



U.S. ENVIRONMENTAL PROTECTION AGENCY
OFFICE OF INSPECTOR GENERAL

Catalyst for Improving the Environment

Evaluation Report

EPA Oversight and Policy for High Priority Violations of Clean Air Act Need Improvement

Report No. 10-P-0007

October 14, 2009

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Abbreviations

AFS	Air Facility System
CAA	Clean Air Act
EPA	U.S. Environmental Protection Agency
HPV	High Priority Violation
NOV	Notice of Violation
OECA	Office of Enforcement and Compliance Assurance
OIG	Office of Inspector General



At a Glance

Catalyst for Improving the Environment

Why We Did This Review

According to U.S. Environmental Protection Agency (EPA) data, in many instances EPA and States are not addressing high priority violations (HPVs) of the Clean Air Act in a timely manner (generally within 270 days). We undertook this review to determine why this is occurring and what improvements are planned. If HPVs are not addressed in a timely manner, continued emissions from facilities may result in significant environmental and public health impacts, deterrence efforts being undermined, and unfair economic benefits being created.

Background

In 1998, EPA revised a 1992 policy to prioritize and focus on the most environmentally important violations of the Clean Air Act by stationary sources. EPA and States jointly determine which agency will be taking the lead for each HPV case.

For further information, contact our Office of Congressional, Public Affairs and Management at (202) 566-2391.

To view the full report, click on the following link:
www.epa.gov/oig/reports/2010/20091014-10-P-0007.pdf

EPA Oversight and Policy for High Priority Violations of Clean Air Act Need Improvement

What We Found

HPVs were not being addressed in a timely manner because regions and States did not follow the HPV policy, EPA Headquarters did not oversee regional and State HPV performance, and regions did not oversee State HPV performance. According to EPA data, about 30 percent of State-led HPVs and about 46 percent of EPA-led HPVs were unaddressed after 270 days. This can result in significant environmental and public health impacts.

Regions are not ensuring that sources receive notices of violation within 60 days. None of the regions reviewed held meetings with their States after HPVs had been unaddressed for 150 days to discuss case strategy. Several States addressed HPVs with informal rather than formal enforcement actions. EPA Headquarters did not use the "Watch List" and trend reports to assess performance of regions and States in addressing HPVs. The regions did not ensure that State-led HPVs are addressed in a timely manner by taking over delinquent State HPV cases. Regions also did not always ensure that States entered accurate data into the Air Facility System database. Although EPA noted some of these deficiencies, it has not developed a plan to correct them.

EPA regions reviewed generally conducted status meetings with States to discuss HPVs. Also, EPA implemented the State Review Framework as a means to better evaluate the performance of its Clean Air Act compliance and enforcement programs.

What We Recommend

To improve oversight over HPVs, we recommend that EPA (1) direct regions to comply with the HPV policy, (2) make needed revisions to the policy, and (3) implement proper management controls over HPVs.

EPA concurred with two of the recommendations but did not provide sufficient detail for us to agree with their proposed corrective actions. EPA did not agree with a third recommendation indicating it needed to revise HPV policy because it intends to conduct a review of the policy before committing to revising the policy. For reasons detailed in the report, we believe the recommendation is valid. For resolution purposes, all recommendations are considered "undecided."



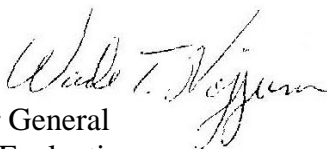
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

OFFICE OF
INSPECTOR GENERAL

October 14, 2009

MEMORANDUM

SUBJECT: EPA Oversight and Policy for High Priority Violations
of Clean Air Act Need Improvement
Report No. 10-P-0007

FROM: Wade T. Najjum 
Assistant Inspector General
Office of Program Evaluation

TO: Cynthia Giles
Assistant Administrator, Office of Enforcement and Compliance Assurance

This is our report on the subject evaluation conducted by the Office of Inspector General (OIG) of the U.S. Environmental Protection Agency (EPA). This report contains findings that describe the problems the OIG has identified and corrective actions the OIG recommends. This report represents the opinion of the OIG and does not necessarily represent the final EPA position. Final determinations on matters in this report will be made by EPA managers in accordance with established audit resolution procedures.

The estimated cost of this report – calculated by multiplying the project's staff days by the applicable daily full cost billing rates in effect at the time – is \$673,050.

Action Required

In accordance with EPA Manual 2750, you are required to provide a written response to this report within 90 calendar days. You should include a corrective actions plan for agreed upon actions, including milestone dates. However, as discussed in the report, we do not believe your planned actions meet the intent of the recommendations and all recommendations are considered undecided. We ask that you review our comments and reconsider your responses. We have no objections to the further release of this report to the public. This report will be available at <http://www.epa.gov/oig>.

If you or your staff have any questions regarding this report, please contact me at (202) 566-0832 or najjum.wade@epa.gov, or Dan Engelberg at (202) 566-0830 or engelberg.dan@epa.gov.

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Purpose

High priority violations (HPVs) are significant violations of a federally-enforceable regulation by major and synthetic minor¹ Clean Air Act (CAA) stationary sources. U.S. Environmental Protection Agency (EPA) policy states that HPVs should be addressed (formal enforcement action taken) or resolved (compliance achieved) within 270 days. According to EPA data, about 30 percent of State-led HPVs and about 46 percent of EPA-led HPVs were unaddressed after 270 days.² If HPVs are not addressed in a timely manner, continued emissions from facilities may result in significant environmental and public health impacts, deterrence efforts being undermined, and unfair economic benefits being created. We undertook this review to determine why some EPA regions and States are not addressing HPVs under the CAA in a timely manner as set out in Agency policy, and what improvements are planned.

Background

Congress passed the CAA in 1970 establishing standards for allowable emissions by facilities that emit air pollutants. The CAA gave EPA and delegated States the authority to enforce those standards, but vests EPA with responsibility for enforcing the law. EPA may move independently to designate an HPV and assume the lead of an HPV if a State is unable or unwilling to act. EPA's Office of Enforcement and Compliance Assurance (OECA) is responsible for ensuring that the regulated community complies with the CAA.

In 1992, EPA created a policy to focus on significant violators of the CAA's stationary source programs. In 1998, EPA issued a revised policy, *The Timely and Appropriate Enforcement Response to High Priority Violations* (HPV policy). The HPV policy prioritizes and focuses on the most important and environmentally significant violations of major and synthetic minor stationary sources of air pollution. The policy contains threshold criteria to determine whether a violation is an HPV and sets guidance for addressing cases in a timely and appropriate manner. See Appendix A for examples of HPV identification criteria. Continued emissions from sources with HPVs may impact communities' human health and the environment if HPVs are not addressed in a timely manner. Also, compliance and enforcement programs are supposed to ensure a level playing field for industry and deterrence for noncompliance. See Appendix B for information on CAA stationary source enforcement programs.

