



Office of Inspector General Audit Report

Public Participation in Louisiana's Air Permitting Program and EPA Oversight

Report No. 01351-2002-P-00011

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**Inspector General
Resource Center:** Central Audit and Evaluation Resource Center
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Region Covered: Region 6

Program Office Involved: Multimedia Planning and Permitting Division

Report Contributors: Les Partridge, Auditor
Dan Howard, Auditor
Gerry Snyder, Engineer
Bernard Stoll, Engineer
Rick Beusse, Technical Advisor
Sandy Keith, Legal Advisor
Randy Holthaus, Project Manager

Cover photo: The headquarters of the Louisiana Department of Environmental Quality in Baton Rouge, Louisiana, from its web site.



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, DC 20460

OFFICE OF
INSPECTOR GENERAL

August 7, 2002

MEMORANDUM

SUBJECT: Final Report:
Public Participation in Louisiana's Air Permitting Program
and EPA Oversight
Report No. 01351-2002-P-00011

Melissa Heist

FROM: Melissa Heist
Assistant Inspector General for Audit

TO: Gregg A. Cooke
Region 6 Administrator

Attached is our report entitled *Public Participation in Louisiana's Air Permitting Program and EPA Oversight*, conducted as a result of an Agency request. We discussed our findings with your staff and issued a draft report. We summarized your comments in the final report and included your complete response in Appendix I.

This report addresses two objectives—how the Louisiana Department of Environmental Quality (LDEQ) implemented its public participation program in the air permitting program, and the effectiveness of Environmental Protection Agency (EPA) oversight. We are conducting additional audit work, and plan to report at a later date, on whether LDEQ's permits and regulations ensure that facilities comply with the state's and EPA's excess emissions policy related to emissions from upsets, malfunctions, and start-ups and shut-downs.

ACTION REQUIRED

In accordance with EPA Order 2750, you, as the action official, are required to provide this office with a written response within 90 calendar days of the final report date. For corrective actions planned but not completed by the response date, reference to specific milestone dates will assist in deciding whether to close this report. Please e-mail an electronic version of your response to holthaus.randy@epa.gov.

We have no objection to the release of this report to any member of the public. This final audit report contains findings that the Office of Inspector General (OIG) has identified and corrective actions OIG recommends. This audit report represents the opinion of OIG and the findings contained in this report do not necessarily represent the final EPA position. Final determinations on matters in this report will be made by EPA managers in accordance with established EPA audit resolution procedures.

If you or your staff have any questions about this report, please contact Michael Rickey, Director for Assistance Agreement Audits, at (312) 886-3037, or Randy Holthaus, Project Manager, at (214) 665-6620.

Attachment

Executive Summary

Purpose

Public participation is a critical part of the permitting process because it allows the public access to information on proposed environmental actions. Allowing and enabling citizens who live near facilities that emit pollutants to review and comment on proposed permits should result in more complete and enforceable permits, improved compliance, and cleaner air. Under Title V of the Clean Air Act, major sources of air pollutant emissions must obtain source-specific permits, and permitting agencies must provide an opportunity for the public to review and comment on facilities' proposed operations. Based on an Agency request to review the public participation process in Louisiana, which is covered by the Environmental Protection Agency's (EPA) Region 6, we performed a review of the Louisiana Department of Environmental Quality's (LDEQ) Title V program. Our specific objectives were to answer the following questions:

- Does LDEQ allow for effective public participation in the implementation of its air permitting process?
- Does EPA Region 6 provide effective oversight of LDEQ's air permitting program?

Results in Brief

Although LDEQ met the public participation requirements for air permitting, its process could be improved. LDEQ's records were often unorganized, incomplete, missing, or inaccessible. LDEQ also did not clearly define the role of its public participation group, and it issued multiple permits to facilities without providing the public with complete information. As a result, the public was unable to, or had difficulty in, accessing key records needed to effectively review, evaluate, and comment on facilities' proposed operations, thus hindering the public's ability to effectively comment on proposed permits. Improvements would provide for a more effective process and help address the perception among citizens that industry in Louisiana has an unfair advantage during the permitting process.

Also, EPA Region 6 did not perform adequate oversight of LDEQ's public participation activities. Region 6 generally did not review public comments before LDEQ issued permits because the Region did not require LDEQ to provide such comments to the Region until after the permit was already issued. Region 6 also did not take a proactive approach to oversight of public participation issues,

or perform a thorough on-site review at LDEQ. In some instances, Region 6 negotiated commitments with LDEQ, yet allowed the state to miss agreed upon deadlines and commitments.

In addition, we noted two issues that, while not directly impacting our objectives, nonetheless should receive EPA Region 6 attention: (1) LDEQ's Title V air permit backlog of unissued permits is large and continues to grow; and (2) Region 6 has not performed an audit of LDEQ's permit fees used by the state to fund implementation of its program.

We are not reporting at this time on one of our original objectives: "Does LDEQ write effective permits and regulations to ensure that facilities comply with the state's and EPA's excess emissions policy related to emissions from upsets, malfunctions, and start-up/shut-down?" We are conducting additional audit work in this area.

Recommendations

We recommend that the EPA Region 6 Administrator work with LDEQ to make the public participation process for air permits more effective, with emphasis on such areas as records completeness and accessibility, clarification of roles, and improving outreach. We also recommend that the Region 6 Administrator require staff to review public participation issues, define responsibilities within the Region, perform a thorough on-site review of LDEQ's air permits program, establish a tracking mechanism for permits reviewed, and review the required number of LDEQ's proposed Title V permits prior to LDEQ issuance of final permits.

Agency and State Comments and OIG Evaluation

Region 6 generally agreed with the findings and recommendations. The Region provided comments to clarify portions of the report, and we have incorporated these comments and modified the report as appropriate. We have summarized the Region's comments following each chapter and have included the complete response in Appendix I.

Louisiana generally did not agree with our findings and recommendations. We reviewed the comments and have modified the report as appropriate. Their complete response can be found in Appendix II.

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Chapter 1

Introduction

Purpose

Public participation is a critical part of the permitting process because it allows the public access to information concerning proposed environmental actions. Allowing and enabling citizens who live near facilities that emit pollutants to review and comment on proposed permits should result in more complete and enforceable permits, which in turn should result in improved compliance and cleaner air. Under Title V of the Clean Air Act, major stationary sources of pollution emissions (see Exhibit A for definition) must obtain source-specific permits, and permitting agencies must provide an opportunity for the public to review, evaluate, and comment on facilities' proposed operations. Title V sources are generally recognized as the most environmentally significant air pollution sources that the Environmental Protection Agency (EPA) regulates.

Based on an Agency request to review Louisiana's public participation process, the Office of Inspector General (OIG) performed a review of the Louisiana Department of Environmental Quality's (LDEQ) Title V air permitting program including EPA's oversight of Louisiana's program. The purpose of this audit was to answer the following questions:

- Does LDEQ allow for effective public participation in the implementation of its air permitting process?
- Does EPA Region 6 provide effective oversight of LDEQ's air permitting program?

Background

Clean Air Act and Title V

Clean Air and Quality Environmental Information, including the public's right to know, are 2 of EPA's 10 strategic goals designed to protect human health and the environment. In addition to research and standard setting, the Clean Air goal envisions adequate implementation by state and local agencies, appropriate oversight by EPA, and public involvement in the operational decisions that impact whether the air in every American community will be safe and healthy to breathe. Despite great progress, EPA's Strategic Plan notes air pollution continues to be a widespread human health and environmental problem in the United States. The Public's Right to Know goal includes providing the public with access to accurate and reliable environmental information so that they can influence regulators'

decisions and make more informed decisions to help protect their families and communities.

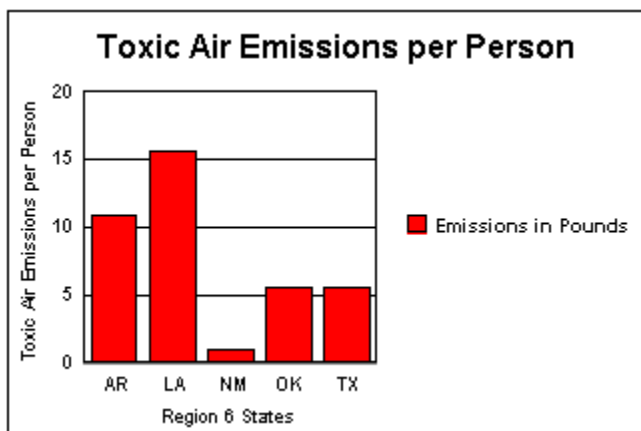
Congress' main goal in adopting the Title V program was to achieve a broad-based tool to aid effective implementation of the Clean Air Act and enhance enforcement. Title V requires operating permits for every major source of a regulated air pollutant. Each Title V operating permit is supposed to reduce source violations, improve regulatory agency enforcement abilities, establish site-specific monitoring requirements, increase source accountability, and ensure adequate public involvement in the permitting process.

EPA authorized Louisiana's Title V program effective October 12, 1995. EPA gives the authority to states to execute various environmental programs, including the Title V air program, when EPA determines that the state has shown the capability and commitment to do so. EPA Region 6 has authorized each of its five states (Arkansas, Louisiana, New Mexico, Oklahoma, and Texas) to carry out the air program. EPA's Office of Air and Radiation is responsible for establishing national air objectives and providing guidance and direction to the Regional offices in their role of providing oversight of delegated programs to states.

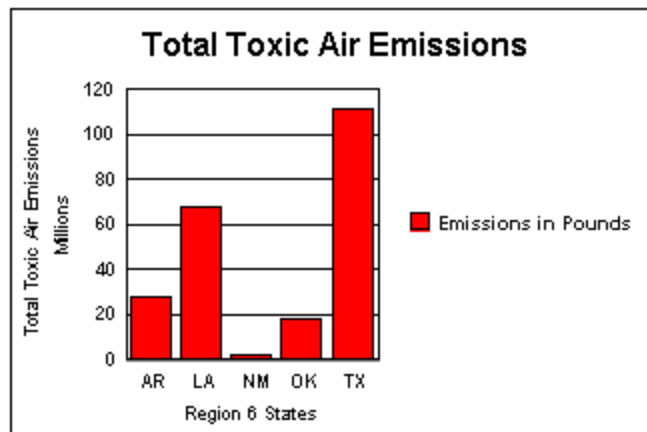
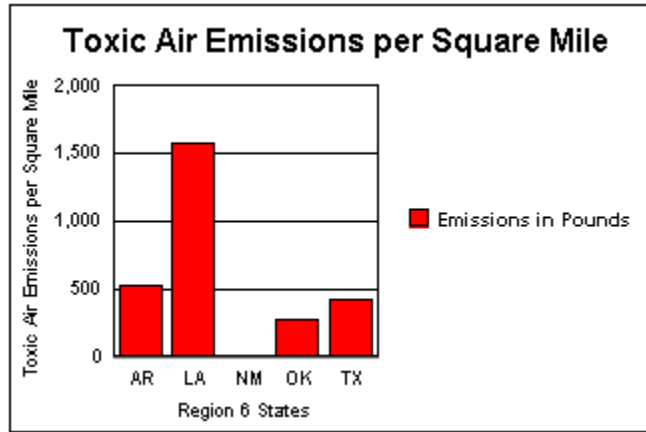
More details on the Title V program, including definition of major sources, are in Exhibit A.

Louisiana Economy and Industry

Louisiana is one of the most heavily industrialized states in the nation, and is the second largest refiner of petroleum in the United States. Louisiana's petrochemical industry manufactures one-quarter of America's petrochemicals, including basic chemicals, plastics, and fertilizers. As shown in the following three charts, based on EPA's



Toxic Release Inventory data from 1999, Louisiana is the highest in Region 6 in toxic air emissions per person (9th nationally); highest in Region 6 in toxic air emissions per square mile (15th nationally); and second highest in total toxic air emissions in Region 6 (14th nationally).



Environmental and Health Issues

In passing the 1990 Act, Congress established different, and more stringent, levels of non-attainment for different pollutants of concern. For example, for an area that does not meet air quality standards for ozone, EPA assigns one of five “non-attainment” levels: marginal, moderate, serious, severe, and extreme. Louisiana has one non-attainment area. Baton Rouge and the five surrounding parishes are identified as a “serious” non-attainment area for ozone. This area is in jeopardy of being redesignated to “severe” non-attainment,¹ the second worst level. Additional restrictions and sanctions are required to be imposed on businesses and motorists that operate within a severe non-attainment zone. For example, businesses may have to reduce emissions dramatically, motor vehicles could be subject to more extensive emissions inspections, and motorists could be required to use cleaner fuel.

According to *The Plain English Guide To The Clean Air Act*, published by EPA in 1993, air pollution can cause burning eyes and nose and an itchy, irritated throat,

¹ This “severe” redesignation is for the 1-hour (.12) ozone standard based on 3 years of ambient monitoring data showing exceedances.

as well as trouble breathing. Some chemicals in polluted air cause cancer, birth defects, brain and nerve damage, and long-term injury to lungs and breathing passages, and reproductive systems. Some air pollutants are so dangerous that accidental releases can cause serious injury or even death. The health effects of ground-level ozone include respiratory (breathing) problems, reduced lung function, asthma, irritated eyes, stuffy nose, reduced resistance to colds and other infections, and accelerated aging of lung tissue. The health effects of volatile organic compounds, one of the precursor components in the formation of ozone, include cancer and other serious health problems.

Scope and Methodology

To address the effectiveness of public participation and EPA's oversight of LDEQ's permitting process, we focused our audit work on the Title V air permitting process. We performed our audit in accordance with the *Government Auditing Standards*, issued by the Comptroller General of the United States. We conducted our fieldwork from April 2001 to January 2002, primarily at LDEQ in Baton Rouge, Louisiana. We reviewed EPA Regional oversight issues primarily at Region 6 Headquarters in Dallas, Texas. See Exhibit B for further details on the scope and methodology used, including prior audit coverage related to this subject.

As part of our audit, we were requested to answer the question, "Does LDEQ write effective permits and regulations to ensure that facilities comply with the state's and EPA's excess emissions policy related to emissions from upsets, malfunctions, and start-up/shut-down?" We are planning to conduct additional audit work in this area, which we plan to report on separately.

Chapter 2

LDEQ's Public Participation Process Needs Improvement

Although LDEQ met the public participation requirements for air permitting, its process could be more effective. According to EPA, an effective process enables citizens to gather relevant information related to proposed permits and aids them in making informed judgments about environmental issues in their locality. However, public participation was often hampered because LDEQ's records were often unorganized, incomplete, missing, or inaccessible. LDEQ also did not clearly define the role of its public participation group or emphasize the public participation function. Further, LDEQ issued multiple permits to facilities without providing the public with complete information. As a result, the public was unable to, or had difficulty in, accessing complete records needed to effectively review, evaluate, and comment on issues. This hinders the public's ability to effectively comment on proposed permit conditions. Improvements in these and other areas would provide for a more effective process and help address the perception among citizens that industry in Louisiana has an unfair advantage during the permitting process.

EPA Has Identified Best Practices and Core Values

According to EPA's August 2000 Reference Guide, *Public Involvement in Environmental Permits*, states should develop a public involvement plan to identify the public's concerns, and use existing regulatory requirements as a framework for meaningful public input in permitting decisions. EPA's guide also pulls together some of the best practices that EPA has observed. The guide is intended to help state permitting program staff build an effective public involvement plan. In addition to suggesting best practices, EPA's Reference Guide calls for regulatory programs, such as Title V, to follow the National Environmental Justice Advisory Council's² core values as part of a model public involvement plan. Among these core values are that the public participation process:

- provides participants with the information they need to participate in a meaningful way.
- includes the promise that the public's contribution will influence the decision.
- seeks out and facilitates the involvement of those potentially affected.

