



Office of Inspector General

Report of Audit

**Consolidated Review of the
Air Enforcement and
Compliance Assistance Programs**

Report No. E1GAE5-05-0169-7100306

September 30, 1997

**Inspector General Division
Conducting the Audit:**

Consolidated Report:

**Northern Audit Division
Chicago, Illinois**

Regional Reports:

**Northern Audit Division
Chicago, Illinois**

**Central Audit Division
Dallas, Texas**

**Western Audit Division
San Francisco, California**

Regions Covered:

Regions 5, 6, and 9

Program Offices Involved:

**Office of Enforcement and
Compliance Assurance**

Region 5 Air and Radiation Division

**Region 6 Compliance Assurance and
Enforcement Division**

Region 9 Air and Toxics Division



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, DC 20460

OFFICE OF
THE INSPECTOR GENERAL

SEP 30 1997

MEMORANDUM

SUBJECT: Audit Report No. E1GAE5-05-0169-7100306
Consolidated Review of the Air Enforcement and
Compliance Assistance Programs

FROM: Michael Simmons /s/
Deputy Assistant Inspector General
for Internal Audits

TO: Steve Herman
Assistant Administrator
for Enforcement and Compliance Assurance

Attached is our final report titled Consolidated Review of the Air Enforcement and Compliance Assistance Programs. This report consolidates national issues identified during our reviews of Regions 5, 6, and 9. The report contains findings and recommendations identified during our review of the air enforcement and compliance assistance program.

This report represents the opinion of the Office of Inspector General. EPA managers will make a final determination on matters in the report following established EPA audit resolution procedures. Accordingly, the findings described in the report do not necessarily represent the final EPA position.

A draft of this report was issued on August 7, 1997. Although we have not received a written response to our draft report, we have made changes based on discussions with OECA staff and a draft response, received on September 22, 1997. When we receive your written response, the response along with our evaluation of it will be provided to interested parties upon request.

Action Required

In accordance with EPA Order 2750, you, as the action official, are required to provide us with a written response within 90 days of the date of this report. The response should address all

recommendations. For corrective actions planned but not completed by the response date, please describe the actions that are ongoing and provide a timetable for completion. This information will assist us in deciding whether to close this report.

We have no objection to the release of this report to the public. We appreciate the efforts of your staff, and the staff in each region, in working with us to develop this report. Should you or your staff have any questions, please contact Kimberly O'Lone, Audit Manager, at 312-886-3186 or Ernie Ragland, Audit Liaison, at 202-260-8984.

EXECUTIVE SUMMARY

INTRODUCTION

The Office of Inspector General audited air enforcement and compliance assistance programs in Regions 5, 6, and 9. Because we identified national issues during these audits, we have used that work as a basis for this report.

Many different levels of government have roles in enforcing the Clean Air Act, as amended in 1990 (Act). U.S. Environmental Protection Agency (EPA) Headquarters and regional offices can and do take enforcement actions, but in most instances, the states are primarily responsible for enforcing the Act. States sometimes delegate their enforcement authority to local agencies.¹ The states, including their local agencies, are expected to perform compliance evaluations and take action against significant violators. States can also pass their own legislation, giving them additional, independent enforcement authority.

OBJECTIVES

The objectives of this audit were to determine if:

- the level of enforcement activity was consistent throughout the nation;
- regional and delegated agency programs were designed to deter companies from violations, through:
 - publicizing enforcement actions,
 - assessing the economic benefit component of penalties, and
 - conducting compliance assistance activities; and

¹ In this report, we will refer to the state, district, and local offices collectively as “delegated agencies,” unless we refer to a specific level.

- the EPA Headquarters or regions have useful, effective management information systems for tracking enforcement actions.

RESULTS IN BRIEF

The Office of Enforcement and Compliance Assurance (OECA) could prevent unnecessary inconsistencies and duplication in regional and delegated agency enforcement and compliance assistance activities. Inconsistent activities included (1) the levels of enforcement activity, (2) the use of publicity, (3) assessing the economic benefit component as part of penalties, and (4) variation in how, or even if, agencies used the national database. Regions and delegated agencies had active compliance assistance programs, with outreach efforts made to a number of industry groups. However, some of the compliance assistance activities they performed were similar, which could result in duplication.

Enforcement Levels Varied Across the Nation

The goal of EPA's enforcement program is for all facilities to consistently comply with applicable rules and regulations. At a minimum, the program should ensure that like violations are treated similarly in enforcement responses, regardless of location or agency boundaries. Instead, the regions and delegated agencies implemented the program inconsistently, resulting in varied penalty sizes and numbers of enforcement actions taken. These inconsistencies were caused by unfavorable political climates, resource limitations, limited legal support, and a lack of administrative enforcement authority.² Inconsistent enforcement can result in (1) reduced levels of environmental protection that put public health and the environment at increased risk and (2) industry being treated unfairly, where enforcement consequences are more a function of locale than conduct.

²Regional officials cited other potential factors such as regional attitudes toward enforcement, compliance assistance and technical activities, and other program initiatives. We did not evaluate the impact these factors may have had on enforcement programs.

**More Publicity of
Enforcement Actions
Was Needed**

Most EPA regions and delegated agencies reviewed did not usually publicize enforcement actions. Even when press releases were issued, the type of information included in them varied. EPA's policy is to encourage publicizing enforcement actions, but the policy is outdated and the regions did not always follow it. Delegated agencies did not publicize cases because they were concerned about possible political repercussions and often did not have written publicity policies. Inconsistently publicizing cases can result in some companies having their violations known, damaging their image, while their competitors may also be subject to enforcement actions that are not made public.

**Delegated Agencies
Needed to Consider
the Economic Benefit
in Penalties**

Regions and a few delegated agencies used the economic benefit component of penalties to deter companies from violations, in accordance with EPA's Penalty Policy.³ Most delegated agencies, however, did not consistently consider or appropriately assess the economic benefit. This occurred because the delegated agencies (1) did not have procedures for computing the economic benefit, (2) believed legal decisions and case law prevented them from calculating or assessing it, or (3) reduced the penalty. If enforcement officials did not assess a penalty that recovered the full economic benefit component, they allowed violators to have an advantage over companies that paid to come into compliance. The deterrent effect of enforcement actions was also limited when violators saved money by avoiding or delaying costs of compliance. As a result, companies were more likely to ignore emission limits and continue polluting the environment.

**Air Enforcement Data
Quality Needed to be
Improved**

Several regions and delegated agencies reviewed needed to improve the quality of their data in the Aerometric Information Retrieval System (AIRS) Facility Subsystem (AFS). These data quality problems occurred because regions and delegated agencies (1) applied different data definitions when tracking enforcement data, (2) had difficulty entering data into AFS, and (3) did not use or maintain data in AFS. As a result, Agency resources were used inefficiently, OECA and regions may not have enough information

³Clean Air Act Stationary Source Civil Penalty Policy

about potential violators, and incorrect information could be released to the public.

**Regions and Delegated
Agencies Needed to Share
Compliance Assistance
Activities**

Each regional office and delegated agency reviewed had performed compliance assistance activities, including outreach to dry cleaners and printers. Some of these activities were similar to efforts other agencies had developed. While OECA has taken some steps to help coordinate compliance assistance activities, a clearinghouse of these activities did not exist for most industries. As a result, there was a potential for duplication. Regions and delegated agencies may be developing similar compliance assistance materials and activities, rather than using methods that have already been developed and tried elsewhere. If regions and delegated agencies share information, they may be able to use their resources to develop new materials for other program areas, resulting in wider outreach to the regulated community.

RECOMMENDATIONS

We recommend that the Assistant Administrator for Enforcement and Compliance Assurance:

1. Set up a mechanism to work with regional and delegated agency staff to recommend ways to address national inconsistencies in enforcement. This should include evaluating factors that may affect enforcement programs, such as political climates, resources, enforcement authority, attitudes toward enforcement, and other program initiatives.
2. Update and reissue the 1985 EPA policy on publicizing enforcement actions, in conjunction with the Office of Communication, Education, and Public Affairs.
3. Ask the regions to work with delegated agencies to assess the full economic benefit of noncompliance in all enforcement matters.
4. Determine OECA's minimum data needs for decision-making and monitoring on a nationwide basis. Then, decide if OECA could obtain this data directly from the

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regional or delegated agency data systems to reduce the amount of data input to the national system. If OECA continues to use AFS, consider establishing a minimum set of standard data elements and simplifying data input.

5. Work with regions, delegated agencies, and other appropriate groups to create and maintain a clearinghouse of available compliance assistance materials.

Additional and expanded recommendations are included at the end of each chapter, beginning with Chapter 2.

**AGENCY COMMENTS
AND OIG EVALUATION**

We have not received an official written response to our draft report, although it was due by September 8, 1997. However, we received a draft response on September 22, 1997, that requested some changes to our draft report. We made changes, based on the draft response and further discussions with OECA officials.

