

STAPPA / ALAPCO

STATE AND TERRITORIAL
AIR POLLUTION PROGRAM
ADMINISTRATORS

ASSOCIATION OF
LOCAL AIR POLLUTION
CONTROL OFFICIALS

S. WILLIAM BECKER
EXECUTIVE DIRECTOR

August 15, 2003

Greg Gholson
Environmental Scientist
U.S. Environmental Protection Agency
1 Congress Street, Suite 1100 (SEW)
Boston, Massachusetts 02114-2023

Dear Mr. Gholson,

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 provide comments on the U.S. Environmental Protection Agency's (EPA's) Draft National Stack Testing Guidelines. Stack testing is an extremely important tool in the establishment of compliance status with Clean Air Act requirements by the various utility, industrial, and commercial sources. The associations commend EPA for the development of this policy guidance, and appreciate the agency's willingness to solicit and include state and local feedback and its availability to discuss and address our concerns. We understand that EPA regards the draft guidance primarily as consolidation and clarification of existing guidance relating to the conduct of stack testing. In particular, the guidance expands upon the requirements of CMS (the Compliance Monitoring Strategy issued April 2001) and the HPV (High Priority Violations issued December 1998) to address matters raised by the EPA Office of the Inspector General ("Report of EPA's Oversight of Stack Testing Programs," 2000-P-00019).

At the outset, we note that, although we support the goal of the Inspector General to achieve national uniformity regarding stack testing practices, the ability of states and localities to meet this goal may vary. The comments of STAPPA and ALAPCO reflect the need to include in the guidance acknowledgment of state and local agencies' need for some measure of enforcement discretion and administrative flexibility.

GENERAL SUGGESTIONS

First, STAPPA and ALAPCO request that all of the guidance documents referenced in this draft guidance be consolidated and easily accessible on EPA's website. We note that STAPPA and ALAPCO have made available most of the stack test guidance on their own website and that EPA is assisting us in completing this effort.

Second, it is not clear whether the guidance is directed at initial or ongoing stack testing and when it is intended to address one or the other. For instance, the statement appears in the first paragraph of page one that "stack testing...is most valuable in determining whether a facility has the ability to comply with the requirements of the Clean Air Act in the first instance." On pages 3 and 4, moreover, the text includes repeated references to "initial" testing. Nonetheless, the guidance appears to encompass retests (page 2,

bottom, "time elapsed since last test"). Both initial tests and retests are important CMS tools and the guidance should apply equally to both instances of compliance evaluation.

Third, although STAPPA and ALAPCO recognize that the guidance is intended to apply to stack testing nationwide, it is nonetheless apparent that some testing will fall outside its scope. For the sake of clarity, we encourage EPA to anticipate and address questions that may arise concerning Relative Accuracy Test Audits (RATAs), linearity checks, gas cylinder audit tests, routine calibration of CEMs, and screening tests that are undertaken voluntarily by a facility.

Fourth, we suggest that the TIME FRAME section (page 3) be combined organizationally with the POSTPONEMENT section (page 9) as a matter of logic and clarity since both sections deal with the time for testing and when and how extensions can be granted.

Finally, STAPPA and ALAPCO consider the timely submission of thorough testing protocols, which include adequate time for review and revision by the delegated agency in advance of test scheduling, crucial to a meaningful stack test. We encourage EPA to address protocol development in this guidance.

SPECIFIC TEXTUAL RECOMMENDATIONS

STAPPA and ALAPCO offer the following recommendations relative to specific sections or provisions of the draft guidance.

Page 2, IV. Presently reads: "States/Locals should conduct a stack test whenever they deem appropriate. States/Locals should conduct a stack test where there is no other means..." In both sentences, the beginning phrase should be revised as follows: "States/Locals should conduct a stack test or require the facility to conduct a stack test whenever..." Many states do not conduct stack testing but require sources to conduct the tests.

Page 3, V. Neither RATA failures nor stack tests at major sources conducted for pollutants emitted (or potentially emitted) only at minor source levels would require designation of a facility as HPV in the case of failure. The guidance should, therefore, be modified to read "Failing a stack test at any time is a violation for which appropriate enforcement action must be taken, including adjusting the facility's status to HPV if appropriate."

Page 4, "If a facility fails to conduct a stack test within the required time frame, the only way for the delegated agency to legally grant additional time to conduct the test is through an enforcement action stemming from the failure to test." Although the delegated agencies have no legal ability to grant additional time to conduct a test, they nonetheless should be able to exercise discretion regarding the nature of the enforcement response. For example, a warning letter may be determined to be the appropriate vehicle for a grant of additional time in the case of a facility that is unable to obtain the maximum production rate within the start-up period or a facility that is unable to test due to severe meteorological conditions or safety considerations. Delegated agency staff should be allowed to exercise their best professional judgment regarding the appropriate enforcement reaction -- particularly in cases involving minimal testing delays that are incidental and unintended.

