



Office of Inspector General

Audit Report

Air

Idaho's Air Enforcement Program

E1GAF8-10-0018-8100249

September 30, 1998

**Inspector General Division
Conducting the Audit**

**Western Audit Division
Seattle Branch Office**

Region covered

Region 10

Program Office Involved

Office of Air Quality

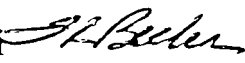


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September 30, 1998

MEMORANDUM

SUBJECT: Idaho's Air Enforcement Program
Audit Report No. E1GAF8-10-0018-8100249

FROM: Truman R. Beele 
Divisional Inspector General for Audits
Western Audit Division

TO: Chuck Clarke
Regional Administrator
EPA Region 10

Attached is our final report titled *Idaho's Air Enforcement Program*. The overall purpose of the audit was to evaluate the effectiveness of the State of Idaho's administration and EPA Region 10's oversight of the stationary source air enforcement program in Idaho.

We concluded that the State's administration and the Region's oversight of the stationary source air enforcement program for Idaho's significant violators were not sufficient to ensure compliance with federal and State laws and regulations. We believe that improvements are necessary to prevent threats to public health and the environment.

This audit report contains findings that describe problems the Office of Inspector General has identified and corrective actions the OIG recommends. This audit report represents the opinion of the OIG and the findings contained in this audit report do not necessarily represent the final EPA position. 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 described in this audit report 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 our office with a written response to the audit report within 90 days of the report date. The response should address all recommendations. For corrective actions planned but not completed by the response date, reference to specific milestone dates will assist us in deciding whether to close this

report.

We have no objection to the release of this report to the public.

We appreciate the cooperation from your staff and the Idaho Division of Environmental Quality staff during this audit. Should you or your staff have any questions about this report, please call me at (415) 744-2445, or Charles Reisig of our Seattle Office at (206) 553-4032.

Attachment

Distribution: APPENDIX D

EXECUTIVE SUMMARY

INTRODUCTION

The Clean Air Act, as amended in 1990, gives EPA authority to set and enforce national standards to protect human health and the environment from emissions that pollute the air. EPA Region 10 (the Region) has granted authority to the State of Idaho (the State) to implement and enforce the stationary source air program through approval of the State Implementation Plan for the Control of Air Pollution in the State of Idaho. The audit focused on enforcement activities related to stationary source significant violators (SVs) in the State.

OBJECTIVES

The overall purpose of the audit was to evaluate the effectiveness of the State's administration and the Region's oversight of the stationary source air enforcement program. The specific objectives were to evaluate whether the State's:

- Enforcement actions were appropriate and penalties were of sufficient magnitude to have a credible deterrent effect on major air pollution sources;
 - Enforcement activities resulted in timely return of sources to compliance; and
 - Inspection procedures ensure that all significant air pollution violations were identified.
-

RESULTS IN BRIEF

The State's administration and the Region's oversight of the stationary source air enforcement program for SVs were not sufficient to ensure compliance with federal and State laws and regulations. We believe that significant improvements are necessary to prevent threats to public health and the environment.

The Idaho Division of Environmental Quality (DEQ) needs to make significant improvements in its air enforcement program because: (i) enforcement actions were not appropriate and penalties were not of sufficient magnitude to have a credible deterrent effect on major air pollution

sources; (ii) enforcement activities did not result in timely return of sources to compliance; and (iii) inspection procedures did not ensure that all significant air pollution violators were identified. We also found that: (i) emission reports were not reviewed timely to ensure sources were in compliance with applicable emission limits; and (ii) SV data was not reported accurately.

The Region's oversight of DEQ's enforcement program also needs significant improvement because the Region did not: (i) establish enforcement criteria for assessing the State's program; (ii) perform any program reviews of the State's air enforcement program after April 1993; and (iii) use its enforcement authority effectively when the State was unwilling or unable to take timely and appropriate enforcement action in response to violations. In addition, the Region's Federal Manager's Financial Integrity Act (FMFIA) assurance letter to the Administrator did not report the weaknesses in the administration and oversight of the State's air enforcement program as a material deficiency in management controls.

Lack Of Enforcement Against Many Stationary Source Significant Violators

Enforcement actions, including the use of penalties, were often insufficient to bring SVs into compliance with federally enforceable air regulations and the *Rules and Regulations for the Control of Air Pollution in Idaho*. Enforcement actions were neither made nor escalated to deter SVs from gaining an economic advantage as a result of their violations. Of the few penalties that had been assessed, none included amounts for the economic benefit gained from noncompliance. Also, the penalties that we reviewed were significantly lower than the amounts under the guidelines of EPA's *Clean Air Act Stationary Source Civil Penalty Policy*. In addition, DEQ was not meeting EPA's *Timely and Appropriate Enforcement Response to Significant Air Pollution Violators* guidance for timely resolution of the violations.

An adequate enforcement program had not been implemented in the State mainly because DEQ focused on compliance assistance rather than enforcement to bring sources back into compliance. However, when compliance assistance failed to timely bring the sources into compliance, appropriate enforcement actions were not taken. Also, a contributing factor to DEQ's insufficient emphasis on enforcement was the Compliance Assurance Agreement between DEQ and the Region. This enforcement agreement did not require DEQ to follow EPA enforcement guidance.

Insufficient Inspections

DEQ's inspection activity did not provide adequate coverage to ensure that all SVs were identified and reported timely. DEQ did not inspect sources as frequently as required by EPA guidance which states that all major sources shall be inspected annually and all potential major sources shall be inspected biennially. In addition, reports of inspections were not prepared timely in accordance with DEQ's guidance. As a result, there is increased risk that significant air pollution violations will not be identified and resolved within a reasonable period of time, which can adversely impact human health and the environment. These conditions occurred because the

Region had not required DEQ to meet EPA's Inspection Frequency Guidance, and DEQ's guidance for timely finalization of inspection reports was not adequately communicated to DEQ inspectors.

Reviews Of Source Emissions Reports Were Not Timely

DEQ did not review source emissions reports timely, resulting in a significant backlog of emissions reports that were pending review. These reports are required by permits and consent orders and provide important emissions information that should be reviewed timely to determine source compliance with applicable emission limits. A lack of review can lead to violations going undetected for long periods of time and enforcement action not being taken timely. This condition occurred because DEQ did not provide sufficient resources needed to eliminate this backlog.

Significant Violator List Inaccurate

The Region did not ensure that data reported on the SV lists for the State was accurate and complete. A review of 37 sources reported on SV lists for DEQ disclosed inaccurate data for half of those sources. EPA uses the SV list as an oversight tool to ensure that SVs are addressed and resolved timely and appropriately. EPA's guidance provides definitions of an SV and criteria for the various action dates reported on the SV list. Inaccurate SV reporting hinders the Region's ability to monitor the timeliness and appropriateness of enforcement actions and resolution of SVs. This condition occurred because the Region did not establish adequate procedures to ensure that the data reported on the SV lists conformed to the reporting criteria specified by EPA's guidance.

Insufficient Oversight By The Region

The Region did not perform sufficient oversight of the State's air enforcement program. This contributed to the weaknesses in the State's enforcement program which did not meet Clean Air Act requirements. Specifically, the Region did not: (i) establish criteria for assessing the State's enforcement program; (ii) perform any program reviews of DEQ's air enforcement program after April 1993; (iii) use its enforcement authority effectively when the State was either unable or unwilling to pursue timely and appropriate enforcement action in response to violations; or (iv) report the weaknesses in the State's enforcement program as management control deficiencies to the EPA Administrator as required by the Federal Managers Financial Integrity Act.

The Region attributed the conditions to three main causes: (i) a loss of positions and experienced staff because of two recent reorganizations; (ii) difficulty in determining the level of oversight to provide because the states have requested more autonomy and flexibility under performance partnership agreements; and (iii) a lack of clear criteria defining oversight under performance partnership agreements.

RECOMMENDATIONS

Principal recommendations to the Regional Administrator are to:

- Require DEQ to develop and implement enforcement policies and procedures which are consistent with EPA enforcement guidance.
- Ensure major and potential major source inspection coverage is in accordance with EPA's Inspection Frequency Guidance.
- Implement procedures that ensure SV data is accurately reported on the Region's SV lists.
- Revise the Compliance Assurance Agreement with DEQ to include EPA enforcement guidance as criteria for assessment of the State's stationary air enforcement program.
- Conduct, at least annually, evaluations of the State's air enforcement program for SVs for consistency with EPA guidance.
- Report the weaknesses in the administration and oversight of the stationary source air enforcement program for SVs in the State as a management control deficiency in the next FMFIA assurance letter to the EPA Administrator.
- Withhold final approval of the State's Title V operating permit program until the State establishes procedures for enforcement which are consistent with EPA's enforcement guidance.
- Assume responsibility for enforcement of the stationary source air program if the State is unable or unwilling to implement an enforcement program consistent with EPA guidance and the Clean Air Act.

Auditee Comments and OIG Evaluation

A draft report was provided to the Region and DEQ on July 31, 1998 for their comments. Both the Region and DEQ responded to the draft report on August 31, 1998 and their responses are included as APPENDIX C to this report. The Region concurred with the recommendations and described corrective actions that have been taken or will be taken. It also commented that it has already taken a number of actions to begin addressing some of the major findings reported. These actions included frank and open discussions at the highest levels of management in both agencies to jointly work through the steps to improve DEQ's air enforcement program.

DEQ did not concur with the findings and recommendations. It stated that its programs have performed according to established agreements and in a manner protective of public health and the environment at all times. It commented that the report inappropriately emphasized differences in DEQ's administration and implementation of its program compared to a preestablished set of national criteria that DEQ had never agreed to strictly comply with. In addition, DEQ stated that strict adherence to national policy as opposed to the operating principles DEQ agreed to operate its program under in no way points to poor performance or ineffectiveness in meeting its goals.

The corrective actions taken or planned by the Region will significantly improve the stationary source air enforcement program in Idaho. We agree with those actions. In regard to DEQ's response, we believe the conditions described in this report clearly demonstrate a need for major improvements. DEQ's enforcement actions were not consistent with EPA enforcement guidance and often were insufficient to bring SVs into compliance with federally enforceable air regulations and the *Rules and Regulations for the Control of Air Pollution in Idaho*. While the Compliance Assurance Agreement between the Region and DEQ did not specifically require DEQ to follow EPA enforcement guidance, it did state that it is DEQ's goal to build an adequate and balanced compliance program which will result in enforcement processing consistent with EPA's SV guidance.

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ABBREVIATIONS

AFS	EPA's Aerometric Information Retrieval System Facility Subsystem
CAA	Clean Air Act, as amended in 1990
CAR	Compliance Action Referral
CEMS	Continuous Emissions Monitoring Systems
CFR	Code of Federal Regulations
DEQ	Idaho's Division of Environmental Quality
EO	Ethylene Oxide
EPA	Environmental Protection Agency
EPHA	Idaho Environmental Protection and Health Act
FMFIA	Federal Managers' Financial Integrity Act
NOV	Notice of Violation
OECA	EPA's Office of Enforcement and Compliance Assurance
OIG	Office of Inspector General
PTC	Permit to Construct
SIP	State Implementation Plan
SV	Significant Violator

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CHAPTER 1

INTRODUCTION

PURPOSE

The overall purpose of the audit was to evaluate the effectiveness of the State of Idaho's administration and EPA Region 10's oversight of the stationary source air enforcement program. The specific objectives were to evaluate whether Idaho's:

- Enforcement actions were appropriate and penalties were of sufficient magnitude to have a credible deterrent effect on major air pollution sources;
- Enforcement activities resulted in timely return of sources to compliance; and
- Inspection procedures ensure that all significant air pollution violations were identified.

BACKGROUND

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

The CAA requires EPA to identify and set national standards for air pollutants which might endanger public health. EPA has set national standards for six criteria pollutants: (i) ozone; (ii) carbon monoxide; (iii) sulfur dioxide; (iv) nitrogen dioxide; (v) lead; and (vi) particulate matter. The standards specify acceptable air pollution concentrations for a geographic area, and the states must take action to ensure facilities meet these standards. Geographic areas which persistently exceed the national standards may be designated "nonattainment" areas. Idaho has five nonattainment areas: Sandpoint, Pinehurst, northern Ada County, and a portion of Power and Bannock counties.

The Region's enforcement principles and expectations are outlined in the Region's Enforcement and Compliance Strategy (Working Draft for fiscal 1997) and the EPA Strategic Plan (September 1997). According to EPA strategy, one of the purposes of the Agency is to ensure that federal laws protecting human health and the environment are enforced fairly and effectively. Traditional enforcement is one of the most powerful and effective tools EPA has to ensure the protection of human health and the environment. The public expects EPA to ensure that minimum federal environmental standards are maintained across State boundaries, to prevent the development of pollution havens, and to take appropriate enforcement action. EPA works to help the regulated community understand and fully comply with environmental requirements, punish violators and deter future violations, and level the economic playing field for law-abiding companies. EPA requires penalty assessments to include gravity and economic benefit components to establish a deterrence to noncompliance. Accomplishment of EPA's environmental goals depends on a strong enforcement and compliance assurance program, with active involvement of State partners to encourage appropriate behavior by the regulated community.

EPA's Timely and Appropriate Enforcement Response to Significant Air Pollution Violators provides guidance for EPA and State enforcement of significant air pollution violators. An SV is any "major" (as defined by the CAA) or "synthetic minor"¹ stationary source of air pollution which is in violation of a federally enforceable regulation. The guidance establishes time frames for identifying, addressing, and resolving SVs. EPA has a program to track and report on SVs in its national database known as the Aerometric Information Retrieval System Facility Subsystem (AFS).

