



# **Office of Inspector General**

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# **Audit Report**

## **Report of EPA's Oversight of State Stack Testing Programs**

**Report Number 2000-P-00019**

**September 11, 2000**



**Inspector General Division  
Conducting the Audit:**

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

**Program Offices Involved:**

**Office of Enforcement and  
Compliance Assurance  
Washington, D.C.**

**Regions Covered:**

**Regions II, III, V, and VII**

**State Covered:**

**New Jersey Department of  
Environmental Protection**



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September 11, 2000

**MEMORANDUM**

**SUBJECT:** Final Report of EPA's Oversight of  
State Stack Testing Programs  
Report Number 2000-P-00019

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**TO:** Steven A. Herman, Assistant Administrator  
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Regional Administrators I - X

Attached is our final audit report on the Environmental Protection Agency's (EPA's) Oversight of State Stack Testing Programs. The purpose of the audit was to determine whether states were either not requiring stack tests, or requiring stack tests and not reporting the results to EPA.

This audit report contains issues that describe conditions 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 finding contained in this audit report does not necessarily represent the final EPA position, and is not binding upon EPA in any enforcement proceeding brought by EPA or the Department of Justice.

## **ACTION REQUIRED**

This report makes recommendations to the Assistant Administrator for the Office of Enforcement and Compliance Assurance (OECA) and the EPA Regional Administrators. The Assistant Administrator of OECA is designated as the primary action official, and as such, should consolidate its response and the Regional comments into one Agency response. In accordance with EPA Order 2750, the action official is required to provide a written response to the audit report within 90 days of the date of this report, however, because OECA is asked to consolidate the regional responses we will provide them an additional 15 days. We ask that the Regional Administrators submit their response to OECA within 90 days and provide us an informational copy of their response. Also, please submit an electronic copy of the response.

We have no objections to the further release of this report to the public. Should your staff have any questions about this report, please have them contact Patrick Milligan or Lorraine Fleury at 215-814-5800.

Attachment

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## EXECUTIVE SUMMARY

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### **Purpose**

EPA headquarters officials requested we perform a review of state stack test programs. They were concerned that states were either not requiring stack tests or not reporting them to EPA. A stack test measures the amount of a specific pollutant or pollutants being emitted through stacks at a facility. Stack testing is one of the primary methods for determining compliance with emission limits.

### **Results-In-Brief**

EPA guidance does not clearly address important issues such as how and what stack testing information should be reported. As a result, EPA and the states are inconsistently implementing the stack test portion of their air enforcement programs. There is confusion and disagreement among the Office of Enforcement and Compliance Assurance (OECA), EPA regions and states regarding issues such as what stack test information should be reported, what is a stack test, and how tests should be performed and evaluated. For example, some regions require states to report stack test data into the Agency's database, while other regions do not.

Without sufficient stack testing information, regions do not know which facilities are testing and how often. As a result, facilities in some states may be subject to less stringent testing requirements, or even no stack testing. In order for EPA to fulfill its oversight function, more complete and consistent stack test information is needed. The Agency needs better assurance that states are requiring enough quality stack tests to identify violators of the CAA. Once EPA knows the condition of state programs, it can identify those states whose stack testing programs need improvement.

### **Recommendation**

We recommended that the Assistant Administrator for OECA work with the EPA regions and states to issue national guidance on stack testing. This guidance should address stack test activities such as: the definition of a stack

test; proper procedures for conducting tests; how tests will be counted; the type of stack test information needed; and how it will be reported. We also recommended that the 10 EPA Regional Administrators increase oversight of their states' stack test programs as needed, adequately monitor the flow of stack test data submitted by states, and perform sufficient follow-up on stack tests.

**EPA and New Jersey Response**

OECA, Regions I, II, III, V, VII, and IX, and New Jersey responded to our draft report and generally agreed with our finding and recommendations. OECA is currently working with the regions and states to develop a Compliance Monitoring Strategy (CMS) that addresses our recommendations.

**OIG Evaluation**

We concur with the Agency's response and the proposed corrective action. As OECA continues to work with the regions and states developing the CMS, it can be revised to address our recommendations. Also, EPA and New Jersey offered some clarifying suggestions and we revised the report accordingly.

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# CHAPTER 1

## INTRODUCTION

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### **Purpose**

Officials from the Office of Enforcement and Compliance Assurance (OECA) requested that we perform this review of state stack test programs. OECA was concerned that states were either not requiring stack tests or not reporting them to EPA. The objectives of our audit were to:

- ◆ Determine whether states were either not requiring stack tests, or requiring stack tests and not reporting the results to EPA.
- ◆ Evaluate state stack test programs.
- ◆ Assess the adequacy of EPA's oversight at the Headquarters and regional levels.
- ◆ Identify ways to improve the effectiveness of state stack test programs as well as EPA's oversight of state activities.

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### **Background**

EPA guidance lists five levels of inspections that can be performed at 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. To adequately evaluate a facility's compliance with the Clean Air Act (CAA), EPA's Compliance Monitoring Strategy (CMS) explains that states need to perform at least a Level 2 inspection at major stationary sources. The CMS defines the necessary tests and evaluations that must be performed for an inspection to be considered a Level 2. This type of inspection must include an assessment of the compliance status of all air pollution sources within the facility.

During a Level 4 inspection, which is the most thorough type, the inspector is required to monitor the operating parameters of all process and control devices during a stack

test. This type of inspection prepares an actual emissions baseline for the source through the use of a stack test. Once established, these parameters should be used to help determine compliance during future Level 2 inspections.

## **Description of a Stack Test**

A stack test, also referred to as a performance or source test, measures the amount of a specific pollutant or pollutants being emitted through stacks at a facility. These tests are performed primarily at major facilities, or at other facilities of concern. Generally, a major facility is any source which emits or has the potential to emit 100 tons per year of the more highly regulated pollutants subject to regulation under the CAA<sup>1</sup>. Some of the more highly regulated pollutants include particulate matter, sulfur dioxide, carbon monoxide, nitrogen oxide, and volatile organic compounds.

The number of stacks at a facility can vary considerably depending on the type and size of a facility. For example, some of the smaller major facilities may have a single stack, while larger facilities can have more than one hundred stacks. The stack test methods that must be followed are provided in the Code of Federal Regulations, unless the state has promulgated its own procedures that were approved by EPA. Any deviations from the recommended test methods must be approved by the state and/or EPA. Usually a stack test can take from one to three days to complete and generally includes three test runs. The cost to the facility for completing a test can typically range from \$10,000 to \$50,000 per stack.

### **Phases of a Stack Test**

A stack test usually consists of three phases, the: (1) protocol review; (2) test observation, and (3) final report review. Each phase is conducted to ensure that the test is appropriate, accurate, and valid.

Generally, a facility hires a consultant to conduct the stack test. The consultant prepares a protocol describing the pollutants to be tested, the test methods they plan to use, and the expected operating conditions at the facility. The

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<sup>1</sup>Facilities can also be classified as a major if they emit as low as 10 tons per year of selected pollutants such as lead.

protocol should be made available to regulatory personnel (EPA, state or local officials) for their review prior to the test. Once approved, a test date is scheduled.

Whenever possible, regulatory personnel should be present during enough of the testing to ensure the test is valid. Depending on the type of test, samples may be sent to a laboratory for analysis. After the test results have been analyzed, the consultant issues a final report to the facility. Regulatory personnel should review the report to determine whether the test was accurate, complete and valid. If the facility fails the test, the regulatory agency should take appropriate enforcement action to ensure the facility is brought into compliance. If the test is determined to be invalid, the regulatory agency should require retesting.

Enforcement actions typically begin with a notice of violation. Depending on the severity of the violation, the regulatory agency will take one of several enforcement actions. For example, a state or EPA Order will require the facility to take corrective action within a specified time frame, and if appropriate, the regulatory agency assesses a penalty.

### **Why Facilities Stack Test**

Some EPA and state officials view stack testing as the most effective way to determine compliance because it demonstrates whether a facility has the ability to comply with the CAA. Officials further explained that if a facility was ever going to be in compliance, it would be for a stack test. This is because the facility is aware that a test is scheduled and has ample time to adjust the equipment to demonstrate compliance with emission limits. However, despite this advance notice, some facilities fail the test. When this occurs, it is unlikely that the facility was in compliance prior to the test.

In addition to measuring the facility's ability to comply, stack testing is important for a variety of reasons, some of which are discussed below.

#### **Emission Factors**

A significant number of facilities are regulated based on emission factors, which are an estimate of the amount of pollution being emitted

at a facility. The states and EPA use emission factors when a facility does not have more reliable information. EPA developed these factors by first grouping types of industries and then specific manufacturing processes or equipment within that industry. For example, burning oil in industrial boilers results in carbon monoxide pollution. The amount of oil burned multiplied by the appropriate emission factor approximates the amount of carbon monoxide emitted into the atmosphere for a given period of time. This estimate is then used to help establish the emission limit in the facility's permit.

There are two reasons why stack tests should be conducted at facilities regulated by limits based on emission factors. First, emission factors are rated for reliability based on the quantity and quality of the test data used to calculate the factor. A 1996 OIG audit report entitled *Emission Factor Development* concluded that many of the emission factors used in estimating pollution are unreliable and outdated. If the emission factors are inaccurate, the facility may be emitting more pollution than appropriate, resulting in harm to the environment. The more stack test data used to develop the emission factors, the more reliable the estimates.

Second, as one New Jersey air inspector explained, stack test results at times differ significantly from the estimate used to develop the emission factor. Because the estimates are inaccurate, the facility is polluting more than the emission limit set in the facility's permit. This excess pollution may go undetected unless the state requires the facility to perform a stack test. When a stack test discloses that the facility is exceeding its permit limit or polluting more than it is allowed, the facility may need to lower production or install pollution control equipment in order to comply with the CAA.

