



**Office of Inspector General**  
**Audit Report**

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**AIR ENFORCEMENT**

**Region 6's Oversight of New Mexico  
Air Enforcement Data**

**Report No. E1GAF7-06-0032-8100078**

**March 13, 1998**

Inspector General Division  
Conducting the Audit:

Central Audit Division  
Dallas, Texas

Region Covered:

Region 6

Program Office Involved:

Compliance Assurance and  
Enforcement Division

Multimedia Planning and  
Permitting Division

March 13, 1998

Mr. Mark Weidler  
Secretary  
New Mexico Environment Department  
P.O. Box 26110  
Santa Fe, NM 87502-6110

Re: Region 6's Oversight of New Mexico  
Air Enforcement Data  
Report No. E1GAF7-06-0032-8100078

Dear Mr. Weidler:

Attached is a copy of our audit report entitled *Region 6's Oversight of New Mexico Air Enforcement Data*. This report contains findings and recommendations that are important to both the Environmental Protection Agency (EPA) and New Mexico. Jerry Clifford, Acting Regional Administrator, EPA Region 6, is the action official for this report.

This report contains findings that describe problems the Office of Inspector General (OIG) has identified and corrective actions OIG recommends. This report represents the opinion of OIG. Final determinations on matters in this report will be made by EPA managers in accordance with established EPA audit resolution procedures.

If you wish to discuss this report, please contact me at (913) 551-7831 or Dave Boyce, Audit Manager in our Dallas office, at (214) 665-6620. Please refer to the report number on all related correspondence.

Sincerely,

Bennie S. Salem  
Divisional Inspector General

Attachment

March 13, 1998

**MEMORANDUM**

SUBJECT: Region 6's Oversight of  
New Mexico Air Enforcement Data  
Report No. E1GAF7-06-0032-8100078

FROM: Bennie S. Salem  
Divisional Inspector General

TO: Jerry Clifford  
Acting Regional Administrator  
EPA Region 6

Attached is our audit report entitled *Region 6's Oversight of New Mexico Air Enforcement Data*. This report contains findings and recommendations that are important to both the Environmental Protection Agency (EPA) and New Mexico. Specifically, we encourage Region 6 to continue to work with New Mexico to develop a comprehensive inspection plan and to ensure timely and accurate reporting of significant violators.

This report contains findings that describe problems the Office of Inspector General (OIG) has identified and corrective actions OIG recommends. This report represents the opinion of OIG. Final determinations on matters in this report will be made by EPA managers in accordance with established EPA audit resolution procedures.

**Action Required**

In accordance with EPA Order 2750, you, as the action official, are required to provide us a written response to the audit report within 90 days of the final audit report date. For corrective actions planned but not completed, reference to specific milestone dates will assist this office in deciding whether to close this report.

Should you have any questions about this report, please contact me at (913) 551-7831 or Dave Boyce, Audit Manager in our Dallas office, at (214) 665-6620. Please refer to the report number on all related correspondence. We have no objections to the further release of this report to the public.

Attachment

## EXECUTIVE SUMMARY

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### PURPOSE

The purpose of this audit was to determine whether the New Mexico Environment Department (New Mexico):

- ▶ Identified significant violators in accordance with the Environmental Protection Agency's (EPA) timely and appropriate enforcement guidance,
- ▶ Reported significant violators to EPA, and
- ▶ Performed inspections that were sufficient to determine if a facility violated the Clean Air Act (CAA).

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### BACKGROUND

The CAA as amended in 1990 provides EPA authority to set and enforce national standards to protect human health and the environment from emissions that pollute the air. CAA lists 188 toxic air pollutants that must be reduced. CAA separately regulates six of the more serious air pollutants. EPA sets national standards for each of these criteria pollutants, and the states must take action to ensure facilities meet EPA standards.

At the federal level, the air enforcement program is carried out largely by the regions. The regions delegate portions of their air enforcement responsibility to the states and often rely on the states to conduct inspections and take enforcement actions. Region 6 delegated such responsibilities to New Mexico.

