November 29, 2001

(A-18J)

Charles G. Kille
Citizen's Organized Watch, Inc.
P.O. Box 682
Columbia City, Indiana 46725

Dear Mr. Kille:

Thank you for your March 12, 2001, letter regarding Citizen's Organized Watch, Inc. comments on Indiana's Clean Air Act (CAA) Title V operating permit program. You submitted 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. Pursuant to the settlement agreement discussed in that notice, U.S. EPA is publishing notices of program deficiencies (NOD) 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 40 C.F.R. part 70.

We reviewed the issues that you raised in your March 12, 2001, letter and determined that some issues indicate program deficiencies. We will identify these program deficiency issues in a NOD which we will publish by December 1, 2001. For other identified implementation issues, the Indiana Department of Environmental Management (IDEM) has taken appropriate action to correct these deficiencies and, therefore, we have no basis at this time for finding that Indiana is inadequately administering its Title V program. We have also determined that other issues raised in your letter do not indicate a program or implementation deficiency in Indiana'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 Indiana's Title V operating permit program meets all federal requirements. If you have any questions regarding our analysis, please contact Sam Portanova at (312) 886-3189.

Sincerely,

/s/

Bharat Mathur, Director
Air and Radiation Division

Enclosure

cc: Janet McCabe, Assistant Commissioner
Office of Air Quality
Indiana Department of Environmental Management

Enclosure
U.S. EPA's Response to Citizen's Organized Watch, Inc. (COW) Comments on Indiana's Title V Operating Permit Program

1. Comment: *Since interim approval was granted to the Indiana Title V program on November 14, 1995, the State has made significant changes to its Title V regulations. These changes have taken place outside the normal publicly visible process. The changes are extensive and Indiana's program should be reevaluated as a whole.*

The Indiana Title V rule revisions have received the proper State public notice requirements. However, the commenter is correct in stating that the state has not submitted some of these changes to U.S. EPA for review and approval. We agree that the state must submit its Title V rules, as currently adopted, in their entirety for review and approval to assure that the program is consistent with the federal requirements. Indiana has several regulatory deficiencies identified in this enclosure which it must correct and submit to U.S. EPA. We have identified these deficiencies in a notice of Title V program deficiency (NOD), which we will publish in the Federal Register. Indiana must submit regulatory corrections to U.S. EPA to resolve this NOD. At the time of that submittal, Indiana must also submit, for review and approval, all rule changes that have occurred since U.S. EPA granted interim approval. Submittal and review of these program changes is an integral part of correcting the program's regulatory deficiencies. Pursuant to this review, U.S. EPA will propose to approve or disapprove any program revisions submitted by the state in accordance with 40 C.F.R. § 70.4(i).

Regulatory Deficiencies

2. Comment: *Minor permit modifications, which are not subject to public review, qualify for a Title V permit shield under the Indiana regulations.*

U.S. EPA agrees that Indiana’s regulation that governs minor permit modifications is not consistent with Part 70. Part 70 says that sources undergoing a minor permit modification are not subject to public comment but do not qualify for a permit shield. See 40 C.F.R. § 70.7(e)(2). During the original review of Indiana's Title V program, which resulted in granting interim approval on November, 14, 1995, the Indiana regulations required minor modifications to be subject to public review and allowed such modifications to qualify for a permit shield. In reviewing

that original regulation, U.S. EPA determined that the permit shield was acceptable in this situation because of the availability of public review. Subsequent to the November 14, 1995 interim approval, Indiana modified its regulation to remove the public notice requirement from the minor modification provision. However, the state did not remove the permit shield provision. Indiana is in the process of correcting this provision to re-instate the public review requirements for minor modifications. Indiana will revise 326 IAC 2-7-12(b)(4) to require that minor permit modification requirements go through public review. Indiana has completed significant steps in its rule revision process to correct this deficiency; however, this rule revision will not become effective by December 1, 2001. Therefore, U.S. EPA will include this deficiency in a NOD to be published in the Federal Register.