#### Continuous Emission Monitoring System

A Continuous Emission Monitoring System (CEMS) is an apparatus placed on a stack, which continuously monitors and records a specific pollutant concentration. As a result, these monitors can provide information which may be directly enforceable. A modified stack test, called a performance specification test, is required when a CEMS is installed. This test is used to calibrate the

monitor and ensure it accurately measures emissions of the target pollutant.

EPA has not yet developed performance specification methods for continuous monitoring of some types of pollutants, such as particulate matter. For such pollutants, the only way to measure compliance with emission limits is to perform stack testing. Agency officials said that stack testing should be specified at certain intervals in order to ensure continuing compliance.

**Pollution-Causing  
Equipment**

The CAA of 1990 imposed more stringent requirements on regulated facilities, which included increased stack testing. For example, after

installing specific types of pollution equipment, facilities are required to conduct a stack test. In some cases, periodic tests are also required after the initial test.

When manufacturing equipment is first installed, it is designed to operate at the optimal level for minimizing pollution. However, the efficiency of this equipment may deteriorate over time without proper maintenance. Because the amount of pollution can increase as the equipment ages, there is a need to periodically stack test.

**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 performance audits. Our review included tests of program records and other auditing procedures we considered necessary for the purpose of expressing an opinion based on our audit objectives. Our recommendations address the need for EPA to clarify state reporting requirements of stack test information. This will improve the Agency's oversight of state air enforcement programs.

To accomplish our objectives, we conducted audit work at: OECA's Enforcement Planning, Targeting, and Data Division and its Air Enforcement Division, both in EPA Headquarters; four regional EPA offices, Regions II, III, V, VII; and the State of New Jersey. We held numerous interviews and meetings with officials from OECA, the Office of Air Quality Planning and Standards (OAQPS), the

regions, and NJDEP to discuss their roles and responsibilities in relation to the issues we identified. However, we did not conduct interviews or reviews at local agencies. In addition, we reviewed applicable laws, regulations, and records maintained by OECA, the regions and states.

We also held discussions with the State and Territorial Air Pollution Program Administrators and the Association of Local Air Pollution Control Officials (STAPPA/ALAPCO). These two national associations represent local and state air pollution control agencies throughout the United States.

In order to evaluate EPA's oversight of the stack testing program, we analyzed stack test data from the AIRS Facility Subsystem (AFS) database. Based on this analysis, we selected Region II and the State of New Jersey for review. To evaluate NJDEP's program, we reviewed stack test files maintained at the State office. The files contained items such as the facility's permit, the protocol, and a final report. In addition, the files contained correspondence prepared by the State to consultants performing the tests, the State's review of the protocol, the observer's checklist, and the State's evaluation of the final report.

To obtain information on regional oversight of state stack testing activities we sent a questionnaire to the 10 EPA regions. Based on the responses to the questionnaires, we visited three regions to further evaluate their programs.

Our survey began on December 7, 1998 and ended on May 7, 1999. As a result of the survey, we initiated an in-depth review on May 8, 1999. We completed the fieldwork on November 30, 1999. We met with senior OECA officials on December 14, 1999 to discuss the issues we planned to report and our proposed recommendations.

We issued the draft report on April 25, 2000. Because this audit was national in scope, we received comments from OECA, six EPA Regions and the State of New Jersey. Regions I, II, III, V, VII, and IX were the six Regions that commented on our draft report. We requested that the Assistant Administrator for OECA consolidate the EPA regional responses. OECA submitted the consolidated response to us on June 26, 2000 and New Jersey provided its

response on May 26, 2000. Based on the comments we received, we made minor modifications to our report. At the end of Chapter 2, we included a summary of EPA's and New Jersey's responses to our finding, as well as our evaluation of their responses. The complete responses from OECA, the EPA regions, and New Jersey are included in Appendices 1 through 3, respectively. Based on discussions with OECA personnel, we agreed that an exit meeting was not necessary because OECA concurred with the finding and recommendations in the report.

**Prior Audit Coverage**

An EPA OIG audit report entitled *Emission Factor Development* (#6100318) was issued on September 30, 1996. This report discussed the importance and impact of properly developing emission factors.

The OIG recommended that the limited progress made in emission factor development be reported as a material weakness under the Federal Manager's Financial Integrity Act. The Office of Air and Radiation (OAR) did not agree with the OIG recommendation, but did establish a five-year plan to address the emission factor program.

An EPA OIG audit report entitled *Consolidated Review of the Air Enforcement and Compliance Assistance Programs* (#7100306) was issued on September 30, 1997. This report consolidates national issues identified during reviews of Regions V, VI and IX's air enforcement and compliance assistance programs.

An EPA OIG audit report entitled *Consolidated Report on OECA's Oversight of Regional and State Air Enforcement Programs* (#8100244) was issued on September 25, 1998. This report was a compilation of audits performed nationwide on EPA's oversight of the air enforcement data at six states.

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## **CHAPTER 2**

### **STACK TEST ACTIVITIES AND STATE REPORTING NEED TO BE STANDARDIZED**

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The primary vehicle for controlling air emissions from stationary sources in the United States is through the state's permitting process. Substantial federal and state resources have gone into establishing the standards for issuing permits. Without a mechanism to effectively measure and evaluate facilities' performance, a permitting program is meaningless. Stack testing is one of the primary methods for determining compliance with emission limits.

EPA and the states are inconsistently implementing the stack test portion of their air enforcement programs. There is confusion and disagreement among OECA, EPA regions and states regarding issues such as what stack test information should be reported, what is a stack test, and how tests should be performed and evaluated. For example, some regions require states to report stack test data into the Agency's database, while other regions do not. These inconsistencies occurred because EPA guidance does not clearly address important issues such as how and what stack testing information should be reported.

Nonetheless, even without guidance requiring regions to obtain stack testing information from their states, each region should have obtained this information because it is necessary to adequately monitor a state's air enforcement program. Without sufficient stack testing information, regions do not know which facilities are testing and how often. As a result, facilities in some states may be subject to less stringent testing requirements, or even no stack testing. Moreover, if facilities are not required to stack test, violations can go undetected.

It is also important to consistently conduct stack testing because these tests are expensive. One test can cost as much as \$50,000. As a result, facilities that do not stack test have an unfair economic advantage over those that do test. EPA

needs to develop guidance to resolve these inconsistencies and create uniformity among the regions and states, so that needed stack tests are performed and monitored consistently.

**Inaccurate EPA Database**

According to EPA’s database, only 14 percent of the 40,000 major facilities in the nation had a stack test at one or more emission units in a 10-year period. The regions are listed by the percentage of facilities where testing occurred.

<b>STACK TESTS REPORTED IN AFS FROM 1989 TO 1998</b>			
<b>Region</b>	<b>Number of Major</b>		<b>% Tested</b>
	<b>Facilities*</b>	<b>Tested</b>	
II	3,463	21	1
VII	4,369	194	4
IX	3,164	149	5
IV	7,208	638	9
VIII	2,268	241	11
I	2,113	284	13
X	1,046	200	19
VI	4,071	779	19
III	4,218	899	21
V	7,833	2,032	26
<b>Nationwide</b>	<b>39,753</b>	<b>5,437</b>	<b>14</b>

\*Includes synthetic minors

Our review determined that the stack testing information was inaccurate, and insufficient for evaluating each states’ or regions’ stack testing efforts. Because of inaccuracies in the stack testing information in EPA’s database, the following conditions are possible. Namely, regions and states could have over reported, under reported, or accurately reported the number of stack tests performed. The stack testing information in the Agency’s database indicates stack testing is occurring in some regions more than in others. If this information were accurate, EPA could require the regions to increase their efforts where not enough stack testing took place.

With very little accurate information available to determine how many stack tests were performed in each state and in each region, we were unable to fulfill one of the objectives of this audit, namely:

Determine whether states were either not requiring stack tests, or requiring stack tests and not reporting the results to EPA.

At the beginning of this audit we had general information that EPA's database was incomplete, but we believed that regional offices would have the accurate information about stack tests. However, we found that this was not true. Without information showing which states and regions were requiring tests as well as those not requiring them, we could not select states to show best practices or those requiring improvement. While we could not fulfill OECA's request in this area, we were able to satisfy the three other objectives of our audit. By doing so, we provided OECA and the regions with information and recommendations needed to improve EPA's stack testing program. Once these recommendations are implemented, it will be possible to fulfill the uncompleted objective. We would undertake that effort if desired by EPA.

**Inaccuracies  
Confirmed**

To begin our review we selected the State of New Jersey which has 1,187 major facilities and reported in AFS only 12 stack tests to EPA during a 10-year period. However, our review of NJDEP indicated that the State had monitored more than 900 stack tests in a 5-year period and had a quality stack test program. It is noteworthy that both Regional and State officials agreed that NJDEP was not required to report stack tests into AFS. Region officials also assured us that NJDEP had a quality stack test program, but EPA personnel had no evidence to support this assertion. For example, the Region did not have information such as, the number of stack tests performed, those tests monitored by the State, pass or fail rates, and the number of retests.

To ensure that stack tests are performed when necessary the state can:

- ◆ Require a stack test as a condition of the permit. These tests can be required either initially after the permit is issued, or periodically while the permit is in effect;

- ◆ Require a stack test every five years when the permit is renewed, if the inspector believes a facility may be exceeding its emission limits; and
- ◆ Perform a stack test any time it believes necessary. However, State officials said this rarely happens.

