



Office of Inspector General

Audit Report

Consolidated Report on OECA's Oversight of Regional and State Air Enforcement Programs

E1GAE7-03-0045-8100244

September 25, 1998

**Inspector General Division
Conducting the
Consolidated Audit:**

**Mid-Atlantic Audit Division
Philadelphia, PA**

Regional Reports:

**Eastern Audit Division
Boston, MA**

**Mid-Atlantic Audit Division
Philadelphia, PA**

**Central Audit Division
Dallas, TX**

**Western Audit Division
San Francisco, CA**

Regions Covered:

Regions 1, 3, 6, and 10

Program Offices Involved:

**Office of Enforcement and
Compliance Assurance**

**Region 1 Office of
Environmental Stewardship**

**Region 3 Air, Radiation and
Toxics Division**

**Region 6 Compliance
Assurance and Enforcement
Division**

Region 10 Office of Air Quality



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

OFFICE OF
THE INSPECTOR GENERAL

September 25, 1998

MEMORANDUM

SUBJECT: Consolidated Report on OECA's Oversight
of Regional and State Air Enforcement Programs
Audit Report Number E1GAE7-03-0045-8100244

FROM: Michael Simmons *Michael Simmons*
Deputy Assistant Inspector General
for Internal Audits (2421)

TO: Steven A. Herman
Assistant Administrator
for Enforcement and Compliance Assurance (2201A)

Attached is our final consolidated audit report on EPA's Oversight of Regional and State Air Enforcement Programs. This report consolidates national issues identified during our audits of Regions 1, 3, 6, and 10. The overall objective of this audit was to determine the functions that the Office of Enforcement and Compliance Assurance (OECA) needs to perform in order to resolve the deficiencies that we identified during our regional audits. This report contains findings and recommendations that are important to EPA.

This audit report contains findings that describe problems the Office of Inspector General (OIG) has identified and corrective actions the OIG recommends. This audit report represents the opinion of the OIG. Final determinations on matters in this audit report will be made by EPA managers in accordance with established EPA audit resolution procedures. Accordingly, the findings contained in this audit report do not necessarily represent the final EPA position, and are not binding upon EPA in any enforcement proceeding brought by EPA or the Department of Justice.

ACTION REQUIRED

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

dates for corrective actions planned, but not completed. This will assist us in deciding whether to close this report.

We have no objections to the further release of this report to the public. Should your staff have any questions about this report, please have them contact Patrick Milligan at 215-814-2326 or Ernie Ragland at 202-260-8984.

Attachment

EXECUTIVE SUMMARY

Purpose

The Office of Inspector General (OIG) performed six audits on EPA's oversight of the states' air enforcement data. The six states reviewed were located in four of EPA's ten regions. We identified national issues during these audits and have used that work as a basis for this report. The objective of this audit was to determine the functions that the Office of Enforcement and Compliance Assurance (OECA) needs to perform in order to resolve the deficiencies identified by the previous audits of state enforcement data.

Results-In-Brief

Air enforcement audits disclosed fundamental weaknesses with state identification and reporting of significant violators of the Clean Air Act. This occurred because states either did not want to report violators or the inspections were inadequate to detect them. Without information about significant violators, EPA could neither assess the adequacy of the states' enforcement programs, nor take action when a state did not enforce the Clean Air Act. Numerous significant air pollution violators went undetected, and many of those identified were not reported to EPA.

State and even EPA regions disregarded Agency requirements, or were uncertain whether enforcement documents were guidance or policy. As a result, the effectiveness of air enforcement programs suffered. Moreover, these violators were not made known to the general public. This occurred in large part because EPA and the states did not adhere to EPA's Timely and Appropriate Enforcement policy (TAE) and its Compliance Monitoring Strategy (CMS).

For EPA's oversight system to work properly, OECA should oversee EPA regions, which are responsible for working with state agencies to promote an effective enforcement program. In response to our six individual audits, states and regions

agreed to corrective actions to improve enforcement, and OECA should ensure that they fulfill their commitments.

In addition, OECA needs to undertake actions to address the concerns discussed in this report. OECA had not assigned internal responsibility for the oversight and implementation of CMS. EPA regions did not always know who to contact in OECA for clarification of enforcement issues. OECA did not routinely analyze enforcement data to detect trends and problem areas, and its regional reviews did not always assess the adequacy of regional oversight to identify violators. Air grants did not include specific amounts for enforcement, which resulted in EPA's loss of leverage to ensure state compliance.

Recommendations

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

1. Continually reinforce EPA regional compliance with the TAE and CMS.
2. Assign oversight responsibility for the CMS.
3. Work with the Office of Air and Radiation (OAR) to earmark Section 105 grant funds to enforcement.
4. Perform analysis and quality assurance of enforcement data.
5. Conduct evaluations of regional air enforcement programs that assess regional compliance with the TAE and CMS.
6. Improve communications with the EPA regions.
7. Establish focal points within OECA so that states and EPA regions can obtain clarification of Agency enforcement directives.

EPA RESPONSE In its August 12, 1998 response to the OIG draft report, OECA agreed with the report's recommendations. OECA stated that many of the findings validated issues that they were aware of, and contributed to their strategies to address them.

OIG EVALUATION We concur with the Agency's response and the corrective actions that were already taken or proposed. OECA offered some clarifying suggestions and we revised the report accordingly.

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ABBREVIATIONS

CAA	Clean Air Act, as amended in 1990
CMS	Compliance Monitoring Strategy
EPA	United States Environmental Protection Agency
FMFIA	Federal Manager's Financial Integrity Act
NOV	Notice of Violation
OAR	Office of Air and Radiation
OECA	Office of Enforcement and Compliance Assurance
OIG	Office of Inspector General
RCRA	Resource Conservation and Recovery Act
SSCD	Stationary Source Compliance Division
SVs	Significant Violators
TAE	Timely and Appropriate Enforcement Response to Significant Air Pollution Violators
VOC	Volatile Organic Compounds

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CHAPTER 1

INTRODUCTION

PURPOSE

The Office of Inspector General (OIG) performed six audits on EPA's oversight of the states' air enforcement data. The six states reviewed were located in four of EPA's ten regions. We identified national issues during these audits and have used that work as a basis for this report. The objective of this audit was to determine the functions that the Office of Enforcement and Compliance Assurance (OECA) needs to perform in order to resolve the deficiencies identified by the previous audits of state enforcement data.

BACKGROUND

Section 105 of the Clean Air Act (CAA) provided the initial authority for federal grants to help state and local agencies prevent and control air pollution. The EPA regions award Section 105 grant money so that states can operate their air programs in accordance with the grant agreements executed with EPA. Before EPA awards each grant, it negotiates a work program with the state which contains specific work commitments the state agrees to perform. The work program should encompass activities such as inspections, monitoring, permitting, and enforcement, which includes identifying and reporting significant violators (SVs).

Inspection Types

EPA guidance lists five different levels of inspections that can be performed at air pollution facilities. Level 0, commonly called a "drive by," is the most basic inspection. EPA does not consider this level of inspection to be an acceptable compliance assurance method. A Level 4 inspection is the most thorough and time consuming. This type is generally done only when developing a legal case against the facility. To adequately evaluate a facility's compliance with the CAA, the Section 105 grants awarded by EPA often required each state to comply with the Compliance Monitoring Strategy (CMS).

To adequately evaluate a facility's compliance with the Clean Air Act, the CMS explains that states need to perform at least a Level 2 inspection at major stationary sources. The CMS defines in detail the necessary tests and evaluations that must be performed to constitute a Level 2 inspection. The inspection must include an assessment of the compliance status of all sources within the facility. The CMS also requires that states annually submit Comprehensive Inspection Plans to EPA. These plans should include a list of those facilities that would receive a Level 2 inspection. Some states inspect major facilities on an annual basis, while others inspect major facilities on a multiple year cycle.

