Office of Inspector General

Report of Audit

Validation of Air Enforcement Data Reported to EPA by Pennsylvania

E1KAF6-03-0082-7100115

FEBRUARY 14, 1997

Inspector General Division Conducting the Audit:	**Mid-Atlantic Division Philadelphia, PA**
Program Office Involved:	**Air, Radiation & Toxics Division Philadelphia, PA**

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

OFFICE OF THE INSPECTOR GENERAL
MID-ATLANTIC DIVISION

841 Chestnut Building
Philadelphia, Pennsylvania 19107-4431
(215) 566-5800

February 14, 1997

MEMORANDUM

SUBJECT: Report of Audit on Validation of Air Enforcement Data Reported to EPA by Pennsylvania
Audit Report Number E1KAF6-03-0082-7100115

Carl A. Jannetti

FROM: Carl A. Jannetti
Divisional Inspector General for Audit (3AI00)

TO: W. Michael McCabe
Regional Administrator (3RA00)

Attached is our audit report on *Validation of Air Enforcement Data Reported to EPA by Pennsylvania*. The overall objectives of this audit were to determine whether the Pennsylvania Department of Environmental Protection (PADEP): (1) identified significant violators in accordance with EPA's Timely and Appropriate Enforcement Policy; (2) reported significant violators to EPA; and (3) performed inspections that were sufficient to determine if a facility violated the Clean Air Act. This report contains findings and recommendations that are important to both EPA and PADEP.

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

ACTION REQUIRED

In accordance with EPA Order 2750, you as the action official are required to provide this office a written response to the audit report within 90 days. Your response should address all recommendations, and include milestone dates for corrective actions planned, but not completed.

We have no objection to the release of this report to the public. Should you have any questions about this report, please contact Patrick Milligan at 215-566-5800.

Attachment

EXECUTIVE SUMMARY

PURPOSE

The purpose of this audit was to determine whether the Pennsylvania Department of Environmental Protection (PADEP):

- Identified significant violators in accordance with EPA's Timely and Appropriate Enforcement Policy.
- Reported significant violators to EPA.
- Performed inspections that were sufficient to determine if a facility violated the Clean Air Act (CAA).

BACKGROUND

The CAA of 1990 lists 189 toxic air pollutants that must be reduced. EPA estimates that more than 2.7 billion pounds of toxic air pollutants are emitted annually in the United States. The list of air toxics touches every major industry, from the mining of base metals to the manufacture of high-tech electronics. EPA studies also show that exposure to these air toxics may result in up to 3,000 cancer deaths each year. Other adverse health effects of air toxics include: respiratory illness; lung damage; premature aging of lung tissue; as well as retardation and brain damage, especially in children.

The CAA separately regulates six of the more serious air pollutants — ground level ozone, particulate matter, carbon monoxide, sulfur dioxide, lead, and nitrogen dioxide. These six criteria pollutants are emitted in large quantities by a variety of sources. EPA sets national standards for each of these criteria pollutants and the states must take action to assure facilities meet EPA standards.

PADEP conducts inspections of most major facilities each year to ensure they meet federal and state regulations. To

assess compliance during an inspection, the inspector should refer to the facility's permit. The permit translates requirements of laws such as the CAA into individualized enforceable requirements.

When an inspector identifies a violation, PADEP should issue the facility a Notice of Violation (NOV). An NOV specifies the type of violation and the regulations the facility violated. It may also require the facility to show what actions it will take to achieve compliance. If the violation meets EPA's definition of a significant violator, the state should report the facility to EPA for placement on the Agency's significant violator list. The Section 105 grant PADEP received from EPA, required the State to identify and report significant violators in accordance with EPA's Timely and Appropriate Enforcement Policy, issued on February 7, 1992.

According to EPA's enforcement policy, a significant violator is any major stationary source of air pollution, which is violating a federally-enforceable regulation. This policy required states to report significant violators to EPA within one month of the violation, and to maintain the facility on EPA's list until it achieves compliance. After the violation is reported, the state and EPA should monitor the source until it achieves compliance. This includes determining an appropriate time schedule for achieving compliance and assessing a penalty, if necessary.

EPA stresses to each state the importance of identifying and reporting significant violators promptly. This issue is of such importance that Region 3 allotted part of the Section 105 grant funds for identifying significant violators and reporting them timely.

RESULTS-IN-BRIEF

EPA set priorities for its air program and awarded grants to PADEP for more than $5 million a year to carry them out. However, PADEP conducted its air program following an agenda different from EPA's. Specifically, the State did not:

- Report all significant violators to EPA.
- Take aggressive enforcement action to bring all violating facilities into compliance.

While EPA required information about violators, the State wanted to keep Region 3 uninformed and did not report significant violators to EPA. From our review of NOVs or enforcement files for 270 facilities, we identified 64 significant violators that the State did not report to EPA. The reason EPA needed this information was to take action if the State did not enforce federal law. Moreover, while EPA wanted PADEP to take aggressive enforcement action to bring violating facilities into compliance, the State wanted to avoid what it perceived as federal meddling. PADEP believed that it could work with the facility to achieve compliance without labeling the facility as a significant violator.

When PADEP did not notify EPA that violations occurred, Region 3 was unable to ensure the violator achieved compliance timely. In effect, PADEP hindered EPA's ability to oversee the State's enforcement program. These differences contributed to allowing facilities that were serious contributors of air pollution to continue harming the environment — sometimes for many years.

In comparison to EPA, the State placed less emphasis on reporting significant violators. Philosophical differences such as the identifying and reporting of significant violators show that PADEP and EPA may not be willing partners. The absence of this willing partnership will undermine the

effectiveness of the Performance Partnership Grant (PPG) the Agency intends to award to PADEP. EPA and PADEP need to mutually resolve differences such as these before PPGs can be most effective.

In addition, PADEP's inspection program needs improvement. Some Level 2 inspections were not thorough enough to determine whether a facility was complying with state and federal regulations. Moreover, when PADEP identified violations, it did not always ensure the facility took corrective action.

RECOMMENDATIONS

We recommend that the Region 3 Administrator take action to ensure PADEP reports significant violators as required by their Section 105 grant and by EPA's Timely and Appropriate Enforcement Policy. We also recommend the EPA Region 3 Administrator require PADEP to conduct Level 2 inspections to determine a facility's compliance, and perform follow-up in order to resolve violations timely.

PADEP RESPONSE

While we believe your draft to be generally misleading and inaccurate, we want to be very clear about one thing. It did not take an audit to determine that PADEP and EPA disagreed on the manner of identifying significant violators (SVs). A review of Region 3's midyear reviews would show this was an issue for the last decade. Although the report criticizes PADEP, it did not criticize EPA for essentially agreeing to PADEP's handling of significant violators for the last decade.

We acknowledge that PADEP does not activate the "SV flag" in EPA's computer system. However, that does not mean the data was not entered, or that it could not be used to easily identify SVs. PADEP has not deliberately concealed violations from EPA, but routinely reports more information about violations in paper copy and electronic form than any other state in Region 3.

We are unable to respond with specificity to your allegations regarding PADEP inspections since the inspections in question were not identified. If the final report identifies the deficient inspections, we will take steps to make corrections. On balance we do perform Level 2 inspections as contemplated by the grant. Additionally, not all inspections we perform are intended or required to be Level 2 inspections.

EPA RESPONSE

We concur with the findings and recommendations expressed in this report. EPA must rely on Pennsylvania for most of our information concerning the compliance status of the State's regulated community. This is the reason for specifying in the CAA Section 105 grant agreement that the State report and identify SVs in accordance with the Timely and Appropriate Enforcement Policy negotiated between the states and EPA.

Once the State began withholding this information, EPA had no reliable and easily accessible source of data to determine which facilities were significantly violating clean air regulations. State input to the EPA database — the Aerometric Information Retrieval System (AIRS) — did not distinguish between simple violations, with little or no impact on public health, and more egregious violations with serious impacts. CAA Section 105 grant funds specifically require SVs to be identified up front, not buried in a mountain of computer data that would have to be analyzed and verified, resulting in wasted time and taxpayer money. The State agreed to those terms in exchange for receipt of the clean air grant funds.

CITIZENS ADVISORY COUNCIL COMMENTS

On November 12, 1996, Secretary of PADEP asked the Citizens Advisory Council (CAC) to the Department of Environmental Resources to convene a group to independently review the issues raised in this report. In their report, the CAC concluded that PADEP did not identify all sources for potential listing as required by its grant with EPA,

and that the SV selection process is somewhat subjective, requiring dialogue, judgement and more information than is available on AIRS, in an inspection report, or in an NOV. The CAC also concluded that our report makes generalizations about the effectiveness of the State's air enforcement program based on a narrow group of cases. The Council recommended that unless the state can negotiate a change to EPA's reporting requirements, PADEP must identify all sources that meet the literal definition of SV.

OIG EVALUATION

We do not agree with the comments provided by PADEP. We acknowledge PADEP's affirmation that it did not report SVs as required by the grant. However, as confirmed by the CAC report, we disagree that Region 3 could identify SVs from the paper NOVs, electronic information submitted by PADEP, and Quick Look reports. We especially disagree with PADEP's comments since the grant agreement between EPA and PADEP requires the State to report SVs via AIRS and telephone.

The grant agreement is, in effect, a contract. Grant recipients cannot be allowed to disregard requirements in a negotiated and executed agreement because they believe portions of the grant to be "rigid," "unrealistic," or "defies any common sense understanding." Reporting SVs in accordance with EPA's Timely and Appropriate Enforcement Policy was a grant or "contract" requirement that the State agreed to perform when it accepted the grant.

On December 24, 1996, we provided PADEP the identity of the facilities for which we questioned the State's inspections. We recognized that not all of PADEP's inspections were intended or required to be Level 2 inspections. However, the inspections we found problematic were intended to be Level 2 inspections. It is important to note that we reviewed 81 inspections and found that 17 percent needed improvement. This percentage indicates that the State's procedures need revision.

We agree with the CAC's overall conclusions concerning the need for improved reporting of significant violators by PADEP, and the need for better communication between EPA and Pennsylvania. However, we do not agree with several of their comments about selected aspects of our report. After evaluating the CAC's comments, our position concerning the issues identified in our report remains unchanged, except that we made minor editorial revisions to Chapter 3.

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CHAPTER 1

INTRODUCTION

Purpose

The purpose of this audit was to determine whether the Pennsylvania Department of Environmental Protection (PADEP):

- Identified significant violators in accordance with EPA's Timely and Appropriate Enforcement Policy.
- Reported significant violators to EPA.
- Performed inspections that were sufficient to determine if a facility violated the Clean Air Act (CAA).

Background

> Air toxics may cause 3,000 cancer deaths each year.

The CAA of 1990 lists 189 toxic air pollutants that must be reduced. EPA estimates that more than 2.7 billion pounds of toxic air pollutants are emitted annually in the United States. The list of air toxics touches every major industry, from the mining of base metals to the manufacture of high-tech electronics. EPA studies also show that exposure to these air toxics may result in up to 3,000 cancer deaths each year. Other adverse health effects of air toxics include: respiratory illness; lung damage; premature aging of lung tissue; as well as retardation and brain damage, especially in children.

The CAA separately regulates six of the more serious air pollutants — ground level ozone, particulate matter, carbon monoxide, sulfur dioxide, lead, and nitrogen dioxide. These six criteria pollutants are emitted in large quantities by a variety of sources. EPA sets national standards for each of

these criteria pollutants and the states must take action to assure facilities meet EPA standards.

One criteria pollutant, ground level ozone, is a major problem in the southeast portion of Pennsylvania. When Volatile Organic Compounds (VOCs) react with nitrogen dioxide, it creates ground level ozone. This toxic air pollutant should not be confused with the "ozone layer" which protects the earth from the sun's ultraviolet rays.

EPA Awards States Grant Money for Air Programs

Section 105 of the CAA provided the initial authority for federal grants to help state and local agencies prevent and control air pollution. Throughout the years, the CAA increased the responsibilities of the states, which were matched with an increase in grant funds. Region 3 awards Section 105 grant money so that states can operate their air programs in accordance with their grant agreements. The most recent amounts provided are shown below.

Fiscal Year	Amounts Awarded To All States in Region 3	PADEP Grant Amounts
1994	$18,725,483	$5,004,533
1995	$19,754,725	$5,036,701
1996	$17,708,800	$5,152,874

Before EPA awards each grant, it negotiates a work program with the state. The program contains specific work commitments the state agrees to perform. Region 3 uses the work program as the basis for evaluating the state's performance under the grant. The work program encompasses activities such as inspections, monitoring, permitting, and enforcement, which includes identifying and reporting significant violators.

Types of Inspections

Pennsylvania conducts inspections of most major facilities each year to ensure they meet federal and state regulations. According to EPA policy, states can perform five different levels of inspections at air pollution facilities. Level 0, commonly called a "drive by," is the most basic inspection. EPA does not consider this level of inspection to be an acceptable compliance assurance method. A Level 4 inspection is the most thorough and time consuming. This type is generally done only for activities such as developing a legal case against the facility.

To adequately evaluate a facility's compliance with the CAA, the 105 grants required each state to perform Level 2 inspections at specified major facilities. A Level 2 inspection includes:

- Reviewing facility records to determine compliance with applicable regulations and permits,
- Taking and analyzing samples when required,
- Recording process rates and control equipment performance parameters, and
- Performing visual observations of emissions.

These activities provide support for enforcement actions and are a viable method for determining whether a facility is violating the CAA.

Types of Permits

To assess compliance during an inspection, the inspector should refer to the facility's permit. The permit translates requirements of laws such as the CAA into individualized enforceable requirements. In other words, the permit defines the parameters by which a facility must operate.

There are two types of permits. The first is a federally-enforceable construction permit. This type allows a facility

to install or construct new equipment and modify its existing equipment. The construction permit issued by a state is valid for a specified period of time and enables the facility to fine tune or adjust its newly installed equipment. At the time the construction permit expires, the state should inspect the facility and issue the second type of permit called an operating permit.

Since operating permits were not federally enforceable at the time of our review, any violations of these permits did not require PADEP to place the facility on EPA's significant violator list. Therefore, EPA used the construction permit to measure a facility's compliance. During August 1996, EPA obtained the authority to enforce operating permits.

EPA Enforcement Procedures

When an inspector identifies a violation, PADEP should issue the facility a Notice of Violation (NOV). An NOV specifies the type of violation and the regulations the facility violated. It may also require the facility to show what actions it will take to achieve compliance. If the violation meets EPA's definition of a significant violator, the state should report the facility to EPA for placement on the Agency's significant violator list. The Section 105 grant required PADEP to identify and report significant violators in accordance with EPA's February 7, 1992, guidance entitled *Timely and Appropriate Enforcement Response to Significant Air Pollution Violators.*

According to EPA's Timely and Appropriate Enforcement Policy, a significant violator is any major stationary source of air pollution, which is violating a federally-enforceable regulation. This policy required states to report significant violators to EPA within one month of the violation, and to maintain the facility on EPA's list until it achieves compliance. After the violation is reported, the state and EPA should monitor the source until it achieves compliance. This includes determining an appropriate time schedule for achieving compliance and assessing a penalty, if necessary.

To resolve violations expeditiously, EPA stresses to each state the importance of identifying and reporting significant violators promptly. This issue is of such importance that Region 3 allotted part of the Section 105 grant funds for identifying significant violators and reporting them timely.

State Reporting Requirements

Each month EPA and the states are responsible for updating the air enforcement data on the Agency's database known as the Aerometric Information and Retrieval System (AIRS). The 105 grant PADEP received from EPA also required the State to report new significant violators within 30 days of identifying the violation. The new violators are to be reported to EPA via telephone and AIRS. EPA and the states conduct quarterly teleconferences to discuss new and existing significant violators. EPA uses this communication to promote a greater degree of teamwork between themselves and the states. However, if EPA is dissatisfied with a state's enforcement action, the Agency has the authority to override the state and assume the lead in resolving the violation.

During Fiscal Year 1995, PADEP's regional offices reported six significant violators to EPA Region 3.

