



Office of Inspector General

Audit Report

Air

Region 10's Oversight of Washington State's Air Compliance and Enforcement Program

E1KAF7-10-0015-8100094

March 30, 1998

**Inspector General Division
Conducting the Audit**

**Western Audit Division
San Francisco Office**

Region covered

Region 10

Program Office Involved

Office of Air Quality

March 30, 1998

MEMORANDUM

SUBJECT: Report on Region 10's Oversight of Washington State's Air
Compliance and Enforcement Program
Audit Report No. E1KAF7-10-0015

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

TO: Chuck Clarke
Regional Administrator
EPA Region 10

Attached is our final report titled Region 10's Oversight of Washington State's Air Compliance and Enforcement Program. The purpose of this audit was to determine whether the Region implemented effective oversight of the State of Washington's Air Compliance and Enforcement Program.

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 and the findings contained in this audit report do not necessarily represent the final EPA position. Final determinations on matters in this audit report will be made by EPA managers in accordance with established EPA audit resolution procedures.

In accordance with EPA Order 2750, we have designated the Regional Administrator as the Action Official for this report. The Action Official is required to provide our office with a written response to the audit report within 90 days of the report date. The response should address all recommendations. For corrective actions planned but not completed by the response date, reference to specific milestone dates will assist us in deciding whether to close this report. We have no objection to the release of this report to the public.

We appreciate the cooperation from your staff during this review. Should you or your staff have any questions about this report, please call Truman Beeler, Western Divisional Inspector General for Audit, at (415) 744-2445, or Lori Risby at (415) 744-2453.

Attachment

Distribution: Appendix E

EXECUTIVE SUMMARY

PURPOSE

The purpose of the audit was to determine whether Region 10 (the Region) implemented effective oversight of the Washington State's Air Compliance and Enforcement Program. While delegated state and local air agencies have primary responsibility for ensuring adequate air quality, EPA retains responsibility for ensuring fair and effective enforcement of federal requirements, and a credible national deterrence to noncompliance. In order to ensure that states and locals are effectively carrying out federal requirements, the EPA implemented a program to track and report on significant violators (SVs) of air pollution. The intent of the program is to ensure that violations by major air stationary sources, namely SVs, are addressed and resolved in a timely and appropriate manner.

This audit was initiated because of a concern from the Headquarters' Office of Enforcement and Compliance (OECA) that states and locals were under reporting SVs to EPA, which if not addressed could gravely injure EPA's ability to protect human health and the environment through a credible compliance and enforcement program. The audit focused on major stationary sources of air pollution in Washington State (the State).

The objectives were to determine whether:

- The Region's corrective actions planned in fiscal 1997 were adequate to address the under reporting of SVs by the State.
- The State identified SVs consistent with EPA's compliance and enforcement guidance.

RESULTS IN BRIEF

The Region could improve its oversight activities to ensure more accurate reporting of SVs by: (i) implementing the corrective actions planned for fiscal 1997; (ii) conducting evaluations of State and local air programs; (iii) assisting State and locals in implementing SV programs; (iv) reviewing enforcement data contained in the Aerometric Information Retrieval System Facility Subsystem (commonly known as AFS); and (v) finalizing a new compliance assurance agreement with the State and locals.

Additionally, we noted numerous errors in the categorization for the types of stationary sources maintained in AFS. Sixty percent of the sources in AFS were categorized using obsolete classification codes. We have not included this matter as a finding with recommendations because the problem appears to be nationwide and EPA Headquarters is aware of it. Nevertheless, we believe management should be aware that: (i) the extent of errors in the classification codes jeopardizes the reliability of the data; and (ii) policy or management decisions should not be made based upon the data. This issue is discussed further in APPENDIX B of this report.

Our findings are summarized below and discussed in detail in CHAPTERS 2 and 3 of this report.

Under Reporting of SVs

During fiscal 1996, the Region reported 7 of the 178 major stationary sources listed in AFS as SVs. However, another 17 (55 percent) from our sample of 31 major sources were not reported as SVs. The Region recognized that some states were not reporting all SVs and developed a corrective action plan for implementation in early fiscal 1997. However, as of June 30, 1997, it had not implemented any of the planned actions. The Region stated that implementation of the planned actions was delayed because it was considering more complete evaluations to include States' inspections and enforcement follow-up on violations, in addition to identification and reporting of SVs. Although the planned actions were not implemented, some other actions were taken to increase the accuracy of reporting SVs by the State. While all of these actions would result in improved reporting, if fully implemented, we believe they are insufficient to completely address the problem of under reporting by the State. Accurate reporting of SVs is essential for the Region to monitor the compliance status of SVs and evaluate whether timely and appropriate enforcement actions were taken.

To assess the extent of under reporting of SVs by the State and identify specific causes for the reporting problems, we focused on the reporting practices by the Region and selected Washington Air Quality Authorities (WAQAs) for fiscal 1996. The causes of under reporting of SVs were related to weaknesses in the Region's oversight and to WAQAs' reporting practices. Some weaknesses in the Region's oversight include not: (i) routinely conducting formal air compliance program evaluations; (ii) ensuring that WAQAs understand the definition of SV, as defined in *EPA's Guidance on Timely and Appropriate Enforcement Response to Significant Air Pollution Violators*; and (iii) ensuring that enforcement data recorded in AFS were routinely used to identify SVs. Some reasons why WAQAs did not report SVs were because they: (i) had not established procedures for reporting SVs; (ii) had failed to apply the EPA's SV definition; (iii) had not reported violations if the facility achieved timely compliance; and (iv) considered some violations insignificant.

Accordingly, we believe the Regional Administrator needs to: (i) implement its corrective action plan; (ii) develop procedures to evaluate the adequacy of WAQAs air programs in accordance with EPA guidance; (iii) work with WAQAs to ensure they fully apply the SV definition; (iv)

review enforcement actions recorded in AFS by WAQAs; and (v) finalize a new compliance assurance agreement with the WAQAs.

Some SVs Not Identified

Two of four WAQAs reviewed were not identifying SVs consistent with EPA's compliance and enforcement guidance. Inspections conducted at 11 of 20 major stationary sources by the two WAQAs did not meet EPA level 2 inspection criteria. In addition, inspection reports on two other sources did not contain sufficient detail to verify that level 2 inspections were conducted. As a result, the Region was not assured that major stationary sources were in compliance with the Act and SVs might go undetected for long periods before corrective action is taken. This occurred because the Region had not implemented an effective oversight program for assuring inspections were thorough enough (equivalent to level 2) to determine whether the sources' operations met the requirements of the Act.