3. Comment: *State consistently takes various U.S. EPA guidance documents and puts statements from these documents in their permits without regulatory basis. For example, one such document suggests a rule change to Part 70 that would allow a source to certify compliance with streamlined emission limits. The current State rule allows sources to certify compliance with alternative or streamlined requirements instead of applicable requirements.*

For the initial compliance certifications that are submitted with permit applications, Part 70 does not provide for certifying compliance with alternative or streamlined requirements instead of the applicable requirements. The March 5, 1996, U.S. EPA memorandum titled "White Paper Number 2 for Improved Implementation of the Part 70 Operating Permits Program" states that a permitting authority may combine underlying applicable requirements into one streamlined permit term provided that the source's compliance with the streamlined term guarantees that the source is also in compliance with all underlying applicable requirements. Indiana's regulations currently only require sources to certify compliance with streamlined terms. Indiana must revise its regulations to further require sources to certify compliance with the underlying applicable requirement. We encourage states to use U.S. EPA guidance documents in implementing the Title V program. When applying those guidance documents, however, a state must assure that its program is consistent with 40 C.F.R. part 70. Indiana is in the process of correcting this rule provision. Indiana will remove language from 326 IAC 2-7-4(c) which allows certification with alternative

or streamlined limits. Indiana has completed significant steps in their rule revision process to correct this deficiency; however, this rule revision will not become effective by December 1, 2001. Therefore, U.S. EPA will include this deficiency in a NOD to be published in the Federal Register.

4. Comment: *Supersession is a problem in Indiana's program. State rules allow construction permits to automatically convert into state operating permits, implying that the construction permits expire.*

Construction permit conditions either must exist in a document that does not expire or must continue to exist independent of the Title V permit. Indiana's construction permit conditions do not exist outside of Title V permits. Therefore, we agree with the commenter that this is a program deficiency in the Indiana Title V program. Indiana is in the process of adding rule language in 326 IAC 2-1.1-9.5 which will address the supersession issue by stating that any condition identified as established in a permit issued pursuant to a SIP approved permit program will remain in effect, even if the Title V permit expires. Indiana has completed significant steps in their rule revision process to correct this deficiency; however, this rule revision will not become effective by December 1, 2001. Therefore, U.S. EPA will include this deficiency in a NOD to be published in the Federal Register.

5. Comment: *The State rule language in 326 IAC 2-7-5(1)(E) considers exceedance of a permit limit and the corresponding operating parameter to count as only one potential violation. This is inconsistent with the Part 70 requirement that any violation of permit conditions is a violation of the Clean Air Act.*

We agree that this condition restricts the enforcement authority of the State. Indiana is in the process of correcting this rule. Indiana will remove this language from their rules by deleting paragraph 326 IAC 2-7-5(1)(E). Indiana has completed significant steps in their rule revision process to correct this deficiency; however, this rule revision will not become effective by December 1, 2001. Therefore, U.S. EPA will include this deficiency in a NOD to be published in the Federal Register.

6. Comment: *326 IAC 2-7-5(1)(F) allows emission limit exceedances for startups, shutdowns, and malfunctions to be*

addressed on a case-by-case basis in Title V permits.

Permitting authorities do not have the authority to establish emission limits which exceed applicable requirements in Title V permits. Indiana is in the process of correcting this rule provision. Indiana will remove this language from their rules by deleting paragraph 326 IAC 2-7-5(1)(F). Indiana has completed significant steps in their rule revision process to correct this deficiency; however, this rule revision will not become effective by December 1, 2001. Therefore, U.S. EPA will include this deficiency in a NOD to be published in the Federal Register.

