



U.S. ENVIRONMENTAL PROTECTION AGENCY

OFFICE OF INSPECTOR GENERAL

Enforcement and Compliance

EPA Can Reduce Risk of Undetected Clean Air Act Violations Through Better Monitoring of Settlement Agreements

Report No. 15-P-0277

September 10, 2015



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Abbreviations

AEP	American Electric Power
CAA	Clean Air Act
CD	Consent Decree
EPA	U.S. Environmental Protection Agency
ICIS	Integrated Compliance Information System
Louisiana DEQ	Louisiana Department of Environmental Quality
OECA	Office of Enforcement and Compliance Assurance
OIG	Office of Inspector General

Cover photo: Air pollution from a smokestack. (EPA photo)

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At a Glance

Why We Did This Review

We conducted this evaluation to determine whether the U.S. Environmental Protection Agency (EPA) ensured selected facilities with Clean Air Act violations were complying with key terms of their consent decrees. A consent decree (CD) is a legal settlement, contained in a court order, where a person or company agrees to take specific actions. The EPA entered into multi-year CDs involving millions of dollars in controls, penalties and supplemental environmental projects. We reviewed three CDs from 2006 to 2011 for three industry sectors: cement manufacturing, coal-fired electric utility and sulfuric acid production. We reviewed two facilities from each of the three selected CDs.

This report addresses the following EPA goals or cross-agency strategies:

- *Addressing climate change and improving air quality.*
- *Protecting human health and the environment by enforcing laws and assuring compliance.*

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The full report is at: www.epa.gov/oig/reports/2015/20150910-15-P-0277.pdf

EPA Can Reduce Risk of Undetected Clean Air Act Violations Through Better Monitoring of Settlement Agreements

What We Found

The EPA has not ensured that facilities were complying with several key terms of the three CDs we reviewed. EPA regional enforcement files were missing key CD deliverables as well as other documents required by the CD. Further, CD requirements were not always incorporated into facilities' permit as required by the CD and potential CD violations were not addressed. The EPA did not have sufficient management controls to ensure that these facilities were complying with the terms of their CDs. These deficiencies occurred because:

Adequate tracking of consent decrees by the EPA reduces the risk of violations going undetected, which could impact human health and the environment.

- The seven EPA regions we interviewed have not implemented automated systems for tracking compliance with CD requirements in accordance with the EPA's guidance for the selected industries.
- The EPA's guidance does not establish clear requirements on how regional staff should monitor CDs, provides only vague guidance on what specific documents to include in the CD enforcement file, and lacks specific procedures for terminating CDs (other than petroleum refinery CDs).
- The EPA's Office of Enforcement and Compliance Assurance stated that because of the need to balance its resources between addressing violators not currently under CDs and monitoring compliance of existing CDs, it has chosen to focus its resources on addressing new violations not under CDs.

As a result, the EPA does not have reasonable assurance that these facilities are complying with several key terms of their CD. We found that the Title V permits for two facilities had not been revised to incorporate the CD requirements. Thus, violations of the approved emission limits could go undetected since Louisiana and West Virginia permitting and enforcement staff were not aware of the requirements of the CDs we reviewed. Not ensuring compliance with the requirements of the CD creates the risk that facility emissions of harmful air pollutants above CD-required limits go undetected, thus reducing CD effectiveness and exposing the public to harm.

Recommendations and Planned Agency Corrective Actions

We made six recommendations ranging from updating and reissuing guidance for regional monitoring of CDs and termination procedures to requiring the use of a monitoring system to track CD compliance. The agency agreed with three of the six recommendations, which are resolved. The agency partially agreed or disagreed with the remaining recommendations, which are unresolved.



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

THE INSPECTOR GENERAL

September 10, 2015

MEMORANDUM

SUBJECT: EPA Can Reduce Risk of Undetected Clean Air Act Violations Through
Better Monitoring of Settlement Agreements
Report No. 15-P-0277

FROM: Arthur A. Elkins Jr.

A handwritten signature in black ink, appearing to read "Arthur A. Elkins Jr.", is written over the printed name.

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

Shawn Garvin, Regional Administrator
Region 3

Ron Curry, Regional Administrator
Region 6

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 Office of Enforcement and Compliance Assurance's Office of Compliance and Office of Civil Enforcement, Region 3's Office of Air Enforcement and Compliance Assistance, and Region 6's Air Enforcement Section are responsible for implementing the recommendations in this report.

Action Required

In accordance with EPA Manual 2750, you are required to provide a written response to this report within 60 calendar days to address Recommendations 1, 2 and 4, which are unresolved. You should include planned corrective actions and completion dates for all unresolved recommendations. Your response will be posted on the OIG's public website, along with our memorandum commenting on your response. Your response should be provided as an Adobe PDF file that complies with the accessibility requirements of Section 508 of the Rehabilitation Act of 1973, as amended. The final response should not contain data that you do not want to be released to the public; if your response contains such data, you should identify the data for redaction or removal along with corresponding justification.

We will post this report to our website at <http://www.epa.gov/oig>.

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Chapter 1

Introduction

Purpose

We conducted this evaluation to determine whether the U.S. Environmental Protection Agency (EPA) has ensured that selected facilities with Clean Air Act (CAA) violations are complying with key terms of their consent decrees.

Background

Sustained compliance with environmental laws is needed to protect human health and the environment. The principal goal of the EPA's enforcement activities is to ensure that regulated entities are in compliance with these environmental laws. Consent decrees (CDs) are one of a number of tools that the EPA uses to achieve compliance at facilities that have violated the law. The U.S. Department of Justice represents the EPA on judicial matters and is involved in settlement negotiations and the drafting of CDs. A CD is a legal settlement that is contained in a court order. By entering into a CD, a person or company agrees to take specific actions. A CD can address one or multiple facilities. A CD can establish emissions limits, require installation of controls, cause changes in facility processes, and require that a facility comply with environmental laws. A CD may also assess monetary penalties¹ and may require supplemental environmental projects to reduce the civil penalty and/or mitigate the harm caused by past violations.

Ensuring that facilities adhere to the terms and conditions of its CD is key to protecting human health and the environment. In fiscal years 2013 and 2014, the EPA directed almost one-tenth of its enacted annual budget to enforcing environmental laws and promoting compliance. This amounts to almost \$1.5 billion in fiscal years 2013 and 2014 combined.

Applicable CAA Laws and Regulations for Selected Industry Sectors

The CAA requires states or the EPA (depending on the program) to set emissions standards or limits for stationary air pollution sources, such as power plants and industrial facilities. Examples of standards set by the EPA are new source performance standards for new industrial facilities. States also set emissions limits for pollution sources, which include “reasonably available” controls for existing stationary sources (e.g., factories) and “best available control technology” for

¹ Penalties are monetary assessments to be paid by a person or regulated entity in connection with a violation or noncompliance, or as part of an enforcement settlement for noncompliance.

major new pollution sources. These state emission limits are intended to help achieve or maintain national ambient air quality standards set by the EPA.²

Title V of the CAA requires large sources and a limited number of small sources to obtain operating permits that include emission limits and other conditions as necessary to assure compliance with applicable requirements of the CAA. The Title V operating permit consolidates all air pollution control requirements into a single, comprehensive permit that covers all aspects of a source’s year-to-year air pollution activities. The program was designed to make it easier for sources to understand and comply with control requirements, and thus improve air quality.