RECOMMENDATIONS

Specific recommendations follow the findings in CHAPTERS 2 and 3. In summary, we recommend that the Regional Administrator improve the accuracy of reporting SVs by:

1. Implementing the Region's corrective act plan.
 2. Conducting evaluations of State and local air programs to ensure they are implementing their program consistent with EPA guidance.
 3. Reviewing enforcement data recorded in AFS to identify potential SVs.
 4. Giving priority to completing a new compliance assurance agreement.
-

REGION COMMENTS AND OIG EVALUATION

A draft report was provided to the Region for comment on December 30, 1997. Copies of the draft report were also provided to the WAQAs that were included in the review. The Region responded to the draft report on February 20, 1998 and its response is included as APPENDIX D to this report. The response incorporated some of the WAQAs' more significant concerns and included as an attachment their responses for our review regarding specific details of fact and opinion. The WAQAs' responses are not attached to this report but are available upon request. The Region concurred with the report recommendations and described corrective actions that have been taken or will be taken.

We agree with the corrective actions taken or planned by the Region. We believe that these actions should improve the identification and reporting of SVs by the State.

TABLE OF CONTENTS

	<u>Page</u>
EXECUTIVE SUMMARY	i
CHAPTERS	
1 - INTRODUCTION	1
PURPOSE	1
BACKGROUND	1
SCOPE AND METHODOLOGY	3
PRIOR AUDIT COVERAGE	3
2 - UNDER REPORTING OF SIGNIFICANT VIOLATORS	5
BACKGROUND	6
CORRECTIVE ACTION PLAN NOT IMPLEMENTED	8
ADDITIONAL STEPS NEED TO BE TAKEN TO IMPROVE REPORTING OF SVs	8
CONCLUSION	12
RECOMMENDATIONS	12
REGION COMMENTS AND OIG EVALUATION	12
3 - SOME SIGNIFICANT VIOLATORS NOT IDENTIFIED	15
BACKGROUND	15
INSPECTIONS WERE NOT LEVEL 2	16
INSPECTION REPORTS WERE INCOMPLETE	18
THE REGION'S OVERSIGHT WAS INSUFFICIENT	18
RECOMMENDATIONS	19
REGION COMMENTS AND OIG EVALUATION	19
APPENDICES	
A - AUDIT SCOPE AND METHODOLOGY	21
B - OTHER MATTERS	23
C - ACRONYMS	25
D - REGION RESPONSE TO DRAFT REPORT	27
E - REPORT DISTRIBUTION	35

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CHAPTER 1

INTRODUCTION

PURPOSE

The purpose of the audit was to determine whether the Region implemented effective oversight of the Washington State's Air Compliance and Enforcement Program. The audit focused on major stationary sources of air pollution in the State.

The objectives were to determine whether:

- ! The Region's corrective actions planned in fiscal 1997 were adequate to address the under reporting of SVs by the State;
- ! The State identified SVs consistent with EPA's compliance and enforcement guidance.

BACKGROUND

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

Emission regulations apply to two categories of air pollutants, criteria and hazardous. Criteria pollutants are discharged in relatively large quantities by many sources. EPA has set national standards for six criteria pollutants: (1) ozone, (2) carbon monoxide, (3) sulfur dioxide, (4) nitrogen dioxide, (5) lead, and (6) particulate matter. The standards specify acceptable air pollution concentrations for a geographic area. States are required to meet these standards.

Regulations also apply to hazardous air pollutants, or air toxics. These pollutants come from specific sources, such as auto paint shops, chemical factories, or incinerators. Currently, there are 189 toxic air pollutants, including asbestos, benzene, vinyl chloride, arsenic, mercury, and radio nuclide. Toxic air pollutants are known

to or suspected of causing cancer or other serious health effects, including damage to the respiratory or nervous systems, birth defects and reproductive effects. Some can cause death or serious injury if accidentally released in large amounts.

Program Funding

Section 105 of the Act provided for federal grants to help State and local agencies prevent and control air pollution. In fiscal 1996, the Region awarded a Section 105 grant to the State totaling \$6,794,370. The grant agreement included a requirement for the State to follow EPA's guidance on *Timely and Appropriate Enforcement Response to Significant Air Pollution Violators*. However, with the implementation of the Title V, Operating Permits Program¹, grant funds will no longer be available for compliance and enforcement activities of major stationary sources. These activities will be funded from the revenue collected from facilities through the Title V program.

Program Administration

The State's Air Quality Program is administered through cooperation and coordination among the Washington Air Quality Authorities (WAQAs). The WAQAs consist of the Washington Department of Ecology (WDOE) and seven Local Air Pollution Control Authorities (APCAs). WDOE has jurisdiction over stationary sources in 16 of the State's 39 counties. In addition, WDOE has state-wide jurisdiction over chemical pulp mills and primary aluminum smelters. The seven APCAs have jurisdiction over stationary sources in the other 23 counties of the State.

Roles and responsibilities of the Region and WAQAs concerning the enforcement for stationary source air pollution control programs have been established by the *Compliance Assurance Agreement between the Region and WAQAs for fiscal 1993*. Informal extensions have been used by the Region to keep the agreement in effect through fiscal 1997.

¹ Title V, Operating Permits Program is a component of the Clean Air Act Amendments of 1990. Title V requires "major" sources of air pollution to incorporate all provisions contained in the rest of the Act in a single document or "permit." This permit must be approved through programs run by the states. Operating permits will become the primary enforcement vehicle of the Act.

**SCOPE AND
METHODOLOGY**

We performed this audit in accordance with the Government Auditing Standards (1994 Revision) issued by the Comptroller General of the United States as they apply to performance audits. Our review included tests of the program records and other auditing procedures we considered necessary for the purpose of expressing an opinion based on our audit objectives. We also reviewed the Federal Manager's Financial Integrity Act reports for 1995, 1996, and 1997. The reports did not identify any material weaknesses, or vulnerabilities, relating to the issues discussed in this report. See APPENDIX A for scope and methodology details.

