



John R. Kasich, Governor
Mary Taylor, Lt. Governor
Scott J. Nally, Director

May 13, 2013

Environmental Protection Agency
1200 Pennsylvania Avenue, NW, Mail Code 6102T
Air Docket ID No. EPA-HQ-OAR-2012-0322
Washington, DC 20460

Dear Docket ID: No. EPA-HQ-OAR-2012-0322

Ohio EPA provides this comment to U.S. EPA's proposed rule regarding SIP call to amend provisions applying to excess emissions during periods of start-up, shutdown, and malfunction. Because U.S. EPA did not consult with Ohio EPA prior to the issuance of the proposal, there are many errors in the application and interpretation of the Ohio rules. Further, the proposal deprives the Director of the right to oversee the administration of the air quality program in the State of Ohio consistent with the Clean Air Act.

The proposal must be considered in the context of the purpose of a SIP call: to assure that a state air agency's SIP contains the necessary requirements for achieving and maintaining attainment with new or revised NAAQS. It is not meant to circumvent substantial state discretion embedded in the cooperative federalism structure of the Clean Air Act, as recognized by numerous federal courts. See *e.g. EME Homer City Generation v. EPA*, 696 F.3d 7, 29 (D.C. Cir. 2012), *rehg. en banc den.* (2013) ("The terms of that partnership [between EPA and the states] are well-established: EPA sets the standards, but the States bear primary responsibility for attaining, maintaining and enforcing these standards." Citations omitted). A state is not a ward of the federal government, but instead- a full-fledged partner in the task of ensuring the attainment of new or revised NAAQS.

Ohio intends to do everything it must do to fully meet its obligations under the Clean Air Act and delegation agreement with EPA, but EPA cannot require more than what it is authorized to require under the CAA. See *EME Homer City Generation*, *supra* at 25-26. Ohio believes that U.S. EPA exceeds its authority under the proposal by undermining state discretion to manage a program that requires flexibility to maintain the integrity of control equipment and is not used by the state to attain or maintain the NAAQS.

Please see the following summary comments on the proposed Ohio SIP deficiencies. Detailed responses and supporting documentation follow the summarized set of responses.

Petition objection regarding Ohio Administrative Code (OAC) 3745-15-06(A)(3)

OAC 3745-15-06(A)(3) does not exempt emission limit violations. U.S. EPA and the Petitioner have misinterpreted OAC rule 3745-15-06(A)(3) and have made overly broad assumptions about the scheduled maintenance events. Additionally, the Director's discretion associated with this SIP-approved

rule is not unbounded, as each approval is public-noticed and subject to appeal. The Director's approval authority is restrained by the prescriptive measures identified in the rule that must be fully evaluated before any authorization can be granted.

Federal case law related to OAC 3745-15-06 and the ability of a citizen to file an independent enforcement action against the potential violator further contravenes the U.S. EPA and the petitioner's assertion that federal or citizen suit rights are undermined by the current rule language. See *Freeman v. Cincinnati Gas & Electric Co.*, 2005 WL 2837466 (S.D. Ohio, 2005). Applying OAC 3745-15-06, a federal court found that the language in the rule contains objective standards that are enforceable through the citizen suit provisions of the Clean Air Act. *Id.* at *4.

Petition objection regarding OAC 3745-17-07(A)(3)(c) and 3745-17-07(B)(11)(f)

U.S. EPA and citizens are NOT precluded from taking an independent enforcement action against a facility for an exceedance of an applicable emission limitation resulting from a malfunction. If a facility submits a notification pursuant to OAC 3745-15-06(B), they have declared that a source and/or control equipment at the facility has malfunctioned in a manner that caused a violation of an applicable emission limitation. All reported violations are independently enforceable by U.S. EPA or citizens in the event that Ohio EPA exercises enforcement discretion in response to reported violations. The exemption from a reported opacity exceedance, provided that reporting emission limit violations are triggered by the interconnected requirements of OAC 3745-15-06(B), 3745-17-07(A)(3)(c) and 3745-17-07(B)(11)(f), is reasonable and does not contradict the ability of Ohio to assure compliance with PSD and NAAQS requirements under the Clean Air Act. Because U.S. EPA can only disapprove a SIP if it would interfere with the state's ability to attain or maintain the NAAQS, U.S. EPA does not have a valid basis for issuing this SIP call.