Authority for Idaho's Air Enforcement Program

The Region granted authority to the State for implementation and enforcement of the stationary source air program through approval of the State Implementation Plan (SIP) for the Control of Air Pollution in Idaho. The plan was approved by EPA during 1974 and has been periodically revised in response to federal requirements and State and local needs. The *Rules and Regulations for the Control of Air Pollution in Idaho* establish air

1. Synthetic minor sources are sources whose potential emissions have been restricted to below major source emissions thresholds through accepting voluntary emission limits in their construction or operating permits.

quality rules that must be followed by sources located in the State. Most of these rules have been incorporated into the SIP, and as a result, are federally enforceable.

The fiscal 1993 Compliance Assurance Agreement for Air between the Region and DEQ defines the respective roles and responsibilities of the two agencies for the air pollution control program. This agreement covers areas such as inspections, enforcement, and recording compliance activity at facilities in AFS. The agreement states that DEQ has primary responsibility for enforcement of the Idaho Environmental Protection Health Act and the *Rules and Regulations for the Control of Air Pollution in Idaho*. Under the agreement EPA may take unilateral enforcement action when it determines that DEQ has not taken timely or appropriate action concerning a violation or alleged violation which is federally enforceable.

DEQ takes the initial lead on SV enforcement cases which represent violations of the State's air pollution rules. DEQ's goal is to build an adequate and balanced program resulting in enforcement processing consistent with EPA's timely and appropriate guidance for SVs. EPA has authority to assume the enforcement lead in cases when it becomes apparent that the State is unable or unwilling to resolve a violation in a timely and appropriate manner.

DEQ's Organizational Structure

DEQ is the environmental protection unit under the Idaho Department of Health and Welfare. DEQ's Air and Hazardous Waste Division is responsible for administering permit and compliance/enforcement programs for both air quality and hazardous waste, and is comprised of four bureaus. The Air Quality Permitting Bureau is responsible for the air quality permitting program. The air quality section within the Compliance Assurance Bureau is responsible for the air compliance/enforcement program. Besides DEQ's central office, air staff are located in six regional offices. The State of Idaho's Office of the Attorney General provides legal counsel to management and technical staff at DEQ and assists with formal enforcement actions.

DEQ's Enforcement Process and Tools

EXHIBIT 1 illustrates the administrative enforcement process used by DEQ. DEQ identifies violations primarily through inspections. It also identifies violations by reviewing self-monitoring emissions

reports and investigating citizen complaints. Once a violation has been identified, DEQ's procedures are to issue a warning letter which notifies the source of the violation and requests a response or corrective measures to be implemented within a given time frame. If the source fails to cooperate or inadequately responds to the warning letter, a Notice of Violation (NOV) may be issued. A NOV is a formal document which assesses penalties for the violations cited in the warning letter. After a NOV is issued, the source has 15 days to contact DEQ to request and schedule a compliance conference. The purpose of the compliance conference is to discuss and negotiate terms and conditions of a voluntary consent order which will result in resolution of the alleged violations cited in the NOV.

Besides the administrative enforcement process described above, DEQ can also use civil enforcement as necessary. Civil enforcement is commenced through a referral to the State's Office of the Attorney General. As an alternative to formal enforcement actions, DEQ often uses compliance assistance tools, such as permit modifications and technical assistance, to bring sources into compliance with permits and with State and federal regulations.

Status of Title V Operating Permit Program Delegation

Under Title V of the CAA, states are required to develop operating permit programs that meet certain federal criteria. DEQ does not yet have full approval by EPA for a Title V operating permit program, although it does have interim approval. Under the interim approval, DEQ has the authority to issue Title V operating permits. During our audit period (October 1996 through December 1997) DEQ had not yet issued any Title V operating permits. As a result, sources in Idaho generally operated under permits to construct (PTC). 40 CFR Parts 70.4 and 70.10 require an adequate inspection program and demonstration that the State can adequately implement an enhanced compliance assurance program prior to approving a Title V operating permit program.

SCOPE AND METHODOLOGY

We performed this audit in accordance with the Government Auditing Standards (1994 Revision) issued by the Comptroller General of the United States as they apply to performance audits. Our review included tests of program records and other auditing procedures we considered necessary for the purposes of expressing an opinion based on our audit objectives. We also reviewed the Federal Managers' Financial Integrity Act report for 1997. The

report did not identify any material weaknesses, or vulnerabilities, relating to the issues discussed in this report. See APPENDIX A for scope and methodology details.

PRIOR AUDIT COVERAGE

There have been no prior audits performed on the Region's oversight or Idaho's administration of the stationary source air enforcement program. However, on March 30, 1998, the EPA OIG issued an audit report (Report No. E1KAF7-10-0015-8100094) entitled Region 10's Oversight of Washington's Air Compliance and Enforcement Program. The report concluded that the Region could improve its oversight activities to ensure more accurate reporting of SVs by the local and State of Washington air pollution agencies.

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CHAPTER 2

LACK OF ENFORCEMENT AGAINST MANY STATIONARY SOURCE SIGNIFICANT VIOLATORS

DEQ did not have an effective enforcement program to ensure compliance with federal and State laws and regulations, and to prevent threats to public health and the environment. Enforcement actions, including the use of penalties, were often insufficient to bring significant violators into compliance with federally enforceable air regulations and the *Rules and Regulations for the Control of Air Pollution in Idaho*. We reviewed DEQ's enforcement actions for 24 SVs (39 percent of the SVs that DEQ had enforcement responsibility for during the 15-month period ended December 31, 1997) and concluded that:

- Enforcement actions were either not made or were not escalated against 18 of the 24 SVs to deter them from gaining an economic advantage as a result of their violations. In many instances, the sources had a history of repeated and continuous violations of permit conditions that lasted for years.
- Of the few penalties that had been assessed, none included amounts as penalties for the economic benefit gained from noncompliance. Also, the three penalties that we reviewed (98 percent of the dollar amount of penalty assessments during the 15-month period) were significantly lower than the amounts under the guidelines of EPA's *Clean Air Act Stationary Source Civil Penalty Policy*.
- DEQ was not meeting EPA's *Timely and Appropriate Enforcement Response to Significant Air Pollution Violators* guidance for timely resolution of the violations. Violations for 22 of the 24 SVs were either not addressed or not resolved within 150 days of the SV designation. There were 18 SVs that remained unaddressed for periods from 175 days to 1,636 days.

An adequate enforcement program had not been implemented in the State because DEQ mainly focused on compliance assistance rather than enforcement to bring sources back into compliance. However, when compliance assistance failed to timely bring the sources into compliance, appropriate enforcement actions were not taken. Also, a contributing factor to DEQ's insufficient emphasis on enforcement was the Compliance Assurance Agreement between DEQ and the Region. This enforcement agreement did not require DEQ to follow EPA enforcement guidance (see Chapter 6 for additional comments on this issue).

DEQ's lack of enforcement, and small or no penalties, gave SVs a financial incentive to continue polluting rather than bringing their facilities into compliance.

BACKGROUND

EPA's *Compliance and Enforcement Manual* (1986) provides for essentially two enforcement options to bring continuous and repeat violators into compliance and deter future violations. Escalating the type of enforcement action is one option. Actions for escalating enforcement include, in order of increasing significance: (i) issuing notices of violation (NOV); (ii) entering into consent or compliance orders; and (iii) obtaining court-ordered injunctions. The second enforcement option is to escalate monetary penalties.

EPA's *Timely and Appropriate Enforcement Response to Significant Air Pollution Violators* (the SV guidance) (1992) requires that a NOV be issued within 45 days of designation as an SV. Furthermore, if the violation cannot be resolved within 150 days of the SV designation, the SV guidance requires that the violation be addressed within the 150-day period either through: (i) a legally enforceable order; or (ii) a referral to the State attorney general or Federal Department of Justice for an adjudicatory enforcement hearing or judicial action.

According to the SV guidance, EPA's national goal with respect to violations of the Clean Air Act is to have all federal, State, and local enforcement actions assess penalties sufficient to achieve effective deterrence, both for the actual subject of the enforcement action and for the regulated community as a whole. Furthermore, the guidance states that EPA expects that when SVs are resolved agencies will obtain an appropriate penalty, including one to offset the violator's economic gain.

EPA's *Clean Air Act Stationary Source Civil Penalty Policy* (EPA's Penalty Policy) (1991) requires penalty assessment calculations to include gravity and economic benefit components to establish a deterrence. The gravity of violation component considers three factors in establishing a penalty amount: (i) actual or possible harm; (ii) importance to the regulatory scheme; and (iii) size of the violator. The gravity component is designed to equalize violations so that equally serious violations are treated the same way. The economic benefit of noncompliance component includes both delayed and avoided costs. This element is intended to prevent violators from benefitting economically from their noncompliance so that they do not have an unfair advantage over competitors who complied with environmental requirements.

EPA's Penalty Policy includes guidelines on acceptable reasons for mitigating penalties during settlement negotiations with the violator. It suggests appropriate limits on reductions during these negotiations. The gravity amount may be mitigated by up to 30 percent if criteria specified by the guidance are met by the violator. Generally, the economic benefit component may not be mitigated.

The Region entered into a Compliance Assurance Agreement for Air with DEQ during fiscal 1993 which establishes roles and responsibilities of each of the parties for administration of the stationary air pollution control program in Idaho. The agreement states that DEQ must address all violations of the Idaho Environmental Protection Health Act and *Rules and Regulations for the Control of Air Pollution in Idaho*. However, the agreement does not require DEQ to follow EPA's enforcement guidance (i.e., *EPA's Compliance and Enforcement Manual*, SV guidance, and Penalty Policy). Instead, the agreement states that the Region recognizes that DEQ does not currently have sufficient resources to consistently process cases in accordance with EPA's SV guidance. However, the agreement also states that it is DEQ's goal to build an adequate and balanced compliance program which will result in enforcement processing consistent with the EPA's SV guidance.

DEQ regulates air pollution stationary sources under the Idaho Department of Health and Welfare Rules and Regulations, Title 1, Chapter 1, *Rules and Regulations for the Control of Air Pollution in Idaho*. The Idaho Environmental Protection and Health Act (EPHA) provides DEQ with the authority to assess civil penalties against air pollution violators. The EPHA gives DEQ the authority

to assess a civil penalty of \$10,000 for each separate air violation or \$10,000 for each day of a continuing violation. The Act also establishes a 2-year statute of limitations for the pursuit of air pollution violations.

DEQ had enforcement responsibility for 62 SVs during the 15-month period ended December 1997. According to DEQ's records, 18 of the SVs were brought back into compliance during the 15-month period.

**ENFORCEMENT
ACTIONS
NEITHER MADE
NOR ESCALATED**

Enforcement actions were neither made nor escalated against 18 of the 24 SVs reviewed to deter them from gaining an economic advantage as a result of their violations and to ensure protection of public health and the environment. Of the 18 SVs, enforcement actions were not initiated against 5 violators, enforcement was not escalated to penalty assessments for 12 violators, and penalty assessments for 1 other SV were waived. In many instances, the sources had a history of repeated and continuous violations of permit conditions that lasted for years.

Furthermore, only 5 of the 24 SVs reviewed had been addressed or resolved during the 15-month period ending December 1997. As a result, we concluded that DEQ's enforcement activities had not been effective in achieving and maintaining compliance.

EXHIBIT 2 summarizes the results of our evaluation of the 24 SVs², and the following 7 examples illustrate the types of violations where sufficient enforcement was not pursued by DEQ.

SV-5, a toxics storage and disposal facility. This stationary source was designated as an SV in November 1994 for failure in 1993 to obtain a PTC for a cement batch plant and screening operations. In 1996 this SV was out of compliance with the State's Title V Operating Permit requirements because it had not submitted a Title V Application for any of its emission points: cement plant; screening operations; facilities containing hazardous wastes; stabilization facility; and rail transfer facility. Although the source had been in violation of Idaho's permitting requirements since 1993, no enforcement actions had been taken as of

2. For purposes of this report, we have identified SVs with a number in lieu of the violator's name because enforcement actions might not have been completed and the information could be considered enforcement sensitive.

December 1997.

SV-6, a manufacturing facility. This major stationary source was designated an SV in July 1997. The 1997 violation resulting in the SV designation was a repeat of a violation identified in 1995. As of December 1997, enforcement actions were not escalated beyond a warning letter even though the facility had repeatedly violated emission limits specified by its PTC since 1995. These violations included failing to conduct a performance test for particulate matter emissions and exceeding, by six times, the particulate matter emission limit. This source had a history of prior violations and citizen complaints about its air emissions since the early 1980's.

SV-11, a mining and processing facility. This major stationary source had a long history of air quality violations and was identified as an SV in July 1996. DEQ made numerous attempts through the administrative process to get this facility into compliance, but those actions were not escalated enough to prevent the owner from operating the plant and violating air quality standards.

In a letter dated August 30, 1996, the current owner stated that despite improvements that had been made, the facility was old and would never be able to be brought into compliance. The owner, however, stated that it had a compelling business requirement to sustain production and stated that it would continue to intermittently operate the facility until a new facility was in operation.

In a August 25, 1997 memorandum to the Special Assistant to the Governor, DEQ stated that it had been unsuccessful in achieving resolution of both past and ongoing violations by SV-11 and that the case was referred to the Office of the Attorney General for commencement of civil action. It stated that the owner continued to operate the mill knowingly and willfully violating Idaho's air quality rules and the terms of a consent order.

