ATTACHMENT 1

TEXAS AIR CONTROL BOARD

6330 HWY. 290 EAST
AUSTIN, TEXAS 78723
512/451-5711

October 10, 1984

Mr. Dick Whittington, P.E.
Regional Administrator
Environmental Protection Agency
Region 6
1201 Elm Street
Dallas, Texas 75270

Dear Mr. Whittington:

This is in reply to your letter of September 21, 1984, regarding a Memorandum of Understanding to be executed on behalf of our respective agencies regarding enforcement. As agreed in discussions between Mr. Eli Bell and others of this agency, and Mr. Jack Divita and other members of your staff, I have signed the Memorandum with certain revisions and it is enclosed with this letter.

If you have any questions regarding this matter, please let me know.

Sincerely,

for Eli Bell
Bill Stewart, P.E.
Executive Director

Enclosure

cc: Mr. John L. Blair, Chairman

ENFORCEMENT MEMORANDUM OF UNDERSTANDING

BETWEEN THE

TEXAS AIR CONTROL BOARD

AND

U.S. ENVIRONMENTAL PROTECTION AGENCY

INTRODUCTION

The Texas Air Control Board (Board) and the U.S. Environmental Protection Agency (EPA) agree that enforcement is one of the key components of any environmental program. A cooperative enforcement program will ensure that both Federal and State enforcement resources are productively used both to achieve high rates of compliance and to create the necessary deterence to non-compliance. In an effort to achieve this goal, the Assistant Administrator for Enforcement and Compliance Monitoring has issued national guidance entitled, Policy Framework for State/Federal Enforcement "Agreements." This policy framework was developed by a national steering committee made up by Federal, State, and local representatives, and it identifies five areas of national importance. They are: 1) oversight criteria and measures defining good performance, 2) oversight procedures and protocols, 3) criteria for direct EPA enforcement, 4) procedures for advance notification and consultation, and 5) reporting requirements. The Board and EPA Region 6 have reached the following Memorandum of Understanding (MOU) in an effort to implement this national program.

1. Oversight Criteria and Measures - Defining Good Performance

The following items have been agreed to by the Board and Region 6 as defining good performance, consistent with the national policy framework.

Regulated Community

The Board and EPA Region 6 agree to maintain a complete, accurate, and current inventory of the regulated sources through the compliance data system (CDS). The specific reporting requirements are established in the §105 grant (Attachment #1) entitled "Compliance Program Reporting." Each Agency will maintain CDS for the sources under their responsibility and exchange information in a timely manner. Region 6 will assist the Board with CDS problems by providing frequent feedback and training as needed.

Enforceable Requirements

The Board agrees to implement the enforcement criteria of Attachment #2 to evaluate the enforceability of permits, orders, and consent decrees.

LAM 003737

DPMC-09828

Compliance Monitoring

The objectives of a compliance monitoring program are identifying potential violators, establishing an enforcement presence, collecting evidence for enforcement actions, and targeting enforcement activities to maximize use of resources. To fulfill these objectives, the Board agrees to: 1) Develop and implement a written inspection strategy. The specific requirements for the scope of coverage are established by the 2/7/84 guidance "Revised Inspection Guidance for State and Local Agencies" (Attachment #3). The Board agrees to submit a plan to EPA for review and comment 30 days before the fiscal year. Upon EPA approval, the Board agrees to implement the inspection strategy starting with the beginning of each fiscal year. 2) Submit and implement a compliance monitoring quality assurance program (Enforcement guidelines). The program will establish minimum requirements for tracking the field investigation program, inspection documentation, time limits for preparing inspection results, evaluation of self-reported data, and time limits for entering data (inspections, compliance tests, self-reported data) into the CDS system. The Board agrees to submit a plan to EPA for review and comment 30 days before the fiscal year. Upon EPA approval, the Board agrees to implement the quality assurance program starting with the beginning of each fiscal year.

Improving Rates of Continuing Compliance

High overall compliance rates, maintaining continuous source compliance, and returning violating sources to compliance are primary requirements for a successful compliance program. Of particular importance in a compliance program are significant violators (as defined in the Strategic Planning and Management System), sources in violation for more than sixty days, and sources violating continuous compliance requirements. In order to meet these goals, the Board agrees to the specific reporting requirements established by the §105 grant (Attachment #1) entitled "Compliance Program and Reporting."

Recordkeeping

To maintain accurate and up-to-date files and records, the Board and EPA Region 6 agree to the specific requirements for quality assurance, as established by the Compliance Assurance Section of the National Air Audit System Guidelines.

2. Oversight Procedures and Protocols

EPA's goal in oversight of the Board is to improve the compliance and enforcement program. The primary mechanism for implementing this oversight is to conduct annual mid-year and end-of-year audits. A major part of the audit will include file reviews, overview inspections, timeliness and appropriateness of enforcement actions, and review of the source data reporting. The specific criteria for the audit procedures is established by the National Air Audit System Guidelines. In an effort to provide more immediate and responsive feedback to the Board, Region 6 Air Enforcement Staff will also conduct quarterly compliance visits (at a minimum) to the Board and provide routine oral and written feedback on specific issues and cases.

3. Criteria for Direct Federal Enforcement

Defining the roles and responsibility for taking direct enforcement actions is essential to the Federal/State partnership. The Board has primary responsibility for initiating enforcement actions, however, there may be circumstances where the Board is unwilling or unable to take "timely and appropriate" actions, where the Board finds it advantageous for EPA to join them or intervene, or where EPA may need to act to satisfy the minimum national enforcement criteria. The key to such a partnership is defining what constitutes a timely and appropriate response to violators. National Guidance on timely and appropriate enforcement responses was recently established by EPA (in concert with STAPPA and ALAPCO) and it identifies five specific requirements: 1) scope, 2) timeline for enforcement action, 3) issuance of NOVs by EPA, 4) penalties, and 5) consultation and data transfer. In order to meet the minimum Federal requirements of this policy, EPA Region 6 and the Board agree to implement the Guidance on "Timely and Appropriate" EPA/State Enforcement Response for Significant Air Violators (Attachment #4). However, it is recognized by the Board and EPA that the Board Enforcement Guidelines require resolution of significant violators within 180 days, and the Board may not be able to meet the EPA 120 day resolution requirement in all cases. It is also recognized by the Board and EPA that the Board has no legal authority to assess penalties and any penalties assessed by the State are the responsibility of the Attorney General and the judicial system.

There may be cases which due to the seriousness of the violation the timeframes of the "timely and appropriate" guidance do not apply. Examples of such cases may include: 1) Emergency episodes for stationary sources or air stagnation conditions having a potential to cause imminent endangerment to health, 2) NESHAP violations, 3) construction without a PSD or Part D permit, 4) legal precedent, 5) cases of national impact, or 6) violations of EPA Order or Consent Decrees. Of particular concern are cases having a significant emission impact on the public. EPA Region 6 and the Board agree that for cases of this nature consultation between EPA Region 6 and the Board will begin within 5 days of identifying the violation. An oral plan of action by the Board and EPA will be agreed upon during this consultation and within 30 days a written plan of action will be developed by the lead agency.

For cases referred to the State Attorney General's Office which become unduly delayed, the Board and EPA agree to discuss the anticipated progress of the cases and, if necessary, EPA may choose to initiate a parallel Federal action.