We then performed a review of the State's involvement in the three phases of a stack test: the protocol<sup>2</sup>, the observation of the test, and the final report. Our review included 147 stack test summaries for calendar year 1998 and found that 42 facilities, or 29 percent, failed to demonstrate compliance. From these 42 facilities, 33 exceeded their emission limits and 9 were required to be retested because the procedures used were invalid. These results confirm the importance of conducting stack tests to determine compliance. Also, such information would be useful to EPA to evaluate the effectiveness of New Jersey's program.

For the 42 files we reviewed, NJDEP found problems with 36 of the protocols submitted by the facility's test consultant. If deficiencies in the protocol are not identified and corrected, the results would be invalid. Consequently, because of the State's review of the protocols prior to the test, costly retests were avoided.

NJDEP officials believed that the most critical of stack testing oversight is the observation of the test. By attending the test, state inspectors can:

- ✓ Ensure the test equipment meets requirements;
- ✓ Evaluate the competency of the consultant performing the test;
- ✓ Assess whether facility operating conditions are appropriate; and
- ✓ Determine whether the test methods meet standards prescribed in the protocol.

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<sup>2</sup>The protocol is a technical document which describes the methods that will be used for testing the stack and the required operating conditions at the facility.

The observer's checklists we reviewed disclosed that State officials required modifications to 57 percent of the tests. Without these modifications, the tests would have been invalid and retests needed.

Because NJDEP was very active in the protocol review and test observation phases, their review of the final report often required fewer resources. Moreover, disagreements and controversies regarding the validity and enforceability of stack test results are minimized because the State was involved throughout the testing process.

Subsequently, we visited one of New Jersey's field offices to review 14 enforcement files for facilities that had failed stack tests. The State closed one facility after it failed five consecutive stack tests. Most of the remaining facilities applied for permit modifications to increase their emission limits. Increases are sometimes appropriate if the initial permit was based on inaccurate emission factors. In these cases, a higher limit would still meet all applicable requirements.

In conclusion, we found NJDEP had an effective and efficient stack testing program. To the contrary, the EPA Regional office and EPA's database had little information about the details and activities of the State's stack testing program.

### **Regional Responses to OIG Questionnaire**

We developed a questionnaire to obtain a nationwide perspective of stack testing because, through EPA's inaccurate database, we were unable to identify which states were requiring tests. We sent the questionnaire to the Division Directors of the Air Management Divisions in each of the 10 EPA Regions. The purpose of the questionnaire was to obtain information about the effectiveness of each region's oversight of state stack testing programs. It was also intended to gain an understanding of how state stack test programs operated. It is worth noting that most regions solicited input from their states before responding to the questionnaire. The following chart summarizes the responses we received from the regions.

<b>Summary of Regional Responses</b>			
<b>Survey Questions</b>	<b>Yes</b>	<b>No</b>	<b>Did Not Respond</b>
Do states have a stack test program?	10	0	0
Are results entered into AFS? ✓	5	4	1
Do regions receive stack test data other than through AFS?	10	0	0
Do regions evaluate effectiveness of state stack test programs?	7	3	0
Does Section 105 Grant require reporting of stack test activities? ✓	6	4	0
Are there reporting requirements other than AFS? ✓	5	5	0
Are stack tests required to be entered into AFS?*	3	2	5

\*This question was not specifically asked in the questionnaire, however, it was answered by half the regions.

Our survey found an overall inconsistency in regional oversight of state stack testing programs. For three questions, marked with a '✓', approximately half of the regions responded yes, while the other half replied no. The even divide in answers illustrates the need for EPA to clarify what is expected of the states by developing standardized reporting requirements.

Some regions receive more stack test information than others, and as a result, provided a more complete response to the questionnaire. For the most part, regional involvement with stack testing is on a case-by-case basis. For example, a region may be involved when the stack test is part of testing being performed to comply with a federal requirement or when the test is controversial.

The survey responses disclosed numerous discrepancies and contradictions in how regions and states operate their stack test programs. OECA, region, and state officials have differing opinions about: the definition of a stack test, which tests must be reported to EPA, the type of information reported, stack test procedures, and which facilities should be tested.

We visited three regions to develop some of these issues further. The remainder of this report describes these issues in detail and demonstrates the need for EPA's attention.

## **Uniform Stack Test Procedures Needed**

### **Stack Tests Reported Inconsistently**

The question of which stack tests must be reported was answered by the regional offices several different ways. Generally, the situations

described to us resulted in most stack tests not being reported. The most common response was that only a stack test performed as part of a Level 2 inspection must be reported. However, performing a Level 2 inspection in conjunction with a stack test is a rare occurrence. Among other activities, a Level 2 inspection requires the inspector to tour the plant, observe facility operations, inspect equipment and review records. Most times, if a state inspector is at the facility during a stack test, the reason is to observe the test, not to conduct a Level 2 inspection. Because both are usually not conducted simultaneously, several states do not report any stack tests, while several other states report minimal data.

To further complicate matters, EPA's guidance manual for inspections refers to stack testing under its definition of a Level 4 inspection. It describes Level 4 as a more detailed inspection than a Level 2. We believe that any stack test conducted would be considered a Level 4 inspection and should be reported. However, EPA personnel offered a different interpretation regarding what constitutes a Level 4 inspection. They defined a reportable stack test as a Level 4 inspection or greater only when every stack at the facility was tested. Their rationale is that to assess a facility's compliance, all stacks must be tested for all pollutants regulated at that facility. However, when facilities have multiple stacks, testing all stacks is a rare occurrence.

OECA officials stated that at a minimum, states should enter stack test failures in the Agency's database. Regions also agreed that if a facility fails the stack test, the state should place the facility on EPA's High Priority Violator List and notify the Agency of the failure. Similar to the Level 2 scenario, this would encompass only a small number of tests.

#### States Counting Tests Differently

EPA guidance does not specifically address how to count a stack test. One state in a Region considers each pollutant tested as an individual stack test recognizing there may be more than one pollutant tested at the stack. Another Region counts stack tests quite differently, resulting in a lower number of tests. At this Region, if there were five stacks at a facility and they were tested over a three-day period, it would be recorded as one stack test. These two Regions could perform the same amount of tests, but EPA data would not reflect that. For EPA to know the number of stack tests conducted, the Agency needs to ensure all Regions and states count tests in the same manner.

#### Variety of Stack Test Information Reported

Regions offered a number of situations where states provide different stack test information, ranging from only a notification that a test occurred to a detailed report on both the proposed test method and the results of the test. In response to our questionnaire, region officials also stated that they receive the information from the states in many different formats. These formats include:

- Quarterly printouts of all stack tests, when they were performed, and what the results were;
- Stack test summaries which are typically a short memorandum describing the test performed and the results of the test;
- Pretest summaries describing the specific test method(s) that will be employed and the final report depicting the results;

- Observation checklists completed by the state inspector during the stack test; and
- Data entry into AFS, either in the fields designated for stack tests or in the Remarks section.

It is noteworthy that several states within the same region submit stack test information differently. While there may be more than one way to adequately report this information, more consistency is needed. When data is reported in many formats, EPA can not compare state and regional stack testing programs.

For those states that do not routinely report any stack test data, states and regions must mutually decide on the type of information needed and how it will be reported.

Although EPA policies for stack testing define precise test procedures for specific pollutants, they do not address more general procedures such as what operating conditions should be used during the test. Consequently, some facilities are subject to more lenient operating requirements that can result in the stack test not accurately measuring compliance.

#### Different Test Conditions

When conducting a stack test, the facility's operating capacity is regulated because of the correlation between production and pollution. The allowable amount of production stated in the facility's permit should reflect worst case operating conditions at the facility. Worst case conditions are often attained when a facility is operating at its maximum capacity.

New Jersey stack test officials said they routinely require a facility to be running at least 95 percent of maximum operating capacity. The facility has to submit process data at the time of the test to substantiate this production level. If the company cannot meet the 95 percent production rate, the State may modify the permit to limit production. In rare instances, NJDEP may allow the company to run the stack test at less than 95 percent. The State would then evaluate the results to assess what the emissions level would be at 100 percent production. Through this analysis, the State

makes a determination if the facility has the ability to pass the test at a maximum permitted production level. If NJDEP determines the facility cannot pass the test, the State will either limit the facility's production or require the facility to retest at maximum production.

Personnel from two of the four EPA regions we visited said their states at times allow the stack test to be conducted at less than maximum operating capacity. In one region, they said some facilities could damage equipment or create unsafe conditions when operating at maximum capacity. The other region acknowledged accepting test results at less than maximum capacity without requiring the facility to modify its permit. If the facility typically operates at a capacity greater than what it was stack tested, the facility could pass the test, but be out of compliance under normal operating conditions. Moreover, allowing facilities to test at less than maximum capacity creates an unfair advantage over those states that rigidly enforce the requirement of stack testing at full capacity.

#### Test Stoppages Are Not Recorded

There are times when tests may need to be discontinued because either the facility's equipment or, more often, the test equipment malfunctions. Region and state

officials said that in some instances they question the validity of these stoppages. For example, a facility may suspect it is going to fail, but will cite a legitimate reason to avoid continuing the test. The Agency does not have a policy to address these stoppages. Moreover, both regional and state officials said it is almost impossible to prove that a facility stopped a test for invalid reasons.

These stoppages are not required to be recorded, and as such, EPA does not know how many times tests are stopped. It is necessary for the Agency to have this information. An excessive amount of test stoppages at a facility may indicate the facility is operating out of compliance. Likewise, many stoppages in one state could indicate that an individual consultant or facility is stopping tests when failure is imminent.

Another way that facilities avoid failing a stack test is by postponing it. A facility may conduct its own stack test

before the scheduled test date. If a company believes it will not pass, it will postpone the test until it can repair the problem. Although not in favor of this practice, state and EPA officials agree they have little recourse to prevent the postponement.

