



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
GREAT LAKES NATIONAL PROGRAM OFFICE
77 WEST JACKSON BOULEVARD
CHICAGO, IL 60604-3590

MAR 17 2010

AE-17J

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Beth Mowrey, Director of Environmental Compliance
The Shelly Company
80 Park Drive
Thornville, Ohio 43076

Dear Ms. Mowrey:

This is to advise you that the United States Environmental Protection Agency has determined that The Shelly Company's facility at 1400 State Route 7 North, in Gallipolis, Ohio (the Shelly facility) is in violation of the Clean Air Act (CAA) and associated state or local pollution control requirements. A list of the requirements violated is provided below. We are today issuing to you a Notice of Violation and Finding of Violation (NOV/FOV) for these violations.

The CAA requires the development of Primary and Secondary National Ambient Air Quality Standards to protect public health and welfare. To attain and maintain these standards, each State is required to develop an implementation plan. Ohio's State Implementation Plan (Ohio SIP) includes the following requirements:

- 1) A permit to install shall be obtained from the Director of the Ohio Environmental Protection Agency prior to installing a new source of air pollutants.
- 2) There are limitations on the quantity of volatile organic compound emissions which can be emitted from stacks. These limits are incorporated into the Shelly facility's Permits to Install numbers 06-2395, 06-4296, 06-5573, 06-06923, 06-5936, and 06-07018, which were all issued in accordance with the Ohio SIP. The purpose of these limits is to limit the formation of ground level ozone which can cause adverse health effects such as damage to lung tissue and reduced lung function, especially in children, people with lung diseases such as asthma, and people who work or exercise outside. Ground level ozone can be transported by wind currents and cause health impacts far from original sources.
- 3) There are reporting as well as design and/or operational requirements for tanks used to store petroleum liquids.
- 4) There are requirements to use air pollution control devices located in the Shelly facility's Permits to Install numbers 06-5573 and 06-5936, which were both issued in accordance with the Ohio SIP.

EPA finds that the Shelly facility has violated the above listed Ohio SIP requirements. In violating the Ohio SIP requirements and Permits to Install numbers 06-2395, 06-4296, 06-5573, 06-06923, 06-5936, and 06-07018, you have violated Title I of the CAA and its implementing regulations, which require compliance with the terms and conditions of the Ohio SIP and permits to install.

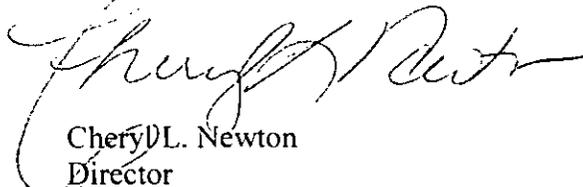
In addition, EPA finds that the Shelly facility is in violation of the Prevention of Significant Deterioration requirements under Section 165 of the CAA, 42 U.S.C. § 7475, Operating Permit requirements under Title V of the Act, 42 U.S.C. §§ 7661 – 7661e, and the New Source Performance Standards under Section 111 of the Act, 42 U.S.C. § 7411.

Section 113 of the CAA gives us several enforcement options to resolve these violations, including: issuing an administrative compliance order, issuing an administrative penalty order, bringing a judicial civil action, and bringing a judicial criminal action.

Section 113 of the CAA provides you with the opportunity to request a conference with us about the violations alleged in the NOV/FOV. A conference should be requested within 10 days following receipt of this notice. A conference should be held within 30 days following receipt of this notice. This conference will provide you a chance to present information on the identified violations, any efforts you have taken to comply, and the steps you will take to prevent future violations. Please plan for your facility's technical and management personnel to take part in these discussions. You may have an attorney represent and accompany you at this conference.

The EPA contact in this matter is Erik Hardin. You may call him at (312) 886-2402 if you wish to request a conference. EPA hopes that this NOV/FOV will encourage The Shelly Company's compliance with the requirements of the Clean Air Act.

Sincerely,



Cheryl L. Newton
Director
Air and Radiation Division

Enclosure

cc: Bruce Weinberg, Air Pollution Control Supervisor
Southeast District Office
Ohio Environmental Protection Agency

United States Environmental Protection Agency
Region 5

IN THE MATTER OF:)	
The Shelly Company)	NOTICE OF VIOLATION and
Gallipolis, Ohio)	FINDING OF VIOLATION
)	
Proceedings Pursuant to)	EPA-5-10-OH-11
the Clean Air Act,)	
42 U.S.C. §§ 7401 et seq.)	