The enforcement "clock" for HPVs starts no later than 45 days after EPA or the State first receives information concerning a federally enforceable violation. If during this 45-day period the enforcement agency decides that additional monitoring or analysis is required to determine or confirm the violation, the clock does not start until the earlier of the date of receipt of such additional data or the 90th day after the violation was initially discovered. The date the "clock starts" is called "day zero."

¹ According to EPA, a synthetic minor is a source that avoids permitting under Title V, New Source Review, or the requirements of the Maximum Achievable Control Technology rules by taking restrictions in a federally enforceable minor source permit that limits the annual emissions of any Title V, New Source Review, or Maximum Achievable Control Technology-regulated pollutant to below major source thresholds for those pollutants.

² Within 300 days if a lead change occurs.

An essential part of tracking HPVs is assuring that all HPVs are promptly and accurately entered into the EPA national air database, the Air Facility System (AFS). AFS contains compliance and enforcement data for stationary sources of air pollution regulated by EPA, State, and local air pollution agencies. Stationary source data in AFS are collected and updated by State and/or local agencies. EPA regions occasionally assist States in entering data into AFS.

In January 2004, EPA designed the Facility Watch List (“Watch List”) to assist EPA and the States in tracking facilities with serious or chronic violations of environmental laws but with no formal enforcement response. As an automated tool, the Watch List provides the regions and States a list of facilities that have not been addressed or resolved in a timely manner.

Noteworthy Achievements

EPA regions we reviewed generally conducted monthly, bimonthly, and/or quarterly status meetings with States and local agencies to discuss HPVs. EPA Headquarters and regions also implemented the State Review Framework as a means to perform a consistent approach for overseeing the programs. EPA reviews each State every 4 years to determine how well its compliance and enforcement programs are operating for the CAA, Clean Water Act, and Resource Conservation and Recovery Act. EPA conducted its first rounds of reviews from 2004 to 2007 and identified the lack of timely and appropriate enforcement as an issue. EPA released the State review reports to the public in July 2009.

Scope and Methodology

We conducted our evaluation from September 2008 to August 2009 in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the evaluation to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our evaluation objective. We believe the evidence obtained provides a reasonable basis for our findings and conclusions based on our evaluation objective.

We reviewed EPA region-led and State-led HPV cases classified as HPVs on or between October 1, 2005, and December 31, 2007. We cut off our review of data at December 31, 2007, so that any HPVs that had a day zero on that date would have at least 270 days to be addressed. We limited the scope of our review to the timeliness of addressing HPVs. We did not review whether States were identifying or resolving HPVs in a timely manner.

We obtained AFS data from EPA Headquarters for all HPV cases as of October 9, 2008, which included 3,753 HPV cases during our time period. We did not conduct a data reliability review of AFS. We calculated days unaddressed by subtracting the date addressed from the day zero. If the HPV had not yet been addressed, we used the date the data were run. We sorted the data into State-led and EPA-led HPV cases to determine which States and EPA regions to interview.

We selected States in Regions 1, 5, 7, and 8 for our review because of the high rate of unaddressed HPVs in their respective States. We also selected Region 6 and the State of Texas for our review because OECA recommended we visit Texas. Overall 57 percent of the EPA-led cases were located in the five regions we reviewed and 47 percent of the State-led cases were

located in those regions. We interviewed EPA regional staff and State staffs in Colorado and Texas to determine why HPV cases are not addressed within 270 days. We reviewed meeting notes between the 5 selected regions and 25 States.³ We also reviewed 20 EPA regional HPV case files and the findings in EPA Office of Inspector General (OIG) and U.S. Government Accountability Office reports (see Appendix C).

We obtained State Review Framework reports completed between 2003 and 2007 for each State from EPA. We reviewed relevant sections of the reports to determine what problems EPA identified.

Results of Review

HPVs were not being addressed in a timely manner because regions and States did not follow the HPV policy, EPA Headquarters did not oversee regional and State HPV performance, and regions did not oversee State HPV performance. According to EPA data, about 30 percent of State-led HPVs and about 46 percent of EPA-led HPVs were unaddressed after 270 days. We noted that:

- Regions did not ensure that sources received notices of violation (NOVs) within 60 days; the CAA amendments of 1990 stipulate that issuing an NOV shifts the burden of proof of continuous compliance to the source.
- None of the regions and States reviewed held meetings after HPVs had been unaddressed for 150 days to discuss case strategy.
- Several States addressed HPVs with informal rather than formal enforcement actions.
- EPA Headquarters did not use the Watch List or trend reports to assess the performance of regions and States in addressing HPVs.
- Regions did not ensure that State-led HPVs were addressed in a timely manner by taking over delinquent State HPV cases.
- Regions did not always ensure that States input accurate data into AFS.

Although EPA acknowledged these deficiencies, it has not developed a plan to correct them. If HPVs are not addressed in a timely manner, continued emissions from facilities may result in significant environmental and public health impacts, deterrence efforts being undermined, and unfair economic benefits being created for violating sources.

EPA Regions and States Not Complying with HPV Policy

Regions and States we reviewed did not comply with key provisions of the HPV policy. Air enforcement staff from three of five regions told us they did not ensure States were issuing NOVs in a timely manner. Regions did not hold 150-day meetings with States. Moreover, several States addressed HPVs with informal rather than formal enforcement actions.

³ Region 7 staff did not document its meetings with Missouri, while Region 8 and North Dakota did not meet because the State did not have any HPVs during our review period.

Also, the HPV policy is missing key elements. The HPV policy does not describe the oversight steps that need to be taken once an HPV had not been addressed for over 270 days. The HPV policy also does not clearly lay out the roles and responsibilities of EPA Headquarters and regions, the States, and local agencies. EPA should revise its HPV policy to include these elements.

Details on noncompliance with key provisions of the HPV policy that did exist follow.

NOVs Not Issued in 60 days

Air enforcement staff in three of five regions said they do not monitor whether States issue NOVs within 60 days. According to the HPV policy, an NOV shall be issued within 60 days of day zero. The State or local agency shall routinely issue an NOV, an informal action, to the source. If the State has not taken such action, EPA shall immediately issue an appropriate notice. The CAA amendments of 1990 stipulate that issuing an NOV shifts the burden of proof of continuous compliance to the source.

NOVs should be issued so that the source has to prove its compliance status. This cannot be done when regions do not monitor NOV issuance. For example, according to the Region 7 Kansas State Coordinator, Kansas typically waits to issue an NOV until after negotiations have stalled with a source. Colorado usually issues a compliance advisory to the source before issuing an NOV. In one instance, Colorado issued a compliance advisory on February 23, 2006, but did not issue an NOV until September 6, 2006, or 214 days after the HPV was established. This conflicts with the agreed-upon statutory role of NOVs as an early signal to violators that they need to return to compliance.