U.S. EPA objection regarding OAC 3745-15-06(C)

OAC 3745-15-06(C) does not exempt emission limit violations, even during malfunction events. Although, as detailed later in this response, malfunction events can present practical event-specific issues in determining whether a violation has occurred or whether quantification of actual ambient impacts are technically feasible in some cases, Ohio EPA has, in correspondence, guidance and in implementation of Ohio rules, taken the position that all exceedances of emission limits are violations of applicable permitted emission limits unless explicitly exempted by Federal regulations – regardless of the basis of the exceedance.

General comment related to OAC 3745-15-06(A)(3)(c), 3745-15-06(C), 3745-17-07(A)(3)(c), and 3745-17-07(B)(11)(f)

Please see the detailed response below for consideration.

U.S. EPA's proposal to deny the petition requests regarding OAC Chapter 3745-75 rules and the use of interpretive letters from the states

Ohio EPA concurs with U.S. EPA's position regarding these issues.

U.S. EPA's proposal to revise federal start-up shut-down and malfunction policy

Ohio EPA believes that including the proposed change in policy is procedurally deficient as only 36 states are involved in the proposed SIP call, while the changed policy applies nationwide. Ohio EPA is concerned that notification of U.S. EPA's intended considerations through a Federal Register notice focused on specific state notices of deficiency will not provide all impacted parties with the opportunity to consider and join in the deliberative process. Please see below for consideration of the specific steps proposed by U.S. EPA in the proposed action.

Detailed responses

Petition objection regarding OAC 3745-15-06(A)(3)

Based upon its experience in implementing this rule, Ohio EPA believes that the Petitioner has misinterpreted OAC 3745-15-06(A)(3) and has made overly broad assumptions about the scheduled maintenance events and whether such events, pursuant to the current rule language:

- Constitute exempted emission violations; and,
- Whether the rule precludes U.S. EPA or citizens from taking action

It is very important to emphasize that emissions associated with a scheduled maintenance request authorized by the Director of the Ohio EPA DO NOT automatically result in a violation of an applicable emission limitation. While the authorization may result in a violation of an emission limit in a particular situation, the rule requires a demonstration that all feasible interim control measures will be taken to reduce emissions from the source during the scheduled maintenance event. For certain scheduled maintenance events, the current approved rule requires steps to: avoid emission violations; encourage compliance with the PSD requirements; and assist in meeting the NAAQS, if technically feasible.

Where the authorization of a scheduled maintenance event does result in emission levels in excess of an applicable limitation, the Ohio EPA has never taken the position that the excess emissions are not violations of the applicable limitation or that those emission violations do not have to be reported. The language included in maintenance request approvals further bolsters¹ the Director's enforcement authority with respect to any violations that may occur during the approved maintenance.

All emissions that exceed an emission limitation are violations of the enforceable permitted emission limit, and the letters specifically inform the requesting entity that they are not absolved from any violation caused by the scheduled maintenance event. Any excess emissions associated with a scheduled maintenance event are accounted for in the total annual emissions for the source and/or facility.

