

May 22, 2002

(A-18J)

Ms. Jessica G. Dunn
Clean Air Conservancy
3130 Mayfield Road GE 012
Cleveland Heights, Ohio 44118

Dear Ms. Dunn:

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 Clean Air Conservancy, Inc. 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 Clean Air Conservancy's Comments on Ohio's
Title V Operating Permit Program

1. Comment: *Permit conditions are often too vague or include poorly defined language, consequently unenforceable as a practical matter. For Example:*
- a. *S.K. Wellman Corp. (Facility ID #13-18-12-1632)*
- *"A regular program of inspection and maintenance shall be performed..." Regular must be defined.*
 - *"The permittee shall properly operate and maintain..." Maintain must be defined.*
 - *"Material spilled from the baghouse hoppers or from the crew conveyors shall be cleaned up immediately." Immediately must be defined by setting an outer time limit.*
- b. *Hydraulic Press Brick (Facility ID #13-18-27-0383)*
- *"The permittee shall promptly remove, in such a manner as to minimize or prevent resuspension, earth and/or other material from paved streets." Promptly must be defined by setting an outer time limit.*
 - *"The permittee shall eliminate visible particulate emissions to the extent possible with good engineering design." The permitting authority must specify the extent and good engineering design must be defined.*
 - *"The permittee shall ensure that the baghouse is operated with sufficient air volume..." Sufficient must be defined.*

Response: We have reviewed all of your specific comments on the Cleveland Electric Illuminating, Avon Lake Power Plant and Cleveland Steel Container Corp. permits. We have considered these specific permit issues as a whole rather than as individual permit comments when we evaluated whether or not Ohio's title V program requires sufficient monitoring. We have also reviewed OEPA's responses to your comments and to our November 21, 2001, letter regarding unresolved issues. (OEPA's responses are enclosed.) Overall we found Ohio's title V program meets the minimum requirements of part 70. However, if we become aware of an individual permit does not meet the minimum requirements of part 70, U.S. EPA will object to the permit.

We agree that in addition to implementing appropriate compliance methods, the monitoring, record keeping, 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. Permit language such as "properly operate and maintain" and "good engineering design" are examples. U.S. EPA does agree that this language could be clarified and we will continue to work with OEPA to improve the enforceability of this language.

2. Comment: ***The draft Title V permit for Hydraulic Press Brick includes some permit conditions that are less stringent than the conditions in the previous operating permit. In addition, some conditions from the previous PTO are omitted from the Title V permit. For example:***
 - a. ***The previous PTO states that the particulate emissions from the traveling grate clinker cooler are limited to 39.1 pounds per hour, but the draft Title V permit only limits emissions to 43.6 pounds per hour.***
 - b. ***The previous PTO states "The baghouse shall be inspected for visible emissions twice per eight hour shift during operation". The draft Title V permit cannot be less stringent than the previous PTO.***

Response: Section 504(a) of the CAA and 40 CFR 70.6(a)(1) require that title V operating permits include emission limitations and standards that assure compliance with all applicable requirements at the time of permit issuance. Permits to Operate (referred to as PTO in your comments) terms and conditions are not themselves "applicable requirements" as the term is defined in 40 CFR 70.2. In this case, the underlying requirement which imposes the particulate matter emission limitation is OAC 3745-17-11, which requires a 43.6 pound per hour limit. We believe Hydraulic Press Brick's title V permit will assure compliance with this limit. Therefore, we find the change in Hydraulic Press Brick's particulate emissions limit from 39.1 to 43.6 pounds per hour to be consistent with the requirement of 40 CFR 70.6(a)(1) that each title V permit include emission limitations that assure compliance with the underlying applicable requirements.

3. Comment: ***Permit conditions lack adequate monitoring, record keeping and reporting requirements to ensure compliance with applicable regulations. As currently drafted, the Title V permits for Hydraulic Press Brick, Lincoln Electric Company, S.K. Wellman Corp, and Cleveland Electric Illuminating Lakeshore 18 do not include the necessary monitoring, record keeping and reporting requirements to allow the public or***

regulatory agency to determine whether or not the facility is in compliance.

Response: OEPA takes several factors into account when determining the appropriate monitoring, record keeping, and reporting for each title V permit. OEPA considers the actual emissions of a particular unit, its compliance history, the monitoring, record keeping, and reporting required in the underlying applicable requirement, and if there have been continual and excessive malfunctions of the control equipment. (See Ohio engineering guides 15, 52, and 65). Based on OEPA's general approach to determining adequate monitoring record keeping, and reporting, we believe that OEPA's title V program is not deficient.

4. Comment: ***The draft permits for the above mentioned facilities include language that limits the type of evidence that members of the public and government regulators may rely upon to show that a facility is violating a requirement. For example:***
- a. ***"Compliance with the emissions limitation...shall be determined by..." This credible evidence buster language must be removed from Ohio Title V permits.***

Response: As memorialized in a December 28, 1998, letter from Cheryl Newton, U.S. EPA, to Robert Hodanbosi, OEPA, U.S. EPA and OEPA agreed on the common understanding and interpretation that although the permits clearly state the reference test or monitoring method that must be employed by a given permittee, the general term in A.17 makes it clear that any person can use any credible evidence to demonstrate compliance with or violation of a term of the title V permit. It is U.S. EPA's position that the scope of the phrase "to the extent authorized by law" in A.17 is not limited to the particular permit but rather refers to the federal Clean Air Act, implementing regulations and all other applicable federal and state authorities. Furthermore, Ohio's instructions for the annual compliance certification specify that "any other material information that has been specifically assessed in relation to how the information potentially affects the compliance status of the above-described applicable requirements for this emissions unit must be included". U.S. EPA interprets this language to mean that sources are not precluded from taking any credible evidence into account in making its compliance certifications and that sources must do so.

4. Comment: ***The Ohio EPA has not responded to any of the***

comments we have submitted. In addition, none of the permits we have reviewed have moved past the draft stage. The permits and dates comments were submitted are as follows:

<i>Cleveland Electric Illuminating Lakeshore 18</i>	<i>- July 6, 1999</i>
<i>Hydraulic Press Brick</i>	<i>- June 27, 2000</i>
<i>The Lincoln Electric Company</i>	<i>- September 15, 2000</i>
<i>S.K. Wellman Corp</i>	<i>- February 26, 2001</i>

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, 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.

5. Comment: *The Ohio EPA has not met the deadline for issuing Title V permits. These issues have been raised with the Ohio EPA through written comments for each permit. However, it is my position that poorly written Title V permits clearly demonstrates inadequate administration of the program by the Ohio EPA. These comments are based on the review of draft permits, and dialog with other permit reviewers in the state.*

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.