150-Day Case Strategy Meetings Not Held

Regions did not hold 150-day meetings with States. According to the HPV policy, EPA and States will conduct 150-day case progress evaluation meetings. If the State or local agency has the initial lead and the case has not been resolved/addressed by day 150, the HPV policy directs that EPA and the State or local agency hold a focused, case-specific consultation concerning overall case strategy, including a discussion of effective means for expeditiously addressing/resolving the case. Possible strategies could include continued deferral to the State or local agency, EPA assumption of the case, or continuation of the case in a work-sharing arrangement between EPA and the State or local agency. Air enforcement staff from three of the five EPA regions reviewed said their regular status meetings substituted for the 150-day meetings. However, none of the meeting minutes reviewed provided evidence that these case-specific consultations concerning overall case strategy were being held for HPVs.

States Address HPVs with Informal Enforcement Actions

Several States reviewed did not follow the HPV policy because they addressed violations with informal rather than formal enforcement actions. The HPV policy states HPVs are to be addressed by a legally-enforceable and expeditious administrative or judicial order,

or by being referred to the (State) attorney general or (Federal) Department of Justice for an adjudicatory enforcement hearing or judicial action. Illinois was not following the HPV policy because it used informal, non-binding enforcement actions to address HPVs. The Region 5 Illinois section chief said there have been instances where Illinois issued these informal, non-binding actions and a source ignored them. EPA identified this issue in Illinois' State Review Framework review in 2007, but it has not been resolved. Utah was not following the HPV policy because it used the date it issued a compliance advisory (similar to an NOV) as the date of the addressing action; a compliance advisory is not an addressing action as defined in the HPV policy.

EPA Headquarters and Regions Not Providing Effective Oversight

EPA Headquarters did not provide effective oversight because it did not use management controls and information to assess region and State performance in addressing HPVs. Likewise, the regions did not effectively oversee the States to ensure State-led HPVs were addressed in a timely manner by taking over the lead of HPV cases. As a result, sources remain out of compliance longer than they should, leaving the potential for excess pollutants to be emitted.

EPA Headquarters Not Using Key Management Controls and Overseeing Regions and States

EPA Headquarters did not use the HPV Watch List (which lists HPVs that have not been addressed in a timely manner) and trend reports to assess the region and State performance in addressing HPVs. EPA oversees State performance during State Review Framework reviews but only conducts those reviews every 4 years.

The Director of OECA's Office of Compliance said that EPA Headquarters and the regions no longer follow Watch List standard operating procedures and manager (trend) reports are no longer being done due to a "lack of resources." According to the Watch List Standard Operating Procedures, EPA Headquarters should be performing two national reviews per year that include all regions: a core review and an administrative review. The core review would identify when data suggests that HPV timeliness is not consistent with policies or national practice. The administrative review would ensure that the appropriate Watch List information is being submitted by the regions and data quality errors do not persist in the data systems. Some required steps of these reviews are not being conducted.

EPA Headquarters oversees States by performing the State Review Framework. Each State is reviewed once every 4 years, and EPA completed its first round of reviews in 2007. During the first round of reviews, EPA found that 16 States had 50 percent or more of their HPVs unaddressed for longer than 270 days. For 9 of the 50 States, EPA did not document the percentage of HPVs that were not addressed in a timely manner in the State Review Framework. As a result of the first round of State Review Frameworks, EPA made recommendations to States, developed a white paper summarizing the problems States have in taking timely and appropriate enforcement, and identified timely and appropriate enforcement as one of four high priority national issues that must be

addressed by EPA and the States. However, the Agency has not taken action to solve the problems with timely and appropriate enforcement identified in the first round of State Review Frameworks.

Regions Not Providing Effective Oversight of State Programs

Regions do not provide effective oversight of States to ensure HPVs are addressed timely by taking over HPV cases. Regions did not use their authority to take over State-led HPVs except in rare cases. The regions also did not ensure that the data States enter into AFS were accurate.

EPA regions did not assume the lead for any unaddressed State-led HPVs due to timeliness concerns. The HPV policy states “EPA shall assume the lead at any time in cases when it becomes apparent that the State is unable or unwilling to act to resolve a violation in a timely and appropriate manner.” The regions monitored HPV cases in general status meetings, but they rarely took action even though 9 percent of all State-led HPVs were unaddressed for 540 or more days. Further, in those rare instances when EPA did assume the responsibility for HPVs that were unaddressed longer than 270 days (7 of the 1,037 instances), none of the 7 were acted upon due to timeliness concerns.

For example, Illinois had 56 HPV cases (about 33 percent of its cases) and Wisconsin 53 HPV cases (about 88 percent of its cases) that were unaddressed for over 270 days during our review period. Region 5 only assumed the lead for one HPV in Wisconsin, but this was for reasons other than timeliness. Neither State has the authority to issue administrative penalties. According to Region 5 air enforcement staff, one of the reasons HPV cases go unaddressed for so long in Wisconsin is the lack of these authorities. State options to address HPVs are to refer HPV cases to the State Attorney General or for EPA to assume the lead. Regional air enforcement staff said they were willing to help the States if they asked for assistance but they did not want to assume the lead.

Regions did not always ensure that data in AFS were accurate even though reliable information is a basic element of oversight and management control. Regions did not always ensure that States were linking HPVs with key enforcement actions. OIG has reported similar data problems in its Fiscal Year 2009 report on management challenges. One HPV in Region 5 was listed in the AFS database as being unaddressed for 992 days, which should have triggered action by the region; the State had addressed the HPV but did not link the addressing action and violation in AFS. Despite holding monthly meetings with Illinois, Region 5 did not identify this error in AFS for nearly 2 years. Due to the inaccuracies in the AFS data, EPA is downloading AFS data and providing it to States to review in advance of the second round of State Review Frameworks. EPA needs to work with the States to ensure accurate data is entered into AFS so that EPA Headquarters and regions can track HPVs and manage CAA stationary source programs.

Conclusions

EPA regions and States need to comply with the HPV policy to ensure HPVs receive a timely enforcement response. Regions need to provide oversight to States by taking over the lead of HPV cases that have gone on for an excessive period of time and by ensuring that accurate data is entered into AFS. As a result of the behaviors pointed out above, the system for addressing HPVs is not functioning as intended. EPA's priorities may have changed since the HPV policy was issued, and it has no assurance that the HPV policy and its associated timeframes are valid. EPA lacks the information necessary to effectively monitor HPVs, assess results, and make informed changes to the policy and its application.