Most CAA CDs by Industry Sector

The EPA has entered into multi-year CDs involving millions of dollars in new controls, penalties and supplemental environmental projects. From January 2006 to June 2011, the majority of CAA CD settlements that the EPA reached were with the following four industry sectors: cement manufacturing, coal-fired electric utility, petroleum refining and sulfuric acid production. Table 1 shows the number of these CD settlements during this timeframe for three of these industries.³

Table 1: Pollutants emitted by three industry sectors and number of CAA CD settlements reached from January 2006 to June 2011

Industry sector	Number of CD settlements reached from January 1, 2006, to June 30, 2011	Pollutants emitted by industry
Cement manufacturing	5	Carbon monoxide, nitrogen oxides and sulfur dioxide.
Coal-fired electric utility	14	Carbon dioxide, nitrogen oxides, sulfur dioxide and other greenhouse gases.
Sulfuric acid production	5	Nitrogen oxides, particulate matter, sulfur dioxide and sulfuric acid mist.

Source: OIG analysis of EPA-issued CDs and related pollutants.

² The CAA requires the EPA to establish National Ambient Air Quality Standards for pollutants considered harmful to public health and the environment. The EPA has set National Ambient Air Quality Standards for six criteria pollutants: carbon monoxide, lead, nitrogen dioxide, ozone, particulate matter and sulfur dioxide. National Ambient Air Quality Standards establish the maximum amount of a pollutant that can be present in outdoor air.

³ We did not include the petroleum refining industry sector in our review because we recently reviewed petroleum refineries and issued a final report on the topic (Report No. [14-P-0184](#)) on April 15, 2014.



Clockwise from top left: Photographs of a cement manufacturing plant, coal-fired electric power plant and sulfuric acid plant. (EPA photos)

Pollutant Health Effects for Selected Industries

Cement manufacturing plants, coal-fired electric power plants and sulfuric acid plants emit pollutants that impact human health and the environment. These emissions include nitrogen oxides, sulfur dioxide, sulfuric acid mist and particulate matter. Regarding these pollutants:

- Nitrogen oxides can cause or worsen respiratory disease and aggravate existing heart disease, leading to increased hospital admissions and premature death.
- Sulfur dioxide in high concentrations can affect breathing and may aggravate existing respiratory and cardiovascular disease.
- Sulfuric acid mist may cause third-degree skin burns and blindness on contact and can irritate the nose, throat and lungs. At higher levels, sulfuric acid mist can cause a buildup of fluid in the lungs.
- Particulate matter is linked to respiratory symptoms, decreased lung function, asthma, irregular heartbeat, nonfatal heart attacks, and premature death in people with heart or lung disease.

EPA Guidance for Monitoring Facility Compliance With CD Requirements

Once a company has entered into a CD, the EPA's Office of Enforcement and Compliance Assurance (OECA) works with EPA regional offices and states to enforce its requirements. Monitoring compliance with CD requirements is generally an EPA regional function with OECA providing oversight. The EPA issued the following five guidance documents to the regions regarding monitoring and oversight of CDs:

- The EPA's 1990 *Manual on Monitoring and Enforcing Administrative and Judicial Orders* requires each region to have a system in place for monitoring compliance with the technical (non-penalty) requirements of judicial and administrative orders, including CDs.

- In 1990, the EPA also developed the *Agency Judicial Consent Decree Tracking and Follow-up Directive*. It outlines agency requirements that are necessary for the regions to effectively manage CD tracking and follow-up responsibilities.
- The EPA’s 2010 *Revised Guidance on Tracking Civil Judicial Consent Decree Implementation in ICIS* (CD tracking guidance) requires regions to enter key milestones into the EPA’s Integrated Compliance Information System (ICIS) to track CD compliance. This guidance applies only to CDs entered by the court in fiscal year 2007 and after.
- In 2013, the EPA issued *Guidance on Streamlining Oversight in Civil Settlements*.⁴
- In 2015, the EPA issued a memo titled *Use of Next Generation Compliance Tools in Civil Enforcement Settlements*. The memorandum states that case teams are expected to consider Next Generation compliance tools in all cases other than expedited settlements and to include them whenever appropriate in civil, judicial and administrative settlements. According to the EPA, Next Generation compliance tools have the potential to improve compliance and provide significant benefits to the EPA, the public and the regulated community. The tools described in the memorandum include (1) advanced monitoring, (2) independent third-party verifications, (3) electronic reporting, and (4) public accountability through increased transparency of compliance data. The memorandum also states that it is not intended to supersede any statutory or regulatory requirements or agency policy.

Responsible Offices

The Office of Enforcement and Compliance Assurance’s Office of Compliance and Office of Civil Enforcement, Region 3’s Office of Air Enforcement and Compliance Assistance, and Region 6’s Air Enforcement Section are responsible for implementing the recommendations in this report.

Noteworthy Achievements

Region 6 developed an automated tracking system called Consentes. This system aids staff in monitoring petroleum refinery CDs due to the number of deliverables and reviews that need to be tracked. Consentes has a document repository to allow deliverables, in an electronic format, to be uploaded directly from the company with the CD. Consentes includes information on the due date of the deliverable, the date received, the EPA staff responsible for reviewing the deliverable, and the

⁴This guidance was marked “privileged and confidential.” We did not include any information from this guidance in the final report. We did not perform any verification of the justification for the marking.

tasks to be completed. Companies under CDs can upload documents to an EPA portal. Once uploaded, each recipient of the CD deliverable receives an email with a link to the document.

Scope and Methodology

We conducted this performance audit in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our objectives. We conducted our review from June 2014 through May 2015.

We selected the following three industry sectors for our review: cement manufacturing, coal-fired electric utility and sulfuric acid production. Except for petroleum refineries, these three industries entered into more CAA CDs with the EPA from January 1, 2006, to June 30, 2011, than with any other industry. As previously noted in Footnote 3, the Office of Inspector General (OIG) did not include petroleum refineries in our review because we recently issued a separate report on this industry sector.

For each selected industry sector, we chose one CAA CD based on the number of facilities covered by the CD and, if available, the expected amount of pollution reduction and estimated health benefits. For each selected CD, we chose two facilities for detailed review. Table 2 identifies the selected CDs, the facilities and the location of the reviewed facilities.

Table 2: Industry sector, company and location of facilities the OIG reviewed

Industry sector	Company with EPA CD	Facilities (location)	EPA regions
Cement manufacturing	Lafarge	Alpena (Michigan)	Region 5
		Tulsa (Oklahoma)	Region 6
Coal-fired electric utility	American Electric Power (AEP)	John Amos (West Virginia)	Region 3
		Cardinal (Ohio)	Region 5
Sulfuric acid production	Rhodia ^a	Baton Rouge (Louisiana)	Region 6
		Houston (Texas)	Region 6

Source: OIG analysis of EPA-issued CD documents.

^a Rhodia is now known as Eco Services Operations, LLC.