Regional Office	Violators Reported
Conshohocken✓	0
Wilkes-Barre✓	0
Harrisburg✓	2
Williamsport	0
Pittsburgh	1
Meadville	3
Total	**6**

✓ Offices Visited by the OIG

Scope and Methodology

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

To accomplish our objectives we performed reviews at PADEP regional and district offices, and at their central office in Harrisburg. We visited three of PADEP's six regional offices and two district offices within those regions. While at the PADEP offices, we had discussions with air inspectors, compliance specialists, permit chiefs and air quality program directors. We also interviewed managers, engineers, and inspectors from EPA Regions 3 and 5.

We reviewed the CAA, the Code of Federal Regulations, EPA's Timely and Appropriate Enforcement Policy, the CAA Compliance/Enforcement Guidance Manual, EPA's Compliance Monitoring Strategy, and Title 25 of the Pennsylvania Code. We also reviewed Section 105 grants awarded to Pennsylvania under the CAA, EPA's midyear reviews of the State's performance, and the NOVs PADEP submitted to Region 3. During this audit, we used various printouts from the EPA's AIRS to obtain information about the inspections performed.

To evaluate PADEP's enforcement of the CAA requirements, we reviewed the air quality files maintained at PADEP offices. These files contained items such as inspection reports, NOVs, permits, permit applications, test results, emission monitoring records, and correspondence. Due to the complexity of air enforcement files, we received technical assistance from EPA personnel in Regions 3 and 5.

We performed two analyses to accomplish our objectives. First, we reviewed the 556 NOVs that the six PADEP offices

submitted to EPA Region 3 during Fiscal Year 1995. During our second analysis, we judgementally sampled enforcement files, and the associated Fiscal Year 1995 PADEP inspection reports, for 45 major stationary sources of air pollution in Pennsylvania. These inspections did not result in the State submitting an NOV to EPA, or reporting the facility as a significant violator. We selected facilities that were sources of various pollutants and of varying size. During both analyses, it was sometimes necessary to review documents prior to Fiscal Year 1995. This was done to obtain historical information, such as how long problems persisted and the results of previous inspections.

Our audit disclosed several areas needing improvement that are discussed in Chapters 2 through 4. We provided recommendations to ensure PADEP identifies and reports significant violators to EPA. Our recommendations also addressed the need to improve the quality of inspections, and EPA's use of monitoring data.

We reviewed management controls and procedures specifically related to our objectives. However, we did not review the internal controls associated with the input and processing of information into AIRS or any other automated records system.

As part of this audit we also reviewed the Region 3 Air, Radiation and Toxics Division's Annual Report on Internal Controls for Fiscal Years 1993 through 1995. These reports were prepared to comply with the Federal Manager's Financial Integrity Act. We found that none of the weaknesses cited during our audit were disclosed in Region 3's annual reports.

Our survey began on November 2, 1995, and ended on April 15, 1996. As a result of the survey, we initiated an in-depth review on April 16, 1996. We completed fieldwork for the audit on September 15, 1996. To obtain a preliminary

response to the issues in this report, we issued position papers to EPA Region 3 on October 10, 1996. We received their response on October 18, 1996.

We issued a draft report on November 15, 1996. PADEP submitted its response to us on December 13, 1996. EPA Region 3 provided comments on December 18, 1996. After evaluating these responses, we made minor modifications to our report. However, our position remains unchanged on the major issues discussed in this report.

In his response, the Secretary of PADEP requested that we provide the names of the facilities we reviewed so that he could respond with specificity. On December 24, 1996, we provided this information to PADEP. However, PADEP did not provide any additional comments during the seven-week interim between December 24 and the date of this report.

In his response, the Secretary also indicated that he asked the Citizens Advisory Council (CAC) to the Department of Environmental Resources to undertake an independent review of the State's violation reporting system and the allegations in the draft report. On December 20, 1996, the CAC asked that we not finalize our report until they completed their review at the end of January 1997. Because of this request, we did not finalize our report until we received the CAC's report.

PADEP's and Region 3's responses to our findings are summarized at the end of each chapter. We also provide our evaluation of these responses at the end of each chapter. PADEP's complete response is included in Appendix A, and Region 3's complete response is included in Appendix B. On February 11, 1997, the CAC issued their report on the issues we identified. Their complete report is included in Appendix C. Our evaluation of the CAC's report is also included in this Appendix.

Prior Audit Coverage

An EPA Office of the Inspector General audit report (E1KAE5-24-0015-5100510) issued on September 29, 1995 discussed Section 105 grants awarded to Pennsylvania and other states. This report also addressed the need for states to complete the work plan commitments of these grants, and EPA's reluctance to withhold funds from states that do not complete grant commitments.

Other OIG audit reports addressed topics similar to those discussed in this report. For example, past reports disclosed that data submitted by the states through AIRS was incomplete, inconsistent, and untimely. AIRS data was not reliable, and EPA relied on supplementary information and manual reports from other databases.

Past audit reports have also identified concerns with other aspects of EPA's oversight of state air enforcement programs such as inadequate penalty calculations, untimely completion of enforcement actions, and inadequate publicity of enforcement actions. EPA Office of Inspector General reports discussing these topics include:

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

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

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

- *Capping Report on the Computation, Negotiation, Mitigation, and Assessment of Penalties Under EPA*

Programs (E1G8E9-05-0087-9100485, September 27, 1989)

♦ *Follow-up Review on EPA's Mitigation of Penalties* (E1GMG4-05-6009-4400107, September 15, 1994).

CHAPTER 2

PADEP NOT REPORTING SIGNIFICANT VIOLATORS TO EPA

EPA set priorities for its air program and awarded grants to PADEP for more than $5 million a year to carry them out. However, PADEP conducted its air program following an agenda different from EPA's. Specifically, the State did not:

- Report all significant violators to EPA.
- Take aggressive enforcement action to bring all violating facilities into compliance.

While EPA required information about violators, the State wanted to keep Region 3 uninformed and did not report significant violators to EPA. The reason EPA needed this information was to take action if the State did not enforce federal law. Moreover, while EPA wanted PADEP to take aggressive enforcement action to bring violating facilities into compliance, the State wanted to avoid what it perceived as federal meddling. PADEP believed that it could work with the facility to achieve compliance without labeling the facility as a significant violator.

When PADEP did not notify EPA that violations occurred, Region 3 was unable to ensure the violator achieved compliance timely. In effect, PADEP hindered EPA's ability to oversee the State's enforcement program. These differences contributed to allowing facilities that were serious contributors of air pollution to continue harming the environment — sometimes for many years.

At the time of our review, there were 2,053 major facilities in Pennsylvania and PADEP inspects most major facilities each

year. For example, PADEP performed 2,000 inspections during Fiscal Year 1995, and reported only six significant violators to EPA Region 3.

To identify significant violators, we first reviewed the 556 NOVs that the six PADEP offices submitted to Region 3 during Fiscal Year 1995. We determined that 331 of these NOVs were either issued to minor facilities ineligible for placement on EPA's list of significant violators, or for violations that were not federally enforceable. The remaining 225 NOVs were issued to major facilities that violated state or federal regulations. These were analyzed further to identify any that met EPA's definition of a significant violator.

We also reviewed a sample of 45 PADEP enforcement files and associated inspection reports. These were for facilities that PADEP inspected, and did not submit an NOV to EPA during Fiscal Year 1995, or report the facility as a significant violator. This sample was used to review facilities for which the State did not provide information indicating that the facility was a violator.

In total, we reviewed NOVs or enforcement files for 270 major facilities (225 + 45). This represents 13 percent of the 2,053 major facilities in Pennsylvania. From these 270 facilities, we identified 64 significant violators that the State did not report to EPA. One of these was a Continuous Emissions Monitoring (CEM) facility, for which the State submitted monitoring data to EPA that indicated the facility was a "potential" significant violator. This is discussed in Chapter 4 under *Other Matters*.

It is noteworthy that both our review of NOVs and our sample of enforcement files and associated inspections disclosed similar percentages of significant violators. Our review of 225 NOVs, and PADEP files when additional information was necessary, showed that 56, or 25 percent were significant violators that the State did not report.

Further, our analysis of the 45 enforcement files disclosed 8 violators or 18 percent, which the State did not report. This second percentage is important because it indicates a review of all 2,053 facilities would have likely yielded more violators over and above the 64 we identified.

We understand that the NOVs PADEP provided EPA contained some information about violators. However, it was a laborious task to review all 556 NOVs to sort out minor facilities not eligible for significant violator status, major facilities with minor violations, and finally the significant violators. Moreover, for a number of the NOVs, we could not determine if the facility was a significant violator from the NOV alone. In many of these cases, we reviewed PADEP's enforcement files including the State's Fiscal Year 1995 inspection reports. For these reasons, we did not consider the NOVs submitted by the State as an adequate alternative to the reporting requirements for significant violators mandated in the 105 grant. Specifically, the State should tell EPA who the significant violators are, and not expect EPA to review almost 600 NOVs that contain a relatively small number of significant violators. The significant violators reported by PADEP offices in Fiscal Year 1995 and those identified by our audit are shown next.

Significant Violators Identified		
Regional Office	**PADEP**	**OIG**
Conshohocken	0	14
Wilkes-Barre	0	13
Harrisburg	2	22
Williamsport	0	12
Pittsburgh	1	1
Meadville	3	2
Total	**6**	**64**

Clean Air Act Was Violated in Numerous Ways

While the severity of these violations varied, many were threats to the quality of our air. Furthermore, some of these facilities violated the Clean Air Act for years without the State reporting them to EPA. The violations included:

- 34 facilities that emitted excessive pollution;
- 22 facilities that violated their construction permit; and
- 8 facilities that installed machinery without receiving a construction permit from PADEP. These permits were critical because the new machinery produced pollution.

According to EPA's Timely and Appropriate Enforcement Policy, and the grant agreement between EPA and the State, PADEP should have reported to EPA the 64 significant violators we identified. However, PADEP did not believe the violations warranted reporting these facilities to EPA. This practice allowed the State to function without EPA oversight, and to deal with violators as the State saw fit — not how EPA required. This condition was one reason why many violations persisted for long periods.

PADEP Not Informing EPA Allows Violations to Persist

One facility had seven violations in sixteen months.

For example, PADEP inspections at a facility that manufactures concrete structures identified seven violations during the sixteen months starting May 1993 through September 1994. All of the violations were for fugitive emissions, which are excessive dust particles released into the air. These fugitive emissions were from the following three sources:

- loading trucks with concrete,
- traffic in and out of the plant, and

- a broken fabric collector that was supposed to capture the fugitive emissions.

These violations took a long time to resolve. The first violation occurred in May 1993 and the final violation occurred in September 1994. Although the facility took corrective action on individual violations, it was not until October 1995, almost two and one half years later, that a PADEP inspection verified that the last violation was resolved. Based on the number of violations and their severity, this was a situation where PADEP should have reported the facility as a significant violator.

PADEP allowed a facility to "pay to pollute" for over one year.

Another facility that manufactured automotive carpet and interior trim had a history of opacity violations during the past four years. Opacity violations occur when the plume of smoke from a stack exceeds an allowable density, indicating that the facility is emitting excess pollution. Here, the source was a boiler.

In August 1995, PADEP assessed this manufacturer a civil penalty of $4,000, but decided not to place the facility on EPA's list of significant violators. Despite the penalty, PADEP allowed the facility to continue operating the faulty boiler and pay a penalty of $500 per month. According to PADEP officials, they allowed this "pay to pollute" arrangement to persist for 14 months, from June 1995 until August 1996, when the facility installed a new boiler.

This example shows there are occasions when PADEP recognizes that a facility is a violator and has taken enforcement action against the facility. However, despite assessing a penalty, PADEP did not consider these violations severe enough to report the facility to EPA as a significant violator.

Others allowed to pollute without penalties.

Since the early 1980's, a facility that manufactured adhesive tape constructed and operated three coating lines without obtaining a permit from PADEP. These coating lines applied VOC solvents that were hot air dried to evaporate excess solvents. Both the coating and drying processes emit VOCs that contribute to ground level ozone, a harmful pollutant.

Operating without a permit was not this facility's only violation qualifying it as a significant violator. One coating line exceeded PADEP's limit for VOC content and had been operating in violation for 13 years, since 1983. A PADEP inspection performed four years ago discussed this violation. However, at the time of our review in April 1996, the violations were not resolved, and the State did not put the facility on the list of significant violators.

Not Reporting Significant Violators Hinders EPA Oversight

Facility "too busy" to correct violation.

The sprayer at a facility that manufactures metal containers was releasing harmful VOCs. These VOCs were released because the facility's incinerator was broken. Operating the sprayer, without the incinerator to remove the VOCs, was a significant violation that the State should have reported to EPA. This situation occurred twice and the State did not notify EPA either time.

PADEP first became aware of the violation in August of 1995, when a citizen complained about offensive odors coming from the facility. PADEP's inspection that month revealed that the facility vented excess pollution directly into the atmosphere. At that time, the owner indicated that the incinerator was malfunctioning for a couple of months and had been turned off. He also indicated the facility did not stop operation because the production line was "too busy."

The State's file indicated that in October 1995, the incinerator was repaired and operating. However, test results showed that its performance was "questionable." In May 1996, a fire damaged the incinerator, and the facility again operated the spray booth without the incinerator for one week. Again, the State should have placed this facility on EPA's significant violator list.

Facilities Constructed Without Permits and Not Reported to EPA

Before a facility installs or modifies equipment, the owner must obtain a construction permit from PADEP. At facilities regulated by the Clean Air Act, two types of equipment require permits. The first and most important permit is for equipment that is a source of air pollution. The second type is for equipment designed to control air pollution.

Eight of the 64 violators we identified, were significant violators because they installed or modified "pollution-creating" equipment without a permit, a more serious offense. These were violations of both state and federal laws that PADEP believed should not be reported to EPA. For example, one facility installed and operated a large boiler without a permit. The boiler emitted nitrogen dioxide that when combined with VOCs, creates harmful ground level ozone. However, PADEP officials said they did not report this facility as a significant violator because they did not believe boilers were environmentally hazardous. State personnel also indicated that as a rule they did not report situations such as these to EPA.

PADEP's Reasons for Not Reporting

In most cases, PADEP personnel did not agree that the facilities we identified were significant violators. State personnel contend:

- Having EPA remove violators from its list of significant violators is difficult. The facilities remain on EPA's list for an excessive amount of time, until the facility has taken corrective action and paid all penalties.

- EPA places too much emphasis on the number of significant violators and PADEP considers this "unnecessary bean counting."

- They can bring the facility into compliance timely, without EPA's involvement. The State personnel also contend they will request EPA's assistance whenever it is necessary.

- EPA's involvement results in interference, and delays resolution of the violation.

- PADEP and EPA differ on what is considered a significant violator, and the length of time that a violation must exist before it should appear on EPA's list. For example, if a facility tells PADEP it intends to rectify a violation in the future, the State will avoid listing the facility.

These reasons have one recurring theme — a difference of approach between EPA and PADEP on how to enforce the CAA. EPA's Timely and Appropriate Policy requires PADEP to be much more aggressive regarding issues such as: what is considered a significant violator, when the facility should be put on the list, and how long the facility should remain on the list.

We disagree with PADEP that it does not need to report significant violators to EPA. We found that EPA involvement can be beneficial because the State does not always resolve the violations timely. Moreover, EPA personnel believe they can be more objective because they are further removed from the pressures of industry. In any event, the State agreed to report significant violators when it accepted the 105 grant.

EPA Was Generally Aware of PADEP Not Reporting

EPA Region 3 officials stated that in the past, they used NOVs to help identify the more serious violators not reported by PADEP. However, to verify the violation, EPA said they often

needed to review PADEP's enforcement file. EPA personnel found this was not always an efficient use of their resources, because these reviews took too much time. Therefore, the Agency has recently focused its enforcement resources on doing inspections to emphasize a "federal presence in the field."

EPA officials said that whenever a state is obviously not reporting significant violators, the Agency still reviews NOVs in selected cases. For example, EPA recognized that PADEP only reported six significant violators in Fiscal Year 1995, although the State performed 2,000 inspections of major facilities. As a result, EPA did a limited review of PADEP's NOVs during the fall of 1995, and found several significant violators that the State did not report.

EPA discovers blatant violator not reported by PADEP.

For example, one NOV reviewed by EPA was for a facility that manufactures packaging materials. Part of the manufacturing process involved printing labels on the package. This is done by printing presses that are a source of VOC contamination. To control the pollution from these presses, PADEP required the facility to install incinerators designed to capture and destroy the pollutants. The State also required that the incinerators operate above a predetermined temperature to be effective. PADEP is supposed to enforce these requirements that are in the facility's permit.