²

The National Environmental Justice Advisory Council is a federal advisory committee established in 1993 to provide independent advice, consultation, and recommendations to EPA on matters related to environmental justice.

LDEQ Met Public Participation Requirements

LDEQ met the public participation requirements identified in 40 Code of Federal Regulations (CFR) Part 70, which implements Title V of the Clean Air Act. EPA's Reference Guide summarizes EPA statutory authorities, regulations, and guidance materials related to public involvement. All Part 70 programs provide the following seven specific opportunities for public involvement:

- Public Notice
- Public Comment Periods
- Response to Comments
- Mailing Lists
- Statements of Basis
- Contact Persons
- Petitions to the EPA Administrator to object to a permit

We did not identify any systemic problems with LDEQ's handling of these basic actions. For example, LDEQ issued public notices containing the required elements, such as the name and address of the facility and the time and place of any scheduled hearings. LDEQ also developed and maintained mailing lists of individuals and organizations interested in its activities. Further, LDEQ provided 30 days advance notice prior to holding public hearings.

Records Management at LDEQ Needs Improvement

While LDEQ met public participation requirements in 40 CFR Part 70, its process could be more effective. Records management at LDEQ needs improvement so that the public is given a better opportunity to comment on draft permits, monitor whether facilities are meeting emission limits and other requirements, and challenge permit decisions if they believe they are in error. However, the Clean Air Act requires agencies to establish public records (permit files) that include certain information relevant to the permitting decisions. Because LDEQ's files and records were often unorganized, incomplete, missing, or inaccessible, the public's ability to comment on permits, monitor facility actions, and challenge LDEQ decisions was restricted. Also, LDEQ's records indexing system was confusing. Details on these issues follow.

LDEQ Files Were Unorganized, Incomplete, Missing, or Inaccessible

We often had difficulty locating permit documents and files, and LDEQ staff had the same difficulties. When files were provided to us, they were often unorganized or incomplete. LDEQ air permit files were filed first by parish rather than facility. Permits, applications, correspondence, engineering reports, and enforcement actions were filed in random order within folders. Researching files was so difficult that it was necessary for us to ask for the services of an LDEQ employee to locate the sampled files we needed to review. The lack of organized and complete files was also a common complaint made by environmental groups

and individuals. A representative of the Tulane Environmental Law Clinic filed a written complaint that she had to make four separate trips from New Orleans to LDEQ in Baton Rouge to obtain all the documentation she requested for a facility. LDEQ has acknowledged that there were differences in the structure of the files, noting in some cases all documents were kept in one facility folder while in others the permit was kept in a facility folder and inspections in a separate facility folder. LDEQ has stated that it is in the process of correcting these issues.

Several times when we went to LDEQ's file room during advertised normal operating hours, no one was present to assist us. Similar complaints were made by environmental groups and the Tulane Environmental Law Clinic. LDEQ's former Assistant Secretary for Environmental Services and the Administrator of the Permits Division said they were aware of problems in the operation of the file room and attempts were being made to fix them. Also, LDEQ could provide greater accessibility by placing public records on the LDEQ website. Although the Permits Administrator said LDEQ was moving toward placing proposed permits on its website, LDEQ had not started the process.

LDEQ's Records Numbering System Confusing

LDEQ's records numbering system was confusing. LDEQ used four different ways to identify the same information for each facility: (1) facility name; (2) permit number; (3) tracker number; and (4) Agency Interest number. For example, documents pertaining to Dow Chemical Company's facility in Plaquemine – including permits, applications, correspondence, engineering reports, and enforcement actions – were filed, respectively, by: Dow Chemical; 2008-V1; 28823; or 1409. The Agency Interest number was the one number that remained constant by company. For example, if Dow had three permits at the same facility, all documents pertaining to that facility would have the same Agency Interest number (1409) but different tracker and permit numbers.

LDEQ acknowledged that its file numbering system was confusing, and stated LDEQ's data system ("Tool for Environmental Management and Protection Organizations") should correct this problem by assigning one number to each facility. LDEQ also stated that it is in the process of bringing together several different filing systems that had little, if any, references in common.

Key Document for One Permit Not Available for Public Review

LDEQ did not always provide relevant permit documents to libraries for public review prior to hearings. For three permits, we visited Louisiana public libraries the day of public hearings to review the permit materials provided in advance for public review. For one permit, although LDEQ staff had provided the proposed permit, a key engineering study was not at the library for public review. The study provided methods and calculations for the reduction of pollutants, which would have better informed the public about emissions in the proposed permit.

According to Region 6, although it is not required, it is desirable to have all supporting information available at all document repositories.

Improvements Needed in the Hearing Process

LDEQ needs to improve its hearing process to ensure hearings are conducted without bias. Although public hearings were generally conducted properly, there is room for improvement. During the four public hearings we attended, LDEQ attorneys – acting as the hearing officers – appeared to be unbiased and conducted the hearings according to LDEQ policy. However, at one of the four hearings, we observed inappropriate behavior by two other LDEQ employees, both of whom appeared to be openly supportive of the company requesting the permit action (see example in the accompanying box).

According to the National Environmental Justice Advisory Council’s core values,

Example of Potential Appearance of Bias

One of the LDEQ employees previously worked for the company for about 15 years. Before the hearing started, and while citizens could have been observing, this employee talked with the company’s representatives in an overly friendly manner, giving the appearance of possible favoritism. During the hearing, while several people stood up to speak against the proposed permit, this LDEQ employee paced the room. In our opinion, the employee appeared impatient and agitated. At one point, when a citizen stood up to voice concern over the proposed permit, this LDEQ employee walked across the room so that he could stand near that citizen, and appeared to stare at her in an unfriendly manner. In addition, another LDEQ employee – the permit writer – appeared to indicate agreement, both verbally and by clapping, with those who spoke in favor of the permit.

public participation must include the promise that the public’s contribution will influence the decision. When LDEQ officials act at a public hearing in a way that appears to indicate a bias toward industry, members of the public may be intimidated from expressing their opinions, and may believe that their contribution will have no influence on decisions. LDEQ’s policy for “Conducting Public Hearings,” dated October 1997, does *not* state that LDEQ employees should refrain from situations where they are biased or behave in a manner that

creates the appearance of bias, and such clarification is needed. Federal regulations (5 CFR Part 2635) require that federal employees recuse themselves from any situations where there is a potential for, or even the appearance of, a conflict of interest.

LDEQ Needs to Track Hearings Requested

LDEQ needs to track hearings requested as well as held. LDEQ documented the number of public hearings it held, and indicated it held 99 public hearings on Title V permits from July 1995 through April 2002. However, LDEQ did *not* track the number of hearings *requested* by the public, an important factor in

assessing the effectiveness of LDEQ’s public participation efforts. As a result, LDEQ could not tell us how many hearing requests had been denied.

Public Participation Not Clearly and Sufficiently Emphasized

Public participation roles and responsibilities within LDEQ were not clearly defined or sufficiently emphasized. Clearly defined roles and responsibilities are necessary for any organization to be efficient and effective. However, there appeared to be a disconnect between the public participation section, permit writers, and the LDEQ Permits Administrator in addressing citizen comments, as shown in the accompanying example.

LDEQ management also has not stressed the importance of the role the public participation section could perform. The group generally had five or six people at any given time, and the tasks they performed were administrative in nature, not substantive public relations activities. For example, they scheduled hearing dates and locations, set up tables before hearings, maintained sign-in sheets, and distributed information at the hearings. This group did not do any outreach to citizen groups, even though such efforts could not only better inform the public but could build a better relationship that could foster greater public confidence in LDEQ.

According to EPA’s Reference Guide, LDEQ’s public participation group could facilitate public involvement by using some additional tools that are not required by regulation. For example:

- LDEQ could help disseminate information about a facility or permit to interested citizens by providing briefings, arranging presentations by independent technical experts, or arranging facility tours.
- LDEQ could solicit the views and opinions from members of the community regarding permit applications and provide forums for discussion between all interested parties regarding a permit application.

Example of Disconnect Within LDEQ

- ☛ LDEQ’s **public participation section** maintained a database of public comments made at hearings, but it was only used to track “inputs” – to count how many comments were received. The public participation section did not know how the comments were addressed, if at all. They tracked only those comments sent to LDEQ in writing as a result of hearings, and did not track oral comments.
- ☛ **Permit writers**, who are responsible for responding to comments, did not use the tracking database. Instead, permit writers responded to commenters separately.
- ☛ The **Permits Administrator** was unaware that the database existed until we informed him. We also told the Administrator that the database was incomplete and not used by the permit writers. Subsequently, he told the public participation section employee who maintained the database to stop maintaining it.

- LDEQ could solicit citizen input by conducting surveys and telephone polls, discussing issues with focus groups, or holding semiannual “open house” sessions with the public.

We were not aware of LDEQ performing any of these activities. As noted, the National Environmental Justice Advisory Council’s core values state the public participation process must seek out and facilitate the involvement of those potentially affected.

LDEQ Issued Multiple Permits Without Providing Complete Information to Public

When proposing a permit, LDEQ did not provide the public with a clear picture of all air pollution activities at a given facility. Specifically, LDEQ issued multiple permits to the same facility, but did not clearly identify in operating permits and permit notices the total number of permits issued to a particular facility nor the total criteria and toxic air pollutant emissions permitted for each facility. Not having complete information on a facility hampers the public’s ability to effectively comment on proposed permit conditions. When Congress passed the Clean Air Act amendments in 1990, the goal of the Title V program was to consolidate all air pollution control requirements into a *single*, comprehensive operating permit that covers *all aspects* of an emission source’s air pollution activities. This improves the public’s ability to know what requirements the facility is subject to and its compliance status. The practice of not identifying the total number of permits or emissions does not provide the public with the necessary information to gain a comprehensive understanding of how a facility operates. An example is illustrated in the accompanying box.

Example of Single Facility With Multiple Permits

The Exxon Mobil facility in Baton Rouge has received 13 Title V permits and 42 more are pending issuance – a total of 55 Title V permits for one facility. None of 13 issued or 42 pending permits refer to, or provide information on, the emissions for any of the other 54 permits. This reference to the other permits should aggregate all permitting actions and emissions for the site, such as through a table of contents. In this case, a citizen may never realize by looking at a permit that there are 54 other Title V permits that cover the facility.

For our sample of 10 facilities, LDEQ had issued a total of 61 Title V permits, an average of over 6 per facility. There were only 2 facilities out of the 10 for which LDEQ had issued only 1 Title V permit. In addition, there were a total of 84 more Title V applications under review for these same 10 facilities. Therefore, there was a potential total of 145 Title V permits being issued to these 10 facilities, an average of almost 15 permits per facility. Table 1 provides a breakdown.

Table 1: Title V Permits Issued and Under Review, By Facility

Facility	Permits Issued *	Permits Under Review	Total
Chevron Chemical Co., Belle Chasse	2	0	2
Conoco, Inc., Westlake	6	0	6
Dow Chemical Co., Plaquemine	14	14	28
Exxon Mobil Co., U.S.A., Baton Rouge	13	42	55
Marathon Ashland Petroleum, LLC, Garyville	2	3	5
Motiva Enterprises, LLC, Convent	1	0	1
Motiva Enterprises, LLC, Norco **	12	7	19
Rubicon, Inc., Geismar	3	5	8
Tosco (BP Oil), Belle Chasse	7	13	20
Westlake Petrochemical, Sulphur	1	0	1
Total	61	84	145

* Includes General and Regular Title V permits. General Title V permits cover numerous similar sources. Regular Title V permits cover single sources.

** Includes Motiva Norco, Shell Norco, Shell Oil (Norco), and Tejas Norco.

According to LDEQ officials, they issue multiple permits for facilities because industry representatives requested they do so. Both LDEQ and EPA Region 6 told us there is no prohibition against issuing multiple permits. LDEQ and industry representatives both said it is beneficial to companies if individual processes (e.g., chemical process in a catalytic cracking unit) are permitted separately. LDEQ officials believe they can more easily amend or modify individual permits, if necessary, than one large permit. According to EPA's Office of Air Quality Planning and Standards, multiple permits are allowed for similar emission sources if sufficient documentation showing all permitted activities on the site are listed and the total emissions are combined to give a complete picture of all emissions. According to Region 6, Louisiana and Texas are the only two states in the Region that issue multiple permits for one facility.

Because LDEQ did not aggregate total emissions for a given site, a complete assessment of emissions cannot be readily made. Further, having multiple permits for a facility requires the public to search numerous files just to understand how one permit relates to the entire facility's emissions. As noted earlier (see page 6), LDEQ's files were often unorganized, incomplete, missing, or inaccessible, which

further reduces the chances of the public obtaining all the information needed to make an informed decision.

Permit Documents Need to Be Clearer

LDEQ could ensure that permits are more clearly written to facilitate better public understanding. This would include defining the scope of an individual permit as it relates to a facility's total number of permits and emissions. Air permits should be so transparent as to provide the reader with complete information about a facility, the processes used, the pollutants emitted, the requirements for those pollutants, the inspection methods, and any prior enforcement history.

We interviewed several citizen groups, as well as a technical expert, to obtain their views on the readability and understandability of permits. Citizen groups – such as the Louisiana Environmental Action Network, the Calcasieu League for Environmental Action Now, Mossville Environmental Action Now, and the Tulane Environmental Law Clinic – told us that it is very hard to understand the technical processes in LDEQ permits and determine the impacts they may have on the environment and their communities. In addition, we contacted a California agency, recommended to us by Region 6 as a technical expert in the field of air permitting, and a senior manager for this agency also indicated the permit we provided for review was difficult to read (see box).

California Official Confirms Difficulty in Reading Louisiana Permits

The Senior Manager for Refineries within the California South Coast Air Quality Management District's Office of Engineering and Compliance – which is responsible for all permitting of stationary sources in southern California – reviewed the permit materials we sent her for one Louisiana facility. She said the materials were difficult to read and did not go far enough in explaining what effects the processes would have on nearby communities and other members of the general public. The South Coast Air Quality Management District, the air pollution control agency for the four-county region including Los Angeles and Orange counties, covers 12,000 square miles and is home to about 14 million people.

Conclusion

For public participation to be meaningful, citizens must have easy access to public records that are complete and organized. Public hearings should be conducted in an independent and objective manner without the appearance of bias or conflicts of interest. The contribution that the public can make to ensuring effective permits is something that LDEQ needs to emphasize in its organization. Such organizations should provide reasonable stewardship of the public trust. Further, Title V permits should be written in a way to help the citizen understand them, including how a given permit relates to the total emissions at a facility.

Improvements in these and other areas would provide for a more effective process and help address the perception of certain groups in Louisiana that industry has an unfair advantage during the permitting process.

Recommendation

2-1 We recommend that the EPA Region 6 Administrator work with LDEQ to make the public participation process for air permits more effective, with emphasis on the:

- Accessibility, ease of use, and understandability of permits and other documents made available for review or comment.
- Number of hearings not held and the reasons for denial.
- Need for LDEQ employees to be impartial and refrain from appearances of bias.
- Clarification of the roles and responsibilities for state personnel involved with the public participation process.
- Need to conduct more outreach to the public, including soliciting citizen input with surveys and telephone polls, discussing issues with focus groups, and holding semiannual “open house” sessions.
- Need to encourage LDEQ to improve its Title V permits program by providing the public with a source that lists all permits for a facility and aggregates all permitted emissions on each individual permit.

Agency Comments and OIG Evaluation

Region 6 generally agreed with Recommendation 2-1. The Region agreed to work with LDEQ on public participation issues and plans to encourage LDEQ to improve its process. However, the Region’s response to the recommendation lacked sufficient detail for us to determine specifically what actions the Region plans to take and by when. In its response to this report, the Region needs to inform OIG of the specific actions it will be taking to work with LDEQ on each of the matters listed in the recommendation. The Region’s response also needs to include specific timeframes for accomplishing these corrective actions.