## RESULTS IN BRIEF

New Mexico and the Region 6 Compliance Assurance and Enforcement Division (enforcement ) should have better identified and reported significant violators. The annual inspection plan developed by New Mexico, as required under its Air Pollution Control Program Section 105 cooperative agreement, did not establish goals for inspections of all major stationary air pollution facilities. Further, New Mexico did not place enough emphasis on completing committed inspections. A lack of resources caused delays in New Mexico's inspecting and reporting of significant violators. Region 6 enforcement did not adequately use provided information to identify significant violators. In the absence of inspection coverage of all major air pollution sources, New Mexico could not assure adequate identification and reporting of all significant violators. Further, Region 6 could not adequately monitor the progress of New Mexico in returning facilities to compliance. Information regarding significant violators reported to EPA, Congress, and the public was not complete and accurate.

New Mexico and Region 6 enforcement need to take actions to ensure significant violators are returned to compliance timely. New Mexico did not establish timeframes for taking enforcement actions, and lacked legal counsel to assist with significant violator actions. When enforcement actions are not timely, facilities continue to emit pollution which could lead to a higher potential for harm to the environment and local residents.

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## RECOMMENDATIONS

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We recommend that the Acting Regional Administrator require the Region 6 Compliance Assurance and Enforcement Division to:

1. Work with New Mexico to develop a comprehensive inspection plan to address all major stationary air sources within New Mexico,

2. Continue to work with New Mexico to develop a process to ensure the timely and accurate identification of significant violators in EPA's significant violator tracking system,
3. Verify that significant violator information in AFS is complete and accurate, and
4. Perform more effective oversight of significant violators to ensure that New Mexico takes timely and appropriate actions that result in facilities returning to compliance. In instances where the State does not act timely, the Region should consider taking its own enforcement actions.

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**AGENCY/STATE  
COMMENTS AND OIG  
EVALUATION**

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Region 6 generally agreed with our findings and recommendations and proposed taking the following corrective actions regarding significant violators:

- ▶ Continue to enter, flag, and track planned inspections for the fiscal year in AFS and review monthly and quarterly reports from AFS.
- ▶ Continue contact with each new AFS coordinator, as identified by the state, and provide necessary training and data support.
- ▶ Continue to provide, as required in the MOU between the Multimedia Division and the Enforcement and Assurance Division, data necessary to ensure timely compliance and reporting of significant violators.

New Mexico also agreed in principle with the report findings and recommendations and provided some proposed corrective actions. The State's response stated that New Mexico takes its enforcement responsibilities very seriously, strives to ensure that high quality inspections are performed, and provides accurate and reliable reporting of its enforcement activities. The State provided additional documentation concerning required inspections and facilities we identified as significant violators.

We agree with the corrective actions proposed by Region 6 and New Mexico. In response to New Mexico's concerns, we made revisions, where appropriate, to the final report based on additional support provided by New Mexico.



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## ABBREVIATIONS

agreement	New Mexico Air Pollution Control Program section 105 Cooperative Agreement
Bureau	New Mexico Air Quality Bureau
New Mexico	New Mexico Environment Department
AFS	Aerometric Information Retrieval System Facility Subsystem
CAA	Clean Air Act
CMS	Compliance Monitoring Strategy
enforcement	Compliance Assurance and Enforcement Division
EPA	Environmental Protection Agency
guidance	Timely and Appropriate Enforcement Response to Significant Air Pollution Violators
MOU	Memorandum of Understanding
OIG	Office of Inspector General
permitting	Multimedia Planning and Permitting Division

# CHAPTER 1

## INTRODUCTION

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### PURPOSE

The purpose of this audit was to determine whether the New Mexico Environment Department (New Mexico):

- ▶ Identified significant violators in accordance with the Environmental Protection Agency's (EPA) timely and appropriate enforcement guidance,
- ▶ Reported significant violators to EPA, and
- ▶ Performed inspections that were sufficient to determine if a facility violated the Clean Air Act (CAA).

This audit was conducted as part of a nationwide audit of air enforcement data.