Ohio EPA has also issued formal guidance related to scheduled maintenance events in the form of an Engineering Guide. The Engineering Guide clearly states that a scheduled maintenance request which could interfere with the attainment or maintenance of the NAAQS and/or endanger or tend to endanger the health or safety of the public living in the vicinity of the source will not be authorized. The Engineering Guide addresses the computer modeling needed to assess the air quality impact of the emissions released during the scheduled maintenance event. The Guide also notes that enforcement action may be warranted. (www.epa.state.oh.us/Portals/27/engineer/eguides/guide33.pdf)

¹ See highlighted text in the attached example with a preventive maintenance authorization date of January 20, 2012 for BP-Husky Refining, LLC

Ohio EPA acknowledges the use of the word “continuous” in the Clean Air Act section 302(k) definition of emission limitations. However, for more than 30 years, OAC 3745-15-06(A)(3) (which was approved by U.S. EPA) has allowed the Ohio EPA to address the practical realities a facility faces, such as maintaining the integrity of control equipment that serve sources that cannot be routinely shut down (i.e., glass furnaces, coke batteries, etc.) while maintenance is performed on the source controls.

As U.S. EPA is aware, requiring a forced shut-down of operations to perform emission control preventive maintenance activities could end up causing a larger impact on air quality than authorizing maintenance of an individual piece of control equipment without shutting down. This can be true at refineries and other operations. Forcing a complete plant shut-down (and subsequent start up) could easily far exceed the ambient impact that by-passed emissions from a single part of the operation would have during the maintenance activities. The combination of potentially higher emissions, higher operational costs and possible operational safety issues with certain plants created by the forced shut-down militate toward allowing the Director flexibility in such situations. U.S. EPA is also aware that there is no federal rule or mandate that requires redundant emission control systems to be installed and operated for all source categories where the emitting source(s) cannot be shut down for technical, economic or safety reasons while industry-recognized, necessary maintenance is performed on the source controls.

U.S. EPA has recognized that some source categories, such as coke ovens, must perform scheduled maintenance while the source continues to operate. In fact, U.S. EPA often dictates the frequency of the scheduled maintenance when settling an enforcement case. If this proposal is adopted, a company would be required to choose between violating the state rules or a federal consent decree. Again, proposing to eliminate the common sense benefits associated with exempt operating controls during scheduled control equipment maintenance in the long-standing, SIP-approved rule allows the experienced technical staff at Ohio EPA to recommend fully evaluated, case-by-case Director’s authorizations for scheduled control equipment maintenance, bearing in mind that excess emissions during these periods may be considered violations of the applicable emission limit. Many years of common sense regulation will be voided only to readdress the same emissions through resource-draining permit revisions that will most likely yield the same air quality impacts that have already been properly assessed under the public-noticed states’ rules and U.S. EPA-approved SIPs.

For many years, U.S. EPA has correctly recognized the real-world impacts of scheduled control equipment maintenance, source start-ups, source shut-downs, and source malfunctions. Further, U.S. EPA has not promulgated regulations requiring redundant emission control equipment for specific source categories and has not made continuous emissions monitoring systems mandatory for all source categories for direct compliance with applicable emission limitations.

Ohio EPA disagrees with the U.S. EPA’s assertion that the Director’s discretion associated with this SIP-approved rule is unbounded. The Director’s discretion is most certainly restrained by the prescriptive measures identified in the rule that must be fully evaluated before any authorization can be granted.

Ohio EPA also disagrees with the Petition’s assertion that the U.S. EPA or any citizen is precluded from taking an independent enforcement action against a facility where the Ohio EPA elects to use its enforcement discretion with respect to any violation of an emission limitation that may be caused by the authorized scheduled maintenance event. Ohio Administrative Code 3745-15-06 contains objective standards which are enforceable through a citizen suit. See *Freeman*.

Petition objection regarding OAC 3745-17-07(A)(3)(c) and 3745-17-07(B)(11)(f)

Ohio EPA disagrees that the rule exemption from the visible particulate emission limitations precludes U.S. EPA or any citizen from taking an independent enforcement action against a facility for an exceedance of an applicable emission limitation resulting from a malfunction. Ohio EPA also asserts that exemptions from the visible particulate emission limitations do not automatically result in NAAQS violations, nor can they be used to avoid PSD violations because Ohio EPA still must review requests pursuant to the existing rule requirements.

