

September 30, 1998

(AR-18J)

Janet McCabe, Assistant Commissioner
Office of Air Management
Indiana Department of Environmental Management
100 North Senate Avenue
Post Office Box 6015
Indianapolis, Indiana 46206-6015

Dear Ms. McCabe:

This letter is in reference to Aluminum Company of America (Alcoa) Warrick Operations' request for a compliance extension for the National Emission Standards for Hazardous Air Pollutants (NESHAP) Subpart LL. Alcoa has been verbally informed that the Indiana Department of Environmental Management (IDEM) believes it does not have the authority to grant the requested extensions because the NESHAP has not been adopted into the State regulations. Therefore, Alcoa has requested the United States Environmental Protection Agency (USEPA) to make the determination whether IDEM has the authority to issue such compliance extensions.

On July 10, 1998, John S. Seitz, Director of the USEPA Office of Air Quality Planning and Standards issued a memorandum titled "Delegation of 40 CFR Part 63 General Provisions Authorities to State and Local Air Pollution Control Agencies" which addresses questions concerning the delegation of discretionary authorities relating to air toxics to State and Local air pollution control agencies. This memorandum provides a clarification to 40 CFR 63.6(i)(1), which states that "until an extension of compliance has been granted by the Administrator (or a State with an approved permit program) under this paragraph, the owner or operator of an affected source subject to the requirements of this section shall comply with all applicable requirements of this part." The memorandum states that "it is our interpretation that this authority . . . is automatically granted to States as part of their part 70 operating permits program approval regardless of whether the operating permits program approval is interim or final. Additionally, it is our interpretation that the State would not need to have been delegated a particular source category or have issued a part 70 operating permit for a particular source to grant that source a compliance extension" (emphasis added).

It is USEPA's position that IDEM does have the authority to grant compliance extensions for NESHAP requirements, including to Alcoa for Subpart LL. Since the July 10, 1998, guidance states that delegation of a specific source category or issuance of a specific permit is not necessary to grant a

compliance extension, then this authority was granted as part of the November 15, 1995, interim approval of Indiana's part 70 operating permit program.

I hope this provides a clarification to this issue. If you have any further questions, please contact Sam Portanova, of my staff, at (312) 886-3189.

Sincerely yours,

/s/

Genevieve Damico, Acting Chief
Permits and Grants Section (IL/IN/OH)

cc: Mike Brooks
Indiana Department of Environmental Management
Office of Air Management