

To: Permit Advisory Group (notification of PDF link via e-mail)
From: Mike Ahern, DAPC
Date: March 1, 2012

Re: Summary of comments on draft revised Title V and PTI Standard Terms and Conditions; **Request for feedback by close of business Thursday, March 8, 2012**

The most recent version of the Standard Terms and Conditions template has been posted to the Ohio EPA Answer Place. The document highlights the changes made in response to the comments submitted on the August 24, 2010 draft. Changes in the August 24 draft that either did not receive any comments, or that we determined did not need further refinement are presented in normal text. The template documents, and a pdf copy of all received comments, can be accessed by searching for the term "PAG" via the Ohio EPA Answer Place (<http://ohioepa.custhelp.com>).

Below is a summary of the comments received under each summarized change to the originally sent out for comment on August 24, 2011. The document is structured as follows:

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- ◆ Summary of the change to the term
 - Summary of comments
 - DAPC evaluation of the comments and/or DAPC response to the comments
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Comments were received from:

- **Porter Wright Morris and Arthur (PWMA)** ["...on behalf of numerous and diverse clients"]
- **PPG Industries**, Cleveland facility
- **First Energy**; as part of their West Lorain facility Title V renewal permit comments
- **Goodrich Landing Gear - Plating Operations**; as part of their Title V renewal permit comments
- **Regional Air Pollution Control Agency** (comment agreed with all revised language)
- **Shumaker, Loop & Kendrick, LLP** on behalf of the Ohio Utility Group (Buckeye Power, Inc; Columbus Southern Power Company (a unit of AEP); The Dayton Power and Light company; Duke Energy of Ohio; FirstEnergy; Ohio Power

company (a unit of AEP); Ohio Valley Electric Company

Title V Standard Terms and Conditions

- ◆ Updated the cover letter to reflect the current ERAC address; highlight compliance assistance and pollution prevention support resources; highlight how to provide feedback on the permitting experience; and, highlight how to access an electronic copy of the permit.
 - No comments received.
- ◆ A.1.a)(5) – added reference to a new term A.30 concerning electronic submission of required documents.
 - No comments on A.1(a)(5), but there are comments on the referenced A.30 (see response to A.30 below).
- ◆ Removed references to “postmarked” and made associated minor text changes throughout to indicate “submit” or “*submission*” accordingly throughout the standard terms.
 - Commenters would like “postmarked” to remain in the terms based on their comments concerning A.30 below.
 - See response and modified language for A.30 below.
- ◆ Removed throughout generic references to “the appropriate Ohio EPA District Office or local air agency” and replaced with a field marker [DO/LAA long name] that will reflect the specific Ohio EPA District Office or local air agency having jurisdiction over the specific issued permit.
 - No comments received.
- ◆ A.2.c)(5) – harmonized reports associated with this term by cross referencing term A.2.c)1 and added text to clarify that reports are primarily sent to the DO/LAA unless otherwise specified elsewhere in the permit.
 - No comments received.
- ◆ A.7.a) – Removed the sentence “The permittee must comply with all terms and conditions of this permit” in response to multiple appeals. Appellants argue the term serves no purpose since full compliance with the permit is inherently required.
 - Commenters supported the change.

- ◆ A.7.b) – added “...except as provided pursuant to A.16 below.” to address concerns raised in multiple appeals that term A.7.b and A.16 were not in harmony with one another.
 - One commenter supported the change, one objected citing potential requirements to keep the facility running so that electric systems integrity, reliability and “obligation to serve” is not compromised. The objection also proposes exempting such situations with commenter’s proposed language (see comments from First Energy). The commenter also provided additional supplemental information for Ohio EPA to consider regarding potential exemptions from permit requirements so that electric systems integrity, reliability and “obligation to serve” is not compromised.
 - Ohio EPA is consulting with U.S. EPA to investigate any authority, and under what conditions, operating conditions (forced or otherwise) can be exempted through the Title V permit terms and conditions. Future changes to the Standard Terms and Conditions will be implemented if regulation-based exemptions are identified and confirmed in writing by U.S. EPA.
- ◆ A.13.d)(2).a – added language to clarify by permit term that the short form annual compliance certification requires review of every permit term and condition and that completed certifications fulfill the requirements of OAC rule 3745-77-07.
 - Commenters supported the intended purpose of the change. One commenter suggested the following text:

"Identification of each term or condition that is the basis of the certification. The identification may include a statement by the Responsible Official that every term and condition that is a federally enforceable emission limitation, standard, or work practice has been reviewed, and such terms and conditions with which there has been continuous compliance throughout the year are not separately identified."
 - Ohio EPA appreciates the suggested language, but does not think that it is broad enough to meet the requirements of 40 CFR 70.6(b) [see box below]. However, we have used the suggested language and broadened it in the revised draft that we are seeking comments on today.