To answer our objective, we reviewed agency guidance pertaining to the EPA's responsibilities and requirements for monitoring facility compliance with the terms and conditions of the CAA CDs. We reviewed the facility CDs and assessed whether each facility was in compliance with the terms of their CDs by reviewing: (1) annual or semiannual reports and other deliverables submitted to the EPA; (2) regional CD enforcement files, including correspondences between the EPA regions and companies under CDs; (3) Title V permits and/or New

Source Review⁵ permits issued to facilities; and (4) the EPA and/or state inspection reports. We did not conduct independent inspections or onsite visits to the facilities under the CD.

We analyzed enforcement data from the agency's ICIS and the Enforcement and Compliance History Online databases to determine whether any enforcement actions for violations of the CD were taken against the facilities. We conducted interviews with OECA; Office of Regional Counsel management and staff; and EPA regional compliance and enforcement staff from Regions 3, 4, 5, 6, 7, 9 and 10. We selected regions that monitored facilities for the CDs selected. We also reviewed documents from and/or interviewed selected state management and staff, including the Louisiana Department of Environmental Quality (Louisiana DEQ), the Ohio Environmental Protection Agency, the Texas Commission on Environmental Quality, and the West Virginia Department of Environmental Protection.

Prior Evaluation and Audit Coverage

The following OIG reports address issues related to the scope of our review:

- **ENFORCEMENT: Compliance with Enforcement Instruments** (Report No. [2001-P-00006](#)), issued March 29, 2001: The OIG found that the EPA's annual enforcement accomplishment reports did not accurately represent the actual environmental benefits resulting from enforcement activities. The OIG also found that EPA regions did not adequately monitor compliance with enforcement instruments and did not take further enforcement actions against violators who did not comply in a timely manner. The OIG made three recommendations to OECA: (1) establish a performance measure for ensuring that facilities under a formal enforcement action return to compliance, (2) identify a more accurate method for reporting actual EPA enforcement activity accomplishments, and (3) issue baseline guidance for monitoring violators' efforts to comply with enforcement instruments. The OIG also recommended that all Regional Administrators adequately monitor violators' actions. Agency information systems report that the corrective actions addressing the report recommendations have been completed. OECA developed four ICIS tracking measures to address the recommendation of establishing a performance measure for ensuring that facilities under a formal enforcement action return to compliance.
- **EPA Needs to Improve Its Recording and Reporting of Fines and Penalties** (Report No. [10-P-0077](#)), issued March 9, 2010: The OIG found that the EPA did not consistently record fines and penalty billings in a timely manner. The EPA also did not report penalty information with

⁵ New Source Review requires stationary sources of air pollution to obtain permits before they start construction.

complete accuracy and transparency. The OIG recommended that the EPA: ensure the timely recording of fines and penalty billings, monitor delinquent debt, ensure greater data system accuracy, develop a policy for recording stipulated penalties, and disclose fines and penalties collected as well as assessments when reporting enforcement action results. Agency information systems report that the corrective actions addressing the report recommendations have been completed.

- **EPA Needs to Demonstrate Whether It Has Achieved the Goals It Set Under the National Petroleum Refinery Initiative** (Report No. [14-P-0184](#)), issued April 15, 2014: The OIG found that the EPA did not determine whether the National Petroleum Refinery Initiative achieved the compliance goal it set. The OIG recommended that the EPA develop and implement a plan to assess whether the initiative led to sustained improvement in compliance and sustained reductions in pollution among refineries. The OIG also recommended that the EPA report the results of its efforts to the public. Agency information systems report that the corrective actions addressing the report recommendations have been completed.

Chapter 2

Management Controls Needed to Assure CD Compliance

The EPA has not ensured that facilities were complying with several key terms of the three court-ordered consent decrees we reviewed. EPA regional enforcement files were missing key deliverables and other documents required by the CDs. Also, important CD requirements were not incorporated into Title V permits as required by the CD and potential CD violations were not addressed. In our view, these conditions occurred because the EPA lacked sufficient management controls to ensure that the CAA-regulated facilities we reviewed are complying with the terms of their CDs. For example, none of the seven EPA regions we interviewed had implemented an automated system to track compliance with CD requirements in accordance with the EPA's guidance for the three industries reviewed. These weaknesses in the agency's monitoring of CD compliance create risk that violations of CD-required emission limits go undetected, which could impact human health and the environment.

EPA Guidance for Monitoring CD Compliance

The EPA's *Manual on Monitoring and Enforcing Administrative and Judicial Orders* requires regions to establish a system for monitoring CD compliance that includes three minimum elements: an automated tracking system, regular supervisory review and maintenance of the case file. According to the manual, the automated tracking system must:

- Store all judicial and administrative order requirements.
- Alert EPA users to the judicial/administrative order milestones due in each reporting period for compliance verification.
- Provide for regular compliance information updates.

The EPA's CD tracking guidance requires regions to enter key milestones into ICIS to track CD compliance. For example, regions should enter the overall compliance status at least every 3 years for CDs with compliance schedules in excess of 3 years.

EPA Regional Documentation Did Not Demonstrate Compliance With CD Requirements

The EPA has not ensured that facilities were complying with several key terms of the three CDs we reviewed. Specifically:

- Regional enforcement files were missing key deliverables and other information.
- No record that CD requirements were incorporated into Title V permits.

- No record that potential violations of CD requirements were addressed.
- Enforcement files lacked evidence of regional follow-up with companies about compliance status of facilities.

Regional Enforcement Files Missing Key Deliverables and Other Information

The EPA’s CD enforcement files for AEP, Lafarge and Rhodia were missing key deliverables and other documents from the companies under CDs. The EPA’s guidance instructs regions to maintain enforcement files to verify compliance. Specifically, the files should contain routine company self-reporting and efforts to address noncompliance, the EPA contacts with the company, telephone calls, meetings, and letters. These key documents need to be in the regional enforcement files to enable staff to make compliance and enforcement decisions.

Table 3 shows the types of documents that were missing from the enforcement files for the three CDs and the purpose of including the documents in the enforcement files.

Table 3: Types of CD-required documents missing from regional enforcement files

Documents	Purpose	CD and facility
Semiannual reports submitted by facility	Allows the agency to determine whether the CD requirements are being met or on track to be met.	Rhodia – Baton Rouge and Houston
Excess emission reports submitted by facility	Allows the agency to determine if the facility emitted any excess pollutants and if the company’s continuous emission monitoring system was not operating at certain times.	Rhodia – Baton Rouge and Houston
Permit applications and proposed permits	Allows the agency to determine if the CD requirements have been incorporated into permits.	AEP – Amos and Cardinal Rhodia – Baton Rouge and Houston
CD amendments	Allows the agency to track compliance with new or modified CD requirements.	AEP – Amos Lafarge – Alpena and Tulsa
EPA approval of a baseline data report	Allows the agency to help set emission rates by providing data collected prior to initiating operation of any control technology.	Lafarge – Tulsa
Interim demonstration reports	Allows the agency to help set emission limits by providing data collected while operating required control technology during the demonstration phase.	Lafarge – Tulsa
Notice of violation or potential violation submitted by facility for the sulfuric acid mist limit	Allows the agency to review the violation and determine whether stipulated penalties should be assessed or other actions taken against the facility.	Rhodia – Baton Rouge
Follow-up reports of two different notices of violation or potential violation submitted by facility for the sulfuric acid mist limit	Allows the agency to consider a facility’s full explanation of the cause of the violation or potential violation. This includes the facility’s corrective action, before assessing penalties or taking other actions.	Rhodia – Baton Rouge
Notification of sulfur dioxide performance test	Allows the agency advance notice of key onsite emissions testing in the event EPA enforcement staff want to observe performance test in person.	Rhodia – Baton Rouge and Houston
Results of sulfur dioxide performance test	Allows the agency to determine whether the company’s emission control equipment is working effectively and capable of preventing the emission unit from exceeding the CD-required emission limit.	Rhodia – Baton Rouge and Houston

Source: OIG analysis of regional enforcement files of AEP, Lafarge and Rhodia.

