May 22, 2002

(A-18J)

Ms. Keri N. Powell, Esq.
United States Public Interest
Research Group Education Fund, Inc.
9 Murray Street, 3rd Floor
New York, New York 10007

Dear Ms. Powell:

Thank you for your March 10, 2001, letter regarding your comments on Ohio's Clean Air Act title V operating permit program on behalf of Ohio Public Interest Research Group, Inc., Ohio Environmental Council, Inc., The Buckeye Forest Council, Inc., Earth Day Coalition, Inc., Clean Air Conservancy, Inc., Ohio Citizen Action, Keith Bailey, Caroline Beidler, and John J. Nicastro. 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 is issuing notices of program deficiencies (NODs) for individual operating permit programs, based on the issues raised that U.S. EPA agrees are deficiencies, and is responding to other concerns that U.S. EPA does not agree are deficiencies within the meaning of part 70.

We reviewed the issues that you raised in your March 10, 2001, letter and determined that one issue indicates a program deficiency. We identified this program deficiency issue in a NOD published in the Federal Register on April 18, 2002. Because the Ohio Environmental Protection Agency (OEPA) has taken appropriate action to correct other implementation issues you identified, as described in a March 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.

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 USPIRG's Comments on Ohio's Title V Operating Permit Program

1. **Comment:** ***OEPA is in violation of the statutory deadlines for action on permit applications***

   USPIRG commented that OEPA was behind the statutory deadline to issue the title V permits (only 27% of initial permits had been issued by January 2001) and had a large number of permits which have been drafted but had not been issued. USPIRG further commented that the delay in the permit issuance hindered the ability for the public to challenge the State's actions if appropriate.

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 (Act). Because of the sheer number of permits that remain to be issued, U.S. EPA believes that many permitting authorities need up to two years to complete permit issuance. If the permitting authority has submitted a commitment to issue all of the permits by December 1, 2003, U.S. EPA will consider this commitment to mean that it has taken "significant action" to correct the problem, and will 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; therefore a NOD is not

warranted at this time. We acknowledge the bottleneck in permit issuance which exists in Ohio. To some extent, we agree that the backlog in permits developed while both OEPA and U.S. EPA were resolving the issue of where the best available technology (BAT) requirements should reside in the title V permits. (See the response to comment 10 for more discussion of the BAT issue.) The bottleneck grew because OEPA chose to focus on the drafting of the title V permits rather than the finalization of the permits which have been drafted. We believe the bottleneck has improved and will continue to improve as OEPA fulfills its obligations under this commitment to issue the title V permits by September 1, 2003. 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.

The commenter is also concerned the permit issuance delays will cause a delay in the response to comments and the time during which the public can challenge the permit. U.S. EPA agrees that these delays can make the situation more confusing. However, U.S. EPA believes these delays do not constitute a deficiency in OEPA's title V program because U.S. EPA believes that the permit issuance schedule to which OEPA has committed will minimize any delays in permit issuance in the future.

2. Comment: ***Permits issued by OEPA improperly limit the use of credible evidence to prove a violation of an applicable requirement.***

USPIRG comments that OEPA's permits include language which limits the type of evidence that can be used for compliance purposes despite the general term and condition found at A.17 of the title V permits.

> *Condition A.17 - Nothing in this permit shall alter or affect the ability of any person to establish compliance with, or a violation of, any applicable requirement through the use of credible evidence to the extent authorized by law. Nothing in this permit shall be construed to waive any defenses otherwise available to the permittee, including but not limited to, any challenge to the Credible Evidence Rule*

(see 62 Fed. Reg. 8314, Feb. 24, 1997), in the context of any future proceeding.

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.

3. Comment: ***Ohio title V permits do not require facilities to include sufficient information in six month monitoring reports.***

40 CFR 70.6(a)(3)(iii) requires the permittee to submit reports of any required monitoring at least once every six months. Ohio requires that only the deviations are reported or if no deviations occurred, the permittee must report that no deviations have occurred. The actual monitoring data is not required to be submitted. USPIRG believes that OEPA is not following the intent of Part 70.

Response: Since our November 21, 2001 letter, to OEPA requesting a change in its deviation reporting requirements, we have investigated further into Ohio's program. U.S. EPA believes that the general term and condition in A.1.c meets §70.6(a)(3)(iii)(A) which requires that the permitee must submit reports of required monitoring at least every 6 months and such reports must identify deviations that occurred within the reporting period. Although this provision does not provide much detail on what the 6-month reports must contain, the language and structure of

70.6(a)(3)(iii)(A) suggests that a compilation of deviation reports does not satisfy this requirement.