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Abbreviations

Act	Clean Air Act, as amended in 1990
AFS	AIRS Facility Subsystem
AIRS	Aerometric Information Retrieval System
Bay Area	Bay Area Air Quality Management District, California
CA	California
CFC	Chlorofluorocarbon
District	Air Quality Management District
EPA	U.S. Environmental Protection Agency
EPA Penalty Policy	Clean Air Act Stationary Source Civil Penalty Policy
GAO	U.S. General Accounting Office
Illinois	Illinois Environmental Protection Agency
Indiana	Indiana Department of Environmental Management
Louisiana	Louisiana Department of Environmental Quality
Michigan	Michigan Department of Environmental Quality
Monterey Bay	Monterey Bay Unified Air Pollution Control District, California
Notice	Notice of Violation
OECA	Office of Enforcement and Compliance Assurance
OIG	Office of Inspector General
Sacramento	Sacramento Metropolitan Air Quality Management District, California

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South Coast	South Coast Air Quality Management District, California
Texas	Texas Natural Resource Conservation Commission
Timely & Appropriate Guidance	Guidance on the Timely and Appropriate Enforcement Response to Significant Air Pollution Violators
Wisconsin	Wisconsin Department of Natural Resources

CHAPTER 1

Introduction

PURPOSE

The Office of Inspector General (OIG) has performed a series of regional audits of air enforcement and compliance assistance programs. Because we identified national issues during these audits, we have used that work as a basis for this report. The objectives of this audit were to determine if:

- the level of enforcement activity was consistent throughout the nation (see Chapter 2);
- regional and delegated agency programs were designed to deter companies from violations, through:
 - publicizing enforcement actions (see Chapter 3),
 - assessing the economic benefit component of penalties (see Chapter 4), and
 - conducting compliance assistance activities (see Chapter 6); and
- the U.S. Environmental Protection Agency (EPA) Headquarters or regions have useful, effective management information systems for tracking enforcement actions (see Chapter 5).

BACKGROUND

The Clean Air Act, as amended in 1990 (Act), gives EPA authority to set national standards to protect human health and the environment from emissions that pollute the air. The Act assigns primary responsibility to the states and local agencies for ensuring adequate air quality. EPA is responsible for issuing regulations to implement the Act.

Emissions regulations apply to two categories of air pollutants, criteria and hazardous. Criteria pollutants are discharged in relatively large quantities by many sources across the country.

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EPA has set national standards for all six criteria pollutants: (1) ozone, (2) carbon monoxide, (3) sulfur dioxide, (4) nitrogen dioxide, (5) lead, and (6) particulate matter. The standards specify acceptable air pollution concentrations for a geographic area. States are required to meet those standards.

Regulations also apply to hazardous air pollutants, or air toxics. These pollutants come from specific sources, such as auto paint shops, chemical factories, or incinerators. EPA has established emissions standards for some air toxics, such as: asbestos, beryllium, mercury, vinyl chloride, arsenic, radionuclides, and benzene.

Enforcement Authorities

The Act defines EPA's air enforcement authorities, including administrative, civil, and criminal remedies. Under Section 113:

- Subpart (a) provides administrative orders for corrective action to comply, but does not provide for assessing penalties. This section is also used if the violator fails to respond to an information request.
- Subpart (b) allows for initiating civil judicial action against certain violators to restore compliance and recover a civil penalty of up to \$27,500 per day per violation.⁴
- Subpart (c) defines criminal enforcement, including fines and/or prison sentences.
- Subpart (d) gives EPA the authority to issue administrative penalty orders. These orders may assess penalties of up to \$27,500 per day of violation. They are generally authorized in cases where the penalty sought is not more than \$220,000 and the first alleged date of the violation occurred no more than 12 months prior to the start of the administrative action.

⁴This information reflects the increase in penalties, due to inflation, effective January 30, 1997. During our audit period, the maximum penalty was \$25,000 per day, with the total penalty for a single administrative enforcement action at a maximum of \$200,000.

- Subpart (d) (3) gives EPA the authority to create a field citation program through implementing regulations. EPA expects the rule promulgating this program to be effective in February 1998.

The Act also granted EPA information request authority, through Section 114. This gives EPA the right to require any person believed to have information relating to the Act to submit that information to EPA.

Roles

Many different levels of government have roles in enforcing the Act. EPA Headquarters and regional offices can and do take enforcement actions, but in most instances, the states are primarily responsible for enforcing the Act. States sometimes delegate their enforcement authority to local agencies.⁵ The states, including their district offices and local agencies, are expected to perform compliance evaluations and take appropriate action against identified violators, including significant violators. The EPA regions have concurrent authority to conduct compliance evaluations and take enforcement actions. States can also pass their own legislation, giving them additional, independent enforcement authority. However, state laws cannot be enforced at the Federal level, unless incorporated into a state implementation plan.

Enforcement Process

If an EPA region or a delegated agency finds a violation of the Act, it can bring an enforcement action against the company. The EPA regions identify violations by using a variety of sources, including reviewing monitoring data, conducting inspections, reviewing emission test results, and through information requests to companies. The delegated agencies typically identify violations through inspections. If the inspection finds a violation of the air regulations, the type of action taken depends upon the nature of the violation. The delegated agencies are required to report all Federal violations to the region.

⁵ In this report, we will refer to the state, district, and local offices collectively as “delegated agencies,” unless we refer to a specific level.

Federal enforcement actions often start with a notice of violation (notice). Delegated agencies have similar documents that generally serve the same purpose. The notice outlines: the statutory authority supporting the notice, the rules the company has violated, and the violations. The notice also has a cover letter that informs the company what the next steps in the enforcement process are. The company is encouraged to meet with regional or delegated agency officials to discuss resolving the violation and to begin negotiating a settlement.

An important part of the settlement negotiation process, for enforcement actions that will include a penalty, is agreement on the penalty. At the regional level, stationary source violations are subject to the Clean Air Act Stationary Source Civil Penalty Policy (EPA Penalty Policy). The EPA Penalty Policy outlines penalty calculations. While EPA encourages delegated agencies to follow its penalty policy, it does not require them to do so. If the company reaches a settlement with the region or delegated agency, the parties enter into a formal agreement. This is a legal agreement that outlines the terms of the settlement. EPA and some delegated agencies can settle cases administratively or judicially.

**Effective Programs
That Deter Violators**

There are at least three ways EPA regional and delegated agency programs can effectively deter violators. First, the enforcement action should be publicized. Publicity will help the regulated community learn that regions and delegated agencies have strong enforcement programs and inform the public about which companies violate the Act. Second, enforcement actions must recover the economic benefit the violator gained by not complying with the Act. This means that the penalty should make it more expensive for companies to violate the law than to be in compliance. Finally, the agencies need to proactively seek out industries, particularly small businesses, to assist them in coming into compliance. This proactive approach is called compliance assistance.

**SCOPE AND
METHODOLOGY**

We performed our audit in accordance with the U.S. General Accounting Office's Government Auditing Standards, as issued by the Comptroller General of the United States (1994 Revision). We also reviewed the Office of Enforcement and Compliance Assurance and regional Federal Managers' Financial Integrity Act reports. The reports did not identify any material weaknesses or vulnerabilities related to air enforcement and compliance assistance. We did not detect any material internal control weaknesses during our audit.

See exhibit 1 for scope and methodology details. See exhibit 2 for prior audit coverage.

CHAPTER 2

Enforcement Levels Varied Across the Nation

The goal of EPA's enforcement program is for all facilities to consistently comply with applicable rules and regulations. At a minimum, the program should ensure that like violations are treated similarly in enforcement responses, regardless of location or agency boundaries. Instead, the regions and delegated agencies implemented the program inconsistently, resulting in varied penalty sizes and numbers of enforcement actions taken. These inconsistencies were caused by unfavorable political climates, resource limitations, limited legal support, and a lack of administrative enforcement authority. Inconsistent enforcement can result in (1) reduced levels of environmental protection that put public health and the environment at increased risk and (2) industry being treated unfairly, where enforcement consequences are more a function of locale than conduct.

EPA NEEDS TO ENSURE EVEN ENFORCEMENT

The Office of Enforcement and Compliance Assurance (OECA) needs to ensure national consistency in implementing and enforcing Federal requirements to prevent polluters from gaining a competitive advantage over entities that do not violate the law.⁶ In the *FY 1995 Enforcement and Compliance Assurance Accomplishments Report*, OECA officials stated that:

Enforcement actions prevent violators from gaining any competitive advantages by skirting pollution control requirements. No one should gain from violating the environmental laws, and putting people's health and the environment at risk. Furthermore, responsible citizens and companies who make the necessary expenditures to comply with our laws should not be placed at a competitive disadvantage to those who do not. EPA is

⁶Core EPA Enforcement and Compliance Assurance Functions, February 1996.

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committed to ensuring that actions are taken to level the economic playing field for law-abiding companies.