7. Comment: *The original permit exemption levels stated in the Indiana rule were expressed in both pounds per hour and pounds per day. 326 IAC 2-1.1-3(d) now provides a tons per year limit, which is a significant relaxation from the originally approved rules. The original sulfur dioxide (SO2) exemption level was equivalent to 9.13 tons per year, which U.S. EPA found to be unacceptably high. 326 IAC 2-1.1-3(d)(1)(B) exempts up to 10 tons per year of SO2 emissions. Therefore, this original issue has not been corrected.*

U.S. EPA raised the original issue, the SO2 insignificant activity threshold, in the May 22, 1995, Federal Register notice proposing interim approval to the Indiana Title V program. Indiana corrected this issue by adopting a more stringent SO2 threshold, in 326 IAC 2-7-1(21)(A)(iii), which sets the insignificant activity level at 5 pounds per hour or 25 pounds per day. This more stringent insignificant activity SO2 emission threshold remains in the state rule.

326 IAC 2-1.1-3(d) is a permit exemption provision in the state rule which says that the minor permit modification and significant permit modification requirements of 326 IAC 2-7-12 do not apply to new sources or to modifications of existing sources with potential emissions less than 10 tons per year of SO2. U.S. EPA agrees that this exemption level is not consistent with the definition of minor permit modification and significant permit modification in 40 C.F.R. § 70.7(e) and is a deficiency in the Indiana Title V program. Indiana is in the process of correcting this deficiency. Indiana will remove language from 326 IAC 2-1.1-3(d) which apply this provision to Title V sources and Title V modifications. Indiana has completed significant steps in their rule revision process to correct this deficiency; however,

this rule revision will not become effective by December 1, 2001. Therefore, U.S. EPA will include this deficiency in a NOD to be published in the Federal Register.

8. Comment: *The formerly acceptable permit exemption limits for carbon monoxide (CO) and nitrogen oxides (NOx) have been increased to 25 tons per year and 10 tons per year, respectively. The original exemption levels for these pollutants were equivalent to 4.56 tons per year. The exemption level for volatile organic compounds (VOC) has been raised from 2.74 tons per year to 10 tons per year.*

The definition of insignificant activity in 326 IAC 2-7-1(21)(A)(ii) establishes a CO emissions threshold of 25 pounds per day. This is equivalent to 4.56 tons per year and is the same provision that U.S. EPA deemed acceptable in the original program review. However, 326 IAC 2-7-1(21) does not include specific insignificant activity threshold levels for NOx and VOC. The rule refers to the limits in 326 IAC 2-1.1-3(d)(1) to establish the insignificant activity threshold levels for these two pollutants. As mentioned by the commenter, the exemption levels in this provision are 10 tons per year for both NOx and VOC. U.S. EPA considers this to be an unacceptably high threshold and considers this to be a deficiency in the Indiana Title V program.

Notwithstanding the insignificant threshold levels established in 326 IAC 2-7-1(21), the CO, NOx, and VOC exemption levels listed in 326 IAC 2-1.1-3(d) are 25, 10, and 10 tons per year, respectively. A more detailed discussion of 326 IAC 2-1.1-3(d) is included in item 7 of this enclosure. U.S. EPA agrees that these exemption levels are not consistent with the definition of minor permit modification and significant permit modification in 40 C.F.R. § 70.7(e) and are deficiencies in the Indiana Title V program. Indiana is in the process of correcting these deficiencies. Indiana will remove language from 326 IAC 2-1.1-3(d) which applies this provision to Title V sources and Title V modifications, and will revise 326 IAC 2-7-1(21) to establish a VOC insignificant activity threshold of 3 pounds per hour or 15 pounds per day and a NOx insignificant activity threshold of 5 pounds per hour or 25 pounds per day. Indiana has completed significant steps in their rule revision process to correct these deficiencies; however, this rule revision will not become effective by December 1, 2001. Therefore, U.S. EPA will include this deficiency in a NOD to be published in the Federal Register.