In the event that EPA does take a direct enforcement action in the State, EPA will make arrangements for joint action (where possible considering the circumstances), use available Board inspection/information, offer the Board the opportunity to attend conferences, and acknowledge the contribution of the Board in the news media to ensure that the Board is not erroneously perceived as failing.

4. Advance Notification and Consultation For EPA Lead Actions

To guarantee that there is ample advance notification on consultation between the proper State and Federal Officials, the Board and EPA Region 6 agree to the following procedures for inspections and enforcement actions.

Inspections

EPA will:

1) Provide the designated Board Representative(s) a written list of all the proposed routine inspections for the year, one month prior to the beginning of the EPA fiscal year. EPA will review this list with the Board at least each quarter or other appropriate times as the need arises and make modifications as needed.

2) On a monthly basis, EPA will contact the designated Board Representative(s) to coordinate the scheduling of inspections.

Enforcement Actions

EPA will:

1) On a monthly basis, EPA will contact the designated Board representative(s) to discuss active or proposed cases.

2) Contact the designated Board Representative(s) by phone when a Federal action (i.e., referral, NOV, or Administrative Order) is ready to be issued.

3) Provide the Board with an advanced copy of any press releases on enforcement actions.

The Board and EPA Region 6 agree to identify an Agency Representative(s) for Inspection and Enforcement Action Notification within 15 days of signing the MOU.

5. State Reporting

In order to report reliable performance information on which to judge success and identify areas needing management attention, the Board agrees to report the following information: 1) overall compliance levels, 2) progress in returning significant violators to compliance,

3) inspections, 4) formal administrative actions, and 5) judicial actions, 6) timeliness and appropriateness of response to violations, 7) penalties, and 8) data necessary for congressional or public inquiries.

To the extent possible, EPA will use the Compliance Data System (CDS) to retrieve this information. EPA will use CDS for items 1, 3, 4, and 5. The Board agrees to input this data in accordance with the §105 grant (Attachment #1) entitled "Compliance Data System" and "Enforcement Statistics."

Information for items 2, 6, 7, and 8 are not attainable by CDS due to the nature of the data and the timeframe for reporting. To satisfy the national reporting criteria, the Board agrees to report monthly to EPA, by the 5th day of the month, information required for items 2, 6, and 7. Specific requirements for this reporting are established in the Strategic Planning and Management System (SPMS) (Attachment #5). For item 8, the Board agrees to provide EPA information necessary to respond to congressional or public inquiries.

Once executed, this MOU will continue in effect unless modified by the mutual consent of both parties. The MOU will be reevaluated annually and revised as necessary.

FOR THE TEXAS AIR CONTROL BOARD

Signature of Executive Director — 10/5/84 Date

FOR THE ENVIRONMENTAL PROTECTION AGENCY, REGION 6

Dick Whittington
Signature of Regional Administrator — 10-17-84 Date

ATTACHMENT #1

State: Texas

Region VI
FY 85 105 GRANT OUTPUT DESCRIPTION

Output Objective: Compliance Program and Reporting

Grant Allocation:

Goal: To provide for management and supervision of the State's enforcement program; to ensure that violating sources are placed on an enforceable compliance schedule designed to bring them into compliance in an expeditious manner; and to report the status of the source's compliance and the State's enforcement activity.

Date	Milestones
Compliance Data System	
15th of each month	State will submit the update of CDS for SIP, NSPS, PSD, and NESHAP Programs to EPA using CAPS data system, assuring that all data is accurate and up-to-date. Data will include asbestos demo/reno activities. Updates will be used to document achievement of enforcement output commitments.
Significant Violators Activity	
10/15/84	State will submit a list of all state-lead significant violators and a compliance workplan for each violator. The workplan will include forecasted action dates with final resolution within two quarters.
15th of each month	State will report in writing the progress in achieving the workplan action dates. If the action dates are not achieved, the State will report in writing on reasons for the delay. If final resolution is not attained in two quarters, EPA and the State will negotiate action dates with final action no later than 9/85. As new signficant violators are identified, the State will submit compliance workplans.
Other Enforcement Activity	
Quarterly: 1/15/85 4/15/85 7/15/85 10/15/85	State will submit the State's plan of action, and report on the status of all sources listed in CDS as Codes 0, 1, 5, 6, and 7 for more than sixty days. State will implement the plan of action for each source. For unknown sources, State will change status upon completion of State action. State will complete action for "unknowns" by next quarterly report.

LAM 003742

DPMC-09833

State: Texas

Region VI
FY 85 105 GRANT OUTPUT DESCRIPTION

Output Objective: Compliance Program and Reporting (continued)

Date	Milestones
30 days after referral	State will respond to referrals of violations from EPA by initiating State action or returning it to EPA for Federal enforcement, or demonstrating source is in compliance.
As needed	After discussion with EPA, State will take appropriate enforcement actions against source not in compliance with applicable regulations after 12/31/82. If necessary, EPA will take action.
11/1/84	State will submit a list of all sources required to have continuous emission monitors (CEM) under NSPS Subpart D and Da. The list will include verification that the source has installed all required monitors, passed the performance specification testing, and submitted the required excess emission reports.
As needed	The State will take appropriate enforcement action against a source that does not have CEMs required by NSPS. If necessary, EPA will take action.

Enforcement Statistics

Quarterly 1/15/85 4/15/85 7/15/85 10/15/85	State will provide the following information on enforcement activities on SIP, PSD, NSPS, and NESHAP sources during the previous quarter:
	(1) Number of Notices of Violation (NOV) issued including name of source, location, regulation violated, and date of NOV.
	(2) Number of administrative orders or Agency compliance schedules issued including name of source, location, regulation violated, date of order, and final compliance date.
	(3) Number of facilities brought into compliance through informal procedures including name of source, location, regulation violated, type of informal action (e.g., letter, phone call, visit, etc.)
	(4) Number of civil/criminal actions initiated including name of source, location, regulation violated, date referred to the State's Attorney General.

LAM 003743

DPMC-09834

State: Texas

Region VI
FY 85 105 GRANT OUTPUT DESCRIPTION

Output Objective: Compliance Program and Reporting (continued)

Date	Milestones
	(5) Number of civil/criminal actions completed including name of source, location, regulation violated, date of settlement, amount of fine, and final compliance date.
	(6) Number of variances granted including name of source, location, date variance granted and date variance expires, and regulations for which variance was granted.
	(7) Number of fines and/or penalties assessed by the Board including the name of the source, location, regulation violated, amount of fine, and date of action.

Excess Emissions/Emergency Discharge Reports

Quarterly: 1/15/85 4/15/85 7/15/85 10/15/85	State will provide EPA a summary report on their review of the excess emissions/emergency discharge reports submitted to the State by sources subject to NESHAP requirements. The summary report will include the State evaluation of each excess emission report and its disposition.

Guideline or criteria for accomplishment:

Content of CDS updates shall conform to the guidance issued on 5/16/84.
Section 113, CAA. Significant violators list and definition 4/16/82.
PSD, NSPS, and NESHAPs letters of delegation.

LAM 003744

DPMC-09835

ATTACHMENT #2

MINIMUM SUBSTANTIVE PROVISIONS FOR PERMITS, CONSENT DECREES AND COMPLIANCE ORDERS

A. Permits

1. Identification of all points of emission (both stack and fugitive).

2. Specification of a numerical emission limitation for each point of emission in terms of mass rate or concentration limitations. If emission testing based on a numerical emission limitation is infeasible, the permit may instead prescribe a design, operational or equipment standard. Any permits issued without numerical emission limitations must contain conditions which assure that the design characteristics or equipment will be properly performed so as to continuously achieve the assumed degree of control.

