

November 21, 2001

(AR-18J)

Robert F. Hodanbosi, Chief
Division of Air Pollution Control
Ohio Environmental Protection Agency
122 South Front Street
P. O. Box 1049
Columbus, Ohio 43266-1049

Dear Mr. Hodanbosi:

This letter is to inform you of the action required by the Ohio Environmental Protection Agency (OEPA) to avoid an April 1, 2002, United States Environmental Protection Agency (USEPA) publication of a notice of program deficiency for the Ohio Title V operating permit program. As you know, we published a Notice of Comment Period on operating permit program deficiencies in the Federal Register on December 11, 2000. Pursuant to the settlement agreement discussed in that notice, USEPA will publish notices of program deficiencies for individual operating permit programs, based on the issues raised that we agree are deficiencies. In that notice, USEPA committed to publishing these notice of program deficiencies for fully approved programs, such as Ohio's program, by April 1, 2002.

USEPA received comments concerning the Ohio's Title V program on or before the March 12, 2001, deadline. We have reviewed these comments and, based on our preliminary review, have identified the issues on which Ohio must have taken significant action to avoid Title V notice of program deficiency on April 1, 2002. These issues include;

1. The language of Ohio Administrative Code (OAC) 3745-77-07(A)(3)(c)(ii) and (iii) limits the reporting of deviations to those which can be detected by the compliance method required by the permit, in violation of the Credible Evidence rule.
2. The Title V permits exempt the reporting of the malfunctions under OAC 3745-15-06(B) from the six-month monitoring reports required by 40 C.F.R. § 70.6(a)(3)(iii).
3. The six-month monitoring reports do not require permittees to submit reports of all required monitoring as required by 40 C.F.R. § 70.6(a)(3)(iii).
4. All of initial Title V permits have not been issued.
5. Title V permits must contain monitoring, recordkeeping, and reporting requirements sufficient to assure compliance.
6. Applicability of 112(r) and Title IV in the Title V permit.

7. Identification of origin and authority of each permit term and condition in the Title V permit.
8. The statements of basis must conform to the guidelines we will provide to you under separate cover.

We enclosed a more detailed discussion of these issues with this letter.

We have been working with your staff concerning these comments and are pleased with Ohio's intent to correct many of these potential deficiencies within a reasonable timeframe. We would like for you to provide us with confirmation of the issues that you are planning to resolve, along with timeframes for these resolutions, so that we will be better prepared to work with you to achieve your goal. Please be aware USEPA reserves the right established in the Act and 40 C.F.R. § 70.10 to publish a notice of program deficiency for any or all of these deficiencies at a later date if Ohio fails to address these deficiencies adequately and expeditiously. USEPA also reserves the right to publish subsequent notice of program deficiencies concerning other deficiencies in the Ohio Title V program that were not identified during the comment period ending March 12, 2001.

We look forward to continued cooperation between our offices on Title V program issues. If you have any questions, please contact Genevieve Damico or Kaushal Gupta, of my staff, at (312) 353-4761 and (312) 886-6803 respectively.

Sincerely yours,

/s/

Bharat Mathur, Director
Air and Radiation Division

Enclosure

Enclosure

Issues Concerning Deficiencies in the Ohio Title V Operating Permits Program

The language of Ohio Administrative Code (OAC) 3745-77-07(A)(3)(c)(ii) and (iii) limits the reporting of deviations to those which can be detected by the compliance method required by the permit.

OAC 3745-77-07(A)(3)(c)(ii) and (iii) states:

(ii) That each report submitted under paragraph (A)(3)(c)(i) of this rule shall clearly identify any deviations from permit requirements since the previous report that have been detected by the compliance method required under the permit and any deviations from the monitoring, recordkeeping, and reporting requirements under the permit;

(iii) That each permit shall require prompt reporting of deviations from federally enforceable permit requirements that have been detected by the compliance method required under the permit, including deviations attributable to upset conditions as defined in the permit, the probable cause of such deviations, and any corrective actions or preventive measures taken. Verbal reports under this paragraph shall be submitted to the director as soon as practicable, consistent with diligent verification and certification, but in no case later than three business days after discovery of the deviation, with a follow up written report within thirty days after such discovery.