Ohio EPA cannot understand how the U.S. EPA could misinterpret these SIP-approved rule exemptions in such a manner that they fail to recognize the practical effect of allowing the exemptions if the facility complies with the requirements of OAC 3745-15-06(B).

If a facility submits a notification pursuant to OAC 3745-15-06(B), they have declared that a source and/or control equipment at the facility has malfunctioned in a manner that caused a violation of an applicable emission limitation. That declaration alone inherently allows Ohio EPA, U.S. EPA or any citizen to initiate an enforcement action against that facility, where warranted. It makes no sense to remove the exemption and mandate, by rule, additional violations of a secondary standard that may (1) not be directly associated with maintenance or attainment of the applicable NAAQS (PM10); (2) be extremely unlikely to impact regional haze requirements; and (3) provide no corresponding air quality benefit.

As with the scheduled maintenance rule, excess emissions associated with a malfunction are required to be accounted for in the total annual reported emissions for the source and/or facility and deviation reports submitted in accordance with OAC 3745-15-06(B) for the scheduled maintenance events.

Ohio EPA is also concerned about the effect of the proposed notice of deficiency on the question of whether the U.S. EPA reference methods specified in 40 CFR Part 60, Appendix A, can legally be used to assess compliance with OAC 3745-17-07(A)(3)(c) and 3745-17-07(B)(11)(f) during a malfunction. 40 CFR Part 60.8 explicitly precludes the use of the reference methods in 40 CFR Part 60, Appendix A, during a malfunction. In fact, U.S. EPA's own performance testing provision indicates that excess emissions during a malfunction are not considered violations of an applicable emission limitation (also see 40 CFR Part 63.7(e)² and 40 CFR Part 63.6(e)³ for maintenance). This seems to be a reasonable position since it does not appear that any technology-based regulation could reasonably anticipate and account for the expected number and duration of malfunction-related excess emissions when setting technology-based standards.

U.S. EPA may argue that the general performance test provisions of 40 CFR Part 60.8 only apply when determining compliance with the emission limitations established pursuant to the technology-based NSPS, but that position undermines the reality of how the general testing provisions in 40 CFR Part 60.8 have been used by the states for demonstrating compliance with SIP-approved rules. States' emission monitoring and testing programs rely on the research supporting the 40 CFR Part 60.8 provisions to ensure that accurate emissions data can be obtained during representative source operational periods.

² ".....nor shall emissions in excess of the level of the relevant standard during periods of startup, shutdown, and malfunction be considered a violation of the relevant standard unless otherwise specified in the relevant standard or a determination of noncompliance is made under §63.6(e)."

³ "The general duty to minimize emissions during a period of startup, shutdown, or malfunction **does not require the owner or operator to achieve emission levels that would be required by the applicable standard at other times** if this is not consistent with safety and good air pollution control practices...." (emphasis added).

Start-up, shut down and malfunction periods are not considered representative source operational periods for the purpose of accurately determining source emissions.

Finally, Ohio EPA is concerned that while the source emissions associated with some scheduled periods of start-up and shutdown can be determined (utilizing a source's maximum uncontrolled potential to emit emissions when the source's control equipment is off line), it simply is not always possible to accurately determine the source emissions during unscheduled start-ups or shutdowns where a source is not operating at its maximum capacity and the source's control equipment is still on line, but not functioning as efficiently due to an upset condition or malfunction. Even when a facility has a certified continuous opacity monitoring system, proving violations of fugitive visible particulate emission limitations is difficult, given that U.S. EPA has failed to take the steps necessary to make the continuous opacity monitoring systems reference method equivalent under 40 CFR Part 60, Appendix A. The facility has already admitted to an emission violation and a court could construe the additional visible emission violations as a means of driving up a penalty against the facility.