3. Limitations on factors which were basis for air quality impact analysis must be specified (e.g., hours of operation, stack height, materials processed which affect emissions).

4. Methods of determining compliance for each point of emission must be referenced (if part of the SIP) or explicitly identified if a reference method is not used.

5. Where continued source compliance is dependent on process variations or events which can be reasonably anticipated, preventative requirements must be specified (such as stockpiling of low sulfur coal and fuel specifications such as ash content and sulfur content).

6. Record keeping requirements which enable the agency to ascertain continued compliance especially where factors such as hours of operation, through-put of materials, type or quantity of materials processed are conditions of the permit.

7. A condition that the permit will expire if the construction is not commenced within certain specified time frame.

8. The condition that the source is responsible for providing sampling and testing facilities at its own expense.

9. Reporting requirements which enable the agency to monitor the progress of source construction and compliance including the date by which construction is completed, and if different from the completion of construction date, the date by which full compliance is to be achieved.

B. Consent Decree

1. A statement by the polluter which admits, for purposes of that decree, facts necessary to establish the court's jurisdiction to enter the decree.

2. A schedule which includes dates by which the polluter must have taken specific action to bring the source of pollution into compliance with the generally applicable requirements. This schedule typically has a date for submittal of final control plans to the Agency, a date by which contracts for emission control systems or process modifications will be awarded, a date for beginning on-site construction or installation of emission control equipment or process modification is to be completed, and a date by which final compliance will be achieved.

3. A determination of the civil penalty which the polluter must pay upon the issuance of the decree. This penalty is designed to remove any economic benefit which the polluter enjoyed by delaying compliance, as well as penalizing recalcitrance and harm to the environment resulting from the excessive emissions.

4. A specific penalty which will be assessed by the court for failure of the polluter to meet the various requirements of the decree, including each action in the compliance schedule. This provision eliminates arguments later as to how much penalty is needed to punish the polluter for failing to meet its agreement.

5. Requirements for limiting excessive emissions as much as possible during the time that the polluter cannot comply with the generally applicable requirements. A polluter cannot operate as if it were free of regulation until it can fully comply with the law.

6. Requirements for measuring the quantity of pollutants emitted at the conclusion of the compliance schedule. A determination of final compliance can be made only with such a measurement, usually a stack test.

7. Requirements for ensuring that the source is operated and maintained in such a way that compliance, once achieved, continues indefinitely. These requirements may include a maintenance program, specific operational limits, continuous monitors to measure emissions, or other operational and maintenance programs.

C. Compliance Orders

1. A paragraph that defines the violation including the method of discovery and the time of the violation. The regulation violated must also be included.

2. A schedule which includes dates by which the polluter must have taken specification action to bring the source of pollution into compliance with the generally applicable requirements. This schedule typically has a date for submittal of final control plans to Agency, a date by which contracts for emission control systems or process modifications will be awarded, a date for beginning on-site constructionor installation of emission control equipment or process change, a date by which on-site construction or installation of emission control equipment equipment or process modification is to be completed, and a date by which final compliance will be achieved.

3. Requirements for limiting excessive emissions as much as possible during the time that the polluter cannot comply with the generally applicable requirements. A polluter cannot operate as if it were free of regulation until it can fully comply with the law.

4. Requirements for measuring the quantity of pollutants emitted at the conclusion of the compliance schedule. A determination of final compliance can be made only with such a measurement, usually a stack test.

5. Requirements for ensuring that the source is operated and maintained in such a way that compliance, once achieved, continues indefinitely. These requirements may include a maintenance program, specific operational limits, continuous monitors to measure emissions, or other operational and maintenance program.

6. A paragraph that offers the pollutant an opportunity to a conference. The conference offers the pollutant an opportunity to discuss the violation, tell of the manner in which the violation will be corrected and the time that it will take to correct the violation.

ATTACHMENT #3

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

FEB 7 19[illegible]

OFFICE OF
AIR, NOISE AND RADIATION

SUBJECT: Revised Inspection Frequency Guidance for State and Local Agencies

FROM: Director
Stationary Source Compliance Division
Office of Air Quality Planning and Standards

TO: Air and Waste Management Division Directors
Regions II, IV, VI-VIII and X

Air Management Division Directors
Regions I, III, V, and IX

Attached please find the "revised inspection frequency guidance for State and local agencies" as contained in the recently-issued Compliance Strategy for Stationary Sources of Air Pollution. This guidance will be fully implemented beginning in FY 1985. (Changes to FY 1984 commitments based on this guidance are discretionary with the Region.) It replaces the March 1980 guidance that required at least annual inspections be conducted for all operating NSPS, NESHAPs, and Class A1 SIP sources and biennial inspections for all operating Class A2 SIP sources.

The revised guidance is intended to balance the need for a nationally-uniform data base to enable an evaluation of the effectiveness of the program with the needs of State and local agencies to make optimal use of their limited resources to address the varied and unique air quality problems faced by each. However, please note this guidance establishes only the minimum acceptable onsite surveillance program. Agencies are strongly encouraged to go beyond these minima to the extent resources permit.

The principal distinctions between the March 1980 and the revised guidance attached herein are:

- Class A1 SIP sources will generally continue to be inspected, at a minimum, once a year. However, certain limited exceptions are now permitted.
- Added discretion for State and local agencies to redirect inspection resources previously targeted for biennial inspections of Class A2 SIP sources, as long as resource levels are maintained.

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- The use of continuous emission monitoring excess emission reporting (EER) under certain conditions in lieu of on site inspections in meeting specified inspection frequencies.

We recognize that due to the transition from one guidance to another, compliance with the new requirements will be difficult to monitor for SPMS purposes in the first year (FY 1985). In order to ensure the revised inspection frequency guidance reaches you in time for the FY 1985 State grant negotiations, we are sending it out now. More detailed instructions for entry of data into CDS for SPMS purposes will be provided later.

For any questions or comments that may arise, please feel free to contact me or Howard Wright at 382-2831.

Edward E. Reich

Attachment

cc: Air Program Branch Chiefs
Regions I-X

Air Compliance Branch Chiefs
Regions II, III, V, VII, and IX

LAM 003749

DPMC-09840

REVISED GUIDANCE ON INSPECTION FREQUENCY FOR STATIONARY SOURCES OF AIR POLLUTION

The inspection is the primary compliance assurance method presently available in the air program for validating source performance. Therefore, EPA believes it is imperative that an inspection program be implemented in all States. The following guidance on the expected frequency of inspections is intended to balance the need for a nationally-uniform data base to enable an evaluation of the effectiveness of the program with the needs of State and local agencies to make optimal use of their limited resources to address the varied and unique air quality problems faced by each State and locality.

The frequency of such an inspection shall be determined by which requirements are applicable (SIP, NSPS, NESHAPs) and, for SIP sources, by whether the source is a Class A1 or Class A2 source. It is imperative that all sources be classified by SIP class (if applicable) and applicable air program (SIP, NSPS, NESHAPs) and that these data be duly recorded into EPA's Compliance Data System (CDS).

