



A&WMA

THE AIR AND WASTE MANAGEMENT ASSOCIATION NEWSLETTER
NORTHERN OHIO CHAPTER

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US EPA Gets Off OEPA's Back?

By Michael S. McMahon
Partner of McMahon, DeGulis, Hoffmann
& Lombardi

After nearly five years, the review of petitions of several environmental groups for US EPA to withdraw delegation from the State of Ohio to administer certain federal environmental programs is over. Region V Administrator Skinner on February 10, 2003, informed the groups that the petitions were denied because US EPA did not find sufficient evidence to justify withdrawal or revocation of the programs.

Before applying for a parade permit, you might review the Final Report from US EPA. That report contains a lot of information of importance to entities regulated under the air program. This report provides an insight into Ohio EPA's thinking that might not be available elsewhere. The future for Ohio EPA and the regulated community is more challenging than ever.

This article identifies several of the nuggets on air compliance issues that can be found in the Final Report. The Final Report also addresses (but this article does not) water and hazardous waste issues.

BACKGROUND

Many may have forgotten that this entire process was started because of the State of Ohio's impertinence in enacting the environmental audit privilege and immunity law. US EPA expressed concern. Environmental groups were outraged. Their first petition in 1997 requested US EPA to withdraw or revoke air, water and waste environmental programs based upon the existence of the audit privilege law. In December, 2000, US EPA denied that petition. However, the Ohio Public Interest Research Group has appealed that decision to the Sixth Circuit Court of Appeals.

Environmental groups amended their petition in 1998, 1999 and 2000 to add allegations about how Ohio EPA was

implementing its RCRA program, solid waste permit program, NPDES program as well as the following programs under the Clean Air Act:

- Performance Standards for New Stationary Sources
- New Source Review
- Prevention of Significant Deterioration
- Non-compliance Penalties
- Title V program

In 2000, US EPA inspectors descended upon Ohio EPA's offices with more skepticism toward Ohio EPA than Hans Blix's inspectors showed toward Saddam Hussein. US EPA issued a preliminary report, dated August 30, 2001, which summarized the allegations of the environmental groups and set forth preliminary findings. US EPA held public meetings on November 13, 2001 and accepted comments from the public until January 14, 2002.

Ohio EPA made substantial responses both during initial inspections and following the draft report. This entire process absorbed a substantial amount of OEPA's attention and resources.

While this February 10, 2003 letter terminates the petition review process with respect to these air issues, litigation continues on with the respect to the audit law. In addition, US EPA issued a Notice of Deficiency on April 10, 2002 claiming problems with Ohio's Title V permitting of insignificant emission units and for reports of deviation. Litigation on those points is proceeding and US EPA did not make any final findings on those issues in this report.

WHAT IS IN THE REPORT

The report discusses the specific complaints of the environmental groups and both the preliminary findings and final

continued to page 4

SPRING CONFERENCE ADDRESSES

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May 15, 2003

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Get the answers to these questions and more at "New Developments in Ohio Air Permitting", the 2003 NOC-A&WMA Spring Technical Conference. On May 15, experts from Ohio EPA, industry and the Permit Process Efficiency Committee will present the latest information on a variety of air topics important to Ohio businesses and consultants, including:

- the USEPA New Source Review Reform Rule;
- the new Boiler MACT for small boilers & process heaters;
- new rules for Insignificant Emission Units;
- general permits, permits-by-rule, exemptions and combined PTI/PTO's;

and much more! NOC-A&WMA is also pleased to welcome Michael E. Hopkins, Manager of Ohio EPA's Air Quality Modeling and Planning Section, as the conference keynote speaker. Mr. Hopkins is scheduled to address "The Implications of Pending Non-Attainment in Ohio."

This half-day conference will be packed full of information useful to YOU. A small investment now could bring big dividends in the very near future. NOC-A&WMA looks forward to seeing you at the 2003 Spring Technical Conference!