**Agency
Enforcement
Procedures**

According to Section 110 of the Clean Air Act, when a violation is identified, the inspector should issue the facility a Notice of Violation (NOV), which specifies the type of violation and the regulations the facility violated. If the violation meets EPA's definition of a significant violator, the state should report the facility to EPA for placement on the Agency's Significant Violator List, as required by EPA's February 7, 1992 *Timely and Appropriate Enforcement Response to Significant Air Pollution Violators (TAE)*.

According to the TAE, a significant violator is any major stationary source of air pollution, which is violating a federally-enforceable regulation. The TAE requires states to report significant violators to EPA within one month of the violation, and to maintain the facility on EPA's list until it achieves compliance. After the violation is reported, the state and EPA should monitor the source until it achieves compliance. This includes determining an appropriate time schedule for achieving compliance and assessing a penalty, if necessary. To resolve violations expeditiously, EPA stresses to each state the importance of identifying and reporting significant violators promptly.

Each month EPA and the states are responsible for updating the air enforcement data in the Agency's database known as the Aerometric Information and Retrieval System. The TAE also requires states to participate in teleconferences with the EPA regions to discuss new and existing significant

violators. EPA intends for this communication to promote a greater degree of teamwork between themselves and the states. However, if EPA is dissatisfied with a state's enforcement action, the Agency has the authority to override the state and assume the lead in resolving the violation.

OECA's Roles And Responsibilities

We performed our audit work for this capping report at two of OECA's divisional offices; the *Enforcement Planning, Targeting, and Data Division* and the *Air Enforcement Division*. The roles and responsibilities of these divisions as they relate to the issues we identified in this report include: 1) establishing inspection priorities; 2) developing and assessing accurate compliance measures; 3) providing technical assistance to regions, states and the regulated community; 4) developing national enforcement policies and guidance; 5) performing evaluations of national, regional and state enforcement programs; and, 6) performing oversight of EPA regional and state enforcement actions.

State Audits

To determine if underreporting of SVs was occurring, we initially conducted an audit of Pennsylvania's air enforcement program during fiscal year 1996. This review found that Pennsylvania was not reporting significant violators to EPA.

OECA's Assessments

Because of concerns that other states were also not reporting SVs, during November 1996, the Assistant Administrator for OECA requested that each regional administrator conduct an assessment of SV reporting by the states within their region. At that time, he also requested the OIG to determine if there were comparable conditions in other states. Subsequently, all 10 EPA regions responded to OECA that states were underreporting significant violators. Moreover, two regions visited states to review files in order to determine the extent of underreporting.

Because of the significant interest in this issue, we initiated audits in five additional states. The primary objectives of these audits were to determine the extent of the underreporting by the states, and also to determine whether states were performing sufficient inspections to identify

violators. During the time these audits were ongoing, OECA established a workgroup consisting of state, EPA regional, and Headquarters personnel to determine if the TAE needed revision. One revision contemplated was to change the definition of a significant violator.

**SCOPE and
METHODOLOGY**

We performed this audit according to the *Government Auditing Standards* (1994 Revision) issued by the Comptroller General of the United States as they apply to program audits. The audit included tests of the program records and other auditing procedures we considered necessary.

This report consolidates the audit work completed in Regions 1, 3, 6, and 10. The six states where we performed audits were: Arkansas, Maryland, Massachusetts, New Mexico, Pennsylvania, and Washington. We also conducted a limited examination in Region 4 to evaluate their reviews of the states. Region 4 staff examined enforcement files in its eight states to determine the extent of SV underreporting: Alabama, Florida, Georgia, Kentucky, Mississippi, North Carolina, South Carolina, and Tennessee. Personnel in Region 2 also performed a similar review at the State of New York. We considered the results of these reviews during our audit of OECA.

To accomplish our objective, we performed our review at OECA's: *Enforcement Planning, Targeting, and Data Division; Manufacturing, Energy, and Transportation Division; and its Air Enforcement Division*. We held numerous meetings with officials from these divisions to discuss OECA's responsibilities for the specific issues we identified.

We reviewed management controls and procedures specifically related to our objective, but we did not fully review the internal controls associated with the input and processing of information into EPA's database or any other automated records system. We also reviewed Headquarters reports prepared to comply with the Federal Manager's Financial Integrity Act (FMFIA) and found that none of the

weaknesses cited during this audit were disclosed in these reports. Moreover, these reports contained no issues that impacted our audit.

We reviewed documentation to determine OECA's responsibilities for overseeing regional and state air enforcement programs. This documentation included among others, OECA's; 1) Enforcement Accomplishments Report, 2) Data Quality Survey, 3) draft Strategic and Tactical Automation Management Plan, 4) regional memorandum of agreement, 5) significant violator and inspection trend analyses, and 6) National Performance Measures Strategy. We also analyzed the evaluations OECA performed at regional offices, and the draft *Strategy For Addressing The Status Of State Under-Identifying And Under-Reporting Of CAA "Significant Violators."*

We conducted our fieldwork for this report between October 1, 1997, and February 17, 1998. We met with senior OECA officials on January 20, 1998 to discuss the results of our audit work.

We issued the draft report on May 13, 1998. EPA submitted its response to us on August 12, 1998. Based on this response, we made minor modifications to our report. EPA's response to our findings and our evaluation of the response are summarized at the end of Chapter 2, Part 4. EPA's complete response is included in Appendix 2.

See Appendix 1 for prior audit coverage.

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CHAPTER 2: FINDINGS and RECOMMENDATIONS

Part 1

STATES NOT REPORTING SIGNIFICANT VIOLATORS TO EPA

Although EPA required information about violators, the states did not report significant violators to EPA. Without information about significant violators, EPA could neither assess the adequacy of the states' enforcement programs, nor take action when a state did not enforce the Clean Air Act. In effect, the states hindered EPA's ability to oversee the states' air enforcement programs by not providing information concerning significant violators.

In fiscal year 1996, EPA provided the states \$160 million in grants to carry out the Agency's priorities for enforcing the Clean Air Act. One such priority was to report significant violators, another was to perform inspections. Despite these priorities, the audits we performed in six states disclosed states underreported SVs. This occurred because states either did not want to report violators or the inspections performed were inadequate and did not detect violators. The assessments that each EPA region performed at the direction of OECA confirmed that the states' lack of reporting was a nationwide condition.

Six OIG Audits Found States Did Not Report SVs

Despite performing more than 3,300 inspections during the fiscal year reviewed, the six states we audited reported a total of only 18 significant violators to EPA. In contrast, while reviewing only a small portion of these 3,300 inspections, we identified an additional 103 SVs the states did not report. More specifically, we reviewed state enforcement files for 430, or 13 percent of the major facilities

in these states and identified an additional 103 SVs that the states did not report:

	State		OIG	
	Inspections	Identified SVs	Facilities Reviewed	Identified SVs
MD	722	3	60	4
PA	2,000	6	270*	64
AR	418	2	23	10
WA	106	7	42	17
MA	39	0	7	3
NM	<u>45</u>	<u>0</u>	<u>28</u>	<u>5</u>
	<u>3330</u>	<u>18</u>	<u>430</u>	<u>103</u>

*For PA we reviewed 45 facilities and 225 Notices of Violation.