Page 4, "A facility...unable to attain the maximum production rate within the start-up period...violat[es] the requirement to test..." If a source routinely operates at less than the maximum production rate and demonstrates compliance at that rate, the delegated agencies should have the flexibility to pursue or not pursue a formal enforcement action. No violation should occur as long as the regulatory agency requires notification of increases in production and stack testing to demonstrate compliance at the higher production rate.

Page 5, STACK TEST WAIVERS FOR IDENTICAL UNITS. As noted previously, there is confusion in this section regarding whether the guidance is intended to address initial testing, ongoing testing, or both. It is the opinion of STAPPA and ALAPCO that, in general, all identical emission units should be tested for initial compliance unless they are true minor sources and the appropriate regulatory agency determines it is not necessary to conduct stack testing on each emission unit to establish the compliance

status for each. Additional flexibility may be appropriate, however, regarding ongoing testing of identical emissions units.

Page 6, NOTIFICATION. First, the first sentence reads, "If for some reason the stack test must be delayed, sources are required to notify the delegated agency and EPA of the delay." In delegated states, however, the source may be under no obligation to notify EPA. We suggest that EPA reevaluate this provision and ensure that it reflects the sources' true reporting obligations.

Moreover, the guidance requires a facility testing for its own benefit ("i.e., not required by regulation, permit or enforcement order") to report a failure and submit the relevant test data to the delegated agency pursuant to the reporting requirements of Title V. STAPPA and ALAPCO advocate elimination of a reporting requirement in the case of facilities conducting testing for their own benefit. Such a provision will provide a disincentive to facilities that test for their own information in order to evaluate their emissions status. A further unintended consequence may be that the regulated community will regard such a provision as unnecessarily punitive in nature. Finally, as a practical matter, it appears to us that there may in fact be few self-initiated stack tests, and thus correspondingly little reason may exist to justify the imposition of such a requirement.

Page 6. Regarding testing protocols and deviations from required reference methods. STAPPA and ALAPCO agree that all test protocols must be submitted in a timely manner by the source to the delegated agency for review and approval. The guidance states further that a facility must receive prior approval from the appropriate delegated authority for "minor or intermediate" changes from required reference methods and that the delegated authority must make such approval in consultation with the EPA Regional Office "or as otherwise required by the delegation." STAPPA and ALAPCO feel strongly that the field staff responsible for stack testing should retain the discretion to make minor adjustments in the testing protocols at the time of testing based on actual field conditions. In addition, if "minor" in this context is defined in other guidance, it would be helpful to include the definition here.

Page 9, STOPPAGES. A language modification should be made so that the second sentence on page 9 reads, "Hence, failure to complete a stack test within the applicable regulatory time frame or by the date specified in a permit or enforcement order is a violation of the requirement to conduct a stack test." This will make the guidance consistent with the requirements of POSTPONEMENT on the same page. The first sentence of the second paragraph should also be modified to reflect that, if a facility stopped a stack test but rescheduled and tested within the applicable regulatory time frame, there would be no violation of the requirement to conduct a stack test. In the paragraph following, regarding severe meteorological conditions, the same modification should be made in order to clarify that a facility that rescheduled and successfully completed the stack test within the applicable regulatory time frame would not be in violation of the requirement to stack test.

STAPPA and ALAPCO note as well that, although the circumstances of stoppage could conceivably be considered evidence of a violation of the underlying regulatory requirement or permit condition, stoppage alone is an exceedingly slender evidentiary reed upon which to hang an enforcement action assessing penalties. We strongly urge EPA to modify the guidance to allow for the exercise of enforcement discretion by the delegated agency regarding the appropriate enforcement response in circumstances involving stoppage. Stoppage alone would be unpersuasive proof of an underlying violation if challenged in court and would, as well, make poor use of an agency's limited enforcement resources.

Page 10, TEST REPORTS. Although we agree generally with the provisions this section, we note that the language of 40 CFR 60.8(a) is ambiguous regarding the time frame for NSPS testing and reporting. The testing must be completed within 180 days. Because it would not be practical to submit a report on, for instance, the same day as the test (if it were performed on the 180th day) most states have interpreted the regulation in such a way as to allow the test report to follow the test. Many delegated agencies allow at least 30 days after the NSPS test for report submission. The second paragraph on page 10 should be modified to adopt this interpretation.

STAPPA and ALAPCO appreciate the opportunity to provide these comments and look forward to working with EPA further as the agency continues the process of finalizing this guidance. The associations view stack testing as an important compliance tool and consider EPA's effort to address testing in the

context of this guidance valuable to delegated agencies and the regulated community alike. If you have any questions about these comments or desire additional information, please contact either one of us or Mary Stewart Douglas of STAPPA and ALAPCO.

Sincerely,



Felicia Robinson
STAPPA Chair



Curt Marshall
ALAPCO Chair