9. Comment: *326 IAC 2-1.1-3(g)(2)(F) and (G) seems to exempt a modification from permit revision requirements if it does not result in a potential increase in lead emission of one ton per year for lead and copper smelters and five tons per year for other sources. These levels are very high and would trigger BACT (best available control technology) at 0.6 tons per year if these levels were considered for new source review. These levels do not provide a realistic trigger for evaluation of modifications to Title V sources and should be tightened. Also, significance levels should be based on pollutant and should not vary based on the end product of the source.*

Similar to the provision in 326 IAC 2-1.1-3(d) discussed in items 7 and 8 of this enclosure, 326 IAC 2-1.1-3(g) says that the minor permit modification and significant permit modification requirements of 326 IAC 2-7-12 do not apply to modifications to existing sources with potential lead emissions less than one ton per year for lead and copper smelters and five tons per year for other sources. U.S. EPA agrees that these exemption levels are not consistent with the definition of minor permit modification and significant permit modification in 40 C.F.R. § 70.7(e) and are deficiencies in the Indiana Title V program. U.S. EPA believes these levels are unacceptable high regardless of the source's end product. Indiana is in the process of correcting this deficiency. Indiana will remove language from 326 IAC 2-1.1-3(g) which applies this provision to Title V sources and Title V modifications. Indiana has completed significant steps in their rule revision process to correct this deficiency; however, this rule revision will not become effective by December 1, 2001. Therefore, U.S. EPA will include this deficiency in a NOD to be published in the Federal Register.

10. Comment: *326 IAC 2-1.1-3(g)(2)(H) states that a 0.6 tons per year significant modification threshold for lead only applies if the existing source has a potential to emit greater than or equal to 5 tons per year of lead. This bypasses the significance thresholds set in new source review (NSR) and prevention of significant deterioration (PSD) and should not be allowed.*

326 IAC 2-1.1-3(g)(2) provides a permit modification exemption for existing sources with potential lead emissions of up to 5 tons per year. However, this provision also states that this exemption does not apply to any modification that exceeds the

significance levels established in 326 IAC 2-2-1 and 326 IAC 2-3-1, which are Indiana's PSD and NSR regulations, respectively, and are consistent with the federal PSD and NSR significance levels. Therefore, this provision does not allow sources to bypass the federal PSD and NSR significance thresholds. U.S. EPA does not find this language to be a deficiency of the Indiana Title V program.

Implementation Deficiencies

11. Comment: *Condition B.16 from Indiana's model Title V permit says sources are not required to report as a deviation the failure to perform monitoring unless such failures exceed 5% of recorded data.*

This permit condition is not consistent with the requirement in 40 C.F.R. § 70.6(a)(3)(iii)(a), which requires sources to identify all instances of deviations from permit requirements. Indiana has removed this condition from the model permit and has ceased issuing permits with this language, therefore, U.S. EPA considers this issue resolved.

Indiana committed to correct Title V program implementation issues in a letter sent to U.S. EPA on November 15, 2001. Therefore, the following two issues will not be identified as deficiencies in a NOD at this time. U.S. EPA will monitor Indiana's compliance with its commitment to ensure that the state is now implementing the program consistent with its approved program, the CAA and U.S. EPA's regulations. Indiana has committed to correct the following two implementation deficiencies in future permits:

12. Comment: *Indiana's model permit condition C.18 excuses monitoring failures if the failures are less than five percent of the recorded data and there was a temporary unavailability of qualified staff to perform the monitoring.*

U.S. EPA agrees that this permit language is not acceptable in that it allows sources to violate Title V permit requirements, specifically, the requirements to perform monitoring listed in the permit. In establishing the appropriate monitoring required pursuant to 40 C.F.R. § 70.6 to assure compliance with applicable requirements, the permitting authority has the authority to determine the necessary frequency of monitoring. The permitting authority, however, cannot provide an automatic five percent exemption from any monitoring requirement particularly when

simple training of backups could prevent this "temporary unavailability of qualified staff." In addition, the term "temporary, unscheduled unavailability" is not enforceable as a practical matter. This term can be interpreted to apply to extended periods of time and could result in an exemption from essential monitoring for these extended periods.