All title V permits issued by OEPA, detail in Condition A.1.c what must be included in the quarterly and semiannual monitoring reports. Specifically, the quarterly reports must include: any deviations from federally enforceable emission limitations, operational restrictions, and control devices operating parameter limitations, the probable cause of such deviations and any corrective actions or preventive measures taken. In the March 20, 2002, letter, OEPA committed to clarify in general terms and conditions of the title V permit that the magnitude of these deviations are also expected to be reported. OEPA expected to complete the updated general terms and conditions by May 15, 2002. However, OEPA provided a draft to U.S. EPA for review on that date. U.S. EPA provided comments on the draft general terms and conditions on May 17, 2002. OEPA expects to begin issuing the permits with the updated terms and conditions by May 28, 2002. The semiannual reports must include: any deviations from the federally enforceable monitoring, record keeping, and reporting requirements. Also, as required by part 70, the reports must include a certification by a responsible official that the contents of the reports are true, accurate, and complete.

In addition to reporting the deviations and malfunctions, Condition A.1.c also requires that the probable cause of such deviations and any corrective actions or preventive measures taken be reported. Malfunction reports must include:

> identification and location of such equipment (including the permit application number for each air contaminant source); the estimated or actual duration of breakdown; the nature and estimated quantity of air contaminants which have been or may be emitted into the ambient air during the breakdown period; and statements demonstrating that shutdown or reduction of source operation during the breakdown period will be or would have been impossible or impractical; the estimated breakdown period will be or was reasonable in duration based on installation or repair time; delivery dates of equipment; replacement parts or materials; or current unavailability of essential equipment parts; or materials; available alternative operating procedures and interim control measures will be or have been implemented during the breakdown period to reduce adverse effects on public health or welfare; and all actions necessary and required by any applicable preventive maintenance and

malfunction abatement plan will be or have been implemented.

OEPA shall also be notified when the condition causing the failure or breakdown has been corrected and the equipment is again in operation. Where we do agree that these reports do not include the submission of raw data (such as the daily pressure drop readings or continuous emission monitoring data), 40 C.F.R Part 70 does not specify what form the report of monitoring results must take.

Although the malfunction and quarterly monitoring reports required by OEPA focus on information related to deviations and monitor operation, one can conclude that all monitoring results not reported as deviations show compliance with applicable permit terms or conditions. This interpretation is supported by the fact that the permit requires the reports to state that there were no deviations when there were, in fact, no deviations for a given reporting period. The emissions units and activities being monitored and the applicable emission limits and standards addressed in such reports are clearly described in the permit itself. In addition, Condition A.1.c.iii of the permit requires the facility to identify in its semiannual monitoring reports any deviations from the federally enforceable monitoring, record keeping, and reporting requirements. Therefore, the facility must describe in its reports any monitoring that was not conducted in accordance with the permit for any reason, for example the times when monitors were not in operation.

Deviations reported by a facility are not necessarily violations of emission limits, but are generally indicators that a source has operated close to a limit and that corrective action may be warranted. Ohio's title V permits require that corrective action is taken in the case of a deviation to help prevent actual emission limit violations. In addition, information provided in the deviation reports indicates to the State whether a source has been operating well within its emission limitations or that more effective emission controls or more frequent monitoring is needed.

Ohio's title V permits require quarterly and semi-annual reports regarding all required monitoring. EPA believes OEPA has reasonably interpreted 40 C.F.R § 70.6(a)(3)(iii)(A) in specifying the information needed from such reports to remain informed of a facility's compliance status and potential problem areas.

4. Comment: ***Ohio does not require facilities to promptly report deviations from permit conditions.***

Ohio's permits require deviation reports every 3-6 months. USPIRG believes this is inconsistent with 40 C.F.R part 70.6(a)(3)(iii)(B) and U.S. EPA's approach articulated in the Federal Register notice proposing interim approval of Arizona's title V program. Ohio's administrative code (OAC) also requires that verbal reports of deviations no later than three business days after discovery of the deviation. USPIRG believes sources are not complying with the requirement in Ohio.