One way of creating a level playing field is through the regional enforcement programs. While delegated agencies primarily are responsible for enforcing air laws and regulations, EPA regions retain oversight responsibility. If regions identify situations where delegated agencies are not carrying out an enforcement program consistent with EPA guidance, the region may take action to correct this inconsistency. Such regional action should help ensure that competitive companies in different areas are treated fairly.

**ENFORCEMENT
PROGRAMS WERE
INCONSISTENTLY
IMPLEMENTED**

Air enforcement programs in delegated agencies and regions were inconsistently implemented. For instance, the penalties assessed and the number of enforcement actions taken varied widely across agency lines. While we recognize that some variation is to be expected, the extent of the inconsistencies identified warrant OECA's attention.

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The States of Michigan, Indiana, and Texas, and the Bay Area District in California (CA) stood out as having assessed penalties of more than \$100,000 in a few individual cases (see table 1). These agencies were the only ones to assess a single penalty exceeding \$100,000, within the 18 month period of our review. Michigan led the agencies with four cases where the penalties exceeded \$100,000 and Indiana had three such cases. The Bay Area District and Texas each had one case with penalties over \$100,000.

**Table 1: Delegated Agency Cases
Assessing Over \$100,000 in Penalties**

Michigan	Indiana	Bay Area, CA	Texas
\$2,800,000 ⁷	\$572,000	\$1,050,000	\$263,375
532,000	340,000		
499,000	125,000		
200,000			

⁷This was Michigan’s share of a larger penalty assessed through a lawsuit along with Region 5, Wisconsin, and several environmental groups.

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Perhaps more important than a single penalty is the average penalty assessed per enforcement action. Delegated agencies' average penalties varied significantly.⁸ For example, as shown in table 2, Michigan and Indiana each assessed an average penalty of more than \$30,000. Texas averaged just over \$20,000, while all four California local districts averaged less than \$2,500 in penalties per case.⁹

**Table 2: Average Penalties Assessed
Delegated Agencies**

Delegated Agency	Average Penalty
Michigan	\$68,285
Indiana	\$34,431
Texas	\$21,990
South Coast, CA	\$2,473
Sacramento, CA	\$754
Bay Area, CA	\$452
Monterey Bay, CA	\$270

⁸To determine average penalties, we used the universe of cases completed during an 18 month period. We dropped the highest and lowest single penalty for each agency. We did this to prevent a single case from skewing the average.

⁹Louisiana was not included in this analysis because the data we had were not complete for penalties and number of cases.

The number of enforcement actions taken at delegated agencies also varied, as shown in table 3. The Bay Area District took many more enforcement actions than any other delegated agency, at 455 actions completed within an 18 month time period.¹⁰ The South Coast District was the next closest agency, having completed 86 actions. Indiana, Texas, and Michigan each completed more than 25 actions, while the Sacramento and Monterey Bay Districts completed fewer than 10 actions each.

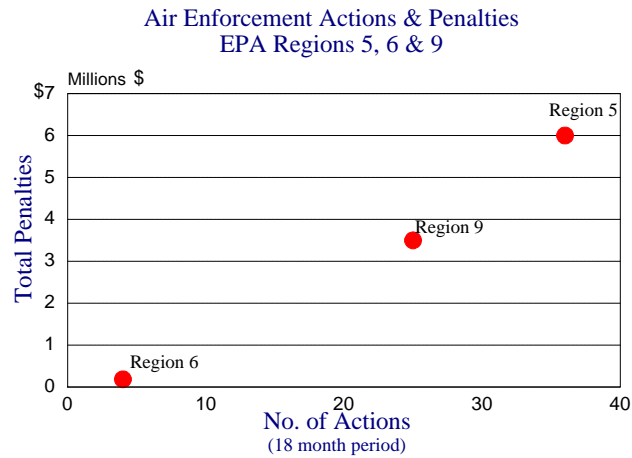
**Table 3: Number of Actions Completed
Delegated Agencies**

Delegated Agency	Number of Actions
Bay Area, CA	455
South Coast, CA	86
Indiana	34
Texas	31
Michigan	29
Sacramento, CA	9
Monterey Bay, CA	4

¹⁰One reason why the Bay Area District may have had more actions than other agencies was that they issued a separate notice of violation for each identified violation, while other agencies may have combined all identified violations from each inspection into a single notice. We were unable, however, to determine how much of the variation was caused by this practice.

The three EPA regions reviewed also varied widely in both the number of actions completed and penalties assessed, as shown in figure 1. Region 5 completed 33 enforcement actions and assessed more than \$6 million in penalties in the same period as Region 9 completed 25 actions and assessed about \$3.5 million in penalties, while Region 6 completed 2 cases and assessed penalties of just over \$100,000.

Figure 1:



**BARRIERS CAUSED
INCONSISTENT
IMPLEMENTATION**

The regions and delegated agencies identified several barriers that caused inconsistencies in program implementation. These barriers included (1) unfavorable political climates, (2) resource limitations, and (3) delegated agencies' limited legal support and lack of administrative authority.¹¹

Political Climates

Officials at 6 of the 12 agencies reviewed cited a political climate that did not favor enforcement as one of their top three barriers to their enforcement programs. Enforcing air regulations often involves major employers. Delegated agency officials stated that companies might close or choose to locate elsewhere when faced with a strong enforcement program. Because of this possibility, politicians sometimes become involved in individual enforcement actions and enforcement programs in general.

The political climate particularly affected delegated agencies. For example, political involvement made it difficult for Michigan officials to settle some cases. In an enforcement action against a copper mine in the upper peninsula of Michigan, local politicians tried to convince the Michigan Attorney General's Office not to enter a lawsuit. The local politicians also urged individuals to write the Attorney General and their state legislators protesting the lawsuit. They were very concerned that the mine would close, affecting more than 1,000 employees. This political involvement made it difficult for Michigan staff to pursue the enforcement action. Eventually, Region 5 and others became involved and reduced the case's political effect on Michigan.

Other delegated agency officials also said the political climate was a barrier to their programs. According to officials from two California air districts, their Boards did not always support aggressive enforcement actions, because the Boards feared industries might move to other locations if faced with aggressive enforcement. In Texas, an official stated that the changes in the political climate from one election year to the next were a problem,

¹¹OECA, regions, and delegated agencies also listed other barriers to effective air enforcement programs. In this section, we focused on those barriers that led to inconsistencies. See exhibit 3 for a listing of all barriers.

because the program was expected to be consistent even though the political climate had changed.

According to a Region 5 official, the national political climate also affected the regional air enforcement program. He thought the regulated community recognized that they could exert influence over regulations and the enforcement process. They called or wrote their Congressional representatives after the EPA issued an enforcement action against them. Involving Congressional representatives can delay the process and take the negotiations to a higher level. For example, Region 5 had brought an enforcement action against a state university. Shortly after that, a United States Senator and congressional staff met with the EPA Administrator. As a result, negotiations were elevated to a higher level, reducing Region 5's control and influence over the negotiations. Such political involvement can negatively impact the enforcement program.

Limited Resources

Eight of the twelve agencies, at both the regional and delegated agency level, stated that limited resources affected their ability to carry out effective air enforcement programs. For example,

- South Coast District officials advised that they continued to scale back their enforcement program. Between 1994 and 1996, they cut their field inspectors by 20 percent. Even before this reduction, a 1993 California evaluation report on the local district pointed out that “overall, non-compliance has increased, while resources have been reduced”
- Texas and Louisiana officials also stated that a lack of resources prevented them from having effective air enforcement programs.
- Michigan officials said that they did not have enough resources to identify and take enforcement actions on all violations. The officials noted that, although their resources for compliance and enforcement had increased in recent years, the increases were for the permitting program, not inspections.

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Resources and other factors also affected regional enforcement programs. Officials from Regions 6 and 9 commented that staffing levels at EPA regional offices could result in some variability in enforcement actions taken. For example, they said Region 5 took more enforcement actions than the other regions, because it had more staff. However, Regions 6 and 9 had similar resources to each other, but the number of enforcement actions completed were significantly different. As shown in table 4, Region 5 had about 50% of the resources for the three regions and completed just over 50% of the actions. Regions 6 and 9 each had about 25% of the resources, but Region 9 completed 42% of the actions, while Region 6 only completed 3%. This variation suggests that factors other than resources also affected how many actions were taken.¹²

Table 4: Regional Enforcement and Compliance Resources¹³

Region	Budgeted Resources	Actions Completed
Region 5	67.0 (53.6%)	33 (55%)
Region 6	30.2 (24.2%)	2 (3%)
Region 9	27.7 (22.2%)	25 (42%)
Total	124.9 (100%)	60 (100%)

Limited Legal Support In some delegated agencies, limited legal support and a lack of

¹²Regions also identified other potential factors, including the region's attitude toward enforcement, compliance assistance activities, involvement in Project XL and the Common Sense Initiative, and the type of industry in each region. We did not evaluate the impact these factors may have had on enforcement programs.