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### BACKGROUND

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CAA, as amended in 1990, provides EPA authority to set and enforce national standards to protect human health and the environment from emissions that pollute the air. CAA lists 188 toxic air pollutants that must be reduced. CAA separately regulates six of the more serious air pollutants — ground level ozone, particulate matter, carbon monoxide, sulfur dioxide, lead, and nitrogen dioxide. EPA sets national standards for each of these criteria pollutants, and the states must take action to ensure facilities meet EPA standards.

At the federal level, the air enforcement program is carried out largely by the regions. The regions are expected to perform inspections and take action against significant violators found through inspections or other means. The regions can also delegate portions of their air enforcement

responsibility to the states and often rely on the states to conduct inspections and take enforcement actions.

CAA section 105 provides the authority for federal grants to help state and local agencies prevent and control air pollution. In fiscal 1996, Region 6 awarded New Mexico \$1,045,208 through a section 105 cooperative agreement for the Air Pollution Control Program. The agreement's negotiated workplan contained specific work commitments the State agreed to perform. Region 6 used this agreement as the basis for evaluating the State's performance under the agreement. The agreement encompassed activities such as inspections, monitoring, permitting, and enforcement, which includes identifying and reporting significant violators in the Agency's national database known as the Aerometric Information Retrieval System Facility Subsystem (AFS).

In addition, Region 6 and New Mexico maintained an enforcement memorandum of understanding (MOU). The objectives of this MOU were to identify potential violators, establish an enforcement presence, collect evidence for enforcement actions, and target enforcement activities to maximize the use of resources.

The New Mexico Environment Department is tasked with the protection of the environment for the State. Four divisions manage the State's environmental programs, one of which is the Environmental Protection Division. Within this division, the Air Quality Bureau manages all matters pertaining to the protection of air standards, the regulation of air pollution sources, and the enforcement of actions against environmental violators. An internal Office of General Counsel provides legal support for pursuing enforcement actions.

The Region 6 Compliance Assurance and Enforcement Division (enforcement) is responsible for monitoring state enforcement activities, and the Multimedia Planning and Permitting Division (permitting) is responsible for verifying the accuracy of AFS. As a result of our previous audit

entitled *Region 6's Enforcement and Compliance Assurance Program (E1GAF5-06-0056-6100309)* and dated September 26, 1996, the enforcement and permitting divisions entered into an MOU on January 29, 1997, to better define their responsibilities. The MOU requires that the Region 6 AFS compliance manager provide monthly AFS reports to the enforcement division and to the states for comments related to the accuracy of the data, including significant violator flagging. Responses to the AFS report are due by the end of the month. As of the date of our review, implementation of this MOU was still in process.

New Mexico established a Small Business Technical and Environmental Assistance Program to encourage lawful cooperation among small business stationary sources and other persons to further compliance with CAA. New Mexico personnel stated that the State air program's procedures provide immunity from enforcement actions for small businesses who apply for assistance before an enforcement action has occurred. Small businesses already under an enforcement action would not be immune from penalties for their violation.

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**SCOPE AND  
METHODOLOGY**

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We performed our audit in accordance with the *Government Auditing Standards* (1994 revision) issued by the Comptroller General of the United States as they apply to economy and efficiency program audits. Our review included tests of the program records and other auditing procedures we considered necessary. Our audit focused on state inspections of major facilities during fiscal 1996 (October 1, 1995, to September 30, 1996). We conducted our fieldwork from June to October 1997.

Additional details are provided in Exhibit 1.

**PRIOR AUDIT  
COVERAGE**

Prior audit coverage is provided in Exhibit 2.

## CHAPTER 2

### NEW MEXICO AND THE REGION COULD BETTER IDENTIFY AND REPORT SIGNIFICANT VIOLATORS

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New Mexico and Region 6 enforcement needed to better identify and report significant violators. New Mexico did not establish goals to complete inspections of major stationary air pollution facilities within a 5-year time period. Further, New Mexico did not place enough emphasis on completing committed inspections. New Mexico's lack of resources caused delays in inspecting and reporting significant violators. Region 6 enforcement did not adequately use provided information to identify significant violators. In the absence of complete inspection coverage of major air pollution sources, New Mexico could not assure adequate identification of all significant violators. Without proper identification and reporting of significant violator information, Region 6 could not adequately monitor the progress of the cases to ensure return to compliance. Also, information regarding significant violators reported to EPA's Office of Enforcement and Compliance Assurance, Congress, and the public was not complete and accurate.