Message from the Chairman by Herb Mausser

EH&S and the 11 O'Clock News

Note: because of editorial and publishing deadlines, I wrote this column during the week of February 24. National and world events since then may have rendered these observations irrelevant – hopefully due to positive global developments.

My wife and I were eating breakfast in our dining room Saturday when the conversation turned to terrorism threats and possible war in Iraq. Perhaps you've experienced this phenomenon with your spouse or other loved one lately. Not the most appetizing meal conversation, but hard to avoid given the recent "orange" alerts, Osama taped messages and runs on duct tape and plastic sheeting.

Anyway, in the midst of our rather innocuous conversation ("What's this world coming to? Going to hell in a hand basket!"), her face went very serious and she blurted out, "I can't believe our stupid government is pushing duct tape when our whole city could be wiped out by these idiot terrorists!"

I explained to her that, short of a suitcase-sized nuclear device, it's highly unlikely that terrorists could inflict damage on that scale, especially with today's heightened security. And let's be realistic, folks; it's unlikely that Cleveland is high on any terrorist's priority site list.

"But what about our drinking water supply?" I reassured her that too much

inoculant or toxin is needed to make any kind of impact on Lake Erie, and 24 hour security at the water treatment plants means that they'd be shut down before contaminated water was distributed. Major inconvenience, yes, but no mass casualties.

"But what if ...". The scenarios kept coming. Smallpox spread from airplanes. Attacks on Terminal Tower. Back to the water treatment plants.

She was terrified.

My wife is a college-educated, intelligent woman. But it suddenly struck me that she, like the majority of Ohioans and Americans, lacks the skills to properly interpret the overwhelming doses of "information" thrown at them daily by the media, Web pages and well-meaning but equally underinformed or misinformed acquaintances.

It also struck me that EH&S professionals now have a golden opportunity to use our expertise in a way that most of us probably never anticipated – educating the public, or at least our friends and families, about the consequences of nuclear, biological and chemical (NBC) attacks.

Sure, our experiences are largely workplace-related. But if you think about it, most of us have a wealth of knowledge about chemicals, their characteristics and their

negative health effects. Although our knowledge in the biological and nuclear areas may not be as strong, we have one distinct advantage – we know how and where to find dependable, legitimate information in a figurative "sea of chatter", and we know how to apply that information in meaningful ways. Think about the research you do to complete an air permit, assess a brownfield site or develop a Hazard Communication training program. We have the tools to make sense of NBC threats!

"Terror", for the most part, occurs when we can't (or don't) put risk into context. You may be deeply concerned about North Korea's nuclear program or Iraq's biological weapons, but your EH&S skills help you address those concerns in a logical manner that neutralizes the irrationality of terror. I encourage you to use those skills to help your loved ones (and yourself) deal constructively with the current world situation.

I am very interested in hearing how you've used your EH&S expertise to help educate others about potential NBC incidents. Send your anecdotes to herbert.mausser@tri-c.edu and, with your permission, I'll include them in the next edition of this newsletter.

NOC-AWMA Awards Science & Engineering Fair Prizes



Heidi Schmidt presents her Science & Engineering Fair project on renewable oil viscosities.

Joe Candio, Scott Smith and Herb Mausser represented NOC-AWMA as Special Judges for the 50th annual Northeastern Ohio Science and Engineering Fair held at Cleveland State Tuesday, March 11. NOC-AWMA awarded three prizes:

First place (\$100 savings bond): Heidi Schmidt, Euclid, OH – "Finding the ideal viscosity of a renewable oil."

Second place (\$50 savings bond): Valerie Andrus, Richmond Hts., OH – "Bioremediation study of parking lot runoff."

Third place (\$50 savings bond): Rogelio Santiago, Cleveland, OH – "Potential effect of bacteria on quantitative variables in Lake Erie water."

Heidi Schmidt was also selected by the overall Northeastern Ohio Science & Engineering Fair organization to represent Northeast Ohio in the upcoming Intel International Science and Engineering Fair (see story on page 6).