From early 1993 to mid 1994, the facility operated an incinerator below the required temperature on many occasions. This caused the facility to emit excess pollution into the atmosphere. It is also noteworthy that the facility saved money by operating the incinerator at lower temperatures. According to the inspection report that we reviewed, PADEP planned to issue an NOV for this violation.

However, we did not find an NOV in the file for operating the incinerator below the specified temperature.

In the summer of 1994, the incinerator exploded, and the facility requested permission from PADEP to operate the printing press without the incinerator. PADEP denied the request and warned the facility of possible penalties associated with this type of violation. In July 1995, PADEP again inspected the facility, and found that the company had been operating the press without the incinerator since November 1994.

The facility's permit allowed a maximum of 4.3 tons of VOCs per year. PADEP reviewed the company's records and found that the facility emitted 33.8 tons of VOC emissions during 1995, more than seven times their allowable amount. In August 1995, PADEP issued an NOV for giving off excess VOCs, and operating the press without the incinerator. Despite receiving the NOV, the facility continued operations without the incinerator until January 1996 when the company moved its plant operations.

This facility violated many permit requirements between 1993 and 1996, which made it apparent that PADEP should have reported this significant violator to EPA. However, PADEP did not report this facility to EPA, even though VOC emissions were seven times the allowable amount.

EPA is Changing to Performance Partnership Grants

Because the Section 105 grants awarded to the states in the past were administered categorically, EPA could hold states accountable for specific performance measures. That is, EPA targeted grant dollars to some of the individual activities recipients agreed to complete. When activities were not completed, EPA could penalize recipients. However, an audit we issued in September 1995 (Audit Report Number E1KAE5-24-0015-5100510) reported that recipients often did not complete required activities under the 105 grants. The audit also showed that EPA rarely withheld grant dollars

when activities were not performed. The conditions shown in the prior audit were again illustrated in this report by PADEP's refusal to report significant violators, and EPA's failure to apply sanctions such as withholding grant funds.

In place of categorical grants, EPA plans to award Performance Partnership Grants (PPGs) to the states. These grants will use results-oriented performance measures to avoid excessive "bean counting." EPA will hold states less accountable for specific accomplishments. Instead, the Agency plans to evaluate the grantee on the "bottom line results" of their air program. More emphasis will be placed on environmental outcomes such as how much air quality improved, instead of measuring accomplishments through the number of inspections completed or significant violators reported.

PPGs are intended to develop a partnership between EPA and the states where both parties share the same environmental and program goals. This new working relationship between EPA and the states is intended to focus state and federal efforts on working cooperatively. PPGs are also designed to give states the flexibility to address their most pressing environmental priorities.

PPGs May Not Be Effective

In comparison to EPA, the State placed less emphasis on reporting significant violators. Philosophical differences such as identifying and reporting significant violators show that PADEP and EPA may not be willing partners. They need to mutually resolve differences such as these before PPGs can be effective. The absence of this willing partnership could undermine the effectiveness of PPGs.

EPA considers reporting significant violators important and PADEP needs to fulfill its grant commitment to report them. For these reasons, both parties should consider negotiating to resolve their philosophical differences concerning the reporting of significant violators. This is especially critical if

PADEP and EPA are to develop a working relationship and become "performance partners." Until the State and EPA develop the working partnership intended by PPGs, one of the most important performance measures of the air enforcement program should be whether the State is identifying and reporting significant violators.

CONCLUSION

While PADEP identified six significant violators, we identified 64 other facilities that should have been on EPA's list of significant violators during Fiscal Year 1995. This is a considerable difference because we conducted our review at only half of PADEP's regional offices, and reviewed documentation for only 270 of the more than 2,000 major facilities in Pennsylvania.

It appears certain that a more thorough review by us, would have likely identified many more significant violators that the State should have reported. Even the results of our limited review left no doubt that PADEP did not report many significant violators. Moreover, State personnel expressed their intentions not to report significant violators to EPA.

The present arrangement for identifying and reporting significant violators needs improvement. Under the current conditions, EPA cannot help PADEP bring significant violators into compliance, since EPA is often unaware of the violations. Also, EPA cannot adequately perform its oversight role of evaluating the effectiveness of PADEP's enforcement program. Under PPGs, EPA will need to rely more heavily on the completeness and accuracy of the significant violator information provided by PADEP. For PPGs to be effective, PADEP must report significant violators to EPA.

RECOMMENDATIONS

We recommend that the Region 3 Administrator take action to ensure PADEP reports significant violators as required by

their Section 105 grant and by EPA's Timely and Appropriate Enforcement Policy. Region 3 could accomplish this by:

1) Using a performance measure in future PPGs that evaluates whether the State is identifying and reporting significant violators. This practice will require EPA Region 3 to verify the accuracy of information submitted by the State.

2) Withholding some of Pennsylvania's grant funds in order to achieve the desired results.

3) Negotiating with PADEP to resolve philosophical differences concerning the reporting of significant violators.

4) Requiring PADEP to certify it has reported all significant violators to EPA, as defined by EPA's Timely and Appropriate Enforcement Policy.

PADEP RESPONSE

While we believe your draft to be generally misleading and inaccurate, we want to be very clear about one thing. It did not take an audit to determine that PADEP and EPA disagreed on the manner of identifying significant violators (SVs). A review of Region 3's midyear reviews would show this was an issue for the last decade. Although the report criticizes PADEP, it did not criticize EPA for essentially agreeing to PADEP's handling of significant violators for the last decade. At our most recent midyear grant review, in May 1996, EPA Region 3 officials stated that they thought that our enforcement program was very good. They stated that they had no problem with the actions taken or penalties collected.

While EPA does provide a $5 million grant, the amount needs to be put in perspective. It is a small part of the $30 million that Pennsylvania spends on its air program. It is misleading to suggest that the entire $5 million grant is in any material way related to the identification of SVs.

We acknowledge that PADEP does not activate the "SV flag" on the AIRS system. However, that does not mean the data was not entered, or that it could not be used to easily identify SVs. Our personnel can readily identify major sources having violations **(the essence of an SV)** [emphasis added by OIG] by a search of the EPA database. We assume EPA could do so as well if it chose to. PADEP has not deliberately concealed violations from EPA, but routinely reports more information about violations in paper copy and electronic form than any other state in Region 3. In contrast, EPA has so far withheld the names of the cases involved in this report so that PADEP could not properly evaluate this report.

Selective use of the facts from case files gives readers a distorted, almost preordained view of enforcement actions leading to the conclusion that the report was either done by staff completely unfamiliar with the federal air quality program, or that the report was motivated by something other than a sincere desire to improve the enforcement system. With respect to individual case examples we can identify, the report contains numerous errors, which misidentify major sources that are really minor sources, criticizes PADEP for putting sources on compliance schedules after recommending them, identifies violations where none existed, and stated there were inspection problems with at least one facility that PADEP inspectors actually observed every day. AIRS data also shows that one facility, the report labeled an SV, was inspected by EPA in August 1995 and found to be in compliance. Allegations that PADEP should have reported SVs by telephone are also incorrect. The grant documents seek reporting **via AIRS and no other way** [emphasis added by OIG].

The disagreement between EPA and PADEP is a dispute over which "flag" is activated in a computer program, not a public health issue. The reason for this decade old disagreement regarding SVs is also obvious without an audit. The reason is EPA's unrealistic definition of an SV and the rigid procedures mandated upon reporting. We do not apologize for disagreeing with a policy, which defines SVs in a manner that defies any common sense understanding of the word "significant."

The definition of a significant violator and the procedures for EPA involvement in SV cases are not derived from the statute or regulations, but rather from EPA guidance. Using its grant money, EPA then seeks to impose its guidance on Pennsylvania. If one followed EPA's guidance, any violation at a major source would make it a significant violator, regardless of its real significance. Once reported to EPA, an SV becomes subject to extensive EPA micro-management.

We do not object to oversight or criticism if warranted. We do object to the second guessing and interference that inevitably follow SV designation. Based on information available to us, it appears that most other states do not identify any more SVs than Pennsylvania. Perhaps this suggests that the place to look for the problems is with the EPA policy, not with the states' reporting.

We find it distressing that the report attempts to undermine the PPG process. PADEP sees PPGs as an opportunity for both agencies to discuss the SV issue openly and constructively. PPGs represent a chance to construct a sensible way of dealing with SVs that will give EPA necessary oversight yet allow the states flexibility.

EPA RESPONSE

We concur with the findings and recommendations expressed in this chapter.

Without consistent, timely, and reliable information on violators, and open communication between state and federal officials regarding appropriate enforcement action, determinations cannot be made on the best course of action to bring violators into compliance. EPA must rely on Pennsylvania for most of our information concerning the compliance status of the State's regulated community. This is the reason for specifying in the Clean Air Act (CAA) Section 105 grant agreement that the State report and identify SVs in accordance with the Timely and Appropriate Enforcement Policy negotiated between the states and EPA.

Despite disagreement over terminology during the past 10 years, the information, when provided was in an easily accessible and plainly identifiable form which promoted prompt review and discussion of the appropriate action to take. Once the State began withholding this information, EPA had no reliable and easily accessible source of data to determine which facilities were significantly violating clean air regulations. State reports to the EPA database — the Aerometric Information Retrieval System (AIRS) — did not distinguish between simple violations, with little or no impact on public health, and more egregious violations with serious impacts. CAA Section 105 grant funds specifically require SVs to be identified up front, not buried in a mountain of computer data that would have to be analyzed and verified, resulting in wasted time and taxpayer money. The State agreed to those terms in the contract for receipt of clean air grant funds.

EPA provided a list of the 64 identified violators to the State in an effort to engage officials in a discussion of the status of transactions and future actions. While we have had productive discussions with the State on better data sharing, open communication, and improved understanding of each other's interests in compliance and enforcement policies, the listing of violators and future actions has not been resolved in our discussions.

However, as we have stated repeatedly, State NOVs themselves contain insufficient information to place a facility on the list of national violators. More importantly, they cannot replace the dialogue required and necessary under the Timely and Appropriate Policy and the Section 105 air grant commitments to determine what action to take, and which agency should take the lead.

Regarding Recommendation Number 1, the Office of Enforcement and Compliance Assurance is currently developing national guidance to confirm that even after we have successfully negotiated a PPG agreement, EPA will continue to have a strong need for complete and accurate state supplied compliance data. Region 3 will withhold a portion of Fiscal Year 1997 CAA grant funds until EPA is convinced that Pennsylvania is reporting all known SVs in accordance with the Timely and Appropriate Policy.

Concerning Recommendation Number 3, the fundamental principles of shared responsibilities for enforcement of the CAA are clearly defined in the Agency's Timely and Appropriate Enforcement Policy. This policy is a product of recommendations by a state/federal workgroup. An important aspect of the policy is to ensure that there is consistency among the states and expeditious compliance. We believe that to renegotiate these fundamental principles would create serious discrepancies among the state enforcement programs and undermine the goal of nationwide consistency and protection of the public health and environment. Lastly, we are prepared to work with Pennsylvania to ensure that the implementation of the policy brings definite benefits to the Pennsylvania enforcement program.

OIG EVALUATION

We do not agree with the comments provided by PADEP, and will clarify two portions of EPA's response.

PADEP's comments are contrary to documentation we reviewed and discussions we conducted with State personnel. For example, we did not withhold the names of the facilities we reviewed to hinder PADEP's evaluation of the report. Because EPA Region 3 is responsible to make final determinations concerning the issues in this report, we did not include the names of the facilities reviewed. This was done to protect the privacy of facilities until they were listed by Region 3 as an SV. Moreover, we discussed many of these cases with PADEP personnel during the audit, and they were provided a complete list of violators one working day after we issued the draft report. In any event, PADEP could have obtained this information by calling the contact person provided in the draft report.

We do not agree that our draft report misled the reader by suggesting that the $5 million grant was only for the identification of SVs. In our opinion, the report was clear, the $5 million grant was for the total air program. Our draft report stated that:

> Region 3 awards Section 105 grant money so that states can operate their **air programs** in accordance with their grant agreements.
>
> This issue [reporting SVs] is of such importance that Region 3 allotted part of the Section 105 grant funds for identifying significant violators and reporting them timely.

PADEP's interpretation of EPA's May 1996 midyear grant review was incorrect. Discussions with EPA personnel disclosed that their verbal comments were intended to provide PADEP with some "positives" concerning the enforcement actions taken and penalties collected. However, the PADEP response did not mention the voluminous negative comments and concerns that EPA documented in this midyear review about the State's air enforcement program. EPA's chief concerns were:

> . . . over the last couple of years, there has been a decrease in the number of NOVs and penalty actions taken.
>
> . . . Pennsylvania has one of the lowest significant violator reporting rates in Region 3. In fact, during this Fiscal Year PADEP has only voluntarily reported one significant violator.

We also disagree that we did not criticize EPA for inaction when states did not complete grant commitments. In this current report and in the past, we have criticized

EPA for not withholding grant funds from PADEP and other state agencies that did not fulfill grant commitments. We believed then and still believe now that grant funds should be withheld when a grantee — be it a state, non-profit entity, or an educational institution — does not complete commitments contained in a grant agreement. Page 20 of our report discusses one such past audit that recently criticized EPA for not withholding funds. Additionally, OIG audits have evaluated other aspects of both EPA and state air enforcement programs. Several of these are discussed in the *Prior Audit Coverage* section of this report.

The grant agreement is in effect a contract. Once the contract is negotiated and executed, the parties are bound contractually, and the contract terms must be fulfilled. When contract terms are not fulfilled, the party that is remiss should be penalized. Grant recipients cannot be allowed to disregard requirements in an executed agreement because they believe portions of the grant to be "rigid," "unrealistic," or "defies any common sense understanding." Reporting SVs in accordance with EPA's Timely and Appropriate Enforcement Policy was a grant or "contract" requirement that the State agreed to perform when it accepted the grant. If the grant requirements were objectionable, PADEP should have refused the grant. Furthermore, EPA paid the State to complete commitments, and should have withheld funds when these were not completed. In our opinion, EPA has been too patient and cooperative.

We disagree with PADEP's contention that this audit was not needed to find out that SV reporting was an issue. Even though past Region 3 reviews discussed the need to report SVs, this audit was necessary to provide conclusive proof that SVs were not being reported, and to learn the extent of the State's non-reporting. Moreover, past EPA practices have been to work cooperatively with the states and to apply sanctions to solve only ". . . persistent, significant performance problems." This provides some reasoning for Region 3's inaction, but does not justify it.

We acknowledge PADEP's affirmation that they do not report SVs as required by the grant. The disagreement between EPA and the PADEP is not about activating a "flag" in a computer program. Region 3 cannot identify SVs from the paper NOVs, electronic information submitted by PADEP, and Quick Look reports. In addition to the reasons already discussed in the report, EPA also could not identify SVs because of inaccuracies in the AIRS. We are not saying this to assess the reasons for the inaccuracies, but only to indicate an additional reason why we disagree with PADEP's contention that EPA can easily identify SVs from AIRS. Additionally, it is unreasonable for EPA personnel — with other oversight responsibilities — to continually review the

status and inspection results for thousands of facilities in Pennsylvania and the other four states in Region 3. This is especially unreasonable since the grant agreement between EPA and PADEP requires the State to report SVs via AIRS and telephone.

It is also noteworthy that PADEP's response explains that EPA can obtain **the essence of an SV.** EPA's policy requires more than the essence of an SV. It requires the reporting of an SV.

We disagree with PADEP's response that our report contains many errors and distorted facts. Contrary to the PADEP response, our auditors were knowledgeable about the air program, and our report was **not** " . . . motivated by something other than a sincere desire to improve the enforcement system." For example, the PADEP response explains that one of our examples was a minor source, not eligible for SV status, that we misidentified as a major source. During our review, we found two inspection reports for this facility — signed by the PADEP inspector and his supervisor — that contained the following heading, *Semi-annual Inspection Verification Report for Major Facilities.* Additionally, PADEP is responsible for determining if a facility is a major or minor source, and had labeled this facility as a major in the AIRS. Also, our determinations concerning when a facility should be labeled an SV were scrutinized by the EPA personnel who make these same determinations in EPA Regions 3 and 5.