Recommendations

We recommend that the Assistant Administrator for Enforcement and Compliance Assurance:

1. Direct EPA regions to comply with the HPV policy, and monitor and report on regions' compliance.
2. Revise the HPV policy to:
 - Require specific oversight steps and remedies for HPVs that are unaddressed after 270 days, including taking over selected State HPV cases that have not been addressed in a timely manner, especially cases in States that have no administrative process.
 - Include a section detailing the roles and responsibilities of EPA Headquarters and regions, the States, and local agencies.
3. Implement proper management controls over HPVs by:
 - Following the Watch List standard operating procedures, including generating trend reports and conducting national annual reviews.
 - Ensuring that AFS data is accurate by documenting data inaccuracies and their disposition in regular meeting notes.

Agency Comments and OIG Evaluation

EPA concurred with Recommendations 1 and 3, and indicated how it plans to address some of our concerns. However, EPA did not provide sufficient detail for us to agree with its proposed corrective actions. The Agency did not concur with Recommendation 2, indicating it needed to revise HPV policy because it intends to conduct a review of the policy before committing to revising the policy. For reasons detailed in the report, we believe the recommendation is valid. For resolution purposes, all recommendations are considered "undecided."

EPA's complete comments and OIG's detailed evaluation of the comments are in Appendices D and E, respectively. The OIG has incorporated technical corrections and clarifications from the Agency's comments into the final report as appropriate.

Status of Recommendations and Potential Monetary Benefits

RECOMMENDATIONS						POTENTIAL MONETARY BENEFITS (in \$000s)	
Rec. No.	Page No.	Subject	Status ¹	Action Official	Planned Completion Date	Claimed Amount	Agreed To Amount
1	7	Direct EPA regions to comply with the HPV policy, and monitor and report on regions' compliance.	U	Assistant Administrator for Enforcement and Compliance Assurance			
2	7	Revise the HPV policy to: <ul style="list-style-type: none"> • Require specific oversight steps and remedies for HPVs that are unaddressed after 270 days, including taking over selected State HPV cases that have not been addressed in a timely manner, especially cases in States that have no administrative process. • Include a section detailing the roles and responsibilities of EPA Headquarters and regions, the States, and local agencies. 	U	Assistant Administrator for Enforcement and Compliance Assurance			
3	7	Implement proper management controls over HPVs by: <ul style="list-style-type: none"> • Following the Watch List standard operating procedures, including generating trend reports and conducting national annual reviews. • Ensuring that AFS data is accurate by documenting data inaccuracies and their disposition in regular meeting notes. 	U	Assistant Administrator for Enforcement and Compliance Assurance			

¹ O = recommendation is open with agreed-to corrective actions pending
 C = recommendation is closed with all agreed-to actions completed
 U = recommendation is undecided with resolution efforts in progress

Appendix A***Examples of HPV Identification Criteria***

The following criteria trigger HPV status. The determination of what is substantive/substantial shall be part of a case-by-case analysis/discussion by EPA and the delegated agency.

- (1) Failure to obtain a Prevention of Significant Deterioration or a New Source Review permit, and/or a permit for a major modification of either.
- (2) Violation of an air toxics requirement that results in excess emissions or violates operating parameter restrictions.
- (3) Violation by a synthetic minor of an emission limit or permit condition that affects the source's Prevention of Significant Deterioration, New Source Review, or Title V status.
- (4) Violation of any substantive term of any local, State, or federal order, consent decree or administrative order.
- (5) Substantial violation of the source's Title V certification obligations.
- (6) Substantial violation of the source's obligation to submit a Title V permit application.
- (7) Violations that involve testing, monitoring, record keeping, or reporting that substantially interfere with enforcement or determining the source's compliance with applicable emission limits.
- (8) A violation of an allowable emission limit detected during a reference method stack test.
- (9) CAA violations by chronic or recalcitrant violators.
- (10) A substantial violation of CAA Section 112(r) requirements.

Appendix B**CAA Stationary Source Enforcement Programs**

Enforcement of HPVs falls under five separate CAA programs, as follows:

New Source Review

The CAA requires all areas of the country to meet or strive to comply with the National Ambient Air Quality Standards. One of the key programs designed to achieve compliance with the National Ambient Air Quality Standards is the New Source Review program, a preconstruction review process for new and modified stationary sources. The New Source Review program has two components. The Prevention of Significant Deterioration program for attainment or "clean" areas typically requires new or modified sources to install state-of-the-art pollution controls to ensure that the ambient air quality will not degrade. The non-attainment area New Source Review program is designed to ensure that any new industrial growth in a non-attainment area will comply with stringent emission limitations (by requiring the most protective pollution controls and emission offsets), with the goal of improving air quality overall to meet the National Ambient Air Quality Standards. The New Source Review program requires companies to obtain a permit for new construction or major modifications that substantially increase a facility's emissions of the National Ambient Air Quality Standards.

National Emission Standards for Hazardous Pollutants

National Emission Standards for Hazardous Air Pollutants are stationary source standards for hazardous air pollutants. Hazardous air pollutants are those pollutants that are known or suspected to cause cancer or other serious health effects, such as reproductive effects or birth defects, or adverse environmental effects. National Emission Standards for Hazardous Air Pollutants are found in 40 Code of Federal Regulations Parts 61 and 63. Part 61 regulates only seven hazardous air pollutants: asbestos, beryllium, mercury, vinyl chloride, benzene, arsenic, and radon/radionuclides. The 1990 CAA amendments significantly expanded EPA's authority to regulate hazardous air pollutants. Section 112 of the CAA lists 188 hazardous air pollutants to be regulated by source category. The National Emission Standards for Hazardous Air Pollutants promulgated after the 1990 CAA amendments are found in 40 Code of Federal Regulations Part 63. These standards require application of technology-based emissions standards referred to as Maximum Achievable Control Technology standards. The National Emission Standards for Hazardous Air Pollutants are delegated to the States, but both EPA and the States implement and enforce these standards.

State Implementation Plans

State Implementation Plans are the regulations and other materials for meeting clean air standards and associated CAA requirements. State Implementation Plans include State regulations that EPA has approved and State-issued, EPA-approved orders requiring pollution control at individual companies. In rare cases, the plans include federally promulgated

regulations. The plan may also include planning documents, such as area-specific compilations of emissions estimates and computer simulations (modeling analyses), that demonstrate that the regulatory limits assure that the air will meet air quality standards.

Title V

Under the CAA amendments of 1990, States were required to establish programs to issue, review, and renew permits to operate for their most important or "major" sources of air pollution. These permits would encompass all CAA requirements that apply to a source but impose no new requirements. The primary purpose of these permits is to encourage sources to self examine for compliance. States are in the process of finalizing the issuance of Title V permits and many sources have completed annual certification processes inherent in the program.