DEFINITION OF AN INSPECTION AND USE OF CONTINUOUS EMISSION MONITORING (CEM) DATA AS AN ALTERNATIVE

For the purpose of this guidance, a State inspection shall mean an onsite visit to an operating source to assess compliance with applicable State and Federal air pollution control requirements.

An alternative for satisfying inspection frequency guidance by the State for any SIP or NSPS source is the use of continuous emission monitoring Excess Emission Reporting (EER) on a quarterly basis in lieu of periodic inspection requirements. An EER is a suitable alternative for a source utilizing continuous emission monitoring under the following conditions:

- The data reported in the EER to assess compliance are at least comparable to the data which would have been obtained during an onsite inspection to assess compliance.

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DPMC-09841

- As part of the State's CEM quality assurance/ quality control program, the monitor must be quantitatively audited at least every three years.
- EERs must be input into the CEM subset of CDS.
- The intended use of the EER alternative to onsite inspections must be agreed upon between the State and the EPA Regional Office.
- The Stationary Source Compliance Division must receive the names and CDS numbers of all Class A1 SIP and NSPS sources covered by the EER alternative to adjust properly the data base for subsequent analysis and reporting.
- The State must conduct an onsite inspection of all sources being tracked under the EER alternative at least once every three years. (This could be conducted in conjunction with the quantitative audit previously described.)

It is EPA's belief that continuous emission monitoring should eventually be fully integrated with inspections and other compliance determination methods into a total compliance monitoring system. The use of CEM data under the circumstances described in this section is a step in that direction. As more experience is obtained, it is envisioned that this guidance will be revised accordingly.

For sources for which compliance is based solely on the characteristics of the fuel burned (typically percentage of sulfur in the fuel), an inspection of the fuel supplier's records and a sampling of the supplier's product can be substituted for an onsite inspection of the source.

CLASS A1 SIP SOURCES

All operating Class A1 SIP sources regulated under the Clean Air Act shall be inspected annually. Annually is construed to mean at least one onsite visit is made to each such source between October and September, corresponding to the Federal fiscal year.

An exception to the annual inspection requirement is permitted if the EPA Regional Office and State agree that a source is constrained by an operating permit or is seasonal in nature such that it would be inappropriate to apply an annual inspection requirement to this source. All such excepted sources shall be inspected at least once every five years. Categories such as grain elevators and alfalfa dehydrators are examples of possible exceptions. Exceptions should be communicated by the Regional Office to EPA's Stationary Source Compliance Division (SSCD) at the start of the inspection year so that the data base can be properly adjusted for subsequent analysis and reporting. Regional Offices are encouraged to discuss with SSCD any novel issues which may arise in their discussions with their States.

CLASS A2 SIP SOURCES

Except as noted below, operating Class A2 SIP sources regulated under the Clean Air Act shall be inspected biennially. However, a State may propose a modified inspection scheme to its EPA Regional Office which represents at least the same level of resource commitment but which the State believes is more responsive to the needs of its air quality program. This can consist of any combination of additional Class A1 SIP inspections, Class A2 SIP inspections, and inspections of other sources regulated under the Clean Air Act. This could include Class B SIP sources in those areas where they are particularly significant. EPA Regional Offices and their States are free to establish whatever approach is best suited to their situation as long as the following conditions are met:

- SSCD must receive informational copies of such agreements at the start of each fiscal year.
- A method of monitoring the agreement must be in place and data reporting requirements clearly established.
- The State must demonstrate that the modified approach is based on at least the same resource expenditure as would be required to inspect all Class A2 SIP sources on a biennial basis.

- All operating Class A2 SIP sources must be inspected at least once every five years.

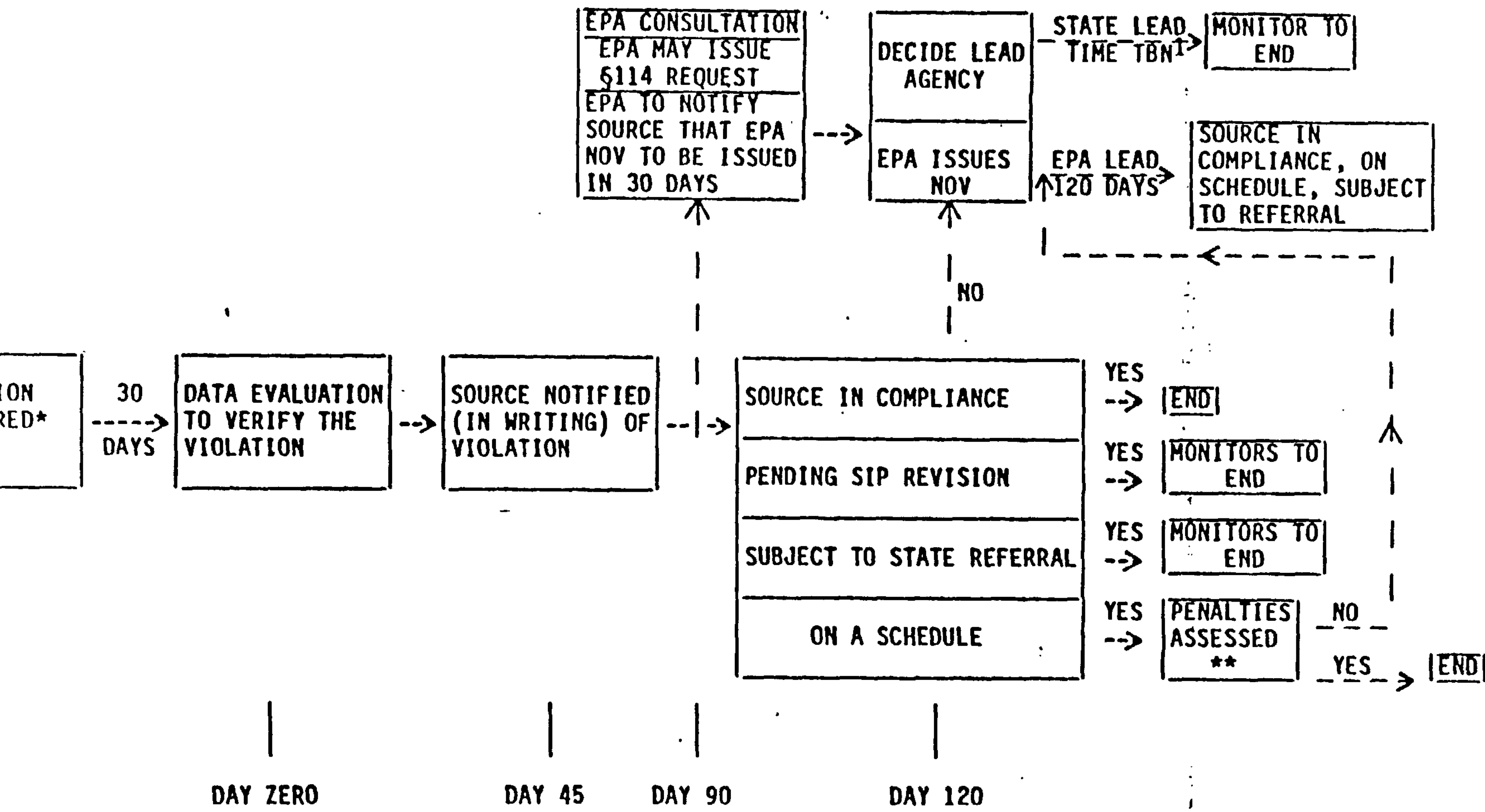
NSPS SOURCES

Any operating NSPS-subject source which is also a Class A1 SIP source shall be inspected at least once every Federal fiscal year. All other NSPS sources shall be treated as a Class A2 SIP source.