Another facility we reviewed had been coded in AIRS by PADEP as a major source during Fiscal Year 1995. Similar to the example above, the inspection report indicated it was a major. During Fiscal Year 1996, the State changed the designation for this facility to a minor. If justified, this change is acceptable, but shows that codings can be changed after the period of our review. In any event, PADEP was responsible for reporting this facility as an SV in Fiscal Year 1995, when it was coded as a major.

We also disagree with PADEP's contention that we reported violations where none existed. We compared the circumstances reported in PADEP inspection reports to EPA's Timely and Appropriate Enforcement Policy and EPA's definition of an SV. PADEP's disagreement with this Policy and the definition of an SV, does not negate the fact that violations occurred. For example, the EPA Policy considers facilities that install equipment without a permit as an SV. Our report disclosed that PADEP does not believe installing boilers without a permit is a reportable violation.

We also do not agree that it is an error to report problems at a facility even though PADEP inspectors observed it every day. Observing a facility without performing an

on-site visit is not considered an acceptable compliance assurance method. EPA defines this type of inspection as a Level 0. Additionally, we did not criticize PADEP for putting a facility on a compliance schedule. We reported that PADEP placed the facility on a compliance schedule and assessed penalties for violations, yet did not report these violations to EPA. Additionally, we do not agree that an August 1995 EPA inspection, at a facility we labeled as an SV, found the facility to be in compliance. EPA personnel disclosed that they initiated an unannounced inspection at this facility in August 1995. However, they aborted this inspection because the facility was not in operation, and in the process of moving.

We must also disagree with the PADEP response where it alleges that we erred by indicating that SVs should be reported by telephone. The PADEP response states, "the grant documents seek reporting [of SVs] via AIRS and no other way." This statement is inaccurate because the EPA grant awarded to PADEP required the reporting of SVs in two ways. First, PADEP was required to identify significant violators to EPA via the AIRS. Second, the grant required PADEP to comply with EPA's Timely and Appropriate Enforcement Policy which provides that:

> EPA and States should conduct frequent (at least monthly)* informal consultations to discuss compliance efforts. During these discussions, information exchange relative to obtaining compliance and penalties should occur. This exchange should include at least the following items:
>
> > 1. The State and EPA would each identify any newly-found violators subject to this guidance. . . .

* subsequent grants changed this requirement to quarterly.

What we find most confusing in PADEP's response is its description of EPA's oversight. The response asserts that:

- ♦ EPA's definition of an SV is unrealistic and defies common sense;
- ♦ The Agency employs rigid reporting procedures;
- ♦ SVs are subject to extensive micro-management by EPA; and
- ♦ Second guessing and interference follow SV designation.

Despite these comments, the response criticizes our report for undermining the PPG process, which relies on cooperative working relationships between EPA and the states. The PADEP response raises some questions as to whether Pennsylvania is going to be a cooperative partner with EPA under the new Performance Partnership Grants.

Two portions of EPA's response need clarification. EPA's Timely and Appropriate Enforcement Policy and the procedures for identifying SVs were a product of negotiations between the states and EPA. Secondly, we generally agree that NOVs should not be used alone to identify SVs. We agree because there were a number of NOVs we reviewed that indicated the facility was a potential SV. However, because of time constraints we did not review the PADEP files for all of these facilities. Had this been done, it appears likely that we would have identified additional SVs. In any event, regardless of the number of SVs we identified, PADEP should have reported SVs in accordance with the grant agreement.

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CHAPTER 3

INSPECTIONS OF AIR FACILITIES NEED IMPROVEMENT

PADEP's inspection program needs improvement. Some Level 2 inspections that PADEP performed were not thorough enough to determine whether a facility was complying with state and federal regulations. Moreover, when PADEP identified violations, it did not always ensure the facility took corrective action. Because of these conditions, violations sometimes persisted longer than necessary.

To evaluate the effectiveness of the State's inspection program, we reviewed PADEP inspections performed during Fiscal Year 1995. In total, we reviewed 81 enforcement files and associated inspection reports. This review showed that six Level 2 inspections were not thorough enough. Another eight inspections identified violations or questions about permits, but the State did not ensure the facility took corrective action to resolve the questions or violations. In total, 17 percent of the inspections we reviewed needed improvement.

Some PADEP Level 2 Inspections Were Inadequate

> Inspections Not Thorough Enough To Identify Violations.

For six of the inspections we reviewed, there was no evidence in the State's files to indicate that the inspector performed the evaluations required for a Level 2 inspection. In accordance with the Fiscal Year 1995 grant, PADEP scheduled and committed to perform Level 2 inspections at these facilities. Without documentation, there was no proof that the inspector ensured that the facility complied with its permit.

For example, one facility we reviewed used surface coatings that contain VOCs. The PADEP inspector should have ensured that the VOCs emitted by this source did not exceed the allowable limits specified in the facility's permit. The PADEP inspector could have done that by reviewing the Manufacturer's Safety Data Sheet or analyzing a sample of the coating. EPA prefers the second method because it is more accurate. However, the PADEP inspector did not conduct either method, and therefore could not determine if a violation existed.

Corrective Action Not Always Verified

Eight of the inspection reports we reviewed showed that PADEP had identified violations. However, there was no evidence in the State's enforcement files to indicate that these violations were corrected.

We found four instances where PADEP did not follow up on problems identified during an inspection. For example, in December 1994, PADEP issued an NOV to a facility for an opacity violation that occurred when the plume of smoke from its stack exceeded the allowable density. According to PADEP's file, the facility claimed that the violation was a one-time occurrence and that there would be no future opacity violations. PADEP accepted this response and did not perform any follow-up inspections during the 16 months that elapsed between PADEP's initial inspection and our review.

During a July 1995 inspection at another facility, PADEP identified broken gauges on the facility's equipment. These gauges were to be used to ensure that pollution was being captured. The facility's permit requires that the gauges operate properly. It also requires that the facility take periodic readings from the gauges and record these readings. Because the gauges were broken, the facility's records were incomplete, and PADEP could not tell if the facility's emissions complied with the CAA. As of April 1996, more than eight months after the inspection, PADEP had not

determined if the gauges had been repaired. PADEP officials informed us that the facility was conscientious and did not believe a second visit was necessary.

At a third facility, the 1995 inspection report showed violations. To determine if these violations were pre-existing, we reviewed prior inspection reports and found 1982 test results showing the facility's emissions were almost five times the allowable limit. Further examination of the State's records showed there was no follow-up performed to determine if these violations were corrected. We identified a similar situation at another facility where the 1982 test results showed emissions were almost seven times the allowable limit. Again, the State's file did not indicate that any follow-up was performed to determine if these emission violations were corrected.

Violations Were Not Always Corrected Timely.

We also found four instances when PADEP identified questions about the facility's permits, but did not resolve these matters timely. For example, PADEP's February 1995 inspection at one facility showed that the equipment being used did not agree with the permit. One month later, PADEP conducted a follow-up inspection and informed the facility that it had permitting deficiencies. At that time, PADEP told the facility to submit the documentation needed to resolve the permitting deficiencies. It was not until June 1996, that PADEP personnel met with facility representatives to discuss the permitting issues. This first meeting took place 16 months after the initial inspection.

According to PADEP officials, their inspectors may have performed some follow-up sooner than the file indicated. However, PADEP personnel could not provide evidence to support their position.

RECOMMENDATIONS We recommend that the Region 3 Administrator:

1) More aggressively enforce the requirements of the Section 105 grant awarded to PADEP by ensuring the State;

   - ♦ Conducts Level 2 inspections that are thorough enough to determine a facility's compliance.
   - ♦ Performs follow-up in order to resolve violations timely.
   - ♦ Documents their follow-up activities.

2) Withhold a portion of Pennsylvania's Section 105 grant funds until the State complies with the inspection requirements of the grant.

PADEP RESPONSE

We would agree that we and EPA should continuously strive to improve inspections. If the final report identifies specific inspections that are deficient we will take appropriate steps to make corrections.

We are unable to respond with specificity to your allegations regarding PADEP inspections since the inspections in question were not identified. On balance PADEP does perform Level 2 inspections as contemplated by the grant. As noted, PADEP performed over 2,000 inspections at major sources in FY 1995.

We request that you identify the eight inspections the report contends were not thorough enough. Additionally, we would call to your attention that not all inspections we conduct are intended or required to be Level 2 inspections. Therefore, it is necessary to determine whether the particular inspection in question was intended to be a Level 2 inspection.

We also request that you identify to us each of the facilities and inspections used as examples in Chapter 3 of the report. Specifically, identify the inspections for which

the report indicated that corrective actions were not verified. We have had limited success in trying to identify the examples used in Chapter 3. However, to the extent that we have guessed correctly, we believe your summaries again present an incomplete or inaccurate picture.

- The example regarding the incinerator is incomplete. We believe our four inspectors were able to determine whether the incinerator was capturing the required amount of pollutants. We disagree that a stack test was required. In addition, our records show this to be a 1990 inspection, well before the Fiscal Year audited.

- The facility in Conshohocken gave a reasonable explanation that the opacity violation was a one-time event. Numerous PADEP personnel, including the facility inspector, drive by the facility on the way to work each day, no further emissions were observed and therefore we did not feel an additional inspection was needed.

- The summary of the broken gauge example highlights the real issue. Our inspectors determined, based on their experience with the source and the circumstances of the case, that no follow up was necessary. After the fact, EPA now is second-guessing that decision based on looking at a file.

We do not claim to be perfect. If out of these thousands of inspections only eight were not complete enough, we feel we did well. However, we will continue to seek improvement.

EPA RESPONSE

We concur with the main themes and recommendations expressed in this chapter that not all inspections PADEP performed were Level 2 inspections, and that violations were not always corrected timely. Anything less than a Level 2 inspection is largely inadequate to determine compliance with many of the sources that PADEP inspects. The problems detected in this chapter, in part, may have resulted when the 1990 CAA changed the definition of a major source in a way that caused a significant increase in the universe of sources requiring state inspections. This greater universe poses a significant challenge to both EPA and the states in providing proper balance to field activities while maintaining high standards for quality inspections.

Concerning the recommendation to ensure PADEP performed the Level 2 inspections, Region 3 will work with EPA Headquarters in reviewing current national policies in an attempt to bring consistency to all state inspections. This may mean that fewer inspections will need to be conducted to ensure greater quality. Appropriate documentation will become a significant issue during any negotiations for an effective PPG with Pennsylvania. We also concur with the recommendations to perform and document follow-up inspections.

OIG EVALUATION

On December 24, 1996, we provided PADEP the identity of all facilities discussed in Chapter 3. However, PADEP did not provide any additional comments during the seven-week interim between December 24 and the date of this report. Moreover, we discussed all of our concerns about the State's inspections with PADEP personnel during the audit. As a result, we believed that PADEP staff knew which facilities we reviewed.

We recognized that not all of PADEP's inspections were intended or required to be Level 2 inspections. However, the six inadequate inspections discussed in this chapter were committed by the State to be Level 2 inspections.

Regarding the three specific comments in PADEP's response, we provide the following. According to EPA's Timely and Appropriate Policy, a "drive by," or Level 0 inspection is not acceptable for determining compliance. Without performing a follow-up inspection, PADEP had no assurance that the violation was corrected. Similarly, without performing a follow-up inspection to ensure the gauges were repaired, the State cannot be assured that the facility was in compliance. We believe that relying on a facility's verbal commitment to take corrective action is not prudent.

We recognized that it was a 1990 inspection that highlighted the need for a stack test. However, similar to the 1990 inspection, the 1995 inspection report also raised concerns about the incinerator. Because a stack test is not required as part of a Level 2 inspection, we reclassified this inspection as one that did not verify that corrective action was taken.

It is important to note that we reviewed 81 inspections and found that 14, or 17 percent, needed improvement. This percentage shows that the State's procedures need

revision. For the inspections with inadequate follow-up, PADEP personnel often stated that they performed the follow-up, but did not document it. Without documentation, we cannot verify that PADEP inspectors performed follow-up.

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CHAPTER 4

OTHER MATTERS

Each quarter, PADEP received Continuous Emissions Monitoring (CEM) data from about 100 facilities in Pennsylvania. In essence, CEM data is around-the-clock surveillance of a facility's emissions. PADEP in turn submitted this monitoring data to EPA. As a result, both PADEP and EPA had detailed information about the emissions from these facilities.

One of the significant violators we identified was a CEM facility. Because of the CEM data, EPA had more information about this facility than the other significant violators we identified. We believe that EPA should have used the CEM data as the reason for requesting more information from PADEP about this source. With this additional information EPA could have listed this facility as an SV. However, it is noteworthy that PADEP also was responsible for identifying and reporting it as a significant violator.

EPA personnel indicated that about a year ago they adopted a more aggressive approach for the use of CEM data. This more aggressive approach by EPA is a step in the right direction.

RECOMMENDATION

We recommend the Region 3 Administrator ensure that his staff determines if a facility should be placed on EPA's list of significant violators, when CEM data identifies "potential" significant violators.

PADEP RESPONSE

We must note that your endorsement of EPA's "more aggressive" approach to CEM data is a step in the wrong direction. CEM data can be very useful in identifying violations that really are significant. However, to list a source as a significant violator for every minimal and transient exceedence serves no useful purpose. To suggest that a facility should be considered a significant violator when a CEM identifies "potential violators" is outrageous.

EPA RESPONSE

The Air, Radiation and Toxics Division will continue with its aggressive approach in the use of CEM data and discuss with EPA Headquarters the establishment of national policy with defined action levels.

OIG EVALUATION

EPA's response is noted, and should correct the conditions we cited, if Region 3 uses the CEM information to identify potential significant violators. Once they identify these potential violators, Region 3 needs to confirm the significant violator status with the State.

PADEP's comments are also noted; however, this recommendation was not addressed to the State. We revised this chapter to clarify our position that it was EPA that should have reacted more aggressively to the information it had about the source.

This chapter was directed toward EPA because it had CEM data indicating that the source reviewed was a potential significant violator. Because of this information, EPA should have researched further, i.e., reviewed PADEP's NOV issued to this facility and requested additional information from the State, to determine if this facility was a significant violator. Contrary to the State's contention, this source had violations that were far above minimal and transient exceedences. We did not recommend labeling every facility with minimal exceedences as an SV. If that were so, we would have recommended listing many more than one facility.

APPENDIX A — PADEP'S RESPONSE TO THE DRAFT REPORT

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Pennsylvania Department of Environmental Protection
Rachel Carson State Office Building
P.O. Box 2063
Harrisburg, PA 17105-2063
December 13, 1996

The Secretary

717-787-2814

Mr. P. Ronald Gandolfo
Divisional Inspector General For Audit
Office of the Inspector General
Mid-Atlantic Division
U.S. Environmental Protection Agency
841 Chestnut Building
Philadelphia, PA 19107-4431

Dear Ron:

The Pennsylvania Department of Environmental Protection (DEP) welcomes this opportunity to comment upon the "Draft Report of Audit on EPA Region III's Oversight of Pennsylvania's Air Enforcement Data" (Report) dated November 15, 1996.

Let me first say that DEP is committed to administering our air quality program in a professional manner that protects the health and rights of our citizens. We have taken the public charges EPA made based on this draft Report seriously and have asked our Citizens Advisory Council to undertake an independent review of our violation reporting system and of the allegations in the draft Report. If legitimate problems are identified in the final audit we will take the steps necessary to correct them.

The unprofessional handling of a preliminary draft version of the Report, however, is still of great concern to us. It is extremely unfortunate that we did not have the opportunity to review and comment on the preliminary Report before it was leaked to the press and commented upon extensively and provocatively by EPA officials. We find it extremely ironic that the draft copy provided to us for review contains two warnings not to distribute or disclose its contents.

To our knowledge no one in your office, or elsewhere at EPA, has made any effort to locate the source of the leak or otherwise deal with the highly irregular way this document has been used. The failure of EPA Regional officials or the Inspector General to investigate simply reinforces the overall impression that this is not a professionally conducted audit, but a thinly disguised attempt to further a personal or political agenda of the agency or its officials.

On the draft Report itself, we have five major areas of comment:

1. No audit was needed to find out that significant violators reporting is an issue, but it has been an issue between Pennsylvania and EPA for the last ten years. This is not a public health issue; it is about whether a "flag" is raised in a computer system. Although the Report liberally criticizes DEP, we note the Report does not criticize EPA Region III for essentially agreeing to DEP's handling of significant violators for the last decade.