40 CFR 70.6

(b) Federally-enforceable requirements.

(1) *All terms and conditions in a part 70 permit, including any provisions designed to limit a source's potential to emit, are enforceable by the Administrator and citizens under the Act.*

(2) Notwithstanding paragraph (b)(1) of this section, the permitting authority shall specifically designate as not being federally enforceable under the Act any terms and conditions included in the permit that are not required under the Act or under any of its applicable requirements. Terms and conditions so designated are not subject to the requirements of §§ 70.7, 70.8, or of this part, other than those contained in this paragraph (b) of this section.

Ohio EPA seeks comment on the following revised language:

"Identification of each term or condition that is the basis of the certification. The identification may include a statement by the Responsible Official that every term and condition that is federally enforceable has been reviewed, and such terms and conditions with which there has been continuous compliance throughout the year are not separately identified."

◆ A.23.a) - Corrected a typographical error

- No comments received.

◆ A.30 – New term added to clarify required means for submitting documents required by the permit to be submitted in electronic format except as otherwise specified within specific terms and conditions of a specific issued permit. Ohio EPA has received many comments since 2008 requesting clarification that would result in consistent use of electronic submissions versus hard copy reporting. Title V facilities have submitted quarterly and semi-annual deviation reports electronically since January 2009. A large majority of facilities submit all reports (including emission test reports and NSR modeling results) via Air Services. This new term reflects practical and consistent use of electronic reporting while preserving the option alternate mechanisms through permit terms or administrative approval tailored to specific situations. Added text also harmonizes electronic submission requirements from permit-to-install to Title V permit.

- Three commenters stated concerns with adding paragraph A.30; two commenters believe the Director does not have legal authority to require electronic submissions (or conversely, does not have authority to not accept paper submissions).

➤ OAC rule 3745-77-03(A) states in part:

"Standard application form. The owner or operator of a source that is

subject to the Title V permit program as provided in rule 3745-77-02 of the Administrative Code shall submit Title V permit applications in the manner and form prescribed by the director for that purpose.”

It is clear, from the inception of the Title V program, that the Director has had and has used the authority to require electronic means as the mechanism for receiving Title V applications. Electronic submission of reports, etc is not explicitly addressed in the rule. However, stipulating a “manner and form” for reporting in the permit terms and conditions is consistent with the rule. The proposed language does not prohibit a hard copy submission of reports under certain conditions and the term is structured in a way that provides approval by the Director to use this alternate means of reporting, but preserves electronic reporting as the primary mechanism. Not requiring a consistent, predictable, and structured approach to reporting will lead to inconsistency and the inability to track submitted reports both from a given facility over time and across facilities. Required electronic reporting provides an accurate, predictable, and consistent manner for permittees to report.

Ohio EPA does recognize that unforeseeable events or hardship may affect the ability to submit applications, notifications, or reports electronically and has modified the text of A.30 to provide a mechanism that allows a permittee to identify the unique hardship circumstances that preclude electronic submission of applications, notifications, or reports thus preserving an alternate means to electronic submissions based on specific circumstances.

- One commentor indicated that they believe A.30 is contradictory (i.e., applying to the submission of information that is state and federally enforceable, but the submission requirement itself is state-only enforceable) and will result in a Responsible Official (RO) being required to sign documents (e.g., intent to test forms) that are not legally required to be signed by a RO.
- The requirement to use Air Services as the mechanism is separate from the information contained in the submission. Therefore, there is no legal conflict between state and federal enforceability of what is being submitted versus the state-only enforceable mechanism for transmitting the information. Similar to the preceding, the person (represented by the Air Services account performing the submit step in Air Services that transfers the information to Ohio EPA can be either a RO or another employee of the company. Air Services presents different signature language (RO versus simply stating they are authorized to submit what is being submitted) depending on the Air Services role that person has been given by the company. In summary, a non-RO can continue to submit information that is not required to be signed by an RO and conversely, an RO does not have to sign information being submitted that is not legally required to be signed by an RO.