Because the general provisions of 40 CFR Part 60 have practical applicability beyond the NSPS, U.S. EPA will need to revise 40 CFR Part 60.8 to remedy the contradiction within federal regulations that U.S. EPA establishes through this proposed "Notice of Deficiency." Otherwise, excess emissions during start-up, shutdown, and malfunction will not be consistently addressed as violations. As indicated for the NESHAP regulations, U.S. EPA will need to revise many of the NSPS regulations to either remove exemptions from emission limitations during periods of start-up, shut down, and malfunction, provide for redundant source emission control systems, and to establish continuous emissions monitoring systems for direct compliance with the applicable emission limitations.

U.S. EPA objection regarding OAC 3745-15-06(C)

Ohio EPA does not agree with U.S. EPA's assertions regarding OAC 3745-15-06(C). This rule provision adds enforcement strength to the malfunction provisions in OAC 3745-15-06(B). Should a facility fail to comply with the requirements of OAC 3745-15-06(B), the Director "shall" take further action to resolve the matter. Please note that the Director's authority to enforce violations of applicable requirements, whether resulting from a malfunction or otherwise, is not limited by OAC 3745-15-06 and Ohio EPA does not believe that this rule protects a facility from enforcement of emission limitation violations during times of unanticipated and/or unpreventable malfunctions. The information provided by a facility for a source malfunction subject to the requirements of OAC 3745-15-06(B) allows the Director to determine when and if enforcement discretion is appropriate. Ohio Administrative Code 3745-15-06(B) sets forth the criteria that would allow a source to be exempt from the visible particulate emission limitations stated above during a malfunction subject to OAC 3745-17-07, not OAC 3745-15-06(C). The exercise of enforcement discretion is NOT automatic.

Why the U.S. EPA would target a SIP-approved rule that adds enforcement strength to another SIP-approved rule that was not identified in the proposed rulemaking seems contrary to the stated purpose of the proposed notice. Such a step would undermine the primary function of states to enforce the Act by removing all judgment and discretion from the states rather than the purported goal of addressing continuous compliance.

Here again, Ohio EPA disagrees with the U.S. EPA's assertion that the Director's discretion associated with this SIP-approved rule is unbounded. The Director's discretion is most certainly restrained by the very prescriptive measures identified in OAC 3745-15-06(B) that must be fully satisfied and evaluated

before any enforcement discretion can be considered for excess emissions during a malfunction. Regardless, U.S. EPA's finding that Ohio's rules are deficient in part on the ability of the Director to exercise his discretion reflects a position that has been recently rejected by the United States Fifth Circuit Court of Appeals:

[T]he EPA has invoked the term "director discretion" as if that term were an independent and authoritative standard, and has not linked the term to the language of the CAA. The EPA's use of a particular term does not constitute a "satisfactory explanation for its action" or a "consideration of the relevant factors" for its decision. [*Motor Vehicle Mfrs. Ass'n of U.S., Inc. v. State Farm Mut. Auto. Ins. Co.*, 463 U.S. 29, 43].

There is, in fact, no independent and authoritative standard in the CAA or its implementing regulations requiring that a state director's discretion be cabined in the way that the EPA suggests. Therefore, the EPA's insistence on some undefined limit on a director's discretion is, like the Agency's insistence on a particular drafting style, based on a standard that the CAA does not empower the EPA to enforce. 5 U.S.C. § 706(2).

Texas v. U.S. EPA, 690 F.3. 670, 682 (5th Cir.2012) (bold in original). Ohio EPA believes the reasoning of the Fifth Circuit applies in this instance as well, and U.S. EPA should remove the exercise of Ohio EPA Director's discretion as any basis for issuing a notice of deficiency with respect to OAC 3745-15-06(C).