That same day, the Office of the Attorney General wrote a letter to the SV stating that based upon conversations with the owner:

- (i) the mill could not be operated in conformance with either the consent order or the *Rules and Regulations for the Control of Air*

Pollution in Idaho and; (ii) the owner agreed to cease operations of the mill until it could demonstrate that the mill can be operated in conformance with requirements. The letter also advised that as a good faith gesture, and to encourage compliance, the DEQ was conditionally returning a check from the SV in the amount of \$3,250. The check was tendered as a partial payment for numerous penalties incurred for violations of the consent order. In addition to returning the \$3,250, other penalties in 1996 and 1997 (\$3,250) had not been paid as of December 1997.

As a result, the owner achieved the economic benefit of intermittently operating the mill while avoiding any financial penalty for violating air quality standards over a period of about 1½ years. In October 1997 the facility failed performance tests because it still could not operate in compliance with requirements. An additional test was planned in 1998.

SV-17, a sawmill. This synthetic minor stationary source was designated as an SV in June 1996 for exceeding the visible emission limit and noncompliance with construction notification requirements of the facility's PTC. DEQ issued warning letters for this violation and subsequent violations during a 1½-year period, but it did not escalate its enforcement actions to bring the facility into compliance. Instead, DEQ brought the facility into compliance during February 1998 by establishing less stringent emission limits through a modification of the facility's PTC.

SV-20, a State facility. This major stationary source was designated as an SV in July 1995 for boiler emissions that exceeded Idaho's 20 percent visible emissions limit. At the time of this violation, the SV was under its second consent order. The first consent order was established in December 1986 to address the facility's failure to obtain a PTC for a boiler and the second order was established in March 1995 to address a 2-year history of emissions violations. Although the facility continued to exceed emission limits established under the second consent order in 1995 and 1996, DEQ did not assess any penalties. Instead, DEQ issued a warning letter and established a third consent order in November 1996. Subsequent data reports from the source showed periodic excess emissions, but DEQ had not made an evaluation to determine whether those emissions were violations of the third consent order.

SV-21, a portable rock crusher plant. This synthetic minor source was designated as an SV in October 1995 for exceeding visible emissions limits established by the plant's PTC. Although the source was found to have similar significant PTC violations in subsequent years, DEQ did not escalate enforcement actions beyond warning letters. As of December 1997, the plant was still out of compliance.

SV-24, a manufacturing facility. This synthetic minor stationary source was identified as an SV in September 1996 for failing to comply with several requirements of a January 1995 PTC, including a requirement to conduct a source test on an acid scrubber. DEQ did not proceed with an enforcement action in response to the violations. Instead, it issued an operating permit in March 1997 which superseded the PTC and eliminated the requirement to conduct the source test.

DEQ FOCUSED ON COMPLIANCE ASSISTANCE

The main reason for DEQ's lack of enforcement was that the Division had implemented an air pollution prevention program that focused on compliance assistance rather than enforcement to bring sources back into compliance. A contributing factor to DEQ's insufficient emphasis on enforcement was the Compliance Assurance Agreement with the Region. This enforcement agreement did not require DEQ to follow EPA's *Compliance and Enforcement Manual*, SV guidance, and Penalty Policy. In its comments to our position papers³, DEQ stated:

... DEQ by virtue of its Compliant Assurance Agreement entered into with EPA in 1993, maintains that the terms of the agreement describe the efforts that will be taken to ensure compliance. The fact the DEQ has complied with those terms and USEPA has not sought revision of the agreement since it was drafted, would tend to support an argument that DEQ's program is, and has been, acceptable to EPA.

3. Position papers which described our tentative findings and recommendations were issued to DEQ and the Region during June 1998. DEQ and the Region were requested to provide written comments on the accuracy and fairness of our findings. We received comments from both DEQ and the Region.

DEQ views enforcement as a last resort to be used only when other avenues, such as compliance assistance and maximum flexibility in regulatory and permit interpretation, have been exhausted. For example, in a written response to an inquiry from a representative in Idaho's State Legislature, dated January 1996, the DEQ Administrator stated:

Although DEQ can impose penalties as indicated above, we would put forth significant guidance and additional energies to help sources avoid penalties. Penalties and fines are imposed as a last resort in an attempt to bring a source into complying with Idaho's air rules when all other efforts have failed.

As part of its compliance assistance focus, DEQ escalated enforcement actions beyond a warning letter only for cases that were perceived by the Division to be recalcitrant, egregious, and harmful to the environment. Furthermore, in some instances DEQ avoided initiating or escalating enforcement actions for PTC compliance violations by issuing permit modifications that provided less restrictive compliance requirements and increased emission limits.

In response to our position papers, DEQ also stated:

... DEQ's investment into compliance assistance was made with Region X's knowledge and has been considered to be following the lead set by EPA, and as being consistent with what is being similarly adopted by state regulatory agencies all across the country.

We agree that compliance assistance can be an effective tool for educating sources on air pollution requirements and promoting compliance. However, DEQ's approach to enforcement of air pollution requirements is not consistent with EPA guidance. Although EPA's *Operating Principles for an Integrated EPA Enforcement and Compliance Assurance Program* (1996) recognizes compliance assistance, the operating principles state:

Compliance assistance is not a substitute for the regulated industries' responsibility to learn and comply with laws and regulations. It complements but does not replace appropriate enforcement.

DEQ's focus on compliance assistance has not been effective in bringing SVs back into compliance. As discussed earlier, only 5 of 24 SVs reviewed were either addressed or resolved during the 15-month period ended December 1997. Many of those SVs were out of compliance for extended periods. Allowing SVs to remain out of compliance for extended periods could adversely affect public health and the environment.

MINIMAL PENALTIES

DEQ's penalty assessments did not provide a deterrence to noncompliance with the *Rules and Regulations for the Control of Air Pollution in Idaho*. DEQ assessed penalties against four SVs during the 15-month period covered by our review. None included amounts as penalties for the economic benefit gained from noncompliance.

We reviewed the penalties for three of the four SVs (98 percent of the dollar amount of penalty assessments during the 15-month period) and found that the penalties were significantly lower than the amounts under the guidelines of EPA's *Clean Air Act Stationary Source Civil Penalty Policy*. The three penalty cases we reviewed are discussed below.

SV-2 and SV-3, portable rock crushing plants. Two of the cases where penalties were assessed were SV-2 and SV-3, which were designated as SVs in August 1996 for being out of compliance with their PTCs. DEQ assessed penalties totaling \$89,400 for the gravity portion of the violations which was about 57 percent of the \$158,000 in penalties that could have been assessed under EPA's Penalty Policy.

As of the end of 1997, DEQ was pursuing settlement negotiations with the SVs and proposing to reduce the penalties to less than \$15,000. At this time, the SVs had been out of compliance for almost 500 days. Under EPA's Penalty Policy, penalties may be reduced under certain circumstances such as the subject's degree of cooperation. The policy also requires that the justification for penalty reductions be adequately documented. DEQ's penalty

reductions were not based on EPA's Penalty Policy and the justification for the proposed reductions was not documented.

SV-7, a sawmill. This major stationary source was designated as an SV during September 1996 for failing to submit a Title V operating permit application to DEQ. DEQ issued a NOV during January 1997 which assessed a penalty of \$10,000 for the gravity portion of the violation which was less than one-third of the \$32,000 that could have been assessed under EPA's Penalty Policy.

DEQ settled the enforcement action in April 1997, with the SV agreeing to pay a \$250 penalty. According to the DEQ, the penalty was mitigated because the SV: (i) submitted its permit application to DEQ in February 1997; (ii) claimed that it could not afford the \$10,000 penalty; and (iii) offered to pay a \$250 penalty. With respect to the significant reduction in the penalty due to the company's claim of financial hardship, DEQ did not evaluate the company's ability to pay.

**DEQ'S PENALTY
POLICY
INCONSISTENT
WITH EPA'S
PENALTY POLICY
AND THE STATE'S
EPHA**

There were two major causes to DEQ's low penalty amounts. First, the Compliance Assurance Agreement between the Region and DEQ did not require the State to have a penalty policy which was consistent with EPA's Penalty Policy.

Specifically, DEQ's policy establishes a gravity component which is significantly below EPA's Penalty Policy and does not include an economic benefit component. Furthermore, DEQ's policy does not establish sufficient guidelines for reducing or increasing the gravity component.

Second, DEQ's penalty policy is not consistent with the State's EPHA. The EPHA grants DEQ the authority to assess a civil penalty of \$10,000 for each separate air violation or \$10,000 for each day of a continuing violation. DEQ's policy is inconsistent because it authorizes the assessment of a civil penalty of \$10,000 for each separate violation, but restricts penalties for continuing violations to no more than \$1,000 per day.

During the audit, a representative of the State's Office of the Attorney General advised us that the State's statutes do not prevent DEQ from establishing a policy to include an economic benefit

component in its penalties. Therefore, DEQ does have the authority to include the economic benefit obtained from noncompliance in penalty assessments.

In its comments to our position papers, DEQ stated:

... However, as policy, and because DEQ never stated its intent to comply with federal policy, DEQ assumed EPA found the state's penalty assessments were acceptable.

In order to provide an effective deterrence to noncompliance, DEQ needs to develop and implement a penalty policy that is consistent with the *Rules and Regulations for the Control of Air Pollution in Idaho* and EPA's Penalty Policy. This will require a penalty policy that includes significant assessments for both the gravity of violations and the economic benefit gained for noncompliance. As discussed above, DEQ has the statutory authority to assess up to \$10,000 for each violation or \$10,000 for each day of a continuing violation. Therefore, DEQ has the legal authority to implement a penalty policy which is consistent with EPA's Penalty Policy. DEQ's penalty policy should also include specific criteria for reducing or increasing the gravity component.

UNTIMELY ENFORCEMENT ACTIONS

DEQ was not meeting EPA's SV guidance and often it was not meeting its own time frames for resolution of the violations. Violations for 22⁴ of the 24 SVs were either not addressed or not resolved within 150 days of the SV designation. There were 18 SVs that remained unaddressed for periods from 175 days to 1,636 days. In order to provide adequate protection to public health and the environment, SVs need to be brought back into compliance as soon as possible. Furthermore, Idaho's 2-year statute of limitations necessitates that enforcement actions in response to significant violations be pursued timely.

The following example illustrates the need for more timely enforcement actions in response to significant violations.

4. Of the 24 SVs, one SV was resolved within the 150-day time frame specified by EPA guidance and one other SV was less than 150 days old.

SV-19, a manufacturer. This synthetic minor stationary source was designated as an SV in October 1996. In April 1997, almost 6 months later, DEQ issued a warning letter to the SV for those violations. Although the SV did not respond to the letter, DEQ did not escalate the enforcement action. Another inspection in August 1997 found that the facility was still violating its PTC. As of the end of December 1997, over 3 months later, enforcement had not been escalated beyond a warning letter. Therefore, the SV's violations have remained unresolved for approximately 14 months. This is well beyond the 150-day time frame goal established by EPA's SV guidance.

A major cause for DEQ's untimely responses to SVs was that the Compliance Assurance Agreement between the Region and DEQ did not require the State to follow EPA's SV guidance. Therefore, EPA had not established a requirement for DEQ to address or resolve SVs within 150 days of designation as an SV.

**DEQ Enforcement
Time Frames not
Consistent with EPA
Guidance**

Because DEQ was not required to follow EPA's SV guidance, DEQ's Enforcement Procedures Manual established enforcement time frames that significantly exceeded the SV guidance. The manual established a time frame of up to 120 days from the initial compliance review to initiate a warning letter or NOV and up to another 200 days to address the violation through a consent order or referral for a civil action.

We also found that DEQ had a policy in effect from 1996 to mid-1997 which contributed to untimely enforcement actions. During this approximate 1-year period, DEQ had a policy which required the inspectors in its Compliance Assurance Bureau to refer draft inspection reports to its Permitting Bureau for compliance determinations. When an inspection revealed potential permit violations, the compliance status would be considered "pending" until the Permitting Bureau determined whether, in fact, there were actual permit violations. According to Compliance Assurance Bureau staff, the Permitting Bureau's compliance determinations often were not necessary and slowed down the enforcement process. Therefore, this policy resulted in delayed enforcement actions against sources who violated permitting requirements.

CONCLUSION

The State of Idaho has not brought SVs into compliance in a timely manner, resulting in increased threats to public health and the environment. Our review of 24 SVs showed that only 1 of the violating facilities had been either addressed or resolved within the 150-day time frame specified by EPA guidance as of the end of 1997. In fact, DEQ allowed many of the SVs to continue to violate permit conditions and the *Rules and Regulations for the Control of Air Pollution in Idaho* for years without initiating enforcement actions or penalties. A lack of adequate enforcement and small or no penalties gave SVs a financial incentive to continue polluting rather than bringing their facilities into compliance. Furthermore, insufficient enforcement responses to SVs may result in DEQ's inability to pursue penalties for the violations because of Idaho's 2-year statute of limitations.

In its comments to our position papers DEQ stated:

... Our resources have continually been assigned to doing whatever is necessary to protect public health and the environment according to the provisions of state law.... DEQ does not necessarily agree that adding staff strictly to achieve the requirements within federal policy is a sound approach to the perceived problems brought to light in the audit. Federal policy of the type being argued herein is presently being challenged by many states at the national level.

In our opinion, DEQ's focus on compliance assistance in lieu of enforcement has not been effective in achieving and maintaining compliance with Idaho's air pollution requirements. DEQ needs to implement an enforcement program that provides a deterrence and eliminates any economic benefits gained from noncompliance.

RECOMMENDATION

We recommend that the Regional Administrator:

- 2-1. Require DEQ to develop and implement enforcement policies and procedures which are consistent with EPA's *Compliance and Enforcement Manual, Timely and Appropriate*

*Enforcement Response to Significant Violators, and
Clean Air Act Stationary Source Civil Penalty Policy.*

**REGION COMMENTS
AND OIG
EVALUATION**

The Region concurred with the recommendation and described corrective actions that it planned to take in early fiscal 1999. The Region commented that while it did not have unilateral authority to require DEQ to strictly and formally adhere to EPA enforcement policies and procedures, it will expect future State performance and outcomes to reflect EPA policies and procedures.