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Permit-To-Install Standard Terms and Conditions

- ◆ Updated the cover letter to reflect the current ERAC address; highlight compliance assistance and pollution prevention support resources; highlight how to provide feedback on the permitting experience; and, highlight how to access an electronic copy of the permit.
 - No comments received

- ◆ A.3.a) – Removed the sentence “The permittee must comply with all terms and conditions of this permit” in response to multiple appeals. Appellants argue the term serves no purpose since full compliance with the permit is inherently required.
 - Commenters supported the change.

- ◆ Removed references to “postmarked” and made associated minor text changes to indicate “submit” or “submission” accordingly throughout the standard terms.
 - Multiple commenters suggested “postmarked” remain in the Standard Terms and Conditions
 - See response to comments for the similar change to the Title V terms.

- ◆ Removed throughout generic references to “the appropriate Ohio EPA District Office or local air agency” and replaced with a field marker [DO/LAA long name] that will reflect the specific Ohio EPA District Office or local air agency having jurisdiction over the specific issued permit.
 - No comments received

- ◆ A.6.a) - added compliance requirements text to clarify required means for submitting documents required by the permit to be submitted in electronic format except as otherwise specified within specific terms and conditions of a specific issued permit. Ohio EPA has received many comments since 2008 requesting clarification that would result in consistent use of electronic submissions versus hard copy reporting. Title V facilities have submitted quarterly and semi-annual deviation reports electronically since January 2009. A large majority of facilities submit all reports (including emission test reports and NSR modeling results) via Air Services. This new term reflects practical and consistent use of electronic reporting while preserving the option alternate mechanisms through permit terms or administrative approval tailored to specific situations. Added text also harmonizes electronic submission requirements from permit-to-install to Title V permit.
 - Multiple commenters reiterated comments similar to those related to Standard Term and Condition A.30 of the Title V Standard Terms and Conditions
 - See response to comments for the similar change to the Title V terms; term A.30.

- ◆ A.11.c) – added clarifying text that submitting the facility profile electronically constitutes notifying the director of permanent shut down of affected emissions units when so designated as part of a facility profile submission.

- No comments received

Section B&C

- ◆ C.1 – for the case where groups of emissions units are permitted, added the company equipment ID field from permit applications to aid in company identification of operations subject to specific permit requirements.

- No comments received

- ◆ C.1.b)1 – replace “with” with “associated” in the first sentence to read as follows: “The specific operation(s), property, and/or equipment that constitute each emissions unit along with the applicable rules and/or requirements and associated emissions limitations and/or control measures are identified below.”

- No comments received

◆ Additional unsolicited comments

- Two commenters raised a suggestion that Ohio EPA add Standard Term and Condition language that would effectively state “compliance with the terms and conditions in the Title V permit applicable to an emission[s] unit constitutes compliance with all prior permits-to-install, permits-to-operate, and permits to install and operate issued for the [emissions] unit.” in order to promote consistency across the permitting programs.

- Ohio EPA understands the desire to streamline the ability to comply with multiple permit requirements through one reporting mechanism and has received questions over time whether duplicate copies of reports must be submitted in order to meet separate, but identical, reporting requirements established in installation versus operating permit documents. To date, our response to the questions has been that one report can be submitted as long as all underlying permit documents are referenced (e.g., “The attached quarterly deviation report is submitted to fulfill the reporting requirements of PTI P01XXXX and the Title V permit issued XX/XX/XXXX”).

Ohio EPA is interested in the alternate proposed approach and would consider a future revision to the Standard Terms and Conditions to reflect the proposed approach if the commenters can provide similar language and/or examples from other State Title V programs and if Ohio EPA can get written agreement with U.S. EPA Region V that the proposed approach is not in conflict with our fully approved Title V program.