The underlined portions of the language demonstrates that Ohio's rules do not require permittees to consider all credible evidence when the permittee reports deviations from the permit requirements. Ohio must remove this language from OAC 3745-77-07(A)(3)(c)(ii) and (iii).

The Title V permits exempt the reporting of the malfunctions under OAC 3745-15-06(B) from the six-month monitoring reports required by 40 C.F.R. § 70.6(a)(3)(iii).

Ohio's permits provide that quarterly reports satisfy the requirements pertaining to prompt reporting of all deviations (Part I A.1.c.ii). For this reason, the quarterly reports must meet the criteria for deviation reports. Both 40 C.F.R. § 70.6(a)(3)(iii)(B) and OAC 3745-77-07(A)(3)(c)(iii) require permittees to report promptly deviations from permit requirements. Yet, Part I.A.1.c.ii of the Ohio Title V permits specifically exclude from the quarterly reporting requirement deviations resulting from malfunctions reported in accordance with OAC rule 3745-15-06, a part of the Ohio State Implementation Plan. The reporting aspects of the Ohio SIP, OAC 3745-15-06, do not alter the Title V requirement to report all deviations, including malfunctions, in the Title V quarterly report. Ohio must revise Part I A.1.c.ii of the Title V permits to no longer exclude the reporting of deviations resulting from malfunctions in the quarterly deviation reports. OEPA may choose to require that the permittee simply reference the malfunction report required by OAC 3745-15-06 by requiring a similar report to Section D of USEPA's Part 71 six-month report form.

The six-month monitoring reports do not require permittees to submit reports of any required monitoring as required by 40 C.F.R. § 70.6(a)(3)(iii).

Ohio's permits provide that quarterly reports satisfy the six month reporting requirements (Part I A.1.c.ii). For this reason, the quarterly reports must meet the same criteria as the six-month reports. Both 40 C.F.R. § 70.6(a)(3)(iii) and OAC 3745-77-07(A)(3)(c)(i) require that the permittee submit a report of the results of all required monitoring. Ohio's quarterly reports only include a compilation of the deviations being reported by the permittee. This does not satisfy the requirement to submit a report of any required monitoring. Ohio may choose to resolve this issue by requiring permittees to submit reports similar to those required by Section C of USEPA's Part 71 six-month report form.

Furthermore, these same rules require that all applicable reporting requirements must include a semiannual (or more frequent) reporting requirement. The rule allows no exceptions. Therefore, all federally enforceable reporting requirements in a Title V permit must require at least semiannual submission of the reports. Some of Ohio's Title V permits currently require only annual submission of certain reports; Ohio must revise these permits to submit reports at least semiannually.

All of the Title V permits have not been issued.

Section 503(c) of the Clean Air Act clearly requires states to issue all of the original Title V permits within 3 years of program approval. We do understand that there are many reasons why Ohio was unable to complete the issuance of these permits within the required 3-year timeframe. However, because the success of this program is dependant on the issuance of the Title V permits, Ohio must develop by March 2002 a schedule for permit issuance, including milestones, to ensure issuance of all outstanding initial permits no later than December 1, 2003. Pamela Blakley provided an example of a permit issuance schedule in an e-mail on November 7, 2001.

Title V permits must contain monitoring, recordkeeping, and reporting requirements sufficient to assure compliance.

A. Title V permits contain monitoring and recordkeeping conditions on the state-only enforceable side when those conditions should be made federally enforceable.

Some Title V permits incorrectly make monitoring and recordkeeping provisions enforceable only by the state when those provisions are federally enforceable. Because a federal rule, 40 C.F.R. § 70.6(a)(3)(i)(B), requires the permit to contain all monitoring and recordkeeping necessary to assure compliance, such monitoring and recordkeeping must be on the federally enforceable side of the permit.

One example of this problem comes from the draft Title V permit for Cleveland Electric Illuminating Avon Lake Power Plant (facility ID 0247030013, issued January 30, 2000). The permit

requires the source to operate and maintain a temperature monitor in order to measure the temperature of gases entering an electrostatic precipitator. Because the temperature of these inlet gases will indicate whether the source is complying with federally enforceable emission limits in the permit, the requirement to operate and maintain the temperature monitor also is federally enforceable. However, the requirement as written in the draft permit is currently enforceable only by the state.