Region 6 disagreed with the portion of the recommendation that the Region should encourage LDEQ to list all permits for a facility and aggregate all permitted emissions on each individual permit. The Region stated that the aggregation of all permits, especially for large facilities, could discourage public

participation by overwhelming an interested person with data. The Region further stated that they agreed with the intent of OIG's recommendation, but differed on how to achieve the objective of improving the public's understanding and involvement. To be responsive to our recommendation, the Region, in its final response, needs to describe in detail how it will meet the objective of ensuring that the public understands the total amount of emissions permitted by any given facility. The Region also needs to provide milestones for this corrective action.

OIG believes that data directly affecting the decisions of LDEQ must be available for the public to make informed decisions on proposed permits. In discussions with EPA's Office of Air Quality Planning and Standards, we were told that "at a minimum all the permits should be listed and emissions aggregated for each permit." Issuing multiple permits for numerous sources within one facility makes it more difficult for citizens to make informed decisions on any one permit submission. OIG believes that full disclosure regarding the number of permits any one facility has already obtained should be made available to the public when a new permit is proposed for issuance. Such full disclosure or aggregation of all emissions for each facility would help with the understanding of the public, as well as the LDEQ engineers writing and issuing these permits. LDEQ should provide a simple list of all of the permits that a single facility has at the point in time when a given permit is being sent out for public notice, together with emissions totals. This would likely be one to two pages for Title V facilities, but would serve the purpose of at least alerting the public that this is one of a number of permits for the same facility.

Chapter 3

Region 6 Oversight Needs Improvement

EPA Region 6 oversight of LDEQ's Title V air permitting program needs improvement. EPA Region 6 did not review public participation issues as part of its review of permits, and needs to resolve some permit related issues with LDEQ. As a result, LDEQ's permitting program has deficiencies, which can impede public participation (see Chapter 2).

Improvements Needed in Public Participation Oversight

EPA Region 6 did not review public participation issues as part of its review of permits. Region 6 – as the entity that authorized Louisiana to carry out the program – should oversee LDEQ's implementation of the program to ensure that the goals are met. However, in our opinion, Region 6 did not adequately review public participation issues because the Region did not:

- receive public comments before LDEQ finalized permits.
- place emphasis on oversight of public participation.
- perform a thorough on-site review at LDEQ.

According to EPA's Strategic Plan, EPA oversight of state environmental programs is to ensure compliance with federal laws and achievement of national objectives. Further, it states that EPA will foster efforts to make environmental and human health information more available and understandable to the public, and EPA should tailor the type and amount of EPA oversight to the needs of individual states. However, we noted the following issues.

Public Comments Not Reviewed By EPA Before Permit Issuance

Region 6 did not review public participation issues because it did not require LDEQ to provide relevant documents for review *before* LDEQ finalized permits. Citizens have raised concerns about public participation in the Louisiana Title V program. Nonetheless, the Records of Decision, public comments from hearings, written comments, and LDEQ's responses to these comments were submitted to the Region by LDEQ *after* the final permit was issued, according to Region 6's Permitting Division. Region 6 stated that there are a few instances, such as for controversial permits, when they may review LDEQ's activities before the public comment period expired. However, they indicated the Permitting Division did not routinely review public comments when they reviewed proposed permits. Further, the Region did not provide any documentation, including in mid-year and end-of-year review reports, showing that they had reviewed public comments and LDEQ

responses. As a result, Region 6 did not proactively identify issues that may affect citizens and hold LDEQ accountable for addressing the issues.

Region 6 Needs More Proactive Public Participation Oversight Role

The 2001 Performance Partnership Grant workplan states: (1) how LDEQ should notify the public regarding permit actions, and (2) that EPA will continue to receive copies of draft permits for review and provide comments to LDEQ. However, the workplan does not require EPA to oversee the public participation process. According to EPA's Strategic Plan, EPA will negotiate performance partnership agreements with states that define the roles and responsibilities of both EPA and states. The Region 6 Permitting Division Director told us that the Region needs to improve its public participation process, including identifying how citizens' comments could improve the permitting process. He also stated that the Region is spending an increasing level of resources responding to citizen petitions. In our opinion, if the Region took a more proactive approach to oversight and identifying potential problems, the Region may not receive as many petitions.

Region Oversight Insufficient to Note Public Participation Problems

Region 6 has not performed a thorough on-site review of Louisiana's permitting system since LDEQ reorganized 4 years ago. While the Region has traveled to LDEQ to discuss specific issues, such as controversial permits, it did not do so for the air portion of the mid-year and end-of-year reviews. (We were aware of such on-site end-of-year reviews performed by Region 6's Water Division.) Region 6 Permitting Division officials said they could not remember the last time Region 6 went to LDEQ to perform a review for the air program. Due to a limited travel budget, they said they conducted reviews twice a year via telephone and fax. They noted states have requested more on-site reviews by the Region. Because the Region does not travel to LDEQ's offices to perform reviews, it does not review LDEQ's air permit files. If they had reviewed those files, they may have determined that the files were unorganized, incomplete, missing, and inaccessible (see chapter 2). Region 6 staff also told us that, with the exception of hearings on petitioned or complex permits, they did not attend LDEQ public hearings.

Region 6 Needs to Resolve Permit Issues with LDEQ

Region 6 has identified problems with LDEQ's regulations regarding excess emissions, but has backed off, or "disinvested," its efforts toward resolving the issue. Since 1997, the Region has reviewed fewer permits each year.

Region 6 Disinvesting in Resolving Excess Emissions Concern

Region 6 identified and documented a problem in 1998 with LDEQ's regulations pertaining to startup, shutdown, and maintenance events. The Region believes

LDEQ's regulations do not address enforcement regarding unauthorized emissions and startup, shutdown, and maintenance activities. However, LDEQ believes its regulations and procedures comply with EPA policy in these areas, and Region 6 has been unable to resolve the issue with LDEQ. In the Region's 2002 Memorandum of Agreement with the Office of Air and Radiation, the Region said resolving this difference with LDEQ is a lower priority and they plan to disinvest in the effort.

Region 6 Has Reviewed Fewer Permits

Region 6 has reviewed significantly fewer permits over the past 4 years. While the number of permits issued by the five Region 6 states dropped 51 percent from 1997 to 2001, the number of permits the Region reviewed dropped even more. For the entire Region, Region 6 reviewed 65 percent fewer draft permits in 2001 than in 1997 (see Table 2). The Region had to estimate how many permits it reviewed because, until 2000, it did not track permits reviewed. Regional officials could not provide us with a breakdown by state. They also could not provide information on the number of comments they made on LDEQ's draft permits or the type of comments, because Region 6 did not keep a separate file or tracking system of their comments. Further, the estimates in Table 2 include all types of air permits because the Region was unable to determine which were solely Title V permits. Instead, the Region filed its written comments in each individual permit file. Therefore, Region personnel would have to pull and review approximately 600 files to identify trends.

Table 2: Estimate Number of Permits Reviewed by Region 6

Year	No.
1997	200
1998	150
1999	100
2000	70
2001	70

According to Region 6, it has reviewed fewer permits because priorities have shifted and turnover has been high in the Air Permits Section. Staffing in the Section has declined from 17 people in fiscal 1998 to 11 as of January 2002, a 35-percent drop. According to the Section, they are in the process of hiring two to three people. EPA's Office of Air and Radiation indicated staff allocations for Region 6's air program have remained constant since 1999, at about 58 full-time employees.

The Office of Air and Radiation's National Program Guidance for fiscal 2002 stated that all of EPA's 10 regions should, among other things, review at least 10 percent of the Title V operating permits proposed by states and local permitting authorities. However, Region 6 is concentrating on other priorities. For fiscal 2002, the Region--in an investments/disinvestments chart--indicated it does *not* plan to review at least 10 percent of Title V operating permits, and is reducing the

number of formal mid-year reviews. Region 6 plans, among other things, to spend more resources on reviewing Title V permit petitions, and coordinating with OIG on the “Inspector General study [audit] on permits.” The Region’s priorities noted in its 2001 end-of-year review of LDEQ’s air program documents relate primarily to emissions credit banking issues.

Conclusion

Region 6 has not taken sufficient responsibility for ensuring that LDEQ operates an effective air permits program. EPA oversight is supposed to ensure that states comply with federal laws and achieve national environmental goals. In this role, EPA should foster efforts to make environmental and human health information more available and understandable to the public. EPA Region 6 officials have stated they are aware of longstanding problems with LDEQ’s implementation of delegated programs, yet we believe they have not demonstrated sufficient efforts to correct the problems.

Recommendations

We recommend that the EPA Region 6 Administrator require staff to:

- 3-1 Review public participation issues related to LDEQ’s Title V permits, including reviewing comments to LDEQ-proposed Title V permits prior to LDEQ’s issuance of final permits.
- 3-2 Clearly define what part of the Region’s organization is responsible for addressing Title V public participation oversight and how such oversight will be conducted.
- 3-3 Perform a thorough on-site review at LDEQ of the air permits program, including records management and public participation.
- 3-4 Establish a system for tracking the permits reviewed by state and facility name, and include the comments it makes for each permit reviewed and how it resolved the comments.
- 3-5 Comply with the National Program Guidance and review at least 10 percent of LDEQ’s proposed Title V permits prior to LDEQ issuance.

Agency Comments and OIG Evaluation

Region 6 agreed with Recommendation 3-1. The Region stated that there are implementation issues with their current practice of reviewing permits that need to be improved. The Region stated that it is currently discussing an approach to

revise their review procedure to include an EPA review of public comments and the separation of the comment periods on a regular basis. To be responsive to our recommendation, the Region in its final response needs to provide us with specific actions it plans to take to correct this situation and when they plan to complete such actions.

Region 6 agreed with Recommendation 3-2. The Region stated that its Air Permits Section with the Multimedia Planning and Permitting Division is responsible for oversight. However, they further stated that, while review of public participation is inherent with EPA's oversight role of the permit program, it would be better to specifically state this intent in the performance partnership grant document to clarify that point. The Region stated that it plans to include this statement in the fiscal year 2003 performance partnership grant with LDEQ. Region 6 said it will also continue to participate in public events, such as public hearings, on an ongoing basis as resources and priorities allow. The Region's response and planned corrective actions, when complete, will address this recommendation. No further response is needed on this recommendation.

Region 6 agreed with Recommendation 3-3. The Region stated that it will review LDEQ's air permits program, records management, and public participation in the fiscal years 2002, 2003, and 2004 program reviews. They also stated that they expect to conduct an on-site end-of-year review in October 2002 for LDEQ. The Region's response and planned corrective actions, when complete, will address this recommendation. OIG requests that Region 6 provide OIG with documentation of its October 2002 on-site review at LDEQ.

Region 6 agreed with Recommendation 3-4. The Region stated that it established a database, in March 2001, that tracks permits it has reviewed. The database, according to the Region, contains draft permits and supporting documents, such as fact sheets, comment letters, and correspondence between the Region and LDEQ. The Region stated that it would develop a format for gathering all comment letters electronically and ensure consistent data input for each state. The Region, in its final response to this report, needs to provide OIG the timeframe in which they plan to complete the development of this format.

Region 6 generally agreed with Recommendation 3-5. The Region stated that it has continued to meet the Headquarters goal of reviewing 10 percent of the operating permits. The Region further stated that its current review strategy for fiscal year 2003 for Louisiana includes the review of Title V permits for facilities located in non-attainment areas and that involve netting or offset requirements. The Region also stated that it plans to conduct on-site visits on a rotating schedule so that all states have an on-site mid- or end-of-year review every 2 years.

Although the Region stated in its response that it has continued to meet the Headquarters goal of reviewing 10 percent of Title V permits, they were unable to provide detailed data to show that. The data the Region provided were estimates

of permits reviewed, and the data included all types of air permits because the Region was unable to determine which were solely Title V permits. The Region's actions, when completed, will address Recommendation 3-5, and no further response is need on this recommendation. The OIG requests that Region 6 provide the OIG with documentation showing completion of its future on-site visits at LDEQ.

Chapter 4

Other Matters

During our review, we identified two issues not directly impacting our objectives that we believe should be brought to Region 6's attention. While we did not perform sufficient work to reach conclusions, we are bringing these issues to the attention of Region 6 management because there could be systemic problems that need to be addressed. Specifically, we noted that:

- LDEQ's Title V air permit backlog is very large and continues to grow.
- EPA Region 6 has not performed an audit of LDEQ's permit fees.

We believe that the underlying causes of the first matter may be LDEQ's reorganization and use of its Tools for Environmental Management and Protection Organizations (TEMPO) data system. The Louisiana Office of the Legislative Auditor also reported in its March 2002 report that the LDEQ reorganization and use of TEMPO have decreased employee morale and productivity, including the issuance of permits. EPA Region 6 has not performed an audit of LDEQ's permit fees because they did not believe it a high priority.

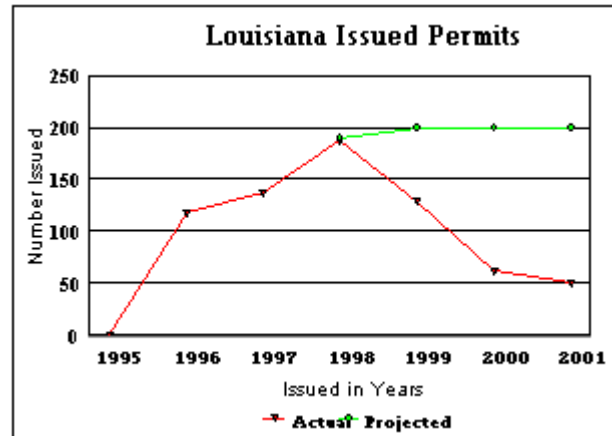
LDEQ reorganized in 1998 from a departmental organization that focused on program-specific issues – such as air, water, and hazardous waste – to a functionally-based organization that focuses on such areas as permits, inspections, and enforcement. According to LDEQ, the reorganization was to result in a more efficient and effective workplace. At the time of the reorganization, LDEQ also undertook a massive project to consolidate all electronic data and paper files into one integrated system.

LDEQ's Title V Air Permit Backlog Continues to Grow

The Clean Air Act amendment of 1990 required all Title V air permits to be issued by November 1997. EPA revised its deadline for meeting the requirement to December 2003. According to LDEQ, it still needs to issue 315 initial Title V permits, and LDEQ has verbally agreed to issue them by December 2003. However, LDEQ has not told EPA how it intends to do so. LDEQ would have to issue about 158 new permits a year in 2002 and 2003 to meet the revised deadline. Since LDEQ issued only 51 Title V permits in 2001, and the number of permits LDEQ has issued has been steadily declining since 1998 (see graphic for permits issued and LDEQ projections), it appears unrealistic that they will meet the new deadline. This is particularly so because LDEQ has saved the most complicated Title V permits and those that take the longest to write until last. Title V permits

are valid for 5 years, and since the original Title V air permits issued starting in 1996 began to expire in 2001 and need renewal, the total number of permits to issue will be even greater.

The Region did not require LDEQ to timely reduce its air permit backlog. The Region did not negotiate any air permit backlog reduction commitments for LDEQ from 1999 through 2001. Title V does provide for implementation agreements, and these can be an appropriate mechanism for addressing permit backlogs.



Source: LDEQ Permits Division

Region 6 Has Not Performed a Fee Audit of LDEQ

EPA Region 6 had not performed any Title V permit fee reviews (fee audits) of LDEQ. A fee audit is conducted to ensure that a state is not mixing money (i.e., the state is only spending Title V dollars on authorized activities). If the Region identifies deficiencies in the audit, the Region could recommend that the fee is too low and needs to be increased to ensure successful operation of the program. The Region could also recommend that money be spent only for authorized purposes. If EPA does not analyze the fees, LDEQ may not obtain sufficient funds to run its Title V program.