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#### **GUIDANCE CALLED FOR INSPECTION PLANS**

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The fiscal 1996 New Mexico Air Pollution Control Program section 105 cooperative agreement (agreement) required the State to develop and submit an annual inspection plan, by program and class, of all sources in compliance with the revised *Compliance Monitoring Strategy* (CMS), issued March 29, 1991.

The fiscal 1996 State inspection plan listed major, synthetic minor, and minor sources to be inspected that year. The State was to evaluate inspection data and determine the compliance status of all sources on the inspection plan through inspection, compliance tests, or continuous emission monitors, as required by applicable regulations.



Prior to the revised CMS taking effect in fiscal 1992, states were required to use the *Inspection Frequency Guidance*, issued March 1980. This guidance required states to inspect all major sources annually and all synthetic minor sources every 2 years. According to the Associate Director of the Air Program Division in EPA's Region 3 and the Air/Toxics and Inspection Coordination Branch Chief in Region 6, Agency and state practice has unofficially expanded the inspection criteria timeframe to a minimum of an inspection at least once every 5 years.

Once a source was identified as a violator, EPA's guidance entitled *Timely and Appropriate Enforcement Response to Significant Air Pollution Violators* (guidance) and dated February 7, 1992, provided that the finding agency shall determine whether or not a facility is a significant violator. EPA shall add the newly designated significant violator to the significant violator list. The fiscal 1996 agreement between EPA and New Mexico required the State to identify significant violators in AFS.

The guidance defines a significant violator as any major stationary source of air pollution that violates emission, monitoring, or substantial procedural requirements; is a repeat or chronic violator; violates federal or state administrative or judicial orders; or constructs or performs major modifications without a permit. This guidance requires states to report significant violators to EPA within 1 month of the violation, and to maintain the facility on EPA's significant violator list until it achieves compliance. After the violation is reported, the state and EPA should monitor the source until it achieves compliance. The state or EPA should determine an appropriate time schedule for achieving compliance and assessing a penalty, if necessary. The state and EPA conduct teleconferences to discuss new and existing significant violators. If EPA is dissatisfied with the state's enforcement action, it has the authority to override the state and assume the lead in resolving the violation.

**NEW MEXICO DID NOT  
ESTABLISH GOALS FOR  
INSPECTIONS OF ALL  
MAJOR SOURCES**

Although OIG and Region 6 identified problems with New Mexico's inspection coverage of all major sources in fiscal 1996, New Mexico had not developed an overall compliance monitoring strategy to provide for inspection of all major stationary sources within the required timeframe. According to September 30, 1996, AFS reports, New Mexico inspected only 106 (53 percent) of its 199 major sources between January 1, 1990, and September 30, 1996. While the State made some progress in fiscal 1996 toward inspecting major sources which had not been inspected in the last 5 years, it did not yet have a formalized strategy which would provide for inspections of all major stationary sources within a specified timeframe, such as the EPA-recommended 5-year cycles.

New Mexico responded to the draft report that the State was not aware of a requirement to inspect all major sources within a specific timeframe. The State was only aware of a requirement to make inspections according to the inspection plan. New Mexico agreed that, "as a matter of policy," it would be a good idea to inspect all major sources and synthetic minor sources on a periodic basis.

Both OIG and Region 6 cited concerns in fiscal 1996 reviews about New Mexico's failure to provide for inspection coverage of all major facilities. OIG reported that part of the problem could be attributed to New Mexico targeting and inspecting many of the same sources year after year.

Prior to fiscal 1997, the State used an EPA inspection targeting software which identified some of the same facilities for inspection every year. New Mexico repeated the inspections because the facilities were targeted by the software. New Mexico stated in its response that the software did not work as expected, since many major sources did not "bubble up" for inspection. It acknowledged that, as a result, many sources were identified for inspection year after year.