New Source Performance Standards

The CAA required EPA to create a list of the important categories of stationary sources of air pollution and establish federal standards of performance for new sources within these categories. These standards are known as New Source Performance Standards and apply to newly constructed sources or those that undergo major upgrades or modifications. The standards include equipment specifications as well as operation and measurement requirements. EPA and the State or local air quality agencies are responsible for ensuring that new stationary sources will meet the New Source Performance Standards and that existing sources subject to these standards continue to comply with them.

Appendix C

Prior Reports

EPA OIG Report		
Title	Report No.	Date
Consolidated Report on OECA's Oversight of Regional and State Air Enforcement Programs	E1GAE7-03-0045-8100244	September 25, 1998

Government Accountability Office Reports		
Title	Report No.	Date
Environmental Protection: EPA-State Enforcement Partnership Has Improved, but EPA's Oversight Needs Further Enhancement	GAO-07-883	July 31, 2007
Environmental Compliance and Enforcement: EPA's Efforts to Improve and Make More Consistent Its Compliance and Enforcement Activities	GAO-06-840T	June 28, 2006
Environmental Protection: More Consistency Needed Among EPA Regions in Approach to Enforcement	RCED-00-108	June 2, 2000

Appendix D**Agency Comments****MEMORANDUM**

SUBJECT: Response to the Office of the Inspector General Draft Evaluation Report, “EPA Oversight and Policy for High Priority Violations of Clean Air Act Need Improvement,” Project Number 2008-0026, dated August 14, 2009

FROM: Cynthia Giles /s/
Assistant Administrator

TO: Dan Engelberg
Director for Program Evaluation
Water and Enforcement Issues
Office of the Inspector General

Thank you for the opportunity to review and comment on the draft evaluation report, entitled, “EPA Oversight and Policy for High Priority Violations of Clean Air Act Need Improvement,” (Report) Project Number 2008-0026. This Report focuses on improving compliance with the “Policy on Timely and Appropriate Enforcement Response to High Priority Violations” (HPV policy) and EPA’s oversight of the policy’s implementation.

OECA agrees that oversight of the HPV policy can be enhanced, both by OECA and by the regional offices, which oversee state enforcement agencies. In fact, OECA has taken or plans to take additional steps to improve oversight of the HPV policy that were not included as recommendations in the OIG report. Recently, OECA publicly released its State Review Framework (SRF) reports, which outline in detail the performance issues associated with implementation of the HPV policy. OECA also plans to issue a separate memorandum to the regions and states that outline the thresholds for federally-reportable violations. This will help ensure that violations (HPV and non-HPV) are reported and made available to the public. OECA will also improve transparency regarding HPV identification and enforcement response by releasing an enhanced version of the Enforcement and Compliance History Online website – allowing the public to compare states, and allowing state trends to be graphed using the same data EPA uses pursuant to the state review framework.

Additionally, OECA believes that this is an appropriate time to review the current HPV policy. OECA will work with the Regions to review the policy to determine what revisions might be necessary to ensure the most effective implementation of an HPV policy. OECA plans to issue a memorandum reminding the Regions of the current HPV policy. As specified in the Watch List standard operating procedures, OECA will also commence regular calls with the EPA Regions to enhance oversight of the HPV policy. OECA also agrees that the regions should follow the Watch List standard operating procedures and continue their quarterly calls with the states to discuss HPVs on the Watch List.

These steps will provide OECA critical information necessary to determine what revisions to the HPV policy might be needed. OECA believes that this evaluation should be conducted prior to deciding how the HPV policy should be revised. The evaluation will allow OECA, working with regions and states, to determine whether the HPV policy is still a suitable and effective oversight tool and whether any adjustments to the HPV policy and approach are warranted. Consistent with our view that an evaluation should be undertaken prior to any revisions of the current policy, we do not agree with several of the specific recommendations contained in the draft report. Please see our attached detailed comments to each of the issues and recommendations.

We appreciate the opportunity to review and comment on this draft report. Should you have any questions or concerns regarding this response, please contact OECA's Audit Liaison, Gwendolyn Spriggs, at 202-564-2439.

Attachment

OECA Response to OIG Draft Report
EPA Oversight and Policy for High Priority Violations of Clean Air Act Need Improvement
(Project No. 2008-0026)

OECA agrees that EPA Headquarters' oversight of the EPA regions and the EPA regions' oversight of the state enforcement agencies' implementation of the policy can be improved. OECA's response to the recommendations and specific comments and technical corrections on the text of the draft Report are provided below:

I. OECA's Response to Report Recommendations

Report Recommendation 1:

Direct EPA Regions to comply with HPV Policy, and monitor and report on Region's compliance.

OECA Response:

OECA agrees that the Regions are not fully complying with the HPV policy and would like to discuss this with the regional offices. OECA plans to issue a memorandum to the Regions reminding them of the HPV policy and to have discussions with the regions to more fully understand the challenges they face in complying with this policy and what revisions to the policy might address concerns and strengthen compliance by HPVs. OECA will commence regular calls with each of the EPA regions for the specific purpose of increasing its oversight and monitoring of both the Regions' implementation of the HPV policy and their oversight of states' actions to address HPVs in a timely manner consistent with the current HPV policy. OECA will use the Watch List as one tool to identify issues to discuss with the Regions to include distributing a quarterly region-specific Watch List report to each of the Regions which will identify specific HPV cases that require dialogue with OECA.

Report Recommendation 2:

Revise the HPV Policy to:

- ***Require specific oversight steps and remedies for HPVs that are unaddressed after 270 days, including taking over selected State HPV cases that have not been addressed in a timely manner, especially cases in States that have no administrative process.***

OECA Response:

OECA thinks it is premature to decide what revisions should be made to the policy or that revisions to the policy are the best way to address the oversight problems identified in the report.

Instead, OECA proposes to evaluate the regional challenges in complying with this policy and determine, after that evaluation, whether the HPV policy should be revised. This will allow OECA to determine whether the policy needs to be modified and if so, to more effectively identify what, if any, revisions should be made.

It is important to note that the HPV policy by its terms provides flexibility to account for extenuating circumstances in enforcement actions, recognizing that some cases will not be resolved or addressed in accordance with the general timeframes of the policy. Specifically, in Section IV. E., “Day 270 (no lead change) or Day 300 (lead change),” the policy states:

“By Day 270 (or 300 with lead change), the source shall either be RESOLVED or ADDRESSED i.e., on a legally-enforceable and expeditious administrative or judicial order, or be subject to a referral to the (State) attorney general or (Federal) Department of Justice for an adjudicatory enforcement hearing or judicial action. In some complex cases, more time may be required. The State should discuss with the Region that a case’s complexity will require additional time as soon as those factors are determined” (underline added).