Response: Part 70 allows permitting authorities to define prompt "in relation to the degree and type of deviation likely to occur and the applicable requirements." Section A.1.c.ii of the general terms and conditions of Ohio's title V permits requires sources to report at least quarterly deviations from emission limitations, operational restrictions, and control device operating parameter limitations. Similarly, Section A.1.c.iii of the general terms and conditions of Ohio's title V permits require sources to report at least semi-annually deviations from federally enforceable monitoring, record keeping, and reporting requirements. The commenter has misinterpreted Ohio's regulations with respect to verbal reports of deviations. Although OEPA has the authority to require verbal reports of deviations within 3 business days after discovery, Ohio does not often use its authority to require verbal reports of deviations with the exceptions of those required to be reported under OAC 3745-15-06. If OEPA believes more frequent reporting is necessary, it requires additional monitoring in the body of the permit. (For examples see the title V permits for Appleton Papers permit number 08-57-19-0001 and Delphi Interior Systems, permit number 01-25-04-0057.) OAC 3745-15-06 requires immediate reporting of malfunctions which cause air emissions in violation of any applicable law to OEPA.

All verbal reports are required to be followed up with a written report. (See the response to comment 6 for further detail.) However, we believe that between the quarterly and semi-annual deviation reports and the immediate malfunction reports, OEPA has met the requirements of part 70 with respect to prompt reporting.

5. Comment: ***Ohio title V permits purport to allow facilities to disregard certain kinds of monitoring data for purposes of six month monitoring reports and deviation reports.***

Ohio Administrative Code 3745-77-07(A)(3)(c) requires that the permittee submit reports that identify any deviations from permit requirements that have been detected by the compliance method required under the permit. USPIRG comments that the phrase "that have been detected by the compliance method required under the permit" inappropriately limits the information that is used to determine deviations.

Response: OAC 3745-77-07(A)(3)(c)(ii) and (iii) limits the reporting of deviations to those which can be detected by the compliance method required by the permit. This limitation is contrary to the requirements of the Act and 40 C.F.R part 70. Specifically, 70.6(a)(3)(iii)(A) requires that permitees submit reports of required monitoring at least every 6 months and that all instances of deviations from permit requirements be identified in these reports. 70.6(a)(3)(iii)(B) requires that permitees promptly report deviations from permitting requirements to the permitting authority. Section 70.6 does not provide for any exceptions to these requirements. Section 113(c)(2) of the Act, among other things, prohibits any person from knowingly making a false certification or omitting material information from any reports. Finally, 40 C.F.R 70.5(d) and 70.6(a)(3) require responsible officials to certify that all reports are true, accurate and complete. Together these statutory and regulatory requirements obligate sources to consider all available other material information in evaluating and reporting deviations for purposes of promptly reporting deviations and submitting reports of any required monitoring at least semi-annually. Because Ohio's rule only requires permittees to consider compliance method test data when reporting deviations from permit requirements, Ohio's title V program does not meet the minimum requirements of part 70. Consequently, U.S. EPA issued a notice of deficiency on April 18, 2002 (67 FR 19175).

6. Comment: ***Ohio does not requires facilities to report deviations due to malfunction unless the malfunction lasts more than 72 hours.***

OEPA's title V permits exclude malfunctions that are reported under OAC 3745-15-06 from being reported in the quarterly and semiannual deviation reports (general term and condition A.1.c). OAC 3745-15-06 requires that in the event of a malfunction the permittee must immediately notify OEPA. If the malfunction lasts more than 72 hours then the permittee must submit a written statement to OEPA. USPIRG

comments that this approach to reporting malfunctions is inconsistent with Part 70.

Response: Permittees must immediately report upsets to OEPA, in accordance with OAC rule 3745-15-06, either verbally or in writing. If the malfunction continues for less than 72 hours, the permittee must notify OEPA, either verbally or in writing, that the problem has been corrected and the equipment is again in operation. U.S. EPA believes that part 70 requires that such events be reported in writing and certified. In the May 20, 2002 letter, OEPA committed to require title V facilities to identify malfunctions in the quarterly deviation reports. Specifically, if the malfunction was reported in writing as required in OAC rule 3745-15-06, the title V facility will be required to provide in the quarterly deviation report the date the malfunction report was given to OEPA. If the malfunction was not reported in writing, the information required by OAC rule 3745-15-06 will be required to be included in writing in the quarterly deviation report. All information provided in the quarterly reports shall be certified. This certification by the responsible official shall state that, based on information and belief formed after reasonable inquiry, the statements in the deviation report and the content of any malfunction reports referenced in the deviation report are true, accurate and complete. OEPA expected to complete the updated general terms and conditions by May 15, 2002. However, OEPA provided a draft to U.S. EPA for review on that date. U.S. EPA provided comments on the draft general terms and conditions on May 17, 2002. OEPA expects to begin issuing the permits with the updated terms and conditions by May 28, 2002.