At the start of fiscal 1997, New Mexico implemented its own targeting database and used data in AFS to identify air pollution sources needing inspections. The State believed this method would provide complete coverage of major sources in approximately 18-24 months.

Based on our review of AFS printouts, some progress had been made. Region 6's midyear and end-of-year reviews noted that New Mexico had inspected more facilities in fiscal 1996. However, New Mexico only inspected an additional 19 major facilities between September 30, 1996, and August 21, 1997, and had 74 major facilities yet to be inspected in approximately 7 months in order to accomplish its goal of completing these inspections in 18 months.

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**NEW MEXICO DID NOT  
COMPLETE ALL  
COMMITTED  
INSPECTIONS**

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New Mexico did not complete all fiscal 1996 committed inspections. As part of the workplan requirements of its 1996 agreement, New Mexico committed to inspect 112 air pollution sources in fiscal 1996. While the State completed 101 inspections, it only completed 56 of the committed inspections.

New Mexico defended its substitutions. The State argued that it substituted different facilities than those targeted due to changing State priorities. The State further commented that it should be allowed flexibility to adjust its commitments during any year based on changing areas of importance and State needs.

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**LACK OF RESOURCES  
CAUSED DELAYS IN  
INSPECTING AND  
REPORTING**

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New Mexico attributed delays in completing inspection commitments and reporting significant violators to a lack of resources. The State experienced a turnover of inspectors and a fiscal 1996 hiring freeze, which resulted in a lack of experienced inspectors. Also, in late 1995 or early 1996, the State lost its person responsible for updating AFS.

New Mexico attributed its problems in completing inspections to its shortage of experienced inspectors. At the time of our audit, the State had one inspector with 5 years experience, one with 3 years experience, and nine with less than 2 years experience. Region 6 reported in its fiscal 1996 midyear review that the State had a shortage of staff with the necessary background to complete all of the targeted sources. Region 6 also reported in the midyear review that the State advised Region 6 that the shortage in personnel would deter the State from meeting its annual commitments. Further, New Mexico had been under an Agencywide hiring freeze since the beginning of fiscal 1996.

Turnover and the lack of resources also added to problems in the reporting of significant violators in AFS. According to New Mexico officials, the person responsible for the input of significant violator information into AFS left sometime in late 1995 or early 1996 and was not replaced until March 1997. As a result, New Mexico did not report significant violators in AFS for fiscal 1995 and 1996. An *EPA Air Program Significant Violator and Inspection Analysis Report* dated January 22, 1997, was prepared to provide significant violator trend data through fiscal 1996 and should have alerted the Region that New Mexico was not inputting significant violators into AFS. The report listed 11 significant violators as identified in AFS for fiscal 1993 through 1994 in New Mexico but showed no significant violators in fiscal 1995 or 1996.

New Mexico, in its response to the draft report, stated that significant violator information was reported to Region 6 during monthly enforcement conference calls. However, flagging in AFS was not done during fiscal 1996 because Region 6 states were not authorized to enter data in the significant violator flagging field and did not receive this authority until March 1997. As we reported in our audit of *Region 6's Oversight of Arkansas Air Enforcement Data* (E1GAF7-06-0014-7100295), Region 6 officials provided a slightly different explanation. While access to the significant

violator flagging field is new, states did have the capability to input a significant violator designation in a day zero field.

Since the initiation of our audit, Region 6 held meetings with New Mexico to discuss the identification of significant violators and reporting them in AFS. As a result, New Mexico reported nine significant violators in AFS prior to our visit and added two more after our visit. (These entries included significant violators which had returned to compliance prior to fiscal 1996. The Region requested they still be reported.) We identified 5 additional significant violators in our review of 28 facilities.

The five significant violators identified by OIG included four that had been operating without a construction permit and one that had violated its permit conditions. For example, one facility, constructed in 1983, operated until November 1995 without a permit. A state inspection conducted in December of 1995 found that the facility was emitting much higher emissions than were reported on its November permit application.