Thus, the issue is not, as characterized in the Report, whether HPVs have not been addressed by Day 270, but rather whether there is a reason why a Region or state needs additional time to take an addressing action. The regular communication on the status of HPVs should provide a sufficient framework to discuss and account for such cases.

Additionally, it is important to note that the OIG appears to have relied on AFS data alone to determine whether the timeliness standards in the HPV policy were followed. However, the AFS data system can not fully reflect the flexibility provided for by the policy since there is no place in AFS to indicate that a state needs additional time to take an addressing action. Because such information is critical in determining whether the HPV policy is being followed, during the HPV policy evaluation period, OECA will discuss this issue internally to determine the best mechanism for tracking this information.

- ***Include a section detailing the roles and responsibilities of EPA Headquarters and Regions, the States, and Local agencies.***

OECA Response:

The HPV policy adequately addresses the roles of EPA and states. For example, Section III, “Processing of High Priority Violators,” specifically lays out the expectations for state and regional actions while accounting for needed flexibility (e.g., noting that “the State agency and EPA Regional Office shall jointly decide which agency has the necessary resources and will take the lead in resolving the HPV”).

Report Recommendation 3:**Implement proper management controls over HPVs by:**

- **Following the Watch List standard operating procedures, including generating reports and conducting national annual reviews.**

OECA Response:

OECA agrees that this is an important step in improving implementation of the HPV policy and will use the Watch List standard operating procedure to ensure that regular conference calls to discuss the Watch List occur between Headquarters and the Regions. In regard to generating reports, OECA will standardize a regular report.

- **Ensuring that AFS data is accurate by documenting data inaccuracies and their disposition in regular meeting notes.**

OECA Response:

OECA agrees that increased attention to AFS data accuracy is critical. OECA commits to increasing its ongoing efforts in overseeing AFS data accuracy and as part of the overall evaluation of the policy, will determine if additional steps can be taken to ensure accuracy.

II. OECA's Specific Comments and Corrections on Text of the Report**At a Glance**

Revise the "At a Glance" page to reflect that the improvements suggested do not apply to all HPVs, but rather a subset of the HPV universe. Some HPVs are being adequately addressed and some are not. The first paragraph would be revised as follows:

Some HPVs were not being addressed timely because **some** regions and States did not **consistently** follow the HPV policy, EPA Headquarters did not **consistently** oversee regional ~~and State~~ HPV performance, and **some** regions did not **consistently** oversee **state** HPV performance.

Table of Contents

Revise draft Report at Appendices as follows: Change Appendix A to say, "Examples of HPVs **Criteria**"

Purpose

Revise draft Report at page 1, footnote 1, as follows:

“According to EPA, a synthetic minor is a source that avoids permitting under Title V, or New Source Review **or the requirements of the Maximum Achievable Control Technology (MACT) rules by taking restrictions in a federally-enforceable minor source permit that limits the annual emissions of any Title V, NSR or MACT-regulated** pollutant to below major source thresholds for those pollutants.”

Background

Revise draft Report at page 1, middle of second paragraph, as follows: “See Appendix A for examples of HPVs **criteria.**”

Results of Review

OECA Comment: We do not dispute that the OIG found deficiencies with some of the regions and states interviewed, however, this discussion is overly broad in implying that this is a problem with all regions and states (see specific edits below addressing this concern).

EPA Regions and States Not Complying with HPV Policy

Revise draft Report at page 3, as follows: “**Some** EPA regions and states ...”

Revise draft Report at page 3, subtitle, first paragraph, first sentence, as follows: “**Some** regions and states did not comply ...”

OECA Comment: The Report states at page 3 that, “. . . the HPV policy is missing key elements. The HPV policy does not describe the oversight steps that need to be taken once an HPV has not been addressed for over 270 days.” OECA does not agree that the HPV policy is missing key elements as stated in the draft report with regard to oversight for HPVs not addressed by Day 270. Section IV, “T&A Timelines for Enforcement Action,” subsection C., “Day 150 Case Progress Evaluation,” subsection D., “EPA Responsibility After It Assumes the Lead,” and subsection E., “Day 270 (no lead change) or Day 300 (lead change),” provide guidance regarding continued tracking of unaddressed HPVs, including issuance of 113 orders and civil judicial enforcement. In addition, the Watch List standard operating procedures provide further direction regarding oversight of HPVs not addressed by day 270.

Revise draft Report at page 4, top of page, by deleting “EPA should revise its HPV policy to include these elements.” and replacing with new text, as follows: “EPA should **evaluate whether it should** revise its HPV policy and determine whether some or all of the suggested elements would improve compliance. ~~to include address all or some of these elements.~~”

NOVs Not Issued in 60 Days

OECA Comment: We agree that there are situations where a source is not notified of a violation

by Day 60. However, often some form of notification of a violation or alleged violation has been given, but it was not labeled as an “NOV” but rather by some other term used by a state. To clarify, the CAA states at Section 113 (a)(1):

“Whenever, on the basis of any information available to the Administrator, the Administrator finds that any person has violated or is in violation of any requirement or prohibition of an applicable implementation plan or permit, the Administrator shall notify the person and the State in which the plan applies of such finding.” (underline added).

Thus, it is only a requirement that the SIP-violating facility and the state in which the violations occurred be informed, i.e., notified, of such finding. It is not a requirement that this notification be in writing, although we agree this is generally a best practice. Therefore, in evaluating this timeliness requirement of the HPV policy, OECA looks to a state or local agency’s action to determine whether it provides that notice, regardless of what the state or local agency labels that action, e.g., notice of violation, finding of violation, compliance advisory, and others. Nonetheless, we agree, as part of our broader evaluation of the HPV policy discussed above to assess whether it is possible to issue an NOV by Day 60 and if not whether a different time frame is needed, or whether there are alternative enforcement vehicles appropriate to address HPVs.

Finally, the requirement to notify the violator and state of a violation 30 days before a formal action can be taken does not apply to non-SIP violations, e.g. NSPS, NESHAP/MACT, or NSR (unless incorporated as a SIP requirement).

150 Day Case Strategy Meeting Not Held

OECA Comment: The OIG interprets the HPV policy as requiring case-specific consultations between EPA and the state enforcement agency regarding case progress by Day 150. Our interpretation of the HPV policy is that such consultation should occur after Day 150 and that, in the interest of efficiency, can be consolidated into routinely scheduled meetings between the regions and the States. This more flexible interpretation recognized that multiple meetings may not be the most efficient way to meet with regions that have a significant number of HPVs. For example, a state with several dozen HPVs, may have dozens of different Day 150 dates, which would require a regional and state meeting on an almost daily basis.