- Two commenters submitted comments focused on OAC rule 3745-15-06 malfunction reporting requirement language in the Standard Terms and Conditions. One commenter indicated that Standard Term and Condition A.2.c.1 imposes an excessive reporting requirement by requiring the permittee to “double-report” malfunctions and that the permit language be revised so that malfunction reports submitted pursuant to OAC rule 3745-15-06 satisfy the quarterly deviation reporting requirements of OAC rule 3745-77-07(A)(3)(c).
- Ohio EPA understands the desire to administratively streamline the reporting burden. However, there are rule-based barriers to doing so. The malfunction reporting requirements apply to each distinct reportable malfunction. Pursuant to OAC rule 3745-15-06(A), in cases where the malfunction lasts less than seventy-two hours, no written report is required even though a deviation of an emission limitation or control requirement occurred that prompted the verbal report. In cases where the malfunction lasts more than seventy-two hours, a follow-up written report is required by OAC rule 3745-15-06(B). This follow-up report is focused on the incident itself and the corrective actions taken to prevent a malfunction in the future. In short, the reports (both verbal and written when required) are incident-specific. Alternately, 40 CFR Part 70 and OAC rule 3745-77-07(A)(3)(c) require a written quarterly report that identifies all deviations of emission limitations or control measures that occurred during the previous calendar quarter. In this instance, the federal rule and associated State rule are focused on summarizing all deviations within a quarter and provide for analysis of patterns of deviations from quarter to quarter. This approach is furthered by the annual compliance certification requirements which “roll up” a written summary of all intermittent compliance throughout a given year.

In order to reduce administrative burdens on permittees, Ohio EPA has accepted quarterly deviation reports that reference previously submitted written deviation reports along with the detail required by OAC rule 3745-77-07(A)(3)(c)(iii) and that reporting such deviations quarterly is considered “prompt” as required by rule.

- One commenter suggested that Ohio EPA remove Standard Term and Condition A.1.a.3 which identifies “Standard Term and Condition A. 27., Scheduled Maintenance/Malfunction Reporting” as state-only enforceable, citing that the rule is part of the Ohio State Implementation Plan (SIP) and is thus federally enforceable.
- Ohio EPA agrees that reporting malfunctions pursuant to OAC rule 3745-15-06 is part of the SIP and reporting itself is federally enforceable. However, there are instances where reportable malfunctions occur for rule-based emission limits or control measures that have not been incorporated into the SIP and thus, are not enforceable through the SIP by U.S. EPA at the time the malfunction occurs, but are enforceable by Ohio EPA. Standard Term and Condition A.1.a.3 serves a

valuable function to distinguish those emissions caused by malfunctions that cannot be subject to an enforcement action in federal court from those emissions caused by malfunctions that are reported pursuant to Standard Term and Condition A.1.c.3 that could be subject to federal enforcement action.

Ohio EPA has modified the heading for Standard Terms and Conditions A.1.a.3 and A.2.c.1 to more clearly delineate the purpose of reporting malfunctions under one permit term versus another. Feedback is appreciated.

- Two commenters stated that reference to Ohio Administrative Code (OAC) rule 3745-15-07 (Air Pollution Nuisances Prohibited) does not meet the “criteria for a federally enforceable Title V “applicable requirement”” and; therefore, should be identified as a State-only enforceable requirement. One commenter expanded on this view stating that although the rule is part of the Ohio state implementation plan (SIP), their read is that it is erroneously in the SIP, further buttressing that it should not be incorporated into Title V permits as an applicable requirement.
- Making Standard Term and Condition A.21 state-only enforceable will draw objection of proposed Title V permits by the U.S. Environmental Protection Agency (EPA)

Ohio EPA cannot currently identify Standard Term and Condition A.21 as a state-only enforceable requirement. As correctly noted by one of the commenters, OAC rule 3745-15-07 is currently part of the approved Ohio SIP and; therefore, any proposed Title V permit that identifies this SIP-approved rule as “state-only enforceable” would draw objection by the U.S. EPA (see Enclosure A of the May 20, 1999 letter from John Seitz, Director of the U. S. EPA’s Office of Air Quality Planning and Standards to Robert Hodanbosi and Charles Lagge on behalf of STAPPA/ALAPCO at <http://www.epa.gov/ttn/oarpg/t5/memoranda/hodan7.pdf>).

Background

Rule 3745-15-07 was initially promulgated as regulation AP-2-07 by the Ohio Air Pollution Control Board on January 28, 1972 and became effective on February 15, 1972. The Ohio Air Pollution Control Board and its technical support staff at the Air Pollution Unit, Ohio Department of Health are the predecessors to the Ohio Environmental Protection Agency (Ohio EPA) and its Division of Air Pollution Control.

Regulation AP-2-07 was part of a set of regulations (including AP-2-01 through AP-2-09; General Provisions Relating to Air Pollution) which were subject to public hearings on October 19, 1971, November 16, 1971, January 17, 1972 and January 18, 1972. These regulations were approved by the Ohio Air Pollution Control Board and proposed as the Implementation Plan for submission to the U.S. EPA as required by the

Federal Clean Air Act (CAA). Under the 1970 CAA, states were required to develop a State Implementation Plan (SIP) to reduce air pollution in areas not meeting the national ambient air quality standards (NAAQS).