Another reason EPA should more closely regulate stack test procedures is the lack of controls regulating test consultants and laboratories. EPA does not require these companies to be accredited or meet quality standards to conduct or analyze stack test samples. There is an ongoing effort by the National Environmental Laboratory Accreditation Conference to develop nationally accepted standards for pollutants regulated under other EPA programs, including air. EPA and some state personnel expressed concern that without a laboratory certification program, there is less assurance samples are properly analyzed and results are accurate.

#### Facility Coverage

Before EPA can know whether facilities are conducting a sufficient amount of stack tests, it must first know which industries should

stack test. According to Agency personnel, there are many factors which would indicate the need for a stack test. For example, there would be a greater need for stack testing if a facility:

- ✓ Emits pollutants that are commonly measured by a stack test, or where the only method of determining compliance is by conducting a stack test;
- ✓ Does not have a Continuous Emission Monitoring System (CEMS) or other monitors which indicate compliance;
- ✓ Is not subject to some of the recent federal regulations which require stack tests;
- ✓ Has never stack tested or has not tested for a long time; or
- ✓ Has other indications of noncompliance, such as visible emissions, odor, or poor maintenance.

Currently, EPA has no procedures to readily identify those facilities which have a greater need for stack testing. We realize it would not be feasible to develop a comprehensive list of facilities currently in need of a test. However, by collecting more consistent, complete, and accurate stack test data, EPA would make progress toward identifying and tracking those facilities needing tests.

One EPA region has undertaken an initiative to target facilities as candidates for stack testing. From some of the larger facilities within that region, they chose facilities that are regulated for two specific pollutants. From this subset, the region selected three industries that they believe can only determine compliance with a stack test. To further reduce the number of candidates for stack testing, the region focused on those facilities that do not have CEMs and for which the regional file shows no evidence of any stack testing. To date, the region has identified this group of facilities likely to need a test, but due to budgetary constraints has suspended the effort pending additional funding.

#### Frequency of Tests

Similar to identifying which facilities need to be stack tested, the frequency of testing is a controversial issue. We received numerous responses from EPA officials regarding how often facilities should stack test. Frequency is influenced by many factors such as the facility's compliance history, the type of pollutants emitted, and the last time it was stack tested. We believe there is no single answer to how often facilities should test. NJDEP relies primarily on the initial permit approval, or the permit renewal process that occurs every five years to require facilities to stack test. If EPA more closely tracks stack test activities, the Agency would know which facilities have tested and which have not. Once a reliable tracking system is established, EPA and the states can begin to address appropriate testing frequencies for various types of facilities.

## **Conclusion**

EPA is not obtaining critical information such as how many tests are being conducted and whether the tests are adequate. In order for EPA to fulfill its oversight function, more complete and consistent stack test information is needed. The Agency needs better assurance that states are requiring enough quality stack tests to identify violators of the CAA. Once EPA knows the condition of state programs, it can identify those states whose stack testing programs need improvement.

We recognize that an effective stack testing program is primarily the responsibility of the states and that EPA has oversight responsibilities for state programs. However, ambiguous criteria and an overall lack of attention to stack testing has caused regions and states to carry out their programs inconsistently. By achieving more uniformity in state stack test programs, EPA will create a more level playing field and will help improve air quality.

## **Recommendations**

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

- 1-1 Decide on the definition of a stack test; proper procedures for conducting tests; how tests will be counted; the type of stack test information needed; and how it will be reported.

At a minimum, stack test information received from states should include when a test is completed, the results of the test, and the type of enforcement action taken for those facilities found in violation.

- 1-2 Issue a policy addressing test stoppages. This policy should include identifying those situations when it is appropriate to stop a test.
- 1-3 Identify those facilities where stack testing is the only way to determine compliance and then require stack testing at a specified frequency.

We recommend that the 10 EPA Regional Administrators increase oversight of their states' stack test programs as needed. Each Region can accomplish this by:

- 2-1 Adequately monitoring the flow of stack test data submitted by states. At a minimum, each Region should receive information from states which includes when a test is completed, the number of test stoppages, the results of the test, and the types of enforcement action taken for those facilities found in violation.
- 2-2 Performing sufficient follow-up on stack tests, particularly for those facilities that failed the test.

**OECA's Response** OECA concurred with our recommendations and agreed that stack testing is one of the primary methods for determining compliance with emission limits and that it is critical to its oversight function. Achieving increased uniformity in state stack test programs will help create a more level playing field and help improve air quality. These activities are integral to OECA's mission and the recommendations provided by the OIG can be implemented within current resources.

OECA plans to address our recommendations through the implementation of the revised Compliance Monitoring Strategy (CMS). OECA began the effort to revise the CMS in response to our 1998 report, *Consolidated Review of the Air Enforcement and Compliance Assurance Program*. In revising the CMS, OECA is planning to address the issues and recommendations we provided from both the 1998 report and this report. OECA is working with the regions and states to develop a CMS strategy that is responsive to our recommendations and will make stack testing a principal component of the CMS. Preliminary comments from the states indicate that a satisfactory resolution can be achieved. However, the final CMS is largely dependent on agreement with the states on the issues discussed in our report.

OECA also attached the EPA regional comments it received and stated that the regions generally concurred with our recommendations. OECA did not agree with Region II's comment that there must be significant regulatory changes in order to implement our recommendations.

**OIG Evaluation** We reviewed the draft CMS strategy dated March 29, 2000 developed by OECA's workgroup. One of the primary goals of this strategy is to provide a national policy for developing

CAA compliance monitoring programs, and delineate the roles and responsibilities of EPA and state/local agencies.

We agree with OECA's comment that our recommendations can be implemented without the need for significant regulatory changes. We also agree with OECA that the CMS is an appropriate policy to incorporate our recommendations because stack testing is already referenced several places in the draft. As OECA continues to work with the regions and states developing the CMS, it can be revised to address our detailed recommendations such as, defining a stack test, what is a countable stack test, and how the states will submit stack test information to EPA.

## **Regional Responses**

Regions I, III, V, VII, and IX generally agreed with our finding and recommendations. However, Region II officials neither agreed nor disagreed with the report because they were not sure what level of disagreement would constitute nonconcurrency. The regional responses are summarized below, followed by our evaluation of their comments.

Regions I, III, and IX agreed with our finding and recommendations, while Region VII generally concurred with the reported finding, but did not comment on the recommendations. Region V agreed with the report's conclusion that stack testing is a primary method for determining compliance with emission limits. However, Region V did not believe stack test procedures or reporting requirements needed to be included in the CMS policy.

Overall, the regions agreed that there needs to be a national policy addressing stack test activities. However, the regions varied as to the specific stack test activities which need clarification. Regions V and VII believed the national policy should address test stoppages and test frequency. Region I thought national guidance needed to better define stack test procedures and quality assurance controls. Region IX responded that all of the stack test activities discussed in this report should be clarified.

Regions III and IX emphasized that in order to effectively implement a national enforcement policy such as the CMS, air enforcement activities need to be included in the Section 105 grant process.

According to Region II officials, the draft report only addressed the quantity of stack tests, but fails to address the quality of the stack tests. They further suggested that the OIG should have undertaken an investigation of the quality and effectiveness of additional state and regional stack test oversight programs, if desired by EPA.

Region II believes that regulatory change is needed to require: periodic retesting, protocol submittal, acceptable operating conditions during testing and test stoppages, and the reporting of stack tests.

## **OIG Evaluation**

The regions generally agreed that EPA and the states need to issue a national policy to ensure more consistent and uniform stack test activities. However, regional responses show that differences exist about what stack test activities need to be addressed in the revised CMS policy. OECA, EPA regions, and the states must mutually agree on what stack testing information needs to be addressed in the revised CMS. Some regions responded that they have their own operating procedures for implementing the stack test portion of their air enforcement program. After the national stack test guidance is finalized, the regions must revise their own operating procedures accordingly.

In response to Region III's and Region IX's comments regarding Section 105 grant funds, OECA and OAR have recently decided that a portion of Section 105 funds will be linked to air enforcement activities. OECA is currently working with OAR to determine the proper fraction of Section 105 grant funds that should be earmarked for state and air enforcement activities.

We disagree with Region II's comment that the quality of stack testing oversight was not addressed in the draft report. The section of this report entitled "Inaccuracies Confirmed" emphasizes a quality stack testing program. We did evaluate the quality of NJDEP's stack test program. As stated in our report, EPA's AFS database indicated that NJDEP may not have had a quality program. We found the opposite, which demonstrated that AFS does not always accurately depict a state's stack test program. Without information showing which states and regions were requiring tests as well as those not requiring them, we could not select states to show best practices or those requiring

improvement. For this reason, we did not evaluate additional states and regions during our review. Therefore, until EPA obtains accurate data from the states, AFS is not a reliable source for evaluating a state's stack test program.

**NJDEP Response** NJDEP was pleased with the positive findings concerning its stack test program. While NJDEP concurred with the need for a defined EPA oversight program on a national level, they could not emphasize enough that EPA oversight should be achieved through limited and efficient reporting. Also, NJDEP believed that data reporting requirements for stack testing should not be mandated by EPA until both EPA and the states have jointly developed and agreed to such requirements on a national level. EPA should ensure that the reporting requirements are not so prescriptive as to effectively eliminate individual states' discretion to direct resources to priority issues.

NJDEP requested that the stack test guidance not be a separate document. NJDEP relies heavily, as do other states, on the Performance Partnership Agreement (PPA) process to articulate New Jersey and EPA direction and commitments for the upcoming years. The PPA also establishes the parameters for the relationship between the two agencies, which includes such things as data exchange. Therefore, any requirements (data reporting or otherwise) related to stack testing should be contained within the PPA, rather than within a separate guidance document.