General comment related to OAC 3745-15-06(A)(3)(c), 3745-15-06(C), 3745-17-07(A)(3)(c), and 3745-17-07(B)(11)(f)

Ohio EPA acknowledges that the above-referenced rules lead to or are impacted by case-by-case determinations by experienced technical staff at the Agency. However, the rules underwent the public rulemaking process at the State level and were again reviewed and SIP-approved by U.S. EPA. Implying that the Petitioner or any other citizen was precluded from commenting on or obtaining a full understanding of the technical evaluations conducted by this Agency under the SIP-approved rule provisions is inaccurate. If the Director's discretion, based on recommendations by the Agency's experienced technical staff, is forced to be removed from Ohio's rules, it will most likely prompt the need for more unfunded resources to be incurred on the State level to ensure that each determination is a case-by-case evaluation.

Ohio EPA would like to further point out that U.S. EPA did not make any mention of the proposed SIP call during U.S. EPA's State Review Framework enforcement program audit in October of 2012. There were no discussions related to how the Ohio EPA used its discretionary rule provisions, no discussions of or evaluations related to Ohio EPA's use of enforcement discretion, and no attempt to fully understand the Ohio rules. This "Notice of Deficiency" is simply unhelpful in evaluating how Ohio EPA is enforcing the Clean Air Act.

Petition objection related to OAC 3745-14-11(D)

U.S. EPA should reevaluate their position regarding continuous compliance with emission limitations during start-up, shutdown, and malfunction periods for the Portland cement operations affected by OAC 3745-14-11(D).

As mentioned above, 40 CFR Part 60.8 explicitly precludes the use of the reference methods in 40 CFR Part 60, Appendix A, during periods of start-up, shut down, and malfunction. In fact, the provision indicates that excess emissions during these periods are not, by federal rule, considered violations of an applicable emission limitation (also see 40 CFR Part 63.7(e)).

The stated exemption during start-up periods for the low-NOx burners identified in OAC 3745-14-11(D) is moot since the burners are either on or off. There is no ability to turn off the "low-NOx function" of the burner. The continued operation of the low-NOx burner during shutdown and malfunction periods is not helpful in reducing NOx emissions during the ozone season.

For a mid-kiln firing system subject to OAC 3745-14-11(D), the stated exemption during start-up, shut down, and malfunction periods seems reasonable given that these firing systems can utilize solvent-derived fuels or tires to achieve the lower kiln combustion temperatures that, in turn, decrease nitrogen oxides emission formation. It is prudent to allow the kiln to achieve a certain temperature during a start-up period before initiating the use of the solvent-derived fuel or tires in the mid-kiln firing system. Likewise, if the kiln is shut down, it is reasonable to cease using the mid-kiln firing system as the kiln temperatures fall to ensure that the secondary fuels are properly combusted prior to a full shut-down. For a malfunction of the source, all operating systems, whether serving controls or the source, may need to be off line in order to address the malfunction. For a control system malfunction, such as a baghouse, ESP, or dry scrubber serving the kiln, there may be a greater air quality impact if certain control systems continue to operate to reduce NOx emissions during the malfunction period.

Allowing scheduled maintenance of the kiln's emission control systems is environmentally beneficial and also seems reasonable given that some kilns can run for more than a year without a scheduled shutdown. Ohio EPA recognizes that some routine maintenance can be performed on the kilns while they are still in operation, but safety issues may dictate the need to have certain controls off line in order to perform the needed maintenance and it may not be possible to shut down the kiln for technical or economic reasons to perform the necessary maintenance.

As a procedural note, it was U.S. EPA that suggested that Ohio EPA add the language to the rules. These rules, now adopted by U.S. EPA, are deemed deficient by another group at U.S. EPA.

U.S. EPA's proposal to deny the petition requests regarding OAC Chapter 3745-75 rules and the use of interpretive letters from the states

Ohio EPA concurs with U.S. EPA's position regarding these issues.

Thank you for the opportunity to comment on this proposal. We request that you fully evaluate the contents of this letter prior to taking a final action.

