



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5
77 WEST JACKSON BOULEVARD
CHICAGO, IL 60604-3590

APR 25 2012

REPLY TO THE ATTENTION OF:

Michael W. Ahern
Manager, Permit Issuance and Data Management Section
Ohio Environmental Protection Agency
Division of Air Pollution Control
50 West Town Street
Suite 700
P.O. Box 1049
Columbus, Ohio 43216

RE: Clarifications concerning federal enforceability of Ohio Administrative Code (OAC) rule 3745-15-07 nuisance permit term in Ohio OAC Chapter 3745-77 Title V permits.

Dear Mr. Ahern,

Thank you for your letter dated April 4, 2012, regarding the U.S. Environmental Protection Agency's position on the federal enforceability of Ohio's nuisance rule, OAC 3745-15-07, in Title V permits. Your letter specifically asks EPA to clarify whether, under Section 504(a) of the Clean Air Act (CAA) and 40 C.F.R. § 70.2, all provisions in State Implementation Plans (SIPs) are federally enforceable, or whether there have been any decisions or policy changes since 1999 that would lead EPA to have a different conclusion than that which was stated in the June 1999 letter from Steve Rothblatt to Bob Hodanbosi with respect to objecting to proposed Title V permits that identify Ohio's nuisance provisions as state-only enforceable.

Upon re-examining the underlying regulations, Section 504(a) of the CAA, and 40 C.F.R. § 70.2, we reaffirm our position that, because EPA has approved it into the Ohio SIP, OAC 3745-15-07 is a federally enforceable permit term for purposes of Title V permits. As noted above, you referenced in your letter a June 1999 letter from Steve Rothblatt to Bob Hodanbosi. In Enclosure A to that letter, EPA explained stated that "all provisions contained in an EPA-approved SIP and all terms and conditions in SIP-approved permits are ... federally enforceable.... [A]ll such terms and conditions are also federally enforceable 'applicable requirements' that must be incorporated into the Federal side of a Title V permit." Thus, if nuisance provisions apply to a stationary source either because it is subject to the provisions in the Ohio SIP or because a permit issued pursuant to a SIP-approved program contains the requirements, the terms must be included in the federally enforceable side of the source's Title V permit.

Your letter also asked about any decisions or policy changes since 1999 that would lead EPA to have a different conclusion. EPA has not issued any guidance that would contradict this outcome.

We look forward to continuing to work with you on this issue. If you have any questions or wish to discuss this issue further, please feel free to contact me or Charmagne Ackerman, of my staff, at (312) 886-0448.

Sincerely,

A handwritten signature in cursive script that reads "Genevieve Damico". The signature is written in black ink and is positioned above the typed name.

Genevieve Damico
Chief
Air Permits Section