

May 22, 2002

(A-18J)

Chris Trepal
Earth Day Coalition
3606 Bridge Avenue
Cleveland, Ohio 44113

Dear Ms. Trepal:

Thank you for your March 9, 2001, letter regarding your comments on Ohio's Clean Air Act title V operating permit program on behalf of Earth Day Coalition. You submitted your comments in response to the United States Environmental Protection Agency's (U.S. EPA's) Notice of Comment Period on operating permit program deficiencies, published in the Federal Register on December 11, 2000 (65 FR 77376). Pursuant to the settlement agreement discussed in that notice, U.S. EPA agreed to publish in the Federal Register notices of program deficiencies for individual operating permit programs, regarding issues raised that U.S. EPA agrees are deficiencies, and to respond by letter to other concerns that U.S. EPA does not agree are deficiencies within the meaning of part 70.

We have reviewed the issues that you raised in your March 9, 2001, letter and determined that these issues do not indicate any program deficiencies in the Ohio Environmental Protection Agency (OEPA) operating permits program. Because the Ohio Environmental Protection Agency (OEPA) has taken appropriate action to correct other implementation issues you identified, as described in a May 20, 2002, letter from Christopher Jones, Director, OEPA, to Thomas V. Skinner, Regional Administrator, U.S. EPA Region 5, we have no basis at this time for finding that Ohio is inadequately administering its title V operating permit program. We have also determined that other issues raised in your letter do not indicate a program or implementation deficiency in Ohio's title V operating permit program. U.S. EPA's response to each of your program concerns is enclosed.

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We appreciate your interest and efforts in ensuring that Ohio's title V operating permit program meets all federal requirements. If you have any questions regarding our analysis, please contact Genevieve Damico at (312) 353-4761.

Sincerely,

/s/

Stephen Rothblatt, Acting Director
Air and Radiation Division

Enclosure

cc: Robert Hodanbosi, Director
Division of Air Pollution Control
Ohio Environmental Protection Agency

Enclosure

U.S. EPA's Response to Earth Day Coalition's Comments on Ohio's
Title V Operating Permit Program

1. Comment: *OEPA is clearly failing to meet the Clean Air Act Deadline for issuing Title V permits. According to USEPA's web site, Ohio has issued 27% of the 751 applications received. (JAN 2001)*

Response: OEPA has made significant progress in issuing title V operating permits in the past year, and as of March 2002, has issued 60% of the initial permits. However, a number of permitting authorities, including OEPA, have not issued permits at the rate required by the Clean Air Act. For many permitting authorities, because of the sheer number of permits that remain to be issued, U.S. EPA believes that a period of up to two years will be needed for the permitting authority to be in full compliance with permit issuance requirements of the Clean Air Act. If the permitting authority has submitted a commitment to issue all of the permits by December 1, 2003, U.S. EPA interprets that the permitting authority has taken "significant action" to correct the problem and thus U.S. EPA does not consider the permit issuance rate to be a deficiency at this time. An acceptable commitment must establish semiannual milestones for permit issuance, providing that a proportional number of the outstanding permits will be issued during each 6-month period leading to issuance of all outstanding permits. All outstanding permits must be issued as expeditiously as practicable, but no later than December 1, 2003. U.S. EPA will monitor the permitting authority's compliance with its commitment by performing semi-annual evaluations. As long as the permitting authority issues permits consistent with its semi-annual milestones, U.S. EPA will continue to consider that the permitting authority has taken "significant action" such that a notice of deficiency is not warranted.

On March 15, 2002, OEPA submitted a commitment and a schedule to U.S. EPA providing that OEPA will issue 25% of the remaining permits by June 1, 2002, 50% by January 1, 2003, 75% by May 1, 2003, and 100% by September 1, 2003. These milestones reflect a proportional rate of permit issuance for each semiannual period. A copy of the permitting authority's commitment is enclosed. This commitment demonstrates that OEPA has taken "significant action to correct its permit issuance rates, and therefore an NOD is not warranted at this time. As stated above, however, U.S. EPA will continue to monitor OEPA's permit issuance progress on a semi-annual basis, in accordance with OEPA's permit issuance commitments, to ensure that the state continues to take

significant action to issue the remaining operating permits.