Furthermore, the Region stated that it will take whatever actions are necessary, including carrying out independent inspections and assuming responsibility for enforcement actions, should the State fail to secure results in line with EPA expectations.

We consider the proposed corrective actions to be satisfactory.

CHAPTER 3

INSUFFICIENT INSPECTIONS

DEQ's inspection activity did not provide adequate coverage to ensure that all SVs were identified and reported timely. DEQ did not inspect sources as frequently as required by EPA guidance which states that all major sources shall be inspected annually and all potential major sources shall be inspected biennially. In addition, reports of inspections were not prepared timely in accordance with DEQ's guidance. As a result, there is increased risk that significant air pollution violations will not be identified and resolved within a reasonable period of time, which can adversely impact human health and the environment. These conditions occurred because the Region had not required DEQ to meet EPA's Inspection Frequency Guidance, and DEQ's guidance for timely finalization of inspection reports was not adequately communicated to DEQ inspectors.

BACKGROUND

The air quality section within DEQ's Compliance Assurance Bureau is responsible for oversight of facility compliance with State rules and federal regulations and for enforcement of permit compliance. DEQ assures compliance with air quality rules and regulations primarily through routine inspections of facilities which emit or have the potential to emit air pollutants. Inspections provide credible evidence to determine whether a particular source is operating in compliance with the CAA. EPA's Inspection Frequency Guidance requires periodic onsite inspections (generally once a year for major sources) to determine whether a source is complying with emission limits and whether emission control systems are working properly. Inspections provide an effective mechanism for identifying SVs.

DEQ inspectors are located within DEQ's central office, as well as within various regional offices throughout the State. Once the inspection has been completed, the inspector is responsible for writing the inspection report, which documents all visual observations and information obtained during the inspection. The

primary purpose for the written inspection report is to document the facility's compliance with permits and/or specific environmental laws. The inspection report is used to support noncompliance determinations which may result in a recommendation for administrative, civil, or criminal enforcement action. The inspection report is usually the first step of the enforcement process; without it, enforcement cannot proceed.

INADEQUATE INSPECTION COVERAGE

Idaho's inspection activity did not provide adequate coverage to ensure that all SVs were identified. Although it appears that DEQ substantially met its annual inspection commitments to the Region, it did not commit to an adequate number of inspections based on its universe of sources and EPA's Inspection Frequency Guidance. Not all major sources were inspected annually and not all potential major sources⁵ were inspected biennially.

- Of the 120 major sources as of December 1997, only 47 (39 percent) were scheduled for inspection during 1997 and 43 (36 percent) were inspected during that year. Only 43 (36 percent) were scheduled for inspection during 1998.
- Of the 228 potential major sources as of December 1997, only 58 (25 percent) were scheduled for inspection during 1997 and only 72 (32 percent) were inspected during either 1996 or 1997. Only 47 (21 percent) were scheduled for inspection during 1998.

According to the Inspection Frequency Guidance contained in EPA's Compliance Monitoring Strategy, generally all major sources regulated under the CAA are to be inspected annually, and all potential major sources regulated under the CAA are to be inspected biennially.

The fiscal 1993 Compliance Assurance Agreement between the Region and DEQ stipulates that in developing the annual inspection schedule, DEQ begins with the entire universe of sources and lists those which must be inspected during the coming

5. Potential major sources are sources with potential uncontrolled emissions of a criteria pollutant or pollutants that exceed the major source threshold. These sources have emissions that are below the major source threshold when operating under physical or operational limitations on their emissions capacities.

year. If a source is not scheduled for inspection, justification for the omission shall be provided to EPA. By November 1 of each year, the Region and DEQ will negotiate a final inspection schedule.

INSPECTION REPORTS NOT TIMELY

Reports of inspections were not prepared timely. From our sample of 25 inspections performed during our audit period (October 1, 1996 through December 31, 1997), 15 inspection reports (60 percent) were not finalized within 60 days. Of those 15 inspection reports, 10 were not finalized within 90 days. The average number of days from the inspection to finalization of the report for these 10 inspections was 205 days.

DEQ's Enforcement Procedures Manual requires: (i) inspectors to complete inspection reports within 45 days from either the first day of inspection, or from the date requested information is received; and (ii) management review and finalization to not exceed 15 days. Thus the norm for finalizing reports is 60 days. In extenuating circumstances, the manual provides an extension of up to 30 days.

VIOLATIONS NOT IDENTIFIED AND RESOLVED TIMELY

Inspections are an important tool for DEQ to detect violations. Therefore, not inspecting sources as frequently as EPA's guidance indicates increases the risk that significant air pollution violations will not be identified and remain unresolved. Failure to complete timely inspection reports can delay violation determinations and associated enforcement processes. Delaying the enforcement process may result in decreased opportunities for resolving the violations and may increase the risk of exceeding the State's 2-year statute of limitations.

Our sample of inspections consisted mostly of SVs. Timely inspections of SVs is especially important because enforcement action cannot be taken until the inspection report is completed. The following is an example where DEQ did not inspect a major source annually and did not complete an inspection report timely, contributing to the source's continued noncompliance over several years.

SV-4, a manufacturer. This major stationary source was inspected on February 2, 1994, revealing that the source

was out of compliance with *Rules and Regulations for the Control of Air Pollution in Idaho* because it had failed to register with DEQ and pay registration fees. This source also had a history of air emissions noncompliance since 1991.

DEQ sent the facility a letter on March 11, 1994 requesting emission information for registration fee purposes. We were unable to find any evidence at DEQ that the company responded to DEQ's request.

The source was not inspected again until September 4, 1997 and October 21, 1997. These inspections were in response to a citizen's complaint alleging the source was emitting a pollutant which was accumulating on vehicles near the facility. These inspections revealed a number of violations, including excess opacity emissions and operating without PTCs for four emission points. As a result, the source was designated as an SV during October 1997.

The September and October inspection reports were not finalized until January 1998, or over 80 days (October 21, 1997 to January 13, 1998) after the last inspection. This contributed directly to the delay in an enforcement action until February 1998.

**DEQ NOT
REQUIRED TO
MEET EPA'S
INSPECTION
GUIDANCE**

Inadequate inspection coverage of air pollution sources in the State occurred because the Region had not required DEQ to meet EPA's Inspection Frequency Guidance. During fiscal 1992, DEQ developed a modified inspection list because of a reduction in inspection resources (DEQ had only three inspectors), and the Region approved this strategy in August 1992. Although DEQ has subsequently increased its inspection resources, the Region has not reevaluated DEQ's inspection commitments since 1992. This is because the Region has not performed any air program reviews at the State since fiscal 1993.

Additionally, DEQ did not believe that it was always necessary or efficient to inspect each major source annually and each potential major source biennially. For example, DEQ noted that there were some sources which were always in compliance. DEQ's approach

to determining facilities for inspection was to ask each of its six regional offices to come up with about 15 (major, potential major, and minor) sources for inspection each year. The inspectors were to consider factors such as compliance status and history, facility size, and citizen complaints. This list was compiled and submitted as the inspection schedule to the Region every year for approval. This process did not ensure that all significant air pollution violations were identified. Only 36 percent of major sources were inspected during 1997 and 32 percent of potential major sources were inspected during 1996 or 1997. Using only 15 sources for each region as a baseline number for planning purposes was not sufficient, based on Idaho's universe of sources and EPA's Inspection Frequency Guidance.

GUIDANCE RECENTLY FINALIZED

Regarding timely finalization of inspection reports, DEQ staff advised that the criteria stipulated in DEQ's Enforcement Procedures Manual was not finalized and communicated to DEQ inspectors until January 29, 1998. However, in its response to our position papers, DEQ stated that this criteria was made available to DEQ inspectors in draft form nearly 8 months prior to its finalization. DEQ further stated that its files include a 1991 policy memo regarding inspection report timeliness. In our opinion, this timeliness criteria apparently was not adequately communicated to staff and DEQ had not implemented adequate procedures to ensure that these policies were consistently followed.

RECOMMENDATIONS

We recommend that the Regional Administrator:

- 3-1. Assess the level of inspection resources available to DEQ and negotiate with DEQ to inspect major and potential major sources in accordance with EPA's Inspection Frequency Guidance. In the event it is determined that DEQ cannot meet EPA's guidance, the Region should assess DEQ's criteria for selecting sources for inspection, including determining that the criteria does, in fact, result in the most high risk (for noncompliance) sources being inspected annually.

- 3-2. Supplement DEQ's inspection resources with regional staff if DEQ is unable to meet EPA's Inspection Frequency Guidance.
- 3-3. Ensure that DEQ implements adequate procedures to ensure timely finalization of inspection reports.

**REGION COMMENTS
AND OIG
EVALUATION**

The Region concurred with the recommendations and stated that it planned to implement corrective actions during the fall of 1998. We consider the proposed corrective actions to be satisfactory.

CHAPTER 4

REVIEWS OF SOURCE EMISSIONS REPORTS WERE NOT TIMELY

DEQ did not review source emissions reports timely, resulting in a significant backlog of emissions reports that were pending review. These reports are required by permits and consent orders, and provide important emissions information that should be reviewed timely to determine source compliance with applicable emission limits. A lack of review can lead to violations going undetected for long periods of time and enforcement action not being taken timely. This condition occurred because DEQ did not provide sufficient resources for review of emissions reports needed to eliminate this backlog.

BACKGROUND

In addition to performing routine inspections of facilities, DEQ also identifies violations through review of self-monitoring emissions reports required by permits and consent orders. Source and emissions testing is a compliance assurance activity which directly measures emissions from a source. Two methods are stack tests and continuous emissions monitoring systems (CEMS). DEQ staff review test protocols and test reports, confer with facilities concerning test conditions and procedures, witness tests, validate emission monitoring data from stack test and CEMS reports, and ultimately use this data to determine source compliance with applicable emission limits. Violations discovered through these compliance reviews can result in a recommendation for initiation of an enforcement action against the violating facility.

BACKLOG OF EMISSIONS REPORTS

DEQ had a significant backlog of unreviewed stack test and CEMS reports for both major and minor sources. Of the total backlog, about 42 percent were for major sources. As of April 1998:

- Ninety seven stack test reports out of 142 reports received (68 percent) had not been reviewed. Of the backlogged reports, 33 (34 percent) were received from 2 to 6 years ago.

- Eighteen CEMS reports out of 19 (95 percent) had not been reviewed. Of the backlogged reports, 8 (44 percent) were received over 2 years ago.

Reports Required by Permits and Consent Orders

Stack tests and CEMS reports provide emissions information that are essential parts of a compliance assurance program, and should be reviewed timely. A stack test consists of sampling a source's stacks to determine average levels of air pollutants. With CEMS, instruments continuously measure the level of pollutants in the exhaust gas. DEQ should validate emission monitoring data from stack tests and CEMS reports, and use this data to determine source compliance with applicable emission limits.

DEQ establishes stack test and CEMS requirements in PTCs, consent orders, or operating permits⁶, in accordance with *Rules and Regulations for the Control of Air Pollution in Idaho*.

Violations Go Undetected

DEQ cannot determine source compliance with applicable emission limits when stack test and CEMS reports are not reviewed. This lack of review can lead to violations going undetected for long periods of time and enforcement action not being taken timely. A number of the reports that had not been reviewed were for facilities with a history of noncompliance and which are currently on the SV list.

The following are examples where DEQ did not review timely stack test reports which either identified significant emission limit violations or were from facilities that had a history of violations:

- A processing plant⁷. This stationary source had PTCs requiring stack tests for Ethylene Oxide (EO). The company performed a stack test on April 29, 1997 and DEQ received the test results on July 31, 1997. DEQ did not review the report until December 1997. The stack test results revealed that the source: (i) failed to submit the test report within 30 days of conducting the stack test; (ii) significantly exceeded the average hourly EO emission

6. DEQ has issued operating permits to some synthetic minor sources.

7. Although this source was designated as an SV on EPA's SV list, the facility was not included in EXHIBIT 2 because our evaluation of DEQ's documentation identified that the facility was a minor source, and as a result, did not meet EPA's SV definition. The serious violations by this minor source, however, illustrate a need for timely reviews of reports from minor as well as major sources.

rate limit during the test; and (iii) exceeded the pounds of EO per batch process input limit during the test.

Specifically, the PTC allowed an hourly EO emission rate of 0.021 lb/hr, and the recorded value in the test report was 0.49 lb/hr (over 22 times higher than the permitted limit).

DEQ's review of the stack test in December 1997 was precipitated by a citizen's complaint regarding particulate matter settling on nearby homes, yards, and cars. Also in December, a notice of intent to bring a civil suit against the company was filed by a community located across a road from the facility for violations related to this stack test, as well as for other violations. The notice alleged that the source's emission levels were outside the range of acceptable risk, and that the residents and owners in the community had endured property damage and health problems related to the company's actions. The community has also filed a notice of intent to bring a civil suit against DEQ for failing to take enforcement action against the source for the alleged violations.

- SV-13, a rock crushing operation. This stationary source had significant "fugitive" emissions violations that were discovered during inspections performed in 1994, 1995, and 1996. The opacity ranged from 30 to 60 percent at a number of different emission points, constituting violations of both Idaho's *Rules and Regulations for the Control of Air Pollution in Idaho* and the source's PTC. The SV conducted two source tests and submitted the results to DEQ in January 1997. Although this source had a significant history of noncompliance and had been on the SV list since August 1995, as of April 1998 DEQ still had not formally reviewed these source tests to determine compliance with emission limits.