2. DEP has not deliberately concealed violations from EPA, but in fact routinely reports more information about more violations in paper copy and electronic form than any other state in Region III. DEP staff would be happy to show the EPA staff conducting the audit how EPA's electronic database works so they can retrieve this information in the future. In contrast, EPA has so far withheld the names of the cases involved in this audit so that DEP could not do a proper evaluation of this report.

3. EPA has been fully aware of Pennsylvania's significant and insignificant enforcement cases for the last ten years and could have, at any time, requested DEP or EPA actions to handle cases differently. Ironically, many cases have in fact been handled this way in the past — successfully.

4. Selective use of facts from case files gives readers a distorted, almost preordained view of enforcement actions leading to the conclusion that the Report was either done by staff completely unfamiliar with the federal air quality program or that the Report was motivated by something other than a sincere desire to improve the enforcement system.

5. With respect to individual case examples we were able to identify, the Report contains numerous errors which misidentify major sources that are really minor sources, criticizes DEP for putting sources on compliance schedules after recommending them, identifies violations where none existed and stated there were inspection problems with at least one facility that DEP inspectors actually observed every day.

General Comments

Identifying significant violators is not a new issue. While we believe your draft Report to be generally misleading and inaccurate, we want to be very clear about one thing. It did not take an audit to determine that Pennsylvania and EPA have disagreed on the manner of identifying significant violators (SVs). A simple review of Region III's mid-year grant review documents would show this to have been an issue for the last decade.

Contrary to EPA's attempts to do otherwise, this is not a problem which can be laid at the feet of the Ridge administration. It has existed unchanged through several administrations. For example, in the fiscal year 1992 mid-year review, EPA stated "DER has acknowledged their previous track record of not identifying Significant Violators to EPA." This is not a new issue.

DEP does not deliberately conceal violations from EPA. We want to be equally clear on a second point. DEP has not intentionally concealed any violations from EPA and has routinely reported violations. The draft Report is simply wrong when it states, in several places, that a violation was not reported to EPA. The Report all but ignores the Aerometric Information Management System (AIRS) database which is maintained by EPA and on which DEP reports violations. We acknowledge that DEP does not and has not activated the "SV flag" on the AIRS system. However, that does not mean the data was not entered or that it could not be used to easily identify SVs.

Our personnel can readily identify major sources having violations (the essence of an SV) by a search of the EPA database. We assume EPA could do so as well if it chose to. Allegations that EPA must search through Notices of Violations (NOVs) provided in Monthly Reports to find SVs is disingenuous at best. DEP provides the monthly reports as extra information which can be checked against the AIRS data. If EPA officials are searching through paper copies of NOVs rather than using EPA's own database they are wasting a lot of taxpayer money maintaining the AIRS database.

EPA's SV guidance is unrealistic. The reason for this decade old disagreement regarding significant violators is also obvious without an audit. That reason, as stated repeatedly by the former DER, is EPA's unrealistic definition of a significant violator and the rigid procedures mandated upon reporting. We do not apologize for continuing to disagree with a policy which defines SVs in a manner which defies any commonsense understanding of the word "significant."

The definition of a significant violator and the procedures for EPA involvement in SV cases are not derived from the statute or regulations, but rather from EPA guidance. Using its grant money, EPA then seeks to impose its guidance on Pennsylvania.

If one followed EPA's guidance, any violation at a major source would make it a significant violator, regardless of its real significance. Once reported to EPA, an SV case becomes subject to extensive EPA micro-management.

We do not object to oversight or criticism if warranted. We do object to the second guessing and interference which inevitably follows SV designation. Based on information available to us, it appears that most other states do not identify any more SVs than Pennsylvania. Perhaps this suggests that the place to look for problems is with the EPA policy, not with the states' reporting.

We find it curious that your Report is entitled "Draft Report of Audit on EPA Region III's Oversight of Pennsylvania's Air Enforcement Data" because there is no mention of EPA's decade of acquiescence in Pennsylvania's handling of significant violations. We say this not to criticize Region III, which we feel handled the matter correctly in the past, but to point out the alternate agenda behind your Report. The revisionist history in the Report suggested EPA has "stressed" this issue over the years. Actually, EPA has raised the issue each year and DER/DEP has stated it opposition to the process. The parties then moved forward to work cooperatively.

For example, in documents prepared by EPA for the fiscal year 1991 mid-year review EPA stated "DER does not identify sources as Significant Violators; however, it does submit the necessary information for EPA to determine Significant Violators." DEP reports the same information today as it did then and actually makes better use of AIRS than it did in 1991. It was not until fiscal year 1996, after it was widely known at Region III that your Report raised this issue that Region III officials became strident about it.

Specific Comments

We turn now to some of the specific statements in the Report.

The "Background" section (page 1) attempts to sensationalize this issue by citing largely irrelevant statistics about air toxics and incorrectly suggesting that ozone is an air toxic. This is a dispute over which "flag" is activated in a computer program, not a real public health issue; an assertion that is backed up by examples given in the audit.

While EPA does provide a $5 million grant (page 2), that amount needs to be put in perspective. It is a small part of the $30 million Pennsylvania spends on its air program. As you note, EPA's grant is for all aspects of the program, not just enforcement. Identifying SVs has never had a specific dollar amount attached to it by EPA. In the past, when EPA did suggest that Pennsylvania could receive money from a "bonus pool" if SVs were handled EPA's way, the amounts suggested were less than $50,000. It is misleading to suggest that the entire $5 million grant is in any material way related to the identification of SVs.

Allegations that SVs were to be reported by telephone is a new addition since the leaked version of the Report (page 5). However, it is incorrect. The grant documents seek reporting "... via the AIRS Facility Subsystem" and no other way. While DEP and EPA do conduct periodic conference calls regarding cases and new developments, reporting is specifically required via AIRS. The Report neglects to mention that after Region III complained it was too much trouble to contact each of DEP's six regional offices to get first-hand enforcement information, DEP re-centralized the conference call process in 1995 to help EPA. Prior to this change, calls from EPA to some DEP regional offices were infrequent. To assist EPA, DEP central office initiated regular quarterly calls with EPA and ensured the appropriate regional staff were also on the call. DEP made this effort even though the grant documents put this responsibility on EPA.

We reject your unsupported assertion that DEP hindered EPA's ability to oversee enforcement (page 9). Violations at major sources are reported to EPA via AIRS and the monthly reports. By a simple search of its own database EPA has the ability to oversee enforcement and seek more information about any case. Data entered into AIRS is coded using codes devised by EPA to identify major sources. These codes also show the type of activity performed, such as an inspection conducted or an NOV issued, and the results of the activity. By using the system's "Quick Look" report and setting simple search parameters, EPA can easily locate all major sources with violations or enforcement actions for any time period.

Thus, using AIRS, EPA Region III could on a quarterly, monthly, or even daily basis produce a list of major sources with violations. To assert that merely because DEP does not activate the SV flag, EPA is hindered in its oversight role is absurd. In fact, EPA discussed numerous cases with DEP in the past based on information gathered from DEP reports, including many of the cases used as examples in the Report.

Information regarding violations is on the AIRS system and is reported to EPA. There is simply no evidence that activating the SV flag on the system will lead to any different enforcement result, or even any quicker resolution.

Perhaps realizing that Region III was, for a decade, a willing participant in DEP's method of dealing with SVs without adverse consequences, the Report suggests that not activating the SV "flag" somehow leads to less aggressive enforcement. However, at our most recent mid-year grant review, in May 1996, EPA Region III officials stated that they thought that our enforcement program was very good. They stated that they had no problem with the actions taken or penalties collected.

The examples used are inaccurate. While the Report does not identify the sources used as examples, and that information has still not been provided by EPA, we can make some educated guesses at the sources in question. Assuming we have made the correct guesses, DEP believes that almost every example presents incomplete information or slants the facts to serve other motives. We specifically request that you provide us with the identity of all sources used as examples. Here are examples of the incomplete information included in the Report —

- The example at the bottom of page 12 relates to a facility which is not a major source and thus not subject to SV reporting to EPA. Information about this source was in AIRS. Moreover, the suggestion that there were continuous violations from May 1993, until October 1995 is inaccurate. In fact, the road dust violations occurred three times in 1993. NOVs were issued and the problem did not recurr. A separate problem at a cement silo was found in November 1993, and confirmed corrected in a February 1994, inspection. Lastly, at the loading area various attempts to correct the problem were finally successful in January 1995. Thereafter the control device was damaged, but repaired by October 1995. Penalties were resolved in September 1995. It is inaccurate to lump these separate violations together to suggest a continuous state of violation which was unaddressed.

- On page 13 you characterize the handling of a matter as "pay to pollute." This shows a bias or lack of understanding of the work required to replace a boiler. This case involved periodic and minor opacity violations. On numerous occasions inspections were conducted and no violations were found. The company made several adjustments to its operations to attempt

to prevent a recurrence. DEP required the company to replace the boiler (a major undertaking) and established a compliance schedule. We also required the company to pay a penalty for past violations and to pay a penalty monthly until replacement was complete. To call this "pay to pollute" or "willingness to accommodate the facility" is unfounded and unwarranted. EPA uses similar techniques to resolve similar matters. In fact on page ii, you endorse compliance schedules as appropriate. Finally, this matter was fully reported to EPA via AIRS and the monthly NOV report.

- The case discussed at the top of page 14 is one where we agree that resolution has taken too long, but this issue has nothing to do with the lack of reporting to EPA. This matter was first discovered in 1992, and reported to EPA via the monthly report, which was what the grant narrative required for fiscal year 1992. EPA was involved in discussions regarding the facility's request for a "bubble" permit and was aware of this case. We are not happy that this matter took as long as it has, but we reject any allegation that EPA was not informed. Data concerning this source was also entered in AIRS. AIRS data also shows this facility was inspected by EPA in August 1995 and was found to be in compliance.

- The case discussed on page 14 and 15 is incorrect. This facility did not have a violation in August 1995. The facility operated under an EPA approved "bubble" permit which allowed volatile organic compound (VOC) emissions from the subject spray booth without using the incinerator. The incinerator was added to deal with malodor complaints and resulted in VOC controls in excess of regulator requirements. When it malfunctioned, the facility still was in compliance with its EPA approved permit. DEP did, however, report all the activity to EPA via AIRS. The second incident, operating the facility without the incinerator in May 1996, did violate the Pennsylvania permit and in October 1996, a civil penalty was assessed for this violation. This was also reported on AIRS.

- The case discussed on page 15 is greatly exaggerated. The facility did construct the boiler without a plan approval, but after receiving an NOV an application was made and approval was granted. More importantly, this is not the serious pollution problem your summary would suggest. The fact is that facilities are allowed to emit NO_x if the emissions meet the regulatory requirements. The boiler's emissions meet the regulatory requirements even before the plan approval was granted. This is a prime example of an insignificant matter which EPA's guidance would label a significant violation.

- The case discussed on pages 17 and 18 also contains numerous omissions. Chief among them is any mention that DEP collected a civil penalty in excess of $100,000 for the violations. Also omitted is any mention that this facility was not a major source subject to SV reporting prior to the summer of 1994. While EPA may not have discovered it, the file does contain an NOV for the temperature violations and a correction plan by the company. Temperature records show the plan had been successful up to the time of the explosion at the incinerator, which occurred for reasons unrelated to environmental issues. After the explosion EPA was aware of the case and discussed it several times with DEP. This information was also noted in the AIRS data. This is a case which illustrates how the significant violator process should work. When DEP discovered the source was operating without the incinerator in July 1995, an NOV was sent and EPA was notified via AIRS and the monthly report. The matter was discussed with EPA as a result of our reporting and in November 1995, the facility was identified as a SV since it truly was significant. Thus, it is incorrect to state that DEP did not report this facility to EPA.

Performance Partnership should not be discouraged. Given the ten-year history of this dispute and the inaccuracies in your report, we find it distressing that you attempt to undermine the Performance Partnership Grant (PPG) process (pages 19 and 20). DEP sees the PPG process as an opportunity for both agencies to discuss the SV issue openly and constructively, without dogmatic demands. The PPG represents a chance to construct a sensible way of dealing with SVs which will give EPA necessary oversight yet allow the states flexibility in dealing with individual circumstances.

We find your conclusions and recommendations to be considerably off the mark. As noted repeatedly above, EPA is not and never was unaware of violations at major sources. That information is readily available in AIRS. EPA receives adequate information to oversee DEP's enforcement activity if EPA chooses to use it. Instead of recommending that EPA force its unrealistic SV guidance into the PPG process, a more constructive suggestion would have been for EPA to re-evaluate its SV guidance and adopt it for the PPG process. We believe a process can be established for open communication between the states and EPA by which violations that really are significant are identified and dealt with.

Inspections

We would agree that we, and EPA, should continuously strive to improve inspections. If the final Report identifies specific inspections which are deficient we will take appropriate steps to make corrections.

We are unable to respond with specificity to your allegations regarding DEP inspections since the inspections in question were not identified. On balance DEP does perform Level 2 inspections as

contemplated by the grant. As you noted DEP performed over 2000 inspections at major sources in fiscal year 1995, not to mention a large number of inspections at non-major source facilities.

We request that you identify the eight inspections the Report contends were not thorough enough. Additionally, we would call to your attention that not all inspections we conduct are intended or required to be Level 2 inspections. Therefore, it is necessary to determine whether the particular inspection in question was intended to be the Level 2 inspection.

We also request that you identify to us each of the facilities and inspections used as examples in Chapter 3 of the Report and specifically the seven inspections mentioned on page 24. We have had limited success in trying to identify the examples used in Chapter 3. However, to the extent we have guessed correctly, we believe your summaries again present an incomplete or inaccurate picture.

- The example on page 24 regarding the incinerator is incomplete. The problem in question involved discoloration around an access door. We believe that our four inspectors were able to determine whether there was leakage at the door and thus whether the incinerator was capturing the required amount of pollutants. We disagree that a stack test was required. In addition, our records show this to be a 1990 inspection, well before the fiscal year audited.

- The December 1994 NOV for opacity violation mentioned on page 24 was, we believe, at a facility in Conshohocken where DEP's regional office is located. The company gave a reasonable explanation that this was a one time event. Numerous DEP personnel, including the facility inspector, drive by this facility on the way to work each day, no further emissions were observed and therefore we did not feel an additional inspection was needed.

- The broken gauge example discussed at the bottom of page 24 could be one of a couple of cases of broken gauges, but we cannot identify the specific case. However, your summary highlights the real issue. Our inspectors determined based on their experience with the source and the circumstances of the case that no follow up was necessary. After the fact, EPA now is second-guessing that decision based on looking at a file.

We do not claim to be perfect. If out of these thousands of inspections only eight were not complete enough, we feel we did well. However, we will continue to seek improvement.

Other Matters

We must note that your endorsement of EPA's "more aggressive" approach to continuous emission monitoring (CEM) data is a step in the wrong direction. While CEM data can be very useful in identifying violations which really are significant, to list a source as a significant violator for every minimal and transient exceedence serves no useful purpose. To suggest, as you do on page 27, that a facility should be considered a significant violator when a CEM identifies "potential violators" is outrageous.

The advent of Title V air permits, the more widespread use of CEMs and the Performance Partnership program all serve to reinforce the conclusion that EPA's Significant Violator guidance has become outdated and needs to be revised.

Conclusion

We believe DEP operates a quality air program which protects the environment and the people of Pennsylvania. Pennsylvania has never hidden its disagreement with EPA Region III over the significant violator issue. However, we do not and never have deliberately concealed information from EPA. We believed we had a workable relationship with Region III staff which allowed for oversight and provided for discussion of cases and, at times, joint enforcement actions. That relationship has been seriously damaged by the leak of this Report and the unfair and inaccurate nature of its allegations. We can only speculate at the real motives for this course of events. It is a shame that so much damage has been done over whether a "flag" was activated in a computer database.

DEP is committed to working cooperatively with Region III to ensure that a proper and sensible enforcement program exists to protect the health and rights of Pennsylvania's citizens.