OECA Also Found States Did Not Report SVs

While our audits disclosed underreporting by six states in four regions, the regional offices’ responses to OECA’s request for an assessment of SV reporting further corroborated our findings. In response to OECA’s assessment request, all ten regions agreed that some of their states were underreporting SVs. The responses received from the six regions where we did not audit a state illustrated the seriousness and extent of the underreporting by states:

- ✓ Region 5 responded there was at least one state that appeared to be underreporting. Ohio, which had more than 1700 major sources, reported only four SVs during a two-year period. Ohio officials agreed that it was underreporting and that it would be reasonable to expect a large industrial State such as itself to identify more than four SVs in two years.
- ✓ Region 8 replied that several states may not be reporting all SVs. The Region was concerned that the

underreporting may be caused by inadequate state inspections that did not identify SVs, rather than the state not wanting to report SVs.

- ✓ Regions 7 and 9, along with some of their states, criticized the EPA definition of an SV contending that it was too all-inclusive. In some instances, Region 7 agreed with its states that a particular source did not need to be designated as an SV, even though it met the definition contained in EPA's TAE document.
- ✓ Regions 2 and 4 performed reviews at a total of nine state offices and confirmed that there was substantial underreporting of SVs.

**More Than 150 SVs
Not Reported By New York**

During one of these reviews, Region 2 personnel examined 73 of New York's inspections performed at major sources. This review identified nine SVs that were not reported to EPA.

According to EPA's database, New York had more than 2,300 major sources and reported no SVs during fiscal year 1996, and only five during the previous fiscal year. As a result of Region 2's review, the State revised its procedures, trained its staff, and emphasized SV reporting. Within a few months of the review by EPA, New York reported 152 SVs in EPA's database.

The results achieved in New York also confirmed the Secretary of Pennsylvania's contention that his state was not the only one disregarding the TAE. In his response to that audit, he explained that most states disagreed with EPA's definition, and disregarded it because EPA did not require compliance with the TAE.

**Region 4 Discovered
More Than 300 SVs**

Region 4 staff examined almost 1,200 inspection files in its eight states to determine if states were reporting SVs. These states had more than 5,000 major sources

and EPA's database showed only 99 SVs. The Region's review identified more than 300 SVs not reported in EPA's database.

Forty-six SVs were violators the states had not identified, indicating possible differences between what the states and EPA considered to be SVs. Through conference calls or by submitting copies of NOVs, these states had previously notified the Region of another 259 SVs. However, the SV status for these sources was not entered into EPA's database because there was confusion about who was supposed to enter the SV data. Region 4 believed the states entered the SVs, and the states thought EPA did it. As a result, EPA's database was incomplete because it listed fewer significant violators of the CAA than actually existed.

Reasons States Did Not Report Significant Violators

In response to our audits and OECA's request, state air enforcement officials cited many reasons why significant violators were not reported to EPA. However, while state officials did not offer specific examples to support their contentions, they indicated that:

- ✓ **They did not understand EPA's SV definition.** Some state personnel believed they were identifying all SVs when actually they were not. When we asked Massachusetts personnel why violations we identified as significant were not reported, they told us the TAE was unclear. However, the State did not request clarification from EPA until we raised this issue during our audit.

Contrary to EPA's TAE, Washington did not report SVs at the time the violations were first detected. Instead, the State reported SVs only after penalties were assessed. When SVs were not assessed a penalty, they were not reported as an SV.

- ✓ **EPA involvement caused delays.** Even though required by the TAE, Massachusetts and Kentucky did not conduct teleconferences with EPA to discuss SVs. Officials from another state indicated they often did

not want EPA involved in the resolution of a violation. They contended EPA's involvement delayed the process; however, EPA's assistance was requested whenever it was necessary. They also said facilities remained on EPA's list for an excessive amount of time.

- ✓ **Timely resolution negated reporting of SVs.** When state officials believed violations were resolved timely, they often thought it was not necessary to report the violations to EPA. However, states and EPA did not always agree on what was considered timely resolution. State officials claimed they preferred not to discuss these types of violations during monthly SV meetings with the region.
- ✓ **States not responsible for designating SVs.** State and EPA personnel in Regions 4 and 6 told us they were confused about who was responsible for designating SVs in EPA's database. In one case, Region 4 had not authorized the states to enter this data, and therefore needed to clarify the reporting responsibilities of the states.
- ✓ **Compliance with the TAE was not necessary.** Arkansas personnel argued that the TAE was only guidance and allowed states flexibility to achieve their goals. As a result, they believed compliance with the TAE was not required. They also expressed dissatisfaction with the TAE for not meeting its intended purpose and suggested that EPA needed to revise it. It appears that this belief was also held by the personnel in at least one EPA region. This region did not require the states to comply with the TAE as a condition of the Section 105 grants it awarded to the states.
- ✓ **They disagreed with EPA's SV definition.** Some state personnel believed EPA's definition required them to report minor violations as SVs. As a result, they did not always use the EPA definition of a

significant violator. For example, in Pennsylvania, a facility installed and operated a large boiler without a permit. The boiler emitted nitrogen dioxide, a pollutant regulated under the CAA. However, State officials did not report this facility as an SV. They believed boilers were not environmentally hazardous and did not report situations such as these to EPA.

Disagreement with EPA's SV definition was illustrated in another Pennsylvania inspection report for a facility that manufactured automotive carpet and interior trim. This facility had a history of opacity violations for almost four years. Opacity violations occur when the plume of smoke from a stack exceeds an allowable density, indicating that the facility is emitting excess pollution. Here, the source was a boiler. The State assessed this manufacturer a civil penalty of \$4,000, but decided not to place the facility on EPA's list of significant violators. This example shows there were occasions when Pennsylvania recognized that a facility was a violator and took enforcement action against the facility. However, despite assessing a penalty, the State did not consider these violations severe enough to report the facility to EPA, even though the violation met the SV definition.

States Need To Comply With TAE Requirements To Report SVs

It is essential that states report SVs to EPA. In response to one audit, the Regional Administrator wrote, without consistent, timely, and reliable information on violators, determinations cannot be made on the best course of action to bring violators into compliance. EPA must rely on states for most of its information concerning the compliance status of the regulated community. This is the reason for specifying in the Section 105 grant agreement that states identify and report SVs in accordance with the TAE that was negotiated between the states and EPA. If the grant requirements were objectionable, states should have refused the grant. Grant recipients cannot be allowed to disregard requirements in an executed agreement because they believe portions of the grant to be "rigid," "unrealistic," or "defies any common sense understanding."

CHAPTER 2: Part 2

INADEQUATE INSPECTIONS CAUSED UNDERREPORTING OF SIGNIFICANT VIOLATORS

The quality of state inspections affected the number of SVs identified and ultimately reported to EPA. In four of the states we audited, inspectors did not always complete the tests required for a Level 2 inspection. In other cases, it was not possible to determine whether inspectors in these same states did enough to identify significant violators because the inspectors did not document inspections properly. As a result, EPA was not assured that facilities were in compliance with the Clean Air Act, and that states identified all significant violators. Details concerning inspections that either did not fulfill Level 2 requirements or were not documented properly are shown below:

	Files Reviewed	Inspections Without		Total
		Required Tests	Documentation	
PA	81	6	8	14
MD	60	12	14	26
WA	20	11	2	13
MA	<u>6</u>	<u>1</u>	<u>4</u>	<u>5</u>
	<u>167</u>	<u>30</u>	<u>28</u>	<u>58</u>

Level 2 Inspections Not Always Performed

Because inspections were either inadequately done or documented poorly, SVs were undetected for long periods. This condition continued because the EPA regions did not ensure state inspectors completed the tests and evaluations that CMS required for Level 2 inspections.

**Violations At One Facility
Not Detected For Years**

For example, at a facility in Maryland which painted diesel truck engines, there were two Volatile Organic Compounds (VOC) sources installed in 1991, without a construction permit. The State did not identify these violations for five years despite performing other inspections during this time. During fiscal year 1996 alone, the State conducted five inspections at this facility, but did not identify either source that was operating without a permit. It was not until fiscal year 1997, that the State identified the violations and requested the facility to apply for a permit.