**PRIOR AUDIT
COVERAGE**

There have been no prior audits performed on the Region's oversight of the State's Air Compliance and Enforcement Program. On February 14, 1997, the EPA OIG issued an audit report (report no. E1KAF6-03-0082-710015) entitled *Validation of Air Enforcement Data Reported to EPA by Pennsylvania*. The report concluded that Pennsylvania did not report all SVs to EPA and did not take aggressive enforcement action to bring the violating facilities into compliance. This report was the basis for initiating our audit of the State's reporting and identification of SVs.

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CHAPTER 2

UNDER REPORTING OF SIGNIFICANT VIOLATORS

The Region could make improvements to its oversight activities to ensure more accurate reporting of SVs. During fiscal 1996, the Region reported 7 of the State's 178 major air stationary sources in AFS as SVs. However, another 17 (55 percent) from our sample of 31 major sources were not reported as SVs. The Region recognized that some states were not reporting all SVs and developed a corrective action plan for implementation in early fiscal 1997. However, as of June 30, 1997, it had not implemented any of the planned actions. Although the planned actions were not implemented, some other actions were taken to increase the accuracy of reporting SVs by the State. While all of these actions would result in improved reporting, if fully implemented, we believe they are insufficient to completely address the problem of under reporting by the State. Accurate reporting of SVs is essential for the Region to monitor the compliance status of SVs and evaluate whether timely and appropriate enforcement actions were taken.

To assess the extent of under reporting of SVs by the State and identify causes for the reporting problems, we focused on the reporting practices by the Region and WAQAs for fiscal 1996. The causes of under reporting of SVs were related to weaknesses in the Region's oversight and to WAQAs' reporting practices. Some weaknesses in the Region's oversight include not: (i) routinely conducting formal air compliance program evaluations; (ii) ensuring that WAQAs understand the definition of SV; and (iii) ensuring that enforcement data recorded in AFS were routinely used to identify SVs. Some reasons why WAQAs did not report SVs were because they: (i) had not established procedures for reporting SVs; (ii) failed to apply the EPA's SV definition; (iii) had not reported violations if the facility achieved timely compliance; and (iv) considered some violations insignificant.

Accordingly, we believe the Regional Administrator needs to: (i) implement its corrective action plan; (ii) develop procedures to

evaluate the adequacy of WAQAs' air programs in accordance with

EPA guidance; (iii) work with WAQAs to ensure they fully apply the SV definition; (iv) review enforcement actions recorded in AFS by WAQAs; and (v) finalize a new compliance assurance agreement with the WAQAs.

EPA's Timely and Appropriate Enforcement Response to Significant Air Pollution Violators provides guidance for EPA and state² enforcement of significant air pollution violators. The guidance defines a SV as any "major" (as defined by the Act) stationary source of air pollution which is violating a federally enforceable regulation. This policy requires states to report SVs to EPA within 1 month of the violation. The Region controls the SV designation in AFS, and after consultation with the state and local agency, the Region will either add a source to the SV list or delete a source from the SV list. Once the violation is reported, the state and the Region should monitor the source until it achieves compliance. This includes determining an appropriate time schedule for achieving compliance and assessing a penalty, if necessary.

BACKGROUND

Reporting Requirements

The 1993 Compliance Assurance Agreement between the Region and WAQAs requires SVs to be reported to the Region through monthly enforcement conference calls or meetings. The Region informally extended the agreement with WAQAs through fiscal 1997. At the start of fiscal 1997, the Region began drafting a new agreement. According to the Region, this new agreement will clearly describe the expectations of each entity, regarding air enforcement and compliance programs, including reporting SVs. In addition, it will describe procedures to follow to assure adherence to EPA guidance. However, as of the date of our review, the agreement had not been finalized.

A Recent Issue

In an audit report (Report No. E1KAF6-03-0082-7100115, dated February 14, 1997), the OIG reported that the State of Pennsylvania was under reporting SVs to EPA. In response to the

² “state” as used in the background section of this chapter also refers to local agencies where they have enforcement authority.

draft report, the Assistant Administrator of OECA sent a memorandum, dated November 19, 1996, to the EPA Regional Administrators which stated:

If unaddressed, the problems identified by the IG would gravely injure our ability to protect human health and the environment through a credible compliance and enforcement program. ... I have also requested the IG to work with us to determine whether there are comparable problems in other states. I view this

problem with substantial gravity and expect all of you will work to help the Agency make appropriate corrections.

The memorandum also requested the regions to: (i) immediately discuss the report’s findings and OECA’s views on the seriousness of the situation with their states; (ii) identify all states that have a SV reporting problem through an examination of in-house information; and (iii) propose strategies to assess reporting problems. The Regions were requested to notify OECA of the results of the assessments of state reporting accuracy and proposed corrective strategies by December 3, 1996.

The Region's Response

The Region 10 Administrator notified OECA of the results of their assessment of state reporting accuracy and proposed a corrective action strategy in a memorandum, dated December 5, 1996. A preliminary assessment of the quality of SV reporting from the Region's four states identified that Oregon and Washington were under reporting SVs. The Region's Office of Air Quality proposed to assess the level of SV under reporting through a file review in each of the four States during fiscal 1997, preferably by the end of the second quarter. The Region's plan also included steps to design and conduct comprehensive multi-program enforcement program evaluations in each state during fiscal 1997, with completeness of priority reporting as one focus.

Finally, the Region stated that the WAQAs did not report violations against major sources that were discovered and addressed or resolved in a timely manner. These violations were not reported because WAQAs staff did not see the need to report the violations and preferred not to discuss the cases during monthly SV conferences with the Region. During fiscal 1996, a total of seven SVs was reported to the Region.

CORRECTIVE ACTION PLAN NOT IMPLEMENTED

The Region's corrective action plan, if implemented, would increase the accuracy of SV reporting by WAQAs. It was scheduled for implementation during fiscal 1997, but as of June 30, 1997 the Region had not initiated any of the planned actions. The Region stated that implementation of the plan was delayed because they were considering more complete evaluations to include States' inspections and enforcement follow-up on violations, in addition to identification and reporting of SVs.

Some Corrective Actions Taken

While the Region has not yet implemented its original or an expanded plan, it has taken some corrective action. At the request of WDOE, the Region expanded the monthly conference calls/meetings to involve representatives from all the WAQAs instead of one person from WDOE representing the WAQAs. While we believe this effort should increase reporting of SVs, the Region needs to implement the corrective action plan and other steps (as discussed below) to completely address the reporting problem.