Sincerely,

James M. Seif
Secretary

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APPENDIX B — EPA'S RESPONSE TO THE DRAFT REPORT

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UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION III
841 Chestnut Building
Philadelphia, Pennsylvania 19107

SUBJECT: Draft Report of Audit on Region III's Oversight of Pennsylvania's Air Enforcement Data- Region III's Comments

DATE: 12/18/96

FROM: W. Michael McCabe
Regional Administrator (3RA00)

TO: P. Ronald Gandolfo
Divisional Inspector General for Audit (3AI00)

GENERAL COMMENTS

Thank you for the opportunity to comment on the draft report on Pennsylvania's Air Enforcement Data (number E1KAF6-03-0082). The issues raised by the report are serious and worthy of the examination provided by the Inspector General. Both the Environmental Protection Agency (EPA) and the Pennsylvania Department of Environmental Protection (PADEP) have responsibilities under various laws to ensure that public health and the environment are protected. EPA has delegated substantial portions of the 1990 Clean Air Act (CAA) to the Commonwealth of Pennsylvania for implementation and enforcement. Indeed PADEP has significantly more resources devoted to the implementation and enforcement of the CAA in Pennsylvania than does EPA. As a result, we rely on PADEP to carry out inspections of their major air pollution sources to ensure they meet federal regulations.

The basis of our partnership with Pennsylvania, as with other States, is the exchange of consistent, timely, and reliable information on violators and regular communications between State and federal officials regarding appropriate enforcement action. Without reliable information and open communication, determinations cannot be made on the best course of action to bring violators into compliance. PADEP is closer to the regulated community and better able to learn about its compliance problems. EPA must rely on Pennsylvania to be the source of most of our information concerning the compliance status of the regulated community in Pennsylvania. That is the reason for specifying in the CAA Section 105 grant agreement that the State report and identify significant violators (SVs) in accordance with the Timely and Appropriate (T&A) Enforcement Policy negotiated between the States and EPA.

Our agreement to provide reports of SVs has worked well in the past. Disputes have arisen over what to call SVs - the State preferring not to attach the potential stigma of the designations to industrial, State, or municipal sources in violation. However, despite disagreement over terminology during the past 10 years, the information, when provided, was in an easily accessible and plainly identifiable form which promoted prompt review and discussion of the appropriate action to take. The process, while somewhat cumbersome, clearly identified major sources requiring immediate attention. If further action was required, a determination was made as to which Agency should conduct the appropriate follow-up. In the majority of cases, no action beyond the State's initial response was necessary.

Once the State began withholding this information, EPA had no reliable and easily accessible source of data to determine which facilities were significantly violating clean air regulations. State reports to the EPA database - the Aerometric Information Retrieval System (AIRS) - did not distinguish between simple violations, with little or no impact on public health, and more egregious violations with serious impacts. CAA Section 105 grant funds specifically require SVs to be identified up front, not buried in a mountain of computer data which would have to be analyzed and verified; resulting in wasted time and taxpayer money. The State agreed to those terms in the contract for receipt of clean air grant funds.

In addition, as your report states, a review of 45 randomly selected State files revealed eight SVs that had not been entered into the AIRS database. Even if EPA were to analyze AIRS data for SVs, data from these files would not have been found. To date, EPA has not received any State issued enforcement documents for these violators.

EPA has provided a list of the 64 identified violators to the State in an effort to engage officials in a discussion of the status of transactions and future actions. While we have had productive discussions with the State on better data sharing, open communication, and improved understanding of each other's interests in compliance and enforcement policies, the list of violators and future actions has not been resolved in our discussions. We hope to deal with the violations soon, so that appropriate steps can be taken to correct them.

EPA, under the leadership of Administrator Carol M. Browner, has aggressively promoted improved partnerships with the States and greater appreciation of State priorities in protecting public health and natural resources. Critical to these relations is an environment of openness, shared information, and trust. The Inspector General's report has provided us with an opportunity to

examine aspects of these relationships that aren't working as intended and to reach an understanding that ultimately will strengthen out partnership. EPA Region III is committed to working cooperatively with the Mid-Atlantic States to ensure strong and effective environmental protection for the area's citizens.

Chapter 2

We concur with the findings expressed in this chapter and agree with the proposed recommendations. In our review of the State notices of violations (NOVs) for 56 of the 64 identified SVs, we determined they all appear to meet the definition of an SV as indicated in EPA's T&A Policy. However, as we have stated repeatedly, State NOVs themselves contain insufficient information to place a facility on the national violators list. More importantly, they cannot replace the dialogue that is required and necessary under the T&A policy and the Section 105 air grant commitments to determine what action to take, and which Agency should take the lead. Considerable effort is now underway to review each of the associated State files, discuss the compliance history with State officials, and make a determination whether or not to list the facility on the national violators list. We have also verified that Region III has not received any State-issued enforcement documents for the remaining eight SVs identified in your report.

Regarding Pennsylvania's data entry into the national database, the data is neither timely nor complete, nor does it identify a source to be a significant violator.

The term "significant violator" was introduced into the Agency's compliance program in 1982. The significant violator program was designed to identify the Agency's highest non-emergency violating sources both for purposes of prioritization of Agency efforts and for reporting in the Agency's Management Accountability System. Subsequent federal policies were developed, in concert with representatives of State and local agencies, to establish procedural and substantive requirements for EPA in resolving such violations, and in evaluating the adequacy of State efforts to resolve such violations.

The definition of significant violator was added to the first "Timely and Appropriate" EPA/State Enforcement Response Policy for major violations under the Clean Air Act signed on June 28, 1984. The policy was later revised on February 7, 1992, to encourage a greater degree of team-building and cooperative resolution of SVs by all responsible agencies, and to permit an increased degree of agency flexibility in identifying and resolving SVs. Further, the Policy was revised to more accurately reflect the time and resources necessary to bring major sources into a state of continuous compliance. To that

end, the time line for addressing an SV was extended an additional 30 days from the original policy. Each policy was developed, in conjunction with other federal policies, to establish a strong framework for clarifying the relative roles and responsibilities of EPA and the States and the mutual expectations of the various enforcement agencies.

PADEP has been critical of EPA for placing too much emphasis on the number of SVs and considers this as unnecessary "bean counting". Region III disagrees with this statement. The T&A Policy was created to foster the development of a more complete and accurate compliance picture by setting up a process which ensures regular communication between EPA and States concerning the compliance status of regulated sources and discussion of appropriate action for both EPA and the State in each particular case. Through this process, a State and EPA will be more likely to address the most environmentally important violators first and be assured of protecting public health. The process also ensures that expeditious compliance will be achieved in every case.

Audit Recommendation: "Using a performance measure in future Performance Partnership Grants (PPG) that evaluates whether the State is identifying and reporting significant violators. This practice will require EPA Region III to verify the accuracy of information submitted by the State."

Regional Response: The Office of Enforcement and Compliance Assurance (OECA) at EPA in Washington, DC, is currently developing national reporting requirements for the enforcement component of a Performance Partnership Agreement (PPA). This national guidance will confirm that, even after we have successfully negotiated a PPA/PPG agreement, EPA will continue to have a strong need for complete and accurate State supplied compliance data. While we understand that it is the intent of the PPA/PPG to give greater latitude to the State and decrease federal oversight, we do not believe that a reduction in oversight means that EPA should receive less data. In fact, incomplete data hinders effective oversight. Complete and accurate data is necessary to support federal enforcement.

The responsibility of federal enforcement is to ensure that there is consistency among the State enforcement programs so as to ensure that no economic advantage is being gained by people who fail to comply with environmental requirements. These concepts are embodied in the T&A process. Given the essential role of federal enforcement and the fundamental principles contained in the T&A process, we believe that the core enforcement requirements in any PPA/PPG will be a continuation of the requirements under the T&A process. This must involve the reporting of SVs, entering into a dialogue with EPA with respect to coordination and resolution, and resolving the violations according to requirements of the policy. We believe that any PPA/PPG must capture this process through verifiable performance measures.

Audit Recommendation: "Withholding some of Pennsylvania's grant funds in order to achieve the desired results."

Regional Response: Region III will withhold a portion of Fiscal Year 1997 CAA grant funds until EPA is convinced that Pennsylvania is reporting all known SVs in accordance with the T&A policy. After Pennsylvania has demonstrated to EPA's satisfaction that there is complete, accurate and timely reporting of all enforcement information, EPA will then reevaluate all its grant options.

Audit Recommendation: "Negotiating with PADEP to resolve philosophical differences concerning enforcement of the CAA."

Regional Response: Up through 1990, EPA and DEP had been conducting monthly meetings, which from our perspective, were very successful in satisfying the intent of the T&A policy. EPA received monthly reports from DEP that provided us with a list, complete with case chronology, of every source DEP considered subject to the T&A policy. That summary report served as a basis for informal consultation to discuss compliance efforts both within PADEP and EPA. This process was revamped by PADEP after the Department was reorganized in July 1991 and enforcement coordination was transferred from Harrisburg to the State Regional Offices. We are now working very diligently to reestablish that line of open communication that is so vital to the success of the T&A process.

Further, the fundamental principles of shared responsibilities for enforcement of the CAA are clearly defined in the Agency's T&A Policy. This policy is a product of recommendations by a State/Federal Workgroup with representatives from STAPPA/ALAPCO and EPA Headquarters and the Regions. The final policy was also concurred in by the STAPPA and ALAPCO organizations. An important aspect of federal enforcement recognized by this policy is to ensure that there is consistency among the States and expeditious compliance. We believe that to renegotiate these fundamental principles would create serious discrepancies among the State enforcement programs and undermine the goal of nationwide consistency and protection of the public health and environment. If there is continued confusion by the Commonwealth as to the requirements of national policy, we will initiate new attempts to explain to Pennsylvania what is intended by the national policy. We are also prepared to discuss with Pennsylvania what mechanisms can be employed to efficiently implement the policy. Lastly, we are prepared to work with Pennsylvania to ensure that the implementation of the policy brings definite benefits to the Pennsylvania enforcement program.

Audit Recommendation: "Requiring PADEP to certify it has reported all significant violators to EPA, as defined by EPA's Timely and Appropriate Policy."

Regional Response: We concur and believe the above proposals will bring about positive change. It is also our intent to develop a mechanism to verify the accuracy of the information if and when it is reported by the State.

Chapter 3

We concur with the main themes and recommendations expressed in this chapter that not all inspections PADEP performed were Level 2 inspections, and that violations were not always corrected timely. A Level 2 inspection is considered a selective type of inspection in which the control device and process operating conditions are recorded as part of the source evaluation in addition to visible emission observations. In a typical application, the inspector would record such process items as feed rates, temperatures, raw material compositions, process rates, and such control equipment performance parameters as water flow rates, water pressure, static pressure drop, and electrostatic precipitator power levels. The inspector would then use these values to determine any significant change since the last inspection or any process operations outside normal or permitted conditions. Anything less than a Level 2 inspection is largely inadequate to determine compliance with many of the sources that DEP inspects. The problems detected in this Chapter, in part, may have resulted when the 1990 CAA changed the definition of "major" source in a way that caused a significant increase in the universe of sources requiring State inspections. This greater universe poses a significant challenge to both EPA and the States in providing proper balance to field activities while maintaining high standards for quality inspections.

Audit Recommendation: "More aggressively enforce the requirements of the Section 105 grant awarded to PADEP by ensuring the State conducts Level 2 inspections to determine a facility's compliance."

Regional Response: Region III will work with OECA in reviewing current national policies in an attempt to bring consistency to all State inspections. This may mean that fewer inspections will need to be conducted to ensure greater quality.

Audit Recommendation: "Performs follow-up in order to resolve violations timely."

Regional Response: We concur and will attempt to incorporate this aspect into the construction of any new national inspection policy.

Audit Recommendation: "Documents their follow-up activities."

Regional Response: Again, we concur. Appropriate documentation will become a significant issue during any negotiations for an effective PPA/PPG with Pennsylvania.

Audit Recommendation: "Withhold a portion of Pennsylvania's Section 105 grant funds until the State complies with the inspection requirements of the grant."

Regional Response: See above discussion on withholding grant funds.

Chapter 4

This brief, but significant, mention of the importance of reviewing continuous emission monitoring (CEM) data is an area that Region III has been concerned about for some time. CEMs include the total equipment needed to sample, analyze, measure, and provide a permanent record of emissions. A CEM provides direct measurement of a particular pollutant exiting the stack on a continuous basis. It was believed that the 1990 CAA would bring about a greater reliance on continuous emission monitoring This has met with great resistance from the regulated community. As such, the Region developed its own enforcement policy in the use of CEM data. The Air, Radiation and Toxics Division has since adopted a more aggressive approach for using CEM data which the Inspector General recognized as a "step in the right direction."

Audit Recommendation: "We recommend the Region III Administrator ensure that his staff reviews the necessary information to determine if a facility should be placed on EPA's list of significant violators, when CEM data identifies "potential" violators."

Regional Response: The Air, Radiation and Toxics Division will continue with its aggressive approach in the use of CEM data and discuss with OECA the establishment of national policy with defined action levels.

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APPENDIX C — CITIZENS ADVISORY COUNCIL REPORT

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CITIZENS ADVISORY COUNCIL to the Department of Environmental Resources
5th Floor • Market Street State Office Building • P.O. Box 8459 • Harrisburg, PA 17105-8459 • 717-787-4527

February 11, 1997

Mr. P. Ronald Gandolfo
Divisional Inspector General for Audit
Office of the Inspector General (3AI00)
Mid-Atlantic Division
841 Chestnut Building
Philadelphia, PA 19107-4431

Dear Mr. Gandolfo:

This letter conveys the Report of Inspector General Audit Workgroup convened by the Citizens Advisory Council to the Pennsylvania Department of Environmental Protection. DEP Secretary Jim Seif requested the CAC to convene a Workgroup to investigate the circumstances generating the IG Audit, the timing of its inappropriate and inflammatory release and, most importantly, the validity and impact of the IG's findings.

The Workgroup participants exhibited a remarkable esprit de corps in tackling the predicament begun when an unofficial preliminary draft of the EPA Inspector General's "Draft Report of Audit on EPA Region 3's Oversight of Pennsylvania's Air Enforcement Data" became public, in conflict with standard procedures that should have been followed, allowing DEP and EPA to comment on the official draft IG report before its public release.

Unquestionably, we accepted a formidable challenge. The IG Audit, on its face, shook public confidence in DEP's Air Program, and compromised the credibility of that program. It did bring to light internal and long-standing problems troubling DEP's and EPA's partnership to protect Pennsylvania's air quality.

The Workgroup conducted its affairs fairly, openly, with diligence, and kept a firm focus on developing recommendations to heal and strengthen that vitally essential partnership and its ultimate responsibility to the public's expectation of DEP/EPA cooperative environmental protection.

To reflect the sentiments of several Council members in the discussion to approve the Workgroup report, we must acknowledge continuing disapproval over the motivation for and manner of releasing the preliminary draft of the IG Audit. The Council recommends that Region 3 EPA investigate how and why this occurred and revisit the ramifications of such sensationalizing techniques so that similar incidents will not occur in the future.

As co-chairs of the IG Audit Workgoup we remain impressed with the thoughtfulness and labor intensity of the Workgroup's members. This report is submitted with hope that it will be given full and due consideration. Council is available to discuss our findings and mediate implementation of our recommendations, and will in any event, revisit this issue within two years.

Sincerely,

Brian Hill
Workgroup Co-chair

Gail Rockwood
Workgroup Co-chair

Enclosure

Report of the

Inspector General Audit Workgroup

Introduction

In late October 1996, a "preliminary draft" of an audit report by EPA Region III's Inspector General ("IG") of the Region's oversight of Pennsylvania's air enforcement data was obtained by newspapers in Pittsburgh and Philadelphia. The preliminary draft reported that, among other things, DEP had deliberately withheld information from EPA.

This preliminary report was an unofficial, early draft that would normally have gone through further internal review by the IG with a revised draft released only to DEP and EPA for comment. The final report incorporating those comments would then have been released publicly. Instead, the unofficial preliminary draft became public, without any opportunity for either DEP or EPA to comment on the validity of the findings contained in the report.