This facility also had two paint spray booths under one registration number since 1979. Maryland was also not aware of this condition. Rather, the State believed that the new spray booth had replaced the existing booth. However, the facility operated both spray booths for 18 years before the State discovered the additional booth. During an October 1996 inspection, the inspector indicated that the two spray booths needed individual registration numbers.

An adequate Level 2 inspection should have identified any new or unreported sources since the time of the last inspection. Had the inspectors compared the facility's permit to the equipment in the plant, as required by a Level 2 inspection, the two VOC sources and the spray booths would have been identified more timely and the SV reported to EPA.

**Inspections Did Not Include
All Pollution Sources**

We reviewed inspections performed at 20 major facilities in the State of Washington. These inspections were reported to EPA as Level 2 inspections. However, the State's inspectors did not inspect all of the sources at 11 of these facilities. As a result, the inspectors did not complete the tests EPA required for Level 2 inspections. For example, a Level 2 inspection conducted at a lime manufacturing

company contained results for a heat exchanger and hydrator scrubber. However, State inspectors did not inspect the facility's baghouse and its coal firing system, including a review of fuel records to determine the amount of sulfur and ash content in the fuel. Without inspecting these, the inspector did not perform a Level 2 inspection and did not assure the facility complied with the CAA.

Our audits disclosed numerous other examples and reasons why inspectors did not perform Level 2 inspections. For example, on some inspections the state did not:

- ✓ **Follow up** on conditions identified during inspections. A Pennsylvania inspector identified broken gauges on one facility's equipment. These gauges were to be used to ensure that pollution was being captured. The facility's permit required that the gauges operate properly. It also required that the facility take periodic readings from the gauges and record these readings.

Because the gauges were broken, the facility's records were incomplete, and the State could not tell if the facility's emissions complied with the CAA. More than eight months after the inspection, Pennsylvania had not determined if the gauges had been repaired. State officials informed us that the facility was conscientious and did not believe a second visit was necessary to verify that the gauges were repaired. It appears that the State placed too much reliance on the facility and should have conducted a follow-up inspection to be sure the facility repaired the gauges.

- ✓ **Require facilities to correct violations timely.** An inspection at one facility showed that the equipment being used did not agree with the permit. It was not until 16 months later that State personnel met with facility representatives to correct the permitting issues.

- ✓ **Have qualified inspectors** conduct a Level 2 inspection. Tennessee’s inspectors did not make compliance determinations because they were not adequately trained to perform the mass balance calculations. As a result, there was a backlog of over two years for determining facilities’ compliance.

Four States Did Not Adequately Document Inspections

In Washington, the inspection reports for two facilities did not contain enough information to determine if the inspector completed the necessary tests. In addition to these two inspections, inspectors did not satisfy Level 2 requirements for another 11 inspections. As a result, some State officials planned to work with Region 10 to ensure their inspectors received training for conducting Level 2 inspections.

Some Inspection Reports Totaled Only Five Handwritten Lines

Inspectors did not thoroughly document inspections as illustrated during an inspection at a

Maryland facility that used four melting furnaces to produce glass. At the time of the inspection, two of these furnaces were operating. The inspector looked for visible emissions, and noted temperature readings and production rates for the day of the inspection. Although required for a Level 2 inspection, we saw no documentation that the State inspector reviewed the facility’s annual operating parameters. The parameters the inspector should have reviewed, included items such as; hours of operation, operating temperatures, and fuel usage. Moreover, the information that was recorded on the inspection report and reviewed by the inspector was only for one day and not for the intervening period since the last inspection as required by the CMS. The operating conditions for the day of the inspection comprised the entire inspection report, which totaled only five handwritten lines.

States Need To Comply With CMS

The CMS includes critical aspects of an enforcement program. These include which facilities should be targeted for inspection, and the tests and evaluations that need to be done during a Level 2 inspection to determine compliance with the CAA. When states do not complete the tests and

evaluations required by CMS, a Level 2 inspection is not performed, violations are not detected, and enforcement action cannot be taken against polluters. Personnel in one region told us, anything less than a Level 2 inspection is largely inadequate to determine compliance. Inspections are the front line of an enforcement program upon which all other aspects of the program are built. If inspections are deficient, the entire enforcement program suffers. EPA can help remedy this situation by enforcing state compliance with the CMS.

CHAPTER 2: Part 3

EPA REGIONAL OFFICES ALLOWED STATES TO UNDERREPORT SIGNIFICANT VIOLATORS

In the previous sections, we discussed many of the reasons that states did not report significant violators. In this section, we address reasons that EPA regional offices allowed the underreporting by states to continue, and mention various steps that EPA regions are now taking to improve oversight of state enforcement activities and reporting.

SV Data Not Analyzed

Although our audits showed that state input into EPA's reporting systems often was incomplete, EPA regions did not adequately review the data that was reported. Had regional offices performed more quality assurance and trend analyses of the data, they would have identified the underreporting of SVs and the over reporting of inspections. Closer attention to data trends would have alerted EPA that the number of SVs being reported by the states was declining, and that some of the largest industrial states in the nation were not reporting any SVs.

EPA's Message Unclear— Policy Or Guidance?

It was not clear to many personnel in the states, regions, and even EPA Headquarters whether the TAE and CMS were policy or guidance. There is considerable difference in these terms, policy must be adhered to, while complying with guidance is more flexible. More specifically, guidance allows states and regions to use alternatives for accomplishing specified requirements.

Although the word *guidance* is mentioned throughout the TAE, including the title, EPA personnel in one region, as

well as in Headquarters regarded it as policy. Conversely, personnel from the states and other EPA regions viewed the TAE as guidance. The CMS document was confusing because it is referred to as both policy and guidance within the document itself. Because some regional personnel viewed the TAE and CMS as guidance which did not absolutely have to be adhered to, they did not enforce state compliance with the reporting and inspection requirements.

States And Regions Need To Comply With Both Policy And Guidance

Specifying a requirement in guidance does not make compliance optional or relieve the necessity for fulfilling the requirements.

We do agree that deviations from guidance with proper justification are allowable. However, the regions did not provide us justification when states underreported SVs, did not conduct teleconferences, or performed inadequate Level 2 inspections.

It is also important to note that while the CMS may be viewed by some as only a guidance document for developing an inspection targeting strategy, it also includes the Level 2 inspection requirements for adequately determining a facility's compliance. This substantially increases the importance of the CMS and the need for EPA to mandate state compliance with the CMS.

Section 105 Grants Not Used As Leverage

The Section 105 grant is one of the most effective tools a region can use to ensure states comply with the TAE and CMS. Grant

agreements provide the regions with leverage to withhold funds when states do not adhere to requirements specified in the grants. However, OECA personnel told us that prior to the Pennsylvania audit, none of the regions took action to withhold funds for underreporting SVs of the Clean Air Act. Moreover, Region 4 did not require compliance with the TAE and CMS as a condition of receiving EPA's grant funds.

Ineffective Communication Between EPA And States

Regions 1 and 4 were not conducting SV conference calls with some of its states, contrary to what was required in the TAE.

Massachusetts officials claimed they would contact EPA on an as-needed basis, such as when they needed to add or delete information. We considered this breakdown in communication between Region 1 and Massachusetts as the one overriding cause of the State's failure to identify SVs.

Communication breakdowns also caused Regions 4 and 6 to believe states were entering SV information into EPA's database; however, the states believed the Regions were entering the SVs. More effective communication would have prevented this underreporting.