**OIG Evaluation** OECA's workgroup is currently working with EPA regions and state officials to revise the Agency's Compliance Monitoring Strategy (CMS). The workgroup plans to address our finding and recommendations. Perhaps NJDEP should consider actively participating in this workgroup to better ensure its concerns are sufficiently addressed in the workgroup's final decision-making.

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**APPENDIX 1**  
**OECA'S RESPONSE TO DRAFT REPORT**

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

OFFICE OF  
ENFORCEMENT AND  
COMPLIANCE ASSURANCE

June 26, 2000

MEMORANDUM

SUBJECT: OECA's Response to OIG's Draft Report of EPA's Oversight of State Stack Testing Programs

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

TO: Carl A. Jannetti  
Divisional Inspector General for Audit  
Mid-Atlantic Division

A handwritten signature in black ink, appearing to read "SK Lowrance", written over the "FROM:" line.

The following is OECA's response to the OIG's Draft Report of EPA's Oversight of State Stack Testing Programs. These comments have been developed and coordinated with the Office of Compliance and the Office of Regulatory Enforcement.

OECA concurs with comment on the OIG's recommendations in the draft report. We agree that stack testing is one of the primary methods for determining compliance with emission limits. We also agree it is critical to our oversight function that we receive more complete and consistent stack test information. Achieving increased uniformity in state stack test programs will help create a more level playing field and help improve air quality.

While we have identified resource concerns in other OIG reports, we recognize that the actions suggested in this report are central to the air enforcement program's ability to assess compliance which will avoid excess emissions. Because these activities are integral to OECA's mission, we will be able to implement the recommendations suggested by the OIG within current resources.

OECA plans to address the OIG's recommendations through the implementation of a revised Compliance Monitoring Strategy (CMS). OECA began the effort to revise the CMS in response to the OIG's 1998 report, *Consolidated Review of the Air Enforcement and Compliance Assurance Program*. In revising the CMS, we are attempting to resolve many of the issues you raised in your 1998 report. Through our efforts on revising CMS, we also hope to resolve the recommendations in your recent report on stack testing. While the revised CMS is still in draft, we are working with the Regions and states to develop a strategy that is responsive to the

recommendations of your Office. Preliminary comments from the states indicate that a satisfactory resolution can be achieved. However, the final CMS is largely dependent on agreement with the states on these issues. A recent draft of the CMS has been shared with your Office.

One of your recommendations is to identify those facilities where stack testing is the only way to determine compliance and then require stack testing at a specified frequency. We agree that stack testing is particularly valuable for those emission points where there is no other way to make compliance determinations. Consequently, we are working to include this concept into the revised CMS. However, rather than identifying specific emission points that rely on stack testing to determine compliance and specifying a testing frequency, our goal is to work with the Regions and states to make stack testing a principal component of the CMS.

Your Office also recommended that we develop a policy to address test stoppages. The revised CMS does not currently address this recommendation. However, we share your concern on this issue and we will work on a policy on how stack tests should be conducted.

We have also attached the comments that we received from our Regional offices. We have received comments from Regions 1, 2, 3, 5, 7 and 9. In general, the Regions concurred with the OIG's recommendations. Some Regions concurred with comment and offered specific changes to clarify statements in your draft report. Region 2 commented that the recommendations cannot be implemented without significant regulatory changes. OECA does not anticipate the need for regulatory changes to implement the OIG's recommendations or the revised CMS.

In closing, we appreciate the opportunity to comment on the draft report. We will continue to work with the Regions and states to develop a CMS that is responsive to your recommendations. Should you have any questions, please contact Greg Marion, OECA's OIG Audit Liaison at (202) 564-2446.

Attachment

cc: Regional Administrators I - X

**APPENDIX 2**  
**EPA REGIONAL RESPONSES TO DRAFT REPORT**

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UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 1  
1 CONGRESS STREET, SUITE 1100  
BOSTON, MASSACHUSETTS 02114-2023

OFFICE OF THE  
REGIONAL ADMINISTRATOR

**MEMORANDUM**

**DATE:** May 31, 2000

**SUBJ:** New England Region Comments on (April 26, 2000) Draft Report of EPA's Oversight of State Stack Testing Programs Report Number 1999-000310

**FROM:** Mindy Lubber, Regional Administrator  
New England

**TO:** Steven Herman, <sup>MPR</sup>Assistant Administrator  
Enforcement and Compliance Assurance (2201A)

As requested in the above referenced audit we are providing the following written response to the draft to your office. We have also been requested to send a copy of our comments to the Mid-Atlantic Division of the OIG.

Overall, the staff at the New England Region feels the report presents the situation accurately and makes good recommendations. We had the following specific comments:

- Page 1, Background, first paragraph, last line:  
Insert the word "air" before pollution sources, to make it clear that only air sources are included.
- Page 2, Description of a Stack Test, first paragraph, last sentence:  
Add nitrogen oxide to the list of pollutants.
- Page 3, Second paragraph, first sentence:  
Change the sentence to read, "Whenever possible, regulatory personnel should be present during enough of the testing to ensure the test is valid."
- Page 3, third paragraph, third sentence:  
Change the sentence to read, "For example, a state or EPA Order. . ."
- Page 4, second paragraph, first sentence:  
Change the sentence to read, "There are two reasons why stack tests should be conducted at facilities regulation by limits based on emission factors."

Page 4, end of page:

Most facilities also conduct quarterly cylinder gas audits and RATAs

Page 9, first paragraph, first sentence:

Change to read, "Because of lack of guidance, EPA and the states are not consistently implementing . . ."

Page 9, last paragraph, first sentence:

Change to read, "According to the EPA's database, which is not accurate, only 14 . . ."

Page 10, table:

Note that "major" includes synthetic minor sources.

Page 16, second paragraph, first sentence:

This sentence says Regions agreed that at a minimum, failed stack tests must be entered. The New England Region feels that all stack tests, not just failures, need to be entered, in order to assess level of stack testing activity.

Page 17, third paragraph:

The report says that for those states that do not routinely report any stack test data, state and regions must mutually decide on the type of information needed and how it will be reported. The New England Region believes this would be much easier if there were national guidance on these questions.

Page 20, checklist:

Add, "Highly efficient control devices, where slight degradation in control would cause orders of magnitude increases in emissions."

Page 21, second paragraph, first sentence:

Change the sentence to read, "The primary vehicle for controlling air emissions from stationary sources in the United States . . ."

Page 21, second paragraph, last sentence:

Change sentences to read, "Stack testing is one of the primary methods for . . ."

Page 21, 1.1:

The New England Region agrees with this recommendation, but suggests that the definition of stack test procedures should include development of a quality assurance plan by the stack tester.

9

In addition, to the minimum requirements listed for stack test information provided by states, the New England Region would include

- Unit # tested

- reference method used
- ✓ pollutant(s) measured
- ✓ whether the test was valid
- ✓ whether the source passed or failed
- ✓ the testing firm
- ✓ reason for test (114 requests, permit condition)
- ✓ date of completion of the test

Page 22:

The New England Region suggests a third recommendation. To address the problems described on page 19, EPA needs to establish a certification system for labs, or establish a process for quality assuring samples. Additionally, all test protocols should have Quality Assurance Plans.

If you have questions about the comments provided by the New England Region, please contact me. You may also call Arnie Leriche or Tom McCusker, of my staff, at (617) 918-1748, and (617) 918-1862, respectively.

cc: Carl Jannetti, Divisional Inspector General for Audit, Mid-Atlantic Division (3AI00)

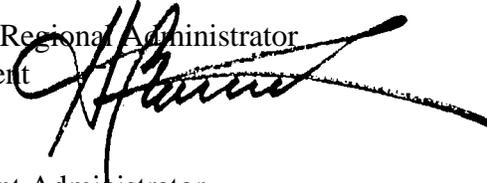
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UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 2

**DATE:** May 25, 2000

**SUBJECT:** Office of Inspector General (OIG) Report of EPA's Oversight of State Stack Test

**FROM:** Herbert Barrack, Assistant Regional Administrator  
for Policy and Management



**TO:** Steven A. Herman, Assistant Administrator  
for Enforcement and Compliance Assurance

Attached is Region 2's response to the findings and recommendations of the Office of the Inspector General's draft report on EPA's Oversight of State Stack Testing Programs. We have contacted the New Jersey Department of Environmental Protection and requested that they too submit comments on those sections of the draft report that pertain to state activities.

If you have any questions regarding these comments, please let me know, or have your staff contact Barbara Pastalove of the Policy, Planning and Evaluation Branch at (212) 637-3570.

Attachment

**CC:** Carl Jannetti, OIG  
Patrick Milligan, OIG  
Rich Biondi, OECA  
Fred Stiehl, OECA

## General Comments

The basic, and overriding, problem with the Draft Report is that it recommends policy solutions for deficiencies that require regulatory change, and it ignores two important areas that can be addressed by policy, though they will require serious resource evaluations,:

- ! Federal regulations do not require periodic retesting, do not directly require protocol submittal, do not require specific operating conditions during testing, and do not address test stoppage.

The policy remedies suggested in the Draft Report might be inappropriate in light of the recent court decision of Appalachian Power Company vs. US EPA regarding periodic monitoring, when regulatory changes are needed.