2. **Comment: *Ohio EPA has failed to respond to comments on a draft Title V permit. We began interest in a Title V permit in March 1999, participated in a July 6, 1999 public hearing and, to date have not had a response to our comments. (Copies of our letters are enclosed.) We are concerned because we do not know if Ohio EPA has forwarded the proposed permit to U.S. EPA. This does not give us the opportunity to petition U.S. EPA to object.***

Response: U.S. EPA agrees that a significant amount of time has elapsed since the time that you submitted public comments. However, 40 C.F.R §70 does not limit the time that a permitting authority can deliberate about a draft permit before it is proposed. For that reason, this is not a program deficiency. While the time period for filing a petition for objection with the Administrator may be uncertain, a prospective petitioner can conservatively assume that a permit might be issued 135 days from the date of the notice of the draft permit for public comment (i.e., 30 days (public comment) + 45 days (U.S. EPA review) plus 60 days (period for filing petitions for objection)). While permits are often issued more slowly because permitting authorities take time to respond to public comments, this time frame allows a petitioner to protect its rights in the event of uncertainty as to when U.S. EPA's 45-day review period begins. You can determine the date the proposed permit is issued by monitoring OEPA's website and/or the permit issuance spreadsheet which OEPA provides, via electronic mail, to you periodically.

U.S. EPA believes these delays do not constitute a deficiency in OEPA's title V program because 40 C.F.R §70 does not limit the time a permit can rest between stages of issuance. U.S. EPA also believes that the permit issuance schedule to which OEPA has committed will minimize any delays in permit issuance in the future.

3. **Comment: *Ohio EPA seems to be holding up Title V permits. Although we have questioned the permitting process timeline, we have had no response to our concerns from Ohio EPA. At a January 31, 2001 meeting, Ohio EPA Director, Chris Jones, stated that Ohio was holding up all utility Title V permits until a lawsuit was settled. That means for the past 18 months or more, and for an undetermined time in the future our concerns will be unmet and our comments on the permit will be unanswered. We are concerned that Ohio's policy of***

holding up Title V permits for what may be some of the biggest polluters in Ohio will result in negative health effects for some of our most sensitive populations. We also question if Ohio is holding up the permits for other major polluters in the state.

Response: U.S. EPA and OEPA are also concerned with the length of time it is taking to issue all of the title V permits and the environmental benefits being lost while the title V permits have not been issued. For this reason, on March 15, 2002, OEPA submitted a commitment and a schedule to U.S. EPA providing that OEPA will issue 25% of the remaining permits by June 1, 2002, 50% by January 1, 2003, 75% by May 1, 2003, and 100% by September 1, 2003. This schedule applies all title V permits, including utilities and other source categories which heavily impact the environment.

4. ***Comment: USEPA has criticized Ohio EPA on their Title V program and policies. Letters on Region V's web site identify potential deficiencies in Ohio's program including: Statement of Basis (March, 1998) Best Available Technology (June, 1999 and October, 1999), changing or eliminating PTI provisions (May, 1998 and March, 1999), Continuous Opacity Monitors for Utilities (September, 2000) with many of the comments reflecting concern for their federal enforceability. We requested a New Source Review as part of our Title V comments for the Lakeshore 18 permit. Due to all the criticism of Ohio's program we have little confidence that they will address our legitimate concern and request. We question if Ohio is including New Source Review in their Title V permits.***

Response: We agree that we have raised several issues with OEPA over the past 5 years. In each case OEPA and U.S. EPA came to a common understanding on how to address each issue. OEPA is now issuing title V permits with statements of basis and federally enforceable best available technology. (I would like to note that OEPA and U.S. EPA are working to improve the content of the statements of basis.) OEPA does not supercede previously issued permits to install with title V permits. Since OEPA has resolved each of these concerns, we do not believe this to be a deficiency in Ohio's program.