Sincerely,



Scott J. Nally
Director



Environmental
Protection Agency

John R. Kasich, Governor
Mary Taylor, Lt. Governor
Scott J. Nally, Director

OHIO E.P.A.
JAN 20 2012

ENTERED DIRECTOR'S JOURNAL

CERTIFIED MAIL

JAN 20 2012

Mr. William Rupert
Senior Environmental Specialist
BP-Husky Refining, LLC
Toledo Refinery
4001 Cedar Point Rd.
Oregon, Ohio 43616

I certify this to be a true and accurate copy of the official documents as filed in the records of the Ohio Environmental Protection Agency.

By: [Signature] Date: 1/20/12

Re: Request for scheduled maintenance at BP-Husky Refining, LLC, Toledo Refinery (premise number 0448020007)

Dear Mr. Rupert:

On January 11, 2012, the Toledo Division of Environmental Services ("TES"), the Ohio Environmental Protection Agency's ("Ohio EPA") contractual representative in Lucas County, received your company's written request, dated January 11, 2012, for authorization to continue to operate emissions units at the BP-Husky Refining, LLC, Toledo Refinery ("BP-Husky") facility (facility ID number 04-48-02-0007) located at 4001 Cedar Point Road, in Oregon, Ohio, Lucas County, while performing maintenance of control equipment. Pursuant to the provisions of Ohio Administrative Code ("OAC") Rule 3745-15-06(A)(3), this request is for authorization to continue facility operations while the Vac 2 unit (emissions unit P010) vacuum system is shut down for maintenance.

Ohio EPA has reviewed the request. Based on the information submitted within the request and on the recommendation of TES, I find this request acceptable. BP-Husky is authorized to continue facility operations while the Vac 2 unit vacuum system is shut down until the scheduled maintenance is completed.

All efforts shall be made to minimize the length of the maintenance period and the use of the West Hydrocarbon Flare to control emissions from the emissions unit, with consideration to safety and best engineering judgment, in order to prevent unnecessary emissions.

This authorization is subject to BP-Husky's adherence to the scheduled maintenance program outlined in its January 11, 2012 letter. If there is any deviation from the expressed program, such deviation shall be reported immediately to TES so that this authorization may be re-evaluated. This authorization may be revoked at any time by written notice from TES or this office should the situation no longer justify continued operation of the source.

Mr. William Rupert
BP-Husky Refining, LLC
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You are hereby notified that this action of the Director is final and may be appealed to the Environmental Review Appeals Commission pursuant to Section 3745.04 of the Ohio Revised Code. The appeal must be in writing and set forth the action complained of and the grounds upon which the appeal is based. The appeal must be filed with the Commission within thirty (30) days after notice of the Director's action. The appeal must be accompanied by a filing fee of \$70.00 which the Commission, in its discretion, may reduce if by affidavit you demonstrate that payment of the full amount of the fee would cause extreme hardship. Notice of the filing of the appeal shall be filed with the Director of the Ohio Environmental Protection Agency (Ohio EPA) within three (3) days of filing with the Commission. Ohio EPA requests that a copy of the appeal be served upon the Ohio Attorney General's Office, Environmental Enforcement Section. An appeal may be filed with the Environmental Review Appeals Commission at the following address:

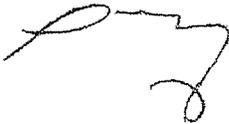
Environmental Review Appeals Commission
77 South High Street, 17th Floor
Columbus, Ohio 43215

This authorization does not exempt BP-Husky of any liability for any violation of Ohio law and does not limit the Director's authority to take action pursuant to the provisions of OAC Rule 3745-15-06(C).

Please notify TES prior to beginning the scheduled maintenance and again when the scheduled maintenance is complete and the Vac 2 unit vacuum system is once again operating.

If you have any questions or information to report, please feel free to contact Peter Park of TES at (419) 936-3936.

Sincerely,



Scott J. Nally
Director

SJN/JP/jp

xc: Tom Kalman, DAPC
John Paulian, DAPC
Karen Granata, TES
Peter Park, TES
Stephen Feldmann, Legal