7. Comment: ***Language included in Ohio title V permits can be interpreted as allowing facilities to rely exclusively on data obtained from specified "compliance methods" when submitting annual compliance certifications.***

OAC 3746-77-07(C)(5)(c) does not require that "other material information" be considered in the annual compliance certification in conformance with Part 70.6(c)(5)(iii)(B). USPIRG comments that this is a program deficiency.

Response: Although Ohio's rules do not follow Part 70 verbatim, OEPA does require that any other material information be disclosed in the compliance certification in sections III and IV of the compliance certification form. Furthermore, as stated in the response to comment 2, we interpret 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. 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 in fact, sources must do so.

8. Comment: ***OEPA consistently issues the title V permits that lack sufficient monitoring and are not enforceable as a practical matter.***

USPIRG articulated several issues it believes demonstrates that OEPA is not issuing permits with sufficient monitoring and that are enforceable as a practical matter. All the examples provided are from the Cleveland Electric Illuminating, Avon Lake Power Plant and Cleveland Steel Container Corp. but USPIRG believes these comments are common to many title V permits issued by OEPA.

Cleveland Electric Illuminating, Avon Lake Power Plant

A. Emission Control Action plans as required by OAC 3745-25. OEPA issued an engineering guide (#64) that says that these plans are not necessary at this time because they were designed to address very serious air quality issues which no longer exist in Ohio. Therefore, OEPA is not requiring these plans to be submitted. USPIRG comments that this illegal because OEPA does not have the authority to waive the requirement to develop the plans.

B. Particulate emissions. USPIRG comments that Ohio's title V permits do not require sufficient federally enforceable requirements to determine when a permittee is eligible for an exemption from OAC 3745-17-07(A). USPIRG also expressed concern that applicable requirements are not translated in the permit in sufficient detail to make them enforceable as a practical matter.

C. Sulfur dioxide limitations. Permits do not clearly identify what kind of monitoring will be used to demonstrate compliance. Two possible methods are provided in the permit. The permit also does not require that deviations from the sulfur dioxide limit be reported unless the deviation is greater than 1.5 times the limitation.

D. Sulfur content of coal. The permit does not require a specific coal content that would assure compliance with the sulfur dioxide limitation.

E. Gas turbine. The permit fails to assure the facility's compliance with carbon monoxide and nitrogen oxide limits because there are not specific, enforceable conditions included in the permit to assure that the facility continues to engage in "current operating practices" or properly maintains and operates control devices. The statement of basis lacks a justification of this condition.

F. Operational restrictions for gas turbine. Similar to D above.

G. Monitoring and reporting for gas turbines. The permit does not define when the permittee must maintain monthly records. If the permittee does not maintain these record then it will be unable to report deviations as required by the permit.

H. Testing requirements. The permit states that Method 9 will be used to determine compliance with the opacity limitation, however, the permit does not require a Method 9 test. Compliance with the particulate emission limit is reliant on an AP-42 factor, which is a rough estimate of emissions.

I. Continuous nitrogen oxide monitors. The permit requirements that assure proper operation of the continuous monitoring system are state-only enforceable. USPIRG comments that these requirements should be federally enforceable since they ensure the proper operation of the federally required continuous monitoring system.

J. Fugitive Dust from Coal Piles. USPIRG comments that none of the conditions governing air pollution from the facility's coal piles are enforceable as a practical matter. OEPA allows the permittee to rely on control measures instead of those identified in the permit, refers to commitments that the permittee makes in the permit application rather than including enforceable conditions in the permit, allows the permittee to determine whether control measures are necessary at any given time, without maintaining records of site conditions, and identifies control measures in vague, unenforceable terms such as "precautionary operating practices." USPIRG comments that where the permit allows OEPA to provide written approval, outside of the title V permit, to change the inspection frequency, such changes must be considered a significant modification to the title V permit.

K. Coal unloading and conveying system. Similar to J above.

Cleveland Steel Container Corp.