EPA concluded in the September 12, 1995, Federal Register that LDEQ collected an average of \$19 per ton for all pollutants (\$9 per ton for criteria pollutants, and \$25, \$50, or \$100 per ton based on the class of the pollutant for facilities that emit hazardous air pollutants). Louisiana's average fee of \$19 per ton is well below the EPA-determined "presumptive minimum" amount of \$35 per ton to adequately run a state Title V program.

Further, LDEQ has not collected all of the fees it has assessed. According to the Louisiana Legislative Auditor's March 2002 report on LDEQ, outstanding permit fees were a part of the nearly \$11 million uncollected by LDEQ for the 10 year period beginning in fiscal year 1992.

One of the Regional responsibilities listed in the Office of Air and Radiation National Program Guidance for fiscal 2002 is to perform fee oversight reviews on 25 percent of the states and Title V permitting authorities (in the case of Region 6, reviews of two states). However, according to Region 6, Arkansas is the only state for which they have conducted a fee audit. Further, Region 6 listed Title V

fee audits as one area for which they plan to reduce efforts (“disinvestments”). The fiscal year 2000 grant work plan for LDEQ contained the goal of conducting a permit fee review.

Agency Comments and OIG Evaluation

Regarding Louisiana’s air permit backlog, the Region stated that Louisiana is average for issuance of Title V permits compared to other states throughout the nation. However, during the audit we were not aware of any documentation from Region 6 encouraging the state to comply with the original timeline for issuance of permits, or requesting the state to commit to a compliance completion schedule. The Region stated that LDEQ has committed to issuing all Title V permits by December 2003. OIG believes that Region 6 needs to provide adequate oversight to ensure that LDEQ meets this December 2003 timeframe.

Regarding the fee audit issue, Region 6 informed us that it plans to perform a fee audit for Louisiana’s Title V program during fiscal year 2003. OIG agrees with the Region’s proposed action.

Based on our evaluation of the Region’s comments to the draft report, we removed a section on potential inspection issues from the report. The Region noted that the inspections that EPA conducted during the audit and those that LDEQ conducted months earlier were different in scope and not comparable. The Region also stated that it is EPA policy for inspectors to identify potential "areas of concern," not "violations" as the audit report suggested.

Background on the Clean Air Act Title V Program

Title V Program Established in 1990

The 1990 amendments to the Clean Air Act established the Title V operating permit program. Congress' main goal in adopting the Title V program was to achieve a broad-based tool to aid effective implementation of the Act and enhance enforcement. Title V requires operating permits for every major source of a regulated air pollutant and any other source covered by a current permit program. Title V of the Clean Air Act requires every major source to obtain an operating permit (see "Definitions of Major Stationary Sources" section of this exhibit). The permit includes information on which pollutants are being released, how much may be released, and what kinds of steps the source's owner or operator is taking to reduce pollution, including plans to monitor (measure) the pollution. Title V permits are intended to record in one document all of the air pollution control requirements that apply to the source. This gives the public, regulators, and the source a clear picture of what the facility is required to do to keep its air pollution under legal limits. The Title V permit should result in:

- A better understanding of the requirements that a source is subject to.
- A basis for determining whether a source is complying with the requirements.
- Increased accountability and enforcement.

Permits include enforceable emissions limits and standards, plus inspection, monitoring, compliance certification, and reporting requirements for the source. Title V permits also provide a ready vehicle for implementing other significant parts of the air program, including efforts to reduce acid rain.

States, Local Agencies Given Responsibility for Implementing Title V

States and local agencies that are authorized to implement the Title V program must take action to ensure facilities meet EPA standards. This ensures that all Americans, no matter what state they live in, have the same basic health and environmental protections. The law allows individual states to have stronger pollution controls, but states are not allowed to have weaker pollution controls than those EPA sets for the whole country. States and local agencies are required under the Title V program to, among other things: provide for adequate public participation in the permitting process, hold public hearings on proposed permits and issuing public notices; issue permits; inspect facilities; take enforcement actions; and implement regulations.

There are 112 states and local agencies in the United States approved by EPA to administer the Title V permitting program. In some states (but not Louisiana),

local agencies are responsible for implementing air pollution control programs, such as Title V. Each state and local agency is responsible for developing and implementing Title V operating permit program. Congress established the Title V program to be funded by fees from industry.

Facilities that seek permits to operate are required to pay permit fees based on the pounds of pollutants they estimate they will emit on a yearly basis. The fees that companies pay are intended to help fund state air pollution control activities (including the permit program). To have an approvable program, state and local agencies must be able, through fees, to recoup all reasonable costs of developing and administering the program, including the reasonable costs of emission and ambient monitoring, modeling, and reviewing and acting on permit applications.

Other key provisions that must be part of a Title V program before EPA should approve it include:

- Monitoring and reporting requirements.
- Authority to terminate, modify, or revoke and reissue permits for cause.
- Authority to enforce permits, permit fee provisions, and the requirement to obtain a permit.
- Public notification and opportunity for comment for every new permit and when permits are renewed or significantly revised.
- The requirement that sources provide emission reports to their permitting authorities at least semi-annually and certify compliance status annually.

A Title V permit contains all air pollution control requirements that a source must meet under the Act. This includes requirements established by EPA, states, and local agencies as part of a federally approved program, and states and local agencies that are not required by the Act and are not federally enforceable. The permit will sometimes create new requirements. The Act requires that permits contain adequate monitoring to determine whether the source is complying with specific requirements. If the current EPA or state/local agency requirements do not include monitoring, the Title V permit will create new compliance monitoring activities.

EPA Provides Oversight

While states and local agencies primarily implement the Title V program, EPA has an oversight role. EPA should review and approve each state and local agency's operating permits program; oversee implementation of the program; review a sample of proposed permits; and, if necessary, object to improper permits proposed. In addition to approving state or local agency programs, EPA is responsible for ensuring that states and local agencies administer and enforce the programs. If EPA finds a state or local agency is not adequately administering and enforcing a part of the Title V program, EPA is to notify the state or local

agency of its finding. If the deficiencies are not corrected, EPA can apply sanctions, withdraw the program, or administer a federal program in that state.

Within EPA’s Office of Air and Radiation, the Office of Air Quality Planning and Standards is responsible for developing national regulations and guidance for Title V and providing technical assistance to EPA regions and the states. Regions are responsible for reviewing proposed permits, assisting states and local agencies in getting initial permits issued, and monitoring permit renewal requirements. Every 2 years, the Office of Air and Radiation and the regions negotiate a Memorandum of Agreement identifying what activities they will perform.

Definitions of Major Stationary Sources

Passage of the Clean Air Act Amendments of 1990 brought new definitions of major stationary sources that varied depending on the type of pollutant, the attainment status of the area where the pollutant is emitted, the synergistic effects of multiple airborne pollutants, the ability of pollutants to travel long distances, and other factors. As a result, simple definitions of what sources are major are difficult to find. Generally, a major source is any source with annual emissions that meet or exceed levels specified in the Act. Table 3 shows the annual emission levels, in tons of pollution, that define a major source of any National Ambient Air Quality Standard pollutants under the Act:

Table 3: Annual Emission Levels that Define Sources

Attainment Status of Area Where Source Is Located	Potential to Emit (Tons/Year)						
	Carbon Monoxide (CO)	Lead (Pb)*	Nitrogen Dioxide (NO2)*	Nitrogen Oxides (NOx)	Particulate Matter (PM-10)	Sulfur Dioxide (SO2)*	Volatile Organic Compounds (VOCs)
Attainment Areas	100	100	100	100	100	100	100
Nonattainment Areas							
Marginal **				100			100
Moderate	100			100	100		100
Serious	50			50	70		50
Severe **				25			25
Extreme				10			10
Northeast Ozone Transport Region				50-marginal 100-moderate			50-marginal 100-moderate

* The Act did not establish additional major source classifications for these pollutants based on an area’s attainment status.

** Nonattainment areas for CO and PM-10 are classified as either moderate or serious.

For example, a steel drum reconditioner, located in a non-attainment area classified as “serious,” which applies paint to the steel drums before selling them and annually emits 50 tons or more of volatile organic compound emissions into the air, is a major source.

The 1990 Act also added new definitions for major sources of hazardous air pollutants, generally referred to as air toxics. The Act listed 188 such air toxics, including the airborne emissions of arsenic, benzene, dioxin, formaldehyde, mercury, and perchloroethylene. By definition, any source is a major source if it emits 10 or more tons annually of any one of these 188 air toxics, or 25 or more tons of any combination of these 188 air toxics.

In addition to these 188 air toxics, there are other pollutants, such as asbestos, regulated under the National Emission Standards for Hazardous Air Pollutants, that may cause sources to qualify as major sources. Additionally, engaging in or undertaking certain activities can cause a source to become a major source. These generally involve sources that are subject to one or more of the following:

- EPA's New Source Performance Standards limitations for new sources of pollution.
- Prevention of Significant Deterioration provisions or the non-attainment area New Source Review provisions for expanding or changing sources.
- Selected sources with potential to contribute to acid rain problems.
- Solid waste incinerators.

According to EPA, over 35,000 sources in the United States have the potential to emit pollutants in sufficient amounts to be a major source, and thus be required to obtain a Title V permit. However, about 17,000 sources have chosen to limit their hours of operation, install pollution control equipment, or take other actions to avoid being subject to the Title V requirements.

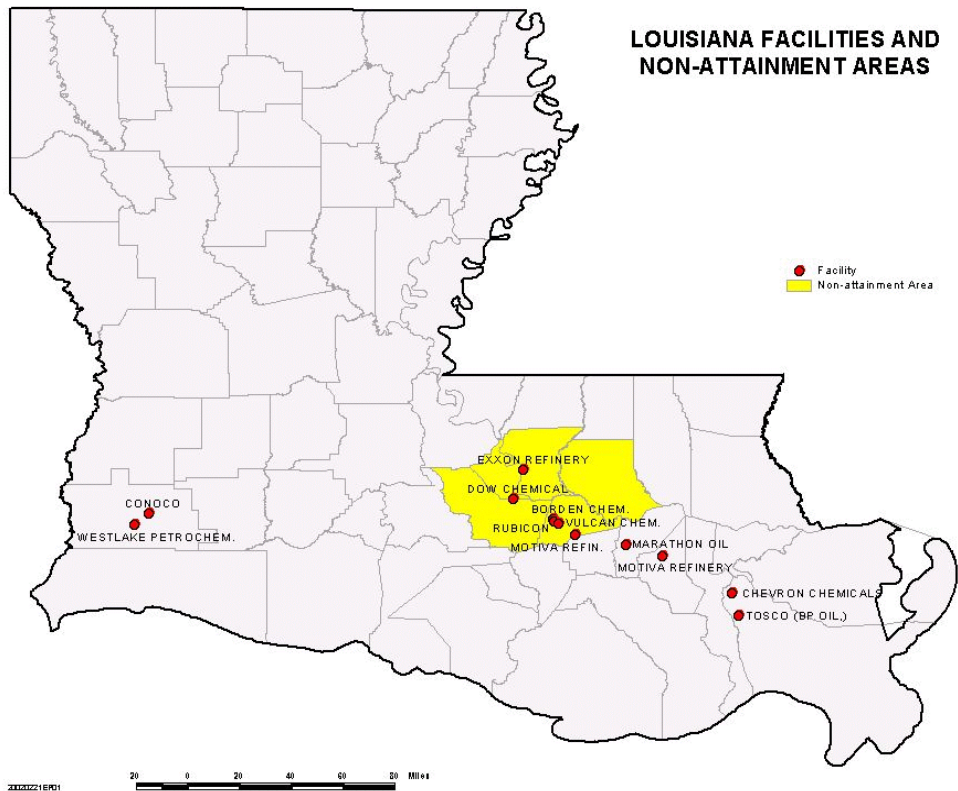
Details on Scope, Methodology, and Prior Audit Coverage

Scope and Methodology

We conducted our audit fieldwork at LDEQ in Baton Rouge, Louisiana; EPA Region 6 Headquarters in Dallas, Texas; the EPA Office of Air and Radiation's Office of Air Quality Planning and Standards in Research Triangle Park, North Carolina; and the EPA Office of Enforcement and Compliance Assurance in Washington, DC. We limited our review of LDEQ to the air program – we did not review LDEQ's water, solid waste, or hazardous waste programs. We interviewed LDEQ management, permit writers, inspectors, enforcement personnel, public participation staff, and attorneys regarding public participation issues under Title V. We also visited LDEQ's Acadiana Regional Office in Lafayette. We also obtained and reviewed internal audit reports conducted by LDEQ staff to determine whether LDEQ had audited its air permitting program. We reviewed LDEQ's website to obtain information related to issued Public Notices.

We obtained a listing of all Louisiana Title V permits from LDEQ. We judgmentally selected a sample of 10 major facilities in Louisiana, and reviewed permits, correspondence, public participation files, and information related to proposed and final permits. We only reviewed facilities classified as "major" sources (see Exhibit A). We also reviewed compliance and inspection files for the facilities to determine enforcement-related activities LDEQ had conducted. We selected these 10 major facilities because most were located in or near Louisiana's only non-attainment area – which includes the five-parish area around Baton Rouge – and because they were petroleum refineries or petrochemical companies, which emit significant amounts of pollutants into the air. The public had also expressed concerns about some of these facilities. The 10 Louisiana facilities are listed below and shown in the map that follows:

- ▶ Chevron Chemical Co., Belle Chasse
- ▶ Conoco, Inc., Westlake
- ▶ Dow Chemical Co., Plaquemine
- ▶ Exxon Mobil Co., U.S.A., Baton Rouge
- ▶ Marathon Ashland Petroleum, LLC, Garyville
- ▶ Motiva Enterprises, LLC, Convent
- ▶ Motiva Enterprises, LLC, Norco
- ▶ Rubicon, Inc., Geismar
- ▶ Tosco (BP Oil), Belle Chasse
- ▶ Westlake Petrochemical, Sulphur



To obtain information related to public participation, we interviewed citizen groups in Louisiana. We spoke with officials from the Louisiana Environmental Action Network, the Calcasieu Louisiana Environmental Action Network, the Mossville Environmental Action Network, and the Environmental Defense Fund. We also spoke with officials from the Tulane Environmental Law Clinic. We did not meet with citizens individually.

We also attended and observed interactions at four public hearings in Louisiana during the months of July 2001 to November 2001 related to four proposed permits, for (1) Dow Chemical, (2) Ventures Lease Company, (3) Condea Vista, and (4) Honeywell. Prior to three of the four hearings, we visited three Louisiana public libraries the day of the public hearings to review the permit materials provided to the public for review, to determine whether LDEQ had provided the libraries with the relevant permit documents for the public's review, as required. We also attended one public meeting in Calcasieu Parish in January 2001 between EPA Region 6 staff and members of the Calcasieu Louisiana Environmental Action Network and Mossville Environmental Action Network.

To obtain information regarding LDEQ's air inspection process, we participated in two unannounced facility inspections – Borden Chemicals and Plastics, and Vulcan Chemical Corporation, both in Geismar (see map above). EPA inspectors from Region 6, assisted by inspectors from EPA Regions 2 and 4 (at the request of Region 6), conducted the multimedia inspections from November 5-8, 2001. We

selected these two facilities because they were recently inspected by LDEQ, and they were both large chemical plants in Louisiana's non-attainment area.

While OIG staff did not assess the technical quality of LDEQ's permits or the likelihood that the public could read and understand them, we did provide an example of an LDEQ-issued permit to California's South Coast Air Quality Management District for its review and comment. That District is responsible for issuing air permits to regulated entities in southern California, and was recommended to us by Region 6 for the purpose of providing a valid independent review of LDEQ permits.