Regions Working To Have States Report SVs

The regional responses to our audits indicated that the regions plan to improve their oversight of SV reporting and inspections. EPA regions have either completed or planned to:

- ✓ Withhold grant funds until it was satisfied the state was reporting all required enforcement information.
- ✓ Improve procedures for reporting SVs. One state agreed to generate a report separating the most important significant violations from those of lesser interest to EPA.
- ✓ Require states, through the 105 grants, to provide the regions with copies of all notices of violation and noncompliant determinations.
- ✓ Improve communications with states regarding the responsibility of entering SV data, and verify that significant violators reported in the states' database are also reported into EPA's database.
- ✓ Evaluate the adequacy of training for state inspectors.

- ✓ Develop, with state assistance, a Level 2 inspection checklist to be used for training state inspectors and for conducting facility inspections.
- ✓ Develop a plan to review a sample of state case files on a yearly basis to determine if inspection reports show that Level 2 inspections were accomplished and adequately documented. This will be a grant commitment.
- ✓ Improve coordination procedures with states and provide SV training for state personnel so that they can adequately identify SVs.

While these corrective actions are a composite of the responses received for the six audits we performed, the regions and states often did not agree with our SV determinations. To confirm our determinations, we requested OECA's interpretation as to whether many of the significant violators we identified met the definition of an SV. OECA personnel generally concurred with our SV designations. Despite differences on whether some violations were SVs, most states ultimately agreed to improve SV reporting or inspections. In this regard, one region has devised a new approach to performing inspections.

One Region's New Approach To EPA Inspections

During past inspections, the EPA inspector would ensure the facility complied with all permit requirements. However, this type of inspection did not identify violations of regulations not included in the permit. To remedy this omission, Region 3 revised its approach to inspections and does not inspect only to the facility's permit. It also focuses on: 1) changes in facility capacity, 2) construction projects and expansions, 3) technical information, and 4) industry trends.

Thus far, Region 3 has performed seven of the revised inspections and has identified six significant violators. According to EPA officials, state personnel are receptive to the new approach because they do not have the resources to consistently perform these in-depth inspections. Moreover,

they believe this new approach complements state inspection programs which may not detect the violators EPA is finding.

CHAPTER 2: Part 4

LAX OVERSIGHT BY OECA CONTRIBUTED TO UNDERREPORTING OF SIGNIFICANT VIOLATORS

EPA's oversight system, when applied appropriately, should ensure the Agency's enforcement priorities are accomplished. For the system to work properly, OECA should oversee EPA regions, which are responsible for working with state agencies to promote an effective enforcement program.

We found inconsistent implementation of Agency directives, and in other cases, the states or EPA regions disregarded the Agency's requirements. As a result, the effectiveness of air enforcement programs suffered. Numerous significant air pollution violators went undetected and many of those identified were not reported to EPA. Moreover, these violators were not made known to the general public. This occurred in large part because EPA and the states did not adhere to requirements of the TAE and CMS. The states and regions have both agreed to improve enforcement. OECA needs to ensure that the regions and states fulfill their commitments. Moreover, OECA needs to improve several of the functions it performs. These are discussed below.

Improvements Needed By OECA

Perform CMS Oversight

There was no one within OECA responsible for the oversight and implementation of CMS since OECA was established in 1994. OECA was created to consolidate enforcement under one Assistant Administrator from program offices such as, Air, Water, as well as the Resource Conservation and Recovery Act (RCRA). Prior to this time, each EPA Headquarters program office had responsibility for enforcement, including the oversight of EPA directives such as TAE and CMS. OECA officials told us that assigning responsibility for CMS was overlooked during the reorganization. While OECA personnel said that it was not

their intention to abandon CMS, this was the perception we found among regions and states.

Communicate With Regions

The four regions we audited expressed concern because they did not always know the appropriate OECA person to contact to clarify requirements. OECA personnel voiced the same concerns about the regions.

Two of the four regions made correcting communications a priority during OECA's most recent evaluations of the regions. According to regional personnel, the ineffective communication was partly due to OECA's organization as a sector-based office. Part of OECA is arranged by industry sectors such as manufacturing, chemical, and transportation. Within these sectors are a mix of expertise from the EPA programs. For example, in each sector there are people with expertise in programs such as Air, Water, and RCRA. These same regional personnel told us that previously the Stationary Source Compliance Division (SSCD) handled air enforcement. If regional air enforcement personnel needed some Headquarters air expertise, they would contact SSCD to obtain assistance. Under the sector approach, the regions are unsure where to obtain the air expertise within OECA. Adding to the confusion, other parts of OECA are organized by program office.

A few regions have reorganized their enforcement offices to be more closely aligned with OECA's sector approach. This was done by establishing one enforcement office within each region for all EPA programs. However, six of the ten regions are still organized by program office. OECA required these regions to establish an Enforcement Coordination Office that coordinates enforcement activity and information. OECA personnel said that because regions are organized differently, they also have experienced some communication barriers and are sometimes unsure of the appropriate regional person to contact.

We are not advocating either the sector-based approach or the program office organizations. However, since OECA and regional personnel have voiced concerns about communications, both organizations could clarify their lines of communication.

Improve Evaluations

OECA evaluates the enforcement programs of about three regions each year. These evaluations did not emphasize state and regional compliance with the TAE and the CMS. OECA's oversight role in this area is crucial. If OECA placed more priority on the TAE and the CMS, regions and states would have known consistent implementation of these enforcement documents was important. This emphasis could have taken place during OECA's regional reviews. For example, OECA should have determined if the regions ensured that states were performing adequate inspections to identify violators.

Analyze Data

OECA personnel told us they do not routinely analyze enforcement data such as the number of SVs identified and inspections performed to detect trends and identify problem areas. Instead, analysis is done mainly for management reporting and targeting resources. At the time of our audit, one person was responsible for gathering, tracking, assembling, and reporting the data for both the Air and Water Programs. Previously this function was staffed with four or five people for each EPA program.

Our audits demonstrated the need for OECA to analyze enforcement data, which would have alerted OECA that the number of SVs were declining. It would also have shown some larger states were not reporting SVs.

Analyzing the number of inspections performed by states also would have been worthwhile. For example, Maryland and New Mexico had about 200 major sources each, but reported a vastly different number of Level 2 inspections. New Mexico reported 45 Level 2 inspections for one year.

Further analysis disclosed the State performed Level 2 inspections at only half its major sources during a six-year period.

Maryland reported 722 Level 2 inspections for the same year, or about four inspections at each facility. Our review disclosed that the State over reported the number of Level 2 inspections performed. We estimated that only 20 percent of the inspections performed were Level 2 inspections. The results of our analysis highlighted two issues that OECA and Regions 3 and 6 should have been concerned with. Analyzing the data effectively would have alerted the Agency that New Mexico was not performing enough Level 2 inspections, while Maryland was over reporting Level 2 inspections.

**Changes Needed
By OECA**

Revise Section 105 Grant

When EPA established OECA, it resulted in enforcement not being as involved in the grant funding process at the Headquarters level. This adversely affected the regions' ability to leverage the states to comply with enforcement priorities. Before the reorganization, an EPA program office such as the Office of Air and Radiation (OAR) had both the ability and the incentive to emphasize the enforcement aspect of the program through the Section 105 grant. For example, if EPA highlighted certain enforcement or compliance initiatives as priority, the regions and states would clearly understand the message through how the grant was structured and how much money was designated for these initiatives.

Under the existing arrangement, OECA has no active role in the allocation of the grant funds. Because enforcement no longer exists in each EPA program office, it is less of a priority for OAR and does not command much attention in the allotment of grant funds. Moreover, there is much less incentive for the program offices to include enforcement on its agenda since enforcement is presently administered under one office—OECA. Without grant funds specified for enforcement, the grants awarded to the states by the regions

also did not have a specified amount for enforcement. As a result, when states do not perform adequate enforcement, the regions do not have specified funds to withhold.