**ADDITIONAL STEPS
NEED TO BE TAKEN TO
IMPROVE REPORTING
OF SVs**

While the Region's planned corrective actions, if implemented, would provide some improvements in reporting SVs, additional steps need to be taken to address some underlying causes of under reporting. The Region needs to: (i) conduct periodic evaluations of WAQAs air programs to ensure consistent implementation with EPA guidance; (ii) work with WAQAs to ensure they fully apply the SV definition; (iii) review enforcement actions recorded in AFS by WAQAs; and (iv) finalize a new compliance assurance agreement with the WAQAs.

To identify the causes for and the extent of under reporting of SVs, we reviewed reporting practices of selected WAQAs for fiscal 1996. During this period, 7 of the 178 major stationary sources in AFS for the State were reported as SVs. To assess the proper status of the other 171 sources, we selectively sampled 42 at four WAQAs. For 11 of the sampled sources we could not determine the compliance status because of the WAQAs inadequate inspection procedures (see Chapter 3 of this report). For the remaining 31 major stationary sources, 17 (55 percent) had violations during fiscal 1996 that met EPA's SV definition; yet they were not reported as SVs in AFS.

There were various reasons why the WAQAs were not reporting SVs, including they: (i) had not established procedures for reporting SVs to the Region; (ii) did not fully apply the SV criteria; (iii) did not report violations if timely compliance was achieved; and (iv) considered some violations insignificant.

The Region was unaware of the significant violations by these major sources. As a result, it was unable to monitor the compliance status of SVs and was limited in its ability to evaluate whether timely and appropriate enforcement actions were taken against SVs. The results of our review at the four WAQA are discussed below.

**Washington Department
of Ecology-Industrial
Section (WDOE)**

The review of enforcement files for 9 of the 18 major sources showed that 7 sources had violations which met EPA's SV definition. The seven sources were not reported as SVs to the Region. The WDOE had issued notices of violations (NOVs) against five of the seven sources. Many of the NOVs were recorded in AFS but they were not identified as SVs because WDOE had not included these NOVs in its monthly conferences with the Region, and the Region did not review the information in

AFS to identify these potential SVs.

CEM data that did not result in a formal enforcement action were considered minor.

One NOV issued against a source had not been resolved timely. In this situation, the NOV cited six violations, of which two remain unresolved. One violation was more than 2 years old. The violations related to a failure to operate equipment within required limits, resulting in excess emissions. These outstanding violations had not been reported to the Region and we found no evidence that the source achieved compliance.

The other two sources that met EPA's SV definition had emission violations that were based on continuous emission monitoring (CEM) data for which no enforcement actions were taken. WDOE indicated these violations were minor exceedences. While WDOE's comments are noted, based on EPA's guidance, these violations met the SV definition.

SVs went unreported because: (i) violations were often corrected before or within 30 days of issuing the NOV; (ii) enforcement actions recorded in AFS by WDOE were not discussed during monthly conference calls or meetings; and (iii) excess emissions based on

**Puget Sound Air
Pollution Control
Authority (APCA)**

The WDOE commented that prior to 1997, emission limit exceedences were not routinely reported or identified to the Region due mostly to a lack of understanding by the WAQAs of what the Region considered a violation and efforts by the WAQAs to correct violations quickly. It maintains that emission exceedences that are identified and resolved within a 30-day time period do not constitute a significant violation. However, WDOE agrees that such violations should be reported in AFS and advised that new procedures were implemented that included reporting any violation at major sources to the Region during monthly conference calls/meetings.

The review of enforcement files for 19 of 54 major sources showed that 6 sources had violations which had not been reported as SVs. The compliance status for 6 of the remaining 13 sources reviewed was not determinable because the facilities had not been adequately inspected by the APCA.

The APCA had not adequately identified all SVs because:

1. It did not use the complete SV definition for major sources contained in EPA's *Timely and Appropriate Enforcement Response Guidance*. Accordingly, the APCA excluded some violations related to:

- State Implementation Plan (SIP) emission, monitoring, or substantial procedural requirements, regardless of pollutant designation status.
- New Source Performance Standards (NSPS) emission, monitoring or substantial procedural requirements.
- National Emission Standards for Hazardous Air Pollutants (NESHAP) emission, monitoring or substantial procedural requirements for existing NESHAP standards and promulgated maximum achievable control technology requirements.

2. It had not established procedures to identify SVs at the time the violations were first identified. Instead, SVs were not identified and reported until penalty assessments were initiated against the sources. Violations that did not result in penalty assessments were not evaluated against the SV definition.

**Southwest Air Pollution
Control Authority (APCA)**

The review of enforcement files for 8 of 14 major sources showed that 4 sources had violations which met EPA's SV definition. None of the violations had been reported as SVs in AFS. The APCA did not report these violations because three of the four violations identified were not considered to be significant by its interpretation of the SV definition. The three violations were related to visible emissions from ship loading operations at grain elevators which are not subject to federal or state standards. The violations cited were based on the APCA's rules which are more stringent than the federal or state standards.

We agree that the three violations were based on local APCA rules. However, these rules have been incorporated into the State's SIP. SIP violations meet the definition of a SV in accordance with EPA guidance which states:

- agencies shall deem a source to be a Significant Violator if it is: 1. a. major source ... ,and it violates any one or more of the following:
 - a. SIP emission, monitoring or substantial procedural requirements ...

The fourth violation was at a source that was under a consent order administered by the Region for past violations, and the APCA advised that the Region was aware of the current violation. The current violation related to excess emissions of benzene, a toxic air pollutant. The APCA did not consider this violation a significant air quality issue. Our discussions with a regional official indicated they were not aware of this violation. However, the Region agreed the violation meets the SV definition and should have been reported.

We also noted that violations at two of the four sources had not been resolved within the 150-day time line specified by the EPA's *Timely and Appropriate Enforcement Response Guidance*. Since the sources were not identified as SVs, this may have contributed to the delay in corrective actions.

**Yakima Regional Clean
Air Authority (RCAA)**

The review of enforcement files for all six major sources under the RCAA jurisdiction showed that one was reported as a SV in AFS. The compliance status for the other five sources was not determinable because the facilities had not been adequately

inspected by the RCAA.