- ! OECA's policy and AIRS capabilities do not combine to provide consistent, workable direction for tracking and reporting of stack testing results. The Draft Report fails to address this topic, but it should.
- ! The quality of stack test project oversight is just as important as the quantity. The Draft Report does not address this, but it should.
- ! OIG's instructions to the Regions state that the Regions should address the factual accuracy of the draft report and indicate concurrence or nonconcurrence with each draft finding and proposed recommendation. However, it is very difficult to figure out exactly what constitutes a draft finding. It is also difficult to determine what level of disagreement should constitute nonconcurrence. This is also true for the recommendations, in which substantial comment on one aspect of a given recommendation may or may not constitute nonconcurrence with the entire recommendation. The following comments do not, therefore, address the issue of concurrence.
- ! An additional over-arching comment concerns OECA's charge to OIG, and an appropriate response irrespective of the OIG's findings in the Regions and the states. The Federal emission control regulations (as found in 40 CFR Parts 60 (NSPS), 61 (NESHAPS), and 63 (MACT)) all require initial stack testing for most facilities, but do not require periodic or routine re-testing except for a very small minority, and do not require any notification to EPA or the delegated states in the event of voluntary re-testing. In addition, there is no concrete or consistent guidance from OECA concerning the frequency of re-testing, and only ambiguous or difficult guidance concerning reporting. While some states may require periodic re-testing and protocol submittal, and while some may collect test information in such a way that reporting to EPA would be cost effective, none of this is required by Federal rules. The sum total of this situation is that OECA wants and expects to receive time-appropriate information about testing, while the agency regulations do not require or even suggest either the testing or the reporting. One consistent remedy would seem to be significant rulemaking, at the national level.

## Specific Comments on IG Stack Test Draft Report

### Chapter 1

#### Purpose -

1<sup>st</sup> para, 2nd sentence - delete the word "performing" and replace it with **"reporting and overseeing"**

*In general, neither the Regions nor the states PERFORM stack tests (with rare exception). Instead, they require and then oversee the performance of tests by the regulated community and their contractors/consultants. This same comment applies later in the report as well. "Overseeing" should replace "performing" throughout.*

#### Phases of a stack test:

2<sup>nd</sup> para, - Insert the following after the 2<sup>nd</sup> sentence **"The protocol is, essentially, a Quality Assurance Project Plan (QAPP), designed to define the objectives of the test, and the methodologies to be employed, including appropriate QA and Quality Control procedures, and to ensure that those methodologies will produce useful results.**

2<sup>nd</sup> para, existing 3<sup>rd</sup> sentence should be changed as follows: The protocol should be made available ... prior to the test, **although Federal regulations do not directly require submittal of a stack test protocol to EPA or the delegated states.**

3<sup>rd</sup> para, 2<sup>nd</sup> sentence should be modified as follows: Depending on the type of test, samples may be sent to a laboratory for analysis, **and regulatory personnel may be present as well. In addition, the regulatory agency may require the analysis of audit (performance test) samples.**

#### Continuous Emission Monitoring System

2<sup>nd</sup> para, delete the following: "EPA has not yet developed performance specification methods for other types of pollutants, such as particulate matter. For pollutants such as these" and replace it with - **"Reliable CEMS are not yet available for all regulated pollutants, and some regulations require the use of CEMS but do not allow them to be used for compliance determinations. In situations such as these,"**

*An important deficiency in the OIG draft report is that it is concerned primarily with the quantity of stack test projects overseen by the states, and less with the quality and usefulness of the oversight that is performed. While the quantity of tests performed and reported is important, the quality of those tests is equally important. Thus, the effectiveness of a states oversight program is just as important as its completeness. There is nothing wrong with the focus of the OIG investigation. The problem is that the report does not put the investigation into proper context. It is recommended that a new, brief section titled "The Overall Stack Test Oversight Programs"*

*be added prior to the section titled "Scope and Methodology ", as follows:*

### **The Overall Stack Test Oversight Programs**

**The oversight conducted by the regions and the states of stack test projects performed by and/or for the regulated community generally involves some or all of the following steps: require a test, review and approve the test protocol, observe the test, review the test report, pursue enforcement action, if appropriate, report to EPA. This audit focused quantitatively on the consolidation of the first five steps under the umbrella of "oversees stack tests", and the last step, reports to EPA. This in no way is intended to diminish the importance of each of the first five steps or the importance of the quality and effectiveness of their performance. Based on our review, there is evidence, much of it circumstantial, that some states and Regions conduct high quality and effective oversight of individual stack test projects. There may also be states and Regions that do not. We could undertake an investigation of the quality and effectiveness of state and regional stack test oversight programs, if desired by EPA.**

## Chapter 2

### Inaccurate EPA Database

4<sup>th</sup> para, 3<sup>rd</sup> sentence - Without information showing which states and regions were performing tests as well as those not performing them, we could not select states to show best practices or those requiring improvement. *This statement is not true. The OIG was able to go to New Jersey and assess its program sufficiently, concluding "we found NJDEP had an effective and efficient stack testing program ". Based on the questionnaire responses from the regions, the OIG could have conducted similar investigations in other states, or at least could have submitted questionnaires to states. Thus, the statement should be deleted.*

### Inaccuracies Confirmed

1<sup>st</sup> para, 4<sup>th</sup> sentence - Region officials also assured us that NJDEP had a quality stack test program, but EPA personnel had no evidence to support this assertion. *This statement is untrue. It is true that the Region had no **quantitative** evidence of the state's stack test oversight program, but the Region had a great deal of qualitative evidence, collected over many years, indicating the high quality of the state's program. The Region had dealt formally and informally with members of the state stack test oversight group over many years, confirming their level of expertise, responding to their questions, consulting on testing projects, and reviewing final and draft documents concerning test projects.*

### Variety of Stack Test Information Reported

4<sup>th</sup> para, 1<sup>st</sup> sentence - delete the word "policies" and replace it with "**regulations**", delete the word "address" and replace it with "**define**".

The NSPS regulations, the most important and widely applied of EPA's air compliance regulations, address operating conditions, in 40 CFR 60.8(c), but do not so specify, because of differences among facilities, situations, conditions, etc. This also applies to the following section, Different Test Conditions.

### Test Stoppages Are Not Recorded

4<sup>th</sup> para - The final paragraph in this section does not belong here. Also, the statements concerning the National Environmental Laboratory Accreditation Conference (NELAC) are incomplete. **NELAC, working with EPA, is well on the way toward developing procedures for certifying not only the laboratories but also the field crews that conduct stack tests. While participation will be voluntary on the part of the states, testing in participating states will be required. Over time, this will likely enhance the quality of stack tests performed.**

## Facility Coverage

1<sup>st</sup> para, 4<sup>th</sup> check mark - "a long time" should be deleted and replaced with "**many years.**"  
*It would be helpful for the OIG to address how many years would be considered too many.*

## Conclusion

1<sup>st</sup> para, 4<sup>th</sup> sentence - delete "is the primary method for" and replace it with "**and CEMS operation are the two primary methods for**" and add the following sentence:  
**Regulations generally require stack testing for determining initial compliance status, and some require periodic testing or CEMS operation (or other parametric monitoring) for determining continuing compliance status. For all facility units not currently required to test periodically, or that do not have adequate periodic monitoring, compliance assurance monitoring or any other form of credible evidence, specifically required stack testing would constitute the only available definitive compliance determination procedure.**

## Recommendations

### OIG Recommendation

1.1 Decide on the definition of a stack test; proper procedures for conducting tests; how tests will be counted; the type of stack test information needed; and how it will be reported.

At a minimum, stack test information received from states should include when a test is completed, the results of the test, and the type of enforcement action taken for those facilities found in violation.

### Region 2 Response

**1.1** *It is not at all clear what is meant by the phrase "proper procedures for conducting tests." As stated elsewhere in the report, the methods are almost always specified by EPA and/or the states. If it is intended to mean "specify required operating conditions during the tests," then this would require a major regulation change that is far more significant than the policy directives apparently intended in the recommendations. This recommendation needs to be clarified.*

### OIG Recommendation

1.2 Issue a policy addressing test stoppages. This policy should include identifying those situations when it is appropriate to stop a test.

### Region 2 Response

**1.2** *EPA has no current regulatory authority to order a facility/contractor to continue testing when they wish to terminate a test for whatever reason. Such an authority would require a significant change in regulations. Perhaps the recommendation could be reworded as follows: **The policy should also address what a state or a region is***

**empowered and expected to do when the facility/contractor proposes to terminate a test inappropriately**

OIG Recommendation

2. We recommend that the 10 EPA Regional Administrators increase oversight of their states' stack test programs as needed. Each Region can accomplish this by:

Region 2 Response

*2. As stated earlier, this draft report does not emphasize the quality and effectiveness of state stack test programs, focusing instead only on the quantity and reporting of the tests. It is suggested that an additional bullet be added as follows:*

**2.3. Continuing due vigilance in overseeing the quality of state stack test oversight programs, despite the fact that this issue is not covered by the findings of the report, is an integral part of a properly administered stack test program.**

OIG Recommendation

2.2 Performing sufficient follow-up on stack tests, particularly for those facilities that failed the test.

Region 2 Response

**2.2 - delete "Performing" and replace it with "Ensuring that the states perform"**

*The failure of the Agency to track stack test activity was the primary driving force for the OIG audit. This shortcoming is mentioned throughout the draft report, including in the section titled "Frequency of Tests, " which states that "Once a reliable tracking system is established... " However, none of the recommendations address this issue. While instituting and implementing an effective and consistent tracking system may well be very difficult and expensive, it still seems appropriate for the OIG to include it in the recommendations of its audit report.*

*It is suggested that the recommendation not be prescriptive, instead leaving it to OECA, the Regions, and the states to develop and implement an effective system that will provide the necessary information without consuming vast amounts of resources. A starting point might be to survey the states that already have internal tracking and reporting systems, and then attempt to develop a workable consensus. However, resources will be a major factor in the implementation of any system.*

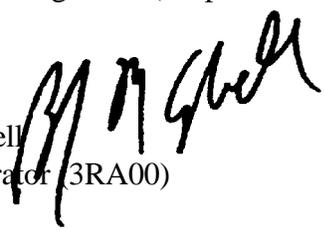
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UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION III  
1650 Arch Street  
Philadelphia, Pennsylvania 19103-2029

May 30, 2000

**SUBJECT:** Draft Inspector General Report, " EPA's Oversight of State Stack Testing Programs" ( Report Number 1999-000310)

**FROM:** Bradley M. Campbell  
Regional Administrator (3RA00)



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

Thank you for the opportunity to comment on the draft report of State Stack Testing Programs (Report Number 1999-000310). As one of the three principal Regional Offices that were the subject of the audit, we have rather strong opinions on the importance of using stack testing as an effective tool in making compliance determinations. It is our understanding that during negotiations with the State and Territorial Air Pollution Program Administrators (STAPPA) and the Association of Local Air Pollution Control Officials (ALAPCO) on the revised Timely and Appropriate Policy that this issue first surfaced as a possible concern. Two mid-western agencies noted at the time that they were finding an unexpectedly high noncompliance rate resulting from recent stack test findings. Since facilities have the ability to prepare in advance for the test, it is thought to be rather uncommon for a facility to record a violation. This however proved contrary to what they found.

