

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5
77 WEST JACKSON BOULEVARD
CHICAGO, IL 60604-3590

September 18, 2001

REPLY TO THE ATTENTION OF
(AR-18J)

Michael Koryto
Shiawassee District Supervisor
Michigan Department of Environmental Quality (MDEQ)
10650 S. Bennett Drive
Morrice, Michigan 48857

Dear Mr. Koryto:

On July 27, 2001, you initiated a 45 day United States Environmental Protection Agency (USEPA) review of the proposed title V operating permit for General Motors Lansing, Plant 1, SRN #A1641. In your notice, you indicated that MDEQ has revised the Renewable Operating Permit Report Certification form in response to concerns raised by General Motors.

Specifically, MDEQ removed the highlighted phrase from the Responsible Official certification language:

"I certify that, based on information and belief formed after reasonable inquiry, the statements and information in this report and the supporting enclosures are true, accurate and complete, and that any observed, documented, or known instances of noncompliance have been reported as deviations, including situations where a different or no monitoring method is specified by the RO permit."

USEPA agrees that the revised language meets the certification requirements of 40 Code of Federal Regulations (C.F.R.) 70.5(d). However, USEPA is concerned that the removal of the additional language from the State form may give the false impression that the deleted provisions are no longer required. Regardless of whether the language in question is present in the certification statement, the responsible official's reasonable inquiry must include all material information regarding compliance. 40 C.F.R. § 70.6(c)(5)(iii)(B) provides that permits must require owners and operators to consider any other material information in making compliance certifications to comply with section 113(c)(2) of the Clean Air Act, which prohibits knowingly making a false certification or omitting material information. In addition, 40 C.F.R. § 70.11(a)(3)(ii) and (iii) requires states to have the

authority to recover criminal fines if any person knowingly violates a permit condition or knowingly makes any false material statement, representation or certification in any notice or report required by a permit. Similarly, the Clean Air Act provides that USEPA, the State, and citizens, including the source itself, may use any credible evidence to demonstrate violations of or compliance with permit terms and conditions. See 62 Federal Register 8314 (Feb. 24, 1997).

USEPA recommends that MDEQ use other means to inform sources that they must consider all material information in making initial and annual compliance certifications, such as by addressing the issue in the compliance certification form instructions. Furthermore, USEPA requests that MDEQ address credible evidence provisions in the State's general permit shell, as other States have done. Below are examples of general credible evidence permit conditions used in other Region 5 States. We understand that MDEQ's process for revising the title V permit shell is a complex process, and will work with you to address any transition issues which arise from adopting the permit shell changes.

Illinois: "Notwithstanding the conditions of this permit specifying compliance practices for applicable requirements, any person (including the Permittee) may also use other credible evidence to establish compliance or noncompliance with applicable requirements."

Ohio: "Nothing in this permit shall alter or affect the ability of any person to establish compliance with, or a violation of, any applicable requirement through the use of credible evidence to the extent authorized by law. Nothing in this permit shall be construed to waive any defenses otherwise available to the permittee, including but not limited to, any challenge to the Credible Evidence Rule (see 62 Fed. Reg. 8314, Feb. 24, 1997), in the context of any future proceeding."

Wisconsin: "Notwithstanding the compliance determination methods which the owner or operator of a source is authorized to use under ch. NR 439, Wis. Adm. Code, the Department may use any relevant information or appropriate method to determine a source's compliance with applicable emission limitations."

In addition, please be sure that MDEQ submits the revised certification form to USEPA for approval as part of the revised program submittal update that the Department is currently finalizing.

Thank you for your attention to this matter. If you have any questions, please contact me, or have your staff contact Beth Valenziano, of my staff, at (312) 886-2703.

Sincerely yours,

/s/

Stephen Rothblatt, Chief
Air Programs Branch

cc: Gerald Avery, MDEQ (Lansing)