OEPA is still reviewing your comments on the Lakeshore 18 permit. We, therefore, cannot comment on their review of the Lakeshore 18 facility at this time.

5. Comment: *Public Participation Issues:*

HEARINGS:

- *OEPA has not been effective in public outreach including the actual notice. No time is given for the public hearing - only time for the public information session.*
- *It costs \$70 to subscribe to the OEPA publication of the hearing schedules. No one should be expected to access it to get current information. Although we do get emailed Title V information, we cannot access the file from our computer due to a lack of compatibility. Since many low income and minority communities use library, school or community center computer services this is a big problem for EJ communities. This also begs the questions of the digital divide for those communities who do not have computer access at all.*
- *Title V hearings are often held too close together to allow community participation. For Example, two major Title V hearings were held two days apart for the same community (Lake Shore Plant on July 6 and Day Glo on July 8, 1999). It is impossible for one community to fully participate with this timeline. This type of schedule decreases attendance and community participation at one or both of these hearings.*

DOCUMENTS:

- *Copies of documents are rarely provided free of charge to individuals or grassroots groups with limited funds. The city of Cleveland used to charge \$1 per copy and now charges \$.25 per copy. This is a tremendous burden for neighborhood and community groups and members of environmental justice communities.*
- *Requests to examine Cleveland Bureau of Air Pollution Control (BAPC) documents take too long. All requests for air pollution documents must be submitted to Cleveland's Law Department via a public records request.*
- *Some documents may be poorly kept or even be non-existent, causing great difficulty. If documents are missing or non-existent, it is not clear what recourse the public has. The attitude, for example, at the Cleveland BAPC, is that is just the way it is. No apologies, no further help. Public participation in the Title V program has been severely limited by these conditions at BAPC.*
- *Ohio EPA has recently severely criticized the BAPC. It is difficult to know with any certainty if existing*

permits, monitoring and other documents upon which the Title V permit are built are adequate. Some of the OEPA criticisms include: "air pollution permits the city issued that have been so poorly written that their enforcement ability is suspect; a failure to document properly violations they found making it difficult to build enforcement cases against polluters; and air-pollution employees who were unfamiliar with basic air pollution concepts, rules and laws."

- Local agency staff may not be helpful and may be antagonistic (usually due to overwork, lack of tools to deal with the public, etc.). For example, facility engineers are usually not helpful - sometimes they are unable to answer most questions, and do not attend the hearings, even though their names are listed on the Title V public notice. EPA likes to send members of the public to the Public Interest Center where the information is helpful but too general for meaningful participation. Public hearing follow-through is not clearly communicated by hearing examiners from the agencies They do not tell the audience what will happen next, and what the timeline is.

ENVIRONMENTAL JUSTICE:

- Agency folks are not familiar with Environmental Justice issues. Sometimes EPA representatives do not know what "EJ" is, and what should be taken under consideration. This should be integral part of all hearing information.
- All too often the low income and communities of color are forced to live with disproportionate amounts of pollution and increased health risks, even while gains are made for others. Efforts by advocates in low-income communities and communities of color to improve environmental quality are being frustrated by the absence of easily accessible local technical support and expertise. Residents of communities facing disproportionate amounts of pollution also face the burdensome task of accessing and deciphering immense amounts of technical and regulatory information. Information is not easily accessible, is costly to assemble and sometimes difficult to interpret and apply to a given local problem. In many instances a high level of knowledge is required just to learn what pollutants may be found in a neighborhood and whether they pose

health problems for residents. In low-income communities, the problem is heightened by economic realities that make citizen involvement even more difficult, such as lack of financial resources needed to research pollution permits.