As mentioned above, Indiana has committed to resolving this issue in a November 15, 2001 letter to U.S. EPA. Therefore, we believe that this issue is no longer a deficiency within the meaning of part 70. If, however, during our ongoing review of Indiana's Title V permits, we find that Indiana is not correctly implementing its approved Title V program as set forth in its November 15, 2001, commitment letter, we will issue Indiana a NOD in accordance with 40 C.F.R. § 70.10. In accordance with the CAA section 505(b) and 40 C.F.R. § 70.8(c), 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.

13. Comment: *Indiana's model permit condition C.12 does not require sources to begin monitoring immediately after permit issuance. This is unacceptable and part 70 does not provide for extensive periods where monitoring is not being performed.*

This permit condition does not apply to all monitoring requirements and only applies to newly-required monitoring. Nonetheless, part 70 does not provide for an automatic 90 day delay in monitoring requirements. U.S. EPA agrees with Indiana that there are some instances in which a source must install new monitoring equipment or introduce techniques which the source cannot implement immediately upon commencement of operation. However, it is not acceptable to allow a 90-day waiting period for all new monitoring requirements. The permitting authority must address specific installation and "shakedown" periods on a case-by-case basis in permits and must not allow more time than is actually required for the source to install equipment necessary for new monitoring activities.

As mentioned above, Indiana has committed to resolving this issue in a November 15, 2001 letter to U.S. EPA. Therefore, we believe that this issue is no longer a deficiency within the meaning of part 70. If, however, during our ongoing review of Indiana's Title V permits, we find that Indiana is not correctly implementing its approved Title V program as set forth in its November 15, 2001, commitment letter, we will issue Indiana a NOD

in accordance with 40 C.F.R. § 70.10. In accordance with the CAA section 505(b) and 40 C.F.R. § 70.8(c), 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.

Fort Wayne Foundry Permit Deficiencies

The commenter has provided the following comments on the Fort Wayne Foundry, Part 70 Operating Permit and Enhanced New Source Review Permit (Operating permit number T003-6027-00070).

14. Comment: *The Fort Wayne Foundry permit was never apparently subjected to New Source Review (NSR). The permit indicates that, in addition to a part 70 permit, this is also an enhanced NSR permit. There is very little support data for the emissions claimed in this permit and the permit does not include planned testing to verify compliance with the minor limits imposed. The limited information makes it very difficult to assess the validity of the NSR limits of this permit. For instance, five natural gas-fired furnaces are listed as emitting zero NOx, which is very difficult to believe. The permit does not require controls for these units. Since all are a part of the source, it is their combined capacity and potential to emit that should be considered and cannot without realistic data.*

This permit does not include support data to demonstrate how the source will comply with the permitted emission limits. This type of data typically is included in the support material the accompanies a permit, rather than in the permit itself. Such supporting material is available for draft permits at the location identified by IDEM during the public comment period.

We believe that the permit at issue does include planned testing to verify compliance with the minor limits imposed. The permit includes testing requirements in permit conditions D.2.3, D.3.3, D.4.3, D.5.3, and D.6.3 to verify compliance with the synthetic minor limits established in this permit (See item 17 of this enclosure, below, for a detailed discussion of permit condition D.2.3.). In addition, permit condition D.7.4 requires recordkeeping to document the source's compliance with the solvent usage limits of condition D.7.1.

The permit and the technical support document for this permit do not include any NOx emissions from the five natural gas-fired furnaces. We agree that these furnaces would cause NOx emissions

and that information on their NOx emissions is needed to determine the potential emissions. An adequate PSD applicability determination cannot be made without this information. If the furnaces' potential emissions exceed the PSD threshold, then they must be subject to PSD requirements. However, if the furnaces' potential emissions are below the PSD threshold, then they are not subject to any existing applicable NOx limits and the permit would not require controls for these units. We have referred this source to the U.S. EPA Region 5 air enforcement staff to investigate whether the source has avoided compliance with the PSD requirements. Furthermore, the permittee has appealed the terms of this permit. After the conclusion of this appeal process, U.S. EPA will discuss any remaining deficiencies with IDEM and will take appropriate action if we cannot resolve this issue satisfactorily.