NOTICE AND FINDING OF VIOLATION

The Shelly Company (you or Shelly) owns and operates an asphalt storage terminal at 1400 State Route 7 North, Gallipolis, Ohio (facility).

Statutory and Regulatory Background

A. Ohio State Implementation Plan: Permit to Install

1. To achieve the objectives of the NAAQS and the CAA, Section 110 of the CAA, 42 U.S.C. § 7410, requires each State to adopt and submit to EPA for approval a plan that provides for the attainment and maintenance of the NAAQS in each air quality control region with each state. This plan is known as a State Implementation Plan ("SIP").
2. Under Section 110(a)(2) of the CAA, 42 U.S.C. § 7410(a)(2), each SIP must include a permit program to regulate the modification and construction of any stationary source of air pollution as necessary to assure that NAAQS are achieved.
3. Pursuant to Section 113(a) and (b) of the CAA, 42 U.S.C. § 7413(a) and (b), upon U.S. EPA approval, SIP requirements are federally enforceable under Section 113. Under 40 C.F.R. § 52.23, any permit limitation or condition contained within a permit issued under an U.S.EPA-approved program that is incorporated in a SIP, is a requirement of the SIP, and is federally enforceable under Section 113.
4. On October 31, 1980, U.S. EPA approved Ohio Administrative Code ("OAC") Rule 3745-31, permit to install regulations, as part of the federally enforceable SIP for Ohio. 45 Fed. Reg. 72146 (1980). Since then, U.S. EPA has approved several revisions to OAC 3745-31 into the federally enforceable SIP. The rules were substantially revised and approved as a revision to the SIP on September 8, 1993. 58 Fed. Reg. 47211 (1993).

5. OAC 3745-31-02(A) states that no person shall cause, permit, or allow the installation of a new source of air pollutants or allow the modification of an air contaminant source without first obtaining a permit to install (“PTI”) from the Director of the Ohio Environmental Protection Agency (“Ohio EPA”).

B. Prevention of Significant Deterioration

6. On June 19, 1978, EPA promulgated the prevention of significant deterioration (PSD) of air quality standards pursuant to Part C of Title I of the Act. 43 Fed. Reg. 26403 (June 19, 1978). The PSD regulations were revised on August 7, 1980 (45 Fed. Reg. 52676) in response to a decision of the U.S. Court of Appeals for the D.C. Circuit. These regulations are codified at 40 C.F.R. § 52.21, and subsequent to 1980, the PSD regulations have been repeatedly revised.

7. The authority to implement the federal PSD regulations was delegated to the State of Ohio in a letter from EPA dated May 1, 1980, and thereby incorporated into the Ohio SIP. 40 C.F.R. § 52.1884 and 46 Fed. Reg. 9580 (January 29, 1981).

8. On October 10, 2001, EPA conditionally approved the Ohio SIP for PSD provisions for attainment areas. 66 Fed. Reg. 51570 (October 10, 2001). Ohio EPA's PSD program was finally approved as part of the SIP on January 22, 2003 (68 Fed. Reg. 2909).

9. Facilities in Ohio were required to comply with the federal PSD program prior to October 10, 2001.

10. 40 C.F.R. § 52.21(b)(1)(i)(a) defines a “major stationary source” as any stationary source not within one of 28 source categories which emits, or has the potential to emit, 250 tons per year or more of any air pollutant subject to regulation under the Act. Asphalt storage terminals are not one of the 28 source categories.

11. 40 C.F.R. § 52.21(b)(2)(i) defines a “major modification” as any physical change in or change in the method of operation of a major stationary source that would result in a significant net emissions increase of any pollutant subject to regulation under the Act.

12. 40 C.F.R. § 52.21(b)(3)(i) defines “net emissions increase” as the amount by which the sum of the following exceeds zero:

- (a) Any increase in actual emissions from a particular physical change or change in method of operation at a stationary source; and
- (b) Any other increases and decreases in actual emissions at the source that are contemporaneous with the particular change and are otherwise creditable.