Missing deliverables and other documents in the enforcement files of the three CDs underscores the need for more effective file maintenance and a document repository system. A document repository system would assist the regions in storing and maintaining received documents. This feature would also be helpful when enforcement staff turnover occurs. For example, lack of succession management in Region 6 resulted in periods when no enforcement officer was assigned to monitor the Rhodia CD.

No Record That CD Requirements Were Incorporated Into Title V Permits

The three CDs we reviewed required the companies to submit applications to incorporate the emission limits and requirements of the CD into their air permits, including Title V permits. This CD requirement was in place to ensure that emission limits, controls and other requirements remain in effect after a CD is terminated. If requirements are not incorporated into Title V permits, there is a risk that state compliance staff may assess facility compliance against the existing permit requirements and not the more stringent CD requirements. Therefore, excess emissions, which are not identified by state inspectors until the time that the CD expires and before its requirements are incorporated into the Title V permit, could occur.

Each CD we reviewed included deadlines for submitting permit applications incorporating CD requirements to the appropriate state permitting authority. Companies were required to submit a copy of each permit application and a copy of any draft permit resulting from such application to the applicable EPA region. Nonetheless, we found that Regions 3 and 6 enforcement and permitting staff did not inform state permitting authorities that the emission limits and requirements of the CD were not incorporated into draft Title V permits for two of the CDs we reviewed. As a result, the issued Title V permits did not include all the CD requirements. The Region 6 Air Permits Section Chief stated that his section does not review draft permits for a company under a CD unless they were flagged by the enforcement staff. Examples follow.

AEP

AEP sent a letter to the state, along with copies to the EPA, in December 2010 requesting that the continuous operation of flue gas desulfurization controls requirement in its CD be incorporated into the John Amos facility's Title V permit. West Virginia Department of Environmental Protection permitting staff stated that the permit requirements were not incorporated for two reasons. First, the West Virginia Department of

Risks of not incorporating CD requirements into Title V permits

State staff responsible for enforcement may not be aware of the more stringent requirements in the CD. If the CD requirements are not in Title V permits, facilities may emit harmful air emissions above required limits.

Environmental Protection did not become aware of the AEP letter until November 2014 when the OIG inquired about the issue. Second, the EPA did not instruct the West Virginia Department of Environmental Protection to incorporate CD requirements into the permit language when it published the draft Title V permit for public notice. The facility's current Title V permit became effective on January 11, 2011, a few years after the effective date of the AEP CD, but did not include the CD requirements. According to a Region 3 manager, the Title V permit renewal application was due June 28, 2015. However, the region has not had any specific discussions with the West Virginia Department of Environmental Protection about the application and will need to ask the state for the permit renewal application. The Region 3 manager further commented that the region will need to follow up to determine whether the CD requirements are in the Title V renewal application.

Rhodia

The CD required Rhodia to submit a permit application as soon as practicable, but no later than 90 days after the effective date of an emission limit, to incorporate that limit into the permit. Rhodia Baton Rouge facility submitted a Title V permit modification application with a copy of the CD attached to the application to the Louisiana DEQ in October 2007 to incorporate the CD requirements, and a modified Title V permit was eventually issued in November 2009. However, not all requirements in the modified Title V permit aligned with the CD requirements. For example, Rhodia's CD required a sulfuric acid mist opacity limit of 10 percent at Baton Rouge Unit 2 effective January 1, 2011, but the Title V permit effective for 5 years starting in November 2009 contained the state's default opacity limit of 20 percent—double the limit allowed by the CD. The Louisiana DEQ issued a modified permit to Rhodia in May 2011 that incorporated the correct opacity limit required by the CD. Further, the CD required the facility's Title V permit to include a requirement that the sulfur dioxide and sulfuric acid mist limits shall not be relaxed. However, none of the Baton Rouge facility's Title V permits issued since July 2007 contained this requirement. Further, Region 6 staff did not determine whether the Louisiana DEQ incorporated the CD-required permit limits into the Rhodia facility's Title V permit.

OECA told us that its practice is to wait and review permit applications and draft permits for CD requirements at CD termination. OECA noted that the CD requirements remain in effect until termination and that the EPA will not agree to terminate a CD until the requirements of the CD are incorporated into the appropriate permits. EPA can use its discretion and not review these permits until termination, but there are consequences for this decision. If states are not aware of the more stringent CD requirements – and EPA delayed enforcing CD requirements until CD termination (often many years later) – excess emissions could occur in the interim which are not identified and addressed by state inspectors.

In our view, CDs that require facilities to submit permit applications within a specified time period create an expectation that the emission limits and requirements of the CD will be incorporated into the facilities' air permits in a timely manner before CD termination. Thus, when facilities submit revised permit applications in accordance with CD requirements, we believe the EPA should review those permit applications and draft permits and inform the state permitting authority if the CD requirements are not in these documents. If facilities do not submit permit applications as required by a CD, EPA should work with the state and facility to ensure the application is submitted and consider assessing stipulated penalties.

No Record That Potential Violations Were Addressed

The Rhodia-Baton Rouge facility disclosed three potential violations of the sulfuric acid mist emission limit for the CD in 2010 and 2011 to the Louisiana DEQ and the EPA. However, the agency did not have any documentation in its files demonstrating that Region 6 had reviewed these incidents to determine whether violations occurred. Two of the three incidents may have resulted in violations of the emission limit. We estimated that the facility emitted from 50 to 768 times its permitted emissions limit during these two incidents. In addition to the emission limit violations, we also identified other potential violations of CD requirements. For example:

Risks of sulfuric acid mist violations

Not addressing potential sulfuric acid mist violations creates the risk that facilities may emit harmful air emissions above required limits. Exposure to sulfuric acid mist can irritate the eyes, nose, throat and lungs.

- The Houston facility did not perform daily continuous emission monitoring system calibrations for a period of time.
- The Houston facility did not file a permit application in a timely manner.
- The Baton Rouge facility did not fully report its compliance status with the CD in three semiannual reports.
- The Baton Rouge facility did not fully comply with New Source Performance Standards⁶ reporting requirements.