In another example, the same permit contains a state-only requirement for the source to maintain a logbook for a federally required continuous monitoring system. Such a requirement should be federally enforceable, even though there may already be federally enforceable requirements sufficient to ensure proper operation of the monitoring system. Requirements that will ensure the proper operation of federally required monitoring systems are part of the underlying requirements, and therefore are federally enforceable.

B. Title V permits must contain monitoring, recordkeeping, and reporting requirements sufficient to assure compliance with all applicable limits. The permitting authority must write these requirements in sufficient detail to allow no room for interpretation or ambiguity in meaning.

According to 40 C.F.R. § 70.6(c)(1), Title V permits must contain monitoring, recordkeeping, and reporting requirements sufficient to assure compliance with the terms and conditions of the permit. These requirements must involve the best compliance methods practicable, taking into consideration the source's compliance history, likelihood of violating the permit, and feasibility of the methods.

Ohio's Title V permits currently rely too heavily on AP-42 emission factors. These emission factors were not meant to be a basis of compliance with part 70. They are a last resort in compliance assurance (and are not a viable option at all when their reliability ratings are low). In most instances in which AP-42 emission factors are used, more reliable compliance methods are available. The permitting authority need not impose onerous compliance assurance requirements, but it cannot allow sources to use emission factors as an escape from monitoring, recordkeeping, and reporting activities.

In addition to implementing appropriate compliance methods, the monitoring, recordkeeping, and reporting requirements must be written in sufficient detail to allow no room for interpretation or ambiguity in meaning. Requirements that are imprecise or unclear make compliance assurance impossible.

For example, some Title V permits require monitoring devices to be

"installed, calibrated, operated, and maintained in accordance with the manufacturer's specifications," without explaining in detail the steps in these processes or the manufacturer's specifications. These steps must be explained in detail in order for such a requirement to have any meaning. The description of plant activities need not be exhaustive, but they must be specified in the permit if they would significantly affect the source's ability to comply. Leaving the source to follow "manufacturer's specifications" does not help direct the source toward compliance. In some instances, manufacturer's specifications may not even exist.

Many Title V permits contain ambiguous phrases, such as "if necessary." For example: "If necessary, the permittee shall maintain monthly records" The phrase "if necessary" should be removed altogether; the permit should specify exactly what is necessary. In this example, the permit should either precisely explain the situation that would necessitate monthly records, or simply require monthly records at all times. Ambiguous language hampers the source in its duty to independently assure compliance, and leaves legal requirements open to interpretation.

C. Title V permits do not require the submission of an emission control action plan until 60 days after final issuance of the permit, in violation of OAC 3745-25. Although emission control action plans may no longer be critical due to improvements in air quality, Ohio should resolve the deficiency by changing the permits to comply with the rule or by changing the rule itself.

Applicability of 112(r) and Title IV in the Title V permit.

We understand from a October 16, 2001, e-mail from Tom Rigo to staff, that OEPA is immediately making changes to the Title V permit to state applicability to 112(r) and Title IV. We are appreciative of this effort and look forward to the timely incorporation of this language in the Title V permits.

Identification of origin and authority of each permit term and condition in the Title V permit.

40 C.F.R. § 70.6 (a)(1)(i) requires that the Title V permit state the origin of and authority for each term and condition in the permit. Ohio's permits do list the origin and authority on an emission unit basis. It is clear that part 70 and the OAC envision that the origin and authority would be listed on a term and condition basis. For this reason we would like confirmation that OEPA is planning on revising the Title V permit format to include the origin of and authority for each term and condition.

The statements of basis must conform to the guidelines we will provide to you under separate cover.

40 C.F.R. § 70.7(a)(5) requires that each draft permit must be accompanied by a statement that sets forth the legal and factual basis for the draft permit

conditions. Although we recognize that there is little information available to judge the adequacy of a statement of basis besides this requirement, we concur with the comments made by the commentors alleging that Ohio's statements of basis do not meet the intent of part 70. We are, therefore, committing to provide OEPA with some guidelines that will be useful in meeting the intent of part 70. OEPA must follow these guidelines in preparing all future statements of basis to resolve this issue.