13. 40 C.F.R. § 52.21(b)(21)(iv) defines “actual emissions” and states that for any emissions unit that has not begun normal operations on the particular date, actual emissions shall equal the potential to emit (PTE) of the unit on that date.
14. 40 C.F.R. § 52.21(b)(23) defines “significant” and states that, in reference to volatile organic compounds (VOC), significant net emissions increase means an emissions rate increase that would equal or exceed 40 tons or more per year).
15. An applicant for a permit to construct a new stationary source is required to submit all information necessary to allow the permitting authority to perform any analysis or make any determination required in order to issue the appropriate permit. 40 C.F.R. § 52.21(n).
16. Any owner or operator of a new major stationary source or a major modification at an existing major stationary source subject to 40 C.F.R. § 52.21 who commences construction after the effective date of the PSD regulations without applying for and receiving a PSD permit, shall be subject to appropriate enforcement action. 40 C.F.R. § 52.21(r)(1).
17. 40 C.F.R. § 52.21(i) prohibits the construction of any new major stationary source or major modification without a permit which states that the source would meet the requirements of 40 C.F.R. § 52.21(j) through (r), which include, inter alia, that a source subject to PSD regulations undergo a control technology review, install Best Available Control technology (BACT), and conduct air quality modeling.

C. New Source Performance Standards

18. Section 111(b)(1)(A) of the CAA, 42 U.S.C. § 7411(b)(1)(A), requires EPA to publish and periodically revise a list of categories of stationary sources including those categories that, in EPA’s judgment, cause or contribute significantly to air pollution which may reasonably be anticipated to endanger public health or welfare.
19. Once a category is included on the list, Section 111(b)(1)(B), 42 U.S.C. § 7411(b)(1)(B), requires EPA to promulgate a federal standard of performance for new sources within the category, also known as a New Source Performance Standard (“NSPS”). Section 111(e) of the CAA, 42 U.S.C. § 7411(e), prohibits an owner or operator of a new source from operating that source in violation of a NSPS after the effective date of the NSPS applicable to such source.
20. “New source” is defined as any stationary source, the construction or modification of which is commenced after the publication of the NSPS regulations or proposed NSPS regulations applicable to such sources. 42 U.S.C. § 7411(a)(2). “Stationary source” is defined as a building, structure, facility, or installation which emits or may emit any air pollutant. 42 U.S.C. § 7411(a)(3).
21. Pursuant to Section 111(b)(1)(A) of the CAA, 42 U.S.C. § 7411(b)(1)(A), EPA has identified volatile organic liquid storage vessels as a categories of stationary sources

that cause, or contribute significantly to, air pollution that may reasonably be anticipated to endanger public health or welfare. EPA promulgated NSPSs for volatile organic liquid storage vessels at 40 C.F.R. Part 60, Subpart Kb, 40 C.F.R. §§ 60.110b – 60.117b (“Subpart Kb”).

22. Pursuant to Section 111(b)(1)(B) of the CAA, 42 U.S.C. § 7411(b)(1)(B), EPA has promulgated regulations that contain general provisions applicable to all NSPS sources. 40 C.F.R. Part 60, Subpart A, §§ 60.1- 60.19 (“Subpart A”).

23. The provisions of 40 C.F.R. Part 60 “apply to the owner or operator of any stationary source which contains an affected facility, the construction or modification of which is commenced after the publication [in Part 60] of any standard (or, if earlier, the date of publication of any proposed standard) applicable to that facility.” 40 C.F.R. § 60.1.

24. “Affected facility” is defined as “any apparatus to which a standard is applicable.” 40 C.F.R. § 60.2.

25. The “affected facility” to which Subpart Kb applies is defined, in relevant part, as each storage vessel with a capacity greater than or equal to 75 cubic meters (m^3) that is used to store volatile organic liquids for which construction, reconstruction, or modification is commenced after July 23, 1984.. 40 C.F.R. § 60.110b(a).

26. Owners or operators must submit to U.S. EPA a notification of the date of construction of a new affected storage tank within 30 days after such date. 40 C.F.R. § 60.7(a)(1).

27. Owners or operators must submit to U.S. EPA a notification of actual date of initial startup of a new affected storage tank within 15 days after such date. 40 C.F.R. § 60.7(a)(3).

30. At all times, including periods of startup, shutdown, and malfunction, owners and operators shall, to the extent practicable, maintain and operate any affected facility including associated air pollution control equipment in a manner consistent with good air pollution control practice for minimizing emissions. 40 C.F.R. § 60.11(d).