¹³The regional air enforcement and compliance officials provided these numbers for total budgeted FTE (full time equivalent) for fiscal year 1997. We did not verify the accuracy of these numbers.

**and Lack of
Administrative Authority**

administrative authority contributed to inconsistencies in enforcement. Some delegated agency officials said their legal offices delayed air enforcement activities. If delegated agencies can pursue violations administratively, they can avoid lengthy delays, caused by going through outside legal offices. Having administrative authority is particularly important for delegated agencies without strong legal support.

According to Illinois enforcement officials, delays in the state Attorney General's Office had a negative impact on the enforcement program. While Illinois did not have administrative penalty authority, the State could assess penalties by referring cases to the State Attorney General's Office. However, a backlog of cases existed in the Attorney General's Office, so few cases were resolved in less than six months.

Wisconsin and California both had long legal delays as well. Wisconsin enforcement officials had to go through the State Department of Justice to collect penalties from violators. According to a compliance official, the Department of Justice took a long time to resolve cases. Similarly, the Sacramento and Bay Area districts said they were reluctant to refer cases to their legal departments, because of lengthy delays.

When agencies have administrative authority, it gives them another option besides going through the legal staff. Indiana enforcement officials, for instance, said they had not received adequate support from their Attorney General's Office in the past. Because of the limited support, Indiana officials seldom referred cases to the Attorney General's Office. Indiana was able to work around this problem, because it had authority to settle cases and assess penalties administratively.

**PUBLIC HEALTH AND
COMPANIES' COSTS
CAN BE AFFECTED**

Inconsistent enforcement can lead to inconsistent health and environmental protection and to companies being treated unfairly. If some agencies do not enforce the requirements as strongly as others, the people living in those areas may be exposed to more air pollution and the environment may be adversely affected.

Enforcement actions can deter companies from avoiding pollution requirements and putting people's health and the environment at risk.

Such diversity between agencies can also result in inequities, where companies are treated unfairly. For example, according to Michigan staff members, General Motors officials complained that they were treated unfairly, because Michigan's state enforcement program was more stringent than the Wayne County, Michigan program.¹⁴ Wayne County personnel allowed Ford Motor Company's facilities located in the County to operate with violations that Michigan officials required General Motors' facilities in other counties to fix, according to General Motors officials. These officials also noted differences in how their own facilities in Wayne County and those outside the County were treated. Such inconsistency is especially unfair for companies that come into compliance on their own, when other companies are allowed to profit from violating the law.

CONCLUSION

Inconsistent enforcement across the country can lead to industry being treated inequitably, where some pay to come into compliance up-front or through enforcement actions, while others are allowed to profit from avoiding requirements. Limited enforcement may also result in risks to public health and the environment. Regions and delegated agencies faced several barriers, including unfavorable political climates, resource limitations, limited legal support, and a lack of administrative authority, that led to such inconsistencies.

RECOMMENDATIONS

We recommend that the Assistant Administrator for Enforcement and Compliance Assurance:

- 2-1. Negotiate, through the Memoranda of Agreement, to have the regions:

¹⁴As a local agency, Wayne County operated separately from Michigan, although the County was under contract with the State for air enforcement.

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- a. conduct thorough program evaluations of delegated agencies and place priority on enforcement in those areas where delegated agencies do not have strong enforcement programs.
 - b. focus their limited resources on areas that will have the most impact on achieving the Agency's goals.
 - c. assist delegated agencies in obtaining administrative authority from their legislatures, where appropriate.
 - d. work as partners with delegated agencies that do not have administrative authority to impose administrative penalties for their actions, or to assist the agency in obtaining support from its legal staff.
 - e. under the Timely and Appropriate guidance, track the cases referred to State Attorney General offices and take action as needed to ensure the cases are resolved both appropriately and timely.
- 2-2. Reevaluate the mechanism for distributing enforcement and compliance resources to the regions to determine if it is appropriate. Also, assess the regions' distribution of enforcement and compliance resources through the Memoranda of Agreement process and periodic regional reviews.
- 2-3. Set up a mechanism to work with regional and delegated agency staff to recommend ways to address national inconsistencies in enforcement. This should include evaluating factors that may affect enforcement programs, such as political climates, resources, enforcement authority, attitudes toward enforcement, and other program initiatives.

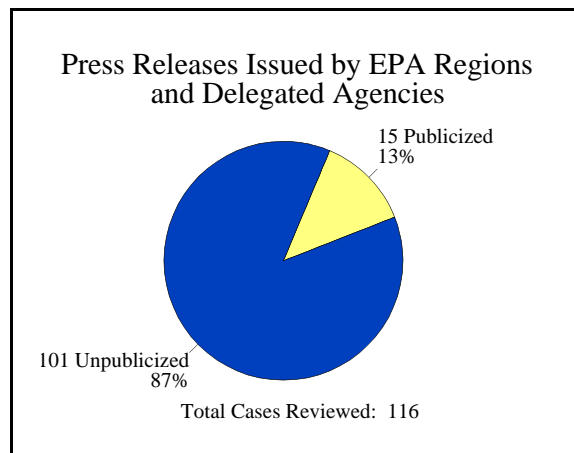
CHAPTER 3

More Publicity of Enforcement Actions Was Needed

Most EPA regions and delegated agencies reviewed did not usually publicize enforcement actions. As shown in figure 2, press releases were issued in only 15 of the 116 (13 percent) cases reviewed. Even when press releases were issued, the information included in them varied. EPA's policy is to encourage publicizing enforcement actions, but the policy is outdated and the regions did not always follow it. Delegated agencies did not publicize cases because they were concerned about possible political repercussions and often did not have written publicity policies.

A written, implemented publicity policy helps assure that (1) companies believe violations will be detected and enforcement actions will be taken; and (2) the public is aware and may pressure companies to come into, or remain in, compliance. Inconsistently publicizing cases can result in some companies having their violations known, damaging their image, while their competitors may also be subject to enforcement actions that are not made public.

Figure 2: EPA Regions and Delegated Agencies



EPA and delegated agencies also used methods other than press releases to publicize their enforcement programs, in accordance

with EPA's policy. These methods, such as industry meetings and the Internet, were also useful in deterring violators.

**EPA POLICY CALLS
FOR PUBLICITY**

EPA has long supported publicizing enforcement actions to improve communication with the public and the regulated community, and to encourage compliance with environmental laws. The November 21, 1985 *EPA Policy on Publicizing Enforcement Activities* stated:

It is the policy of EPA to use the publicity of enforcement activities as a key element of the Agency's program to deter noncompliance with environmental laws and regulations. Publicizing Agency enforcement activities on an active and timely basis informs both the public and the regulated community about EPA's efforts to promote compliance.

In determining whether to issue a press release, EPA personnel are to consider the following:

- amount of the penalty,
- significance of the relief sought and its public health or environmental impact,
- whether the case would create national or program precedence, and
- whether unique relief is sought.

The policy also states that enforcement actions that do not meet these criteria may still be appropriate for local publicity in the area where the violation occurred. On March 6, 1992, the Deputy Administrator issued a separate memorandum which stated that press release content cannot be negotiated with the violator.

EPA can use public opinion to help bring violators into compliance by strategically publicizing significant enforcement actions. In the

November/December 1995 issue of the *Environmental Forum*, the Deputy Assistant Administrator for Enforcement and Compliance Assurance wrote:

. . . agencies are realizing the potential power of enlisting the public and appropriate segments of the regulated community in ensuring compliance and promoting behavior that goes beyond. The public's role will be to use its right to know as a tool to motivate industry and government.

Publicizing enforcement actions deters violators by increasing the regulated community's awareness of regulations and the consequences of noncompliance. Businesses hope to avoid the costs of noncompliance and prevent damage to their public images. As citizens learn about violators, they may pressure companies to come into compliance or risk losing customers. The public also may pressure government to enforce regulations and penalize violators.

**REGIONS' USE OF
PUBLICITY VARIED**

The three regions publicized 10 of the 21 cases reviewed, as shown in table 5. However, the publicity given to enforcement actions varied from region to region. For example, for the cases reviewed, Region 5 issued three of ten possible press releases, Region 6 did not issue any releases for its four cases, and Region 9 released information on all seven cases, through a single, consolidated press release. Although there was an EPA publicity policy in effect, only Region 9 fully implemented the policy.