A. Volatile organic compounds (VOC) from steel sheet printing and bake-off line. The federally enforceable permit to install VOC limitation is state-only enforceable in the title V permit. The permit also doesn't include the equation to calculate VOC emissions from cleanup materials, require reporting of VOC emissions semiannually as required by title V, or require who is supposed to perform the Method 24 test.

B. Sheet coating line. The permit fails to identify the results of the most recent emission test and no supporting information is provided in the statement of basis. The permit relies on the manufacture's recommendations to properly operate and maintain the temperature monitors but doesn't include the recommendations in the permit.

C. Sheet roller coater with bake oven and catalytic incinerator. Similar to B above.

Response: We have reviewed all of USPIRG's 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 USPIRG's 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.

The following is a discussion of the resolution to the three issues regarding monitoring, record keeping and reporting that we outlined in our November 21, 2001, letter to OEPA.

A. Title V permits contain monitoring and record keeping conditions on the state-only enforceable side when those conditions should be made federally enforceable.

We commented that some title V permits incorrectly make monitoring and record keeping provisions enforceable only by the state when those provisions are federally enforceable. Because sections 504(a) and 504(c) of the Act and a federal rule, 40 C.F.R. § 70.6(c)(1), require the permit to contain all monitoring and record keeping sufficient to assure compliance, such monitoring and record keeping must be on the federally enforceable side of the permit. We provided two examples. The first was the inlet temperature monitors in the draft title V permit for Cleveland Electric Illuminating Avon Lake Power Plant (facility ID 0247030013, issued January 30, 2000), which were state-only. OEPA has agreed to move the requirements to operate and maintain such a monitor to the state and federally enforceable section of the permit. As a second example, we noted that the same permit contains a state-only requirement for the source to maintain a logbook for a federally required continuous monitoring system.

B. Title V permits must contain monitoring, record keeping, and reporting requirements sufficient to assure compliance with all applicable limits. The permitting authority must write these requirements in sufficient detail to allow no room for interpretation or ambiguity in meaning.

According to sections 504(a) and 504 (c) of the Act and 40 C.F.R. § 70.6(c)(1), title V permits must contain

monitoring, record keeping, and reporting requirements sufficient to assure compliance with the terms and conditions of the permit. These requirements must involve the best compliance methods practicable, taking into consideration the source's compliance history, likelihood of violating the permit, and feasibility of the methods.

We commented that Ohio's title V permits currently often rely on AP-42 emission factors as the compliance method. Although we continue to believe that AP-42 emission factors are not meant to be a basis of compliance, we do believe that OEPA's approach to the use of AP-42 factors, as clarified in the response to U.S. EPA's draft report on the review of Ohio's programs, is appropriate. In its response OEPA states "Our policy is to require the use of the best emission factor available. This means that the DO/LAA permit writer must research the factors available and make a judgement as to which factor is best. The following list is what Ohio EPA considers "best" to "worse" emission factors:

1. Site-specific stack test information from identical emission units
2. Site-specific stack test information from similar emission units
3. Mass balance calculations
4. Manufacturer's emission factors for the emission unit
5. Non-site specific stack test information from similar emissions units
6. Miscellaneous references material emission factors developed typically by industry groups
7. Facility supplied estimates
8. AP-42 type emission factors

We also commented 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. We used the permit language "installed, calibrated, operated, and maintained in accordance with the manufacturer's specifications" and "if necessary" as examples. U.S. EPA does agree that this language

could be clarified and we will continue to work with OEPA to improve the enforceablity of this language.

C. Title V permits do not require the submission of an emission control action plan until 60 days after final issuance of the permit, in violation of OAC 3745-25. Although emission control action plans may no longer be critical due to improvements in air quality, Ohio should resolve the deficiency by changing the permits to comply with the rule or by changing the rule itself.

U.S. EPA agrees that, in general, permits should not allow plans to be submitted after the fact and OEPA should simply require these plans without the 60 day delay in the title V permits. However, OEPA is exploring the possibility of revising OAC 3745-25 to be consistent with the approach in engineering guide 64.

U.S. EPA will work with OEPA to develop clearer permit language and continue to monitor this issue as part of its permit oversight responsibilities. U.S. EPA may object to any proposed permit we determine not to be in compliance with applicable requirements or the requirements of part 70 in accordance with section 505(b) of the Act and 40 C.F.R. § 70.8(c).