During the course of the Inspector General's investigation, we canvassed each of our grantee agencies concerning State stack testing capabilities. There were three relevant issues we found regarding that capability, and EPA's oversight thereof. First, there are no national policies that pertain directly to oversight of State or local agency stack testing programs. Each Region III grantee agency was found to have a state/local stack testing program. Sources are commonly tested upon start-up to determine initial compliance, and are tested as an obligation for enforcement settlement purposes when a facility is found to be in violation. However, we do not believe that any grantee agency looks to determine periodic, and continued, compliance of major sources where the only compliance reference method is determined through stack testing. This, in part, is due to the wide-spread use of continuous emission monitors (CEMs) in Region III. Therefore, oversight of compliance in this Region is devoted, in large measure, to review of CEM data from the State and local agencies. We have been far more concerned about continued compliance than infrequent compliance tests that have been known to be passed with relative ease.

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Secondly, it is important to note that since 1994 when OECA was formed, there were no longer any line items for enforcement in the Office of Air and Radiation's (OAR) grant process. It was at that time that States began to seriously push back on EPA's annual enforcement grant commitments. To make matters worse, beginning in Fiscal Year 2000, it was made perfectly clear that there are no Section 105 Clean Air Act grant dollars provided to State and local Agencies that are earmarked for air enforcement activities. As you well know, this issue was prominently discussed in the Inspector General's audit report titled "Consolidated Report on OECA's Oversight of Regional and State Air Enforcement Programs" dated September 25, 1998. It was suggested that OECA ***"...work with OAR to earmark Section 105 grantfunds to (air) enforcement. This will enable the EPA regions to reinforce to the states that (air) enforcement is an Agency priority."*** As the report notes, OECA's failure to participate in the grant process has already affected the Regions' ability to leverage the states to comply with enforcement priorities. Therefore, any grant commitment related to stack testing is more of a result of successful grant negotiations by the respective Regional Office and has no force of regulatory backing. Should any State or local Agency decide not to carry-out any of the implied commitments, the Region can not threaten to withhold grant money for failure to implement.

Lastly, Region III was successful in procuring contractor money from OECA in Fiscal Year 1999 that was used to initiate a facility inspection targeting project using stack testing as the basis. This will be accomplished by focusing on various industrial sectors subject to stack testing provisions under Federal and/or State regulations. Once these facilities are identified and cataloged by industrial sector, Region III will focus on identifying those facilities which have performed stack testing, and those facilities which have not, in recent years. The targeting strategy will also identify any stack testing inconsistencies within Federal and State regulatory programs. At the conclusion of the project, we expect to have a report documenting our findings and, depending upon the results, may move towards targeting facilities/sectors for stack testing under Section 114 authority. We hope that this work will be used as a national model for the other nine EPA regional offices. This compliance assurance tool will be used to further enhance continued compliance of the approximately 29,000 facilities in Region III.

#### Findings and Recommendations:

We are in total agreement with each of the Inspector General's findings and recommendations. The Draft Report captures each of the major impediments leading to effective EPA oversight of State Stack Testing Programs, and reflects Region III's personal experience. Therefore, with regards to the specific recommendations, we offer the following comments.

#### Recommendation 1 *We recommend that the Assistant Administrator for the Office of Enforcement and Compliance Assurance:*

- ✓ *Decide on the definition of a stack test; proper procedures for conducting tests; how tests will be counted; the type of stack test information needed; and how it will be reported.*

*At a minimum, stack test information received from states should include when a test is completed, the results of the test, and the type of enforcement action taken for those facilities found in violation.*

We fully support this recommendation. As noted above, we are aware that there is no national consistency and believe efforts to bring about such change will be an enhancement. We agree with the minimum requirements recommended by the OIG to be included for completed tests. The States in Region III do submit stack test reports in varied formats. They provide a listing of the facilities and the source(s) tested with the test report/results on a monthly or quarterly basis. Region III grantee agencies are required, through their federal grant agreements, to input such data into the national data base. However, as noted above, our success with grant negotiations has been severely compromised with lack of a regional line item for air enforcement activities in the OAR budget process. We are uncertain what affect, if any, a national enforcement policy will have once written without federal Clean Air Act monies being earmarked for its execution.

*Recommendation 1.2 Issue a policy addressing test stoppages. This policy should include identifying those situations when it is appropriate to stop a test.*

We are in support of having a policy on stopping a stack test in mid-stream if it appears that the company is aware that should the test continue they are likely to fail and be found in violation. During the course of the audit, it was learned that one of the EPA Regions, and one State, allow a facility to stop the stack test prior to its conclusion if it had indications that it is likely to fail. This is contrary to Region III policy where once a compliance test commences, it must be completed unless there is a disruption or upset somewhere in the plant, or more commonly, part of the stack testing equipment breaks or malfunctions. In speaking to the OIG concerning this audit, we learned that one regional official indicated that on average 20% of all stack tests conducted in their region cease with no real justification. With no national policy preventing this type of behavior, we will never know the "real" noncompliance rates involving stack testing. In the case of the State, officials indicated that they allowed tests to stop because there are no EPA regulations or policies that they can point to which precludes a stack test from stopping regardless of the reasons.

*Recommendation 1.3 Identify those facilities where stack, resting is the only way to determine compliance and then require stack testing at a specified frequency.*

Again we are in agreement with the OIG concerning this recommendation. As noted above, in Region III we have already undertaken a project designed to help identify the universe of sources where stack testing is the only means available for determining compliance with the applicable emission limit. And although the Office of Compliance has begun to address the frequency issue in the revised Compliance Monitoring Strategy now before STAPPA, ALAPCO and the Regional Offices for comment, we are uncertain what impact the Appeals Court ruling in Appalachian Power Company et al v. EPA will have if we try to impose stack testing on a frequency more onerous than provided for in the underlying state or federal rules. While we support the effort to try all available options, it seems that we must inevitably turn our attention to requiring a stack testing frequency in our rules at the time of promulgation.

*facilities that failed the test.*

Again we support the above recommendations by the OIG. For both recommendations 2.1 and 2.2, we believe that the currently proposed Compliance Monitoring Strategy dated March 29, 2000, is the proper vehicle to address these recommendations. The proposal is attempting to update the compliance monitoring programs of the state/local agencies and the EPA regions. A component of the revised CMS Policy is intended to place greater emphasis on the stack test programs when no other means of certifying or determining compliance exist. Current language in the proposed policy also contains mechanisms for enforcement tracking and targeting.

Thank you, again, for the opportunity to express Region III's comments regarding the Draft Audit Report on EPA's Oversight of Stack Testing Programs. If you have any questions, please contact Bernard Turlinski, Associate Director, Office of Enforcement and Permits Review, Air Protection Division at 215-814-2052.



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 5  
77 WEST JACKSON BOULEVARD  
CHICAGO, IL. 60604-3590

REPLY TO THE ATTENTION OF  
(R-19J)

May 26, 2000

**MEMORANDUM**

**SUBJECT:** Draft Report of EPA's Oversight of State Stack Testing Programs

**FROM:** Francis X. Lyons  
Regional Administrator

**TO:** Carl A. Jannetti  
Divisional Inspector General for Audit  
Mid-Atlantic Division (3AI00)

Thank you for providing Region 5 with a copy of the Draft Report of EPA's Oversight of State Stack Testing Programs. Region 5 agrees with the report's conclusion that stack testing is a primary method for determining compliance with emission limits. Within the Region, both State air programs and Region 5's Air Enforcement and Compliance Assurance Branch (AECAB) emphasize the importance of stack testing.

With regard to the report's recommendation for increased oversight of state stack testing programs, AECAB's current partnership with its States promotes an efficient stack testing program which includes protocol review, stack test observation, final report evaluation, and "follow-up on stack test results". We have found this partnership to be an effective means of sharing State/Federal expertise in stack testing. The report's finding that regional involvement with stack testing is on a case-by-case basis is correct. Consequently AECAB does not have data for all stack tests that are done. AECAB does not see this as an area of concern in terms of quality of stack tests and does not agree with the reports findings that "Stack Test Information Reported" and "Test Stoppages" are State deficiencies in stack testing. Rather, we view it as missing data that could be valuable not only in evaluating the compliance history of source categories throughout the Region but also in establishing future enforcement strategies. Therefore, AECAB does agree with the report's findings that "Facility Coverage" and "Frequency of Tests" are problems that could be addressed with more complete

stack test information. Accordingly, in the upcoming 105 Grant process AECAB will negotiate the requirement for States to submit stack test data for all stack tests.

