June 3, 1996

Mr. Robert F. Hodanbosi, Chief
Division of Air Pollution Control
State of Ohio Environmental Protection Agency
1800 Watermark Drive
Columbus, Ohio 49215-1099

Dear Mr. Hodanbosi:

This letter is written in response to your letter of May 2, 1996 regarding: (1) the role of the U.S. Environmental Protection Agency (U.S. EPA) in enforcement of state-only permit terms or conditions and information collected related to those state-only regulations in light of recent developments of the credible evidence rulemaking; and (2) the U.S. EPA position pertaining to the periodic monitoring requirements in part 70 and the soon to be proposed compliance assurance monitoring (CAM) rule. We have coordinated a response to these questions with the Office of Enforcement and Compliance Assurance who is responsible for finalizing the credible evidence rulemaking and our Office of General Counsel.

As you noted, the U.S. EPA is considering promulgating changes to part 51, 52, 60, and 61 to allow the use of information other than that provided through compliance testing in determining compliance with emission limitations or standards. You asked specifically whether the U.S. EPA intends to utilize the information, required through operating permits to fulfill state-only requirements as credible evidence in Federal enforcement actions. You feared that a decision to do so would detrimentally affect the permitting process and potentially result in inconsistencies on a national level.

In proposing the changes to Parts 51, 52, 60, and 61, the U.S. EPA's intent is to ensure that artificial or unnecessary limitations on the use of otherwise credible evidence are avoided, so that the trier of fact can consider all relevant evidence admissible under the rules of the court. To the extent that data gathered in state-only required monitoring is probative of violation of a federally enforceable emission standard, we believe that such data would be admissible in federal court. Thus, it is possible that the U.S. EPA could use state-only required monitoring in federal enforcement proceedings, in those circumstances where data from such monitoring would be sufficiently comparable to federally specified or approved compliance data so as to make the state data credible evidence of noncompliance with the standard.

As a practical matter, U.S. EPA believes that the data which source owners will be required to generate to monitor compliance with the applicable requirements in their Title V permits, including data from well-designed CAM plans, will generally constitute most, if not all, of the credible evidence upon which a federal enforcement action would be based. Thus, if there are state-imposed monitoring requirements that relate directly to federal emission limitations, those requirements would naturally form a necessary and useful basis for the source's CAM plan. Where such monitoring is unrelated to federal emission limits, the practical effect of the monitoring on federal enforcement will be negligible, particularly after the CAM rulemaking becomes final. By requiring all Title V permits to include additional monitoring where necessary to assure compliance with federal applicable requirements, the CAM rulemaking will help establish a more level playing field across the nation regarding monitoring requirements.

Your second question had to do with the interpretation of the current part 70 periodic monitoring requirements with regards to permit applications now being submitted and the draft CAM rule. The Office of Air Quality Planning and Standards (OAQPS) believes appropriate selection of periodic monitoring for permits is an issue to be resolved between source owners/operators and the permitting authorities as part of the permit issuance process. The OAQPS does not intend to issue guidance on

selection of periodic monitoring. The CAM rule, when final, will address both periodic monitoring and the enhanced monitoring requirements as specified in the Clean Air Act.

I appreciate the opportunity to be of service and trust that this information will be useful to you.

Sincerely,

/s/

John S. Seitz
Director
Office of Air Quality Planning
and Standards

cc: Jonathan Fleuchaus, U.S. EPA, OGC (2333R)
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