**Table 5: Press Releases Issued by EPA Regions
Sampled Cases**

Press Release Issued	Region 5	Region 6	Region 9	Total
Yes	3	0	7	10
No	7	4	0	11
Total	10	4	7	21

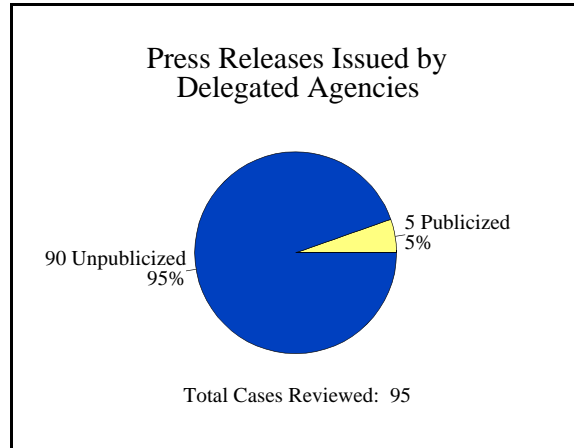
Content of Press Releases The content of press releases also varied among the regions. EPA’s policy states that press releases should include the environmental result the action achieved and the penalty. Some press releases, such as the one from Region 9 and some from Region 5, included such important information about the enforcement actions, while other Region 5 releases were not as detailed. Regional officials agreed that including information, such as the violation’s impact on public health or the environment, added to the effectiveness of the press release.

In response to our regional audits, Regions 5 and 6 agreed to take some action to improve their publicity. Region 5 officials developed a press release policy. The policy addresses three main areas: (1) guidelines for deciding which press releases the media was more likely to pick up, (2) time frames for preparing and issuing press releases, and (3) content of press releases. Also included is a checklist explaining the type of information public affairs officials need to write a news release. Region 6 officials began, in March 1997, to publish quarterly enforcement activity reports.

**DELEGATED AGENCIES
SELDOM PUBLICIZED
ENFORCEMENT
ACTIONS**

Delegated agencies issued press releases in only 5 of 95 cases reviewed, as shown in figure 3. This occurred because delegated agency officials feared political repercussions and did not have formal policies for issuing press releases.

Figure 3: Delegated Agencies



Some delegated agencies indicated that, while they supported publicizing enforcement actions, they were reluctant to do so, because they were concerned about possible political repercussions. For instance, both Indiana and Michigan officials said they did not want to draw the attention of state legislators to their programs through publicizing enforcement actions.

Delegated agencies' publicity policies, or a lack thereof, also limited publicity. For example, California local districts did not issue press releases, because they had no policy for doing so. In Louisiana, a state law required companies to file a public notice when assessed penalties were lowered. However, companies could avoid publicity by paying the penalty in full.

**INTERNET AND OTHER
VEHICLES FOR
PUBLICITY**

Press releases were not the only vehicles for publicizing enforcement actions. EPA offices, regions, and delegated agencies also reached the regulated community and the public through other means, including the Internet, presentations at industry meetings, sending lists of enforcement actions to interested parties, and trade journals. While EPA's policy advocates using other publicity methods, it has not been updated to include such alternatives as the Internet.

The regional offices had established “Home Pages” on the Internet that included information on air enforcement. Items on Region 5's Home Page included lists of companies in each state that were in violation, graphs of enforcement trends, and press releases for air enforcement actions. Region 6's Home Page had information available on closed and concluded enforcement actions. Region 9 provided copies of air enforcement press releases on its Home Page. Also, the Office of Communication, Education, and Public Affairs put enforcement press releases on the Internet. Placing air enforcement information on the Internet is another useful tool for reaching the public.

CONCLUSION

Most EPA regions and delegated agencies usually did not issue press releases. One reason this occurred was that the existing EPA publicity policy was outdated and the regions did not always follow it. Also, delegated agencies feared political repercussions and did not have formal policies for issuing press releases. Because the delegated agencies seldom publicized enforcement actions, the regulated community was unaware of these actions, and not deterred from similar violations. The public was also unaware, and therefore could not help motivate industry to comply. Because EPA regions' use of publicity varied, companies in some regions may have their violations made public, damaging their public image, while their competitors may also be subject to enforcement actions that are not made public.

RECOMMENDATIONS

We recommend that the Assistant Administrator for Enforcement and Compliance Assurance, in conjunction with the Office of Communication, Education, and Public Affairs:

- 3-1. Update and reissue the 1985 policy on publicizing enforcement actions for the regions' use. When updating the policy, consider including:
 - a. a checklist of information needed to write a press release, or other instructions to help staff members write press releases that clearly describe the

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- violations and the effects on the environment and community.
 - b. the Internet as an additional method of publicizing enforcement actions.
 - c. the information from the Deputy Administrator's March 6, 1992 memorandum on prohibiting the negotiation of press releases.
- 3-2. Work with the regions to encourage delegated agencies to publicize more enforcement actions.

CHAPTER 4

Delegated Agencies Needed to Consider the Economic Benefit in Penalties

Regions and a few delegated agencies used the economic benefit component of penalties to deter companies from violations, in accordance with EPA's Penalty Policy.¹⁵ Most delegated agencies, however, did not consistently consider or appropriately assess the economic benefit. This occurred because the delegated agencies (1) did not have procedures for computing the economic benefit, (2) believed legal decisions and case law prevented them from calculating or assessing it, or (3) reduced the penalty. If enforcement officials did not assess a penalty that recovered the full economic benefit component, they allowed violators to have an advantage over companies that paid to come into compliance. The deterrent effect of enforcement actions was also limited when violators saved money by avoiding or delaying costs of compliance. As a result, companies were more likely to ignore emission limits and continue polluting the environment.

DETECTING VIOLATORS BY ASSESSING THE ECONOMIC BENEFIT

By not complying with the Clean Air Act as amended in 1990 (Act), companies can save money or realize an economic benefit. In many cases, they save money by delaying or avoiding expenses. For example, a company may delay installing pollution control equipment until EPA or a delegated agency takes an enforcement action. In other cases, companies try to avoid expenses by disconnecting pollution control equipment or not hiring enough trained staff to monitor emissions.

According to EPA's Penalty Policy, penalties should include two components: economic benefit and gravity. The economic benefit component is important to level the playing field among companies within an industry, and eliminates any economic advantage violators gain through delayed or avoided costs. The gravity component reflects the seriousness of the violation, and represents:

¹⁵Clean Air Act Stationary Source Civil Penalty Policy

(1) the actual or possible harm resulting from a violation, (2) the importance of the violation to the regulatory scheme, and (3) the violator's size. We focused on the economic benefit component because EPA's Penalty Policy provided that "any penalty should, at a minimum, remove any significant economic benefit resulting from noncompliance."

Although considering economic benefit is critical, EPA policy recognizes that there are some limited situations where it does not have to be assessed. For instance, EPA's Penalty Policy states that the economic benefit component can be waived where it is less than \$5,000, considering the impact on the violator and the size of the gravity component. The total penalty, the economic benefit and gravity components, also may be mitigated due to litigation risk or the violator's inability to pay. Although the economic benefit is a key component of a civil penalty, it does not apply in delegated agency cases involving: (1) regulations that are not Federally enforceable, or (2) non-significant violators.

**REGIONS CONSIDERED
ECONOMIC BENEFIT**

Regional officials considered the economic benefit of violations when resolving enforcement actions. When the economic benefit was applicable, they assessed it. Their decisions on whether economic benefit applied were appropriate, based on the discretion allowed in EPA's Penalty Policy.

For example, for the cases reviewed, officials from Regions 6 and 9 determined that the economic benefit was not applicable, in accordance with EPA's Penalty Policy. For Region 6, the violations for the four cases reviewed either did not result in an economic benefit, or resulted in an insignificant benefit, so it was not assessed. For Region 9, the economic benefit for all the cases was determined to be nominal.

Region 5 assessed the economic benefit component, when it applied. The economic benefit applied to 6 of the 10 cases sampled. Region 5 staff assessed the economic benefit in five of the six. In the sixth case, the file showed the enforcement officials reduced the penalty in accordance with EPA's Penalty Policy,

based on the company's financial condition and ability to pay calculations.

**DELEGATED AGENCIES
VARIED ON ASSESSING
ECONOMIC BENEFIT**

One delegated agency reviewed consistently assessed the economic benefit, when it applied, while two other agencies sometimes assessed the economic benefit. We could not determine if the other delegated agencies assessed the economic benefit in the cases we reviewed.

Michigan enforcement officials supported collecting the economic benefit and they assessed it, when applicable. Of the 10 Michigan cases reviewed, the economic benefit applied in 4 instances and it was assessed.

Two other states reviewed did not consistently assess the economic benefit component in their penalties. Indiana and Illinois sometimes assessed the economic benefit. For instance, in each state, the economic benefit applied to six cases, but the state officials collected it in only three.

At the remaining delegated agencies, we could not tell if the penalty assessed included the economic benefit or whether they even considered it. For example, although Sacramento District officials included the economic benefit as a component of their penalty calculations, they only assessed a percentage of each total penalty. Because of the way Sacramento District officials reduced each penalty, it was not possible to determine if they assessed the full economic benefit. For other delegated agencies, officials did not formally calculate the economic benefit, so we could not determine what it was. Examples included:

- To compute fines, Louisiana completed a Penalty Assessment Form with nine factors to consider when determining a recommended penalty amount. One of these factors was to consider the economic benefit realized through noncompliance. However, Louisiana officials did not break out among the nine factors how the total penalty was computed.

