

September 27, 2000

(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:

Over the past month our staffs have been discussing the appropriate monitoring for opacity limitations in Title V permits for the utility sector. Opacity limits are found in Ohio Administrative Code 3745-17-07. Your staff have expressed some concern that requiring continuous opacity monitors (COMs) for compliance purposes would be inconsistent with the State Implementation Plan (SIP) which specifies Method 9 as the compliance method. I would like to take this opportunity to restate USEPA's position that the Ohio Environmental Protection Agency (OEPA), as an enforcement authority, and the subject source, in certifying compliance, must consider COM data in determining compliance with the SIP opacity limit.

As you are aware, a Title V permit must include all applicable requirements. 40 C.F.R. § 70.2 defines an applicable requirement to include "any standard or requirement of the acid rain program under Title IV of the Act or the regulations promulgated thereunder." Under this definition, which your Title V permit program should reflect, the requirements of 40 C.F.R. Part 75, including the requirement that utilities install, maintain and operate COMs, are applicable requirements for Title V purposes. OEPA appropriately includes Part 75 requirements in Ohio Title V permits, albeit indirectly, in the general terms and conditions requiring a source to comply with its acid rain permit. Because the use of COMs is required by Part 75, this monitoring is not periodic monitoring under §70.6(a)(3)(B), but monitoring required by an applicable requirement. As discussed below, the fact that the COMs requirement must be in a utility's Title V permit as an applicable requirement allows you to use it as the mechanism for

determining compliance with the SIP opacity limitations without reference to the periodic monitoring requirements of 40 C.F.R. § 70.6(a).

40 C.F.R. § 70.6(c)(5)(iii)(B) provides for the use of "any other material information" in certifying compliance with the Title V permit. The COM data collected under Part 75 would be considered such material information. If a source submitted a certification of compliance claiming compliance with the SIP based solely on the Method 9 data without consideration of available COM data, the certification would be incomplete and charges of knowingly making a false certification or omitting material information could be brought against the designated representative.

The credible evidence rule further strengthens this point by making it clear that any credible evidence can be used to demonstrate compliance with or show a violation of an applicable requirement. The COM data would be considered credible evidence.

We understand from staff discussions that OEPA agrees with most of our position laid out above, but does not agree that the Title V permits can require the COMs for compliance purposes. OEPA staff have indicated an understanding that the permit must instead reference only the compliance method required by the SIP, Method 9 in this case. However, 40 C.F.R. § 70.6(a)(3)(A) provides that a permitting authority may specify a streamlined set of monitoring or testing provisions provided that the specified monitoring or testing is adequate to assure compliance at least to the same extent as the monitoring or testing requirement not included in the permit as the result of the streamlining. Clearly, the use of COM data assures that the source is adequately monitoring for compliance with the SIP opacity limitations, and, therefore, you should be able to streamline these monitoring requirements in utility permits.

Despite our belief that COMs should be specified, we would not formally object to Method 9 being referenced as a compliance method in the permit. You should be aware, however, that even if the permit refers to Method 9 as the method for demonstrating compliance with the SIP opacity limitation, based upon our reasoning above, USEPA would review and use the data gathered by the Part 75 COMs. We further would expect that the permittee would consider COM data in submitting compliance certifications. For this reason, we believe the permit would be more straightforward and clear if the COMs were clearly stated as a compliance method for the SIP opacity limitation. However, if OEPA still chooses to require the use of COMs only in the general terms and conditions of the Title V permit (which generally

references the acid rain permit and the credible evidence rule) then you must clearly inform the permittee that it must consider COM data in addition to the Method 9 testing results when completing the compliance certification for the SIP opacity limit.

If you have any questions or wish to discuss this issue further, please call Genevieve Damico, of my staff, at (312) 353-4761.

Sincerely yours,

/s/

Pamela Blakley, Chief
Permits and Grants Section