Insufficient Resources for Review of Emissions Reports

The significant backlog of unreviewed emissions reports occurred because DEQ did not provide sufficient resources for review of emissions reports. During our audit period (October 1, 1996 through December 31, 1997) only one full-time position was provided for reviews of stack test and CEMS data and reports, approvals of test protocols, and test observations to determine compliance with applicable emission limits. In its response to our

position papers, DEQ stated that it has received legislative approval to add an additional full-time position to assist with this workload.

RECOMMENDATION

We recommend that the Regional Administrator:

- 4-1. Ensure that DEQ performs its reviews of stack test and CEMS reports timely.

**REGION COMMENTS
AND OIG
EVALUATION**

The Region concurred with the recommendation and stated that it will make the objective of the recommendation a priority during the renegotiation of the Compliance Assurance Agreement in early fiscal 1999. We consider the proposed corrective action to be satisfactory.

CHAPTER 5

SIGNIFICANT VIOLATOR LIST INACCURATE

The Region did not ensure that data reported on the SV lists for the State were accurate and complete. A review of 37 sources reported on SV lists for DEQ disclosed inaccurate data for half of those sources. EPA uses the SV list as an oversight tool to ensure that SVs are addressed and resolved timely and appropriately. EPA's SV guidance provides definitions of an SV and criteria for the various action dates reported on the SV list. Inaccurate SV reporting hinders the Region's ability to monitor the timeliness and appropriateness of enforcement actions and resolution of SVs. This condition occurred because the Region did not establish adequate procedures to ensure that the data reported on the SV lists conformed to the reporting criteria specified by EPA's SV guidance.

BACKGROUND

EPA reports and tracks SVs in its national database known as the Aerometric Information Retrieval System Facility Subsystem (AFS). AFS is used to track emissions and compliance data from air pollution sources. Based on monthly SV conference calls with DEQ air compliance management and staff, the Region inputs information regarding SVs into AFS. The Region uses the resulting SV lists as an oversight tool to monitor the SVs to ensure that enforcement actions taken by DEQ are appropriate and result in timely resolution of SVs.

DATA NOT ACCURATE OR COMPLETE

The SV lists during our audit period (October 1, 1996 through December 31, 1997) were not accurate and complete. A review of 37 sources reported on the SV lists disclosed that data for 20 (54 percent) was not reported accurately. The lists included 24 errors in the data reported for these 20 sources.

- Three sources were reported on the SV lists with violations that did not meet EPA's SV definition;

- Nine sources were erroneously reported on the SV lists as addressed and/or resolved when they had not been addressed and/or resolved;
- Seven sources were reported on the SV lists with erroneous "SV Day 0"⁸ dates;
- Two sources were inappropriately dropped from the SV lists without being resolved;
- Two sources had an additional SV that was not reported; and
- One source was not reported as resolved when, in fact, it was resolved.

Important Oversight Tool

EPA reports and tracks SVs to assist in ensuring that the violations are addressed and resolved timely and appropriately. EPA's SV guidance provides the definition of an SV and also provides criteria for the dates reported on the SV list: (i) SV Day 0; (ii) addressed date; and (iii) resolved date. This guidance defines an SV as any "major" (as defined by the Clean Air Act) stationary source of air pollution which is violating a federally enforceable regulation. States are required to report SVs to EPA within 1 month of discovery of the violation (SV Day 0). An SV is appropriately addressed when: (i) a legally enforceable and expeditious administrative or judicial order is issued; or (ii) the violation is subject to a referral to the State attorney general or Federal Department of Justice. An SV is resolved when the source is returned to compliance.

No Assurance of Timely and Appropriate Enforcement

The Region and DEQ cannot effectively use SV lists to monitor the timeliness and appropriateness of enforcement actions and resolution of SVs because the data is inaccurate. Consequently, the Region cannot be assured that all SVs are addressed and resolved timely and appropriately.

The Region had insufficient procedures to ensure the accuracy and completeness of the SV list. The Region retains the ultimate

8. SV day zero represents the date the source is designated as an SV. Day zero starts the clock for measuring the timeliness of enforcement activities. Generally, the day zero starts no later than 30 days after the discovering agency first receives information concerning the violation.

responsibility for determining whether a violator is an SV and for updating the SV list based on monthly calls between the Region and DEQ. The Region had not established adequate procedures to ensure that: (i) violations added to the SV list met EPA's SV definition; (ii) staff from both DEQ and the Region were aware of and consistently used EPA's SV definition and criteria for the SV Day 0, addressed, and resolved dates; and (iii) SVs are deleted from the SV list only for appropriate reasons. Furthermore, DEQ in its response to our position papers stated that it was not aware of updated EPA SV guidance and had therefore not incorporated this guidance into its current method of designating SVs.

RECOMMENDATIONS

We recommend that the Regional Administrator implement procedures to ensure that:

- 5-1. Violations on the SV list meet EPA's SV definition.
- 5-2. Staff from both DEQ and the Region are aware of, and consistently use, EPA's SV definition and criteria for the SV Day 0, addressed, and resolved dates.
- 5-3. SVs are deleted from the SV list for appropriate reasons.

REGION COMMENTS AND OIG EVALUATION

The Region concurred with the recommendations and described corrective actions that it is in the process of implementing. We consider the proposed corrective actions to be satisfactory.

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CHAPTER 6

INSUFFICIENT OVERSIGHT BY THE REGION

The Region did not perform sufficient oversight of the State's air enforcement program to ensure compliance with federal laws and regulations, and to prevent threats to public health and the environment. Specifically, the Region did not:

- Establish criteria for assessing the State's enforcement program.
- Perform any program reviews of DEQ's air enforcement program after April 1993.
- Use its enforcement authority effectively when the State was either unable or unwilling to pursue timely and appropriate enforcement action in response to violations.
- Report the weaknesses in the State's enforcement program as management control deficiencies to the EPA Administrator as required by the Federal Managers' Financial Integrity Act (FMFIA).

The Region attributed the conditions to three main causes: (i) a loss of positions and experienced staff because of two recent reorganizations; (ii) difficulty in determining the level of oversight to provide because the states have requested more autonomy and flexibility under performance partnership agreements; and (iii) a lack of clear criteria defining oversight under performance partnership agreements.

This lack of regional oversight contributed to the State's ineffective enforcement program which did not meet CAA requirements. Under the State's enforcement program, SVs were allowed to remain out of compliance for unreasonable periods of time and were not assessed financial penalties or denied economic benefits of noncompliance.

BACKGROUND

EPA's *Revised Policy Framework for State/EPA Enforcement Agreements* (1986) provides that while delegated states have primary responsibility for compliance and enforcement actions, EPA retains responsibility for ensuring fair and effective enforcement of federal requirements, and a credible national deterrence to noncompliance. The policy provides guidance for negotiating and implementing enforcement agreements with the states. The agreements are to include clear oversight criteria for EPA to assess State compliance and enforcement program performance. The policy also addresses how EPA should conduct its oversight function to achieve the goal of building and improving the State compliance and enforcement program and overall national performance. Oversight procedures such as mid-year reviews, periodic audits, and oversight inspections should be used.

The fiscal 1993 Compliance Assurance Agreement for Air between the Region and DEQ defines the respective roles and responsibilities of EPA and DEQ for the stationary source air pollution control program. The agreement requires DEQ to address all violations of the Idaho Environmental Protection Health Act and *Rules and Regulations for the Control of Air Pollution in Idaho*, but does not require DEQ to follow EPA enforcement guidance. The agreement also states that the Region and DEQ will review the document annually, identify provisions requiring change, and commit to negotiating new terms. The agreement has not been updated since fiscal 1993.

EPA's SV guidance states the CAA vests responsibility for enforcement of the law with EPA. The SV guidance also states that EPA shall assume the enforcement lead when it becomes apparent that the State is unable or unwilling to act in accordance with the guidance to resolve a violation in a timely and appropriate manner. The SV guidance requires states to address or resolve an SV within 150 days of the SV designation. An SV is considered addressed when the violator is on a legally enforceable administrative or judicial order or subject to a referral to the State attorney general for an adjudicatory enforcement action or judicial hearing. An SV is considered resolved when the facility is returned to compliance. The guidance provides EPA up to 100 additional days to address an SV after it assumes the lead from a State.

EPA's Penalty Policy requires penalty calculations to include economic benefit and gravity components to establish a deterrence. The Penalty Policy also establishes criteria for mitigating and aggravating the gravity component in order to promote flexibility while maintaining national consistency. The Penalty Policy states that it is essential that each case file contain a complete description of how the preliminary penalty was developed as well as the facts and reasons for adjustments made to the preliminary deterrence amount.

The FMFIA requires the Regional Administrator to annually make a systemic assessment of regional management controls that protect programs and resources from fraud, waste, and mismanagement, and help control programs to achieve intended outcomes. After the assessment is made, the Regional Administrator is required to provide personal assurance that management controls are reasonable to ensure protection of programs, operations, and functions and to notify the EPA Administrator of any deficiencies in management controls.

ENFORCEMENT CRITERIA NOT ESTABLISHED

The Region did not establish specific enforcement criteria for assessing the State's air enforcement program. The most recent Compliance Assurance Agreement between the Region and DEQ defines the respective roles and responsibilities of EPA and DEQ for the stationary source air pollution control program. However, the agreement does not require DEQ to follow EPA's *Compliance and Enforcement Manual*, SV guidance, and Penalty Policy. Instead, the agreement states:

It is recognized by EPA that DEQ currently does not have sufficient resources to consistently process cases in accordance with EPA Timely and Appropriate Guidance. DEQ's goal is to build an adequate and balanced compliance program which will result in enforcement processing consistent with the Timely and Appropriate guidelines.

Due to the absence of established enforcement criteria in the agreement, the Region was not able to evaluate DEQ's progress toward its stated goal of establishing an adequate enforcement program.

**PROGRAM
REVIEWS NOT
PERFORMED**

The Region did not perform any program reviews of DEQ's air enforcement program after April 1993. During fiscal 1993, the Region conducted a review of DEQ's air compliance and permitting programs and identified a number of areas needing improvement. The areas needing improvement included: (i) timeliness of enforcement actions; (ii) followup of non-responses to warning letters; (iii) frequency and sufficiency of penalty assessments; and (iv) completeness of compliance inspections and reports. Although the Region provided DEQ with recommendations to correct the weaknesses, the Region had not conducted any followup reviews during the subsequent 5 years.

In responding to the announcement of our audit, the Regional Administrator advised:

Because Region 10 has not conducted an audit or assessment of IDEQ's Air Program subsequent to the FY 1993 agreement, we don't have adequate information to determine IDEQ's ability to consistently meet the timely and appropriate guidance or its progress in that regard.

**REGIONAL
ENFORCEMENT
AUTHORITY NOT
USED
EFFECTIVELY**

The Region did not use its enforcement authority effectively when the State was either unable or unwilling to take timely and appropriate enforcement actions. The Region assumed the enforcement lead for only 10 SVs, even though DEQ reported another 42 that had not been addressed for an average of 1 year.

Also, the Region did not address or resolve 8 of the 9⁹ SVs that it assumed responsibility for within the 100-day time frame specified in EPA guidance. Examples of SV's not addressed or resolved timely include:

- SV 25 and 34. These two SVs were not addressed or resolved by the Region even though it had the enforcement lead for 3 years and the violations were over 3 years old.

9. While the Region assumed the enforcement lead for 10 SVs, one was on hold pending completion of a criminal investigation.

- SV-33. The Region took 9 months to address the SV even though the facility had a history of non-compliance dating back to 1991.
- SV-28 through SV-32. It took the Region between 3 and 29 months after assuming the enforcement lead to refer the cases to the EPA's Headquarters Office of Enforcement and Compliance and Assurance (OECA). These five SVs had not been addressed by EPA as of the end of 1997.

In addition, the Region did not sufficiently document its justifications for mitigating penalties for the one SV (SV-26) that was resolved during the 15-month period ended December 1997. Consequently, we were unable to determine whether the Region's actions were consistent with EPA's Clean Air Act Stationary Source Civil Penalty Policy. The SV was resolved in February 1997 through an administrative complaint and consent order. The administrative complaint proposed \$206,480 in penalties. However, the penalties were subsequently reduced to \$39,000 through the dispute resolution process.

EXHIBIT 3 summarizes our evaluation of the 10 SVs.

**FAILURE TO
REPORT
DEFICIENCY IN
MANAGEMENT
CONTROLS**

For fiscal 1997, the Regional Administrator did not report the Region's lack of oversight and DEQ's ineffective administration of the air enforcement program as a management control deficiency in the Region's annual FMFIA assurance letter to the EPA Administrator. In our opinion, these weaknesses are material deficiencies which should be reported in the Region's next annual FMFIA assurance letter.

**REGION
ACKNOWLEDGES
ADDITIONAL
OVERSIGHT
NEEDED**

In discussing the weaknesses in oversight with managers in the Region's Office of Air Quality, they acknowledged that additional oversight was needed over Idaho's enforcement program. They also stated that the office has provided some oversight over Idaho's program through monthly SV conference calls with DEQ air compliance management and staff. They cited three causes for the lack of additional oversight:

- Two reorganizations within the office during the last 2 years resulted in the loss of some positions and senior staff expertise in the Region's air program.
- Performance partnership agreement negotiations with the states have made it difficult for the Office of Air Quality, as well as the other media programs within the Region, to determine the level of oversight to provide. This is because the states have requested more flexibility and autonomy over their programs under the performance partnership agreements.
- EPA has not established clear criteria on what oversight should consist of under performance partnership agreements.

