February 3, 1997

Robert Hodanbosi, Chief
Division of Air Pollution Control
Ohio Environmental Protection Agency
1800 WaterMark Drive
Columbus, Ohio 43215

Dear Mr. Hodanbosi:

This letter is in follow-up to the conference call between our offices on December 18, 1996 in which we discussed questions your office had regarding Title V and other permitting issues. We hope that this letter clarifies these issues and provides you with the necessary support to continue the Title V implementation process.

You asked whether visible emission limits for stacks and fugitive dust are federally enforceable. Rule 3745-17-07 of the Ohio Administrative Code (OAC) sets those limitations. USEPA approved this rule on May 27, 1994 at 59 FR 27464. The rule, as part of the State Implementation Plan (SIP), provides for the implementation, maintenance, and enforcement of National Ambient Air Quality Standards (NAAQS), and is therefore federally enforceable. As federal requirements, these limits must be included in the state/federal portion of the Title V permit. The start-up and shutdown temperatures for electrostatic precipitators (ESPs) and baghouses at which certain facilities may be exempted from the opacity limits are the same in both the OAC and in the SIP. Opacity limits are not meant as a backup for mass emission limits; like mass emission limits, they are individually enforceable.

You brought to our attention that some sources have proposed that periodic emission testing done every two and a half to five years is sufficient to fulfill the requirement for a monitoring program in an operating permit. As stated in the January 10, 1997 letter from Region 5 to your office, 40 CFR 70.6(a)(3) specifies the standard monitoring and related record keeping and reporting requirements that each Title V permit must contain. The letter states that this rule, known as the gap-filling provision, requires each permit to contain periodic monitoring sufficient to yield reliable data from the relevant time period that are representative of the source's compliance with the permit, if the underlying applicable requirements do not otherwise specify such monitoring. Therefore, if the underlying applicable requirements, such as construction permit conditions or SIP requirements, do not contain adequate monitoring, record keeping, and reporting provisions sufficient to provide such reliable data, the State must add such provisions in the Title V permit, and these provisions must be located in the federally enforceable section of the permit. Emission testing performed every few years does not yield adequate data to represent the source's ongoing compliance with the permit, and is therefore not an acceptable monitoring program. The Compliance Assurance Monitoring (CAM) rule that is under consideration may set the guidelines for major sources and some non-major sources, but Section 70.6(a)(3) exists independent of that rule as a Title V program requirement.

You asked how the Phase I acid rain provisions should be handled within Title V permits. It would be sufficient to reference the Phase I permit in the General Terms and Conditions section of the Title V permit. The following language is an example of how the Phase I permit can be referenced: "This unit is also subject to an EPA-issued Phase I permit effective through December 31, 1999. The acid rain requirements specified in this permit are in addition to, and do not supersede, those set forth in the Phase I permit."

Finally, you asked whether conditions in an OEPA construction permit that were meant to be only state-enforceable can be segregated from the section of a Title V permit that is both federally and state-enforceable. The Ohio SIP provides that all conditions of a construction permit are federally enforceable. However, OEPA may remove the federal enforceability from construction permit conditions with a permit revision and issue the Title V permit simultaneously, using the same public notice, if special procedures are followed. Unless construction permits clarify which of their conditions are not federally enforceable, all of the conditions will be considered to be federally enforceable except for the tons-per-year limits.

In addition, as with the tons-per-year limits, if OEPA can justify that any such specific permit conditions arise from only state-enforceable requirements, and no federal requirements, as discussed in the following paragraph, those conditions may be segregated out and placed in the state-enforceable portion of the Title V permit. A written record should be kept of such justification, and provided to USEPA with any such permit.

Segregating the enforceability of construction permit conditions in a Title V permit is allowable if the conditions being declared as only state-enforceable are: (1) not based on SIP requirements; (2) not used in the construction permit to limit the source's potential to emit (PTE) for reasons such as netting or offsets; and (3) not New Source Review (NSR) permit requirements whose applicability has expired. A statement should be added in the legal basis section of the Title V permit that clarifies that the state requirements are only state-enforceable even if they exist in the construction permit.

We appreciate your bringing your questions to us, and value our continued communication and cooperation. We are looking forward to our next conference call in February. If you have any further questions concerning these issues, please call Kaushal Gupta, of my staff, at (312) 886-6803.

Sincerely yours,

/s/

Cheryl Newton, Chief
Permits and Grants Section