The identified problem (insufficient information to assess the validity of PSD/NSR limits) is a permit-specific issue, not a Title V program deficiency. Furthermore, U.S. EPA has not seen this as a recurring issue in our review of Indiana permits, and therefore, we have no basis at this time for finding that Indiana is inadequately administering its Title V program. U.S. EPA will 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 CAA section 505 (b) and 40 C.F.R. § 70.8(c).

15. Comment: *It is not clear that the Fort Wayne Foundry permit is anything but a part 70 permit. Enhanced NSR is where there has been an NSR of some type with public participation and then those issues are added to a Title V permit using the administrative amendment procedures. There is no evidence that this process is taking place in the Fort Wayne Foundry permit. We question if Indiana really has an approved merged program for Title V and NSR. If it's merged, then at minimum, it must be made clear to the public.*

We agree that this permit is organized as a merged permit for Title V and NSR and does not fit the definition of "Enhanced NSR." Since the issuance of this permit, Indiana has revised its regulations to remove its enhanced NSR provision. There is nothing in the Indiana regulations to prevent the state from including Title V and NSR conditions in the same document which the permitting authority issues pursuant to both Title V and NSR

permit issuance requirements as long as the permitting authority complies with all administrative requirements of both programs. Therefore, U.S. EPA does not find this to be a Title V program deficiency. Under a merged program, Indiana must make clear to the public that it can comply with both permit programs and must demonstrate at the public comment period for each merged permit that it has done so. A similar program exists in Illinois for merged Title V and NSR permits. U.S. EPA and the Illinois Environmental Protection Agency have developed a memorandum of understanding (MOU) which outlines the process by which Illinois issues such permits. U.S. EPA and IDEM must develop a similar MOU to address the concerns that have been raised by these merged permits. IDEM has committed to the development of an MOU in a November 15, 2001, letter to U.S. EPA. The state will include this MOU in the program submittal described in the first item of this enclosure.

16. Comment: *Permit condition B.14 of the Fort Wayne Foundry permit effectively attempts to supersede rather than incorporate earlier permits. In the end, terms and conditions in NSR permits must remain independently enforceable as applicable requirements.*

The permit language in question states the following: "This permit shall be used as the primary document for determining compliance with applicable requirements established by previously issued permits. All previously issued operating permits are superseded by this permit." U.S. EPA agrees that all NSR permit terms and conditions must remain independently enforceable as applicable requirements. As discussed in item 4 of this enclosure, we will include this deficiency in a NOD which we will publish in the Federal Register. When Indiana revises their rules to establish that these previously issued conditions remain effective and independently enforceable, Indiana will be able to allow previous permits which contained those conditions to expire.

17. Comment: *In condition D.2.3. of the Fort Wayne Foundry permit, testing is required on only selected furnaces. The source limits are for the entire source.*

Section D.2 of the permit contains permit requirements for Fort Wayne Foundry's natural gas-fired reverberatory furnace systems. These systems are labeled as Disa #1, Disa #2, Hunter #1, Hunter #2, and Hunter #3. Condition D.2.3 requires testing on only the Disa systems. U.S. EPA agrees that the permittee must test each

of these furnace systems to demonstrate compliance with the permitted limits. The permittee has appealed the terms of this permit. After the conclusion of this appeal process, U.S. EPA will discuss any remaining deficiencies with IDEM and will take appropriate action if we cannot resolve this issue satisfactorily.