- Texas officials did not compute economic benefit for any of the 10 sample cases. Texas officials said they computed economic benefit only in extreme cases where the violation had continued for a long period of time.
- At three California local air districts, Monterey Bay, South Coast, and Bay Area, there was no evidence indicating that they considered the economic benefit of noncompliance when calculating proposed penalties.

**REASONS DELEGATED
AGENCIES DID NOT
ASSESS ECONOMIC
BENEFIT**

Delegated agency officials did not always assess or calculate the economic benefit component of penalties because they (1) did not have procedures for computing it, (2) believed legal decisions and case law prevented them from calculating or assessing it, or (3) reduced the penalty.

No Procedures

Several delegated agencies did not have procedures in place for assessing the economic benefit. Texas' Penalty Guidelines, for instance, did not include economic benefit as a component in the calculation of the penalty.¹⁶ The California district offices also did not have procedures that required them to compute the economic benefit.

Legal Decisions

Officials from Louisiana and Illinois believed that legal decisions and case law prevented them from calculating or assessing the economic benefit. Louisiana officials said they did not formally compute the economic benefit because of a Louisiana Administrative Law Judge ruling. In October 1991, the Judge ruled that the method of computing economic benefit as contained in Louisiana's Penalty Policy was not valid, because the State Legislature had not promulgated it. Louisiana officials interpreted the Judge's ruling as prohibiting them from including a mathematical calculation of economic benefit in the penalty. Illinois officials also believed that Illinois case law affected their collection of the economic benefit. In responding to our Region 5 report, they stated, "The principles of deterrence, restitution and

¹⁶Texas is currently developing a penalty policy that will include consideration of economic benefit.

retribution have not been widely embraced by Illinois courts or the Pollution Control Board.”

Reduced Penalties

Two delegated agencies indicated that they did not always assess the economic benefit, because they reduced the penalties. Indiana officials, for instance, said they often reduced penalties during settlement negotiations. Sacramento District officials also reduced their penalties, by automatically assessing only a percentage of what the actual penalty, including the economic benefit portion, could have been.

**VIOLATORS GAINED
AND WERE NOT
DETERRED FROM
VIOLATIONS**

Penalties that do not include an economic benefit component do not eliminate the economic advantage companies gain by violating the Act. By not assessing penalties with an economic benefit component, enforcement officials may allow violators to gain an unfair economic advantage over other companies.

Not recovering the economic benefit of violations also limited the deterrent effect of enforcement actions. If the economic benefit is not assessed, it continues to be less expensive for a company to violate the law than to comply with it. As a result, some companies were more likely to ignore emission limits and continue polluting the environment, while waiting to see if EPA or the delegated agencies identified their violations. This can lead to unnecessary risks to human health and the environment.

CONCLUSION

While the regions and some delegated agencies assessed the economic benefit component of a penalty, other delegated agencies did not. Sometimes, agencies did not have procedures that called for considering the economic benefit. In other instances, delegated agency officials believed that legal decisions prevented them from calculating or assessing it, while some delegated agencies reduced the penalty, including the economic benefit portion. By not assessing the economic benefit, delegated agencies reduced the deterrent effect of their enforcement actions and allowed the violators to gain an unfair economic advantage over companies who complied with rules and regulations. As long as companies

gain economically, they may continue to pollute the environment, putting people's health at risk.

RECOMMENDATION

We recommend that the Assistant Administrator for Enforcement and Compliance Assurance:

- 4-1. Ask the regions to work with delegated agencies to assess the full economic benefit of noncompliance in all enforcement matters.¹⁷ Discussions with the delegated agencies should include the regions:
- a. assisting delegated agencies in securing the needed legal authority to calculate, assess, and recover the economic benefit component of penalties, if necessary.
 - b. implementing procedures consistent with EPA's policy to calculate and assess the economic benefit component.
 - c. providing assistance in calculating, assessing, and recovering economic benefit when delegated agencies may be precluded from doing so, such as in Louisiana and Illinois, or in similar circumstances.
 - d. identifying what actions regions will take if delegated agencies do not assess and recover the economic benefit of a penalty.

CHAPTER 5

Air Enforcement Data Quality Needed to be Improved

¹⁷Discussions with the regions and delegated agencies may be conducted through OECA's Memoranda of Agreement with the regions or EPA's Environmental Performance Partnership Agreements with the delegated agencies, or through other agreements, as appropriate.

Several regions and delegated agencies reviewed needed to improve the quality of their data in the Aerometric Information Retrieval System (AIRS) Facility Subsystem (AFS).¹⁸ These data quality problems occurred because regions and delegated agencies (1) applied different data definitions when tracking enforcement data, (2) had difficulty entering data into AFS, and (3) did not use or maintain data in AFS. As a result, Agency resources were used inefficiently, the Office of Enforcement and Compliance Assurance (OECA) and regions may not have enough information about potential violators, and inaccurate information could be released to the public.

BACKGROUND

Headquarters designed the AIRS database in stages during the 1980s to be a national repository for air pollution data. AFS was an AIRS enhancement, completed in 1990. The system developers designed AFS to maintain data for emissions, compliance, enforcement, and permits. AFS separated this information between two parts, emission and compliance. The compliance part included enforcement data, the subject of this chapter. We did not review emissions data.

Data Requirements

EPA has established national minimum data requirements for AFS and issued final requirements in December 1993. These data requirements apply to all regions and delegated agencies. OECA also currently requires AFS data through the Memorandum of Agreement with each region. Regional personnel are responsible for ensuring that AFS data requirements are met for both delegated agency and regional enforcement cases.

On February 7, 1992, EPA issued the *Guidance on the Timely and Appropriate Enforcement Response to Significant Air Pollution Violators* (Timely and Appropriate Guidance). This guidance defined:

¹⁸We reviewed AFS compliance data by comparing regional AFS reports of completed significant violator cases to delegated agency reports and identified any differences. We also compared information on both the AFS and delegated agency reports to the information in the enforcement case files.

- (1) what a significant violator was,
- (2) the process and timing of enforcement actions,
- (3) how states and regions would identify who had the lead for taking an enforcement action,
- (4) the conditions when an EPA regional office could assume responsibility for completing a state case, and
- (5) requirements for updating AFS.

This guidance was important to defining what the national approach to enforcement would be and how the data would be evaluated.

Uses of AFS

Several EPA Headquarters' offices use AFS enforcement data. For example, OECA uses AFS data for accountability, targeting, sector analyses, and external reporting purposes. The Headquarters' Office of Information Resources Management has made AFS data available to the public on the Internet.¹⁹

**DATA QUALITY
COULD BE IMPROVED**

Several of the regions and delegated agencies reviewed needed to improve the quality of their AFS data. The data quality problems primarily consisted of missing data. We also found some incorrect data.

Data were not in AFS for many delegated agencies, including the Bay Area, Monterey Bay, and South Coast Districts in California, and the States of Texas and Louisiana. For example, about half of the completed notices of violation for the Bay Area District and three of four notices of violation for the Monterey Bay District were not recorded in AFS. None of the 86 notices of violation for the South Coast District were recorded in AFS. Finally, not all cases for Region 6, Texas, and Louisiana were in AFS.

¹⁹Although AFS is available on the Internet, the information is not readily accessible and it is difficult to query state information on the system.

Some information in AFS was incorrect. For example, Region 6, Texas, and Louisiana did not accurately report information related to significant violators to AFS. Also, some enforcement cases on AFS showed Region 5 as having the case lead, when the work on the case instead remained at the state level. Therefore, AFS data did not reflect who was really handling the cases.

**CAUSES OF DATA
QUALITY PROBLEMS**

A few factors combined to create data problems in AFS. Regions and delegated agencies (1) applied different data definitions when tracking enforcement data, (2) had difficulty entering data into AFS, and (3) did not use or maintain data in AFS.

Different Data Definitions

Regions and delegated agencies used data definitions that differed from those in the Timely and Appropriate Guidance. These differences included defining what was a significant violator and Federal and state lead on cases.

Texas and Louisiana used their own definitions of significant violators for reporting to AFS. According to Region 6 personnel, if a case was not a significant violator within the states' definition, the states did not report the facility. For these cases, Region 6 personnel had to obtain and input the information to AFS.

AFS data for Wisconsin were not correct because Region 5 had identified cases as Federal-lead in AFS, although the state often finished the cases. This occurred because the Region 5 section responsible for Wisconsin identified as Federal-lead the cases it *could* take over, per the Timely and Appropriate guidance, even if they did not *actually* take over the case. Region 5's use of a different definition, for Wisconsin than for other states, distorted the Wisconsin data.

**Difficulty Entering
Data Into AFS**

Some delegated agencies had difficulty uploading and converting data from state data systems to AFS. For example:

- The Bay Area District had problems uploading information electronically to AFS. Bay Area District officials were working with Region 9 to solve this problem.