We did not find documentation in the regional enforcement files that these potential violations were identified by Region 6 at the time we conducted our review. Based on the schedule of stipulated penalties outlined in the CD, Rhodia could have incurred a total of \$226,100 in stipulated penalties for the potential violations we identified according to OIG calculations. The CD provides the EPA discretion to reduce or waive stipulated penalties. However, we found no evidence that the agency reviewed the facility's compliance with these requirements, assessed stipulated penalties, or decided to waive the penalties for these violations.

⁶ New Source Performance Standards are technology-based emission standards that apply to specific categories of stationary sources, such as manufacturers of glass, cement, and sulfuric acid. Each standard includes emission limitations, monitoring, testing, reporting, and recordkeeping requirements.

According to OECA management, the agency can still review these potential violations and assess stipulated penalties up until the time the CD is terminated.

Enforcement Files Lacked Evidence of Regional Follow-Up on Compliance Issues

The EPA relies on a company's self-reporting and self-certification that it has complied with CD requirements. In our view, when a facility does not fully report its compliance status in its annual or semiannual reports to the agency as required by the CD, regional enforcement staff should contact the facility to obtain more information. However, the CD enforcement files did not always contain a record of this follow-up occurring. For example, Rhodia-Baton Rouge did not state in its semiannual report when it installed the continuous emission monitoring system on Unit 1. In another semiannual report, Rhodia-Baton Rouge did not state whether it complied with the long-term sulfur dioxide limit at Unit 2 during the semiannual reporting period. Region 6 enforcement files did not contain documents demonstrating that the region followed up on these issues.

Improved Management Controls Needed to Assure CD Compliance

The EPA had not implemented a management control system, including its existing guidance, to ensure facilities comply with the requirement of their CDs. For example:

- Regions had not implemented automated tracking systems in accordance with the EPA's guidance.
- There was no evidence of supervisory review for four of the six facilities' enforcement files reviewed.
- Existing guidance lacked clarity in some areas, such as not providing an explicit definition of "lead region" in the CD tracking guidance.
- OECA civil enforcement managers stated OECA has to balance its resources between addressing violators not currently under CDs and monitoring compliance of existing CDs and has chosen to focus its resources on addressing violators not currently under CDs.

Regions Have Not Implemented Automated Tracking Systems in Accordance With EPA Guidance

The regions have not implemented automated tracking systems to track CD requirements in accordance with the EPA's guidance. OECA requires regions to report certain CD milestones in ICIS. However, regions do not use the system to track CD requirements, such as the receipt and review of deliverables. In addition to ICIS, Regions 5 and 9 each had an internal database for tracking CD compliance. However, Region 5's automated tracking system did not have an alert system, while Region 9's automated tracking system could not track all CD

requirements. Staff from Regions 6, 7 and 10 told us they track some CDs using staff-developed spreadsheets.

Although Region 6 did not have an automated tracking system for the three CDs we reviewed, it had developed an automated system (Consentes) for tracking compliance with petroleum refinery CDs. Consentes has an alert system, an element required by the EPA's guidance. Consentes also has a document repository. An OECA manager stated that they are evaluating Consentes as a possible nationwide tracking system for all CDs. In addition, a Region 6 staff person said that they are working to expand the use of Consentes to other industry sectors. We consider the use of Consentes a promising practice.

No Evidence of Supervisory Review for Four of Six Facilities' Enforcement Files Reviewed

We did not find evidence of regular supervisory review for four of the six facilities' enforcement files we reviewed. These files were AEP's John Amos facility (Region 3), Lafarge's Tulsa facility (Region 6), and Rhodia's Baton Rouge and Houston facilities (Region 6). Further, we found no documentation showing the enforcement officer's tracking and review of the required CD deliverables from these facilities.

Existing CD Guidance Lacks Clarity

The EPA issued several guidance documents concerning CD monitoring. However, these documents do not establish clear expectations on how regional staff should monitor CAA CDs. For example, the EPA's *Manual on Monitoring and Enforcing Administrative and Judicial Orders* does not clearly specify what documents should be included in the enforcement file to verify compliance. The manual also does not include information on the process for terminating CDs. OECA issued guidance to EPA air enforcement division directors on the process and requirements for terminating petroleum refinery CDs but not the process and requirements for terminating CDs from other industry sectors. In addition, OECA's managers could not provide the OIG with a complete copy of the manual. Only one of seven regions in our review used the manual to monitor their CAA CDs.

The CD tracking guidance did not explicitly define "lead region." This lack of clarity may have resulted in incomplete compliance status information in ICIS for some CDs. Region 5—the lead region for negotiating a settlement with AEP, Lafarge and Rhodia—is listed as the lead region in ICIS. However, Region 5's enforcement staff told us they did not consider Region 5 to be the lead region for monitoring CD compliance. Thus, Region 5 did not consult with other regions in completing the four required milestones in ICIS for the AEP, Lafarge and Rhodia CDs. As of November 2014, the overall compliance status for these three CDs only reflected facilities in Region 5 according to a Region 5 enforcement staff

person. As a result, OECA may not have accurate data in ICIS regarding the overall compliance status of 12 multiregional CDs in which Region 5 is listed as the lead region.⁷ OECA needs accurate data in ICIS to make informed compliance and enforcement decisions.

Focus on Balancing Resources Between Developing New Enforcement Cases and Monitoring Existing CDs

OECA managers told us they focus on balancing their resources between addressing new enforcement cases against violators not currently under CDs and monitoring the compliance of existing CDs. Thus, OECA has chosen to primarily focus its resources on identifying new violations and initiating new enforcement cases to address those violations. An OECA manager stated that the company managers' certification of the accuracy of key reports helps deter misreporting of compliance status. Also, another OECA manager pointed out that the EPA had until CD termination to collect penalties for any violations. However, violations can occur if CDs are not properly monitored, causing additional emissions and potentially impacting human health and the environment.

Lack of CD Compliance Monitoring Could Result in Undetected and Unaddressed Violations and a Reduced Deterrent Effect

The EPA does not have assurance that the facilities we reviewed were complying with several key terms of their CDs. This lack of assurance increases the risk of not detecting potential violations that can impact human health and the environment by emitting harmful pollutants above required limits. CDs require companies to submit copies of Title V permit applications and draft permits to the applicable region. However, neither the regional permitting staff nor the enforcement staff determined whether CD requirements were incorporated into permit applications and draft permits. This resulted in the issuance of at least two Title V permits that did not incorporate the CD requirements. We also found violations of the sulfuric acid mist limit in which we estimated that a facility emitted from 50 to 768 times its permitted emissions limit, as well as other violations associated with the continuous emission monitoring system, permitting, reporting and New Source Performance Standards requirements.

According to a White Paper prepared for the EPA,⁸ numerous peer review studies suggest an increase in compliance when facilities are subject to environmental monitoring and enforcement activities. Further, this deterrent effect can occur even for sector/pollutant combinations where compliance is typically high. In our view, not ensuring that facilities comply with their CD requirements could diminish the deterrent effect of CDs.

⁷ There were a total of 36 multiregional CDs nationwide as of July 2014.

⁸ Jay P. Shimshack, *Monitoring, Enforcement, and Environmental Compliance: Understanding Specific and General Deterrence, State-of-Science White Paper*, October 2007.