31. Owners or operators of affected storage tanks must maintain records of the volatile organic liquid stored, the period of storage, and the maximum true vapor pressure of the organic liquid during the respective storage period. 40 C.F.R. § 60.116b(c).

D. Title V

32. Title V of the CAA, 42 U.S.C. §§ 7661-7661f, establishes an operating permit program for certain air pollution sources, including “major sources.” The purpose of Title V is to ensure that all “applicable requirements” for compliance with the CAA are collected in one place.

33. "Major source" under Title V includes, *inter alia*, any stationary source that directly emits, or has the potential to emit, one hundred tons per year or more of any air pollutant. *See also* 40 C.F.R. § 70.2.

34. Pursuant to Section 502(b) of the CAA, 42 U.S.C. § 7661a(b), EPA promulgated regulations implementing the requirements of Title V and establishing the minimum elements of a Title V permit program to be administered by any state or local air pollution control agency. 57 Fed. Reg. 32250 (July 21, 1992). These regulations are codified at 40 C.F.R. Part 70.

35. Section 502(a) of the CAA, 42 U.S.C. § 7661a(a), and the implementing regulation at 40 C.F.R. § 70.7(b), make it unlawful for any person to violate any requirement of a permit issued under Title V or to operate a major source except in compliance with a permit issued by a permitting authority under Title V.

36. Section 503(a) of the CAA, 42 U.S.C. § 7661(b)(a), states that any source specified in Section 502(a), including a major source, shall become subject to a permit program and is required to have a permit on the later of the following dates: (1) the effective date of a permit program applicable to the source or (2) the date such source becomes a major source.

37. Section 503(c) of the CAA, 42 U.S.C. § 7661(b)(c), states that any person required to have a permit shall, not later than 12 months after the date on which the source becomes subject to a permit program approved or promulgated under this subchapter, submit to the permitting authority an application for a permit. *See also* 40 C.F.R. § 70.5(a)(i).

38. 40 C.F.R. § 70.1(b) requires that all major sources shall have a permit to operate that assures compliance with all applicable requirements.

39. 40 C.F.R. § 70.6(b)(1) specifies that all terms and conditions in a permit issued under a Part 70 program, including any provisions designed to limit a source's potential to emit, are enforceable by the Administrator of EPA under the CAA.

40. 40 C.F.R. § 70.7(b) requires that no Part 70 source may operate after the time that it is required to submit a timely and complete application under an approved permit program, except in compliance with a permit issued under a Part 70 program.

41. U.S. EPA promulgated full approval of the Ohio's Title V program on August 15, 1995. *See* 40 C.F.R. Part 70, Appendix A; 60 Fed. Reg. 42045. Ohio's Title V program became effective on October 1, 1995. *See* 60 Fed. Reg. 42045.

42. The Ohio regulations governing the Title V permitting program are codified at OAC 3745-77, and are federally enforceable pursuant to Section 113(a)(3).

43. OAC 3745-77-02(A) provides that "the owner or operator of the Title V source shall not operate such source after the date that a timely and complete Title V permit

application is required to be submitted, except in compliance with a permit issued under this Chapter.”

The Shelly Facility

44. The Shelly Company owns and operates an asphalt storage terminal at 1400 State Route 7 North, Gallipolis, Ohio (facility).

45. The facility includes 13 storage tanks, including 11 used to store liquid asphalt, and two loading racks.

46. Ohio Environmental Protection Agency (OEPA) issued Permit to Install (PTI) number 06-2395 to the facility on May 17, 1989. This PTI allowed the installation of two liquid asphalt storage tanks (OEPA source numbers T001 and T002) and limits VOC emissions from both tanks combined to less than 1 ton per year.

47. OEPA issued PTI number 06-4296 to the facility on July 26, 1995. This PTI allowed the installation of three liquid asphalt storage tanks (OEPA source numbers T003, T004, and T005) and lists the VOC emissions from the tanks as negligible. The PTI also indicates that the three tanks are subject to NSPS Subpart Kb.

48. OEPA issued PTI number 06-5573 to the facility on January 21, 1999, and issued a revision to it on June 20, 2002. This PTI allowed the installation of one liquid asphalt storage tank (OEPA source number T006), limits the VOC emissions to 0.3 tons per year, and requires the tank to be equipped with a charcoal filter. The PTI also indicates that the tank is subject to NSPS Subpart Kb.