**COMPLIANCE
ASSURANCE
AGREEMENT TO
BE REVISED**

The Office of Air Quality has recognized the need to revise Compliance Assurance Agreements for all four states in the region. In response to our position papers, the Region stated:

In retrospect, we believe the Compliance Assurance Agreement (CAA) has turned out not to be particularly effective in terms of achieving federal enforcement objectives, and we intend to negotiate a new CAA which will bring about much more consistency with EPA guidance.

The Office of Air Quality recently completed a revised agreement with the State of Washington and is now working on revising the State of Oregon's agreement. After the Oregon agreement is revised, the office plans to work on revisions to Idaho's agreement. According to the Office of Air Quality, the negotiations on revisions to State Compliance Assurance Agreements are extremely time consuming. The manager responsible for revising Washington's agreement stated that it took about a year to complete the agreement.

We agree that the Compliance Assurance Agreement with Idaho needs to be revised. In order to ensure that an effective air enforcement program is implemented in Idaho, the Region's revisions to the Compliance Assurance Agreement need to include specific criteria for evaluating the State's program. This criteria

should include EPA's *Compliance and Enforcement Manual*, SV guidance, and Penalty Policy.

**PROGRAM
EVALUATIONS
UNDER
DEVELOPMENT**

The Region agreed that periodic program reviews are needed as part of its oversight responsibilities and is currently planning the scope and methodology for future program reviews. Office of Air Quality managers stated that regional management has recognized the need to conduct reviews of the States' enforcement programs for all media. As a result, both the Office of Air Quality and the Region's Office of Enforcement and Compliance have been developing detailed evaluation programs that will be used to review the States' enforcement programs. In comments to our position papers, the Region stated:

... we have been actively working with the state through monthly compliance status calls to improve program performance. We have long recognized the need to improve our oversight of state enforcement programs....To address the kind of problem you have identified in Idaho, some months ago, we and the states undertook an effort to develop a framework for evaluating states' compliance and enforcement programs. In accordance with that framework, we will undertake a number of program reviews in the months ahead. With regard to the Idaho air program, we have begun an enforcement initiative to take immediate corrective action.

The Region's implementation of its framework and enforcement initiative should improve its oversight over Idaho's air enforcement program. In our opinion, the Region should evaluate Idaho's air program at least annually.

**REASONS
ENFORCEMENT
AUTHORITY NOT
USED
EFFECTIVELY**

The Office of Air Quality managers explained that staff turnover as well as insufficient staffing for enforcement prevented the Region from assuming the lead on additional SVs. The staff turnover and staffing limitations also prevented the Office of Air Quality from addressing in a more timely manner EPA lead SVs that were assumed from Idaho. They also explained that OECA had not

been able to address the five SVs that had been referred by the Region because of a shortage in technical and legal staff. However, according to the managers, OECA recently obtained additional resources and is now working on the cases.

According to Office of Regional Counsel Staff, the justification for the reduction in proposed penalties from \$206,480 to \$39,000 was not sufficiently documented because of an oversight error.

The Region's comments about staffing constraints limiting its ability to effectively take the enforcement lead for all SVs where Idaho was either unwilling or unable to take sufficient enforcement actions are noted. However, SVs represent violators which EPA believes are environmentally most important. Therefore, the Region needs to develop and implement a plan to ensure that EPA enforcement actions taken in response to SVs are consistent with EPA enforcement guidance.

CONCLUSION

The lack of regional oversight of the State's stationary air enforcement program and lack of effective use of its own enforcement authority against SVs in the State has allowed SVs to remain out of compliance for unreasonable periods of time. Such noncompliance contributes to increased risks to public health and the environment. In addition, SVs have not received financial penalties or been denied the economic benefits of noncompliance.

As discussed in the other chapters of this report, DEQ's:

- (i) enforcement actions were not appropriate and penalties were not of sufficient magnitude to have a credible deterrent effect on major air pollution sources;
- (ii) enforcement activities did not result in timely return of sources to compliance;
- (iii) inspection procedures did not ensure that all significant air pollution violations were identified;
- (iv) emissions reports were not reviewed timely to ensure that sources were in compliance with applicable emissions limits; and
- (v) SV data was not reported accurately.

Title V of the CAA and implementing regulations (40 CFR Part 70) provide authority for states to operate a permit program for stationary air sources that meet certain federal criteria. The purpose of the operating permits program is to improve enforcement by issuing each major source (as defined by the Act) a

permit that consolidates all CAA requirements into a federally enforceable document.

40 CFR Part 70 outlines the minimum requirements that states must meet in their Title V operating permit programs. The regulations define the minimum elements required by the Act for State operating permits programs and corresponding standards and procedures by which the EPA Administrator will approve, oversee, and withdraw approval of the State programs. State programs that "substantially" meet regulatory requirements may be granted interim approval for up to 2 years. EPA granted an interim approval of Idaho's program in January 1997. The approval expires in January 1999. In order to obtain final approval, Idaho must correct deficiencies in its program and submit the corrections to EPA at least 6 months prior to expiration of the interim approval.

According to 40 CFR Part 70, EPA may withdraw approval of a State's Title V Program in whole or in part whenever the program no longer is in compliance with the requirements of Title V and the State fails to take corrective action. Criteria for withdrawal of the program include: (i) failure to act on violations of permits or other program requirements; (ii) failure to seek adequate enforcement penalties and fines and collect all assessed penalties and fines; and (iii) failure to inspect and monitor activities subject to regulation.

In our opinion, the significant weaknesses in the State's air enforcement program show that it has not implemented an enforcement program that meets the requirements of Title V of the Clean Air Act. Therefore, the Regional Administrator should withhold final approval of the State's Title V Program if the State is unable to correct the weaknesses by December 1998. Furthermore, if the State is unable to implement an enforcement program that is consistent with EPA guidance and the Clean Air Act, the Regional Administrator needs to assume responsibility for enforcement of the stationary source air program in the State.

RECOMMENDATIONS

We recommend that the Regional Administrator:

- 6-1. Revise the Compliance Assurance Agreement with DEQ to include EPA enforcement guidance as

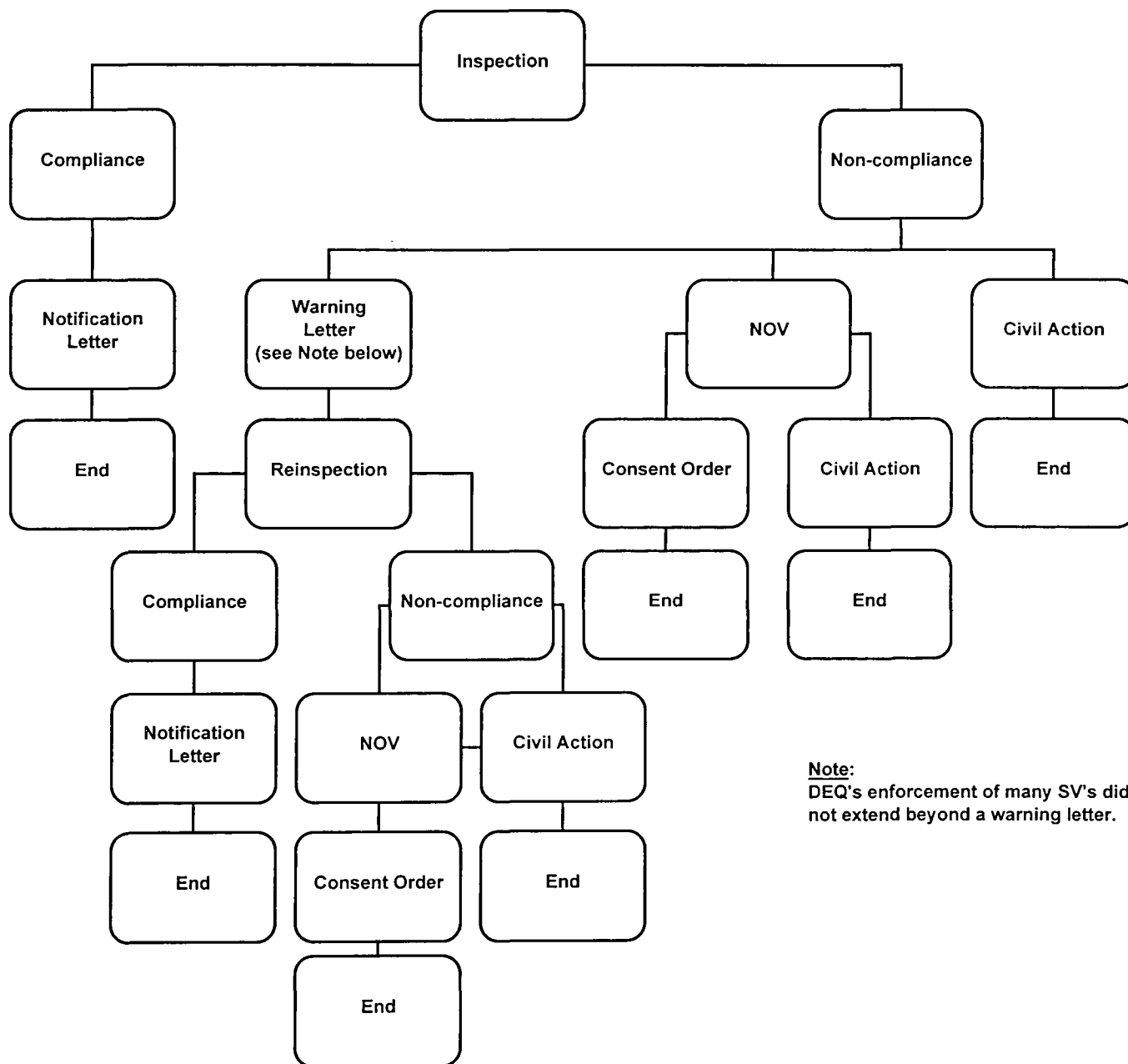
criteria for assessment of the State's stationary air enforcement program.

- 6-2. Conduct, at least annually, evaluations of the State's air enforcement program for SVs for consistency with EPA guidance.
- 6-3. Develop and implement a plan to ensure that EPA enforcement actions taken in response to SVs are consistent with EPA enforcement guidance. Also, ensure that justifications for mitigated penalties meet EPA Penalty Policy criteria and are adequately documented.
- 6-4. Report the weaknesses in the State's stationary air enforcement program for SVs as a management control deficiency in the next annual FMFIA assurance letter to the EPA Administrator.
- 6-5. Withhold final approval of the State's Title V program until the State establishes policies and procedures for enforcement which are consistent with EPA's enforcement guidance. Specifically, the Region should assess Idaho's Title V program against the criteria for an approvable program under 40 CFR Part 70.
- 6-6. Assume responsibility for enforcement of the stationary source air enforcement program in the State for major and synthetic minor sources if the State is unable to implement an enforcement program that is consistent with EPA guidance and the CAA.

**REGION COMMENTS
AND OIG
EVALUATION**

The Region concurred with the recommendations and described corrective actions that it planned to take during fiscal 1999. We consider the proposed corrective actions to be satisfactory.

DEQ's Administrative Enforcement Process



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EXHIBIT 2

IDAHO DEQ
LIST OF 24 SIGNIFICANT VIOLATORS AUDITED

SOURCE	DATE OF SV DESIGNATION	COMPLIANCE STATUS AT 12/97	DATE OF PROPOSED PENALTY	PENALTY AMOUNT	DATE OF PENALTY PAYMENT	AMOUNT PAID	NOTES ²
SV-1	07/96	Unaddressed ¹		\$ 0		\$ 0	NE
SV-2	08/96	Unaddressed	06/97	\$ 44,700		\$ 0	IP, 3
SV-3	08/96	Unaddressed	06/97	\$ 44,700		\$ 0	IP, 3
SV-4	10/97	Unaddressed		\$ 0		\$ 0	NE
SV-5	11/94	Unaddressed		\$ 0		\$ 0	NE
SV-6	07/97	Unaddressed		\$ 0		\$ 0	ENE
SV-7	09/96	Resolved 04/97	01/97	\$ 10,000	04/97	\$ 250	IP
SV-8	05/96	Unaddressed		\$ 0		\$ 0	ENE
SV-9	01/95	Resolved 10/97		\$ 0		\$ 0	EA
SV-10	12/94	Resolved 12/96		\$ 0		\$ 0	ENE
SV-11	07/96	Unaddressed Unaddressed Unaddressed	08/96 03/97 06/97	\$ 4,500 500 1,500		\$ 0 0 0	ENE
SV-12	11/94	Unaddressed	05/96	\$ 24,000	04/97	\$ 24,000	ENE, 4
SV-13	08/95	Unaddressed		\$ 0		\$ 0	ENE
SV-14	09/96	Unaddressed		\$ 0		\$ 0	NE
SV-15	07/96	Unaddressed		\$ 0		\$ 0	ENE
SV-16	10/97	Resolved 10/97		\$ 0		\$ 0	EA
SV-17	06/96	Unaddressed		\$ 0		\$ 0	ENE
SV-18	07/96	Unaddressed		\$ 0		\$ 0	ENE
SV-19	10/96	Unaddressed		\$ 0		\$ 0	EU
SV-20	07/95	Addressed 11/96		\$ 0		\$ 0	ENE
SV-21	10/95	Unaddressed		\$ 0		\$ 0	ENE
SV-22	11/94	Unaddressed		\$ 0		\$ 0	ENE

EXHIBIT 2**IDAHO DEQ
LIST OF 24 SIGNIFICANT VIOLATORS AUDITED**

SOURCE	DATE OF SV DESIGNATION	COMPLIANCE STATUS AT 12/97	DATE OF PROPOSED PENALTY	PENALTY AMOUNT	DATE OF PENALTY PAYMENT	AMOUNT PAID	NOTES ²
SV-23	05/97 06/97	Unaddressed Resolved 06/97		\$ 0 0		\$ 0 0	ENE
SV-24	09/96	Unaddressed		\$ 0		\$ 0	NE

Notes

1. Unaddressed means that an enforcement action imposing a compliance schedule or requiring immediate compliance has not been taken.
2. "NE" indicates no enforcement action initiated, "IP" indicates insufficient penalty was assessed, "ENE" indicates enforcement action was not escalated, "EU" indicates enforcement action was untimely, and "EA" indicates enforcement activities were appropriate during 15-month period.
3. The proposed penalty was in the process of being reduced to below \$15,000.
4. Company also paid \$80,000 to a city for a supplemental environmental project. However, violations that occurred during 1997 were unaddressed by DEQ.

