

May 26, 2000

Ms. Mamie Miller
U.S. Environmental Protection Agency
Office of Enforcement and Compliance
Assurance
Ariel Rios Building
1200 Pennsylvania Avenue, NW
Washington, DC 20004

Dear Mamie:

On behalf of the State and Territorial Air Pollution Program Administrators (STAPPA) and the Association of Local Air Pollution Control Officials (ALAPCO), thank you for the opportunity to comment on EPA's March 29, 2000 draft Proposed Policy on the Clean Air Act Compliance Monitoring Strategy (CMS). The associations commend EPA for the process it has established to solicit state and local feedback on this important policy, and we appreciate your continued willingness to work with us to address our concerns. Pursuant to our May 23, 2000 telephone conversation, we understand that we will have a robust discussion of this policy at the upcoming Enforcement and Compliance Workshop in Dallas, followed by a commitment from STAPPA and ALAPCO to submit final comments and recommendations regarding the associations' outstanding issues on the CMS policy.

STAPPA and ALAPCO are encouraged by a number of EPA's preliminary responses to our May 2, 2000 preliminary comments on the draft CMS policy. Specifically, we are pleased that EPA has agreed to modify the policy's AIRS data reporting requirement language to reflect the reality that a number of state and local agencies do not directly upload or download inspection data to and from the federal AIRS database. The associations are also pleased that EPA has agreed to modify Section VII of the policy, entitled "Elements of CMS Plan," to clarify that the purpose of that section is not to establish nationally consistent reporting requirements. Furthermore, STAPPA and ALAPCO are pleased that EPA has agreed with our initial recommendation that the classification of "mega-sites" falls within the jurisdiction of state and local agencies. Finally, we are encouraged that EPA has solicited alternative language from us regarding the policy's stack testing requirements and have attached our suggestions.

However, while the associations are encouraged by these changes, there still remain important issues that must be resolved before we can fully support the policy. These

include the inspection frequency requirements (including inspection plan development) and the allocation of resources. Our specific comments follow.

STAPPA and ALAPCO continue to have concerns with the proposed inspection frequency requirements in Section VI of the policy and stress the need for flexibility in adjusting inspection plans over the course of the planning period. For example, we are unclear as to the basis for the inspection frequency specifications in the proposed guidance, and question the environmental value in inspecting certain Title V sources on a prescribed minimum cycle. We recommend that the policy be revised to allow state and local agencies the flexibility to perform multiple inspections within a given planning cycle at certain sources, possibly in exchange for inspections that otherwise would be required under the guidance. We also believe the guidance must be sufficiently flexible to allow for annual adjustments in CMS plans to reflect necessary additions and corrections to the inspection list. Finally, the associations recommend that any final CMS guidance specify that Title V sources without applicable requirements will not be subject to the inspection guidance. We welcome the opportunity to continue to work with EPA to develop an appropriate inspection frequency structure that will address our members' concerns, as well as satisfy EPA's goals in this area.

We also wish to reiterate our concerns with the resource allocation requirements and references to permit fees in Section VI of the policy. We remain deeply concerned with state and local agencies' ability to satisfy the terms of the guidance as proposed, especially agencies in serious, severe and extreme ozone nonattainment areas. In these areas, the definition of the term "major" is based upon a lower threshold of emissions, as compared to all other areas, resulting in an expanded inventory of sources that will be subject to the guidance. In addition, the timing of this guidance is especially critical in view of EPA's current December 31, 2000 deadline for issuance of Title V permits. Furthermore, the scheduled expiration of the Transition Policy for Potential-to-Emit on December 31, 2000 will result in an inventory of Title V sources that will be expanded even further. These factors, coupled with the failure of Title V permit fees to generate the level of resources needed, will make the prospect of consistently satisfying this new requirement difficult. For these reasons, we reiterate our recommendation that the section on resource allocation is unnecessary. We believe that the most appropriate approach to negotiation of utilization of federal grant resources is through the Performance Partnership Agreement (PPA's) process rather than through an inspection policy, such as the draft CMS proposal. PPA's are the established mechanism whereby regional offices and state and local agencies routinely determine appropriate environmental priorities and allocation of resources. Since the proposed policy

envisions that state and local agencies will operate from CMS plans, specific mention of resource allocation in the CMS is unnecessary.

The associations continue to applaud EPA's recognition and endorsement of the full spectrum of compliance monitoring techniques available to state and local agencies in evaluating the compliance status of individual sources. This endorsement will allow our members to take appropriate inspection 'credit' in those instances where alternate compliance evaluation methods, such as compliance report evaluations and visible emission evaluations, are used to establish the compliance status of a given source. Accordingly, we believe that the policy's distinction between "Inspections" and "Full Compliance Evaluation" is unnecessary (given that each is considered in the proposed policy to be equivalent to the other) and we reiterate our recommendation that these two concepts be consolidated. Also, we again stress that a "Full Compliance Evaluation" can be accomplished through means other than an inspection.