The identified problem, however, is a case-by-case permit issue and not a Title V program deficiency. Moreover, U.S. EPA has not seen this as a recurring issue in our review of Indiana permits, and therefore, we have no basis at this time for finding that Indiana is inadequately administering its Title V program. U.S. EPA will 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 CAA section 505(b) and 40 C.F.R. § 70.8(c).

18. Comment: *In permit condition D.2.3. of the Fort Wayne Foundry permit, the limited demonstration of compliance that can be achieved with the prescribed one-time testing cannot adequately demonstrate compliance with the permit conditions on a continuing basis and cannot be considered practically enforceable.*

Section 504 of the Clean Air Act states that each Title V permit must include "conditions as are necessary to assure compliance with applicable requirements of [the Act], including the requirements of the applicable implementation plan" and "inspection, entry, monitoring, compliance certification, and reporting requirements to assure compliance with the permit terms and conditions." 42 U.S.C. § 7661c(a) and (c). In addition, Section 114(a) of the Act requires "enhanced monitoring" at major stationary sources, and authorizes U.S. EPA to establish periodic monitoring, recordkeeping, and reporting requirements at such sources. 42 U.S.C. § 7414(a).

The regulations at 40 C.F.R. § 70.6(a)(3) specifically require that each permit contain "periodic monitoring sufficient to yield reliable data from the relevant time period that are representative of the source's compliance with the permit" where the applicable requirement does not require periodic testing or instrumental or noninstrumental monitoring (which may consist of recordkeeping designed to serve as monitoring). In addition, 40 C.F.R. § 70.6(c)(1) requires that all Part 70 permits contain, consistent with 40 C.F.R. § 70.6(a)(3), "compliance

certification, testing, monitoring, reporting, and recordkeeping requirements sufficient to assure compliance with the terms and conditions of the permit." These requirements are incorporated into the Indiana regulations at 326 IAC 2-7-5(3).

U.S. EPA recently clarified the scope of the Title V monitoring requirements in two Orders responding to petitions under Title V. See In re Pacificorp's Jim Bridger and Naughton Electric Utility Steam Generating Plants, Petition No. VIII-00-1, Nov. 24, 2000 ("Pacificorp") (http://www.epa.gov/region07/programs/artd/air/title5/t5memos/woc020.pdf), and In re Fort James Camas Mill,Petition X-1999-1, December 22, 2000 (http://www.epa.gov/region07/programs/artd/air/title5/petitiondb/petitions/fort_james_decision1999.pdf) for a complete discussion of these issues. In brief, the Administrator concluded that, where the applicable requirement does not require any periodic testing or monitoring, the permitting authority must establish permit conditions "sufficient to yield reliable data from the relevant time period that are representative of the source's compliance with the permit." See 40 C.F.R. § 70.6(a)(3)(i)(B). In contrast, where the applicable requirement already requires periodic testing or monitoring, but that monitoring is not sufficient to assure compliance, the separate regulatory standard at section 70.6(c)(1) requires monitoring "sufficient to assure compliance." The Administrator's interpretation is based on recent decisions by the U.S. Court of Appeals for the District of Columbia Circuit, specifically Natural Resources Defense Council v. EPA, 194 F.3d 130 (D.C. Cir. 1999) (reviewing U.S. EPA's compliance assurance monitoring (CAM) rulemaking (62 Fed. Reg. 54940 (1997)), and Appalachian Power Co. v. EPA, 208 F.3d 1015 (D.C. Cir. 2000) (addressing U.S. EPA's periodic monitoring guidance under Title V).

As applied to the Fort Wayne Foundry permit, for the units permitted in section D.2, the permitting authority supplemented the infrequent testing in condition D.2.3. with more frequent monitoring, recordkeeping, and reporting requirements in permit conditions D.2.4. and D.2.5, and therefore satisfies the requirement of section 70.6(c)(1) that monitoring be sufficient to assure compliance. However, we agree that the monitoring requirements of permit condition D.2.4. are not sufficient to assure compliance. We discuss the adequacy of condition D.2.4 in more detail in item 23 of this enclosure.