NESHAPs SOURCES

All operating nontransitory NESHAPs-subject sources shall be inspected at least once every Federal fiscal year.

NATIONAL MINIMUM TIMEFRAMES FOR ENFORCEMENT ACTIONS
STATES WITH PENALTY AUTHORITY



* Applies to significant violators as follows: 1) Class A SIP violators in nonattainment areas in violation for the pollutant for which the area is nonattainment, and 2) NSPS violators (were delegated) and sources operating in violation of Part C (PSD) and Part D (nonattainment areas) permit requirements.

** Penalties apply to: Class A SIP violators in nonattainment areas in violation for the pollutant for which the area is nonattainment, 2) violators of Part D, PSD, and NSPS requirements which continue to operate after failure to demonstrate initial compliance, 3) sources which violate State or Federal administrative or judicial schedules, and 4) violators which the State and EPA determines are repeat violators.

TBN - To be negotiated.

WASHINGTON, D.C. 20460

ATTACHMENT #4

JUN 28 1984

OFFICE OF
AIR AND RADIATION

SUBJECT: Guidance on "Timely and Appropriate" EPA/State Enforcement Response for Significant Air Violators

FROM: Joseph A. Cannon, Assistant Administrator for Air and Radiation

TO: Regional Administrators
Regions I - X

As you know, the Deputy Administrator formally initiated a process to clarify and improve EPA/State relationships in the compliance and enforcement programs with an April 9, 1984 memorandum entitled "Forging an Effective Federal/State Enforcement Relationship". In that memorandum, an Agency-wide Steering Committee was established with State participation to develop a framework document to articulate Agency policy in such important areas as oversight criteria and measures, criteria for direct Federal enforcement, notification and consultation protocols, and reporting requirements. The results of that effort, the Policy Framework for State/EPA Enforcement "Agreements", will be available by the end of this month.

Much of the Policy Framework document relates to oversight of State compliance programs. We are fortunate in the air program to already have an effective audit system, the National Air Audit System (NAAS), which includes compliance and enforcement as an element. We believe the NAAS has worked well in its initial year of implementation and are pleased by the reaction to the process by the States. We will continue to use the NAAS, with such changes as may be made for FY 1985, as the vehicle to carry out the guidance on oversight embodied in the Framework document.

The major new initiative in implementing the Deputy Administrator's memorandum was the development of guidance on what constitutes a "timely and appropriate" EPA/State enforcement response for significant air violators. This guidance, a copy of which is attached, was developed with Regional Office and STAPPA/ALAPCO input and addresses timelines for action, EPA issuance of NOVs, when penalties must be obtained, and consultation and data transfer requirements.

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DPMC-09846

It is intended as a starting point for the negotiation of enforcement agreements with the individual States for FY 1985. This guidance should be read in conjunction with the Policy Framework document, which discusses how it is to be used.

The Policy Framework document also contains suggestions relative to advance notification and consultation which should help foster a more cooperative and effective EPA/State working relationship. Relative to reporting, the discussion on the Policy Framework will be supplemented by and implemented through the SPMS accountability system guidance for FY 1985.

We believe the NAAS, the Policy Framework document, the guidance on "timely and appropriate" enforcement response, and the SPMS guidance establish a strong framework for clarifying the relative roles and responsibilities of EPA and the States and the mutual expectations of the various enforcement agencies. We look forward to working with your office to assure the successful implementation of this important effort.

Attachment

cc: Air Division Directors
Regional Counsels

JUNE 1984

GUIDANCE ON TIMELY AND APPROPRIATE STATE/EPA ENFORCEMENT RESPONSES FOR SIGNIFICANT AIR POLLUTION VIOLATORS

I. Scope of Guidance

A.1. It is assumed that States* will address any violations of air pollution regulations within their jurisdictions (except for non-delegated Federal standards). By focusing on a limited group of violators for purposes of this guidance, it is not intended to detract from the importance of addressing other violators and the rights and responsibilities of the States and EPA for doing so.

2. This guidance is an initial step towards clarifying mutual expectations of the respective parties to the Federal-State partnership in the enforcement of air pollution control requirements for stationary sources. It is fully expected that it will be modified and expanded in future years to reflect experiences in its initial implementation and the evolution of the air program itself.

3. In accordance with the Deputy Administrator's memorandum of April 9, 1984 on Forging an Effective State/Federal Enforcement Relationship, this national guidance will serve as the framework for State-specific agreements reflecting the parties' mutual expectations. As that memorandum states, "[t]he Regions will have to accommodate differences among States, for example, where their administrative procedures require different timelines for enforcement action."

B.1. This guidance applies to the following classes of significant violators:

(a) Class A SIP violators in nonattainment areas in violation for the pollutant for which the area is nonattainment, and

* "State" as used throughout this paper also refers to local agencies where they have enforcement authority.

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DPMC-09848

(b) NSPS violators (where delegated) and sources operating in violation of Part C (PSD) and Part D (nonattainment areas) permit requirements.

2. This guidance does not apply to emergency episodes, sources constructing without a valid PSD or Part D permit where required (or in violation of such a permit), or NESHAPs violations since action against such sources must proceed more quickly than the timelines would permit. In the case of emergency episodes or NESHAPs violations, the seriousness of the violation would normally require expedited action. In the case of a source constructing without a required PSD or Part D permit or in violation of a permit, options for obtaining relief may be foreclosed by allowing the source to continue to construct and, therefore, expedited action may be essential.

II. Timelines for Enforcement Action

A.1. The clock starts (i.e., day zero) 30 days after the date of the inspection or receipt of a source self-monitoring report which first identifies the violation. This provides sufficient time for an evaluation of the inspection or source report data to determine if a violation exists. If, during this 30-day period, the State determines that a stack test or a sample analysis is required to determine or confirm the violation, the clock does not start until the date of receipt of the stack test or sample analysis report.

2. Any serious problems occurring earlier in the process would be identified and addressed in the National Air Audit System process rather than under these timelines.

B. By day 45, the source should be notified of the violation and its need to remedy it by the State in writing or in a documented conversation (in any form the State feels is appropriate).

C. By day 120, the source shall either be in compliance, on a legally-enforceable expeditious State administrative or judicial order, be subject to a referral to the State attorney general or for a State adjudicatory enforcement hearing, or be subject to a proposed SIP revision which has at least been scheduled for a State hearing and which EPA staff-level review shows is likely to be approved. For cases where penalties are required (see IV below), penalties must also be addressed as part of the State action if it is to be sufficient to obviate further EPA action.

D. If a schedule is established, the State will monitor compliance with that schedule and report on progress in accordance with established reporting requirements. If a referral is made, EPA will continue to monitor the progress of the case to and after filing. If a SIP revision is initiated, EPA will monitor the progress of the revision through the State administrative process. If a case or SIP revision becomes unduly delayed, EPA will discuss this with the State and may choose to initiate a parallel Federal action. No formal timelines are being established for this stage of the enforcement process, however.

E. If none of the actions specified in C. have occurred by day 120, EPA will discuss with the State the status of the State's actions and its expectations. If discussions with the State suggest that the State is close to resolving the violation or that further deferral is otherwise appropriate, EPA will continue to defer to enable the State to complete its action. If EPA determines that further deferral is not justified, it will proceed with its own action at this point.