EPA guidance on reporting SVs is intended to be used by EPA Regions, states, and local air agencies. When effectively implemented, it will ensure that violations which are environmentally most important, namely SVs, are highlighted so they can be addressed in a timely and appropriate manner. The Region needs to take steps to address the under reporting of SVs in the State. This includes implementing the corrective action plan it prepared for fiscal 1997 as well as evaluating WAQAs' programs, assisting WAQAs in implementing SV programs, reviewing enforcement data in AFS, and finalizing a new compliance assurance agreement with the WAQAs.

We recommend that the Regional Administrator:

- 2-1. Implement the corrective action plan submitted to OECA on December 5, 1996.

CONCLUSION

RECOMMENDATIONS

- 2-2. Conduct evaluations of the WAQAs' programs for consistency with EPA guidance.
- 2-3. Work with WAQAs to ensure they apply the SV definition to major sources.
- 2-4. Review enforcement data from AFS to identify SVs.
- 2-5. Give priority to completing a new compliance assurance agreement with the WAQAs.

REGION COMMENTS AND OIG EVALUATION

We agree with the corrective actions the Region has taken or planned to take. We are aware of the concern by state and local air agencies regarding the SV definition. To address this concern, a work group, involving EPA and two independent organizations representing the states and locals nationwide, has been established to discuss revisions to the current SV policy. However, as stated in a June 27, 1997, OECA memorandum, the current SV policy is still in effect. The memorandum states:

We have recently agreed to consider requests to modify this policy (*Timely and Appropriate Enforcement Response to Significant Air*

The Region concurred with our recommendations and described corrective actions that have been or will be taken. The Region also commented that there is an implication that SVs involve the environmentally most important violations. It advised there is currently some debate whether some violations designated as significant under the current definition are minor in scope or impact, and should not be considered environmentally significant.

Pollution Violators - SVT&A) in certain respects. However, we have not agreed to any specific revisions or to a suspension of any of the provisions of that policy while this review is being conducted. The SVT&A Policy is controlling until revised.

The memorandum further states that the policy avoids subjective determinations to the extent practicable in the initial identifications of significant violations, requiring identification of all emission requirement violations, all monitoring requirement violations and all substantial procedural requirements.

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CHAPTER 3

SOME SIGNIFICANT VIOLATORS NOT IDENTIFIED

Two of four WAQAs reviewed were not identifying SVs consistent with EPA's compliance and enforcement guidance. Inspections conducted at 11 of 20 major stationary sources by the WAQAs did not meet EPA level 2 inspection criteria. In addition, inspection reports on two other sources did not contain sufficient detail to verify that level 2 inspections were conducted. As a result, the Region was not assured that major stationary sources were in compliance with the Act and SVs might go undetected for long periods before corrective action is taken. This occurred because the Region had not implemented an effective oversight program for assuring inspections were thorough enough (equivalent to level 2) to determine whether the sources' operations met the requirements of the Act.

BACKGROUND

An inspection is the air program's primary compliance assurance method for validating major stationary source performance. In its absence, EPA lacks sufficient evidence that a particular source is operating in compliance with the Act. Accordingly, EPA requires periodic onsite inspections, usually once a year, of major stationary sources to check whether a source is complying with emission limits and whether emission control systems are working properly. Inspections provide an effective mechanism for identifying SVs.

The *EPA Clean Air Act Compliance and Enforcement Guidance Manual* specifies five levels of inspections, of which level 2 is considered to be the minimum for compliance determinations. A level 2 inspection is an onsite inspection of a facility. It comprises reviewing facility records, recording process rates and control equipment performance parameters, and performing visible emission observations. These inspection activities are intended to ensure that: (i) the compliance status of each source is determined in a credible manner; (ii) a source in violation of regulated or permitted emissions is not overlooked; and (iii) sources determined to be in compliance with applicable emission limitations have been thoroughly and completely evaluated. Inspection reports are

prepared to summarize findings and recommendations following level 2 inspections. The 1993 Compliance Assurance Agreement provided a mechanism to ensure inspections conducted by WAQAs were consistent with EPA guidance. The agreement states that:

EPA will conduct oversight (joint) inspections by (or with) WAQAs to ensure that the quality of inspections and the reports documenting the inspections are consistent and complete. If appropriate, EPA will provide guidance, either generically or on a case-by-case basis, to assist the WAQAs to improve their program.

INSPECTIONS WERE NOT LEVEL 2

Two WAQAs (Puget Sound APCA and Yakima RCAA) had not conducted level 2 inspections for 11 of 20 major stationary sources reviewed. Although the inspections were identified as level 2 in the Region's database, there was not any evidence in the files that the inspections met EPA's level 2 inspection criteria.

Puget Sound APCA

Inspections for 6 of 14 major sources did not fully meet EPA level 2 inspection criteria. Inspection reports for the six sources disclosed that the inspections did not cover 100 percent of the facilities' source points. For example, the inspection reports issued December 1, 1995 and April 3, 1996 for a lime manufacturing company provided inspection results for a heat exchanger and hydrator scrubber, respectively. However, the inspections did not include other point sources at the facility such as the baghouses and the coal firing system.

The incomplete inspections were attributed to the APCA not having procedures to ensure that scheduled level 2 inspections met EPA's level 2 inspection criteria. In response to this issue, the APCA acknowledged that its inspections were not level 2 and stated it planned to implement improvements. It has initiated action to work with the Region to ensure that its inspectors receive training on conducting level 2 inspections.

Yakima RCAA

Inspections conducted for five of six major stationary sources did not fully meet the EPA level 2 inspection criteria. The inspection records for the five sources showed that the inspections were based solely on observations for visible opacity emissions. There were no indications that the inspector evaluated the sources' operation, such

as determining compliance with operating parameters established in the construction permits. Also, inspection reports were not prepared as required by EPA guidance.

The causes of deficiencies in inspections conducted by the RCAA include a lack of written policies or guidelines on how to conduct source inspections, as well as providing timely training to inspectors. In addition, the RCAA did not always have the most current permits or other pertinent information during an inspection because of the RCAA's poorly maintained and disorganized filing system. The documents were loose in the folders and generally not in any chronological or sectional order. Some key documents, such as construction permits and prior inspection reports, could not be located in the files. Consequently, the inspector was unable to conduct inspections in a thorough and effective manner.