Complete SV Workgroup

Clarifying the definition of a significant violator is OECA's responsibility. OECA personnel told us they were unaware the states and regions had questions about the SV definition. Moreover, they told us the states and regions did not request clarification.

As a result of the Pennsylvania audit and OECA's assessment, the EPA regions, states, and OECA began discussions on whether: 1) the TAE needed clarification and 2) the definition of an SV needed revision. Subsequently, OECA established a workgroup to evaluate these contemplated changes.

The workgroup consists of air enforcement personnel from state and local agencies, EPA regions and OECA. This workgroup began studying these issues in July 1997. OECA personnel participating in the workgroup told us that the group's work would be completed by the end of 1997. Since October 1997, when we began our work at OECA, little progress was made by the workgroup. More than seven months after the workgroup's targeted completion date, their efforts were still not complete.

Establish Focal Points

Some of the reasons for not identifying and reporting SVs indicate the need for better communication between the states, the regions, and OECA. For example, to address issues such as the cited uncertainty about the definition of an SV, OECA should consider establishing national focal points for interpretation of enforcement policies. These focal points could provide the states and regions a central place to obtain a clear understanding of requirements, and foster a more consistent implementation of EPA enforcement policy and guidance.

EPA And State Partnership

EPA is committed to working in partnership, both internally between headquarters and regional components, and externally with state and local districts, to achieve environmental goals. For these partnerships to work well, there must be mutually agreed-upon enforcement objectives and expectations, clear understanding of each partner's responsibilities, and complete and accurate reporting of enforcement data. In the state air enforcement audits we conducted over the last several years, we found:

- ✓ A lack of agreement on basic definitions and enforcement approaches;
- ✓ Incomplete and inaccurate reporting of enforcement data; and
- ✓ Uncertainty regarding what is optional guidance and what is mandatory policy.

These deficiencies work against effective partnership in making environmental progress.

We found that there is a cascading effect in air enforcement when one partner does not fully carry out its role. If OECA, for instance, is unclear about whether a state reporting requirement is optional or mandatory, EPA regional offices may or may not enforce it. Likewise, states may view the reporting requirement as subject to their own interpretation of what the requirement really entails. We are not advocating more "command and control" measures, but rather that OECA work to reach clearer agreement with its partners on the necessary elements of a sound air enforcement program.

We believe that complete and accurate reporting of significant violators by the states, using a commonly accepted definition of what constitutes a significant violation, is necessary for all partners to be able to carry out their respective roles. With complete reporting from the states, EPA regions can work with their state partners to bring about a return to compliance for recalcitrant facilities.

Likewise, OECA can bring the weight of its authority to bear in those cases which require it.

Recommendations

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

1. Ensure that the initiatives undertaken by the SV workgroup are completed timely. This is needed so that states, EPA regions, and Headquarters will have a clear understanding of what constitutes an SV, and what needs to be reported to EPA.
2. Continually reinforce to the EPA regions that they must comply with the TAE and CMS. This should include emphasizing that grant funds could be withheld when states do not comply with these directives.
3. Assign oversight responsibility for the CMS within OECA to the appropriate functional authority.
4. Work with OAR to earmark Section 105 grant funds to enforcement. This will enable the EPA regions to reinforce to the states that enforcement is an Agency priority.
5. Perform quality assurance of enforcement data through increased analyses of regional and state performance measures. This is needed to detect trends and initiate corrections in a timely manner.
6. When conducting evaluations of regional air enforcement programs, improve oversight of regions by assessing:
 - a. Regional compliance with the TAE and CMS.

- b. Whether regional reviews of states determine if states comply with TAE and CMS. The reviews should include an evaluation of the adequacy of state inspections and whether states are identifying and reporting SVs.
7. Improve communications with the EPA regions. Steps should be taken to ensure that regional personnel know where in OECA technical expertise can be obtained. Conversely, OECA should determine who in each region interacts with state enforcement personnel. Interaction with these regional personnel would help ensure OECA is aware of state performance as well as problem areas.
8. Establish focal points so that states and EPA regions know where within OECA to obtain clarification of Agency enforcement directives such as TAE and CMS.

EPA RESPONSE

In its August 12, 1998 response to the draft report, OECA generally agreed with the report's recommendations. OECA stated that although it had implemented a successful program to evaluate regional oversight of state programs, the OIG's close look at certain CAA enforcement activity provided a welcome supplement to OECA's ongoing efforts. Further, many of the findings validated issues that OECA was aware of, and contributed to OECA's strategies to address them.

Regarding Recommendation Number 1, OECA agreed that there must be a clear understanding of what constitutes an SV. OECA stated it has met several times with state and local air enforcement representatives to discuss its separate proposals and have reached a tentative agreement with them on a new definition of significant violator. Further workgroup discussion on the timely and appropriate aspects of the TAE guidance will follow.

Concerning the recommendation to continually reinforce regional compliance with the TAE and CMS, OECA said it will continue to require implementation of the TAE guidance and make an effort to include the CMS guidance as well. OECA stated it has placed the focal point for TAE oversight in the Air Enforcement Division and the Manufacturing, Energy, and Transportation Division has taken the lead for CMS oversight.

Pertaining to Recommendation Number 4, OECA agreed that enforcement and compliance priorities should be reflected in the Section 105 state grant guidance. OECA stated it will work with OAR to modify the grant guidance to incorporate the enforcement priorities.

Regarding the recommendation to perform quality assurance of enforcement data, OECA said it recently completed an extensive trend analysis of enforcement data for reporting of SVs and inspections during FY 1993 through 1997. The analysis identified a number of possible reporting problems. OECA stated it will consider institutionalizing this trend analysis as a regular Headquarters effort.

In response to Recommendation Number 6, OECA said it is considering potentially significant modifications to the Regional Evaluation Program to better reflect its priorities and to focus its attention on areas where there are known or suspected problems. Adherence to the TAE and CMS guidances, and regional assessment of state inspection programs are areas of known concern. OECA said they will receive continued attention.

Concerning the recommendation to improve communications with EPA regions, OECA stated it has taken a number of steps to ensure that the regions have specific Headquarters contacts on various program areas. OECA said it will continue to provide the regional offices updated material on its outreach efforts and inform the regional offices about its capabilities and responsibilities as they change.

Regarding Recommendation Number 8, OECA partially agreed and said it has identified focal points for the TAE and the CMS guidance. OECA stated to the extent, however, that the OIG is recommending that it identify a single office as a point of contact for all enforcement policy, it disagreed. Further, responsibilities for developing and interpreting enforcement and compliance policies are spread among several offices. OECA said it will continue to communicate the appropriate staff contacts and their responsibilities to the Regions.

OIG EVALUATION

We concur with the Agency's response and the corrective actions that were already taken or proposed. It was not our intention to recommend that there be only one point of contact for all enforcement policies. Therefore, we agree with OECA's decision to assign separate focal points for the TAE and CMS. We modified the report and the recommendation to more accurately reflect our position that multiple focal points are acceptable.

OECA officials also offered some comments to clarify the report and we revised the report accordingly.

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APPENDIX 1
PRIOR AUDIT COVERAGE

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The OIG performed six audits on EPA's oversight of states' air enforcement data. These audits addressed topics similar to those discussed in this report and are shown below.

Validation of Air Enforcement Data Reported to EPA by Pennsylvania: The audit covered Region 3's Air, Radiation and Toxics Division and the Pennsylvania Department of Environmental Protection. The fieldwork was performed from November 2, 1995 to September 15, 1996. The final report (Report No. 7100115) was issued on February 14, 1997.

EPA Region 3's Oversight of Maryland's Air Enforcement Data: The audit covered the Region's Air, Radiation and Toxics Division and the Maryland Department of the Environment. The fieldwork was performed from November 27, 1996 to June 30, 1997. The final report (Report No. 7100302) was issued on September 29, 1997.