F. When EPA takes the lead in a case, it will act to get the source in compliance, on a schedule, or subject to a Section 120 action or judicial referral within 120 days of its assumption of the lead. EPA will encourage continued State participation even where EPA takes the lead. The possibility of a joint action should be considered as an alternative to a unilateral EPA action where feasible.

III. <u>Issuance of NOVs by EPA</u>

A. At day 90, EPA (after consultation with the State on the progress of the case to date) may take one of the following actions as circumstances dictate:

(a) initiate case development activities through an inspection or issuance of a Section 114 letter. (This will be less likely to be required if the State provides sufficient documentation to support an NOV, as provided in III.C.)

(b) advise the source that EPA will issue an NOV in 30 days if the source does not reach an acceptable resolution with the State before then. (This should be used only where such an action by EPA is likely to be of significant value in prompting the source to reach an acceptable agreement with the State.)

(c) issue the NOV, if requested by the State or if it is clear that a resolution will not be reached by the State by day 120 and that the environmental significance of the source warrants EPA action at this point.

B. EPA will routinely issue NOVs, if not already issued, on (or shortly after) day 120 if the violations are still unresolved at that point. This is not intended as a criticism of the State action but only as expression of EPA concern to reinforce State efforts and as a necessary legal prerequisite to further EPA action. (NSPS sources will receive letters of violation rather than NOVs.)

C. Any NOV issued on day 120 will be issued only after consultation with the State. If there is some particularly compelling reason why the NOV should not be issued to a source at day 120, EPA will defer its issuance but this is not expected to be the case in the vast majority of cases. EPA will rely wherever possible on information provided by the State according to mutually-agreed upon procedures.

D. In addition, EPA may immediately issue an NOV to any source subject to this guidance where it finds the violation rather than the State. (This would not apply to violations discovered in joint inspections.) However, prior to a decision on issuance of the NOV, EPA will discuss with the State the circumstances of the violation and ascertain the reason why the violation had not been reported by the State. EPA will also resolve in consultation with the State who will take the lead for the source and the nature and timing of follow-up action.

E. Any NOV issued in a case where the State still has the lead will indicate that EPA is still looking to the State to resolve the matter and further EPA action will be required only in the absence of an acceptable, prompt resolution by the State.

F. EPA will transmit a copy of all NOVs it issues to the State in whose jurisdiction the source is located. If the violation clearly impacts upon the air quality of an adjacent State, EPA will transmit a copy of the NOV to that State as well.

IV. Penalties

A cash penalty of sufficient magnitude appropriate to the violation is required as an element of the resolution of the following classes of violations. If the penalty is not obtained by the State, an EPA action will be brought. If the State believes it can obtain a compliance schedule but not the penalty, a joint action could be appropriate.

The classes of violations subject to this guidance for which an appropriate cash penalty is required are:

(a) Class A SIP violators in nonattainment areas in violation for the pollutant for which the area is nonattainment unless on an EPA-approved DCO or subject to an approvable SIP revision;

(b) violators of Part D, PSD, and NSPS requirements which continue to operate after failure to demonstrate initial compliance. (This would not apply during periods which the regulations or permit specifically provide for "debugging" prior to demonstration of compliance, such as the 180-day start-up period for NSPS sources provided for in 40 CFR Section 60.8);

(c) sources which violate State or Federal administrative or judicial schedules, thus requiring an extension of the final compliance date;

(d) violators which the State or EPA determines are repeat violators.

This requirement would not be applicable to de minimis violations or violations arising from force majeure circumstances.

V. Consultation and Data Transfer

A. EPA and States would initiate or continue at least monthly informal consultations to discuss compliance efforts. During these discussions, information exchange relative to obtaining compliance and penalties would occur. This exchange would include at least the following items.

(a) The State would identify any newly-found violators subject to this guidance.

(b) The State would identify sources notified of noncompliance during the month consistent with Section II.B.

(c) The State would identify violators where action had been taken, consistent with Section II.C., including penalties where required by Section IV.

(d) The State would discuss the status of other enforcement actions pending or in progress if requested by EPA.

(e) EPA would identify sources for which it had completed action and provide the status for other sources where action is pending or in progress.

(f) EPA would identify any sources it had found in violation and confer with the State in accordance with III.D.

B. The CDS would be updated by EPA and/or the State on a monthly basis to reflect:

(a) Compliance status changes for newly-identified violators which are in violation on the last day of the month prior to the consultation and which were (or are expected to be) in that status for 7 days or more.

(b) Sources notified of noncompliance.

(c) Sources with completed enforcement actions, including any schedules and incremental dates for returning to compliance.

(d) Sources found to be in compliance with final limits.

C. Inspection results other than those affected by the above will be provided in accordance with current practices and EPA accountability system requirements.

D. EPA and the State will share inspection results and monitoring reports for use in enforcement proceedings to the extent practicable. State personnel should be encouraged to provide evidence, including testimony, for Federal proceedings. Federal personnel should similarly support State enforcement proceedings.

ATTACHMENT #5

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

JUL 12 1984

OFFICE OF
AIR AND RADIATION

MEMORANDUM

SUBJECT: FY 1985 SPMS Accountability Requirements

FROM: Director
Stationary Source Compliance Division
Office of Air Quality Planning and Standards

TO: Directors, Air Management Division
Regions I, III, V, and IX

Directors, Air and Waste Management Division
Regions II, IV, VI, VII, VIII, and X

Attached are the SPMS accountability requirements for FY 1985 developed jointly by OECM and SSCD (Attachment 1). Wherever possible, we tried to avoid changes since the program is working well. However, I would like to call your attention to some significant changes from FY 1984 requirements. Supplemental detailed reporting instructions for CDS will follow.

The most important change from FY 1984 is the revision to the definition of a significant violator. Relative to SIP sources, this definition has been expanded to include all Class A sources in violation of a SIP which impact a nonattainment area for the pollutant for which the source is in violation. The purpose of this change was to include within the significant violator program Class A2 sources which, as the focus shifts to VOC, become increasingly important. The possibility of this change was discussed with your Branch Chiefs on a conference call in May and received strong support from the Regional Offices. In addition, the definition of significant violator will now include sources in violation of a Federal consent decree or administrative order and all Class A Federal facility violators (irrespective of the attainment status of their location). Certain other minor clarifications and simplifications were also made.

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DPMC-09854

We recognize that the expanded definition of a significant violator may make it impossible for some Regional Offices to commit to 100% resolution of the beginning-of-year list during FY 1985. We are prepared to support aggressive targets less than 100% where the combined Regional/State resources are not sufficient to address fully the expanded universe.

Please use the next two months to refine your inventory of violators meeting the revised definition and include your additions with your fourth quarter FY 1984 report, identified separately from those meeting the existing definition. This will facilitate inclusion of these sources in the beginning-of-year universe for FY 1985 tracking.