We noted that the RCAA issued a consent decree against one of the five sources in December 1995, requiring the company to install emission control equipment at the facility by December 1997. Also, the decree required the company to take all reasonable precautions for the operation and maintenance (O&M) of existing equipment to prevent excess emissions while the compliance schedule was being complied with. In addition, if the company failed to conduct reasonable O&M to prevent excesses, penalties could be assessed for each day that the excess emissions occur.

Because the RCAA had not adequately inspected the facility to verify that the company conducted reasonable O&M to prevent exceedences, the company continued to report excess emissions without having to demonstrate that reasonable measures were taken to prevent the excess emissions. A review of 4 months of emission data submitted by the company between December 1995 and June 1997 showed an average of 30 opacity violations occurred each month.

The RCAA commented that there were additional facts pertinent to this facility. It advised that it had:

1. An on going dialogue with the source which resulted in numerous operating and management changes.
2. Conducted and reported on five "method nine" inspections.
3. Made numerous unannounced visits and drive-bys by staff.

4. Made three (maybe four) on-site tours of the facility.

RCAA records that we reviewed did not have written documentation or other evidence supporting these assertions. The records, however, did contain evidence that the excess emissions at the facility appeared constant for over a year and a half.

RCAA officials also stated that in 1996 they had restructured their organization as well as a change in management to improve their air program. While some improvements have been made, they acknowledge there is still much more that needs to be done.

INSPECTION REPORTS WERE INCOMPLETE

Reports for two major source inspections at the Puget Sound APCA did not provide sufficient information to verify that level 2 inspections were conducted. While we were able to determine that level 2 inspections were actually conducted, we concluded that inspection reports were insufficient because the APCA had not established procedures to ensure that inspection results were adequately documented.

For the two major sources, the inspection reports did not indicate whether O&M records were reviewed. O&M records provide important information when investigating possible causes of air emission violations, as well as control equipment breakdowns.

THE REGION'S OVERSIGHT WAS INSUFFICIENT

The Region's oversight activities were insufficient to ensure level 2 inspections were being performed by WAQAs. While the Region conducted some joint inspections with the WAQAs included in our review, we found no instances where formal evaluations of WAQA inspectors' performance were completed by the Region. Additionally, the Region had not ensured that the WAQAs received adequate guidance and inspector training as agreed to in the 1993 Compliance Assurance Agreement. We believe these actions are necessary to ensure that WAQA inspectors are conducting inspections consistent with EPA level 2 inspection criteria.

RECOMMENDATIONS

We recommend that the Regional Administrator:

- 3-1. Conduct evaluations of WAQA inspection programs to ensure they are consistent with EPA program guidance.
- 3-2. Ensure WAQA inspectors receive adequate training for conducting level 2 inspections of major stationary sources.
- 3-3. Periodically review inspection reports prepared by WAQAs to ensure the scheduled level 2 inspections reported to EPA are consistent with EPA inspection criteria.

**REGION COMMENTS
AND OIG EVALUATION**

The Region concurred with the recommendations and described corrective actions taken or planned during fiscal 1998. We agree with the corrective actions taken or planned by the Region.

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APPENDIX A

AUDIT SCOPE AND METHODOLOGY

Our audit was designed to address OECA's concern that States are under reporting SVs to EPA. Audit fieldwork was conducted between April 14, 1997 and November 21, 1997 at the Region and four WAQA offices (see Table below). The WAQAs selected have jurisdiction for 92 (52 percent) of the 178 major air stationary sources within the State of Washington. The audit covered procedures for identifying and reporting SVs in effect between October 1, 1995 and June 30, 1997.

Region 10	State Agency	Local Air Authority
! Office of Air Quality	! Washington Department of Ecology Industrial Section	! Puget Sound Air Pollution Control Authority ! Southwest Air Pollution Control Authority ! Yakima Regional Clean Air Authority

The scope included a review of management controls associated with identification and reporting of SVs. We obtained an understanding of those controls through inquiries, observations, and inspections of documents and records. We assessed the control environment, policies, and procedures for the offices listed above.

Specifically, we interviewed officials in the Region's Office of Air Quality and the four WAQAs. We reviewed the Region's proposed strategy for addressing under reporting of SVs, as well as applicable laws, regulations, guidance documents, and examined records maintained at the offices. We did not review the appropriateness of enforcement actions taken by WAQAs because of a recent national OIG audit (Report No.

E1GAE5-05-0169-7100306, dated September 30, 1997) which addressed this issue. That audit report contained recommendations to OECA for improving enforcement programs to deter violators across the nation.

To assess the extent of under reporting of SVs in Washington, we selected a judgement sample of 42 air quality files from 92 major stationary sources within the jurisdiction of the selected WAQAs. The judgement sample consisted of sources that (i) had notices of violation issued, or (ii) were inspected during fiscal 1996 with no violations reported.

To evaluate the adequacy of identifying SVs, we selected a judgement sample of 35 scheduled level 2 compliance inspections out of 87 for fiscal 1996. We reviewed the inspection reports prepared and evaluated the results based on EPA level 2 inspection criteria.

Finally, we compared major source information obtained from AFS with information obtained from WAQAs for the same time period, and followed up on any differences. However, we did not review the internal controls associated with the input and processing of information into AFS or any other automated record system.

APPENDIX B

OTHER MATTERS

During the audit we noted numerous errors in data the Region was responsible for maintaining in a national database (commonly known as AFS). We have not included this matter as a finding with recommendations because the problem appears to be nationwide and Headquarters is aware of it. However, we are presenting the condition here to highlight the need for management to be aware that the extent of errors in the classification codes jeopardizes the reliability of the data. We do not believe that policy or management decisions should be made based upon the data.

STATIONARY SOURCES INCORRECTLY CLASSIFIED IN AFS

Stationary air sources contained in the AFS were incorrectly classified. The Region reported a total of 353 stationary sources in AFS for the State. According to a memorandum, dated April 27, 1993, issued by Headquarters' Office of Air and Radiation, the stationary sources were to be categorized into four classification codes for consistency with current definitions in the Act:

- A - pollutants emitted or have potential to be emitted in major amounts from the source as defined by the Act. (Major)
- SM - potential to emit pollutants in major threshold amounts if federal limits were violated. (Synthetic Minor)
- B - actual or potential emissions below all applicable major source thresholds. (Minor)
- C - class is unknown.