Conclusions

The EPA did not ensure that companies complied with the emission limits and other requirements of the reviewed cement manufacturing, coal-fired power plant and sulfuric acid industry CDs. The EPA has not implemented a system of management controls to ensure that the CAA-regulated facilities under CDs that we reviewed were complying with several key terms of their CDs. The lack of an adequate compliance monitoring system increases the risk that potential violations go undetected, which could impact human health and the environment, and decrease the overall effectiveness of CDs. Without adequate compliance monitoring, the EPA cannot determine whether companies have met their CD requirements. Until those requirements are met, the EPA cannot terminate a CD.

Recommendations

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

1. Update and reissue the *Manual on Monitoring and Enforcing Administrative and Judicial Orders* to address:
 - a. Requirements for monitoring of CDs, including enforcement file documentation; responsibilities for ensuring applicable CAA permit applications and draft permits have incorporated CD-required emission limits and other requirements; and documentation of EPA management decisions, company follow-up and correspondence.
 - b. The EPA's general responsibilities and process to be used to terminate a CD.
 - c. Documentation needed to demonstrate supervisory review of enforcement staff's CD monitoring activities.
2. Ensure that all regions have CD compliance monitoring systems in place that:
 - a. Track receipt of all CD deliverables.
 - b. Flag overdue CD deliverables.
 - c. Provide timely access to all CD deliverables.
 - d. Document EPA decisions as to whether deliverables meet the CD requirements.
 - e. Record all CD violations and EPA decisions on whether and how much stipulated penalties were assessed.
 - f. Demonstrate supervisory review and approval of enforcement staff's CD monitoring activities.

3. Update the CD tracking guidance to define which region is the lead region for multiregional CDs after CDs are developed and ensure that regions are complying with the updated guidance.

We recommend that the Region 3 Regional Administrator:

4. As part of the periodic review of AEP's annual progress reports for compliance with the CD, confirm whether AEP submitted a Title V permit renewal application and corresponding copy of the draft permit for the John Amos facility that included the consent decree requirements for flue gas desulfurization controls, and take appropriate follow-up action as needed to ensure the CD requirements are met.

We recommend that the Region 6 Regional Administrator:

5. As part of the periodic review of Rhodia's semiannual progress reports for compliance with the CD, review the Rhodia-Baton Rouge Title V permit renewal application and corresponding draft permit to ensure that the consent decree requirement stating that the sulfur dioxide and sulfuric acid mist permit limits shall not be relaxed will be incorporated into the permit, and take appropriate follow-up action as needed.
6. Assess Rhodia's self-disclosed potential emissions violations and OIG-identified potential violations at the Baton Rouge and Houston facilities to determine if the CD requirements were violated. The CD enforcement file should include all determinations made and any decisions about stipulated penalties.

Agency Comments and OIG Evaluation

The agency agreed in principle that settlement agreement monitoring can be strengthened. However, it disagreed with some of our conclusions regarding the significance of our findings and the adequacy of the agency's management controls for ensuring CD compliance. Based on the agency response and technical comments received, we made revisions to the report where appropriate.

The agency agreed with Recommendations 3 and 6 and provided acceptable corrective action plans. Based on the agency response and further discussion with the agency, we revised Recommendation 5. The agency provided an acceptable corrective action plan for the revised Recommendation 5 on August 7, 2015. Recommendations 3, 5 and 6 are resolved and open pending completion of the corrective actions.

The agency partially agreed with Recommendation 1, and disagreed with Recommendations 2 and 4. Based on the agency response and further discussion with the agency, we have revised Recommendations 1, 2, and 4. These

recommendations are unresolved pending the agency's final response to this report.

Appendix A contains the agency's response to our draft report, submitted by OECA, and our assessment of that response. As action officials for Recommendations 4, 5 and 6, the Regional Administrators for Regions 3 and 6 provided separate responses concurring with the agency's response.

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	16	<p>Update and reissue the <i>Manual on Monitoring and Enforcing Administrative and Judicial Orders</i> to address:</p> <ul style="list-style-type: none"> a. Requirements for monitoring of CDs, including enforcement file documentation; responsibilities for ensuring applicable CAA permit applications and draft permits have incorporated CD-required emission limits and other requirements; and documentation of EPA management decisions, company follow-up and correspondence. b. EPA's general responsibilities and process to be used to terminate a CD. c. Documentation needed to demonstrate supervisory review of enforcement staff's CD monitoring activities. 	U	Assistant Administrator for Enforcement and Compliance Assurance			
2	16	<p>Ensure that all regions have CD compliance monitoring systems in place that:</p> <ul style="list-style-type: none"> a. Track receipt of all CD deliverables. b. Flag overdue CD deliverables. c. Provide timely access to all CD deliverables. d. Document EPA decisions as to whether deliverables meet the CD requirements. e. Record all CD violations and EPA decisions on whether and how much stipulated penalties were assessed. f. Demonstrate supervisory review and approval of enforcement staff's CD monitoring activities. 	U	Assistant Administrator for Enforcement and Compliance Assurance			
3	17	Update the CD tracking guidance to define which region is the lead region for multiregional CDs after CDs are developed and ensure that regions are complying with the updated guidance.	O	Assistant Administrator for Enforcement and Compliance Assurance	10/31/15		
4	17	As part of the periodic review of AEP's annual progress reports for compliance with the CD, confirm whether AEP submitted a Title V permit renewal application and corresponding copy of the draft permit for the John Amos facility that included the consent decree requirements for flue gas desulfurization controls, and take appropriate follow-up action as needed to ensure the CD requirements are met.	U	Region 3 Regional Administrator			

RECOMMENDATIONS						POTENTIAL MONETARY BENEFITS (in \$000s)	
Rec. No.	Page No.	Subject	Status ¹	Action Official	Planned Completion Date	Claimed Amount	Agreed-To Amount
5	17	As part of the periodic review of Rhodia's semiannual progress reports for compliance with the CD, review the Rhodia-Baton Rouge Title V permit renewal application and corresponding draft permit to ensure that the consent decree requirement stating that the sulfur dioxide and sulfuric acid mist permit limits shall not be relaxed will be incorporated into the permit, and take appropriate follow-up action as needed.	O	Region 6 Regional Administrator	10/31/15		
6	17	Assess Rhodia's self-disclosed potential emissions violations and OIG-identified potential violations at the Baton Rouge and Houston facilities to determine if the CD requirements were violated. The CD enforcement file should include all determinations made and any decisions about stipulated penalties.	O	Region 6 Regional Administrator	12/31/15		

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

Office of Enforcement and Compliance Assurance Comments on Draft Report and OIG Evaluation

June 11, 2015

MEMORANDUM

SUBJECT: EPA Comments on Draft Report: “EPA Can Reduce Risk of Clean Air Act Violations Through Better Monitoring of Settlement Agreements,” Project No. OPE-FY14-0016, May 5, 2015

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

TO: Arthur A. Elkins, Jr., Inspector General
Office of the Inspector General

We appreciate the opportunity to provide you with comments on the draft report, *EPA Can Reduce Risk of Clean Air Act Violations Through Better Monitoring of Settlement Agreements*. EPA agrees with the Office of Inspector General (OIG) that monitoring of settlement agreements is one of many important functions of the enforcement program. We are committed to strengthening our settlement agreement monitoring program by implementing the recommendations in this report with which we agree. For those report recommendations with which we agree, we have provided high-level intended corrective actions and estimated completion dates. For those report recommendations with which we do not agree, we have explained our position and proposed alternatives to the recommendations. For your consideration, we have also included a Technical Comments attachment.