EXHIBIT 3

**EPA REGION 10
LIST OF 10 SIGNIFICANT VIOLATORS AUDITED**

SOURCE	DATE OF SV DESIGNATION	DATE ASSUMED BY REGION	DATE REFERRED TO OECA	COMPLIANCE STATUS AT 12/97	PENALTY AMOUNT	AMOUNT PAID	NOTES ¹
SV-25	06/93	01/95	N/A	Unaddressed	\$ 0	\$ 0	EU
SV-26	06/94	01/95	N/A	Resolved 02/97	\$ 206,480	\$ 39,000	DI
SV-27	06/93	01/97	N/A	On Hold	\$ 0	\$ 0	AA, 2
SV-28	08/94	01/95	06/97	Unaddressed	\$ 0	\$ 0	EU
SV-29	11/94	02/97	06/97	Unaddressed	\$ 0	\$ 0	EU
SV-30	09/95	02/97	06/97	Unaddressed	\$ 0	\$ 0	EU
SV-31	09/96	03/97	06/97	Unaddressed	\$ 0	\$ 0	EU
SV-32	09/96	03/97	06/97	Unaddressed	\$ 0	\$ 0	EU
SV-33	12/96	12/96	N/A	Addressed 09/97	\$2,395,000	\$ 0	EU
SV-34	07/94	12/94	N/A	Unaddressed	\$ 0	\$ 0	EU

Notes

1. "EU" indicates enforcement action was untimely, and "DI" indicates documentation supporting the justifications for the reduction in penalties was incomplete, and "AA" indicates appropriate action was taken.
2. Enforcement actions in response to the SV were on hold until completion of a criminal investigation involving the facility.

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APPENDIX A

AUDIT SCOPE AND METHODOLOGY

This section describes the audit scope and methodology, including sample selection for our review of enforcement activities and inspection procedures.

We performed our audit in accordance with Government Auditing Standards issued by the Comptroller General of the United States. Audit fieldwork was performed between December 1997 and July 1998. The audit covered the DEQ's and the Region's management controls in effect for the period from October 1996 through December 1997.

With the Region's concurrence, the following criteria were used to evaluate the effectiveness of the State of Idaho's stationary source air enforcement program:

- EPA's *Compliance and Enforcement Manual* (1986);
- EPA's *Guidance on the Timely and Appropriate Enforcement Response to Significant Air Pollution Violators* (1992);
- Memo from OECA titled, *Oversight of State and Local Penalty Assessment: Revisions to the Policy Framework for State/EPA Enforcement Agreements* (1993);
- EPA's *Clean Air Act Stationary Source Civil Penalty Policy* (1991); and
- *Fiscal 1993 Compliance Assurance Agreement For Air, Idaho Division of Environmental Quality and U.S. Environmental Protection Agency.*

We interviewed officials in the DEQ's Air and Hazardous Waste Division, DEQ's Coeur d'Alene, Boise, and Pocatello regional offices, and the State's Office of Attorney General. We also interviewed officials in the Region's Office of Air Quality, Idaho Operations Office, Office of Enforcement and Compliance, and Office of Regional Counsel. In addition, we reviewed applicable laws, regulations, and records maintained by DEQ and the Region.

The scope included a review of management controls for DEQ and the Region associated with: (i) enforcement actions and penalties; (ii) resolution of violations; and (iii) inspections. We obtained an understanding of management controls through inquiries, observations, and inspections of documents and records. We assessed the control environment, policies and procedures, and risk for the three areas listed above.

Although not originally included in the scope of the audit, we evaluated DEQ's management controls for reviewing source emissions reports and DEQ's and the Region's management controls for SV reporting. We added these areas to the scope of the audit because significant weaknesses in the controls came to our attention.

During the audit, enforcement related documentation that the DEQ and the State's Office of the Attorney General considered to be attorney client privileged was withheld from us. Since DEQ had not escalated most enforcement actions beyond a warning letter, the withheld information did not represent a significant scope limitation. However, as discussed in Appendix B, entitled Other Matters, this issue could adversely effect the Region's ability to oversee DEQ's enforcement program.

The management control deficiencies that were identified in the audit are described in the report, along with recommendations for corrective actions. We also reviewed the Region's 1997 annual FMFIA assurance letter to the Administrator.

Enforcement Actions

Our review of DEQ's enforcement actions and penalties included a judgment sample of 24¹⁰ of 62 SVs that DEQ had responsibility for and were unresolved during at least part of the 15-month period ended December 31, 1997. The sample included a mix of unaddressed, addressed and resolved SVs; and included approximately 98 percent of the dollar amount of penalty assessments made during the 15-month period. The sample covered SVs located in each of the six regional areas of the State.

We also evaluated the Region's enforcement actions during the 15-month period ended December 31, 1997 for all 10 EPA enforcement lead SVs that had been assumed from DEQ.

Resolution of Violations

We used the same judgment sample of 24 SVs described above to evaluate the timeliness of DEQ's enforcement activities that occurred during the 15-month period ended December 31, 1997.

Inspection Procedures

To evaluate the adequacy of DEQ's inspections, we selected a judgment sample of 25 of 120 sources classified as major, potential major, or unknown which were scheduled for an EPA level 2 inspection during fiscal 1997.

We used a judgment sample of 23¹¹ of the 62 SVs that DEQ had responsibility for during the 15-month period ended December 31, 1997 to evaluate the timeliness of completed inspection reports. The sample

10. The judgment sample originally included 27 SVs reported to EPA. However, three of the SVs were dropped from the sample because they did not meet EPA's SV definition.

11. 25 inspections were conducted on these 23 SVs by DEQ during the 15-month period ended December 31, 1997 were evaluated.

included 19 of the SVs originally selected for our enforcement actions evaluation discussed above.

We also reviewed major and potential major source inspection information obtained from AFS and DEQ's inspection schedules for fiscals 1997 and 1998 to evaluate the frequency of inspections. The review included all 120 major and all 228 potential major sources maintained in AFS as of December 1997.

Reviews of Emissions Reports

We reviewed the control record used for tracking DEQ's receipt and review of source emissions reports to evaluate the timeliness of the report reviews. Our evaluation included all reports for major, synthetic minor, and minor sources received by DEQ as of April 1998.

SV Reporting

We used the two¹² samples described under the above Enforcement Actions section to evaluate the accuracy of SV reporting.

12. The two samples consisted of the original judgment sample of 27 SVs that DEQ had responsibility for and the 10 SVs that had been assumed from DEQ by the Region.

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APPENDIX B

OTHER MATTERS

During the audit, enforcement related documentation that the DEQ and the State's Office of the Attorney General considered to be attorney client privileged was withheld from us. The following page contains a letter from the Office of the Attorney General to the OIG confirming that attorney client privileged documents would be withheld from the audit. The documentation was withheld under Rule 502 of the Idaho Rules of Evidence and the Idaho Public Records Act, Idaho Code Section 9-340(1) which exempts attorney client privileged documents from disclosure. Since DEQ had not escalated most enforcement actions beyond a warning letter, withheld attorney client privileged information did not represent a significant scope limitation for this audit. However, we believe the Region needs access to all relevant enforcement documentation developed by the State to effectively oversee the State's enforcement program.

According to the Office of the Attorney General, attorney client privileged documentation includes the compliance action referral (CAR) document, which provides a factual chronology of a source's compliance history and the basis for initiating the appropriate enforcement response, including penalty assessments. The CAR may also include any necessary documents as attachments, including inspection reports and associated evidence, penalty calculations, justifications, written correspondence, phone logs, e-mails, and memorandums. Therefore, the CAR represents an important part of DEQ's enforcement process when enforcement is escalated beyond the warning letter stage.

Without access to those important enforcement documents, the Region will not be able to obtain a complete understanding of DEQ's enforcement decisions. Therefore, the Region needs to have access to the CARs as well as other essential records documenting enforcement decisions in order to conduct a complete evaluation of the effectiveness of Idaho's air enforcement program. This is an extremely important issue which the Region needs to resolve with the State of Idaho prior to conducting any review of the State's air enforcement program.

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STATE OF IDAHO
OFFICE OF THE ATTORNEY GENERAL
ALAN G. LANCE

March 5, 1998

Ron Beeler
Division Inspector General for Audits
U.S. EPA Office of Inspector General
Western Audit Division
75 Hawthorne St., 19th Floor
Mail Code I-1
San Francisco, CA 94105-3901

Dear Mr. Beeler:

Per your request, this letter is written to confirm that the Idaho Division of Environmental Quality (IDEQ) does intend to withhold certain attorney client privileged documents from the audit the U.S. Environmental Protection Agency, Office of Inspector General intends to conduct of IDEQ's air quality programs. Attorney client privileged documents are exempt from disclosure under Rule 502 of the Idaho Rules of Evidence and the Idaho Public Records Act, Idaho Code Section 9-340(1). Neither IDEQ nor the Attorney General's Office are necessarily concerned that the I.G.'s office view such documents; however, once released, arguably the attorney client privilege has been waived and any third party may obtain the documents. Obviously, this could detrimentally effect an enforcement action.

For example, IDEQ is presently pursuing an enforcement action against Penford Products. In addition a notice of tort claim has been filed against the State of Idaho by residents living adjacent to Penford's facility, and a 60 day notice of intent to sue under the Clean Air Act has been issued against Penford. Certainly, it would be extremely disadvantageous for IDEQ to be forced to reveal its attorney client privileged documents to the parties, especially those containing analysis of the strengths and weaknesses of the various matters at issue.

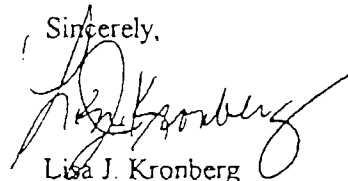
In most cases, there probably won't be many attorney client privileged documents to withhold. However, in cases where a Notice of Violation is issued, IDEQ submits to the Attorney General's Office a document entitled Compliance Action Referral. This document provides a narrative summary of the violations listed in the NOV and additional background information. Further, it provides the Attorney General's Office with a factual chronology of significant facility events. Although the I.G.'s office could probably construct the chronology information upon

Ron Beeler
March 5, 1998
Page 2

review of the file, IDEQ may be able to separate this information from the Referral document and release it to the I.G.'s office.

Please be assured that IDEQ and the Attorney General's Office desire to cooperate as fully as possible in the audit process. Please do not hesitate to ask questions such as why certain actions were or were not taken. We will make every attempt to give you a full and complete picture of each matter at issue. If you have any questions regarding this letter, please do not hesitate to contact me or Doug Conde, Supervisor of Deputy Attorneys General assigned to IDEQ, at (208)373-0494.

Sincerely,



Lisa J. Kronberg
Deputy Attorney General

LJK/lvh

cc. Wallace N. Cory
Charles Resis

APPENDIX C

AUDITEES' RESPONSE TO DRAFT REPORT

Attached are the Region's and the DEQ's comments to the draft report.

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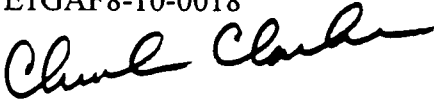
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 10
1200 Sixth Avenue
Seattle, Washington 98101

AUG 31 1998

Reply To
Attn Of: OAQ-107

MEMORANDUM

SUBJECT: Region 10 Response to Draft Report on Idaho's Air Enforcement Program,
Draft Report No. E1GAF8-10-0018

FROM: Chuck Clarke 
Regional Administrator
EPA Region 10

TO: Truman R. Beeler
Divisional Inspector General for Audits
Western Audit Division

This is in response to your July 31, 1998, memo to me and its attached Draft Report. As requested, we are providing a separate statement with respect to each recommendation. As regards your request for a separate statement of concurrence or nonconcurrence with the facts presented in each finding, to the best of our knowledge the facts reported are accurate. We have not, however, mounted our own audit of all of the facts to be able to absolutely confirm every one. However, we believe the facts and the findings are generally consistent with our experiences involving the Idaho Air Enforcement Program. There are, though, a few instances in the following response where we have expanded on the context or have a differing view on the findings.

In your memo you asked us to "consolidate DEQ's responses with those of the Region." The State's responses are enclosed herewith; however, since we did not receive the State's response until mid-day today, we were unable to do anything further with it and still meet your deadline.

Before I get to the specific responses to your findings and recommendations, I want to provide you some background on activities we started working on with all four Region 10 States -- even before the Idaho audit began -- which should have a significant impact on enforcement in all of our media programs. I am enclosing copies of two documents: 1) a letter we sent 2/18/98 to each Deputy Director of the State Environmental Agencies in Region 10 confirming a framework which had been negotiated and agreed to by the Agency Directors for a process to identify and resolve issues related to enforcement in State programs; and 2) a memo we sent 2/18/98 which memorializes an agreement by the four Region 10 States and EPA Region 10 on a set of principles governing State program evaluations, including identification of broad areas of enforcement program expectations. We believe these processes and agreements, along with the

audit findings, will provide strong support in our efforts to improve Idaho's enforcement program and, particularly, to develop a new and strengthened Compliance Assurance Agreement.