49. OEPA issued PTI number 06-5936 to the facility on October 20, 1999. This PTI allowed the installation of one liquid asphalt storage tank (OEPA source number T007), limits the VOC emissions to 0.3 tons per year, and requires the tank to be equipped with a charcoal filter. The PTI also indicates that the tank is subject to NSPS Subpart Kb.

50. OEPA issued PTI number 06-06923 to the facility on June 25, 2002. Among other things, this PTI allowed the installation of one liquid asphalt storage tank (OEPA source number T010) and limits the VOC emissions from this tank to 0.9 tons per year. The PTI also indicates that the tank is subject to NSPS Subpart Kb.

51. OEPA issued PTI number 06-07018 to the facility on June 25, 2003. This PTI allowed the installation of three liquid asphalt storage tanks (OEPA source numbers T011, T012, and T013) and limits the VOC emissions from each tank to 1.75 tons per year. The PTI also indicates that the tanks are subject to NSPS Subpart Kb.

Explanation of Violations

A. Ohio SIP – Permit to Install

Exceedances of VOC PTI Limitations

52. In April 2009, Shelly submitted the results of an analysis of the vapor pressure of its liquid asphalt material to EPA in response to an information request issued by EPA under Section 114 of the Act. The results of this analysis demonstrate the vapor pressure at a range of temperatures as follows:

Temperature (°F)	Vapor Pressure (torr)	Vapor Pressure (psia)	Vapor Pressure (kPa)
100	1.7	0.033	0.227
250	12	0.232	1.600
300	20	0.387	2.666
350	31	0.599	4.133

Using these measured vapor pressure values, EPA's TANKS program application, and the same input parameters Shelly used in its own TANKS calculations that it provided to EPA in response to an information request issued by EPA under Section 114 of the Act, the calculated actual, annual uncontrolled VOC emissions from each of the tanks are as follows:

Tank (Ohio EPA Emission Unit Number)	Actual Annual VOC Emissions (in tons per year)
T001	7.65
T002	8.29
T003	4.08
T004	3.17
T005	3.40
T006	21.21
T007	14.08
T010	14.08
T011	3.46
T012	3.25
T013	3.72

In a December 23, 2003, letter to Ohio EPA, Shelly used an equation from EPA's AP-42 to calculate potential emissions from its two loading racks. EPA used this equation with the above measured vapor pressures to calculate both the potential and actual emissions from the loading racks. For the actual emissions calculations, EPA used the actual annual loading from each of the two racks reported by Shelly in its response to an information request issued by EPA under Section 114 of the Act to calculate the following, and for the potential emissions calculations, EPA used the capacity of the loading racks from this same response (Shelly has not obtained any legal requirement limiting the number of trucks it can load from these racks:

Loading Rack	Actual or	Annual VOC	Daily VOC
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	Potential	Emissions (tons per year)	Emissions (pounds per day)
1	Actual	37.9	207
2	Actual	4.5	25
1	Potential	334	1,829
2	Potential	200	1,097

53. The VOC emissions from the following tanks exceeded the identified PTI VOC limits in violation of the respective PTIs as follows:

Tank (Ohio EPA Emission Unit Number)	PTI Number	VOC Limit (in tons per year)	Calculated Actual VOC Emissions (in tons per year)
T001	06-2395	1	7.65
T002	06-2395	1	8.29
T006	06-5573	0.3	21.21
T007	06-5936	0.3	14.08
T010	06-06923	0.9	14.08
T011	06-07018	1.75	3.46
T012	06-07018	1.75	3.25
T013	06-07018	1.75	3.72

Failure to Operate Carbon Absorption Systems on T006 and T007

54. Shelly does not operate the carbon absorption systems that replaced the charcoal filters on the liquid asphalt storage tanks and loading racks for at least four months out of the year and does not monitor the carbon systems to accurately determine when the capacity of the carbon to absorb VOCs has been exhausted.

55. Shelly's failure to operate the carbon absorption system for Tanks T006 and T007 for a period of at least four months per year violates the Ohio SIP as well as PTIs number 06-5573 and 06-5936.