9. Comment: ***OEPA fails to provide an adequate statement of basis for terms and conditions included in each title V permit.***

USPIRG comments that 99 final title V permits are not accompanied by a statement of basis nor do the existing statements of basis (SB) meet the requirements of Part 70.

Response: USPIRG is correct that several title V permits were issued without SBs. On November 10, 1997, we informed OEPA through a letter to Thomas Rigo of the Part 70 requirement to have a SB accompany each title V permit. OEPA agreed that such a requirement exists and began issuing SBs with each title V permit. The 99 permits that USPIRG refers to in its comment are title V permits that were well into the process of being issued final in November 1997. We agreed with OEPA that developing SBs at that time would not be the best use of resources because the public comment period had ended. Ohio will provide SBs for these permits at renewal.

We also agree with USPIRG that the detail in the SBs is inadequate. In a May 20, 2002, letter OEPA has committed to draft guidance to ensure the proper completion of each SB consistent with OAC rule 3745-77-08(A)(2) and 40 C.F.R §70.7(a)(5). The guidance will address, but will not be limited to, negative declarations, periodic monitoring, streamlined terms, and, if necessary, operational restrictions not required by underlying applicable requirements, but necessary to ensure ongoing compliance with one or more of the underlying applicable requirements. U.S. EPA has begun working with OEPA in the development of this guidance and will monitor its implementation.

10. Comment: ***Many permits issued by OEPA fail to include minor new source review (NSR) requirements as federally enforceable conditions.***

    USPIRG comments that despite U.S. EPA's June 18, 1999, letter requiring all minor NSR requirements be included in the state and federally enforceable sections of the title V permit, OEPA has issued several permits with the minor NSR requirements in the state-only enforceable sections of the title V permit.

Response: US EPA has looked at the permits issued in draft since June 1999 and has confirmed that OEPA has placed the minor NSR requirements (sometimes referred to as BAT) in the state and federally enforceable section of the title V permit. However, given OEPA's resources and the number of permits left to be issued, we have agreed that at permit renewal OEPA will correct the placement of the minor NSR terms in title V permits which had already been public noticed as of at renewal. The permittee must continue to comply with the minor NSR requirements and both U.S. EPA and OEPA can enforce the requirements through the permit to install. Citizens may petition U.S. EPA to re-open any title V permit that does not include the minor NSR terms in the federally enforceable sections of the permit. Because OEPA now correctly places minor NSR requirements on the state and federally enforceable section of the permit, we do not believe this constitutes a program deficiency.

11. Comment: ***OEPA's policy on "off permit changes" circumvents federal permit modification procedures.***

    USPIRG comments that OEPA's policy allows minor NSR permits, which have not necessarily been public noticed, are not incorporated into the title V permit but as an off-

permit change. USPIRG cites the language in 40 C.F.R 70.4(b)(14) which prohibits off permit changes for "modifications under any provision of title I of the Act"

Response: Minor NSR requirements are not title I modifications, therefore, OEPA may use this approach under the off permit provision of 40 C.F.R §70.7. See 60 FR 45530, 45545-45546 (August 31, 1995).

12. Comment: ***Title V permits issued by OEPA fail to adequately identify whether certain requirements apply to the permitted facilty..***

USPIRG commented that OEPA does not clarify when the permittee is required to submit a risk management plan and is subject to title IV requirements.

Response: OEPA has clarified the applicability section 112(r) and title IV of the Clean Air Act in all of its permits issued that had not been issued as a preliminary proposed permit as of November 2001. All of the other title V permits will be updated when they are renewed.

13. Comment: ***OEPA's public participation procedures do not guarantee a fair opportunity for the public to participate in title V permitting.***

USPIRG comments that relevant documents many not be reasonably available to the public, copying costs should be funded by title V fees, OEPA district and local offices retain broad discretion to deny requests for public hearings, and OEPA may be substantially modifying permits after the public comment period without providing the public with an opportunity to review and comment on these modifications.

Response: U.S. EPA believes OEPA is meeting the minimum requirements for public review under part 70.