I also want you to know that EPA Region 10 has already taken a number of actions in the last several weeks to begin addressing some of the major deficiencies identified in this audit. This has included frank and open discussions at the highest levels of management in both agencies to jointly work through steps to improve DEQ's Air enforcement program; and, the convening of an ad hoc EPA task force which is reviewing cases examined by the audit and determining what types of action are needed on an expedited basis to appropriately address existing SV problems. We will shortly be taking enforcement action on a number of these cases. In addition, I am pleased to report that DEQ has begun to make significant progress with several cases on which there had previously been little apparent action.

Our hope and intent is to work cooperatively with Idaho to secure the necessary program improvements. However, we will not hesitate to exercise our Federal authorities should that be necessary to get results.

Chapter 2 Findings and Recommendations

Findings

There are several places (particularly pages 13,14, and 16) where the State is quoted as saying in effect that they assumed EPA was satisfied with the existing Compliance Assurance Agreement, with the State's support of compliance assistance instead of enforcement, and with the level of State penalty collection. We do not agree that those assumptions reflect the full situation. There have been innumerable in person and telephone conversations -- involving staff and management of both agencies -- of the most direct nature in which EPA expressed its dissatisfaction with the situation. In addition, the monthly Significant Violator (SV) calls inevitably involved EPA pressure for more aggressive State performance, but with only grudging progress occurring. EPA staff who negotiated the existing Compliance Assurance Agreement were told that it was "politically infeasible" for DEQ to include any stronger language in the agreement and said that, while they would work toward EPA objectives, they could not formally commit to them. The advent of Performance Partnership Agreements has also created a context in which there is little guidance for how much leeway a State has in conducting its unique compliance and enforcement program. Now that we have the rather complete picture provided by the audit results, we are prepared to take the necessary actions to remedy the situation.

Recommendation 2-1

Require DEQ to develop and implement enforcement policies and procedures which are consistent with EPA's *Compliance and Enforcement Manual, Timely and Appropriate Enforcement Response to Significant Violators, and Clean Air Act Stationary Source Civil Penalty Policy*.

EPA Response

Concur, with comment. Early in FY99 we will begin negotiations with Idaho DEQ to substantially revise the State-EPA Compliance Assurance Agreement. While we do not have the unilateral authority to require that DEQ strictly and formally adhere to our compliance and enforcement policies and procedures, it will be a major goal that this agreement reflects them as

well as possible and, in any event, we will expect future State performance and outcomes to reflect that. Should the State fail to secure results that are in line with EPA expectations, we will take whatever actions are necessary -- including carrying out independent inspections and assuming responsibility for enforcement actions -- to ensure that there is an adequate Air enforcement program in Idaho.

Chapter 3 Findings and Recommendations

Recommendation 3-1

Assess the level of inspection resources available to DEQ and negotiate with DEQ to inspect major and potential sources in accordance with EPA's Inspection Frequency guidance. In the event it is determined that DEQ cannot meet EPA's guidance, the Region should assess DEQ's criteria for selecting sources for inspection, including determining that the criteria do, in fact, result in the most high risk (for noncompliance) sources being inspected annually.

EPA Response

Concur, with comment. During the fall of 1998 we will establish with the State the numbers of inspections to be accomplished by DEQ during FY99. We are not sure whether the State has sufficient inspector resources assigned for their inspection program to satisfy EPA's Inspection Frequency Guidance. We will, however, assess the State's selection criteria and encourage them to better target high risk sources.

Recommendation 3-2

Supplement DEQ's inspection resources with Regional staff if DEQ is unable to meet EPA's Inspection Frequency Guidance.

EPA Response

Concur, with comment. We will work closely with the State during the next few months on inspection targeting to ensure that the collective (i.e., Federal + State) set of inspection targets is optimized and will review their inspection plan for FY99 with the guidance in mind. Our ability to supplement State efforts beyond the amount we already do will be contingent on the need for such resources -- and their availability -- when we make an assessment in FY99 of the State's follow through and success in achieving the goals of the guidance.

Recommendation 3-3

Ensure that DEQ implements adequate procedures to ensure timely finalization of inspection reports.

EPA Response

Concur, with comment. We will work with the State to establish such procedures during revision of the Compliance Assurance Agreement in FY99.

Chapter 4 Findings and Recommendations

Recommendation 4-1

Ensure that DEQ performs its review of stack test and CEMS reports timely.

EPA Response

Concur, with comment. This is an important objective to work toward, and we will make it a priority as we renegotiate the Compliance Assurance Agreement. We believe this situation will improve when DEQ applies the additional resources it is reported to have received

to address this backlog of tests and reports.

Chapter 5 Findings and Recommendations

Recommendation 5-1

Ensure that violations on the SV list meet EPA's SV definition.

EPA Response

Concur, with comment. We have made this a continuing issue in our monthly, detailed SV calls with the State. As the audit demonstrates, discrepancies can creep in. This is a concern for us and we will give it renewed attention in our monthly calls.

Recommendation 5-2

Ensure that staff from both DEQ and the Region are aware of, and consistently use, EPA's SV definition and criteria for the SV Day 0, addressed, and resolved dates.

EPA Response

Concur, with comment. We believe most State and Regional staff are aware of these definitions and criteria, but that the reality of implementing them is a continuing struggle. Part of this is the nature of compliance and enforcement work, where there is often missing or incomplete information that can take some time to procure. Timelines are also sometimes difficult to meet because EPA staff must often negotiate with State staff to persuade them to follow a particular course of action consistent with our requirements, policies, or guidance. Also, there is the issue of inadequate resources to move along actions so that they are always within the boundaries of EPA policy and guidance. However, both State and EPA staff can clearly improve their performance, and we will make this a high priority in the future.

Recommendation 5-3

Ensure that SVs are deleted from the SV list for appropriate reasons.

EPA Response

Concur, with comment. Again, we have continually raised such issues in our monthly SV calls with State staff. We will continue to monitor the situation and promptly address deviations which we discover.

Chapter 6 Findings and Recommendations

Recommendation 6-1

Revise the Compliance Assurance Agreement with DEQ to include EPA enforcement guidance as criteria for assessment of the State's stationary air enforcement program.

EPA Response

Concur, with comment. As mentioned above, this goal will be the highest priority in our Compliance Assurance Agreement renegotiations.

Recommendation 6-2

Conduct, at least annually, evaluations of the State's air enforcement program for SVs for consistency with EPA guidance.

EPA Response

Concur, with comment. By the end of 1999 we will conduct a review and assessment of the State's air enforcement program to determine its consistency with EPA guidance. We will also make a determination at that time as to the feasibility of doing this annually.

Recommendation 6-3

Develop and implement a plan to ensure that EPA enforcement actions taken in response to SVs are consistent with EPA enforcement guidance. Also, ensure that justifications for mitigated penalties meet EPA Penalty Policy criteria and are adequately documented.

EPA Response

Concur, with comment. We believe that EPA failure to always ensure that enforcement actions taken in response to SVs are consistent with our guidance is primarily a resource dependent problem. We generally agree that SVs are violators which EPA believes are environmentally most important, but this is tempered by the fact that we are trying to balance SV priorities among four States and are not able to give all SVs in a particular state our highest attention. In any case, we will develop a plan during the coming year to figure out how best to achieve consistency with our enforcement guidance. In addition, EPA Air Program staff have had discussions with our Office of Regional Counsel to reinforce the need for adequate documentation of the justifications for any mitigated penalties.

Recommendation 6-4

Report the weaknesses in the State's stationary air enforcement program for SVs as a management control deficiency in the next annual FMFIA assurance letter to the EPA Administrator.

EPA Response

Concur, with comment. We will report on any remaining State air enforcement program deficiencies in the next annual FMFIA letter.

Recommendation 6-5

Withhold final approval of the State's Title V program until the State establishes policies and procedures for enforcement which are consistent with EPA's enforcement guidance. Specifically, the Region should assess Idaho's Title V program against the criteria for an approvable program under 40 CFR Part 70.

EPA Response

Concur, with comment. While it is unclear whether we can withhold approval of the State's Title V program solely on the basis of the State not adhering to all of EPA's enforcement guidance, we will make such approval contingent on negotiation of a revised Compliance Assurance Agreement which is satisfactory to EPA and which is aligned with these compliance and enforcement objectives.

Recommendation 6-6

Assume responsibility for enforcement of the stationary source air enforcement program in the State for major and synthetic minor sources if the State is unable to implement an enforcement program that is consistent with EPA guidance and the Clean Air Act.

EPA Response

Concur, with comment. We recognize this as a legitimate approach if the State is unable or unwilling to implement an enforcement program consistent with EPA objectives. Given that the State needs to remedy a number of serious deficiencies (many of which have become institutionalized over a period of years), we expect that it could be several months before such revisions are fully negotiated and become integrated into DEQ's program implementation and follow through. Thus, we will refrain from making a decision to assume responsibility from

the State until DEQ has had an adequate period in which to demonstrate whether it can deliver acceptable performance.

Enclosures: Idaho Response
EPA letter to States, 2/18/98
EPA memo to HQ, 7/9/98

c: Wallace Cory, Administrator, IDEQ
Anita Frankel, Director, Office of Air Quality
Gil Haselberger, Manager, Air Enforcement and Program Support, EPA R10



August 31, 1998

Transmitted by facsimile transmission to (206) 553-4038 and via Certified Mail

CERTIFIED MAIL # P 102 113 968
RETURN RECEIPT REQUESTED

Charles Reisig
United States Environmental Protection Agency
Office of the Inspector General, Western Division
1200 Sixth Avenue
Seattle, Washington 98101-3123

Re: Response to OIG draft audit report.

Dear Mr. Reisig:

The Idaho Division of Environmental Quality (DEQ) has completed its review of the Draft Report on Idaho's Air Enforcement Program dated July 31, 1998. Unfortunately, the report continues to imply wrongdoing on the part of DEQ in the execution of its duties. To the contrary, we steadfastly maintain that our programs have performed according to established agreements and in a manner protective of public health and the environment at all times. The data show, in fact, that all of Idaho's airsheds currently meet air quality health standards, the sole exception being one which remains under USEPA jurisdiction. This overall improvement in air quality can be attributed to the effectiveness of the permitting and enforcement programs operated by DEQ. Today, while in the midst of an expanding economy and population, we are extremely proud of these results.

The report continues to inappropriately emphasize differences in DEQ's administration and implementation of its program when compared to a preestablished set of national criteria that DEQ had never agreed to strictly comply with. The specifics of this argument were previously addressed in our letter to you dated July 6, 1998. While each individual criticism in the report could be soundly argued on its own merit, we have elected to forsake doing so at this time. This approach would likely be unproductive, since the fundamental argument centers on the need for DEQ to fully comply with national policy and guidance as opposed to the numerous agreements we had entered into in good faith with USEPA. It remains our understanding that these agreements contain the standards for which DEQ should be held to when evaluated for any purpose. These agreements, your office has maintained, were in effect invalid since they did not consistently prescribe the terms and conditions brought forth in national policy. This in itself is hard for DEQ to fathom, since the very agreements in question stem from national policy, and were prompted and openly negotiated with our federal counterparts at USEPA. To be vilified in a national audit for largely complying with the terms of such agreements is a considerable injustice. DEQ's trust in ongoing and future agreements will be significantly compromised if such an injustice is allowed to occur. We assume this will not be the case.

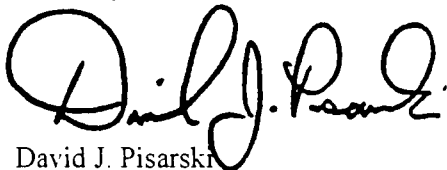
The audit report, by-and-large, condemns DEQ's performance. Since performance must be evaluated on a pre-determined set of criteria, DEQ maintains to have performed remarkably well when appropriately evaluated. Strict adherence to national policy as opposed to the operating principles DEQ has agreed to operate its programs under in no way points to poor performance or ineffectiveness in meeting our goals.

As our previous response had indicated, we will work with USEPA in the coming year in an open and cooperative manner to resolve perceived deficiencies in our program. It is critical, however, that through this process USEPA recognize the differences in state policies and in the direction and manner our agency may respond. Equally important, regardless of the outcome of any negotiations, will be recognition that any actions we commit to take we do so with the mutual goal of protecting public health and the environment at any cost.

Due to the fundamental arguments previously raised in this correspondence, DEQ rejects outright the conclusions and recommendations brought forth in the draft report. We seek a retraction of all portions of the report critical of DEQ for anything other than what was understood by this agency to be legally binding and approved operating guidance. Only in doing so can your office accurately represent the performance and efficiencies of DEQ's programs. Release of the report in its present state will serve no purpose but to undermine the good intentions and successes we have realized.

In closing, we welcome continuing discussions on the valid issues you have raised in your report. We remain committed to working with our partners at USEPA to determine and resolve those matters which are of truly great importance to the effective operation of our programs in meeting our common goals.

Sincerely,

A handwritten signature in black ink, appearing to read "David J. Pisarski". The signature is fluid and cursive, with a large initial "D" and "P".

David J. Pisarski
Chief
Compliance Assurance Bureau
Idaho Division of Environmental Quality

DJP/sd c:\...dave\audit2.rsp

cc: W. Cory
O. Green
Gil Haselberger, (Via fax at: (206) 553-0110 or (206) 553-0404)
T. Trumbull
L. Kronberg
A. Frankel, USEPA
COF

APPENDIX D

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