Ohio's original SIP package was submitted on January 31, 1972. Although the initial federal approval of Ohio's SIP (approved May 31, 1972; 37 FR 10886) was vacated by the U.S. Sixth District on June 28, 1973 due to U.S. EPA not following the federal Administrative Procedures Act, AP-2-07 was subsequently approved as part of the SIP approval published in the Federal Register on April 15, 1974 (see 39 FR 13542). No mention is made concerning regulation AP-2-07 with respect to the appropriateness of it being included in the Ohio SIP.

Regulation AP-2-07 was promulgated by the Ohio EPA as OAC rule 3745-15-07 and was revised to include an exemption (OAC rule 3745-15-07(B)) for sources of odor which are not regulated under OAC Chapters 3745-17, 3745-18, 3745-21, or 3745-31. OAC rule 3745-15-07 became effective May 17, 1982. On January 3, 1984, the Ohio EPA submitted OAC rule 3745-15-07 to the U.S. EPA as a SIP revision. U.S. EPA approved the revision because sources of odor which are not regulated under other portions of the SIP would not impact the attainment and maintenance of the NAAQS. Conversely, any emission identified in OAC rule 3745-15-07(A) from any other source(s) are subject to the provisions of the rule and that those emissions could impact the attainment and maintenance of the NAAQS.

The issue of Ohio's air nuisance provision in the SIP and how it was treated in Title V permits was raised by U.S. EPA in a letter to Bob Hodanbosi on June 18, 1999 (see attached). In that letter, U.S. EPA cited concerns with how Ohio EPA was implementing certain Title V permit terms. Below are quotes from parts of the letter that highlighted U.S. EPA's position with respect to approvability of Ohio's Title V permits and removal of the air nuisance regulation in order to allow the air nuisance regulation to be identified as state-only enforceable in issued Title V permits :

“More specifically, we are concerned the Best Available Technology (BAT) requirements, **nuisance** regulation, and air toxics policy which are contained in the SIP and/or SIP-approved permits, are not identified as federally enforceable terms in your Title V permits.”

“...the terms and conditions implementing Ohio's **nuisance** regulation and toxics policy are included in the SIP and/or a SIP-approved permit and thus are considered federally enforceable applicable requirements for Title V purposes. They should be

reflected as such in the Title V permit.”

“Please keep in mind that the removal of these provisions from the SIP will not affect the continuing Federal enforceability of existing PTIs. As noted above, either inclusion in the SIP or in a permit issued pursuant to a SIP-approved program renders a requirement federally enforceable. Here, the BAT requirements are contained in PTIs issued pursuant to Ohio's SIP-approved PTI program. Therefore, for **sources with existing PTIs** containing BAT, the BAT requirement **still would have to be included on the federally enforceable side of the Title V permit. This is true also for nuisance and state toxics requirements contained in existing PTIs.** We continue to have the authority to enforce BAT and the other provisions at these sources until appropriate regulatory steps are taken.”

Notwithstanding the issue of the thousands of issued PTIs subject to the air nuisance regulation during the period when the regulation was part of the approved SIP, Ohio EPA submitted a withdrawal of OAC rule 3745-15-07 from the SIP on August 10, 1999 as part of a larger withdrawal SIP package.

U.S. EPA has not taken final action on our request to date but has recently indicated that they will conduct a review of the request.

Conclusion

Even if we do not consider the 1974 SIP approval of regulation AP-2-07; OAC rule 3745-15-07, as revised in 1982, was SIP-approved on August 13, 1984 (see 49 FR 32182). There is no record of appeal concerning the incorporation of OAC rule 3745-15-07 into the State rules and regulations in 1982 and there is no record of appeal of the federal action of incorporating OAC rule 3745-15-07 into the Ohio SIP in 1984. Ohio EPA cannot unilaterally identify OAC rule 3745-15-07 as state-only enforceable since it was approved into the SIP through a federal action that was never challenged. Therefore, U.S. EPA considers OAC rule 3745-15-07 as part of the SIP and currently federally enforceable. As a result, this rule must currently be considered an applicable requirement under the Title V rules.