Part 70 requires that permitting authorities "[m]ake available to the public any permit application, compliance plan, permit, and monitoring and compliance, certification report pursuant to section 503 (e) of the [Act]." 40 C.F.R §70.4(b)(3)(viii). Part 70 further requires that public notice of permit proceedings identify "the name, address, and telephone number of a person from whom interested persons may obtain additional information,

including copies of the permit draft, the application, all relevant supporting materials, including those set forth in [§70.4(b)(3)(viii)], and all other material available to the permitting authority that are relevant to the permit decision." 40 C.F.R §70.7(h)(2). Beyond these requirements, part 70 does not specify how permitting authorities are to make documents available to the public. OEPA provides an opportunity for the public to view and/or obtain all non-confidential files. Where there has been a concern with the availability of public versions of all title V applications in the past, OEPA is addressing this concern. Applications containing confidential information are no longer accepted without an accompanying public version of the application. OEPA is also pursuing enforcement against the three remaining applicants which do not have public applications on file. We believe that OEPA is meeting the minimum requirements of Part 70 with respect to availability of documents. USPIRG's comment expand the issue to include discussion about how State regulations require the local and district offices to mail requested documents to the requestor. Since this comment relate to State requirements, it would be more appropriate to address this issue with OEPA.

Although USPIRG raises good arguments, we do not believe that all copying costs incurred by permitting authorities in response to public requests for documents are permit program costs that must be recovered by charging permit fees. Although 40 C.F.R §70.9 (b) lists many activities that must be considered program costs, it does not explicitly address the cost of reproducing documents for the public. U.S. EPA's fee guidance does not address this issue but acknowledges that States may exercise some discretion in deciding what activities result in permit program costs. See August 4, 1993, John Seitz memo to U.S. EPA Regions entitled "Reissuance of Guidance on Agency Review of State Fee Schedules for Operating Permits Programs Under Title V." U.S. EPA believes it is appropriate for States to consider these reproduction costs as program costs, but part 70 does not currently require them to do so.

There is no evidence to conclude that OEPA has abused its discretion to grant a public hearing or refused to meet with an interested individual or group in connection with a particular permit, we do not agree with USPIRG that this is a deficiency in Ohio's title V program at this time.

While 40 C.F.R §70.7(h) does not expressly require that a permit be re-noticed for public comment as suggested by USPIRG in its comments, OEPA does have the ability to re-notice permits.

Furthermore, OEPA does accept comments that have been submitted through the end of the preliminary proposed permit comment period from anyone not just the permittee. (See Ohio's response to comments enclosed.) OEPA posts the preliminary proposed permit on the web so that it is accessible to the public. Ohio's rules (OAC 3745-77-08 (G)) do meet the minimum requirements under 40 C.F.R §70.7(h). Therefore, EPA believes this is not a deficiency in OEPA's program at this time.

14. Comment: ***OEPA is not including the origin of authority for each term and condition in the title V permits.***

USPIRG comments that many conditions that are included in the permits are not accompanied by a citation to a regulation, statute, or underlying permit to install.

Response: OEPA's title V permits do include citations to the underlying applicable requirement on an emission unit by emission unit basis. However, we do agree with USPIRG that the citations should be listed with each term and condition under 40 C.F.R. § 70.6(a)(1)(i). In a May 20 2002, letter, OEPA committed to include the origin of authority for each term and condition when the permits are renewed. It has made a good faith effort to do so by updating the general terms and conditions to include the origin of authority for each term. For this reason we will not issue a notice of deficiency at this time, however U.S. EPA will continue to monitor OEPA's progress.

15. Comment: ***Additional Concerns***
USPIRG is concerned about regulations and policies that govern whether a facility is exempt from the title V program. Under Ohio's rules, synthetic minor facilities only required to report their potential to emit every two years. A report every two years is insufficient to assure that a synthetic minor facility is not emitting pollution at a level that is at or above the title V threshold.

USPIRG also requests that U.S. EPA consider whether the exemption for Research and Development facilities complies with 40 C.F.R Part 70.

Response: Where we understand USPIRG has concern with the OEPA's ability to monitor the emissions at a synthetic minor facility, December 11, 2000 notice requested comment on the title V program and not the synthetic minor state programs. We do not find this comment relevant to the review of Ohio's title V program.

U.S. EPA believes that OEPA's exemption of research and development facilities is appropriate. The July 1992, part 70 preamble provided general guidance explaining that research and development activities could often be regarded as separate "sources" from any operation with which it were co-located and would then be required to have a title V permit only if the research and development facility itself would be major (57 FR 32264 and 32269). Ohio's title V program does not exempt major research and development facilities from the requirement to obtain a title V permit.