Validation of Air Enforcement Data Reported to EPA by Massachusetts: The audit covered Region 1's Office of Environmental Stewardship and the Massachusetts Department of Environmental Protection. The fieldwork was performed from January 24, 1997 to July 31, 1997. The final report (Report No. 7100305) was issued on September 29, 1997.

Region 6's Oversight of Arkansas Air Enforcement Data: The audit covered the Region's Compliance Assurance and Enforcement Division, the Multimedia Planning and Permitting Division, and the Arkansas Department of Pollution Control and Ecology. The fieldwork was performed from January to June 1997. The final report (Report No. 7100295) was issued on September 26, 1997.

Region 6's Oversight of New Mexico Air Enforcement Data: The audit covered the Region's Compliance Assurance and Enforcement Division, the Multimedia Planning and Permitting Division, and the State of New Mexico's Environment Department. The fieldwork was performed from June to October 1997. The final report (Report No. 8100078) was issued on March 13, 1998.

Region 10's Oversight of Washington's Air Enforcement: The audit covered the Region's Office of Air Quality and four local Air Quality Authorities in the State of Washington. The fieldwork was performed from April 14, 1997 to November 21, 1997. The final report (Report No. 8100094) was issued on March 30, 1998.

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APPENDIX 2
EPA'S RESPONSE TO DRAFT REPORT

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UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

OFFICE OF
ENFORCEMENT AND
COMPLIANCE ASSURANCE

AUGUST 12, 1998

MEMORANDUM

SUBJECT: Comments on Draft Internal Audit Report: EIGAE7-03-0045,
'Consolidated Report of Audit on EPA's Oversight of State Air Enforcement
Data'

FROM: Sylvia K. Lowrance /^s
Principal Deputy Assistant Administrator
Office of Enforcement and Compliance Assurance

TO: Michael D. Simmons
Deputy Assistant Inspector General for Internal Audits
Office of the Inspector General

Attached please find the Office of Enforcement and Compliance Assurance's response to the subject draft report. These comments incorporate the views of our Office of Compliance and Office of Regulatory Enforcement.

We thank the Inspector General for the time, effort, and thoughtfulness put into evaluating SV identification and the rigor of air inspections. Although the EPA Office of Enforcement and Compliance Assurance has implemented a successful program to evaluate Regional oversight of State programs, your close look at certain CAA enforcement activity provides a welcome supplement to our ongoing efforts. Many of the findings validate issues that we are aware of, and contribute to our strategies to address them.

Should you have any questions about our response, please contact Carolyn Hardy, OECA's OIG Audit Liaison at 564-2479.

Attachment

cc: Elaine Stanley
Eric Shaeffer
Carolyn Hardy
Frederick F. Stiehl
John Rasnic
Bruce Buckheit
Ernie Ragland
Patrick Milligan

^s As signed by Sylvia K. Lowrance on August 12, 1998.

**OECA Comments on Draft IG Report No.# EIGAE7-03-0045
'Consolidated Report of Audit on EPA's Oversight of State Air Enforcement Data'**

With one possible exception we agree with the recommendations in the Office of Inspector General (OIG) draft report. We do have several clarifying suggestions.

Report Title

The draft report title implies a focus on data. The report goes well beyond data issues, and addresses issues fundamental to effective enforcement programs such as surveillance programs, violation response programs, and State-EPA communication on these programs. The title should better reflect the report's substance.

Scope and Methodology

The draft report mentions that interviews included staff from the Enforcement Planning Targeting and Data Division (EPTDD) and the Air Enforcement Division (AED). It should also reflect OIG interviews of staff in the Manufacturing, Energy and Transportation Division (METD).

Chapter 2, Part 1, States not Reporting Significant Violators to EPA

This section discusses why States did not identify and report significant violators. We are concerned that some wording in this chapter might be interpreted to give credence to frivolous excuses for program gaps. We were particularly concerned about quoted State complaints that 'EPA meddling caused delays' and that the 'SV&T policy defies any common sense and is unrealistic.' No evidence is cited to support these complaints. They should be portrayed as views only. EPA involvement and oversight in State enforcement is entirely appropriate given EPA responsibility to ensure national compliance with environmental law and EPA responsibility to assure State performance in accordance with grant agreements.

Other comments are grouped by recommendation:

- 1. Ensure that the initiatives undertaken by the SV workgroup are completed timely. This is needed so that states, EPA regions, and Headquarters will have a clear understanding of what constitutes an SV, and what needs to be reported to EPA.*

Response: We agree that this is important and are working to that end. We formed a workgroup consisting of 9 state and local air directors who are members of STAPPA/ALAPCO (S/A), first and second line supervisors from each Region, and from OECA (AED and METD), in July 1997 with an objective to "streamline" and clarify the Significant Violator Timely and Appropriate (SVT&A) guidance. We have met several times with S/A representatives to discuss our separate proposals and have reached a tentative agreement with them on the definition of Significant Violator. Our State commissioners' enforcement group was briefed on this agreement in its June

meeting and the response was generally positive. Further discussion on the timely and appropriate aspects of the SVT&A guidance will follow.

2. *Continually reinforce to the EPA regions that they must comply with the TAE and CMS.*

Response: We concur with this recommendation. In our Regional Reviews and the MOA process, OECA will continue to require implementation of the TAE guidance (or as we call it the Significant Violator Timely and Appropriate, SVT&A, guidance). We will make an effort to include the Compliance Monitoring Strategy (CMS) guidance as well. See item 3 below.

This should include emphasizing that grant funds could be withheld when states do not comply with these directives.

Response: Agree. See item 4 below.

3. *Assign oversight responsibility for the TAE and CMS within OECA to the appropriate functional authority.*

Response: Agree. The SVT&A focal point is in ORE/AED. The Manufacturing Energy and Transportation Division (METD) has, for the time, taken the lead for the CMS guidance.

4. *Work with OAR to earmark Section 105 grant funds to enforcement. This will enable the EPA regions to reinforce to the states that enforcement is an Agency priority.*

Response: Agree. We believe that enforcement and compliance priorities should be reflected in the Section 105 State grant guidance. OECA will work with OAR to modify the grant guidance to incorporate the enforcement priorities. Primary responsibility for the actual administration of the grant program, though, remains vested in the Regional offices.

5. *Perform quality assurance of enforcement data through increased analyses of regional and state performance measures. This is needed to detect trends and initiate corrections in a timely manner.*

Response: Agree. The Targeting and Evaluation Branch within the Office of Compliance (OC) recently completed an extensive trend analysis of enforcement data, by Region and by State, for reporting of CAA SVs and inspections during FY 1993 through 1997. This analysis was transmitted to each Region in a May 7, 1998 memorandum from Frederick F. Stiehl. The analysis identified a number of possible reporting problems in particular States and requests that each Region provide answers to various questions about apparent trends and anomalies in the SV

and inspection coverage data. The memorandum also requests that each Region provide a detailed update of the status of Regional efforts to address reporting problems in their States. OECA will consider institutionalizing this trend analysis as a regular Headquarters effort.

In addition, EPA is implementing a set of performance measures for its enforcement and compliance assurance program which will enhance its ability to evaluate the effectiveness of its program. These measures will help identify the relationship between program activities and environmental results. Part of the implementation includes reviewing key elements of enforcement data for accuracy and utility. EPA is working with states to adopt similar measures for their enforcement and compliance assurance programs.