Congratulations to the winners and to all of the participants; the quality of all the projects was very good.

Update On OEPA "Permit By Rule" Status for Ohio's Gasoline Stations

The Ohio EPA, in an attempt to improve the air permitting process, formed the Permit Process Efficiency Committee (PPEC) in July of 2001. The committee is comprised of representatives from various private sector groups, including the Ohio Chamber of Commerce, the Ohio Petroleum Council, and the Ohio Manufacturers Association.

One of the projects that the PPEC is addressing is the "Permit By Rule" regulations for selected permitted operations. The objective would be to develop standard requirements that would apply globally to certain types of operations. Permit by Rule would be particularly beneficial to smaller pollution sources, such as gas stations.

Currently, all gasoline stations in regulated counties are required to submit individual Permit to Install (PTI) and Permit to Operate (PTO) applications, which are

processed individually. This drastically affects the workload of Ohio EPA personnel, and is expensive to gasoline marketers. Permit by rule would eliminate the filing of PTI/PTO paperwork for gas stations, and possibly eliminate the associated fees.

"Permit By Rule" will not change the Stage I/Stage II requirements for gasoline stations. Facilities located in selected counties will continue to be subjected to Stage II requirements, and corresponding Stage II testing requirements. These would be addressed in the "Permit by Rule" language.

The PPEC is anticipating completion of the draft language for the "Permit By Rule" for gas stations by the end of 2003. Until the regulatory change is made, gas stations must continue to file PTI/PTO applications if they are in regulated counties.

NOC-AWMA Enjoys a "Booming" Tour of the Ross Incinerator Facility

An unexpected thunderstorm did not dampen the spirits of the 20 NOC-AWMA members who visited the Ross Environmental Services (RES) incinerator March 25. They came to hear about and see the retrofitted hazardous waste incineration facilities in Grafton, Ohio, as well as enjoy dinner with their colleagues.

The group was greeted at the American Legion Hall in Grafton by Maggie Kelch, Ross' Community Relations Manager and Cliff Goytowski, Ross' Vice President of Technology. Cliff began by welcoming everyone, then presented a very informative PowerPoint presentation on the history of RES and the recent upgrading of the incinerator facility.

Ross Incineration Services (RIS) completed construction of its new air pollution control system and the replacement of the transition duct and main chamber of its incineration system in July. The completion of the construction, one year ahead of the compliance deadline, means that RIS is now in a position to comply with new standards that are established under the USEPA

Maximum Achievable Control Technology (MACT) rule for hazardous waste combustion facilities. [This rule imposed stricter emissions standards for a number of air pollutants, required new operating procedures, more training and different monitoring systems.]

After answering several questions about the upgrade, Maggie invited the group to board the school bus that would take us to the facility. At the RIS gate, Jim Larson, Ross' Vice President of Operations boarded the bus to lead the tour. Although the rain continued, the group was very comfortable driving through the grounds, seeing the waste storage set-up, the actual incinerator system, and all of the associated facilities. The bus parked on a rise across from the incinerator for better viewing, and Jim answered a number of questions from the group in detail.

The event ended with a delicious dinner back at the American Legion Hall, where Maggie distributed small door prizes to all of the attendees. NOC-AWMA extends its thanks to Maggie, Cliff and Jim for their hospitality!

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US EPA

continued from page 1

findings. Much of the report also contains a lengthy discussion of the criteria for "withdrawal" or "revocation" of the various clean air programs. It should come as no surprise that US EPA has employed different terms for different programs and different criteria for each program. Therefore, it became necessary for US EPA to attempt to reconcile these criteria and the terminology.