Relative to the quarterly reporting for significant violators, it will be virtually identical to this year's, with both a dynamic and static (fixed base) component. The fixed base will be those significant violators shown as of October 1, 1984 as in violation and not in compliance with an acceptable schedule. By December 1, the Regions will be required to commit to how many of this fixed base will be resolved by States and EPA by the end of FY 1985. For this purpose, "resolution" is defined similarly to this year, with changes to the language on penalties to reflect the June 28, 1984 guidance on "Timely and Appropriate" EPA/State Enforcement Response for Significant Air Pollution Violators. (See Attachment 2 for the definition of "resolution.") After Headquarters concurrence, the commitments will be tracked quarterly and progress will be reported via a manual report to SSCD due on the last day of each quarter. Regional Offices will also report manually on newly-identified significant violators. SSCD will use CDS for the balance of the significant violator information. (These reporting procedures are the same as for this year.)

Reporting of compliance statistics will continue essentially unchanged from this year, based purely on CDS. Inspection data will be reported as before, with the addition of Federal facilities, and evaluated relative to the inspection frequency guidance attached to my memorandum to you of February 7, 1984. Reporting for Class A1 SIP, NESHAPS, and Class A1 Federal facilities should be relatively straightforward since inspections must be annual (except for the limited exceptions specifically noted in the guidance). For those NSPS and Federal facilities which are not also Class A1 SIP sources, evaluation may be more complex depending on the degree to which (and how) the increased flexibility in the revised guidance is implemented. We will need your help, particularly in assuring that we know which of these sources are to be inspected during the year. We will address this at greater length in the supplemental CDS guidance.

At the request of OECM, we have established FY 1985 targets for meeting the inspection frequency guidance. We have set these at 95% for Class A1 SIP and 97% for nontransitory NESHAPS. Due to the previously-discussed problem with establishing the base for NSPS and Federal facilities, we have been given until the end of the second quarter to establish targets for those two programs.

As in other media, we will be reporting quarterly the number of EPA administrative actions (Sections 113(a) and (d), 167, 120), State administrative actions (meeting the criteria set forth in the Policy Framework developed by the Steering Committee on the Federal/State Enforcement Relationship), State civil referrals, and criminal filings. All this data will be taken from CDS so it will be limited to sources of Federal concern tracked in CDS; we recognize it will not represent the totality of State action. It is essential that CDS be complete for State actions for sources tracked in CDS. This will require a major upgrading of CDS data in most Regions. EPA data should be accurate for the quarter just completed while State data may have a one quarter lag to allow for receipt and entry of the State data where it is received only quarterly.

Three additional items have been added to the SPMS for FY 1985. The first item requires that by the end of the second quarter, all Class A SIP, NSPS, and NESHAPs violating sources be properly coded in CDS to reflect pollutant-specific compliance status and, for SIP sources, current attainment designations. We have asked for pollutant-specific compliance status information for violating sources before with only limited response. Such information is absolutely critical to evaluating the environmental status and effects of our compliance program.

The second item requires the reporting of certain information on asbestos demolition and renovation activities. This is consistent with the high priority for this program and the FY 1985 operating year guidance. (The actual measures were proposed for comment as part of the draft asbestos strategy. No negative comments were received). Those data should be reported in a manual report due on the last day of the quarter. For all violations during the quarter, or pending at the beginning of the quarter, the name of each violator (include demolition contractor and site location) should be given, as well as the status of any State or Federal action to resolve the violation.

The final item, consistent with the increased attention being devoted to continuous emission monitoring, relates to implementation of CEM requirements for Subpart D and Da NSPS sources. We have selected certain elements of the program outlined in the Agency's Continuous Compliance Strategy (sent to you on April 6) for tracking in FY 1985. Based on earlier Regional comments, we believe this program can be accomplished in FY 1985 given the fourfold increase in Regional CEM resources contained in the FY 1985 workload model. The measures relate to assuring an accurate inventory in the CEM subset of CDS, initiation of an action (Federal or State) against sources required to have CEMs which don't, and receipt, review, and entry into the CDS/CEM subset of quarterly report data for Subpart D/Da sources. We will continue to work closely with your CEM contacts to assure successful implementation of this important program. The enforcement action data should be reported manually. The balance will be reported via CDS and the CEM Subset.

A single memorandum from each Region is requested that reports all the information for which manual reporting is required. In summary, this information consists of newly-identified significant violators, a status report on the fixed significant violator universe, a status report on NESHAP demolition and renovation activity, and a status report on enforcement activity for NSPS D/Da sources (first report not due until end of third quarter). This memorandum is due to SSCD on the last day of each quarter, beginning December 31, 1984. For convenience, the electronic mail system can be used. SSCD's electronic mail number is 6203. Due to the deadlines imposed upon us, it is vital that this information be received on time.

I hope this provides a useful overview of the SPMS accountability system requirements for FY 1985. We plan to discuss this item at the Air Branch Chiefs meeting in Southern Pines and will be available to discuss it at the compliance session in Southern Pines if the Regional Offices so desire. If you have any questions about this, please feel free to call John Rasnic, Steve Hitte, or me.

Edward E. Reich

Attachments

cc: Air Program Branch Chiefs, Regions I-X
Air Compliance Branch Chiefs,
Regions II, III, V, VII, and IX

Program Area: Air and Radiation

(Responsible Office)

Attachment 1

OBJECTIVE	MEASURE	SPMS CODE	FREQUENCY
Attain and maintain high levels of compliance with the requirements of the Clean Air Act.	OAR Maintain CDS as the enforcement reporting system for the Strategic Planning and Management System. Regional Offices and the States will report the following statistics to OAR on a quarterly basis: COMPLIANCE a. Compliance status of sources (Class A SIP, Class A1 SIP, NSPS, NESHAP, Federal facilities). b. Number of newly-identified violators (Class A SIP, Class A1 SIP, NSPS, NESHAP). c. Number of violators placed on an acceptable compliance schedule (Class A SIP, Class A1 SIP, NSPS, NESHAP). d. Number of violators achieving final emission limitations (Class A SIP, Class A1 SIP, NSPS, NESHAP). INSPECTIONS e.* Percent of sources that should have been inspected in the most recent four quarters (Class A1 SIP, NSPS, NESHAP, Federal facilities) that actually were inspected by EPA or a State. This measure will have a one quarter data lag to allow for entry of State data into CDS.		Q 1, 2, 3, 4

* This measure requires that Regions and States meet targets of 95% for Class A1 SIP, 97% for NESHAP. As expected, implementation of the revised inspection frequency guidance has complicated setting the base number of sources to be inspected for NSPS and Federal facilities against which performance will be measured.

LAM 003767

DPMC-09858

Administrator's Goal: Restore Environmental Quality
Program Area: Air and Radiation

(Responsible Office)

OBJECTIVE	MEASURE	SPMS CODE	FREQUENCY
	ADMINISTRATIVE ORDERS f. Number of administrative actions taken by EPA (113(a), 113 (d), 167, 120) and States (at a minimum, State actions must meet criteria set forth in guidance issued by the Steering Committee on Federal/State Enforcement Relationship. See attached criteria.) REFERRALS g. Number of State civil referrals from State Agency to State Attorney General and number of cases filed by State Attorney General in State court. Also, report the number of criminal filings for States. The number of EPA civil/ criminal referrals will be obtained from the DOCKET system.		
Return significant violators (see attached definition of a significant violator) to compliance with requirements of the Clean Air Act.	Regional Offices and the States will work towards returning significant violators to compliance. DYNAMIC BASE Report the following information to OAR on a quarterly basis: a. Number of significant violators not on an acceptable compliance schedule at the beginning of the quarter. b. Number of newly-identified significant violators during the quarter. c. Number of significant violators resolved during quarter:		Q1, 2, 3, 4

LAM 003768

DPMC-09859

Administrator's Goal: Restore Environmental Quality
Program Area: Air and Radiation

(Responsible Office)

OBJECTIVE	MEASURE	SPMS CODE	FREQUENCY
	• Number of violators achieving final emission limitations. • Number of violators placed on an acceptable compliance schedule. d. Number of significant violators still out of compliance and not on an acceptable compliance schedule (a + b - c). FIXED BASE** Track the status of significant violators not in compliance at the beginning of the fiscal year throughout-the fiscal year. Report the following information to OAR on a quarterly basis: a. Number of significant violators achieving final emission limitations. b. Number of significant violators placed on an acceptable schedule. c. Number of significant violators subject to enforcement action (i.e. administrative order or case referral. See Appendix for definitions).		Q1, 2, 3, 4

** This measure requires that the Regions and States jointly establish name lists of significant violators and establish quarterly targets for addressing those violations and returning the sources to compliance.