19. Comment: *Permit condition B.23 of the Fort Wayne Foundry permit limits the authority and access of an inspector by*

preconditioning access using the undefined phrase "at reasonable times." This limitation is too vague to be reasonable.

The language in this permit condition is consistent with the inspection and entry requirements listed in 40 C.F.R. § 70.6(c)(2). Therefore, U.S. EPA does not find this language to be inconsistent with the federal Title V requirements.

20. Comment: *Permit condition C.18 of the Fort Wayne Foundry permit states that "the documents submitted pursuant to this condition do no require the certification by the "responsible official" as defined in 326 IAC 2-7-1(34). This is inconsistent with requirements of part 70 and the state regulations.*

The commenter is referring to the condition that also appears in Indiana's model permit and is titled "Actions Related to Noncompliance Demonstrated by a Stack Test." U.S. EPA agrees that part 70 requires that a responsible official certify the documents submitted pursuant to this condition. IDEM has revised this model permit condition to require certification by the responsible official. U.S. EPA believes this action by IDEM resolves the deficiency.

21. Comment: *Permit condition C.18 of the Fort Wayne Foundry permit allows the source to retest after a failed stack test at some time in the future when the source might demonstrate compliance. This changes permit conditions into goals as opposed to limits which must be complied with on a continuous basis. Any scenario that treats compliance testing failures as anything but a demonstration of noncompliance defeats the effectiveness of the permit and should not be allowed.*

The commenter is referring to the condition that also appears in Indiana's model permit and is titled "Actions Related to Noncompliance Demonstrated by a Stack Test." This condition does not excuse failed stack tests. The retest provision of this condition is necessary to show that the source has returned to compliance; it does not excuse any failed tests. U.S. EPA believes this is consistent with the federal Title V requirements.

22. Comment: *Permit condition C.22 of the Fort Wayne Foundry permit states that "Emergency/Deviation Occurrence Report"*

does not require certification by the "responsible official" as defined in 326 IAC 2-7-1(34). This is inconsistent with requirements of Part 70 and the State regulations.

The commenter is referring to the condition that also appears in Indiana's model permit and is titled "General Reporting Requirements." U.S. EPA agrees that part 70 requires that a responsible official certify documents submitted pursuant to this condition. IDEM has revised this model permit condition to require certification by the responsible official. U.S. EPA believes this action by IDEM resolves the deficiency.

23. Comment: *In condition D.2.4. of the Fort Wayne Foundry permit, periodic monitoring requirements are not practically enforceable. This condition requires monitoring for "normal" visible emissions. There is no tolerance or calibration/qualification for the recorder and the recording period of once per shift in condition D.2.5. does not match the requirements of D.2.4.*

U.S. EPA agrees that the monitoring requirements of permit condition D.2.4. are not practically enforceable. This condition defines normal as "conditions prevailing, or expected to prevail, eighty percent (80%) of the time the process is in operation, not counting startup or shut down time." We do not believe that recording "normal" visible emissions adequately demonstrates compliance with the emission limits of permit condition D.2.1. The recording period of once per shift in condition D.2.5. does bolster the requirements of D.2.4., but regardless, U.S. EPA agrees that permit condition D.2.4. is not practically enforceable. The permittee has appealed the terms of this permit. After the conclusion of this appeal process, U.S. EPA will discuss any remaining deficiencies with IDEM and will take appropriate action if we cannot resolve this issue satisfactorily.

The identified problem, however, is a case-by-case permit issue and not a Title V program deficiency. Moreover, U.S. EPA has not seen this as a recurring issue in our review of Indiana permits, and therefore, we have no basis at this time for finding that Indiana is inadequately administering its Title V program. U.S. EPA will continue to monitor this issue as part of its permit oversight responsibilities. In accordance with the CAA section 505 (b) and 40 C.F.R. § 70.8(c), 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.