Here are actual quotes you might find interesting:

1. "Ohio EPA committed to an inspection program focusing on the use of full compliance evaluations, which are more likely to identify process changes that would trigger PSD applicability." (Page 4)

2. "Since US EPA raised the issue of superceded construction permits in its May 18, 1998 letter to Ohio EPA, US EPA has not identified any Ohio EPA draft Title V permit which contains language that the permit superceded or replaced specific PTI conditions." (Page 6)

3. "The permitting reviewers did not conduct a comprehensive investigation on this issue because PSD violators are detected more effectively through enforcement activities than through the permitting process." (Page 7)

4. "US EPA found that Ohio EPA was appropriately responding to US EPA's comments and was resolving US EPA's concerns prior to issuance of the final PTI [regarding PSD permitting]." (Page 7)

5. "US EPA remains concerned that Ohio EPA maintain adequate documentation and permitting files to memorialize how it makes permitting decisions." (Page 8)

More quotes from the Clean Air Act background attachment:

6. "Under the 2001 CMS [Compliance Management Strategy] policy, new categories of inspection activities replace categories tracked by states and US EPA prior the draft report. The new categories reflect the CMS policy's emphasis on Title V major sources and a limited subset of synthetic minor sources, as well as use of full compliance evaluations." (Page 24)

7. "The following is what Ohio EPA considers "best" to "worse" [sic] 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 emission factors for the emission units
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

US EPA commends Ohio EPA for such a policy. We recommend that Ohio EPA document this policy and document the use of this policy in the supporting documentation for each permit." (Page 55-56)

This list will likely be the source of much mischief. How many times has Ohio EPA accepted a "facility supplied estimate" over an AP-42 emission factor?

FUNDING ISSUES

The Final Report briefly touches on the problem of measuring the effectiveness of an environmental enforcement program. Ultimately, the Final Report offers no guidance beyond citing more inspections and more penalties as evidence of an effective enforcement scheme. The report notes that Ohio EPA and US EPA spent much time reconciling the number of inspections performed by Ohio EPA and the local air agencies.

The 2001 CMS policy recommends minimum inspection frequency tied to inspection expectations described in that policy. As many have suspected, this policy makes Title V facilities the target enforcement class.

Another area of dispute was the number of employees in the air program. The preliminary report had asserted that Ohio EPA had only 222 employees on staff in December, 2000. When Ohio EPA first submitted a Title V program in 1992 it estimated that the Division of Air Pollution Control would need 399 employees to run all of its air programs once the Title V program was in place. Yet, US EPA failed to account for the local air agency personnel, so that there were actually 385 state and local air agency employees performing air pollution work.

The interesting factor from this discussion is that pending a SIP revision, it will be difficult for Ohio EPA to operate its air programs with substantially less than 400 employees. A substantial reduction in employees will probably trigger a new review by US EPA.

Finally, US EPA is paying close attention to Ohio EPA's budget situation. The Final Report notes:

"On July 1, 2002 Ohio Governor Bob Taft signed an executive order which ordered a 15% budget reduction to several State agencies, including Ohio EPA, for fiscal year 2003. On October 28, 2002, US EPA requested that Ohio EPA provide a written response as to whether the 2003 budget reduction may impact its ability to meet commitments made in the course of the Ohio program review, and if so, how." (Background Attachment, Page 21.)

Ohio EPA responded that general revenue funds make up approximately 15% of the overall air program budget and that Ohio EPA is funded primarily through fees and federal grants. The 15% reduction equated to approximately 2.5% reduction in air program funding. This scrutiny by US EPA places another layer of concern on the manner in which the State of Ohio handles its budget issues."

So, if general state revenues are cut and federal grants are cut, fees must pay for this program. It is fair to conclude from this discussion that the regulated community will pay for about 400 employees for the foreseeable future. That means that each DAPC employer can have his/her own Title V facility, but only a few can have two.

CONCLUSION

The Final Report provides an interesting insight into the pressures under which Ohio EPA must function in its permitting and enforcement responsibilities. The few examples cited from that report do not indicate that Ohio EPA has been completely exonerated. Indeed, it appears that the permitting and enforcement environment in which the regulated community will operate in Ohio will be more challenging in the future.