We found that 214 (60 percent) of the 353 sources in AFS were not categorized using these classification codes. Instead, they were classified as A1, A2, or Other. The April 1993 memorandum indicated that these codes were obsolete after December 1994.

The Region stated that the reclassification had not been completed

because: (i) Headquarters had not “pushed” the reclassification requirement, and as a result, none of the regions had completed the revisions; (ii) it was involved with merging two other automated compliance databases into AFS; and (iii) of turnover in staff.

EPA Headquarters stated that it has been lenient on the requirement to reclassify the sources because: (i) it realized, after issuing the guidance, that the timeframe for completion by December 1994 was unrealistic due to the large number of sources in AFS; and (ii) many sources will change class size under the Title V program. It also stated that the use of the obsolete classification codes should not prevent sources from being flagged as a SV.

It has been almost 3 years since the stationary sources in AFS were to be reclassified and neither the Region nor Headquarters have committed to establishing a timeframe for completing the reclassification. As a result, many sources in AFS do not have an identification consistent with the Act.

In response to the draft report, the Region agreed that it needs to complete the reclassification and indicated it “has begun working with the States to reclassify the source codes and to ensure that State enforcement activity in AFS is complete and accurate.”

APPENDIX C

ACRONYMS

ACT	Clean Air Act
AFS	Aerometric Information Retrieval System Facility Subsystem
APCA	Air Pollution Control Authority
CEM	Continuous Emission Monitoring
EPA	Environmental Protection Agency
NESHAP	National Emission Standards for Hazardous Air Pollutants
NOV	Notice of Violation
NSPS	New Source Performance Standards
O&M	Operation and Maintenance
OECA	Office of Enforcement and Compliance Assurance
OIG	Office of Inspector General
RCAA	Regional Clean Air Authority
SIP	State Implementation Plan
SV	Significant Violator
the State	Washington State
WAQA	Washington Air Quality Authority
WDOE	Washington Department of Ecology

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APPENDIX D

REGION RESPONSE TO DRAFT REPORT

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

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**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 10**

1200 Sixth Avenue
Seattle, Washington 98101

FEB 20 1998

Reply To
Attn Of: OAQ-107

MEMORANDUM

SUBJECT: Draft Report on Region 10's Oversight of Washington State's Air Compliance and Enforcement Program - Audit Report No. E1KAF7-10-0015

FROM: Chuck Clarke
Regional Administrator
EPA Region 10

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

Thank you for the opportunity to review your draft report and to provide comments on the findings and recommendations. We also received comments from all four of the Washington Air Quality Authorities (WAQAs) that were included in this audit. Some of their more significant comments or concerns are incorporated into this memo; however, I have also attached their responses for your review regarding specific details of fact and opinion.

In responding to the facts presented in the draft report, I will focus on those facts that the Region has direct knowledge of, and refer you to the attached WAQA responses for comments on the facts stated for respective agencies. Also, because there is not a specific section of the report summarizing the facts, I will identify and address those that are apparent in the paragraphs of the report, focussing on Chapters 2 and 3.

Chapter 2, Page 5, Paragraph 1: The numbers of reported significant violators (SVs) is correct (i.e., 7 out of 155 major sources were identified as new SVs during FY96). You should also be aware that there were 19 other major sources on the SV list for Washington that were being tracked as either unaddressed or addressed.

Page 5, Paragraph 2, Sentences 2 and 3: "The causes of under reporting of SVs were related to weaknesses in the Region's oversight and to WAQAs reporting practices. Some weaknesses related to the Region's oversight include:

"(i) formal procedures for evaluating WAQAs' air programs were not established by the Region;"

This statement should be clarified. Air Program Audits were conducted from 1984 through 1989 in Region 10 states as part of a National Air Audit Program. Since that time there have been a few targeted program reviews. In the 1990's, formal air compliance program evaluations have not been routinely conducted. The Air Program's oversight activities have included mid-year and end-of-year reviews of the states' grant-funded work plans, and ongoing tracking of WAQAs' responses to significant violators.

"(ii) instructions provided by the Region to WAQAs were not always clear; and"

We assume this statement is referring to the WAQAs' understanding of the Region's instructions, since instructions seemed clear to the Region. Prior to fall 1996, monthly meetings to discuss SVs identified and tracked by the Region and WAQAs were attended by staff from the Region and one person representing the WAQAs (i.e., Washington Dept. Of Ecology and seven local air agencies). Questions and issues regarding violations reported for specific sources and more general policies and procedures were supposedly transmitted through the state's Air Quality Compliance Coordinator to the various state's regional offices and local air agencies. During FY96 the WAQAs and the Region agreed that the way in which the monthly meetings were conducted was not efficient or effective in communicating EPA's expectations as agreed to by the WAQAs in the FY93 Compliance Assurance Agreement. That agreement sets procedures for identifying, reporting, and tracking SVs. The one area generating the most confusion has been the definition of significant violator, as defined in EPA's Guidance on the Timely and Appropriate Enforcement Response to Significant Air Pollution Violators.

"(iii) enforcement data recorded in AFS by the WDOE were not being used to report potential SVs."

This statement should refer to the routine use of AFS data. The Region has retrieved data from the national database (AFS) in the past to review state enforcement actions, but has not reviewed the state data on a routine basis to identify SVs. We have relied on the states to identify and report all SVs that would be discussed during our monthly SV calls. Verifying the accuracy of the state's quarterly submittal to AFS or questioning the data submitted would be part of a review of the adequacy of a state's program.

Page 6, Paragraph 2: The statement referring to the state reporting SVs to EPA and maintaining those facilities on the EPA list until compliance is achieved needs clarification. This sentence should state that, in Region 10, EPA controls the SV designation in AFS and, only after consultation with the state or local agency, EPA will either add a source to the SV list or delete a source from the SV list.

Page 8 - Corrective Action Plan Not Implemented, Paragraphs 1 and 2: The statement that the employees initially assigned to implement the Region's corrective action plan (as described in the 12/5/96 memo) had been working on other priority assignments needs clarification. The corrective action plan described in the December memo was proposed but was delayed in its implementation. There were no assignments made to implement the plan. Subsequent to the December memo, the Region discussed how to implement the proposed survey in all four states in a short time frame. The Office of Air decided that, if we wanted to assess the adequacy of states' compliance programs, we should include evaluations of their inspections and enforcement follow up to violations, in addition to their identification and reporting of SVs. Therefore, we were considering if we should conduct more complete evaluations of the states' air compliance programs than were originally proposed.