States Address HPVs with Informal Enforcement Actions

OECA Comment: There are instances where states have addressed HPVs with informal enforcement actions. However, it is important to note that an informal action may be the states’ only viable option (i.e., some states do not have administrative vehicles and, therefore, the only option is an informal action or a judicial action), or, as is the case in many states, what is labeled an “NOV” may in fact be an administrative order or referral (i.e., effectively a formal action) to the state Attorney General according to state law. OECA focuses on the legal effect of the

document, not its label. Notwithstanding these limitations on state action, some states inappropriately address HPVs with informal enforcement actions. Where this is an issue it has been the topic of several annual national AFS Managers' meetings in which it has been stressed by OECA that all addressing actions must be closely evaluated to ensure their adequacy given all extenuating circumstances. OECA has been diligent in stressing to regional and state/local AFS managers as well as enforcement managers and staff that, in most cases, informal actions are not adequate or appropriate addressing actions for HPVs. OECA has raised, and continues to raise this issue in numerous national calls and meetings with Regional, state and local AFS and enforcement staff and managers.

EPA Headquarters Not Using Key Management Controls and Overseeing Regions and States

OECA Comment: OECA will improve its oversight and monitoring of the regions implementation of the HPV policy and the regions' oversight of state actions to address HPVs in a timely manner according to the HPV policy with regularly scheduled calls between Headquarters and the regions (see response to recommendation 1 above).

OECA recognizes that increased oversight is one of several improvements needed to enhance implementation of the HPV Policy. OECA will discuss potential modifications to the 2005 Watch List HQ SOP regarding the "core" review and format for the OECA conference calls with the Regions to include processes which will enhance Headquarters and Regional oversight performance.

Revise draft Report at page 5, third paragraph, last sentence, by deleting: "These steps are not being completed." and replacing with new text, as follows: "These steps have been implemented at the staff level including some coordination and dialogue with Regional data managers."

OECA Comment: Additional facts regarding OECA's implementation of the Watch List "Administrative Review" portion may not have been fully covered by OIG interviews. OECA staff continued implementation of most of the administrative review portion of the Watch List SOP (see page 3 of 2005 SOP). Details can be provided to the OIG investigators upon request. Specifically, the first two bullets of the "Administrative Review – Overview" section on page 3 of the Watch List SOP were implemented by OECA staff, as follows:

- A quarterly scan of explanations/status codes has regularly been conducted by OECA staff since the beginning of the Watch List in January of 2004 to include an occasional call or email dialogue with the region;
- A semi-annual facility-level data quality review by OECA staff occurred in FY06/07. Such review increased in detail in the third quarter of FY07 and was transformed into a full AFS minimum data requirement (MDR) data quality review of all HPV cases vs. accuracy in AFS national database (e.g., addressing action linkage, Discovery Dates/types, Violating Pollutants, Violating Type Codes, compliance status, etc.).

- Quarterly analytical reports have been sent to regional AFS data managers and the AEMs.
- AFS was enhanced to include a more capable fixed format report for the expressed purpose of data quality review of complete reporting of MDRs.

Revise draft report at page 5, last paragraph. Delete last sentence: “Other than making recommendations to States, EPA has not taken action to solve this problem [untimely enforcement for SNC/HPVs]. Replace with: “Pursuant to the state review framework evaluation of round one reports, EPA has identified this issue as one of four high priority national issues which must be addressed by EPA and the states.”

OECA Comments: During the review of the Round 1 state review framework reports OECA developed “white papers” for four national issues that were of the highest priority to be evaluated by EPA and the states. One of these white papers evaluates the untimely enforcement at SNC/HPV cases by states and EPA. One of the most prevalent causes of program deficiencies was the states’ claim that there is a lack of clear guidance from EPA and differing interpretations of EPA guidance by the states. In the issue papers, EPA agrees to provide clarification of the expectations of state performance under EPA guidance.

Regions Not Providing Effective Oversight of State Programs

OECA Comment: The Report states that, “EPA regions did not assume the lead for any unaddressed State-led HPVs due to timeliness concerns.” It is important to note that the HPV policy does not require a lead change where the state is able and willing to act to resolve a violation in a timely and appropriate manner. This determination is made on a case-by-case basis and considers numerous factors such as: the strength of the evidence, any litigation risk, schedules of state administrative hearing officers or administrative law judges, the litigation process for referred cases (filing, discovery, trial dates, etc.) that can significantly delay enforcement actions and are beyond the control of the state. In these cases, a lead change may not be the solution since EPA may face the same obstacles.

Conclusions

OECA Comment: OECA agrees that the system for addressing HPVs is not functioning as well as it was intended. We also agree that for some situations where it is clear that the state or local agency cannot or will not address an HPV timely and appropriately, overfiling of an enforcement action by EPA is warranted. However, we do not agree with the Report that, “EPA lacks the information necessary to effectively monitor the CAA stationary source program, assess results, and make informed changes to the policy and its application.” This finding is overly broad given the limited scope of this Report. The Report specifically states, “We limited the scope of our review to the timeliness of addressing HPVs. We did not review whether states were identifying or resolving HPVs in a timely manner.” Given the narrow scope and by implication a very limited evaluation of the AFS data (i.e., there is not discussion regarding an evaluation of AFS data to determine identification or resolution of HPVs), we respectfully request that language stating that EPA doesn’t have the information to monitor the CAA stationary source program, assess results, and make informed changes to the policy be removed.

Appendix A

Revise draft Report at page 9, as follows: “Examples of HPV’s **Identification Criteria**”

Appendix B

Revise draft Report at page 10, as follows: “New Source Review ~~Prevention of Significant Deterioration~~”.

Revise draft Report at page 10, as follows: “**National Emission Standards for Hazardous Pollutants** ~~Maximum Achievable Technology Air Toxics~~”.

OECA Comment: This program description needs to be revised to include a brief discussion of NESHAP Part 61 and Part 63. As currently written it discusses only the Part 63 Maximum Achievable Control Technology (MACT) program. Also, it is incorrect to say that the NESHAPs are new rules created by the CAA 1990 amendments. Only the MACT rules were added at the time.

OECA Comment: Delete the description of the Ozone Protection program in the draft Report at page 11. Sources subject to Title VI are not covered by the HPV policy in part because stationary sources are not classified as major or synthetic minor on the basis of ozone depleting substances emissions.

Appendix E***OIG's Evaluation of Agency Comments***

Regarding Recommendation 1, OECA's proposed activities to monitor regions' compliance with the HPV policy meet the intent of the recommendation. However, the memorandum should be more than a reminder to the regions that the HPV policy exists – the memorandum should direct the regions to comply with the policy. OECA's response also does not address how it will report on the regions' compliance with the HPV policy. This report will allow OECA to “assess the results and make informed changes to the policy and its application” as stated in our conclusions. We expect OECA to address this issue in the final report response.