Concerning the report's recommendations on issues involving the Office of Enforcement and Compliance Assurance, Region 5 agrees with the report's recommendations for national policies on stack test stoppages and stack testing frequency. However, Region 5 does not believe that the procedures for conducting tests, the type of stack test information needed, and how it will be reported need to be modified. The test methods contain the procedures and can be found at 40 C.F.R. Part 60, Appendix A. The type of information needed and how it will be reported are found both in the test methods and in the standard applicable to the source that is being stack tested.

If you have questions regarding these comments please contact me or Brent Marable of AECAB at (312) 386-6812.



Francis X. Lyons  
Regional Administrator

standard bcc's:           official file copy w/attachment(s)  
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                                  originating organization reading file w/attachment (s)

other bcc's:               Ken Westlake  
                                  Tinka Hyde (OECA)  
                                  Naimah Karim (RA 2000-37)  
                                  ORA w/cover slip (RA 2000-37)  
                                  ORA Reading File  
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APD:AECAS:ES(IL/IN) :Marable:BM:05/24/00

DISKETTE/FILE: Jannettimemo



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION VII  
901 N. 5<sup>TH</sup> STREET  
KANSAS CITY, KANSAS 66101

OFFICE OF  
THE REGIONAL ADMINISTRATOR

May 31, 2000

**MEMORANDUM**

SUBJECT: Response to "Draft Report of EPA's Oversight of State Stack Testing Programs, Report Number 1999-000310"

FROM: Dennis Grams, P.E. *Dennis Grams*  
Regional Administrator

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

This memorandum is Region 7's response to the recommendations outlined in the memorandum "Draft Report of EPA's Oversight of State Stack Testing Programs, Report Number 1999-000310", dated April 25, 2000.

Region 7 generally agrees with the reported findings. Region 7 has a comprehensive Standard Operating Procedure (SOP No. 2312.8C) which defines, outlines, and establishes uniform procedures concerning activities related to air pollution source performance tests and continuous emission monitoring system performance evaluations and certification tests. This SOP was provided to the Inspector General during their October 1999 visit. Additionally, Region 7 has uniform procedures for the preparation for, performance of, and reporting on an audit of air pollution source performance test observation and related activities of a state or local air pollution control agency or an Environmental Protection Agency contractor.

cc: Carl A. Jannetti, Divisional Inspector General for Audit  
Mid-Atlantic Division (3AI00)

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UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
 REGION IX  
 75 Hawthorne Street  
 San Francisco, CA 94105

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OFFICE OF THE  
 REGIONAL ADMINISTRATOR

To <i>Rich. Biondi</i>	From <i>Duane James</i>
Dept./Agency	Phone # <i>415-744-1138</i>
Fax # <i>202-564-0015</i>	Fax # <i>415-744-1076</i>
NSN 7540-01-31-7368	5099-101 GENERAL SERVICES ADMINISTRATION

June 9, 2000

MEMORANDUM

SUBJECT: Comments on the Office of the Inspector General's "Draft Report of EPA's Oversight of State Stack Testing Program" (Report # 199-000310)

FROM: Felicia Marcus, Regional Administrator  
 EPA Region 9 (ORA-1)

*Jim Saff*  
*for*

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

Thank you for the opportunity to comment on the Office of Inspector General's (OIG's) evaluation of state stack testing programs. I am providing the following response on behalf of Region 9's Air program, as was requested of each Regional Administrator by the OIG's report. Below please find a summary of our region's stack testing program and concurrence with comments on the report and its recommendations.

Summary of Region 9 Stack Testing Program:

Region 9 has been very supportive of stack testing for many years. Generally, our major sources are tested upon start-up to determine initial compliance. Sources continue to receive periodic inspections and testing to confirm compliance with federal, state, and local air pollution control regulations and with their respective permits. Specifically, California, Arizona, and Nevada have policies and requirements for annual testing of their major emissions units. However, as the OIG report notes, EPA has no national guidance for how these tests should be conducted and reported. Therefore, while our states have conducted many annual source tests, few were reported to the national air database, the Air Information Retrieval System (AIRS). We are confident that once the guidance and requirements are clarified, our states will be willing to report their true level of testing activity for major and synthetic minor sources.

Many of our sources also have Continuous Emissions Monitors (CEMS), submit their CEMS data electronically or via mailings, and those data are reviewed by the states and the region to verify continuing compliance with air pollution regulations and permits. It has always been our policy that when actionable violations are discovered, sources should be cited, and the violations should be resolved with corrective action in accordance with EPA's policies.

Region 9 has also worked with our permitting agencies to assure that stack testing is considered and required when appropriate for Title V Periodic Monitoring . In additions, we have supported alternative parameter monitoring when stack testing is impractical, such as for very small units. We are recommending that any national guidance from OECA or OAQPS support this approach as an essential element of Periodic and Compliance Assurance Monitoring (CAM) for Title V permits.

**Concurrence with Comment on Report and its Recommendations:**

We concur with all of the findings for both Recommendations 1 and 2. We agree that OECA should issue national guidance to better define: stack test procedures, how to count tests (including numbers of unit tests that would equal one credit for a stack test and also how multiple pollutant test should be counted), what standard test information is needed in documentation, what to report to AIRS, *a de minimus* level for reporting, and reporting/testing frequency. These have all long been in need of national clarification in a single guidance document. The new stack test guidance should also address test stoppages and clearly identify when issuance of a violation notice must be made in lieu of making repairs or adjustments.

In addition, we concur with the OIG that OECA should conduct a study to identify the universe of facilities “where stack testing is the only way to determine compliance.” Like several other regions, we are concerned that there may be too large a number of small units subject to annual source testing if the requirements is left as broadly defined as is quoted above. Instead, we recommend the stack testing guidance focus on large emission units and those with variable emission control effectiveness.

Finally, we would like to see OECA work closely with the Office of Air and Radiation (OAR) and the Office of General Counsel (OGC) to find acceptable ways to restore Section 105 grant work elements and assistance for annual enforcement workplans and for the support of enforcement targeting and reporting commitments. The OIG recommended this in a September 25, 1998 report which said OECA should: “work with OAR to earmark Section 105 grant funds to (air) enforcement,” because that would “enable the EPA regions to reinforce to the state that enforcement is an Agency Priority.” Alternatively, if OGC feels that all enforcement and enforcement-related reporting at major sources must be funded with Title V fees, we believe that a strong regional oversight of monitoring (periodic monitoring and CAM) is essential.

If you or your staff have any questions regarding these comments, please contact Steve Frey at (415)744-1140.

cc: Director, Office of Compliance (221A)  
Director, Office of Regulatory Enforcement (2241A)  
Audit Liaison - Office of Enforcement and Compliance Assurance (2201A)  
Deputy Assistant Inspector General for Internal Audits (2421)

**APPENDIX 3**  
**NJDEP RESPONSE TO DRAFT REPORT**

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State of New Jersey  
Department of Environmental Protection  
CN 402  
Trenton, NJ 08625-0402

Christine Todd Whitman  
Governor

Robert C. Shinn, Jr.  
Commissioner  
Tel. # (609) 292-  
2885  
Fax # (609) 292-7695

May 26, 2000

Carl A. Jannetti  
USEPA Divisional Inspector General for Audit  
Mid-Atlantic Division (3A100)  
1650 Arch Street  
Philadelphia, PA 19103-2029

Re: EPA Oversight of Stack Testing Program  
Draft Audit Report (1999-000310)

Dear Mr. Jannetti:

This is in response to your letter of April 25, 2000 transmitting a draft copy of the audit report of "EPA's Oversight of State Stack Testing Programs." Given that New Jersey was the state selected for the audit, I appreciate that you provided us a copy of the draft report and allowed us the opportunity to comment. Enclosed is a return copy of your draft with a compilation of my staff's comments in the margins.

Recognizing the complex technical nature of the stack test program, we were pleased to find that the report correctly characterizes the nature of the program and shows insight into the importance of maintaining adequate quality control. We are also pleased with the positive findings concerning the New Jersey stack test program.

While we concur with the conclusion of a need for a defined EPA oversight program on a national level, we cannot emphasize enough that EPA oversight be achieved through limited and efficient reporting. New Jersey seeks to maintain a reasonable balance between its efforts in maintaining an effective testing program and providing assurance to EPA of proper program function.

NJ relies heavily, as do other states, on the PPA process to articulate DEP and EPA direction and commitments for the upcoming years. The PPA also establishes the parameters for the relationship between the two agencies, which includes such things as data exchange. Therefore, any requirements (data reporting or otherwise) related to stack testing should be contained within the PPA, rather than within a separate guidance document. Further, no data reporting requirements for stack testing should be mandated by EPA until EPA and the states have jointly developed and agreed to such requirements on a national level. In developing such requirements, EPA should ensure that they are

not so prescriptive as to effectively eliminate individual states' discretion to direct resources to priority issues.

We are grateful for the courteous and professional demeanor with which your staff conducted this audit and trust that a continued focus on our common goal of better environmental protection will ensue. If you have any questions concerning our comments, please feel free to contact William O'Sullivan, Administrator, Air Quality Regulation at (609) 984-1484 or Donald Patterson, Administrator, Air Compliance and Enforcement at (609) 633-7288.

Sincerely,

  
Marlen Dooley, Deputy Commissioner

Plco11/marlen/oigrpt

C: Gary Sondermeyer, Chief of Staff  
Dennis Hart, Assistant Commissioner, Environmental Regulation  
Cathy Tormey, Assistant Commissioner, Compliance and Enforcement  
William O'Sullivan, Administrator, Air Quality  
Donald Patterson, Administrator, Air Compliance and Enforcement  
John Preczewski, Chief, Bureau of Technical Services

**APPENDIX 4**  
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