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**REGION 6  
ENFORCEMENT DID  
NOT ADEQUATELY USE  
PROVIDED  
INFORMATION**

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New Mexico furnished Region 6 enforcement with an annual report which listed ongoing and completed enforcement actions. Within these listings, New Mexico identified the facilities it determined were significant violators. However, Region 6 did not verify that New Mexico reported these violators in AFS.

Five of the 11 significant violators New Mexico entered into AFS after discussions with the Region were reported to Region 6 enforcement in September 1996. Additionally, New Mexico reported three of the five significant violators identified by OIG in the September 1996 report.

Region 6 enforcement officials did not use the information furnished in New Mexico's annual reports to verify data in the AFS system. A Region 6 enforcement official stated

that the Region did not verify that New Mexico entered its significant violators into AFS because neither the State agreement nor Region 6 policy identified the officials responsible for the review of AFS input.

The Region's solution to this problem, enacted in response to prior OIG audits, had still not been implemented as of the date of our review. Although the enforcement and permitting divisions entered into an MOU in January 1997 that clearly outlined controls for verifying data input in AFS, the Region had not begun using these controls.

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## CONCLUSION

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Over one-third of the major facilities in New Mexico had not received an inspection in more than 7 years. In the absence of inspection coverage of all major sources, EPA and the State cannot assure adequate and timely identification of all significant violators.

Further, New Mexico added 11 significant violators to AFS, as a result of our audit, and we identified 5 additional facilities that should have been identified as significant violators for fiscal 1996. Region 6 must assure that significant violators are correctly identified and reported in AFS. EPA needs accurate significant violator information so that it can provide adequate monitoring of state activities and can assure that information reported to Congress and the public is accurate.

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## RECOMMENDATIONS

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We recommend that the Acting Regional Administrator require Region 6 enforcement to:

- 2-1. Work with New Mexico to develop a comprehensive inspection plan to address all major stationary air sources within New Mexico,

- 2-2. Continue to work with New Mexico to develop a process to ensure the timely and accurate identification of significant violators in the AFS system, and
- 2-3. Implement the Regional MOU to verify that significant violators reported in New Mexico's reports are included in AFS as significant violators.

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**AGENCY/STATE  
RESPONSE AND OIG  
EVALUATION**

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Region 6 concurred with the recommendations and findings.

New Mexico also agreed with our recommendations but disagreed with some factual findings and conclusions. The State disagreed with language used concerning its inspection obligations under the section 105 grant and ability to enter significant violators into AFS. The State agreed that two of the five OIG-identified facilities were significant violators and provided additional documentation to support its view that the remaining three were not significant violators. The State also agreed that the additional support information should have been in the files during the OIG review.

Also, New Mexico disagreed that it had not established goals to complete inspections of major stationary air pollution sources. The State did concede, however, that any substitutions for its planned inspections, reasons for the substitutions, and Region 6 approval should be documented in the file. In the future, the State will work more closely with Region 6 to document such substitutions.

We clarified our language under the section 105 grant obligations to report that it was not a section 105 grant requirement for the state to commit to a certain number of inspections. Rather, under the grant, the state is required to provide EPA with an inspection plan which identifies the facilities to be inspected. Although we used EPA's

unofficial 5-year timeframe for completing all major source inspections as our criteria, we agree with New Mexico that if a 5-year timeframe is to be required it should be part of Agency written policy or guidance.

We also modified the number of significant violators based on the additional documentation provided by New Mexico. However, we do not believe that the additional documentation provided sufficiently supports New Mexico's conclusions that the other three were not significant violators. New Mexico's justifications were based on: (1) test data which New Mexico has not yet received to confirm that one company is not a major source, (2) incomplete information concerning a second company which that company has refused to provide, and (3) permits designating two components of a third company as synthetic minors. However, New Mexico did not provide copies of the permits for the third company, and file documentation indicated that New Mexico considered this company a major source. New Mexico agreed that the file documentation would lead to the conclusion reached by OIG.



## CHAPTER 3

### NEW MEXICO AND REGION 6 NEED TO IMPROVE THE TIMELINESS OF ENFORCEMENT ACTIONS

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New Mexico and Region 6 should have taken actions to ensure that significant violators were returned to compliance timely. New Mexico did not establish timeframes for bringing facilities back into compliance. The New Mexico Air Quality Bureau (Bureau) was without an assigned attorney within the Office of General Counsel for several months. As a result, facilities continued to violate permit limits and operate without permits.