As discussed on Friday, May 22nd with Deputy Inspector General Sheehan, Deputy Assistant Administrator Starfield and others, there are several overarching issues of concern with the draft that we believe will need to be addressed to ensure that the report is both accurate and recommends meaningful follow-up actions. There are four main areas of concern with the draft report that were discussed at that time:

First, and as a threshold matter, while we agree that settlement agreement monitoring can be strengthened, EPA does not believe that the examples cited in the OIG report – and based on a review of just three Clean Air Act settlement agreements – demonstrate the existence of a national problem, or that EPA does not have sufficient management controls to ensure that facilities are complying with the terms of their settlement agreements. In particular, the title of the report is misleading as it is not supported by the actual discussion in the report itself. For example, the draft asserts that delays in issuance by the relevant permitting agencies of Title V permits incorporating consent decree requirements would likely result in emission exceedances.

This is incorrect; in none of the instances cited in the draft report in which a permitting agency had not yet issued a permit to incorporate surviving consent decree requirements were there any actual emission exceedances. It is also incorrect to conclude that there is an increased risk of emission exceedances resulting from a delay by a permitting entity to issue required permits; this misconstrues both the purpose of the requirement to incorporate consent decree requirements into permits as well as the relationship between permits and consent decrees:

- Consent decree requirements do not depend on incorporation into a permit in order to be applicable and enforceable requirements at a facility subject to a consent decree; consent decree requirements are independent and directly enforceable in the absence of a permit.
- The purpose of the requirement for consent decree emission limits and related requirements to be incorporated into permits is to ensure that the consent decree-based limits continue to apply *after termination* of the decree.¹ The relevance of a permit incorporating consent decree requirements, once issued, is solely as a condition of termination. Prior to termination, the absence of a permit issued by the appropriate permitting entity (a non-enforcement function) does not relieve a facility from complying with the relevant terms of the consent decree, which remains enforceable and in effect until terminated.
- Because consent decrees can only require that all relevant permits are in place by the time of termination, there is no “delay” by a permitting agency. The intent is that the consent decree applies up until termination, and that the permit(s) apply after termination.

OIG Response #1: Although we selected just three CDs and two facilities from each of these CDs for a total of six regional enforcement files, we found problems with each of these six regional enforcement files from three regions. Issues found ranged from missing CD-required documents that would allow the agency to assess compliance with one or more of the CD requirements to a lack of evidence that the regional offices ensured that CD requirements were incorporated into the final permits.

We revised the report title to “EPA Can Reduce Risk of Undetected Clean Air Act Violations Through Better Monitoring of Settlement Agreements.” We believe that the report title is accurate based on our findings and conclusions. For example, we found potential violations of the Rhodia CD spanning from 2008 through 2013. In our view, if EPA had provided better monitoring, potential violations could have been identified and reviewed timely by the agency.

¹ In addition, *enforcement* and *permitting* are separate and independent functions and entities; consent decrees cannot dictate to the relevant permitting authority when it must issue a permit. In an enforcement action, EPA has jurisdiction over a defendant; thus, Agency consent decrees require that a source submit a permit *application* incorporating surviving consent decree requirements, but they cannot require that the permitting agency issue the permit by a date certain. It is for these reasons that EPA will not agree to *termination* of the consent decree until all applicable permits are issued.

OIG Response #1 (continued):

We recognize that CDs do not contain deadlines for incorporating CD requirements into permits. However, we believe there is the expectation that the CDs' emission limits and requirements will be incorporated into the facilities' air permits, including Title V permits, in a timely manner because the CDs we reviewed contain deadlines for submitting permit applications to the appropriate permitting authorities and the EPA.

We updated the final report to discuss the facilities' obligation to submit permit applications and draft permits to the applicable region. We noted in the final report that despite the requirement to submit these copies to the applicable region, neither the regional enforcement staff nor the permitting staff determined whether the CD requirements were incorporated. This resulted in the issuance of two Title V permits that did not incorporate the correct CD requirements. We also revised the report to state that potential violations of the approved emission limits could go undetected since state enforcement staff may not be aware of the CD's requirements.

Second, we agree with the OIG that it is important to continue to work to ensure effective and timely implementation of consent decree obligations because, *inter alia*, compliance with consent decree requirements is very important to members of the public that were adversely affected by the underlying violations. Accordingly, the agency's monitoring and oversight of consent decree compliance is tailored to ensure that major consent decree milestones which significantly reduce air emissions are achieved in a timely manner, and reflects a considered, careful balance between the level of resources committed for consent decree oversight with the level of resources needed for other critical functions of the air enforcement program. The level of oversight and tracking suggested in the draft report would, if adopted, require significant additional resources that are not currently available – and in light of the multi-year decline in resources in OECA and Agency-wide, are not expected to be available at any time in the foreseeable future. Thus, the commitment of a disproportionate level of resources to consent decree tracking and oversight would reduce the Agency's ability to address new serious air pollution violations. In addition, because they are based on less than major consent decree milestones, the type of oversight and tracking suggested in the report is disproportionate to the potential for excess emissions.

OIG Response #2: We recognize that the EPA has to prioritize its activities considering its resources. We continue to believe that monitoring and oversight of CD compliance needs improvement. Table 3 of the report lists missing CD-required documents that would assist in determining compliance with major CD requirements. For example, semiannual reports, excess emission reports, and notices of violation or potential violation are reports that document whether CD requirements are being met or are on track to be met. The EPA should not wait until termination to follow up on potential violations that may be included in these documents.

Third, OECA's consent decree tracking system (as detailed in the 2010 *Revised Guidance on Tracking Civil Judicial Consent Decree Implementation in ICIS*) was developed in response to an earlier OIG Audit Report, No. 2001-P-00006 and agreed to by the OIG; the tracking system establishes that three major milestones (payment of penalty, completion of any Supplemental Environmental Project, and completion of all consent decree requirements) are to be entered into ICIS in order to monitor and ensure compliance with critical consent decree requirements, and that a required review for overall consent decree compliance (at least once every three years) also be recorded in ICIS. Consistent with this guidance, OECA assures that these major critical milestones and overall consent decree compliance for Clean Air Act (and other) consent decrees are being tracked – as they were for each of the three Clean Air Act consent decrees examined by the OIG for this report. Furthermore, the agency's performance in tracking overall consent decree compliance is closely monitored by OECA because it has been established as a Government Performance and Results Act (GPRA) measure included in EPA's strategic plan. The GPRA target for this measure is 100% and in FY2014, following an extended and diligent effort, OECA achieved this goal for the first time. Thus, we do not agree with the OIG's conclusion in the draft report that EPA does not have sufficient management controls to ensure that facilities are complying with consent decrees. Nonetheless, we are always looking for practical ways to improve our ability to track consent decrees, to include exploring the use of systems other than ICIS that could be used for consent decree tracking.