In mid-November, the IG issued its official *Draft Report of Audit on EPA Region 3's Oversight of Pennsylvania's Air Enforcement Data.* The allegations contained in both the preliminary and official draft raised public concerns about the effectiveness of DEP's air quality program, and added to an already growing rift between DEP and EPA. On November 12, 1996, DEP Secretary Seif asked the Citizens Advisory Council (CAC) to convene a group to independently review the issues raised by the IG. The CAC agreed to accept this request and organized an IG Audit Workgroup consisting of the following:

CAC Members:

Brian Hill, Workgroup Co-chair
Gail Rockwood, Workgroup Co-chair
Jolene Chinchilli
John Ford
Paul Hess
Walter Heine
Pat Lupo
Maurice Sampson
Dave Strong

Non CAC-members:

- Douglas Blazey, Esq., Elliott Reihner Siedzikowski and Egan, PC
- Phil Coleman, Chair, Sierra Club Pennsylvania Chapter
- John Dernbach, Esq., Associate Professor, Widener University
- William M. George, President, AFL-CIO
- Caren E. Glotfelty, Goddard Professor of Forestry and Environmental Resource Conservation, Penn State University
- Walter Goldburg, Group Against Smog and Pollution (GASP) (Pittsburgh)
- Joseph M. Manko, Esq. and Timothy F. Malloy, Esq., Manko, Gold and Katcher
- Joe Minott, Esq. and Jason Rash, Esq., Clean Air Council (Philadelphia)
- Ed Shoener, National Institute for Environmental Renewal
- Keith Welks, Esq., Phoenix Land Recycling Co.
- Roger Westman, Air Quality Program, Allegheny County Health Department

All members of the Workgroup served as volunteers and were compensated only for travel-related expenses.

Background

Protection of air quality in Pennsylvania is a collaborative mission carried out by both EPA and DEP. As the federal agency, EPA is responsible for setting national air standards and requirements designed to protect health and the environment, for providing oversight on many aspects of state programs, and ultimately, for initiating such enforcement actions as it believes are appropriate. DEP is responsible for developing a State Implementation Plan and other programs which will ensure that the air in Pennsylvania meets the applicable national standards. Most importantly for the subject of this report, DEP is also responsible for carrying out the vast majority of the permitting, inspections and enforcement under the relevant laws and regulations. EPA has a substantially more limited operational role, focusing on oversight of DEP regulatory efforts and direct participation in a select number of individual cases.

EPA awards grants under Section 105 of the Clean Air Act to state and local agencies to carry out their responsibilities for preventing and controlling air pollution. These grants are one of the mechanisms which EPA uses to maintain oversight of each state's air program. Before EPA awards each grant, it negotiates a work program with the state, containing specific work commitments the state agrees to perform. The work program encompasses activities such as inspections, monitoring, permitting and enforcement.

One of EPA's enforcement priorities in implementing the Clean Air Act has been to identify and focus on "Significant Violators." This term has been defined through various versions of the national Timely and Appropriate Enforcement Guidance ("T&A Guidance"). The current version of the T&A Guidance[1] defines a "Significant Violator" (sometimes herein referred to as "SV") as any major stationary source of air pollution (with some technical exceptions[2]) which is violating a federally-enforceable regulation or permit. The T&A Guidance prescribes timeframes for reporting and enforcement and delineates the relevant factors to be considered in appropriate penalty actions.

Pennsylvania's Section 105 grant agreement[3] specifies that DEP will identify and report Significant Violators to EPA pursuant to the T&A Guidance. While the grant agreement actually cites an earlier version of the policy (1986), the grant application[4] clearly states that DEP is to identify and report significant violators to EPA on the AIRS computer data base[5]. Therefore the grant agreement obligates DEP to report Significant Violators to EPA pursuant to the T&A Guidance .

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[1] February 7, 1992, clarified by the June 14, 1994 clarification.

[2] Pages 6-7, 2/7/92 T&A Guidance Package.

[3] Transmitted by letter dated 1/19/96.

[4] Transmitted by letter dated 7/31/95.

[5] AIRS is the Aerometric Information Retrieval System, a computer based repository of information about airborne pollution in the US and various World Health Organization member countries. The system is administered by the EPA. Any organization or individual with access to the EPA computer system may use AIRS to retrieve air pollution data. AIRS contains air quality, emissions, compliance and enforcement information that EPA and state agencies compile to carry out their respective programs for improving and maintaining air quality. It eliminates the need for individual states to maintain their own databases of air pollution information and to reformat or reorganize data for submission to the EPA database.

Pennsylvania has long disagreed with EPA over when a facility should be considered a significant violator[6], and has not officially reported all Significant Violators meeting EPA's literal definition for many years. Up until last year, DEP and EPA have managed to work through their disagreements. However, in November 1995, EPA requested that the IG conduct a review of SV reporting by Region III states. Pennsylvania was selected for the initial review because of its size, number of inspections, and number of violators.

As previously indicated, the IG Report was released to DEP and EPA in mid-November, several weeks after the preliminary draft became public. The IG Report claimed that, while EPA set priorities for implementation of the Clean Air Act and awarded grants to DEP to carry them out, DEP did not:

- report Significant Violators to EPA;
- carry out adequate inspections in all cases; or
- take aggressive enforcement action to bring violating facilities into compliance.

The IG determined that DEP's failure to notify EPA of all violations as SVs hindered EPA's ability to oversee Pennsylvania's enforcement program. The audit also concluded that DEP's inspection program needed to be improved, since not all inspections were detailed enough to determine whether a facility was complying with state and federal regulations.

As a result of the reporting problems identified by the audit of Pennsylvania's program, EPA is evaluating whether similar problems exist in other states. Clearly, the premature release of the preliminary draft report has further contributed to a deteriorating relationship between DEP and EPA, but it has also opened the issue to a wider scrutiny than likely would have occurred otherwise.

Methodology

Based on the organization of the IG Report, the Workgroup agreed to form three task forces to review the issues identified in the audit report:

- Reporting Compliance Task Force
- Inspection Compliance Task Force
- Enforcement Compliance Task Force

Extensive data was collected through interviews and written reports from DEP, EPA and the IG. Each task force held two conference calls in addition to the three meetings and final conference call of the full Workgroup (12/16/96, 1/13/97, 1/30/97, 2/10/97). The intensive review was necessary to expeditiously address the seriousness of the issues raised by the report. The findings of each of the task forces and the full Workgroup's recommendations follow.

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[6] The technical definition of a Significant Violator is contained in the 1992 T&A Guidance. The dispute is not over the technical definition so much as the application, i.e., whether every source which meets the definition should be treated as "significant" in the everyday sense of the word.

Task Force Findings

1. Reporting Compliance Task Force

As stated earlier, a significant violator is essentially any major stationary source of air pollution which violates a federally-enforceable regulation or permit. EPA's T&A Guidance requires states to report an SV to EPA within one month of the violation and to maintain the facility on EPA's list until it is returned to compliance or is under an enforcement order.

DEP and EPA differ on what should be considered an SV and when it should appear on EPA's list. For many years, DEP has resisted routinely listing SVs as such because it believes that the very broad definition of SVs causes many violations that are not truly "significant" to be entered into the AIRS computer database[7], thus becoming subject to EPA oversight.

Before 1991, DEP's Central Office collected inspection and violation information from the regional offices which it used to generate a list known to both DEP and EPA as "sources subject to the T&A policy." Although the sources on this list were not automatically entered by EPA into its system as SVs, the list formed the basis for monthly discussions between the agencies about roles and responsibilities. EPA also brought to the discussion information about air sources which its own investigations identified as potentially subject to the T&A policy. In general, the agencies' working relationship explicitly presumed that the agency which initially identified a source with violations would assume enforcement responsibility. As a result of the monthly discussion, however, EPA voluntarily turned over many of the sources which it initially identified in violation to DEP for the enforcement lead. The agencies also used this dialogue to determine which sources should be entered by EPA on the SV list, a process which EPA agrees is somewhat subjective and calls for a dialogue to identify cases requiring ongoing management while the source is returned to compliance.

In 1991, DEP decentralized it operations, making its regional offices more autonomous, which made coordination of reporting more difficult. Instead of one Central Office contact, EPA had to communicate with all 6 DEP regional offices (as well as Allegheny and Philadelphia counties, quasi-independent programs). Simultaneously, DEP continued to move toward the view that reporting SVs to EPA was not helpful in achieving compliance. Finally, the individual who had been the Central Office contact for the monthly discussions took a position outside of the Bureau of Air Quality, essentially ending the previous communication arrangement.

In 1994, at EPA's request, DEP recentralized the enforcement dialogue, using a conference call among EPA, DEP Central Office and all 6 regional offices. This approach did not work well, so EPA again communicated with each regional office directly. Finally, in May 1996, DEP indicated that it would only report as SVs those violations for which it desired EPA enforcement help. DEP contends that:

- DEP provides hard copies of Notices of Violations (NOVs) to EPA as well as entering the data in the AIRS system.

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[7] The AIRS database is reportedly archaic by today's standards. EPA is considering revamping this system. We recommend that EPA work with the states and state air organizations to outline refinements to the system and to the data entry process that would improve its effectiveness and usability by all.

- Listing all violators that meet the literal definition of SV trivializes the truly significant violators and extends the time needed to bring them into compliance.
- EPA's involvement can delay resolution of the violation.
- EPA retains facilities on its list for an excessive amount of time.
- EPA places too much emphasis on the number rather than the nature of SVs, which DEP considers unnecessary bean counting.
- DEP can often bring the facility into compliance without EPA involvement. DEP will request EPA assistance when needed.

EPA contends that without DEP's identification of all SVs as such, it is unable to ensure that timely compliance is achieved, and EPA's ability to oversee the state's enforcement program is hindered.

a. Significant Violators--According to the IG report, Pennsylvania has 2,053 major facilities; DEP performed 2,000 inspections during FY 1995, issued 556 NOVs statewide (including 225 to major facilities that violated state or federal regulations) but only reported 6 SVs to EPA. The IG also reviewed 45 inspection reports (from selected regions) for facilities for which no NOV was issued. In total, the IG reviewed NOVs or inspection reports for 270 major facilities (225 +45); from these 270 facilities, the IG identified 64 SVs that PA did not report as SVs to EPA. The Section 105 grant for 1996 requires DEP to report SVs on the AIRS system.

DEP and EPA agree that the 64 SVs identified by the IG meet the literal SV definition, but, according to EPA, this does not necessarily mean that each and every facility today would be placed on the SV list. This is particularly true if most of these violations have now been addressed. It is EPA's position that it must be advised of "every" significant violator. The dialogue envisioned by the T&A Guidance will help determine which sources need to be elevated to the SV list. The selection process is somewhat subjective, requiring dialogue, judgment and more information than is available on AIRS, in an inspection report or in an NOV.

b. Decentralization--DEP's 1991 decentralization coupled a few years later with a new administration with a different philosophical approach to environmental protection strained the DEP/EPA relationship. EPA raised concerns in the early 1990's that DEP's decentralization would result in decreased responsiveness to reporting requirements, making it more difficult for EPA to oversee programs. Reporting problems associated with decentralization have been alleged in programs other than the air program. A centralized coordination amd reporting role is critical to the monthly dialogue and will also enhance regional consistency.

c. Data Entry-- Until 1992, EPA performed all data entry into its AIRS database based on information reported by DEP. Thereafter, DEP entered the information directly. EPA is almost totally reliant on the quantity and quality of information in the database and has stated that it does not have full confidence in the information it is receiving from DEP.

The timing of information being sent to EPA is also critical. Depending on when an NOV is issued, there can be a significant backlog of information input on the database. This can also occur because the hard copies are sent from the district offices to the regional offices which are then sent to central office for compilation and transmission to EPA.

d. Compliance assistance --EPA asserts that any program that places strong emphasis on compliance assistance, and little on enforcement, will see a decline in compliance rates. On the

other hand, EPA talks about voluntary compliance initiatives but is constrained by a lack of federal laws which foster voluntary compliance. The task force is uncertain whether lower compliance has in fact resulted but is concerned that if industry perceives government to be less willing to enforce, then incentives for voluntary compliance may be weakened.

Confusion exists in both agencies over the roles of compliance assistance and enforcement. Both EPA and DEP need to develop performance criteria capable of measuring the effectiveness of compliance assistance vs. enforcement. Although environmental indicators are one possibility, the criteria must be sensitive enough to quickly identify adverse changes.

2. Inspection Compliance Task Force

According to EPA policy, states can perform 5 different levels of inspection at air pollution facilities. Level 0, a "drive by," is the most basic inspection and is not considered an acceptable compliance assurance method. To adequately evaluate a facility's compliance with the Clean Air Act, the EPA grant agreements require each state to perform annually at least one Level 2 inspection[8] at major facilities. The relatively new Compliance Monitoring Strategy allows states the flexibility to focus on priority inspections rather than simply requiring a specific inspection frequency for all facilities.

a. Adequacy of Inspection Program--The IG Report stated that DEP's inspection program needs improvement because not all DEP inspections that the IG reviewed were Level 2 as required by the grant. IG staff interpreted the Section 105 grant agreement to require that all inspections be at least Level 2, even follow up inspections intended to check on a specific violation. DEP's interpretation of the grant agreement is that it must perform at least one Level 2 inspection on all major sources each year and may carry out less detailed inspections in response to a complaint, to follow-up a violation, or to review a specific source that may not operate at all times. It appears that the IG's criticism of DEP's inspection program may be based on differing interpretations of the Section 105 grant agreement and the Compliance Monitoring Strategy.

The IG report states that in 1995, DEP carried out 2,000 inspections of the 2,053 major facilities in Pennsylvania. Assuming that each of these 2,000 was on a different facility, this is a 97% inspection rate, reportedly one of the highest in the region. The inspection rate for FY 1996 was 94% (1,964 out of 2,090 scheduled for inspection), also a very high completion rate.

Some DEP regions are reportedly completing two Level 2 inspections each year on some facilities, and at least one is beginning to do Level 3 inspections[9] on certain categories of sources. Several regions also indicated that they carry out all inspections unannounced (they only announce an inspection if there is some reason that the facility needs to know, such as to be sure a specific source is operating.)

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[8] The Level 2 inspection is a comprehensive inspection of the facility that is centered around a plant walk-through. Control devices and sources are inspected for permitted operating parameters, compliance samples are taken, comprehensive records review is performed, etc. A field report describing what was seen and done is signed by both parties and a copy given to the company.

[9] Level 3 includes all elements of a Level 2 and adds analytical testing on stack emissions.

b. Training and Guidance--Although not required by EPA, DEP requires air inspectors to take core courses offered by EPA. The required training focuses on inspection techniques and procedures for specific sources and types of emissions but does not highlight SVs.

The inspectors themselves do not determine SVs; this is done through consultation between the region's compliance specialist and air program manager. DEP does not provide written guidance to field staff on issuing NOVs or determining SVs. DEP says that since air sources vary greatly, generic guidance would be difficult. Therefore, it is up to the regional managers to determine whether to issue an NOV; some regions issue one whenever there is a violation while others might not document a violation, if they believe it will be addressed immediately.

3. Enforcement Compliance Task Force

a. Adequacy of DEP Enforcement--The IG Report alleges that when DEP identified violations, it did not always ensure that the facility took corrective action and therefore violations may have persisted longer than necessary. Given the time and resource limitations of the task force, we were not able to comprehensively review DEP's enforcement program although the task force did review a variety of information including DEP's case studies of the 64 SVs identified by the IG. Because we could not conduct a detailed statistical assessment of either DEP or EPA performance, we cannot draw firm conclusions about actual enforcement performance. However, it does appear from the DEP supplied data that DEP did apply relatively continuous enforcement or compliance efforts to those sources found in violation.

The summaries of data made available to the committee do not permit us to compare regions or examine individual trends; however, a review of the aggregate data indicates that inspections during FY95 and 96 increased while both the number of NOVs and the ratio of NOVs to inspections have declined. We cannot determine with certainty whether this is due to improved compliance by sources or a change in field policy towards the issuance of NOVs. The penalty data are less clear, although the number of penalty actions initiated in the last two years has declined. Although DEP has inspected regularly, its enforcement and penalty practices are apparently not guided by the T&A Guidance. Neither the IG nor DEP has supplied enough information to date to reach further conclusions about compliance effectiveness.