LAM 003769

DPMC-09860

Administrator's Goal: Restore Environmental Quality
Program Area: Air and Radiation

(Responsible Office)

OBJECTIVE	MEASURE	SPMS CODE	FREQUENCY
Upgrade CDS inventory to allow for evaluation of environmental results of the compliance program.	The Regional Offices shall report on completion of the following activity to OAR in the second quarter report:		Q2
	a. By the end of the second quarter, have all Class A SIP, NSPS, and NESHAP violating sources properly coded in CDS to reflect pollutant specific compliance status and the current attainment designations relevant for each Class A SIP source shown in CDS.		
Expand use of CEM data in the compliance program.	The Regional Offices shall implement a program to expand the use of CEM for NSPS compliance, in accordance with headquarters guidance. Report the following information to OAR:		
	a. Identify and inventory all of the sources subject to NSPS Subpart D and Da which are required to use CEM and enter the information into the CEM subset of CDS.		Q1
	b. By the end of the third quarter, assure initiation of a Federal or State enforcement action against all Subpart D and Da sources required to have CEMs but which have not installed or are not installing them.		Q3
	c. By the end of the fourth quarter, assure receipt, review, and entry into CDS/CEM subset (by the Regional Office or delegated State) of the excess emission report data submitted by Subpart D and Da sources for at least the second quarter.		Q4

LAM 003770

DPMC-09861

Administrator's Goal: Restore Environmental Quality
Program Area: Air and Radiation

(Responsible Office)

OBJECTIVE	MEASURE	SPMS CODE	FREQUENCY
Enforce regulations for controlling asbestos emissions from demolition and renovation activities.	Regional Offices Report the following EPA and State data (seperately) to OAR quarterly: a. total number of notifications b. total number of inspections c. total number of violations found d. status of actions taken to resolve violations.		Q1, 2, 3, 4

Definition of Significant Violator

One of the objectives of the Strategic Planning and Management System for FY 1985 is that resources be used to address significant air violators and return them to compliance. This is designed to ensure that resources are used in the most environmentally-beneficial manner. A violator is deemed a significant violator if it meets any one or more of the following criteria:

1. A source in violation of a hazardous air pollutant standard, other than a source violating asbestos demolition and renovation requirements. (Because of the transitory nature of asbestos demolition/renovation activities, they are not easily susceptible to tracking under the significant violator program. However, because of their environmental significance, they are being tracked in a separate SPMS reporting requirement.)

2. A source in violation of new source requirements, including NSPS, PSD, and Part D nonattainment permitting requirements;

3. A Class A source in violation of a State Implementation Plan if the source is located so as to impact a nonattainment area and is in violation for the pollutant for which the area is nonattainment;

4. A source in violation of Federal consent decree or administrative order; or

5. A Class A Federal facility violator.

The significant violator program is intended to identify the highest priority sources for the air compliance program and to provide a special tracking system for resolving violations by these sources. The criteria listed above are in no way intended to preclude EPA enforcement activity against violating sources which do not meet the criteria (e.g., violating Class A1 SIP sources in attainment areas) if the State has not taken or is not taking appropriate action and if such actions will not detract from the significant violator program.

LAM 003772

DPMC-09863

AIR

State administrative actions should contain provisions that, at a minimum:

- Explicitly requires recipient to take some corrective/remedial action, or refrain from certain behavior, to achieve or maintain compliance;
- Explicitly is based on the issuing Agency's determination that a violation has occurred;
- Requires specific corrective action, or specifies a desired result that may be accomplished however the recipient chooses, and specifies a timetable for completion;
- May impose requirements in addition to ones relating-directly to correction (e.g., specific monitoring, planning or reporting requirements); and
- Contains requirements that are independently enforceable without having to prove original violation and subjects the person to adverse legal consequences for non-compliance.

Attachment 2

SIGNIFICANT VIOLATOR ACTIVITY DEFINITIONS

1. In Compliance: The source has been confirmed to be in compliance by EPA or the State or local agency and this is reflected in CDS. Sources permanently shut down are included.

2. Federal Schedule: A source will be considered on a Federal schedule if it is shown in CDS as in compliance with any of the following and, where applicable, penalties have been obtained in accordance with the Guidance on Timely and Appropriate State/EPA Enforcement Responses for Significant Air Pollution Violators issued on June 28, 1984.

   (a) an administrative order under Section 113(a) or Section 167;

   (b) a final EPA administrative order under Section 113(d) which has been published in the Federal Register; or

   (c) a lodged or entered consent decree or court order under Section 113 or Section 167 consistent where applicable, with all aspects of the Agency's Post-1982 Enforcement Policy of September 20, 1982.

3. State Schedule: A source will be considered on a State schedule if it is shown in CDS as in compliance with any of the following and, where applicable, it is consistent with the Agency's Post-1982 Enforcement Policy of September 20, 1982 and, relative to penalties, the Guidance on Timely and Appropriate State/EPA Enforcement Responses for Significant Air Pollution Violators issued on June 28, 1984.

(a) a formal administrative action (meeting the criteria contained in the Policy Framework for State/EPA Enforcement "Agreements" issued on June 26, 1984) which EPA determines to be acceptable in terms of the final compliance date and interim provisions; or

(b) a State court order (including a consent decree) which EPA determines to be acceptable in terms of the final compliance date and interim provisions.

4. Pending Federal Enforcement Action: A source will be considered to be subject to a Pending Federal Enforcement Action under the following circumstances:

(a) The source is subject to a judicial referral under Section 113(b) or Section 167 and this action has either been forwarded to Headquarters or referred to the Department of Justice and is found acceptable; or

(b) A Federal Section 113(d) order for the source has been proposed in the <u>Federal Register</u>; or

(c) The source has been issued a Notice of Noncompliance under Section 120.

5. Pending State Action: A source will be considered subject to a pending State action under the following circumstances:

(a) The source is subject to a proposed or filed civil action which has been referred to and is being actively pursued by the State Attorney General's Office. Where required under the Guidance on Timely and Appropriate State/EPA Enforcement Responses for Significant Air Pollution Violators issued on June 28, 1984, the action must be for penalties as well as compliance.

(b) The source is subject to a potential SIP revision or DCO which has been proposed for approval in the Federal Register and with which the source would be in compliance if it were approved. (Note: Where penalties are not required or have been obtained, the State order would satisfy the requirements of this guidance as a "State Schedule" under definition 3 even prior to proposal as a DCO.)