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#### EPA GUIDANCE SPECIFIED ENFORCEMENT ACTION TIMEFRAMES

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EPA's *Timely and Appropriate Enforcement Response to Significant Air Pollution Violators* (guidance) required that a notice of violation be issued to each significant violator within 45 days of such determination. The guidance further required that by day 150, a source be either resolved, addressed, or subject to referral to the State's Attorney General or the U.S. Department of Justice for an adjudicatory enforcement hearing or judicial action. The guidance defines resolved as in compliance and addressed as on a legally enforceable and expeditious administrative or judicial order. Day 150 equals 180 days from the inspection date since day zero (when the clock starts) is defined as 30 days after the discovering agency first receives information concerning a federally enforceable violation. If the state's action is not timely, EPA has the authority to take its own action.

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#### NEW MEXICO DID NOT COMPLETE ENFORCEMENT ACTIONS TIMELY

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New Mexico was not timely in addressing 14 significant violators in our sample of 28 major facilities. New Mexico's enforcement tracking system did not include fields for identifying milestone dates, as required by the guidance,

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to monitor the progress of enforcement actions against significant violators. Also, the State did not provide for any other means of tracking progress.

The State averaged 155 days to issue the notices of violation, although guidance required issuance of notices within 45 days. Between June 1996 and June 1997, the State completed enforcement action on 8 of the 14 cases but averaged 319 days to complete these actions. The remaining six cases, as of August 28, 1997, had been out of compliance an average of 433 days.

For example, one of the facilities had been operating without a permit for the past 12 years. New Mexico discovered this violation on December 15, 1995. In August 1996, the Bureau elevated resolution to the division level for review. However, when we inquired about the case, the Bureau was not aware of the status of the case, beyond its referral to the Office of General Counsel.

In another case, New Mexico issued a facility a notice of violation in May 1996 for operating without a permit since 1994. New Mexico discontinued enforcement actions and allowed the company to use the resources of the Small Business Technical and Environmental Assistance Program for help in submitting a permit application. This program normally allows for immunity only if the business applies for assistance before an enforcement action. At the time of our review, the application had not yet been received by New Mexico. During this period, New Mexico allowed the company to continue operation without a permit or a penalty.

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**NEW MEXICO LACKED  
LEGAL COUNSEL  
ASSISTANCE FOR  
SIGNIFICANT  
VIOLATOR ACTIONS**

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The Bureau did not have an assigned attorney within the Office of General Counsel for several months. According to Bureau personnel, approximately six attorneys left the office at one time. Four attorneys remained to process all of New Mexico's environmental legal actions. The lack of legal

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representation caused delays in the completion of legal instruments for enforcement actions, interpretations of State legal statutes, and rulings on questionable areas of the law.

For example, one case involved a major facility that refused to acknowledge State registered correspondence. This facility had been in operation 3 years without a permit and was avoiding State enforcement action. After New Mexico sent a second settlement offer to the company in February 1997, the Bureau forwarded the case to the Office of General Counsel for action. New Mexico issued a compliance order to the company in April 1997. In August 1997, the case was pending assignment to a newly employed attorney. Without legal counsel representation, the Bureau was unable to escalate its enforcement actions.

New Mexico recently took action by adding personnel in the Office of General Counsel and assigning an attorney to the Bureau in September 1997.

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## RECOMMENDATIONS

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We recommend that the Acting Regional Administrator require Region 6 enforcement to perform more effective oversight of significant violators to ensure that New Mexico takes timely and appropriate actions that result in facilities returning to compliance. The Region should:

- 3-1. Work with New Mexico to develop standard operating procedures for timely enforcement actions,
- 3-2. Work with New Mexico to assure the State maintains adequate staff to take timely and effectively enforcement actions against significant violators, and

- 3-3. Take enforcement action when New Mexico does not take timely enforcement action and consider overfiling when the State action does not result in timely resolution.