6. *When conducting evaluations of regional air enforcement programs, improve oversight of regions by assessing:*
 - a. *Regional compliance with the TAE and CMS.*
 - b. *Whether regional reviews of states determine if states comply with TAE and CMS. The reviews should include an evaluation of the adequacy of state inspections and whether states are identifying and reporting SVs.*

Response: Agree. As part of the Regional Evaluation Program, OECA has normally included an evaluation of a Region's air enforcement program, which has included a review of compliance with the SVT&A and CMS policies. OECA is presently considering potentially significant modifications to the Regional Evaluation Program to better reflect OECA priorities and to focus our attention on areas where there are known or suspected problems. Adherence to the SVT&A and CMS guidances, and Regional assessment of State inspection programs, are areas of known concern and will receive our continued attention.

7. *Improve communications with the EPA regions. Steps should be taken to ensure that regional personnel know where in OECA technical expertise can be obtained. Conversely, OECA should determine who in each region interacts with state enforcement personnel. Interaction with these regional personnel would help ensure OECA is aware of state performance as well as problem areas.*

Response: Agree. OECA has taken a number of steps to improve communications with the Regional Offices including ensuring that they have specific Headquarters contacts on various program areas. For general enforcement and compliance assurance activities both OC and ORE have provided the Regions with detailed directories of staff's areas of responsibility, and have communicated office roles and responsibilities to the Regions on several occasions. OECA will continue to provide updated material on our outreach efforts and inform the Regional Offices about additional Headquarters staff capabilities and OECA organizational responsibilities as they change or arise. One specific cross-cutting program that has caused some difficulty and concern among the Regional Offices is the role of enforcement and compliance assurance programs in

negotiating Performance Partnership Agreements (PPAs) and Performance Partnership Grants (PPGs) under the National Environmental Performance Partnership System (NEPPS). Specifically, the problem has been the lack of a substantive discussion of enforcement and compliance in many of the agreements, which is generally attributed to the late inclusion of Regional enforcement and compliance assurance program managers and staff at the initial stages of the negotiating process. OECA expects that the enforcement and compliance assurance programs will be at the table from the beginning of the process and has worked with the Regional Offices on this issue since the inception of NEPPS. Most recently, to emphasize this point, and to facilitate consistent communications on NEPPS, Steve Herman issued on May 13, 1998 a memorandum titled *Enforcement and Compliance Assurance Program and the Performance Partnership Agreement/Grant Process* (copy attached). The memo requested that enforcement and compliance assurance programs participate in the initial NEPPS negotiations and encouraged the use of the OECA Accountability Measures in the PPAs and PPGs. This memorandum also identifies staff within the Office of Planning and Policy Analysis (OPPA), who will serve to facilitate communications on these issues. The Office of Planning and Policy Analysis (OPPA), is the OECA contact point for general State enforcement and compliance oversight issues.

8. *Establish a focal point so that states and EPA regions know where within OECA to obtain clarification of Agency enforcement directives such as TAE and CMS.*

Response: Partially agree. OECA has identified Linda Lay in the Air Enforcement Division (AED) as a focal point within ORE for the SVT&A. OECA has designated Mamie Miller of the Manufacturing Energy and Transportation Division (METD) as the point of contact for the CMS guidance. To the extent, however, that the OIG is recommending that OECA identify a single office as a point of contact for all enforcement policy, we disagree. Under the 1994 reorganization of OECA, responsibilities for developing and interpreting enforcement and compliance policies are spread among several offices. As we develop and issue enforcement guidance, specific staff contacts are identified to assist our regional offices with questions of interpretation and application. We will continue to communicate the appropriate staff contacts and their responsibilities to our Regions.

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UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

OFFICE OF
ENFORCEMENT AND
COMPLIANCE ASSURANCE

MAY 26, 1998

MEMORANDUM

SUBJECT: Enforcement and Compliance Assurance Program and the Performance Partnership Agreement/Grant Negotiations Process

FROM: Steven A. Herman, Assistant Administrator ^{/s}
Office of Enforcement and Compliance Assurance

TO: Deputy Regional Administrators
Regional Counsels
Regional Enforcement Coordinators

During the past three years, EPA Regional Offices have made strides with many of their state partners in implementing the National Environmental Performance Partnership System (NEPPS). I want to take this opportunity to acknowledge the efforts of the Regions' enforcement and compliance programs in negotiating enforcement and compliance priorities with states. I also want to emphasize the importance of the State/EPA relationship and the need to continue to work with the states to make it as effective a process as possible.

The purpose of this memorandum is to emphasize the importance of integrating enforcement and compliance priorities into Performance Partnership Agreements (PPAs) and Performance Partnership Grants (PPGs) as they are negotiated for FY 1999, and to stress that enforcement and compliance personnel must be involved throughout the negotiation process to achieve this goal. Also provided is a list of contacts in the Office of Planning and Policy Analysis (OPPA) assigned to assist the Regions throughout the PPA/PPG negotiations process. I encourage you to consult with OPPA early in the negotiations process when significant issues arise.

Incorporating Enforcement and Compliance Assurance into PPAs/PPGs

The Regions should continue to incorporate enforcement and compliance goals, priorities, and measures into PPAs/PPGs. To accomplish this result, enforcement and compliance personnel need to be involved throughout the PPA/PPG process. Specifically, it is essential for enforcement and compliance personnel to initiate and lead joint planning and priority setting discussions on enforcement and compliance. Also, they should ensure that state enforcement and compliance programs are incorporated in PPAs/PPGs.

^s As signed by Steven A. Herman on May 26, 1998.

Measures of Success

The OECA Accountability Measures are still valid and should be used when negotiating PPAs/PPGs with states for FY 1999. These measures, developed in 1997 in cooperation with the Environmental Council of the States, are a set of outcome and output measures designed to measure the performance of state enforcement and compliance programs.

Coordination with OPPA

OPPA is the OECA lead on enforcement issues and state oversight arising under NEPPS. To assist in resolving enforcement and compliance issues that may arise in PPA/PPG negotiations, the Regional Offices should bring these issues to the attention of OPPA at the earliest possible moment. Please share draft agreements with OPPA contacts at an early stage so that they may have an opportunity to review and comment on the enforcement and compliance components of these agreements. OPPA will provide guidance and support to regional staff in negotiating national enforcement and compliance priorities with states, while providing flexibility to state programs.

Attached for your reference is a list of OPPA contacts assigned to assist you with PPA/PPG activities in your Region. The listed individuals also will be initiating communications with you in the near future. If you have any general questions, contact Mimi Guernica leader of the State Programs and Compliance Incentives Team in OPPA at (202) 564-7048.

ATTACHMENT

Office of Planning and Policy Analysis Contact List

Region 1	Mimi Guernica (202) 564-7048
Region 2	Wendy J. Miller (202) 564-7102
Region 3	Amanda Gibson (202) 564-4239
Region 4	Wendy J. Miller (202) 564-7102
Region 5	Art Horowitz (202) 564-2612
Region 6	Amanda Gibson (202) 564-4088
Region 7	Margaret Du Pont (202) 564-0056
Region 8	Art Horowitz (202) 564-2612
Region 9	Margaret Du Pont (202) 564-0056
Region 10	Margaret Du Pont (202) 564-0056

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APPENDIX 3
DISTRIBUTION

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DISTRIBUTION

Headquarters

Office of Inspector General - Headquarters (2421)
Agency Audit Followup Coordinator (3304)
Agency Audit Followup Official (3101)
Audit Followup Coordinator, Office of Enforcement
and Compliance Assurance (2201A)
Assistant Administrator for Air and Radiation (6101)
Associate Administrator for Regional Operations and State/Local Relations (1501)
Associate Administrator for Congressional and Legislative Affairs (1301)
Associate Administrator for Communications, Education, and Public Affairs (1701)
Headquarters Library (3404)

Regional Offices

Regional Administrators
Regional Air Enforcement Directors
Regional Audit Followup Coordinators
Regional Directors of Public Affairs
Regional Libraries

General Accounting Office