Regarding Recommendation 2, we disagree with OECA's response. The HPV policy does not provide any oversight steps to ensure continued progress on State-led cases after Day 270. Also, the policy does not provide any oversight steps to ensure timely enforcement actions on EPA-led cases after Day 270. We did not rely only on AFS data, as stated in OECA's response. We reviewed the meeting notes between the 5 regions we reviewed and 25 of the States that they oversee. We found no evidence that the States and regions discussed the need for additional time for HPV cases that went beyond Day 270.

We agree that the current policy allows for flexibility. Because the policy allows flexibility in some cases, the policy should have steps for dealing with those cases. However, although the policy allows for flexibility, the issue, as we view it, is whether OECA maintains management control. OECA needs to demonstrate that it has adequate management controls in place to ensure that HPVs unaddressed after 270 days truly require additional time, and that these HPVs receive new milestone goals as well as proper attention from States and regular oversight by EPA. We understand that OECA wants to discuss this issue with the regions and conduct a brief review of its policy. However, after that review is completed, OECA needs to revise the HPV policy to address the deficiencies we identified.

For the need to include a section in the policy detailing roles and responsibilities, as stated in Recommendation 2, we disagree with OECA's position and maintain such a section is needed. The roles and responsibilities are scattered throughout the policy and, as a result, are unclear. To ensure accountability, the revised HPV policy needs to include a section that clearly lays out the roles and responsibilities of EPA Headquarters and regions, States, and local agencies.

Regarding Recommendation 3, we agree with OECA that implementing the Watch List standard operating procedures is important to improving HPV implementation. We also agree regular conference calls are needed between EPA Headquarters and regions to discuss the Watch List. However, the response does not address whether OECA will conduct annual national HPV reviews called for in the Watch List Standard Operating procedures. OECA will need to address this issue in its response to the final report. We also ask that OECA be specific as to how it will increase ongoing efforts to oversee AFS data accuracy in the final report response.

We decided not to revise the report's At a Glance as suggested by OECA regarding improvements not being needed for all HPVs but rather a subset. OECA noted in its response that regions are not fully complying with the HPV policy and oversight can be enhanced by Headquarters and regions. We visited almost half of the regions to develop our findings and clearly state the work we did in our scope and methodology. We do not believe OECA's changes are warranted.

OECA had a concern on page 3 of our report regarding whether the HPV policy "is missing key elements." We maintain our position. Our review found that the HPV policy does not address oversight steps that need to be taken after 270 days. Section IV of the HPV policy provides some guidance to regions in the event of a lead change and allows extending timeframes for more complex cases. However, the policy does not provide any oversight steps to ensure continued progress on State-led cases after Day 270. Also, the policy does not provide any oversight steps to ensure timely enforcement actions on EPA-led cases after Day 270.

OECA took issue with our statement regarding NOV's not being issued in 60 days. It is important that an NOV (or finding of violation) be issued because the CAA Section 113 (e) stipulates that issuing them shifts the burden of proof of continuous compliance to the source and "starts the penalty clock." OECA did not comment on the importance of issuing an NOV or a finding of violation. OECA should gather information from the regions about the issuance of NOV's and whether the timeframe in a revised policy should be changed from 60 days. We also believe that OECA and the regions should discuss whether alternative enforcement vehicles should be used and included in a revised HPV policy. At present, this key element of the HPV policy is not being followed.

Regarding the 150-day case strategy meetings not being held, EPA regions did not comply with a key provision of the HPV policy by not having 150 day meetings. Regions did conduct regular meetings with States; air enforcement staff from three of the five EPA regions reviewed said their regular status meetings substituted for the 150-day meetings. However, from our review of meeting notes between the 5 Regions and 25 of the States they are responsible for, we found no evidence that case-specific consultations concerning overall case strategy were held during any of the monthly meetings we reviewed.

Although OECA indicated there are instances where States have addressed HPVs with informal enforcement actions, informal actions may be the only viable option for some States. However, we would expect that EPA regions would take over HPV cases from States with limited administrative authorities to ensure that high priority violators would receive appropriate formal enforcement actions and penalties consistent with violators across the country. The data we reviewed and presented in the report show that this is not occurring. We also note for the record that, according to the HPV policy, informal actions are never adequate addressing actions for HPVs. The policy states that HPVs are to be addressed by a legally enforceable and expeditious administrative or judicial order, or by being referred to the (State) attorney general or (Federal) Department of Justice for an adjudicatory enforcement hearing or judicial action.

OECA said it will improve its oversight and monitoring of the regions' implementation of the HPV policy and the regions' oversight of States with regularly scheduled calls between

Headquarters and the regions. Regularly scheduled and executed calls between Headquarters and the regions would indeed be beneficial. However, OECA has not demonstrated that its revisions to the 2005 Watch List Headquarters standard operating procedures will enhance Headquarters and regional oversight performance. We require more specific detail in the final report response.

OECA questioned some of our statements on page 5 regarding an EPA white paper summarizing the State problems. The white paper provided to us by OECA on timely and appropriate enforcement did not identify “a lack of clear EPA guidance” as a prevalent cause of untimely enforcement. It did find that disagreement with or having different procedures than EPA was a prevalent cause. The white paper also did not identify any planned EPA activities for addressing the causes of untimely enforcement.

OECA noted that the report states that, “EPA regions did not assume the lead for any unaddressed State-led HPVs due to timeliness concerns,” and said it is important to note that the HPV policy does not require a lead change where the State is able and willing to act to resolve a violation in a timely and appropriate manner. Our sample had 295 HPV State-led cases that remained unaddressed for over 540 days (9 percent), including 98 HPVs unaddressed for over 750 days. We found no instances where EPA assumed the lead for an HPV due to timeliness concerns. Although the policy may not require a lead change, it does not prohibit one either. Given the lack of oversight, it is unlikely that none of these cases would have benefited from a lead change. While EPA may face the same obstacles in addressing HPVs that the States do, taking over a case is a signal to States, violating facilities, and the public that EPA is serious about addressing violations in a timely manner. That EPA may face similar obstacles is not a reason for inaction.

OECA did not agree with the statement in the “Conclusion” section of our report, “EPA lacks the information necessary to effectively monitor the CAA stationary source program, assess results, and make informed changes to the policy and its application,” indicating the statement was overly broad given the limited scope of our review. We concluded that OECA does not have the information to evaluate regional challenges and determine whether the HPV policy needs to be revised at this time. However, we accept OECA’s suggestion to restrict the scope of the statement to HPVs, and made revisions. We did not rely only on evaluation of AFS data as stated in OECA’s response. We also interviewed regional and State staff and reviewed the meeting notes between the 5 regions we reviewed and 25 of the States that they oversee. Further, we conducted other work as stated in the “Scope and Methodology” section of the report.

Appendix F

Distribution

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