About that same time (early 1997), your office initiated a screening survey of Washington and Oregon air programs regarding adequacy of identifying and reporting SVs to EPA. Your office's original scope also included reviewing those states' enforcement responses to the SVs. Because of your office's proposed surveys in these two states, the Region decided to delay implementing its own reviews until after receiving results from your survey. We wanted to build on and supplement your review and not duplicate effort due to limited resources which would be diverted from EPA enforcement activity. In addition, there were discussions in the Region outside of the Office of Air Quality about designing and conducting comprehensive multi-media program enforcement program evaluations in each state. The Region's Office of Air Quality is currently a participant in a Regional workgroup, which includes representatives from the states, who are developing criteria to be used for evaluating adequacy of state compliance and enforcement programs. The criteria will be finalized by March 1998 and some specific program evaluations should begin by early summer of this year. These criteria will enable the Region to more effectively evaluate the states' air programs. The above activities contributed to delayed implementation of the originally proposed plan to conduct file reviews in all four states by mid-FY97.

Page 8, Paragraph 2, Last Sentence: The sentence in the draft report states that the focus of the comprehensive multi-media program evaluations will be priority data reporting. These comprehensive reviews will look at all aspects of the states' programs, of which data reporting is one of many.

Page 10, Puget Sound APCA, Item 1, Sentence 2: The wording "Accordingly, the APCA excluded violations related to:" could be interpreted as all violations related to SIP, NSPS, and NESHAP were not reported to EPA. This sentence should probably say "some violations."

Page 11, Conclusion, Second Sentence: There is an implication that the SVs are the environmentally most important violations. There is currently some debate over the SV

definition, regarding whether or not some violations designated as significant under the current definition are minor in scope or impact, and should not be considered environmentally significant.

Page 11, Recommendations:

1. Implement the corrective action plan submitted to OECA on December 5, 1996.

Concur: The Office of Air Quality is committed to design and implement a process for evaluating the adequacy of the state and local air agency compliance and enforcement programs. The plan will be designed in FY98 and implementation in at least one state will begin in FY98.

2. Develop procedures to periodically evaluate enforcement programs at WAQAs to ensure they are operating their programs consistent with EPA guidance.

Concur: Procedures for evaluating state programs, including appropriate criteria, are being developed as part of a Regional effort involving our state partners. The developed criteria will apply to all media compliance and enforcement programs and include all areas of the state programs that have direct and indirect impacts on improvements to protection of human health and the environment. The procedures should be completed in FY98, followed by initial implementation by the Region's Office of Air Quality.

3. Work with WAQAs to ensure they apply the SV definition against major sources.

Concur: This recommendation was implemented in FY97. We have substituted the monthly meetings with the state's Air Quality Compliance Coordinator with monthly conference calls that include representatives from all the WAQAs. These calls have resulted in a better understanding of the SV definition and improvement to the quantity and quality of violation data reported to EPA.

4. Review enforcement data from AFS to identify SVs.

Concur: This recommendation will be implemented in FY98 beginning with a review of enforcement data submitted by the states for the 2nd quarter of FY98. We will continue to review the states' data on a quarterly basis.

5. Give priority to completing the compliance assurance agreement so it can be used as a mechanism to assure WAQAs have an understanding of EPA's expectation and procedures to be followed for reporting SVs.

Concur: This recommendation has been implemented. A revised compliance assurance agreement was signed on February 17, 1998.

Chapter 3 - Findings:

Page 14, Paragraph 4: Inspections did not meet EPA level 2 inspection criteria at 6 out of 14 major source inspections by the Puget Sound Air Pollution Control Agency (PSAPCA) and 5 out of 6 major source inspections by the Yakima Regional Clean Air Authority (YRCAA). The following are responses from PSAPCA and YRCAA to this statement:

PSAPCA agreed with the findings and have begun implementing actions to improve their inspection program. They have designed and presented a Level 2 Inspection refresher course for their Inspection staff and are developing an Inspection Report Writing class. The Region will verify PSAPCA's corrective actions during its FY98 end-of-year review.

YRCAA gave numerous comments on the draft report regarding inconsistencies, questions, and concerns. They believe the report does not reflect all the information given to the auditor and is not a fair assessment of their program. Please refer to their attached response for details.

Page 16, Paragraph 2: The Region's oversight was insufficient. State and local inspectors did not have adequate guidance and training, and the Region's inspectors did not evaluate the state/local inspectors' performance during joint inspections. In addition, the Region has not evaluated the state's and locals' overall inspection programs.

The above statements warrant further explanation. Evaluations of inspection programs were included in the national air audits performed in the mid to late 1980's. Since that time, there have not been regular reviews of the state and local air agencies or evaluations of the states' and locals' inspections. Over the last few years, if inconsistencies in findings and conclusions occurred between EPA and state inspectors during a joint/oversight inspection, those issues would be discussed and resolved in subsequent meetings. These case-by-case instances could be used for evaluating the adequacy of the state's inspections even though formal evaluations of these instances were not conducted. The concerns expressed in this finding will be addressed when the Region implements the state evaluations discussed in the responses to the following recommendations.

Page 16, Recommendations:

1. Conduct evaluations of State and local inspection programs to ensure they are consistent with EPA program guidance.

Concur. Inspection programs will be included for review in the air compliance program evaluations that the Region will design and begin implementing in FY98.

2. Review State and local training manifest to ensure inspectors receive adequate training for conducting level 2 inspections of major stationary sources.

Concur. Under the compliance assurance agreement recently signed, EPA, the state and local agencies have agreed to jointly identify training priorities on an annual basis as part of the Collaborative Planning Process outlined in the agreement.

3. Periodically review inspection reports prepared by State and locals to ensure the scheduled level 2 inspections reported to EPA are consistent with EPA inspection criteria.

Concur. Reviews of inspection reports will be included in the air compliance program evaluations that the Region will begin implementing in FY98.

Appendix B, Other Matters: Inaccurate AFS Data

The Region agrees with the statements in the draft report regarding the need to improve the accuracy of the data in AFS and has already begun working with the states to reclassify source codes and to ensure that state enforcement activity in AFS is complete and accurate.

APPENDIX E

REPORT DISTRIBUTION

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