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**AGENCY/STATE  
RESPONSE**

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Region 6 concurred with our findings and recommendations. New Mexico did not provide comments to this chapter.

**EXHIBIT 1**

**SCOPE AND METHODOLOGY**

To obtain an understanding of applicable laws and policies, we reviewed the CAA, the Code of Federal Regulations, EPA's *Timely and Appropriate Enforcement Response to Significant Air Pollution Violators*, the CAA Compliance/Enforcement Policy Manual, EPA's Compliance Monitoring Strategy, and the New Mexico State Code.

We also reviewed the fiscal 1996 section 105 cooperative agreement awarded to New Mexico under the CAA, and EPA's midyear and end-of-year reviews of the State's performance. We reviewed various AFS printouts to obtain information about the inspections performed.

To evaluate New Mexico's enforcement of the CAA requirements, we reviewed the permit and compliance files maintained by New Mexico. These files contained items such as inspection reports, notices of violations, permits, permit applications, test results, emission monitoring records, and correspondence.

We conducted interviews at New Mexico and Region 6's enforcement and permitting divisions. We obtained listings from Region 6 of major sources and inspections performed for fiscal 1996.

To identify significant violators, we first obtained and reviewed a list of all New Mexico facilities contained in AFS. This list, as of September 30, 1996, contained 199 major facilities. We judgmentally selected a sample of 28 facilities, or 14 percent of the listed facilities. We selected our sample based upon a review of AFS reports and reports from the State's tracking system. We reviewed the files for the selected facilities to determine if they were major sources, if and when they were inspected last, if the inspection was adequate, and if the facilities were significant violators. During our analyses, we reviewed documents prior to fiscal 1996 to obtain historical information, such as the duration of problems and the results of previous inspections.

Our audit disclosed several areas needing improvements that are discussed in Chapters 2 and 3. We provided position papers of our preliminary findings to Region 6 enforcement and New Mexico in October 1997.

We reviewed management controls and procedures specifically related to our objectives, but did not validate the data associated with the input and processing of information into AFS or any other automated records system. Because of the inherent limitations in any system of internal accounting control, errors or irregularities may occur and not be detected. Except for the issues

discussed in this report, nothing came to our attention which would cause us to believe the State's procedures were not adequate for our purposes.

**EXHIBIT 2**

**PRIOR AUDIT COVERAGE**

On February 14, 1997, the Office of Inspector General (OIG) issued report number E1KAF6-03-0082-710015 entitled *Validation of Air Enforcement Data Reported to EPA by Pennsylvania*. In this report, OIG reported that Pennsylvania did not report all significant violators to EPA and did not take aggressive enforcement action to bring all violating facilities into compliance.

On September 26, 1997, OIG issued report number E1GAF7-06-0014-7100295 entitled *Region 6's Oversight of Arkansas Air Enforcement Data*. In this report, OIG reported that Arkansas maintained an extensive inspection program, Arkansas and Region 6 needed to better identify and report significant violators, Region 6 enforcement did not adequately use information provided by Arkansas to identify significant violators, and enforcement actions against significant violators were not timely.

On September 26, 1996, OIG issued report number E1GAF5-06-0056-6100309 entitled *Region 6's Enforcement and Compliance Assurance Program*. In this report, OIG reported that neither Texas nor Louisiana formally computed economic benefit when assessing fines; Region 6 and Texas were not timely in completing enforcement actions against significant violators for any of the cases reviewed; Region 6 and Louisiana did not adequately publicize their enforcement actions; Region 6 air enforcement data in AFS was incomplete, inconsistent, and untimely; and Region 6 did not work with states to develop and maintain active compliance assistance programs.

On September 29, 1996, OIG issued report number E1KAE5-24-0015-5100510 entitled *EPA Regional Management of Clean Air Act Section 105 Air Grant Program*. In this report, OIG reported that New Mexico's database for determining which facilities to inspect was incomplete and inaccurate and New Mexico did not follow CMS guidance in developing its inspection plan. As a result, New Mexico performed many repetitive facility inspections each year, while other facilities were never inspected.

**APPENDIX III**

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