We conducted fieldwork related to EPA oversight primarily at EPA Region 6 Headquarters. We interviewed EPA Region 6 management and program staff responsible for oversight of LDEQ. We obtained copies of Region 6's mid-year and end-of-year reviews of LDEQ, as well as the performance measures identified in the Performance Partnership Agreement between EPA Region 6 and LDEQ. Region 6 also provided the amount of EPA funding given to LDEQ since 1996 to administer the air program. We also reviewed EPA's website, analyzed 1999 Toxic Release Inventory data, and compared all five of the Region 6 states' air emissions by population and square mileage to determine how Louisiana compared to the other states in Region 6. We did not review the quality of the data in the EPA and state databases.

We also met with staff from EPA's Office of Air Quality Planning and Standards. We discussed issues related to Regional oversight as well as LDEQ's issuance of multiple permits for individual facilities. We spoke with officials from EPA's Office of Enforcement and Compliance Assurance for their perspectives on LDEQ's permitting methods.

We obtained health information from the Centers for Disease Control's and EPA's websites.

During our audit we coordinated and shared information with the Louisiana Office of the Legislative Auditor from October 2001 to January 2002. We conducted joint interviews of LDEQ staff with state auditors and provided state auditors with data and information related to air issues.

We conducted our audit fieldwork from May 2001 to January 2002. We performed the audit in accordance with the *Government Auditing Standards*, issued by the Comptroller General of the United States, as they apply to program audits.

Prior Audit Coverage

We issued a report on March 29, 2002, *EPA and State Progress In Issuing Title V Permits* (Report No. 2002-P-00008). This report notes that permit issuance has been delayed among states. It further notes that EPA did not provide adequate oversight and technical assistance to state and local Title V programs, and did not

use the sanctions provided in the Clean Air Act to foster more timely issuance of Title V permits.

We also issued a report on September 26, 1996, *Region 6's Enforcement and Compliance Assurance Program* (Report No. 6100309), which included a review of air enforcement activities in Louisiana. We found that Region 6 and some of its states, including Louisiana, did not adequately publicize enforcement actions. Louisiana also did not formally compute the economic benefit received by industry when assessing fines for violating the Clean Air Act.

The Louisiana Office of the Legislative Auditor issued a report on all of LDEQ's programs (air, water, solid waste, and hazardous waste) in March 2002, *Performance Audit: Department of Environmental Quality*. They found that LDEQ had not issued 38 percent of the initial Title V permits, and did not issue enforcement actions for 25 percent of air monitoring violations. Further, 13 percent of the air files the state auditors requested could not be found by LDEQ.

Appendix 1

EPA Region 6 Response

Appendix 2

Louisiana Department of Environmental Quality Response

Distribution

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EPA Region 6

Regional Administrator
Deputy Regional Administrator
Director, Multimedia Planning and Permitting Division
Director, Enforcement and Compliance Assurance Division
Audit Followup Coordinator
External Affairs Office

Louisiana Department of Environmental Quality

Secretary



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 6
1445 ROSS AVENUE, SUITE 1200
DALLAS, TX 75202-2733

June 21, 2002

MEMORANDUM

SUBJECT: Response to Office of Inspector General (OIG) Draft Report: "Louisiana's Air Permitting Program Needs to Better Address Public Participation Concerns"; Report Number 2000-71351-xxxx

FROM: Carl E. Edlund, P.E., Director
Multimedia Planning and Permitting Division (6PD)

TO: Randy Holthaus
Region 6 OIG Branch Manager (6IG)

The purpose of this memorandum is to respond to the above referenced draft audit report forwarded to Region 6 on May 15, 2002, for review and comment. In general, the report concludes that "although LDEQ met the public participation requirements for air permitting, its process could be improved." (Executive Summary, p. i.) In addition, the audit points out areas where the U.S. Environmental Protection Agency (EPA) oversight of State air permit programs can be strengthened. We agree that improvements by both EPA and the Louisiana Department of Environmental Quality (LDEQ) can be made in the Title V program and your audit report to provide recommendations to strengthen the State and EPA operating relationship. The attached summary provides a response to each of the Region 6 OIG concerns, comments, and/or recommendations. In general, we agree with many OIG recommendations; however, we have also identified several points needing clarification or corrections and summarized a number of initiatives that are already under way to make improvement in areas that you identify as needing change.

There is one broad conclusion in the draft report that we wish to highlight for review by OIG. The first page of the Executive Summary states that: "Region 6 oversight [of the LDEQ] was limited primarily because EPA management has over-emphasized 'partnering' with the state." We did not find evidence in the report to support this perception and have offered in our response examples of how EPA oversight and partnership have made effective improvements in the air permit program. Both State and Federal environmental programs share common missions to protect

public health and the environment, so partnerships are an effective way to respond to common goals. It is also important to note that when we seek program improvements above the basic regulatory requirements, the good faith between the agencies -- the spirit of partnership -- becomes specially important.

Thank you for the opportunity to comment on the report. I look forward to working with you in the future on this and other aspects of Louisiana's environmental program. Should you have any questions, please feel free to contact me or Mr. David Neleigh of my staff at (214) 665-7250.

Attachment

cc: Gregg Cooke (6RA)
Larry Starfield (6RA-D)
Rebecca Weber (6PD)
David Neleigh (6PD-R)
Bonnie Braganza (6PD-R)
Charles Sheehan (6RC)
Ragan Tate (6RC-M)
Lucinda Watson (6RC-M)
Michael Boydston (6RC-M)
Sam Coleman (6EN)
Donna Ascenzi (6EN-AA)
Gerald Mokry (6EN-AA)

ATTACHMENT

The following comments are furnished in response to the Region 6 OIG's draft audit permit on Louisiana's Air Permitting Program Needs to Better Address Public Participation Concerns, Report Number 2000-1351-xxxx, dated May 15, 2002:

CHAPTER 1: "Introduction"

OIG Comment: "Clean Air Act and Title V"

The OIG draft report states that "Title V requires operating permits for every major source of a regulated air pollutant and any other source covered by a current permit program. Each Title V operating permit is supposed to reduce source violations, improve regulatory agency enforcement abilities, establish site-specific monitoring requirements, increase source accountability, and ensure adequate public involvement in permitting process."

EPA Response

Several points should be clarified:

- The Clean Air Act does not require operating permits for "any other source covered by a current permit program" or to "establish site-specific monitoring requirements."
- A permitted minor source of criteria pollutants is not presently covered under Title V rules. Such minor sources are covered only if they are on the major source's property. (See Sections 501 and 502 of the Clean Air Act).
- We also allow different methods than monitoring to determine compliance with a permit.

OIG Comment: The draft audit report states that EPA delegated the Title V program to LDEQ effective October 12, 1995.

EPA Response:

- We should clarify that under the Clean Air Act, we grant "approval" or "authorization," not "delegation." This is important to note, since each of these terms have distinct legal meanings, in the Water, Hazardous Waste, and Air Programs.

OIG Comment: “Environmental and Health Issues”

The draft report states that the Baton Rouge area is in the process of being re-designated to severe.

EPA Response:

- Again, some clarification and expansion may be useful. We have determined that this area is violating the 1-hour ozone standard. We are publishing this determination with the consequent reclassification to “severe.” However, we have an attainment plan/Transport State Implementation Plan (SIP) and request for an extension of the attainment date pending before us for action that was submitted by LDEQ on December 31, 2001. Therefore, we are also publishing simultaneously a proposal to extend the effective date of the reclassification.
- During this time, we will be reviewing and taking appropriate action upon the pending attainment plan/Transport SIP. If we approve the attainment demonstration SIP and the request for extension of the attainment date before the classification action is effective, the area would not be reclassified to “severe.” The Federal Register Notice was signed by the Regional Administrator on June 5, 2002.

CHAPTER 2: “LDEQ’s Public Participation Process Needs Improvement”

OIG Comment: The OIG’s draft report states that EPA calls for regulatory programs to follow what it has identified as best practices for public participation in its 2000 Reference Guide, *Public Involvement in Environmental Permits*.

EPA Response:

- While we endorse the substance of the 2000 Reference Guide and encourage States to implement programs consistent with it, we note that “[o]nly ‘legislative rules’ have the force and effect of law.” *Appalachian Power Co. v. EPA*, 208 F.3d 1015, 1020 (D.C. Cir. 2000). We do not have the statutory or regulatory authority to enforce guidance as we do formal rules. *If we do treat guidance as though it were a formal rule, then we run the risk that a court will invalidate the guidance for failure to follow the rulemaking procedures required under federal law, as indeed happened in Appalachian Power.*

OIG Comment: “LDEQ Met Public Participation Requirements”

The report found that LDEQ met the public participation requirements identified in 40 Code of Federal Regulations (CFR) Part 70, which implements Title V of the Clean Air Act. The EPA’s Reference Guide summarizes EPA statutory authorities, regulations, and guidance materials related to public involvement. All Part 70 programs provide the following seven specific opportunities for public involvement:

- Public Notice
- Public Comment Periods
- Response to Comments
- Mailing Lists
- Statements of Basis
- Contact Persons
- Petitions to the EPA Administrator to object to a permit

EPA Response:

- The EPA Region 6 agrees that LDEQ is meeting the public participation requirements.

OIG Comment: The OIG draft report found that, “while LDEQ met public participation requirements in 40 CFR Part 70, its process could be more effective.”

EPA Response:

- We have been working with LDEQ to evaluate process issues consistent with guidance documents. The LDEQ has already implemented some measures and is moving forward on making other changes as recommended. We will continue to provide oversight of the Louisiana Title V program to ensure public participation is being effectively implemented according to the intent of the regulatory requirements and will continue to monitor public participation and record management in Fiscal Year (FY) 02. After new public participation processes have had the time to be implemented, we will conduct a more detailed review in FY03/04. In addition, we will also continue to implement our oversight responsibility of the LDEQ air permit program according to the intent of the regulatory requirements.

OIG Concern: “LDEQ Files Were Unorganized, Incomplete, Missing or Inaccessible”

The draft audit report recommends that EPA Region 6 Administrator work with LDEQ to make the public participation process for air permits more effective, with emphasis on the accessibility, ease of use, and understandability of permits and other documents made available for review or comment.

EPA Response: We agree that improvements need to be made in implementation and note that LDEQ has initiated a number of process improvements:

- We have discussed the records access issue with LDEQ. The LDEQ instituted new procedures to make the original documents available for public review in the 2nd Floor File Room much earlier than in the past. The documents are now to go to the file room immediately after leaving the Mail Processing Area.
- The LDEQ established the public records room in October 2000 at its Headquarters in Baton Rouge to enable the public to search, retrieve, view, and print records that have been scanned and stored electronically in LDEQ Document Management System. In addition, paper copies of all material pertinent to a particular Title V permit are to be made available for public viewing in this room at the start of the public comment period.
- The LDEQ has other initiatives underway to further improve the public participation process such as imaging, Internet based Electronic Data Management System search tools, and studies to evaluate and incorporate other actions to improve the public participation process. The EPA will continue to evaluate these improvements during the course of our oversight activities on the Louisiana Title V operating permit program.

OIG Concern: “LDEQ’s Records Numbering System [is] Confusing”

The draft report found that LDEQ’s records numbering system was confusing. The LDEQ used four different ways to identify the same information for each facility: (1) facility name; (2) permit number; (3) tracker number; and (4) Agency Interest number.

EPA Response:

- We agree that improvements need to be made. The LDEQ is in the process of finalizing a computer-based document management system, “Tool for Environmental Management and Protection Organizations” (TEMPO), that should allow for efficient document retrieval. The conversion of LDEQ to

TEMPO is intended to assist the public with obtaining required facility information in a user-friendly manner.

- We will review records management issues with LDEQ in our program reviews.

OIG Concern: “Key Document for One Permit Not Available for Public Review”

The OIG’s draft report found that LDEQ did not always provide relevant permit documents to libraries for public review prior to hearings. For one permit, although LDEQ staff had provided the proposed permit, a key engineering study was not at the library for public review.

EPA Response:

- Although it might be desirable to have all supporting information, such as engineering studies, available at all document repositories, this is not required by the regulations.
- The permit files located at the libraries should contain the permit applications, draft permits, and information on whom to contact at the State. The LDEQ is not required by 40 CFR Part 70 to include key engineering studies providing methods and calculations for the reduction of pollutants with permit files. The public notice identifies the name, address, and telephone number of a person from whom interested persons may obtain additional information, including copies of the permit draft, the application, all relevant supporting materials, including those set forth in 40 CFR 70.4(b)(3)(viii), and all other materials available to the permitting authority that are relevant to the permit decision. The public can also visit the Public Records Room at LDEQ Headquarters to obtain additional information.
- Again, we recognize that management of permit information is a serious concern and will address this matter in our program reviews.

OIG Concern: “Improvements Needed in the Hearing Process”

The draft report states that LDEQ needs to improve its hearing process to ensure hearings are conducted without appearance of bias.

EPA Response:

- We agree that hearings should be conducted by government officials without bias or the appearance of bias for one side of an issue or another.

- The Region 6 Air permits staff have attended several permit hearings, and we have not observed this type of bias. The LDEQ may further address this issue in their response to the draft audit report.

OIG Concern: “LDEQ Needs to Track Hearings Requested”

The draft report states that LDEQ needs to track hearings requested as well as held.

EPA Response:

- We agree that this information is a good management tool. It is the Region’s understanding, however, that this information is provided within the basis for decision. The basis for decision is also sent to those who have submitted comments. The LDEQ may address this issue in their response to the draft audit report.

OIG Concern: “Public Participation Not Clearly and Sufficiently Emphasized”

The draft audit report states that the public participation roles and responsibilities within LDEQ were not clearly defined.

EPA Response:

- The LDEQ is in a better position to respond to these organizational structure issues.

OIG Recommendation: The report has recommended that LDEQ needs to conduct more outreach to the public, including soliciting citizen input with surveys and telephone polls, discussing issues with focus groups, and holding semiannual “open house” sessions.

EPA Response:

- Increasing public participation is a priority for EPA and LDEQ and part of management reviews. For example, the Region and LDEQ have conducted two Regional Air Permits Workshops. The first workshop was April 2000, in Sulphur, Calcasieu Parish, Louisiana, and the second December 2001, in Houston, Texas. The LDEQ also participated in quarterly community forums in the Parish.

OIG Concern: "LDEQ Issued Multiple Permits Without Providing Complete Information to Public"

The report states that issuing multiple permits hampers the public's ability to comment on proposed permits. The report also states that because LDEQ did not aggregate total emissions for a given site, a complete assessment of emissions cannot be readily made.

EPA Response:

- Multiple permits are allowed for similar emission sources. The definition of "Part 70 permit" at 40 CFR §70.2 is as follows:

Any permit or group of permits covering a part 70 source that is issued, renewed, amended, or revised pursuant to this part.

This definition anticipates the issuance of multiple permits to a single source. This issue is also discussed in a December 19, 2001, letter from Judith M. Katz, Director, Air Protection Division, Region 3, to EarthJustice Legal Defense Fund regarding potential deficiencies in the construction or implementation of the District of Columbia's Title V operating program and in White Paper Number 2. We can provide copies of these documents upon request.

- Title V does not require LDEQ to aggregate total emissions for a given site. However, when an existing major source makes a physical change, or change in the method of operation, the source may need to aggregate contemporaneous increases and decreases with the proposed increase to determine if the change will be subject to the provisions for Prevention of Significant Deterioration or Nonattainment New Source Review. Specifically, a source must aggregate contemporaneous emissions increases and decreases with the proposed increase, when such proposed increase equals or exceeds a defined threshold as specified in Louisiana Administrative Code 33: III.504, Table 1, for the threshold numbers for nonattainment areas and 33:III.509.B - Definition of "significant" for attainment areas.
- There are advantages and disadvantages to consider. While a single permit for large sources sounds appealing because the total emissions are in one place, the extreme length of one such permit would be overwhelming and might discourage the public from reviewing the document. Also, if a source has multiple permits, addressing each separately allows the community and government to concentrate on the single process unit that is being added or modified.