Ohio EPA cannot currently identify Standard Term and Condition A.21 as state-only enforceable because the rule based origin of Standard Term and Condition A.21 is the federally approved SIP. Ohio EPA will move forward with the other current changes to the Standard Terms and Conditions, and will modify, remove, or leave “as-is” Standard Term and Condition A.21 as appropriate in the future once U.S. EPA has completed their review of our withdrawal request and has made an official response

to the request.

End of comments and responses

Cc: STARS2 users via email



U.S. Environmental Protection Agency
Region 5 - Air and Radiation Division

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Correspondence



Document

June 18, 1999

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:

For the past several months, we have had discussions with you and your staff about inconsistencies with incorporating provisions of your State Implementation Plan (SIP) as applicable requirements in operating permits under your Title V Permit Program. More specifically, we are concerned that the Best Available Technology (BAT) requirements, nuisance regulation, and toxics policy which are contained in the SIP and/or SIP-approved permits, are not identified as federally enforceable terms in your Title V permits.

On March 31, 1999, John Seitz, Director of the U. S. Environmental Protection Agency's (EPA) Office of Air Quality Planning and Standards, wrote a letter to the California Air Pollution Control Officers Association in response to their questions regarding federal enforceability. In that letter, Mr. Seitz stated our view that "all provisions contained in an EPA-approved SIP and all terms and conditions in a permit issued under any SIP-approved permit program 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." This position was reiterated in a May 20, 1999, letter to you from

Mr. Seitz.

BAT is a requirement of State's Permit to Install (PTI) program, approved into the Ohio SIP. The PTI program serves, in part, to meet the general (or "minor") new source review requirements of section 110(a)(2)(C) of the Clean Air Act (Act), which requires SIPs to include a program for the regulation of the modification and construction of any stationary source as necessary to assure that national ambient air quality standards are achieved. Specific BAT limitations for individual sources are established in specific PTIs. Because BAT terms and conditions are created under the PTI program, which is in turn contained in the Ohio SIP, they are federally enforceable. As requirements under the SIP they also are "applicable requirements" within the meaning of the Act section 504(a) and 40 CFR 70.2 and, therefore, must reside in the Federal and State enforceable section of the Title V permit. Similarly, the terms and conditions implementing Ohio's nuisance regulation and toxics policy are included in the SIP and/or a SIP-approved permit and thus are considered federally enforceable applicable requirements for Title V purposes. They should be reflected as such in the Title V permit.

Section 505(b)(1) of the Act calls upon EPA to object to any proposed permit that is not in compliance with applicable requirements, including the requirements of a SIP. Accordingly, Title V permits which are issued with BAT, nuisance, and toxics policy terms and conditions that are misrepresented as State-only enforceable are subject to EPA objection.

It is our understanding that you intend to submit a SIP revision package requesting removal of the BAT requirements, thus making them State enforceable only. We ask that, prior to this resource intensive effort, you make all necessary assurances that this action will meet all of the planning requirements of the Act, including both specific and general requirements intended to assure the attainment and maintenance of the National Ambient Air Quality Standards and the prevention of significant deterioration of air quality. The BAT program appears to be integral to Ohio's plan for meeting many of these requirements. In addition, sections 110(1) and 193 of the Act are "antibacksliding" provisions that prohibit the approval of a SIP revision that would

interfere with any applicable requirement of the Act and, in the case of nonattainment areas, require that control requirements be replaced by measures of ensuring equal or greater emissions reductions. Thus, before we could approve the removal of the BAT program from the SIP, you must demonstrate that removal of BAT would not adversely affect the various statutory requirements that BAT addresses. This will also enable our review process to be done in a timely fashion. In addition, if you choose to make the nuisance regulation and toxics policy State enforceable only, we ask that this be included as part of your SIP revision package.

Please keep in mind that the removal of these provisions from the SIP will not affect the continuing Federal enforceability of existing PTIs. As noted above, either inclusion in the SIP or in a permit issued pursuant to a SIP-approved program renders a requirement federally enforceable. Here, the BAT requirements are contained in PTIs issued pursuant to Ohio's SIP-approved PTI program. Therefore, for sources with existing PTIs containing BAT, the BAT requirement still would have to be included on the federally enforceable side of the Title V permit. This is true also for nuisance and state toxics requirements contained in existing PTIs. We continue to have the authority to enforce BAT and the other provisions at these sources until appropriate regulatory steps are taken.

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 call Genevieve Damico, of my staff, at (312) 353-4761.

Sincerely yours,

/s/

Stephen Rothblatt, Chief
Air Programs Branch



For further information, contact: flowers.debra@epa.gov

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