- While Texas and Louisiana electronically submitted data to AFS, system problems existed related to converting the data from the state systems to AFS.

**AFS Not Used or
Maintained**

Some regions and delegated agencies did not use or maintain AFS. AFS was part of a mainframe system that was difficult for state personnel to use. Most states found it easier and more meaningful to create and use their own systems.

OECA recognized that many regions and delegated agencies did not use AFS as their own tracking systems and that this created problems for AFS data. For example, OECA officials noted in a Region 4 evaluation report:

Reliance on Regionally developed tracking systems, in lieu of the major national databases, appears to be taking away the incentive for the Region to address data quality problems with national systems.

Both Regions 6 and 5 developed their own tracking systems. For example, although Region 6 officials reported directly to AFS, they also maintained a separate database for their own information needs. Region 5 also maintained a database that provided information Headquarters' officials did not require for AFS and that Region 5 staff did not want in a public database, such as *potential* violations. The Region 5 database included all enforcement actions that Region 5 staff members were responsible for, including those which were not tracked in AFS.

Delegated agencies also maintained their own databases. Michigan and Indiana officials developed and used their own systems, for reasons similar to those at Region 5. Louisiana and Texas did not use AFS as their primary tracking system. California local air districts did not use AFS as their primary information system because the AFS system was too limited to provide all the compliance information local officials needed. Consequently, they developed their own information systems to serve local needs. With their own systems, local air districts did not use or rely on

AFS and, therefore, placed less emphasis on ensuring the accuracy of data contained in AFS.

**DATA PROBLEMS ARE
INEFFICIENT AND
MISLEADING**

Data problems in AFS can lead to (1) inefficient use of Agency resources, (2) OECA and regions not having enough information about potential violators, and (3) inaccurate data being released to the public.

Incomplete and incorrect data in AFS result in inefficient use of Agency resources, through maintaining different systems and collecting and reporting additional data. The average amount spent to maintain AFS for the last six years (FY 1991 through FY 1996) was over \$858,000 per year. Regions and delegated agencies also used additional resources to maintain separate databases since AFS did not meet their needs. In some cases, regions also had to expend resources to input delegated agency data into the AFS system, if the delegated agency officials did not maintain the data themselves. According to an OECA official, he used AFS data as only one of several different sources of information to evaluate the enforcement programs, because he recognized that AFS data were not always correct. Regions sometimes needed to submit manual reports from separate databases to supplement the data in AFS. Having to use information from various systems to reach decisions was not efficient.

For oversight purposes, if delegated agency data are missing or incorrect, OECA and the regions may not always have enough information about potential violators. For instance, they may not know the compliance status and violation history of many major sources. This could limit the regions' ability to take actions to correct violations if delegated agencies are not appropriately addressing them.

Incomplete and incorrect data in AFS are of particular concern, since EPA has made the data publicly available on the Internet. Citizens who access the data could receive inaccurate information.

CONCLUSION

AFS data, alone, for the regions reviewed, were not reliable to make some management decisions. For instance, due to missing data, OECA could not evaluate the performance of certain delegated agencies. The problems with the data occurred partly because regions and delegated agencies interpreted the Timely and Appropriate Guidance differently. Also, regions and delegated agencies had trouble entering data into AFS electronically and did not maintain AFS data since they used their own data systems to meet their information needs. Data problems in AFS lead to an inefficient use of Agency resources, OECA and the regions not having enough information about violators, and inaccurate data being made available to the public.

RECOMMENDATIONS

We recommend that the Assistant Administrator for Enforcement and Compliance Assurance:

- 5-1. Negotiate, through the Memoranda of Agreement, to have the regions review the Timely and Appropriate Guidance with their delegated agencies. This should include working with regions and delegated agencies to ensure consistent interpretation of data requirements.
- 5-2. Determine OECA's minimum data needs for decision-making and monitoring on a nationwide basis. Then, decide if OECA could obtain this data directly from the regional or delegated agency data systems to reduce the amount of data input into the national system. If OECA continues to use AFS, consider:
 - a. working with Headquarter's Office of Information Resources Management to establish a minimum set of standard data elements to ensure consistent data definitions between regions and delegated agencies.
 - b. simplifying data input.
 - c. issuing guidance on required AFS data quality.

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- d. implementing a regular review process to evaluate whether reported data meet the data quality guidelines.

CHAPTER 6

Regions and Delegated Agencies Need to Share Compliance Assistance Activities

Each regional office and delegated agency reviewed had performed compliance assistance activities, including outreach to dry cleaners and printers. Some of these activities were similar to efforts other agencies had developed. While the Office of Enforcement and Compliance Assurance (OECA) has taken some steps to help coordinate compliance assistance activities, a clearinghouse of these activities did not exist for most industries. As a result, there was a potential for duplication. Regions and delegated agencies may be developing similar compliance assistance materials and activities, rather than using methods that have already been developed and tried elsewhere. If regions and delegated agencies share information, they may be able to use their resources to develop new materials for other program areas, resulting in wider outreach to the regulated community.

BACKGROUND

Compliance assistance is a key component of an effective enforcement and compliance assurance program. It complements, but does not replace, appropriate enforcement action. Compliance assistance includes outreach, response to requests for assistance, and on-site assistance. By providing clear and consistent descriptions of regulatory requirements, compliance assistance helps the regulated community understand its obligations. It can also help regulated industries find cost-effective ways to comply through the use of pollution prevention and other innovative technologies.

The compliance assistance program at EPA is relatively new. In March 1995, President Clinton issued the regulatory reform initiative. This initiative instructed EPA to reduce the burden on companies to comply with environmental regulations. The initiative also established: (1) a grace period for small businesses to correct identified violations, and (2) incentives for self-disclosure and correction of violations. It encouraged EPA to work

with small businesses and companies that identified their own violations.

**AGENCIES HAD
ACTIVE AND
SOMETIMES SIMILAR
PROGRAMS**

The regions and delegated agencies reviewed were actively involved in compliance assistance activities. Several of the activities were conducted in similar areas, such as with dry cleaners, printers, or chlorofluorocarbon (CFC) regulations.

A number of regional and delegated agency programs involved outreach to dry cleaners. For instance, Indiana developed a Five Star Recognition Program for dry cleaners. The state developed and distributed to dry cleaner operators a manual including all applicable regulations. Texas and Louisiana also provided assistance to dry cleaners, including holding workshops and distributing brochures that described what rules applied to the cleaners. At the regional level, a Region 6 official visited approximately 50 dry cleaners in Texas to make them aware of the dry cleaner regulations. Region 6 officials coordinated this effort with Texas. OECA has also developed a collection of educational materials for the dry cleaning industry.

Several agencies also conducted compliance assistance for the printing industry. Louisiana distributed brochures to print shops, while Illinois offered compliance assistance to printers through its Clean Break Amnesty Program. OECA also established a Compliance Assistance Center for printers.

The regions have performed compliance assistance in several similar program areas as well. Examples of these programs include Regions 6 and 9 offering assistance to affected industries for the new CFC regulations and Regions 5 and 9 offering outreach for new air toxics standards.

**NATIONAL
CLEARINGHOUSE
OF IDEAS DID
NOT EXIST**

Although regions and delegated agencies performed compliance assistance activities, often in the same industry or regulatory areas, there was not a national clearinghouse of the activities. OECA had taken some steps in this direction. For instance, OECA established a compliance assistance work group to exchange information on

regional and state compliance assistance activities. Also, OECA set up Compliance Assistance Centers in four key industry sectors, with plans to set up four more. An OECA official stated that these centers could be used to help regions and delegated agencies learn what activities others had done for specific industry sectors. For example, in April of this year, the Printers National Environmental Assistance Center put out a message to all states to provide copies of manuals and guidance so that a comprehensive list of compliance assistance tools could be cataloged and linked. Finally, according to OECA officials, such lists are either under development or already available for some other industries.

Region 5 states recently expressed a need to better coordinate on compliance assistance activities so they can learn from each other and borrow ideas and products that have worked. Region 5 agreed to serve as a clearinghouse by collecting compliance assistance information from the states and making it available within the region. The information included in the clearinghouse, however, would be limited to the Region 5 area.

**SIMILAR ACTIVITIES
COULD RESULT IN
DUPLICATION OF
EFFORT**

Without a clearinghouse coordinating information, regions and delegated agencies may duplicate efforts in developing similar compliance assistance activities. Because regions and delegated agencies are trying to reach many of the same industry groups or discuss the same regulations, they could share the materials, perhaps slightly altering them to fit the specific rules of their own areas. Regions and delegated agencies could also use a clearinghouse as a way to share information about what methods have worked well or have not been successful, so that others can learn from their experiences. This coordination may allow regions and delegated agencies to save resources. They could then use these resources to develop new materials for other program areas or industries. The resulting increased compliance assistance could result in wider outreach to the regulated community and fewer violations that endanger public health and the environment.