OIG Concern: "Permit Documents Need to Be Clearer"

The draft report states that LDEQ could ensure that permits are more clearly written to facilitate better public understanding.

EPA Response:

- The Region is working with all of our States to improve permits to facilitate better public understanding. However, the Air Permit Briefing Sheet in the draft permit provides the scope of the permit and proposed modifications if any. Also, LDEQ provides a statement of basis, as required by 40 CFR 70.7(a)(5), that sets forth the legal and factual basis for the draft permit conditions. We plan to develop a consistent Regional approach in the future.

OIG Concern: The draft audit report states that citizen groups told the OIG that it is very hard to understand the technical processes in LDEQ permits and determine the impacts they may have on the environment and their communities.

EPA Response:

- The technical processes are presented in "Plain English" in the Air Permit Briefing Sheet in the draft permit.
- The "IT Decision" questions address the environmental impacts from a project. This analysis was adopted into Louisiana's regulations, Louisiana Administrative Code 33: III.504.D.7. The "IT Decision" questions answer the following: (1) Have the potential and real adverse environmental effects of the proposed facility been avoided to the maximum extent possible? (2) Does a cost benefit analysis of the environmental impact costs balanced against the social and economic benefits of the proposed facility demonstrate that the latter outweighs the former? (3) Are there alternative projects that would offer more protection to the environment than the proposed facility without unduly curtailing non-environmental benefits? (4) Are there alternative sites that would offer more protection to the environment than the proposed facility without unduly curtailing non-environmental benefits? (5) Are there mitigating measures which would offer more protection to the environment than the facility as proposed without unduly curtailing non-environmental benefits? In addition, this approach is being considered as national guidance for incorporating Environmental Justice in Air Permitting.

OIG Recommendation 2-1: We recommend that the EPA Region 6 Administrator work with LDEQ to make the public participation process for air permits more effective with emphasis on the:

- Accessibility, ease of use, and understandability of permits and other documents made available for review or comment.

EPA Response: We agree.

- Number of hearings not held and the reasons for denial.

EPA Response: The LDEQ may have addressed this further in their response to the OIG report.

- Need for LDEQ employees to be impartial and refrain from appearances of bias.

EPA Response: We agree and will discuss with LDEQ.

- Clarification of the roles and responsibilities for State personnel involved with the public participation process.

EPA Response: The LDEQ may have addressed this further in their response to the OIG report.

- Need to conduct more outreach to the public, including soliciting citizen input with surveys and telephone polls, discussing issues with focus groups, and holding semiannual “open house” sessions.

EPA Response: We agree to work with LDEQ on public participation and will discuss the recommended processes with the State.

- Need to encourage LDEQ to improve its Title V permits program by listing all permits for a facility and aggregating all permitted emissions on each individual permit.

EPA Response: We disagree. As indicated above, aggregation of permitted emissions is not required. At large facilities, the aggregation of all permits could discourage public participation by overwhelming an interested person with data. We agree with the intent of this comment (to improve public understanding and involvement) but differ on how to achieve these objectives.

CHAPTER 3: “Region 6 Oversight Needs Improvement”

OIG Concern: Region 6 oversight was limited primarily because EPA management has overemphasized “partnering” with the State.

EPA Response:

- We disagree with OIG perception that the Region’s oversight was limited primarily because EPA management has overemphasized “partnering” with the state. Our oversight responsibility is a key priority, and communications and partnering is the essence of an effective working relationship. The report implies that our partnering efforts lead to commitment shortfalls, but no examples were provided, without which EPA is unable to respond.
- Our partnering efforts with regards to air permitting basically consist of regular discussions on pending issues, jointly reviewing permits and comments, acting as a technical advisor on complicated issues, management retreats, and joint public outreach activities. Partnering has resulted in two EPA/LDEQ workshops for citizens. We work with our state agencies to resolve issues while recognizing that they have the authority to implement the air permitting program in their states and we have oversight responsibility. Therefore, we believe our partnering efforts equate to a more effective program and should not be evaluated solely on a commitment by commitment basis. We recommend that the basis for this perception, if retained in the final report, be supported by appropriate documentation.
- Oversight also includes EPA’s responsibility to respond to citizen petitions of State permitting decisions. This oversight has resulted in real and substantive changes to LDEQ permitting program.

OIG Comment: The OIG report states that, “as a result, LDEQ’s permitting program has deficiencies, which can impede public participation (see Chapter 2) and result in excess emissions being allowed that can adversely affect public health and the environment.”

EPA Response:

- No examples of missed commitments resulting in excess emissions are presented.

OIG Concern: “Public Comments Not Reviewed By EPA Before Permit Issuance”

The OIG’s draft audit report states that Region 6 did not adequately review public participation issues because the Region did not receive public comments before LDEQ finalized permits.

EPA Response:

- We agree there are implementation issues. When a draft permit goes to public comment, the public has 30 days to submit comments on a draft permit during the public notice and comment period. The EPA has 45 days of receipt of the proposed permit to review and submit comments on a draft permit once it received the proposed permit and all necessary information relevant to the permitting decision. In the past, the public’s 30 day comment period ran concurrently with EPA’s 45 day comment period.
- Public comments are considered. When permit applications are expected to be controversial, EPA conducts a preliminary review of them prior to official draft issuance. In those cases, we request an extension of the EPA review time which allows the review of all supporting documents including public comments. We are currently discussing an approach to revise this procedure to include an EPA review of public comments and the separation of the comment periods on a regular basis.

OIG Concern: “Region 6 Needs More Proactive Public Participation Oversight Role”

The draft report cites that the 2001 Performance Partnership Grant workplan states (1) how LDEQ should notify the public regarding permit actions, and (2) that EPA will continue to receive copies of draft permits for review and provide comments to LDEQ. However, the workplan does not require EPA to oversee the public participation process.

EPA Response:

- Review of public participation is inherent with EPA’s oversight role of the permit program, but we agree that specifically stipulating this intent in the PPG document helps to clarify this point. EPA will do this in the FY03 PPG.
- Although not a regulatory requirement, Region 6 will also continue to participate in public events, such as public hearings, on an ongoing basis as resources and priorities allow.

OIG Concern: "Region Oversight Insufficient to Note Public Participation Problems"

EPA Response:

- We disagree. Improving public participation has been a priority in program and management reviews. For example, this concern led to the joint LDEQ and EPA workshops in Sulphur, Louisiana and Houston, Texas.

OIG Comment: The report states that, "Region 6 has not performed a thorough on-site review of Louisiana's permitting system since LDEQ reorganized 4 years ago. While the Region has traveled to LDEQ to discuss specific issues, such as controversial permits, it did not do so for the air portion of the mid-year and end-of-year reviews. (We were aware of such on-site end-of-year reviews performed by Region 6's Water Division.)"

EPA Response:

- EPA expects to conduct an on-site End-of-Year (EOY) review in October 2002 for LDEQ. As mentioned earlier, we will consider a thorough review of Louisiana's air permitting program to evaluate the effectiveness of the new procedures for public participation and records management once the new procedures have had a sufficient amount of time to be evaluated.
- It should be noted that different statutory programs require different types of program review, so comparison among different program reviews is not always accurate or meaningful.
- In regard to the finding that program reviews have been limited, EPA provided information about numerous forums for program reviews in the past. EPA has conducted monthly air permitting conference calls, midyear and EOY reviews, and have held several management meetings. Additionally, we provided you information that illustrated 30% of the permit oversight travel funds went to meetings with LDEQ officials in FY02 regarding oversight activities.

OIG Concern: Region 6 staff did not attend LDEQ public hearings.

EPA Response:

- Regional permit staff have attended several public hearings, based on the complexities of the permit issues. For example, EPA attended the hearings for Shintech, Entergy, Borden, and Dow.

OIG Concern: “Region 6 Disinvesting in Resolving Excess Emissions Concern”

The OIG draft audit report cites that EPA identified and documented a problem in 1998 with the LDEQ’s regulations for startup, shutdown, and maintenance events and Region 6 has been unable to resolve the issue with LDEQ. The report states that in the Region’s 2002 Memorandum of Agreement with the Office of Air and Radiation, the Region said resolving this difference with LDEQ is a lower priority and they plan to disinvest in the effort.

EPA Response:

- There has been an ongoing effort to respond to these types of emissions. The Region invested considerable effort in working with LDEQ to strengthen their excess emissions rule. The effort culminated in numerous letters and discussions during calendar year 1998 thru mid 2002. On June 4, 2002, the LDEQ provided a letter for EPA’s evaluation on a more robust approach for addressing and controlling startup and shutdown emissions. Region 6 expects to work with the LDEQ in the future on such approaches.
- In the Region’s judgement, and in light of resource constraints, the state appropriately has assigned a higher priority to nonattainment SIPs. During the development of the Memorandum of Agreement for 2002, we did identify our disinvestment of resources in further policy and legal review of this issue based on the State’s response. Our investment in Louisiana was in the reclassification of Baton Rouge, working with the State in their development of its Baton Rouge ozone attainment demonstration SIP, and our review of this SIP (received on December 27, 2001) and Federal Register actions (9 separate notices) relating to the new attainment demonstration.
- Nonetheless, accomplishments in resolving excess emissions are also achieved through EPA/State participation as part of the National Indepth Refinery Initiative, which promotes voluntary emissions reduction.

OIG Concern: “Region 6 Has Reviewed Fewer Permits”

The OIG report states, “Region 6 has reviewed significantly fewer permits over the past 4 years. According to Region 6, it has reviewed fewer permits because priorities have shifted and turnover has been high in the Air Permits Section. The Office of Air and Radiation’s National Program Guidance for fiscal 2002 stated that all of EPA’s 10 regions should, among other things, review at least 10 percent of the Title V operating permits proposed by states and local permitting authorities. For fiscal 2002, the Region—in an investments/disinvestments chart—indicated it does *not* plan to review at least 10 percent of Title V operating permits, and is reducing the number of

formal mid-year reviews.”

EPA Response:

- Region 6 has continued to meet the Headquarters goal of reviewing 10% of the operating permits. It should be noted that the scope of a review can vary based on specific issues. The Region 6 MOA investment/disinvestment chart for fiscal year 2002 illustrates what EPA will have to invest in during the course of the year and likely activities that may have to be disinvested as a result. The intent of the chart is to inform national program offices of the decision making workload issues that we will be facing. National priorities for FY03 emphasize Title V permit issuance versus a specific percentage goal. Our current review strategy for FY03 for Louisiana includes the review of Title V permits for facilities located in non-attainment areas and that involve netting or offset requirements.
- In regard to the concern of disinvesting in oversight, the February 21, 2002, Interim Grantee Compliance Assistance Initiative Policy (Amending EPA Order 5700.3 and OGD GPI 98-6) directs an on-site review of 5 - 10% of the Region's grantees. The Region 6 air program initiated a strategy in 2001 to conduct on-site visits on a rotating schedule such that all states have an on-site mid or end-of-year review every 2 years.

OIG Recommendation 3-1: The OIG's draft report recommends that the Region 6 Administrator require staff to review public participation issues related to LDEQ's Title V permits, including reviewing comments to LDEQ-proposed Title V permits prior to LDEQ's issuance of final permit.

EPA Response:

- We agree. As indicated in the above comments, we are reviewing public participation issues.

OIG Recommendation 3-2: The OIG's draft report recommends that the Region 6 Administrator require staff to clearly define what part of the Region's organization is responsible for addressing Title V public participation oversight and how such oversight will be conducted.

EPA Response:

- This responsibility has already been defined. The Air Permits Section of the Multimedia Planning and Permitting Division is responsible for this oversight.

OIG Recommendation 3-3: The OIG's draft report recommends that the Region 6 Administrator require staff to perform a thorough on-site review at LDEQ of the air permits program, including records management and public participation.

EPA Response:

- We will review LDEQ's air permits program, records management, and public participation in the FY02, 03, and 04 program reviews.

OIG Recommendation 3-4: The OIG's draft report recommends that the Region 6 Administrator require staff to establish a system for tracking the permits reviewed by state and facility name, and include the comments it makes for each permit reviewed and how it resolved the comments.

EPA Response:

- In March 2001, the Region established a database that tracks the Nonattainment New Source Review, Prevention of Significant Deterioration, and Title V permits that we have reviewed. The database contains the draft permits, and supporting documents, e.g. fact sheets, comment letters, and correspondence between the Region and LDEQ. We will develop a format for gathering all comment letters electronically and ensure consistent data input for each State.

CHAPTER 4: "Other Matters"

OIG Concern: "LDEQ's Title V Air Permit Backlog Continues to Grow"

The draft audit report states that LDEQ's Title V air permit backlog is very large and continues to grow.

EPA Response:

- Louisiana is average for issuance of Title V permits. National statistics, as of March 31, 2002, on initial Title V issuance rates indicate that the average issuance rate is 70%. Louisiana has issued 66% of their initial Title V permits.
- We have been in constant communication with LDEQ regarding their initial Title V permit issuance rates and a need for a schedule that would address how they plan to issue their remaining permits. The LDEQ has submitted a schedule and committed to issuing all Title V permits by December 2003.

OIG Concern: The draft audit report cites that the Region did not use the Performance Partnership Grant (PPG) to require LDEQ to timely reduce its air permit backlog.

EPA Response:

- Because the PPG concerns federally funded programs and Title V is funded through private permit fees, the PPG grant is an inappropriate tool for the Title V program. While we can include title V provisions in a PPG, we cannot require them since the Title V program is funded through LDEQ's permit fees, not a federal grant to the state. Title V does provide for implementation agreements, and these can be the appropriate mechanism for addressing permit backlogs.

OIG Concern: "Inspection Problems Noted"

The draft report states that "EPA inspectors found that one facility had four lines (pipes) used in production that were disconnected and open to the atmosphere," and that the LDEQ inspection had not identified this discrepancy.

EPA Response: The following facts should be noted in regard to this statement.

- The LDEQ inspection occurred 5 months prior to the EPA inspection, not 3 months as noted in the draft report. The problem may or may not have been occurring at the time of the LDEQ inspection.
- Two inspections were keynoted in the OIG audit report. The EPA inspections were of a broad scope and covered several process units which included leak detection monitoring. By contrast, the scope of the LDEQ inspections was focused on a specific process unit and not leak detection. OIG is making comparisons of inspections having different focus (i.e., apples and oranges).

OIG Concern: The draft report states, "The other facility had a higher leak detection rate (fugitive emissions) than reported by LDEQ." [Emphasis added.]

EPA Response:

- This statement is in error and is a misquote of the EPA inspection report which states, on page 7, "The leak rate monitored by this inspector is higher than that reported to the LDEQ." [Emphasis added.]

OIG Concern: The draft report states, "Both facilities appeared to be in violation of federal regulations, according to EPA's inspection reports, but LDEQ had not reported

any recent violations.”

EPA Response:

- This is incorrect since both LDEQ inspection reports identified areas of concern or errors.
- “Violations” are determined after the review of inspection and other data; it is improper to identify “violations” in an inspection report.

OIG Concern: The draft report states, “LDEQ inspectors said LDEQ management told them to refer to violations they observed as ‘areas of concern’.”

EPA Response:

- It is the policy of LDEQ air surveillance inspectors to identify areas of concern arising from their observations during an air inspection. It should be noted that it is also the policy for EPA surveillance inspectors to identify potential ‘areas of concern’, not violations as evidenced in the EPA inspection reports.

OIG Concern: “Region 6 Has Not Performed a Fee Audit of LDEQ”

The OIG’s draft report found that EPA Region 6 has not performed an audit of LDEQ’s permit fees.