Further, based on information received from EPA and discussions with EPA staff, there is no evidence to date that EPA would have handled specific cases differently than DEP did. EPA may not always meet the enforcement requirements of the T&A Guidance either, but probably documents its actions more thoroughly.

b. Compliance Assistance vs. Penalty Forgiveness--EPA argues that it views compliance assistance and penalty forgiveness as two separate activities. EPA would be open to providing compliance assistance to a company in violation, even though regulations have been on the books for years, while still seeking a penalty for the economic advantage it enjoyed. EPA believes that DEP does not draw a clear distinction between compliance assistance and penalty forgiveness.

DEP defines compliance assistance as:

> "providing information and educational opportunities to help individuals and businesses understand and comply with their environmental obligations. It may also involve

providing powerful incentives like more efficient permitting systems, market-based programs or recognition opportunities that perhaps give regulated communities more incentive and flexibility to meet all existing requirements and maintain good compliance records. Compliance assistance does not mean lessening environmental standards so it is easier to meet them."[10]

Both EPA and DEP use penalty forgiveness, but how they apply it varies depending on their individual policies.

c. Interagency Communication-- Communication, which is a shared responsibility, has clearly broken down. The relationship has been increasingly strained over time, especially with the diverging philosophical approaches to environmental protection. DEP's main focus is on compliance assistance; it would be useful to review the effectiveness of DEP's approach vs. the EPA approach. There is a need for continual feedback about how the two philosophies/programs interact so neither is undermined nor undermines the other. A resolution of this issue is also necessary to allow better citizen understanding of and access to information regarding the overall enforcement and compliance programs of both DEP and EPA, thus engendering greater public confidence.

Responses to Initial Questions

In initiating this effort, the CAC posed several questions to the Workgroup. We were not able to answer all of the questions due to insufficient or inconclusive data, and due to the time constraints under which we operated. The following is a summary of the conclusions we were able to reach.

- *Was there information EPA did not get that they should have? If so, was that information deliberately withheld by DEP?*

  Yes. While DEP provided a significant amount of information to EPA through both AIRS and written monthly reports of NOVs, consent orders and consent assessments, DEP did not identify all sources for potential listing as required by its Section 105 grant. For years, EPA and DEP worked through this disagreement, but now must resolve this issue and have an agreed-upon reporting protocol.

- *Do DEP and EPA define significant violations differently and, if so, why?*

  The term "Significant Violator" is formally defined in EPA's T&A Guidance. Use of this formal definition is imposed upon DEP through the annual grant agreement, which obligates DEP to carry out certain reporting, inspection and enforcement activities in compliance with the T&A Guidance. DEP, however, has believed for many years that the EPA definition is mechanical and overly broad. In DEP's view, the T&A Guidance calls for the inappropriate designation of many sources as "Significant Violators" even though violations at the sources may in fact be *insignificant* in the commonly understood meaning of the word, posing little substantive threat to air quality or the environment. As a result of its dissatisfaction with the definition imposed by the policy, DEP has resisted routinely offering sources for listing by EPA as Significant Violators where the violations meet the technical definition of the policy but are not likely to have a major adverse impact on air quality.

[10] Source: DEP world wide web site.

There is continuing ambiguity and disagreement between the agencies about certain aspects of the T&A Guidance. Both DEP and EPA agree that meaningful dialogue is crucial in evaluating whether sources which initially appear to meet the criteria for listing as SVs actually do satisfy the criteria upon closer examination. Sources may not meet the threshold criteria for listing at the time of discussion between the agencies for any number of reasons, including a prompt return to compliance which obviates further management by either agency, an initial error about the kind or magnitude of a source's emissions, or a different judgment about the about the applicability of subjective criteria in the T&A Guidance defining SVs.

In practice, DEP and EPA differ on what should be considered an SV, when it should appear on EPA's list, and the value of the process itself. For many years, EPA accepted DEP's resistance to routinely listing SVs because the very broad definition of SVs results in reporting and listing violations which are not serious enough to warrant national tracking and management.

Placing facilities on the SV list is a complicated matter, requiring dialogue and judgment.

- *What proportion of violations were paperwork violations vs. actual pollution with potential health and/or environmental impacts?*

  We don't know. The IG did not audit the program at this level, and we did not obtain sufficient information to reach a conclusion on this question.

- *Did DEP handle the violations effectively? Is there any indication that EPA would have handled these violations differently than DEP did? Did these differences have any material impact on the effectiveness of EPA's oversight function?*

  Based on the information we obtained, it was very difficult to identify whether Pennsylvania's enforcement efforts are better or worse than in the past. DEP does not prepare closure documents to track what happened with violators, as EPA does. There is also a lack of clarity among field staff about when to issue NOVs, how to deal with significant violators and about the T&A policy, generally. DEP should develop and implement a consistent policy for the issuance of NOVs to major sources.

  The IG Report does not document a definitive problem with enforcement by Pennsylvania, and no other external evidence gathered by the Workgroup (i.e., the mid-year reviews, EPA's overfiling or assumption of enforcement lead activity) supports the view that air enforcement effectiveness in Pennsylvania has actually declined. There is also no evidence that EPA would have handled these violations differently. In addition, it is not clear if penalties are consistent with T&A, but any inadequacies are not documented by the IG.

  The IG Report's format emphasizes selective conclusions, not all of which are supported in the analysis in the report. In particular, the report makes generalizations about the effectiveness of the state air enforcement program based on a narrow group of cases. It is not clear from the report whether its authors obtained sufficient data from the cases which they did examine to support their conclusions.

Moreover, the limited enforcement data obtained by the IG is given disproportionate prominence in a report which is primarily directed at examining reporting practices by DEP. The report's enforcement conclusions may unfairly alarm Pennsylvanians, who may now fear that the entire air regulatory program is broken and fails to protect them. In fact, the report provides insufficient information to draw any conclusions about the adequacy of the current state enforcement program.

- *What is the status of and compliance schedule for significant violators identified by DEP or EPA in Pennsylvania?*

  While we obtained a significant amount of information on the significant violators identified in Pennsylvania, much of the information was obtained too late in our review to allow us to reach any conclusions. DEP does not prepare closure documents to record what happened with violators and accordingly had to assemble a paper trail on the 64 facilities identified in the IG report in order to document progress made at those sites. EPA also apparently had problems generating the necessary information, and was unable to respond in time for us to review it.

- *Has decentralization of DEP made it more difficult for EPA to get information on significant violators?*

  Yes. Decentralization and other factors have combined to decrease DEP's responsiveness to EPA reporting requirements. For some time, although DEP air program staff had objected to reporting requirements which they felt were counterproductive, DEP's Central Office staff did make attempts to satisfy EPA's desire for information on SVs. However, DEP's 1991 decentralization to more autonomous regional offices, combined a few years later with a new administration with a different philosophical approach to environmental protection led to a deteriorating relationship between DEP and EPA. Reporting problems associated with the regional offices have also been alleged to occur in programs other than the air program.

- *How can communication between DEP and EPA be improved so that this kind of controversy doesn't occur again?*

  Regular discussion is one of the most critical components of the DEP/EPA relationship. Getting effective communication back on track should allow issues to be resolved as they arise. A regular, centralized reporting role is critical to the monthly dialogue and will also enhance regional consistency in enforcement.

Recommendations

For the sake of air quality in Pennsylvania, DEP and EPA must work together. The manner in which the Preliminary Draft Report of Audit of Pennsylvania's Air Enforcement Data was released is indicative of and contributed to a deteriorating relationship between DEP and EPA. Regardless of how the information was distributed, some of the problems identified in the audit report require resolution.

Reporting: We offer the following actions as a means to address the reporting issue, which underlies the other problems identified in the report. We recommend that DEP and EPA use a mediator to resolve these differences, and the CAC and Workgroup offer to provide members to serve as mediators in negotiating the details of implementation.

1) Although DEP has begun to re-centralize the reporting function at EPA's request, the effort needs to go further in order for it to work well. Monthly conferences between EPA and Bureau of Air Quality Central Office with appropriate regional office participation should be held so that EPA does not have to carry on 8 calls each month with Pennsylvania regions and counties.

2) DEP should develop and implement a consistent policy for the issuance of NOVs to major sources to be used by all of its regional offices.

3) Unless DEP and EPA are able to negotiate a change to the T&A Guidance, DEP must identify all sources which meet the literal definition of SV. If it is not willing to call them Significant Violators, it should call them "companies with potential to be included on the SV list" (or "companies subject to the T&A policy")[11]

4) DEP should then use a mutually agreed-upon set of criteria to select those sources which will be the subject of further discussion with EPA. We suggest the following criteria be used as a starting point[12]:

- Any violation that has produced or appears to have produced a significant environmental/human health threat, including but not limited to any situation involving an imminent and substantial endangerment
- Sources causing a "National Ambient Air Quality Standards" (NAAQS) violation
- Any violation that involves a significant or long-term release of pollutants in excess of permitted limits
- Inspections/violations targeted for attention to address an identified regional/national priority
- Any discharge or operation without a permit
- Violations that result in significant economic benefit to the violator, particularly where the violations are serious, long standing or appear to be willful
- Ongoing violations of state or federal enforcement agreements or orders.
- Continuing or significant failures to monitor or report, where circumstantial evidence indicates a likelihood of emission/standards violations

5) DEP and EPA will determine at the time of notification or during subsequent T&A discussion whether a source included on the "companies with potential to be included on the SV list" should be designated as a Significant Violator Requiring Special Emphasis[13].

6) DEP's ability to draw down the full amount of awarded grant money for FY1997 should be conditioned on reaching resolution of the significant violator reporting issue by September 30, 1997, the end of EPA's fiscal year.

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[11] In 1996, DEP issued NOVs to approximately 225 major sources, which made those sources technically subject to the T&A policy, yet reported only 6 such violators with which it requested EPA's help.

[12] The suggested criteria are taken from the draft "Interim Air Guidance" proposed by EPA Region III to identify those to be classified as "Special Emphasis Significant Violator". We have made a few changes to improve the criteria as a screening tool and suggest these as a starting point for discussion.

[13] If the above criteria do not reduce the number from 225 literal SVs to a lesser number that is manageable from a resource standpoint, then the criteria need to be revisited jointly by DEP and Region III.

7) The next EPA/DEP grant agreement (FY1998) should embody the agreed upon criteria for determining which SVs require "special emphasis". A centralized reporting role is critical and should also be incorporated into the next grant agreement. EPA Region III should work towards having the interim guidance (with changes to the criteria as negotiated with DEP) adopted.

8) This dialogue-based approach should be explored for use in other programs where similar communication and coordination breakdowns are apparent.

9) EPA should work with the states and state air organizations to outline refinements to the AIRS system and to the data entry process that would improve its effectiveness and usability by all.

Whether or not DEP and EPA accept any or all of our recommendations, the CAC will revisit this issue in no more than two years in order to determine whether the air enforcement program is operating effectively. As indicated earlier, we also offer to mediate resolution of the details of any of the above recommendations.

Inspections: It appears that the IG's criticism of DEP's inspection program may be based on differing interpretations of the Section 105 grant agreement and the Compliance Monitoring Strategy. In any case, DEP must determine if certain regions are not performing Level 2 inspections on all facilities and if they are not, take action to ensure that Level 2 inspections occur.

There is a lack of clarity among field staff as to how to deal with significant violators and the T&A policy generally. Training and guidance to regional offices should focus more specifically on these areas.

Enforcement: DEP needs to develop a better method to systematically track violations and subsequent enforcement activities and compliance results. This will assist in evaluating the performance and efficiency of compliance and enforcement efforts and will support a reasoned dialogue regarding the relative merits of DEP's Thoughtful & Thorough enforcement policy vs. EPA's Timely & Appropriate Guidance.

Both agencies need to continuously assess and refine the respective roles of compliance assistance and enforcement. This should be accomplished through an ongoing discussion to maintain the credibility of enforcement and compliance and to provide feedback about how the two philosophies interact so neither is undermined by or undermines the other.

DEP should prepare closure documents to record how and when a violator was brought into compliance. This will clarify and validate final decisions.

DEP needs to continue to clarify any internal misunderstandings regarding enforcement policies, including inspection protocols, issuance of NOVs, the circumstances justifying penalties and the circumstances to be considered in setting a compliance schedule. This will reaffirm its commitment to enforcement, increase the dialog among staff on enforcement principles, and increase the level of consistency of enforcement performance across the regions. In addition, DEP and EPA need to establish compliance and performance measures of the effectiveness of compliance assistance: indicators and measures should quickly identify any adverse changes that may occur.

Conclusion

Our review of the issues raised in the IG Report found that they reflect a basic philosophical difference between the two agencies about which violations at air sources represent such serious threats to air quality that they warrant application of the prescribed enforcement responses pursuant to the T&A Guidance. The issues also reflect a profound disagreement about whether these enforcement responses are effective at any sources, regardless of the seriousness of the violation. These philosophical differences, in combination with major organizational changes at DEP (1991), have led to a breakdown in communications between the agencies about identifying and responding to the sources in violation. However, regardless of any philosophical differences, the two agencies must work together not only in protecting air quality, but in all aspects of environmental protection.

Given the timeframe and resource constraints of the Workgroup, we were unable to identify whether Pennsylvania's enforcement efforts are better or worse than in the past, or whether the philosophical differences between the agencies have resulted in delayed achievement of compliance by violators or significant pollution with health and environmental impacts. DEP must develop a better method to systematically track violations and subsequent compliance results.

The Workgroup did not review the compliance assistance programs of both agencies nor the application of penalty forgiveness by DEP, but it is concerned that if industry perceives government to be less willing to enforce, then incentives for voluntary compliance may be weakened.

Since we understand that the debate about state/federal partnerships extends beyond Pennsylvania, we hope that our recommendations might serve as a model for other programs and states where similar communication and coordination issues exist. We are available to discuss with DEP, EPA and the IG our findings and recommendations.

Approved by the Citizens Advisory Council
February 11, 1997

Brian Hill
CAC Chair
Workgroup Co-chair

Gail Rockwood
CAC Vice-Chair
Workgroup Co-Chair

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OIG EVALUATION

The recommendations in the CAC report are similar to those in our draft report. As a result, we have not changed our original position or recommendations concerning the reporting of SVs. However, we did make minor revisions to Chapter Three regarding the number of Level 2 inspections required.

We do not agree with the CAC's recommendation to renegotiate EPA's T&A policy with Pennsylvania. This would result in an inconsistent application of a national policy. We believe the CAC's suggestion that PADEP identify all sources which meet the literal definition of an SV, followed by discussions between EPA and PADEP to determine those violators that will be formally identified as Significant Violators is a reasonable approach and meets the intent of our recommendation.

In rebuttal to the CAC's comments that our report makes generalizations about the effectiveness of the State's air enforcement program based on a narrow group of cases, we offer the following:

We disagree that the scope of our review was too narrow to substantiate this finding. Reviewing 270 or 13 percent of the 2,000 facilities in Pennsylvania, is in our opinion more than a narrow review.

While we agree with the CAC that our report did not evaluate the State's entire enforcement program, we believe that PADEP's non-reporting of SVs is indicative of serious deficiencies in the State's air enforcement program. An enforcement program that is aggressive and effective is largely based on publicizing actions (which begins with reporting SVs) to deter future violators. Reporting violations puts more pressure on the violators from EPA and the public.

- As citizens learn about violators, they may pressure companies to come into compliance or risk losing customers. The public also may pressure government to enforce regulations and penalize violators.

- According to EPA's Five Year Strategic Plan, publication of enforcement actions deters violations by increasing the regulated community's awareness of regulations and the consequences of noncompliance.

In addition, we reported that PADEP did not always perform adequate inspections and follow-up. After violations are initially identified by inspections, follow-up reviews are critical to ensure that violators have returned to compliance. Inspection and follow-up are an integral part of an aggressive enforcement program.

In response to the CAC report, we reexamined the eight inspections we originally reported as inadequate Level 2 inspections. We agree that one of the inspections did not need to be a Level 2. We also agree that a stack test is not required as part of a Level 2 inspection. For these reasons, we revised our report to show that six Level 2 inspections were inadequate instead of the original eight. We also revised our report to clarify that not all inspections need to be Level 2, only those that the State commits and schedules as a Level 2.

Finally, we strongly agree with the CAC that the premature release of the OIG preliminary draft report was inappropriate. We would have much preferred that our report had been finalized using our normal procedures, which provide an opportunity for audited parties to comment.

APPENDIX D — DISTRIBUTION

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Agency Audit Followup Official (3101)
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