CONCLUSION

Regions and delegated agencies have conducted compliance assistance activities. In doing so, they may have developed similar materials and programs, duplicating efforts. Because a national clearinghouse of compliance assistance activities has not been developed for most industries, the regions and delegated agencies cannot easily share information about what materials and programs they have developed and what has worked well. If the regions and delegated agencies could share such information, they could save resources by avoiding duplicating efforts and could instead focus on creating new materials for other industries or program areas. This could result in a wider reaching compliance assistance program, further protecting the environment.

RECOMMENDATION

We recommend that the Assistant Administrator for Enforcement and Compliance Assurance:

- 6-1. Work with regions, delegated agencies, and other appropriate groups to create and maintain a clearinghouse of available compliance assistance materials and make the database available to all regions and delegated agencies. Using existing OECA Compliance Assistance Centers as clearinghouses for certain industries may be appropriate, along with a central clearinghouse for other industries or program areas.

SCOPE AND METHODOLOGY

Scope

This report consolidates the audit work completed in Regions 5, 6, and 9. We conducted fieldwork for the consolidated report between October 7, 1996 and July 30, 1997. We provided position papers consisting of the complete text of the chapters to officials from the Office of Enforcement and Compliance Assurance (OECA) and Regions 5, 6, and 9 on June 5, 1997. We incorporated their comments, received throughout June and July, into a draft report.

On August 7, 1997, we issued our draft report. On September 22, 1997, OECA officials provided us with a draft response. Although the draft report was substantially the same as the position papers they had already commented on, OECA officials made many additional comments and requested new wording changes. On September 23, 1997, we held an exit conference with OECA officials to discuss their draft response. The final response was due September 8, 1997. As of September 30, 1997, the Assistant Administrator for OECA had not responded. After reviewing the draft response and conducting the exit conference, we made appropriate changes and finalized the report.

Methodology

Our first objective was to determine if the level of enforcement activity was consistent throughout the nation. We used the information obtained from our three regional reviews as a starting point for accomplishing this objective. We then interviewed OECA, Office of Air and Radiation, and Regional Air Program personnel. We also received assistance from the OIG's Engineering and Science Staff in comparing the enforcement programs at the various regional and delegated agencies.

To make our data from each regional report comparable with the others, we selected an 18 month time period for our analysis of this objective, which is in Chapter 2 of this report. To do this, we

obtained the numbers of both judicial and administrative actions for Region 9 completed between October 1993 and March 1995 to compare them with Regions 5 and 6. Since this objective uses a time frame that is different from the regional reviews, the numbers in Chapter 2 may differ from those in the regional reports and the other chapters in this report.

Our analysis for this objective considered the number of cases completed and the penalties assessed within the given time period. It did not include many other factors, such as the relative complexity of the cases or the impact of ongoing work. Because the data showed wide variations among the regions and delegated agencies, we determined that the indicators we used, though imperfect, were valid.

Our second objective was to determine if enforcement programs were designed to deter companies from violations. We interviewed air enforcement personnel and performed case file reviews to accomplish this objective. In consolidating this issue, we reviewed the prior OIG regional reports and obtained updated information from Regions 5 and 6. We also interviewed OECA and Office of Communication, Education, and Public Affairs personnel.

Our third objective was to determine if EPA Headquarters or regions had useful, effective management information systems for tracking enforcement actions. We interviewed enforcement personnel about the Aerometric Information Retrieval System (AIRS) Facility Subsystem (AFS). We did not review AFS to verify its accuracy. We did, however, check the data against information found in the case files. We also compared AFS reports to delegated agency reports for the same time period, and followed up on any differences. In consolidating this issue, we reviewed the prior OIG regional reports, and interviewed OECA personnel. We also contacted the Office of Air Quality Planning and Standards to obtain information regarding resources used for AFS.

PRIOR AUDIT COVERAGE

Scope of Regional Reviews

From 1995 to 1997, we reviewed the air enforcement and compliance assistance programs in three regions. For Regions 5 and 6, we focused on enforcement actions (excluding asbestos) completed between October 1, 1993 and June 30, 1995. Since the work at Region 9 was performed later, that review focused on actions completed between October 1, 1994 and March 31, 1996. Details of the scope of the regional reviews follow:

Region 5: The audit covered the Air and Radiation Division and the States of Indiana and Michigan. The fieldwork was performed from September 7, 1995, to July 15, 1996. Prior to our audit, we conducted a survey. Our survey included work at the States of Wisconsin and Illinois. The final report (Report No. 6100284) was issued on September 13, 1996.

Region 6: The audit covered the Compliance Assurance and Enforcement Division and the States of Texas and Louisiana. The fieldwork was performed from September 11, 1995, to July 26, 1996. The final report (Report No. 6100309) was issued on September 26, 1996.

Region 9: The audit covered the Air and Toxics Division's enforcement and compliance activities within California, the California Air Resources Control Board, and 4 of the 34 local air districts: (1) Bay Area Air Quality Management District (District), (2) South Coast District, (3) Sacramento Metropolitan District, and (4) Monterey Bay Unified Air Pollution Control District. The fieldwork was performed from October 2, 1995, to December 31, 1996.²⁰ The final report (Report No. 7100246) was issued on July 24, 1997.

²⁰Fieldwork was suspended from October 1995 until April 1996 to perform other work.

**Other OIG and
GAO Reviews**

Both the OIG and the U.S. General Accounting Office (GAO) have issued reports in this area.²¹ Several of the reports found that regions and delegated agencies were not collecting the economic benefit component of penalties, or correctly calculating and documenting penalties. Some reports identified concerns with delegated agency air enforcement programs, such as not:

- meeting compliance/enforcement grant commitments,
- implementing EPA enforcement guidance,
- reporting all significant violators to EPA, and
- taking aggressive enforcement action to bring all violating facilities into compliance.

GAO also issued a related report that addressed EPA data gathering efforts imposed on states. GAO concluded that a draft regulation would have imposed data gathering requirements on the states that exceeded EPA's minimum air pollution program needs. EPA suspended development of the draft regulation.

²¹See next page for a list of the OIG and GAO reports.

OIG AND GAO REPORTS

Review of Region 5's Stationary Source of Air Pollution Compliance and Enforcement Program (EPA-IG E1K67-05-0449-80743, March 11, 1988).

Capping Report on the Computation, Negotiation, Mitigation, and Assessment of Penalties Under EPA Programs (EPA-IG E1G8E9-05-0087-9100485, September 27, 1989).

Air Pollution: Improvements Needed in Detecting and Preventing Violations (GAO/RCED-90-155, September 27, 1990).

Environmental Enforcement: Penalties May Not Recover Economic Benefits Gained by Violators (GAO/RCED-91-166, June 17, 1991).

Follow-up Review on EPA's Mitigation of Penalties (EPA-IG E1GGM4-05-6009-4400107, September 15, 1994).

Air Pollution: EPA Data Gathering Efforts Would Have Imposed a Burden on States (GAO/AIMD-95-160, August 7, 1995).

Regional Management of Clean Air Act Section 105 Air Grant Program (EPA-IG E1KAE5-24-0015-5100510, September 29, 1995).

Region 5's Air Enforcement and Compliance Assistance Program (EPA-IG E1GAF5-05-0045-6100284, September 13, 1996).

Region 6's Enforcement and Compliance Assurance Program (EPA-IG E1GAF5-06-0056-6100309, September 26, 1996).

Validation of Air Enforcement Data Reported to EPA by Pennsylvania (EPA-IG E1KAF6-03-0082-7100115, February 14, 1997).

Region 9's Administration of the California Air Compliance and Enforcement Program, (EPA-IG E1GAF6-09-0023-7100246, July 24, 1997).

BARRIERS TO EFFECTIVE AIR ENFORCEMENT PROGRAMS

Agency	Barrier 1	Barrier 2	Barrier 3
OECA	Resources	Lack of Emission Data	None identified
Region 5	Detecting Violations	Slow Enforcement Process	Political Climate
Indiana	Unsupported Enforcement Action	Weak State Rules	Local Agencies
Michigan	Limited Resources	Untimely Permits	Political Climate
Region 6	Resources	Complexity of the Law	States' Perceptions That They Know Situations Better than Federal Government
Texas	Not Enough People	Not Enough Money	Political Climate
Louisiana	Legal Process	Lack of Resources	Cases Delayed in State Attorney General's Office
Region 9	Limited Coordination Between OECA and OAR	Limited Resources	AFS Data Quality
State of California	Limited Resources	Untimely Significant Violator Reporting	Political Climate
Sacramento, CA	Permit Conditions Being Revised	Accuracy of Monitoring Reports	Political Climate
Bay Area, CA	Insufficient Penalties	Determining Noncompliance	Unclear Reporting Criteria
Monterey Bay, CA	Ability to Communicate with Regulated Community	Limited Resources	None identified
South Coast, CA	Political Climate	Industry Influences	Limited Resources

Appendix 1

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