EPA Response:

- That is correct; Region 6 has not conducted such a review in Louisiana since their program was approved in 1995.
- Louisiana’s approved Title V regulations require that they collect a fee sufficient to cover the permit program cost. They are not required to use EPA’s presumptive fee. At the time of program approval, the state submitted and EPA approved LDEQ’s demonstration that the fee selected would result in the collection and retention of fees necessary to support their program.
- We plan to perform a fee audit for Louisiana’s Title V program during FY03.



State of Louisiana
Department of Environmental Quality



M.J. "MIKE" FOSTER, JR.
GOVERNOR

J. DALE GIVENS
SECRETARY

June 14, 2002

John T. Walsh
Acting Assistant Inspector General for Audit
Office of Inspector General
U. S. Environmental Protection Agency
1445 Ross Avenue, Suite 1200
Dallas, Texas 75202-2733

Dear Mr. Walsh:

This letter is the preliminary response of the Louisiana Department of Environmental Quality (DEQ or DEQ) to the Draft Audit Report titled *Louisiana's Air Permitting Program Needs to Better Address Public Participation Concerns*, dated May 15, 2002. The fieldwork for the audit was conducted at DEQ from approximately May 2001 through January 2002. According to the draft report, OIG is not finished with its audit. It plans to conduct additional audit work on one of the three original objectives.

Let me say first and foremost that I am extremely disappointed that the audit did not proceed in accordance with the engagement letter dated April 17, 2001 (Attachment 1). While OIG staff did keep DEQ updated through monthly meetings during the summer of 2001, your staff abruptly discontinued these meetings in the fall of 2001. This shows that, in contradiction to the engagement letter, you and your staff did not establish and maintain a collaborative working relationship with DEQ staff to result in an objective assessment of Louisiana's air permitting process. Also, this draft report draws broad conclusions based on very little relevant, factual information and displays an obvious lack of understanding on the part of the auditors of our processes and procedures.

Secondly, I am bothered by the fact that over a year after the audit began, we find out through the draft report that one of the three objectives hasn't even been addressed. At what point did you decide to split this audit into two audits? Why have you chosen to proceed with drafting a report on two of the objectives instead of completing all the work to produce one audit report as was expected and agreed upon? The issuance date for this draft report has slowly "slipped" from its original target of fall 2001, therefore I do not understand why you could not take a little more time to complete the original audit as defined in the letter of engagement.



OFFICE OF THE SECRETARY P.O. BOX 82263 BATON ROUGE, LOUISIANA 70884-2263
TELEPHONE (225) 765-0741 FAX (225) 765-0746
AN EQUAL OPPORTUNITY EMPLOYER



It is most unfortunate that no mention was made in the draft report of the tremendous progress that has been made in Louisiana for reductions in air pollutants, and particularly that **most** of that progress was made by the state prior to the implementation of any federal requirements. DEQ's Toxic Air Pollutant program undeniably has been responsible for huge reductions of emissions during the last decade (over 58%). Based on this glaring omission and other facts, I am of the opinion that OIG had preconceived biases upon entering this audit, and will point to a number of areas in the report that substantiate this belief.

The title of the draft report, *Louisiana's Air Permitting Program Needs to Better Address Public Participation Concerns*, is inappropriate at best and serves only to fan the flames for those who would say that DEQ is not meeting its responsibility under the statutes and regulations. The title of the report should tell the reader what the subject matter of the report is, not what conclusions are drawn in the report. Since this was portrayed as an audit of DEQ and EPA, it would appear that there should at least be some mention of EPA in the title. An acceptable title might be *An Evaluation of Public Participation Opportunities in Louisiana's Air Permitting Program and EPA Region VI's Oversight of the Program*. If you feel that the title of the report is in fact an appropriate place for conclusions as opposed to subject matter, then I would suggest the more important but unfortunately **all-but ignored conclusion** in the report, *Louisiana's Air Permitting Program Meets Federal and State Public Participation Requirements*.

Response to Introduction (Chapter 1)

The entire first chapter of the draft report attempts to provide a background of the air permits program from a national perspective. While this information may be helpful for readers who lack program knowledge, I feel that your efforts to characterize the State of Louisiana using industrial and health related issues is misleading because you failed to include readily available, substantive, Louisiana specific data.

The Toxic Emissions Data Inventory (TEDI) is a state database comprised of the air emissions of the 200 most toxic air pollutants (TAPs) from major and once major sources. The first 100 TAPs were included based upon emission levels in the state, human health effects, population exposed, and persistence in the environment. The second 100 were added to include the entire list of federal hazardous air pollutants. Based on the TEDI, total TAP emissions attributable to industrial sources have decreased by over 58% from 1991 to 2000. Benzene emissions, a known human carcinogen, have been reduced by over 78% as reported to the TEDI. The draft report does not recognize the substantial progress Louisiana has made in reducing TAPs over the last decade.

The report went further to attempt discussion on the ozone standard. While the U.S. Environmental Protection Agency has published its intent to reclassify the five-parish Baton Rouge area as being in severe violation of federal ozone standards, this won't take effect until mid to late September of 2002. By that time, it is expected that EPA would have completed its review and granted approval of the state's new air-pollution-control plan. If the state's plan is approved, the area could avoid being bumped-up from the serious category to severe.

Regulation by the DEQ has resulted in substantial improvements in air quality since the inception of such regulation in the early 1970s. Of the 17 parishes that were designated non-attainment for the pollutant ozone following enactment of the 1990 Clean Air Act Amendments (CAAA), 12 have been redesignated to attainment. In the remaining 5 parishes, which comprise the Baton Rouge non-attainment area, there has been marked improvement noted by reduction in both the number and magnitude of ozone exceedances. In the last ozone season (April - September 2001), the entire five-parish ozone non-attainment area experienced only one exceedance of 125 parts per billion (1 part per billion above the standard) at the Bayou Plaquemine monitoring site in Iberville Parish. *[See Attachment 2, Baton Rouge Area Ozone Exceedance Days Design Value and Average Design Value bar graph].*

I am concerned by your use of statistics when making references to cancer rates in Louisiana, even though this information is not relevant to the two questions posed on page 1 of the draft report. The audit set out to determine if DEQ's air permitting program allows for effective public participation and if EPA provides effective oversight to the state program. Nevertheless, in your review of health data, it is obvious that you failed to perform an adequate review of relevant studies with regard to national and state specific cancer issues. Dr. Vivien Chen and her colleagues at the Louisiana Tumor Registry in New Orleans have extensively studied the issue of cancer in Louisiana.

Cancer is a common disease affecting one of every three people in the United States. Using data from the Louisiana Tumor Registry, Dr. Chen evaluated the incidence rates for cancer in South Louisiana and specifically in the river parishes of the industrial corridor between Baton Rouge and New Orleans. The results of her studies show that people living in this area are not more likely to develop cancer than the national averages. The study showed: "Cancer incidence rates for the Industrial Corridor are either similar to, or lower than the combined rates for most of the common cancers as well as for rare tumors."

While the incidence rate of many cancers is lower than the national average for that cancer, the incidence rate for lung cancer in white males (but not in any other group) is higher than expected. As a result, research is being done to specifically look at what factors may be contributing to lung cancer in white males. Research studies by Dr.

Vivien W. Chen and associates of the Louisiana Tumor Registry, recommend that any effective cancer control program must emphasize and be directed towards prevention and cessation of tobacco use. [*Reference: Journal of the Louisiana State Medical Society, Vol. 150, April 1998*].

According to the Centers for Disease Control and Prevention Data for 2001, the District of Columbia ranks the highest in overall cancer mortality rate per capita among the 50 states and Washington, D.C. from all types of cancer, and its lung cancer rate is 7.2 percent higher than the national average. The Washington D.C. area, the United States Capital and Headquarters of the Environmental Protection Agency (EPA) is an attainment area and not highly industrialized, yet ranks the highest in overall cancer mortality rate.

Mr. Nuruddin Jooma, an epidemiologist and medical student at Tulane School of Medicine, Ms. Christine Romalewski, the epidemiologist supervisor, and Ms. Joan Bostell, a statistician with the State Center for Health Statistics, Louisiana Office of Public Health, conducted a study entitled "**WHICH PARISHES ARE MOST HEALTHY**". The study considered twenty-one factors including Age-adjusted Cancer Mortality Rate, Age-adjusted Heart Disease Mortality Rate and Cancer Incidence Rate.

Based on the 21 health indicators, the highly industrialized parish of Ascension, in the non-attainment area and ranked Number 1 in 1998 Total Releases to Air of 18,539,138 pounds from 18 reporting facilities (Louisiana Toxic Release Inventory Report 1998) was determined to be the parish which was the most healthy. The industrialized parishes of Assumption, Calcasieu, and Caddo were also given a Number 1 ranking for the most healthy parishes. The least healthy parishes were the rural parishes that border the state of Mississippi and Orleans Parish. [*Journal Louisiana State Medical Society, VOL 149 October 1997*].

Response to Public Participation Issues (Chapter 2):

As the draft report states on page 5, *DEQ meets the state and federal public participation requirements for air permitting*. Little time is spent on this important fact, but file room issues are extensively discussed.

The draft report made references to the way in which DEQ numbers its facilities and permitting actions. The fact that the auditors found our numbering system confusing does not make it wrong or bad. The Agency Interest (AI) number is location specific and refers to an individual site, facility, portable source, area source, parish, person or organization. If a company has more than one facility in Louisiana, each location will have its own unique AI number. A particular company may be issued many

different permits, each with its own permit number. The same AI number will reference each permit at a particular facility.

The historical tracker or review number refers to a particular task to generate a permit, variance, exemption and so on. The conversion of DEQ to the TEMPO system has caused the tracker number to be replaced with the Tempo activity number. Permit numbers are required to be entered into the EPA's databases, along with other facility specific information.

Prior to re-engineering, each DEQ environmental program (media) maintained records in several disparate paper filing systems (at last estimate, DEQ's records consisted of over 25 million pages). There was no continuity between any of the filing systems, some of which were inherited from other agencies when DEQ was first created. In fact, retrieving records on a facility required visiting multiple file rooms or placing public records requests with the custodian of record for each media. Review of records was limited to one individual at a time.

The imaging project began in 1998, and in April 2000, DEQ hired a full time Records Manager and established a Records Management Section. During Fall 2001, we studied the public's use of ALPS™. Visitors complimented Records Management staff, ALPS™, and our initiative in studying their needs. While the design and implementation of a comprehensive records management program for DEQ is a work in progress, many significant accomplishments have already been achieved.

DEQ continues to work on the consolidation of all electronic data and records into one integrated system. The Air Quality file room is in the process of being digitally imaged and incorporated into the DEQ electronic document management system (EDMS). This will improve the organization, integrity, and access for the records. Our accomplishments to date include:

- Through the imaging project, all DEQ facility files that have been imaged are now accessible from a single system.
- In October 2000, DEQ established the Public Records Room for use by the general public with computer workstations configured to search the DEQ electronic document management system (EDMS). Staff is on duty Monday through Friday, 8:00 a.m. to 4:30 p.m. to provide personalized help with searching for records and/or completing public records requests. On average, 150 people per month visit the Public Records Room.
- The Records Management Section is the point of contact for all public records requests. Last year, over 2000 public records requests were received and filled by DEQ.

- To better understand EDMS users' needs, a recent study was conducted to compare the information needs of the DEQ user to the non-DEQ user. Findings from the study are being used to develop a user-friendly Internet-based search tool. A key finding of the EDMS user study revealed that non-DEQ users who relied on assistance from Public Records Room staff were successful in finding the records they sought.

During one of the telephone status calls that were held in the summer of 2001, OIG staff raised specific issues regarding the availability of files for public review outside of normal business hours. When the same question was posed during that conference call to Ms. Jole Luehrs, then the air permitting chief for Region 6, she indicated that EPA had never done that and had no intention of doing that. While not making the physical files available after hours, DEQ has several initiatives on the horizon. An Internet-based EDMS search tool that will greatly increase access to DEQ public records is currently in the Beta-test phase. This will allow the public to review DEQ files from their living rooms on a 24/7 basis.

As part of its public participation process, DEQ sends permit materials to local public libraries via certified mail. Libraries are required to return an acknowledgment form to indicate that they have received the information and that it is available for review by the public. If we are notified that material is missing, we replace it as soon as possible. When responding to complaints of material not being in a library, we have found that in most cases, the material was actually there, but not all library employees were aware of its existence. While DEQ is required to send this information to the libraries, there is no statutory or regulatory requirement for the libraries to make the information available. DEQ has been working with the state library association to determine how improvements can be made in this process.

To our knowledge, there has never been a denial of a public hearing where there has been a significant public interest in a hearing and where the issues could not be sufficiently addressed without a hearing. On many occasions, DEQ has proactively scheduled public hearings without having received a request from the public to do so. These hearings are scheduled because DEQ feels that significant interest in the project exists.

A public hearing is not the only way DEQ receives input and addresses concerns from the public regarding draft permitting actions. DEQ attends town meetings where permit applications are discussed, and responds to all written and oral comments received during the comment period. In addition, DEQ routinely extends or reopens comment periods when there is significant public interest in a permitting matter.

The draft audit report goes into some discussion on the potential appearance of bias. Agency staff must constantly communicate with regulated facilities, EPA and other governmental entities, citizens' groups, and individual citizens. Our staff deals with these individuals and groups on a daily basis and while all of the parties may not always be in agreement, there must be a certain level of cordial, professional behavior that is exhibited.

DEQ Policy Number 009-94, dated August 15, 1997, mandates the behavior of the Hearing Officer. While we have no specific written policy for the other employees' conduct at a public hearing, they are expected to present themselves in a professional manner during any work related situation. All employees that meet with the public will be reminded of the appropriate behavior to be displayed at meetings.

I would like to point out that at this same hearing referenced in the draft audit report, an EPA Region 6 official was observed to be laughing and talking with members of a citizen's advocacy group in what might be construed as an overly friendly manner. Does this constitute grounds for recusal of that individual, or does it just point out the fact that as considerate, professional public servants, we should be cordial to people that we know and polite to all members of the public.

Contrary to the findings in the draft report, DEQ's Public Participation Group is dedicated to processing public notices of permit actions and organizing and conducting hearings. The job descriptions and job duties of the Public Participation Group are well documented. The staff uses written standard operating procedures that clearly state their roles and responsibilities, as well as processes and procedures to be followed. At least annually, employees participate in an appraisal and planning process to develop performance expectations regarding their various duties. Staff members are well informed of their individual, as well as group roles and responsibilities.

The draft report specifically references the discontinuance of a certain database that was used to track the comments received on permitting actions. The database that was being managed kept track of individual public comments – a responsibility of the permit writer and not the public participation staff. The duty of the comment database manager is to record the name and address of the commenter. The permit writer and comment database manager stay in contact during the public comment period and at the close of the comment period, the permit writer ensures that all comments have been accounted for.

The permit writer, as part of preparing the final permit decision, will prepare a Response to Comments document that summarizes each comment that was received and provides a response indicating how the draft permit deals with that issue. The comment database is then used to generate mailing labels used to notify all the

commentors once a final permitting decision is rendered. The comment database manager ensures that the Permits Administrator is fully advised of any comments requiring immediate attention. DEQ is not aware of a "disconnect" that is preventing timely public notice and opportunity to comment where required by laws and regulations.

DEQ management is not interested in expanding the "role that the public participation group could perform." This group performs the exact function for which it was created. That is not to say that some of the suggested functions are not already being done. For instance, the Office of Environmental Services has participated in a number of workshops and presentations with the EPA Region 6 staff that were designed to provide outreach to local communities and individuals regarding air permitting issues. The DEQ has other functional areas that include: an Ombudsman, the Community Industry Relations Group, the Recycling and Litter Group, and the Communications Group. All of these have a public outreach function as a major component of their jobs.