Failure to Obtain Permit to Install for New Sources of Air Pollutant

56. Using the measured vapor pressure values listed in paragraph 52, above and Shelly's own calculations that it provided to Ohio EPA to demonstrate the potential VOC emissions from the loading racks, EPA calculated both actual and potential VOC emissions of well over 10 pounds per day for each of the two loading racks located at the facility

57. Shelly has yet to apply for or obtain a permit to install for either of the two loading racks it operates at the facility in continuing violation of Ohio SIP Rule (OAC) 3745-31-02(A)(1).

C. Prevention of Significant Deterioration

58. Using the measured vapor pressure values listed in paragraph 52 above and Shelly's own calculations that it provided to Ohio EPA to demonstrate the potential emissions from its loading racks, EPA calculated potential VOC emissions from Loading Rack 1 alone of greater than 250 tons per year.

59. The Shelly facility is a major stationary source and has been since its initial construction in 1989.

60. Shelly has yet to apply for or obtain a permit containing all of the necessary requirements of PSD, including installation of BACT, and conduct air quality monitoring, and Shelly continues to operate the facility without meeting BACT emission limits. These constitute continuing violations of 40 C.F.R. § 52.21(i) and 40 C.F.R. § 52.21(r)(1).

61. Shelly failed to submit all necessary data about the initial installation of its facility and has yet to calculate the potential emissions from its tanks to determine if the subsequent installation of additional tanks at the facility constituted major modifications subject to PSD requirements. Shelly continues to operate the additional tanks without meeting these requirements. These constitute continuing violations of 40 C.F.R. § 52.21(n).

D. NSPS

Failure to Use Good Air Pollution Control Practices

62. Shelly's inaccurate monitoring of its carbon absorption systems for its asphalt storage tanks and its failure to operate the systems for at least four months every year are not consistent with good air pollution control practice for minimizing emissions and are violations of 40 C.F.R. § 60.11(d).

Failure to Submit Notifications

63. Shelly failed to submit a notification of construction within in 30 days after such construction date for each of its 11 liquid asphalt storage tanks in violation of 40 C.F.R. § 60.7(a)(1).

64. Shelly failed to submit a notification of initial startup within 15 days after the startup date for each of its 11 liquid asphalt storage tanks in violation of 40 C.F.R. § 60.7(a)(3).

E. Title V Violations

Failure to Apply for Title V Permit

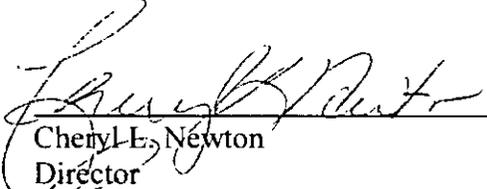
65. The potential VOC emissions have been well over the significance threshold for Title V since it was initially constructed in the late 1980's.

66. Shelly failed and continues to fail to apply for an operating permit and continues to operate without an operating permit in violation of Section 503(c) of the CAA, 42 U.S.C. § 7661(b)(c), 40 C.F.R. § 70.5(a)(i) and 7(b), and OAC 3745-77-02.

F. Environmental Impact of Violations

67. Violations of VOC standards increase ground-level (tropospheric) ozone (smog). Ground-level ozone irritates lung airways and can cause wheezing, coughing, painful or difficult breathing, especially in people with respiratory problems. Repeated exposure can lead to more serious health problems like asthma, reduced lung capacity, and increased susceptibility to pneumonia or bronchitis. In addition, ground-level ozone inhibits the ability of plants to produce and store food, leading to ecological damage.

3/15/10
Date


Cheryl L. Newton
Director
Air and Radiation Division

CERTIFICATE OF MAILING

I, Loretta Shaffer, certify that I sent a Notice and Finding of Violation, No. EPA-5-10-OH-11, by Certified Mail, Return Receipt Requested, to:

Beth Mowrey, Director of Environmental Compliance
The Shelly Company
80 Park Drive
Thornville, Ohio 43076

I also certify that I sent copies of the Notice of Violation and Finding of Violation by first class mail to:

Bruce Weinberg, Air Pollution Control Supervisor
Southeast District Office
Ohio Environmental Protection Agency
2195 Front Street
Logan, Ohio 43138

on the 17 day of March, 2010.

CERTIFIED MAIL RECEIPT NUMBER: 7001 0320 0006 0192 0744