STAPPA and ALAPCO are committed to working with EPA to resolve these outstanding issues and successfully implement a robust CMS program. To that end, we encourage EPA to incorporate our recommendations into the agency's revised draft of the Proposed Policy on the Clean Air Act Compliance Monitoring Strategy. Further, given the heightened interest of our members in the CMS policy, we welcome your commitment to engage in further discussions with our members regarding several issues of ongoing concern. To facilitate such discussion, we have afforded top priority to CMS at the upcoming June 14-15, 2000 Enforcement and Compliance Workshop in Dallas. We are hopeful that this will provide a forum for our members and EPA to work in partnership to address our respective concerns.

If you have any further questions or desire additional information, please contact either of us or Geri O'Sullivan of STAPPA and ALAPCO.

Sincerely,

Felicia Robinson
STAPPA Chair
Enforcement and
Compliance Committee

Curt Marshall
ALAPCO Chair
Enforcement and
Compliance Committee

Cc: John B. Rasnic
Michael S. Alushin

ATTACHMENT

The following are STAPPA and ALAPCO's specific concerns with the stack testing language currently contained in EPA's March 29, 2000 draft Compliance Monitoring Strategy:

1. Some baghouses don't lend themselves to testing by use of Method 5 test procedures. For example, certain baghouses are not typically equipped with "stacks" per se, which are necessary for the proper conduct of a Method 5 PM test to measure the actual PM emissions rate.
2. Baghouses are to particulate sources what natural gas is to boilers; that is, baghouses represent state-of-the-art control for PM sources. As long as the baghouse itself is reasonably well maintained, pressure drop is maintained properly and visible emissions are consistently maintained at a low or non-existent level, then compliance with the PM mass limit is reasonably assured. The larger ones will have COM devices, which is an extra measure of comfort with regard to performance. Thus, except maybe for very large baghouses on utility boilers, it is not necessary to structure this guidance on the premise that stack testing will be necessary for an inspection to be deemed complete.
3. One very important factor that we urge EPA to consider is that every single emissions unit that is covered by this guidance is also covered by the CAM rule. The CAM rule applies to every emissions unit that is subject to an emissions limit, uses a control device to comply and has pre-control emissions levels equal to or greater than the emission levels in Part 70. In its final form, the CMS guidance will define the term "major emission unit" to be consistent with the Part 70 definition of the term "major", which is on an after-control basis. Thus, this guidance will apply to fewer emissions units than does the CAM rule. Since CAM plans must be designed and implemented in such a way that a reasonable assurance of compliance is provided, the testing provision that is built into this guidance should not be necessary. On page 54907 of the CAM preamble (middle column) in the section pertaining to potential enforcement consequences related to CAM and credible evidence, EPA states, "(T)he Agency expects that a unit that is operating within appropriately established indicator ranges as part of approved monitoring will, in fact, be in compliance with its applicable limits." In a fact sheet on CAM issued by EPA on 10/1/97 that describes the relationship between CAM and enforcement resulting from the credible evidence rule, the following statements are made, "...EPA expects that a unit operating within appropriately established ranges as part of an approved CAM plan will, in fact, be in compliance with its applicable emission limits. For this reason, units operating within their CAM indicator ranges will be presumed to be in compliance and will not be targets for enforcement actions." In other words, since properly established CAM data are generally sufficient for purposes of demonstrating compliance with emission limitations, the need for sources to conduct stack testing for purposes of satisfying inspection guidance should be reduced.

4. While STAPPA and ALAPCO appreciate EPA's recognition of the stack test data in the overall compliance evaluation process, we believe that this requirement, as structured, is very prescriptive and inflexible. We continue to believe that issues surrounding the type, size, and frequency of stack testing properly fall within the jurisdiction of the permit program.

For all of the above stated reasons, STAPPA and ALAPCO urge that EPA remove the references to the required conduct of stack testing, opting to instead focus on a recommended test frequency and the evaluation of properly conducted stack test data. The associations offer the following alternative language for inclusion in the final guidance:

Page 5, first paragraph:

"1. Inspections

An 'inspection' is a comprehensive source-wide evaluation which addresses all regulated emission points at a source, including all related processes, applicable requirements, and control systems/control measures. An 'inspection' involves a complete review of all required records and reports. In addition, it requires the conduct of an on-site visit to record control device and operating conditions, and to conduct visible emission observations. The definition has been revised to include stack testing that has been conducted in accordance with reference method testing procedures and has been witnessed by air agency personnel as an appropriate compliance monitoring method. Each state and local agency is encouraged to develop and follow its own written guidance on stack test frequency, source type, and source size for use in its' respective jurisdiction. This guidance should specify the conduct of a reference method stack test at least once in five years for each regulated air pollutant at Title V sources for which the unit is major".

Appendix A:

Revise first bullet to read:

"A review of all monitored data reported to the regulatory agency; e.g., CEM and COM reports, continuous parameter monitoring reports, CAM and periodic monitoring reports, VOC material usage reports, malfunction reports, excess emissions reports, and any other compliance monitoring reports that may be required by the regulatory agency."

Replace the last bullet with the following language:

"An evaluation of the most recent emission test data that have been collected for any and all emissions units at the source."