The Community Industry Relations Group organizes forums aimed at involving citizens of the state in the environmental regulatory process. The CIR Group has used the National Environmental Justice Advisory Council's Public Participation model to increase citizen participation in the regulatory process. The CIR Group has organized panels composed of industry representatives and individuals directly impacted by industrialization. The purpose of these panels is to open dialogue between industries and communities, identify issues of concern, and address (and hopefully resolve) such issues of concern via the identification of individuals with expertise with such issues. Panel participants also learn more about the permitting process and the DEQ's legislative regulatory role in the permitting process.

The CIR Group has undertaken numerous other projects to involve the citizens in the regulatory process. Using Pollution Prevention Grants offered by the U.S. EPA, one community was able to have monitors installed around their community, hire an independent environmental scientist to interpret the data obtained from the monitors, and help citizens understand the contents of the air in their community.

The CIR Group has helped community groups organize and secure tax-exempt status to apply for grants. The CIR Group has conducted surveys to gauge the effectiveness of the CIR panels and has asked citizens for their input in a continuous effort to improve the process.

DEQ endeavors to make all of our air permits as clear and understandable as possible while still meeting all requirements of the Title V program. There is no legal requirement for states to issue a single Title V permit for each facility. Drafting a single Title V permit for a large facility would be extremely difficult to do. The *average* Title V permit issued in the State of Louisiana is from three quarters of an inch to an inch and a half thick and some are in excess of three inches thick. In addition, each permit application is from three to five inches thick. Using these numbers, the total thickness of documents associated with each Title V permitting decision per company can be predicted:

Facility	Total Permits*	Permit Document Thickness in Inches**	Application Thickness in Inches***	Total Thickness in Inches****
Chevron Chemical Co., Belle Chasse	2	1.5	6	7.5
Conoco Inc., Westlake	6	4.5	18	22.5
Dow Chemical Co., Plaquemine	28	21	84	105
ExxonMobil Co., USA, Baton Rouge	55	41.25	165	206.25
Marathon Ashland Petroleum LLC, Garyville	5	3.75	15	18.75
Motiva Enterprises LLC, Convent	1	0.75	3	3.75
Motiva Enterprises LLC, Norco	19	14.25	57	71.25
Rubicon, Inc., Geismar	8	6	24	30
Tosco (BP Oil), Belle Chasse	20	15	60	75
Westlake Petrochemical, Sulphur	1	0.75	3	3.75
Totals	145	108.75	435	543.75

* Projected permits per company reported in audit report Table 1, Page 11

** Projected permits per company times 0.75 inches per permit

*** Projected permits per company times three inches per application

**** Sum of permit and application thickness

LAC 33:III.531 gives the public thirty days to review and comment on draft permits. LAC 33:III.533 allows EPA forty-five days for the same review. As an example, if DEQ aggregated all the Title Vs from Dow Chemical Co., the permit and application together would occupy a stack of paper in excess of eight feet high. For ExxonMobil Company, the stack would be over seventeen feet tall. It would be impractical to expect EPA and the public to review this amount of material in the time allotted.

Section 5 of the Louisiana Emission Inventory Questionnaire (EIQ) for Air Pollutants lists a summary of emissions for the entire plant as a whole. This document is put on notice with each draft permit. Aggregating all permitted emissions on each individual permit is impractical. If the company changed the emissions in one permit, then all issued Title Vs would have to be modified to change the emissions to match. Likewise, if all permits were listed in each Title V, all issued Title Vs would have to be revised to match the latest list.

Response to EPA Oversight Issues (Chapter 3)

DEQ has maintained open and clear lines of communication with Region 6 EPA. All mid-year and end-of-year report deadlines (concerning PPG commitments) have been met and comments from the Region 6 office have been addressed appropriately. DEQ would appreciate any information on specific deadlines/commitments that have lapsed without being addressed by executive management of both Region 6 and DEQ.

“Partnering” with the states by EPA is the hallmark of the Performance Partnership Grant (PPG). The final rule governing this activity became effective January 9, 2001, and may be found in the 40CFRPart 35, § 35.100 – 35.138. This represents a cultural shift in the environmental grant administration process. EPA Headquarters appears to enthusiastically support this shift. However, while management at Region 6 is supportive of the PPG concept, some of the staff does not seem to be receptive to the provisions of the PPG rules.

§ 35.130 describes the **purposes of the PPG**. PPG is designed to:

- Strengthen partnerships between EPA and state agencies
- Provide state flexibility to direct resources where needed
- Link program activities with goals and outcomes
- Foster innovative approaches
- Provide savings by streamlining administrative requirements

The “partnering” philosophy or approach provides for a more innovative culture and management system between EPA and the state agencies. This sentiment is expressed and supported by Governor Whitman in her comments made to EPA senior managers and reported in the ECOS Weekly Issues Report, dated May 17, 2002.

Response to other Matters (Chapter 4)

As of 6/11/2002, DEQ has 294 remaining initial Title V permits to issue. For the year 2001, DEQ issued 51 new Title Vs. Of that number, 37 were initial Title Vs (application received by October 16, 1996). During that year, we also issued 117 Title V modifications, 556 state permits, 17 Prevention of Significant Deterioration permits, 4 acid rain permits, 6 Banking actions, 233 small source emissions, 346, variances, 349 name/ownership changes and 323 others, a total of 2002 actions.

In the past, we have been concentrating our efforts on issuing new Title Vs and modifications associated with new projects. Recently, we have begun re-concentrating our efforts on reducing the initial Title V backlog and will strive to meet the December 2003 deadline.

In the opening paragraph of this chapter, it is stated that sufficient work has not been performed to reach conclusions about the Department's inspection and enforcement process. The last section of the chapter is entitled "Conclusions". The report proceeds to conclude that among other things there were problems with DEQ's inspection process. According to the report, this conclusion seems to center around 3 areas: inspection findings, use of the term "area of concern" versus "violation", and time spent on inspections.

Two inspections performed by the EPA found a few open-ended lines and some higher fugitive emission rates for components than DEQ inspectors had found on earlier inspections. This is hardly enough information upon which to draw the conclusion that there are problems with DEQ's inspection process. There are thousands of lines and components in most of these industrial facilities. Inspectors simply cannot inspect all of these components and lines. Past experience has shown that DEQ could probably go back behind EPA inspectors and find a few leaking components that EPA didn't inspect or a few open-ended lines the inspectors missed. DEQ would certainly not conclude that there is a problem with the EPA inspection efforts from such a finding, especially based upon the small sample size.

The EPA provides guidance to states and local governmental agencies on how to conduct inspections. These guidance procedures are posted on the EPA's web site and DEQ management has provided training and directives that encourage field surveillance staff to follow them. The guidance states that the inspection report should identify "all areas of regulatory concern" and that the inspector is to avoid making statements using the word "violations." Doing so would mean that the inspector was making an institutional decision without using the system of checks and balances built into the enforcement review process.

The role of the inspector is to investigate, prepare a report and serve as the Department's "witness of fact". The EPA guidance is very clear on this. The inspector is not to be put into a position of being both the "cop and the judge." It is usually the compliance program or legal counsel that determines if there is sufficient documentation of a violation. Emotional or personal bias of the field investigator must be avoided and a system where there is a division of job roles and responsibilities, as is the case in the DEQ, easily prevents this.

Adequate time spent on inspections is important and there is no doubt that spending more time on inspections would result in more meaningful results. With the resources provided, the DEQ has endeavored to maintain its inspection level of effort in order to satisfy demands of both Federal and State law, and the EPA grant milestones. The DEQ's compliance monitoring strategy explicitly recognizes that a variety of monitoring inspection tools ranging from self-certifications, deviation reporting, stack testing reports, monitoring reports, and on-site inspections are available and should be used to evaluate compliance. The EPA Compliance Monitoring Strategy (CMS) published in April of 2001 recognizes that there are times when a partial compliance inspection may be appropriate and that a full compliance inspection is not practical.

DEQ management has provided field offices with the EPA CMS guidance and encouraged its use in planning inspections for the year. This has resulted in some inspections being partial reviews while others have been multi-media inspections lasting as much as 2 weeks. A point to be made is that whether the inspection is partial or full, there have been numerous referrals made to the enforcement division. Many of these referrals identify areas of concern considered to be high priority and that are entered into the EPA data system each month. The Enforcement Division is processing these referrals into appropriate enforcement actions as quickly as possible when such action is appropriate.

DEQ entered in to this audit with a spirit of cooperation and anticipation that we would obtain positive feedback and constructive criticism of our program. Our goal was to use the information provided to us to make improvements to specific areas of the program. Instead, while we were laboring to provide OIG with all information it needed, our staff was being asked **"If you were king for a day, what changes would you make at DEQ?"** by EPA personnel! The type of response that a question like this would elicit has nothing to do with what OIG said it came to audit.

While DEQ acknowledges that its permitting process could be improved, we do not agree with the conclusions and recommendations that have come out of this report. Accordingly, we are not submitting an action plan for implementing those changes. Likewise, EPA Region 6 should consult with DEQ before making commitments to implement changes that are not consistent with state and federal program requirements.

In conclusion, I am proud of the accomplishments of the Louisiana Department of Environmental Quality, especially as they relate to public participation. We are firmly committed to continuous improvement and will constantly strive to meet the need of the citizens of the State of Louisiana. We will work cooperatively with the staff of the EPA Region 6 to make further enhancements of our air permitting program where appropriate while we continue our department-wide efforts to improve accessibility of information to the public.

Thank you for this opportunity to respond to your draft audit report.

Sincerely,

A handwritten signature in cursive script that reads "J. Dale Givens".

J. Dale Givens
Secretary

MDV/mdv

Attachment

Attachment 1



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

OFFICE OF INSPECTOR GENERAL
CENTRAL AUDIT DIVISION
726 MINNESOTA AVENUE
KANSAS CITY, KANSAS 66101

913-551-7878
FAX: 913-551-7837

BRANCH OFFICES:

1445 ROSS AVENUE, SUITE 1200
DALLAS, TEXAS 75202-2733
214-665-6521
FAX: 214-665-6589

999 15TH STREET, SUITE 500
DENVER, COLORADO 80202-2405
303-312-6872
FAX: 303-312-6063

April 17, 2001

SUBJECT: Engagement of auditor services for the audit of the Louisiana Air Permits Process (Assignment No. 2000-1351)

The purpose of this memorandum is to confirm our mutual understandings on the objectives, scope, and responsibilities of the Region 6 Multimedia Planning and Permitting Division (R6-PD), the U.S. EPA Office of Inspector General (OIG), and the Louisiana Department of Environmental Quality (LDEQ) during the audit.

Brief Description of Topic

The Clean Air Act (the Act), as amended in 1990, gives EPA authority to set and enforce national standards to protect human health and the environment. Part of that responsibility involves reviewing and approving permits that limit the amount of emissions released into the air. Draft permits are required to undergo public review and comment. Public participation empowers communities by providing citizens with information to enable them to develop informed opinions regarding environmental issues in their communities. Citizens' rights to be protected from significant risks to human health and the natural environment may be jeopardized when there is not an effectively implemented public participation process.

The Louisiana Department of Environmental Quality (LDEQ) is responsible for implementing and enforcing national standards under the Act. This responsibility includes: developing State Implementation Plans (SIPs), writing permits, providing an adequate public participation process, and conducting inspections to ensure that permit requirements are met. EPA oversees the State's activities by reviewing and approving the various aspects of the permit and regulation development program and by responding to citizen petitions to state permit decisions.

EPA has received numerous complaints from citizens and environmental groups alleging excessive air emissions in Louisiana and the lack of adequate public participation in the permitting process. The goal of the OIG audit is to determine if problems exist, identify underlying causes, and determine what steps the State and/or the Region can take to correct them.

Objectives

The OIG's overall audit objective is to evaluate the success of the State of Louisiana's air permitting process and will answer the following three questions.

- (1) Does LDEQ allow for effective public participation in the implementation of its air permitting process?

- (2) Does LDEQ write effective permits and regulations to ensure that facilities comply with the State's and EPA's excess emissions policy related to emissions from upsets, malfunctions, start-up/shut-down?
- (3) Does Region 6 provide effective oversight of LDEQ's air permitting program?

Scope

The OIG's work will be focused only on one state--Louisiana. The OIG will, however, gather background data on other States and attempt to make some comparisons to other States in the Region as it relates to Regional oversight. The OIG will interview EPA Region 6 officials and staff in Dallas, TX, and LDEQ staff in Baton Rouge, LA. The OIG will conduct work at the Region, LDEQ, and may conduct work in communities within Louisiana. The OIG will review pertinent records or documents, which could, at a minimum, include SIPs, permit applications, permits, inspection reports of facilities in affected communities, and correspondence files. The OIG will conduct the engagement using applicable government audit standards.

This engagement addresses EPA Strategic Goals 1 and 7. Specifically, under Goal 1, EPA stated that air toxics emissions nationwide from stationary and mobile sources combined will be reduced by 5% from 1999. Under Goal 7, EPA stated that they intended to improve public access to compliance and enforcement documents and data, particularly to high risk communities.

Expected benefits of this engagement are improved relations between EPA, LDEQ, communities, regulated facilities, and other stakeholders, and improved air quality for all Louisiana communities. Long-term benefits would include reduction of risk to Americans from cancer and other serious adverse health effects caused by airborne toxic emissions.

The OIG will assess the effectiveness of LDEQ and EPA in the areas of public participation (objective 1), excess emissions (objective 2), and oversight (objective 3) by first comparing their efforts to the requirements of statutes, regulations, and provisions of guidance. In addition, the OIG will look to go beyond strict compliance issues and will make recommendations, where necessary, to adopt additional policies, procedures, or requirements to improve effectiveness in these three areas. The OIG will make recommendations to Region 6's Regional Administrator. Region 6 will work with LDEQ to implement those OIG recommendations that they deem will correct identified problems.

OIG Staff on the Engagement

The OIG Project Manager for this engagement is **Randy Holthaus**. Specific concerns or questions, should be addressed to **Sandra Stafford** for issues pertaining to public participation, and to **Les Partridge** for issues pertaining to air permits. The following chart shows all OIG staff assigned to this engagement:

Staff Assigned	Position	Organization	Phone
Randy Holthaus	Project Manager	OIG-Dallas	665-6620
Sandra Stafford	Auditor	OIG-Dallas	665-3130
Les Partridge	Auditor	OIG-Dallas	665-6627
Sharon Davis-Simpson	Auditor	OIG-Dallas	665-6626
Gerry Snyder	Engineer	OIG-Denver	303-312-6623
Bernard Stoll	Engineer	OIG-HQ	202-260-4976

Products

During this engagement, the OIG will produce the following products by these dates:

Products	Date
Draft Report	August 10, 2001
Final Report	September 28, 2001

The OIG will also hold monthly update meetings with both Region 6 and LDEQ during May, June, and July, and later months if necessary. These meetings will be held to ensure open and honest dialogue among all parties involved. These meetings should, at a minimum, include Region 6 representatives above the staff level, but do not necessarily have to include senior program managers. The OIG will contact the Region 6 Audit Liaison--Diane Taheri--in advance to schedule the meetings so that all interested parties may attend. She will coordinate with Jole Luehrs from R6 and Michael Vince from LDEQ to schedule these meetings. The OIG will provide an agenda for the meetings.

To ensure the success and timely completion of this engagement, R6-PD, and LDEQ agree to provide the OIG with the following:

- (1) Relevant documents during the audit in a timely manner.
- (2) Comments on the Draft report within 30 days.

To ensure open and productive dialogue among all parties involved, the OIG agrees to provide R6-PD and LDEQ with the following:

- (1) Relevant citations of statutes, regulations, and guidance the OIG used to review program compliance and effectiveness, as they are identified or during monthly conference calls.
- (2) Information on OIG work conducted in communities within Louisiana and issues arising

ATTACHMENT 2 Baton Rouge Area Ozone Exceedance Days Design Value and Average Design Value All Sites included in Average