- *Technical support and assembling/coordinating available expertise on issues such as regulatory processes, public health risks associated with pollutants of concern, Best Available Technology, New Source Review and Prevention of Significant Deterioration (PSD) Requirements, and monitoring, would equal the playing field for these communities and enable them to effectively take part in the environmental decision making process. Support in the form of research assistance, technical review, and independent oversight of the process will provide affected communities with vital information necessary to achieving environmental equity.*
- *We have requested an EJ determination on the Lakeshore case in addition to a New Source review. We requested the EJ determination for stricter increased monitoring, record keeping and reporting.*

Response:

HEARINGS: 40 C.F.R. §70.7 and Ohio Administrative Code 3745-77-08 have specific requirements for notification of hearings but none for how hearings are to be conducted. OEPA does appropriately notice its hearings in the local newspaper and in the Weekly Review (a state publication which is \$70 to subscribe). You may also request that OEPA notify you of a hearing for a specific source. In the cases where only a time for the public information session is provided and not the time of the hearing, it is because the hearing will directly follow the public information session so the exact hearing time is unknown. OEPA has held hearings close together in order to make it convenient for the participants, as well as to meet their own schedules. In the future, if you feel that hearings scheduled in close proximity to each other are inconvenient for you, we suggest that you contact OEPA to work out other arrangements. We do not believe the cost of the Weekly Review is a deficiency of Ohio's program because the information is readily available through OEPA's website, newspaper notices or directly from OEPA via electronic mail. OEPA stated in its response to your comments that it is willing to work with you to resolve any incompatibility problems with your software and OEPA's format.

DOCUMENTS: We do understand the concerns that you raise with respect to document availability and OEPA staff assistance. Your comments specifically address the BAPC and not OEPA in general. As you pointed out in your comments the BAPC is challenged by resource and other issues. You further recognize that OEPA is committed to working with the BAPC. In its response to your comments OEPA states it has five full time employees devoted to assist the BAPC to improve overall performance including the concerns that you list in your comments. We believe that this commitment of resources on OEPA's part demonstrates its commitment to improving BAPC. OEPA also committed to have a permit review staff member from the appropriate District Office or local air agency at public hearings and ensure that the Public Interest Center staff have a good understanding of the title V permit process.

Where U.S. EPA encourages permitting authorities to provide information that citizens need in order to participate in the permitting process for free or at a reasonable cost, we do not specify, as a program requirement, what a reasonable cost would be. In OEPA's response to your comments OEPA committed to addressing the copying cost issue with all of the local air agencies, requiring that reasonable copying charges are applied and for non-computer users, requiring that only the cost of the copies be applied.

ENVIRONMENTAL JUSTICE: We recognize that the issue of environmental justice (EJ) is of critical importance and is a priority for U.S. EPA. We are working towards providing guidance on this issue to permitting authorities. We also recognize that EJ communities often do need extra resources in order to effectively participate in the permitting process, however this concern needs to be addressed to OEPA as the permitting authority. OEPA is beginning to consider many of these concerns in its approach to permitting facilities in EJ areas. We cannot comment on the request for the EJ determination with respect to the Lakeshore facility at this time.

While EJ issues can be raised and considered in a variety of CAA actions, 40 C.F.R Part 70 does not contain express EJ requirements for permitting authorities. Title V generally does not impose new, substantive emission control requirements but rather it requires that all underlying applicable requirements be included in operating permits. Title V also includes important public participation provisions, as well as monitoring, compliance certification, and reporting requirements intended to assure compliance with the applicable requirements. Given the absence of express EJ requirements for state operating permit

programs, the nature of title V permits, and OEPA's commitment to working with BAPC to resolve issues that have posed barriers to effective public participation, U.S. EPA believes that there is no deficiency in OEPA's title V program with respect to this issue at this time. Nonetheless, U.S. EPA is committed to ensuring environmental justice for all communities, consistent with Executive Order 12898, signed on February 11, 1994, and U.S. EPA encourages state permitting authorities to become familiar with EJ issues. Also, the programs and activities of state permitting authorities that receive U.S. EPA financial assistance are subject to the requirements of Title VI of the Civil Rights Act of 1964, as amended, and U.S. EPA's implementing regulations, which prohibit discrimination by recipients of U.S. EPA assistance on the basis of race, color, or national origin. 42 U.S.C. 2000d et seq.; 40 C.F.R Part 7. Those who believe that a state discriminated against them in violation of these laws, and who meet the jurisdictional criteria that are described in 40 C.F.R Part 7 may file a complaint under these laws.