Final Report Site [<http://www.epa.gov/region5/ohioreview/finalreport.htm>]

Note: Mr. McMahon's picture is at www.mdhl.net

CONSOL Energy Offers Landfill Cost Model For Coal Combustion Products

PITTSBURGH (March 19, 2003) – CONSOL Energy Inc. (NYSE: CNX) has developed a Landfill Cost Model for Coal Combustion Products, for coal users seeking alternative uses of coal combustion products other than landfilling.

As state regulations for the opening of new landfills become stricter, electric power generators face increasing costs to dispose of coal combustion products, or CCPs. The quantity of CCPs will continue to increase as more coal-fired power plants install flue gas desulfurization systems to meet environmental regulations.

"There are alternative uses of coal combustion products that are technically sound, environmentally safe, and commercially competitive," said Richard Winschel, CONSOL Energy's director of coal utilization. "Our model establishes a cost benchmark against which alternative use options for CCPs can be evaluated. More importantly, it is another tool that coal users will have to lower the overall cost of burning coal in their plants."

The landfill cost model will predict both the capital and operating costs of new landfills for disposal of CCPs. This landfill design and cost computer model has the flexibility to provide accurate estimates under a variety of possible scenarios. It includes templates for regulations from Ohio, Pennsylvania, and Kentucky, and can be adapted to other states.

The model includes design and cost algorithms to account for different land topographies and different types of CCPs, Winschel said. It also includes design options to meet anticipated future landfill design regulations and cost escalation factors, to maintain its accuracy over time.

"This model will be a valuable tool to those developing alternate uses of CCPs," Winschel said.

To operate the Landfill Cost Model, the user's computer must be equipped with 32MB or more of RAM, and must be running Microsoft Word 2000 and Microsoft

Excel 2000. The model software can be downloaded from the CD-ROM onto the user's hard drive. The files, including the program and documentation, use less than 5 MB of disk space. The program runs one case at a time, using the full capabilities of an Excel file.

CONSOL Energy researchers created the computer model using funding from the company and the Ohio Coal Development Office (OCDO) within the Ohio Department of Development, GAI Consultants Inc., and Trumbull Corporation.

To obtain a free copy of the model, contact: D.A. Kosmack, CONSOL Energy Inc., Research & Development, 4000 Brownsville Road, South Park, PA, 15129. Phone: (412) 854-6592; Fax: (412) 854-6613; E-mail: deborahkosmack@consolenergy.com. Users also can download the model from the CCP Ohio web site, <http://ccpohio.eng.ohio-state.edu/ccpohio> ; or the OCDO web site, <http://www.odod.state.oh.us/tech/coal/html/Landfill.htm>.

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NOC-A&WMA has scheduled and located the Spring Technical Conference to allow participants the opportunity for visiting the Intel ISEF at the Cleveland Convention Center, 500 Lakeside Avenue. Fair exhibits will be open for public visitation until 9pm on May 15. When the conference adjourns at 1pm, leave your car at the Holiday Inn Select-City Centre Lakeshore and walk the 3 blocks down Lakeside Avenue to the fair!

Also, consider volunteering some time to help make this event a big success. The fair needs a variety of volunteers, including interpreters for the numerous international delegations in attendance. If interested, go to www.intelisef2003.org/html/volunteer.htm for more information.

FROM THE EDITOR

The Northern Ohio Chapter Newsletter is published semiannually for members of A&WMA. Laura Lyden, newsletter editor, may be contacted at (330) 792-9999, lalyden@truenorth.org or TrueNorth Energy, 3711 LeHarps Rd., Youngstown, OH 44515. Membership dues include subscriptions to the newsletter. For membership information contact Cindy Ours at (440) 260-0225, or cours@hcnutting.com. The chapter may be contacted at www.nocawma.org.

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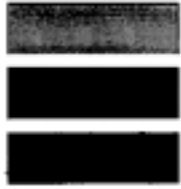
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2) Local only membership helps defray our cost and guarantees that you will receive all announcements. Simply complete and mail the attached form and include a check for \$20 (for two years), payable to NOC-AWMA.

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