



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

APR 12 2012

MEMORANDUM

SUBJECT: Response to *Early Warning Report: Use of Contractors to Conduct Clean Air Act Risk Management Program Inspections in Certain States Goes Against Court Decisions, Report No. 12-P-0376*

FROM: Cynthia Giles
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TO: Arthur A. Elkins, Jr.
Inspector General
Office of Inspector General

This memorandum is in response to the *Early Warning Report: Use of Contractors to Conduct Clean Air Act Risk Management Program Inspections in Certain States Goes Against Court Decisions, Report No. 12-P-0376* (Report) issued on March 28, 2012, by the Office of the Inspector General (OIG). We appreciate the OIG raising this issue immediately rather than waiting until the overall evaluation of the EPA Clean Air Act (CAA) Section 112(r) Risk Management Program (RMP) is completed. We are committed to assessing the situation and taking timely corrective action as warranted by our more in-depth assessment of current practices and any potential legal ramifications of those practices.

The Report states: "EPA Regions 4 and 7 use contractors to conduct CAA 112(r) Risk Management Program inspections in Kansas, Kentucky, and Tennessee despite decisions by the Sixth and Tenth Circuit Courts prohibiting this practice and the EPA policy memo that reiterated this prohibition."

To address this situation, the report recommends that EPA:

- Immediately review the legality and appropriateness of the practice of using contractors to perform CAA Risk Management Program inspections in the states covered by the Sixth and Tenth Circuit Courts;
- Determine whether contractors are used to perform inspections in other CAA programs in states covered by the Sixth and Tenth Circuit Courts;
- Take immediate action if needed to eliminate or revise the use of contractors to conduct 112(r) Risk Management Program inspections; and
- Update and reissue policy on the use of contractors to perform CAA inspections.

Based on the Report, we have taken the following actions thus far:

- Regions 4 and 7 discontinued the practice of using contractors for 112(r) RMP inspections in states in the Sixth or Tenth Circuits. Region 7 further confirmed that no 112(r) RMP contractor inspections have been conducted this fiscal year with the last contractor inspection conducted on May 12, 2011.
- The Office of Solid Waste and Emergency Response (OSWER) and the Office of Enforcement and Compliance Assurance (OECA) discussed the OIG findings with program and enforcement officials in Regions 4 and 7, reiterated that the 1984 policy is still in effect, and requested these regions to immediately discontinue the inappropriate use of contractors for CAA 112(r) RMP inspections in states in the Sixth and Tenth Circuits. OSWER will follow up in writing to Regional program managers to ensure they conform with the Sixth and Tenth Circuit court decisions and current Agency policy.
- OSWER, the Offices of Air and Radiation (OAR), General Counsel (OGC), and Administration and Resources Management (OARM), the affected Regions, and OECA are working jointly to assess current practices and analyze any potential legal implications of using contractors for inspections/evaluations in the Sixth and Tenth circuits.
- OECA is developing inspector credential guidance for contractors and the associated revisions to EPA Order 3510: *EPA Federal Credentials for Inspections and Enforcement of Federal Environmental Statutes*. The guidance and Order will address this issue as appropriate.

We share the OIG concerns, and will work to ensure that the identified issues are addressed as quickly as possible. Attached is a more detailed Corrective Action Plan, which reflects our efforts to date and the actions we intend to take to address this issue. Should you have any questions or concerns regarding this response, please contact the OECA Audit Liaison, Gwendolyn Spriggs, at 202-564-2439.

Attachment

cc: Lawrence Starfield, OECA
Lisa Lund, OECA/OC
Pam Mazakas, OECA/OCE
Barry Breen, OSWER
Lawrence Stanton, OSWER/OEM
Janet McCabe, OAR
Gwendolyn Spriggs, OECA/OAP

ATTACHMENT 1
CORRECTIVE ACTION PLAN

Recommendation	Office	Corrective Action	Target Date	Corrective Action
<ul style="list-style-type: none"> Immediately review legality & appropriateness of using contractors to perform CAA RMP inspections in states covered by the Sixth & Tenth Circuit Courts. 	OGC, OSWER, OECA, Regions	CA 1-1	10/31/12	Assess any potential legal implications of 112(r) contractor inspections & CAA inspections/evaluations in affected states.
<ul style="list-style-type: none"> Determine whether contractors are used to perform inspections in other CAA programs in states covered by the Sixth & Tenth Circuit Courts. 	OAR, OECA, OSWER, Regions	CA 2-1	10/31/12	Obtain and provide summary information on contractor 112(r) inspections & CAA inspections/evaluations in affected states.
<ul style="list-style-type: none"> Take immediate action if needed to eliminate or revise use of contractors to conduct RMP inspections. 	OSWER, OECA, Regions Regions 4 & 7 OSWER	CA 3-1 CA 3-2 CA 3-3	Compl. 3/29/12 Compl. 3/28/12 for Reg 4 & 5/19/11 for Reg 7 4/20/12	Provide CAA 112(r) regional program managers and Regional Air Enforcement Managers with 1984 policy memorandum & reiterate that 1984 policy still in effect. Discontinue use of contractors for 112(r) inspections in affected states. Follow up in writing to Regional program managers to ensure they conform with the Sixth and Tenth Circuit court decisions and current Agency policy.

<ul style="list-style-type: none"> Update & reissue policy on the use of contractors to perform CAA inspections. 	OSWER, OAR, OGC, OECA, OARM, Regions	CA 4-1	12/31/12	As necessary, revise & reissue related policy and guidance memoranda.
	OSWER, OAR, OGC, OECA, OARM, Regions	CA 4-2	12/31/12	Finalize guidance for issuing federal credentials to contractors & related revisions to EPA Order 3510.