



State of Ohio Environmental Protection Agency

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April 16, 2003

Cheryl Newton, Acting Director  
Air and Radiation Branch  
US EPA, Region 5  
77 W. Jackson Blvd.  
Chicago, Illinois 60604

**RE: Inclusion of Clean Air Act § 112(r) Requirements in Title V Permits**

Dear Ms. Newton:

On March 11, 2001, the Ohio Public Interest Research Group ("Ohio PIRG") and several other environmental organizations submitted comments to the Administrator of US EPA concerning many components of Ohio's Title V operating permit program. The commenters specifically requested that the Administrator make a finding under 40 C.F.R. § 70.10 that the Ohio EPA is inadequately administering Ohio's Title V program and issue notices of deficiency to Ohio for the alleged deficiencies.

One of the alleged deficiencies concerned Title V permits issued to sources that are subject to § 112(r) of the Clean Air Act ("CAA"). Commenters alleged that Ohio EPA failed to include a federally enforceable condition stating that the requirements of § 112(r) apply to the source, including the requirement that the source develop and implement a risk management plan.

Following discussions with US EPA, Region 5, Ohio EPA agreed to clarify the applicability of § 112(r) in Ohio's Title V permits. As a result of this commitment by Ohio EPA, US EPA chose not to issue a notice of deficiency and informed commenters that Ohio EPA committed to resolve the perceived deficiency by letter dated May 22, 2002. The purpose of this letter is to confirm what Ohio EPA will do to clarify the applicability of § 112(r) requirements in its Title V permits.

Ohio EPA commits to including the following terms and conditions in newly issued, modified and renewed Title V operating permits:

If applicable, the permittee shall develop and register a risk management plan pursuant to section 112(r) of the Clean Air Act, as amended, 42 U.S.C. § 7401 et seq. ("Act"); and, pursuant to 40 C.F.R. 68.215(a), the permittee shall submit either of the following:

Bob Taft, Governor  
Maureen O'Connor, Lieutenant Governor  
Christopher Jones, Director

- a. a compliance plan for meeting the requirements of 40 C.F.R. Part 68 by the date specified in 40 C.F.R. 68.10(a) and OAC 3745-104-05(A); or
- b. as part of the compliance certification submitted under 40 C.F.R. 70.6(c)(5), a certification statement that the source is in compliance with all requirements of 40 C.F.R. Part 68 and OAC Chapter 3745-104, including the registration and submission of the risk management plan.

Any permit issued to a source that is subject to § 112(r) as of the date of permit issuance and that has submitted the required risk management plan will include the following federally enforceable condition in Part II of the permit:

This facility developed and registered a risk management plan pursuant to section 112(r) of the Act and is required to comply with the requirements of section 112(r) and the regulations adopted thereunder.

If a source is subject to § 112(r) as of the date of permit issuance but failed to submit a risk management plan by the deadline set forth in 40 C.F.R. 68.10(a), the permit issued to that source will include a federally enforceable condition in Part II of the permit stating that:

This source is required to develop and register a risk management plan pursuant to section 112(r) of the Act and is required to comply with the requirements of section 112(r) and the regulations adopted thereunder.

A permit issued to such source will also include a compliance schedule establishing enforceable remedial steps designed to bring the source into prompt compliance with § 112(r) requirements.

Title V permits issued by Ohio EPA currently require, and will continue to require, any source that is subject to § 112(r) to annually certify compliance with § 112(r) requirements.

Ohio EPA understands that should it propose a Title V permit for final issuance to a source that is subject to § 112(r) without including terms and conditions that clarify that the source is subject to and must comply with § 112(r) (including the requirement that the source prepare and submit a risk management plan and that it comply with regulations promulgated pursuant to § 112(r)), US EPA may object to each such permit pursuant to CAA § 505(b)(1) and 40 C.F.R. § 70.8(c)(1).

With respect to Title V permits that Ohio EPA previously issued to sources that are subject to § 112(r), Ohio EPA continues to commit to revising such permits to clarify § 112(r) applicability as set forth herein no later than the deadline for renewal of such Title V permits. If such Title V permits are modified prior to renewal pursuant to Ohio's minor or significant modification procedures set forth in OAC Chapter 3745-77, the revised § 112(r) requirements set forth herein will be incorporated into the modified permit at the time of permit modification. Furthermore, if Ohio EPA determines prior to permit renewal, or modification that a Title V permit must be revised to assure the source's compliance with § 112(r) requirements, or if US EPA directs Ohio EPA to reopen

and revise a Title V permit for the purpose of clarifying § 112(r) applicability, Ohio EPA will promptly reopen and revise such permit.

Sincerely,



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cc: Jim Orlemann, DAPC  
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