OIG Response #3:

The information currently required in ICIS does not track all specific CD requirements that must be met (e.g., submission of semiannual reports, excess emission reports, and stack tests). ICIS is currently required to track the payment of a penalty, the completion of supplemental environmental projects, and whether final compliance with the CD was achieved. For CDs with timeframes over 3 years, the overall CD compliance is only documented in ICIS every 3 years. EPA regions need to have a monitoring system to support the information they input into ICIS about a CD's general compliance status with critical milestones.

OECA states in its response that some of the features of an automated database may be resource intensive. We recommended the use of an automated system in the draft report because it was required in the *Manual on Monitoring and Enforcing Administrative and Judicial Orders* and because OECA is focused on using technology to assist compliance and enforcement through its Next Generation Compliance initiative. We believe implementing an automated system with a document repository system would assist the regions in monitoring CDs. However, we acknowledge OECA's resource concerns and revised our recommendation to allow the regions more flexibility in developing systems to monitor CD compliance.

The ICIS system was developed to address Recommendation 2-1 from the March 29, 2001, OIG report, *Compliance with Enforcement Instruments*. Specifically, the report recommended that OECA establish a performance measure for ensuring that facilities under a formal enforcement action return to compliance in accordance with the schedule contained in the final order or decree. The report did not endorse the ICIS system as the tool to monitor and track all CD requirements.

Fourth, it should also be recognized that in addition to EPA oversight of consent decree implementation as provided in the 2010 *Revised Guidance on Tracking Civil Judicial Consent Decree Implementation in ICIS* (2010 Guidance), consent decrees contain additional incentives for timely compliance, including requirements for regular compliance reporting by defendants, and incentives in the form of significant stipulated penalties for noncompliance with the schedule for installation of major controls (*e.g.*, in some cases starting at \$10,000 per day and quickly escalating to \$37,500 per day). Non-complying defendants also face the potential for contempt actions and/or court-ordered mitigation, which serve as additional incentives for timely compliance. Additionally, the installation of major pollutant-reducing control technologies, such as scrubbers, flue gas desulfurization controls and selective catalytic reduction controls (among others), are highly visible, very expensive and public activities. Installation of these types of controls also typically involves the permitting process (*e.g.*, construction permits), which has its own, independent public notice and outreach requirements by the relevant permitting agency. This combination of EPA oversight, consent decree-based incentives and external drivers, when taken together, create powerful incentives for compliance with the critical terms and requirements of consent decrees that significantly reduce pollution.

Finally, and as noted in the draft report, between 1990 and 2015, EPA issued five guidance documents regarding the monitoring and oversight of settlement agreements.² These guidance documents have sought to balance several competing and challenging considerations, among them the need to continue to maintain a credible enforcement presence in the regulated community overall, the multi-year decline in resources (both extramural and personnel) available for all enforcement activities, and the increasing complexity of matters covered by EPA's settlement agreements. While we do not believe that we can, with current resources, develop the type of comprehensive tracking system suggested by OIG, we appreciate the openness demonstrated at our recent meeting to hearing alternative ideas for increasing the efficacy of our consent decree implementation. In the *EPA Response to Report Recommendations* table below, we outline several steps that we can take to improve our existing system for tracking and monitoring consent decree implementation, such as clarifying the definition of lead region for multi-regional cases, updating and re-issuing Chapter 1 of the 1990 Manual to ensure routine tracking and identification of violations of final order requirements, clarifying termination procedures for consent decrees, and identify and distributing to the Regions a list of best practices related to consent decree monitoring.

² We agree with the OIG's observation that we have not been clear on where our more recent guidance has "superseded" the 1990 *Manual on Monitoring and Enforcing Administrative and Judicial Orders* (1990 Manual), but we believe that when we update and reissue Chapter 1 of the 1990 Manual, which we propose as a corrective action to Recommendation 3.a, it will clarify the guidance that is applicable today. This is particularly important with regard to our 1990 Manual, because concepts like "automated tracking" as used in that document had a very different meaning and price tag in 1990 than those terms have today.

OIG Response #4: While CDs have requirements for regular compliance reporting, we found that Region 6 was missing six semiannual reports for Rhodia (four for the Houston facility and two for the Baton Rouge facility). The facility is supposed to self-report the status of compliance with the CD terms and any CD violations in these semiannual reports, which helps the agency monitor compliance with the key terms of the CD. Further, we found instances during our review where a company reported potential violations that were not acted on by the region.

We agree that CDs contain schedules for significant stipulated penalties if timely compliance is not achieved. We also agree that the potential for non-complying defendants to face contempt actions can be an incentive for timely compliance. However, EPA’s Criminal Investigation Division staff were not aware of any contempt cases being filed.

During our review we asked regional staff how they monitored the installation of emission control equipment. Almost all of the regions we interviewed stated that the information was in the regular compliance reports provided by the companies. However, we found that Region 6’s enforcement files were missing several of these regular reports for the two Rhodia facilities we reviewed as noted above.

In addition, as a related effort to improve efficiencies, we are in the process of taking several steps to ensure that consent decree requirements are properly incorporated into permits before a facility requests termination of the consent decree. In November 2014, OECA’s Air Enforcement Division provided training on how to properly incorporate consent decree provisions into permits to members of the National Association of Clean Air Agencies (NACAA) during the NACAA Joint Permitting and Enforcement Workshop. We are also expanding our efforts internally by providing a similar training in June for the EPA Regional Air Program Managers.

We believe it is not only important, but necessary to take into consideration the larger context when making decisions about how best to deploy enforcement resources to any one area. Consistent with this perspective, we acknowledge that EPA should continue its ongoing efforts to make settlement agreement monitoring more efficient and effective in ensuring compliance, as described below in our response to the draft report recommendations.

EPA RESPONSE TO REPORT RECOMMENDATIONS

Agree:

No.	Recommendation	High-Level Intended Corrective Action(s)	Estimated Completion by Quarter and FY (Calendar date)	Agency Explanation/ Response
3	Update the CD tracking guidance to define which region is the lead region for	a. The Office of Compliance will revise and reissue the 2010 Guidance to define	a. 4 th Quarter – FY2015/ July 31, 2015	

No.	Recommendation	High-Level Intended Corrective Action(s)	Estimated Completion by Quarter and FY (Calendar date)	Agency Explanation/ Response
	multi-regional CDs after CDs are developed and ensure that regions are complying with the updated guidance.	<p>which region is the lead region for multi-regional consent decrees.</p> <p>b. The Office of Compliance will include in the <i>Updates and Clarifications for the FY 2015 End-of-Year Enforcement and Compliance Reporting and Certification</i> memorandum a section that reminds staff of the lead region policy change in the 2010 Guidance and that we will be monitoring compliance with the reissued 2010 Guidance as part of our data certification process under ICIS.</p>	b. 1 st Quarter – FY2016/ October 31, 2015	
6	Assess Rhodia’s self-disclosed potential emissions violations and OIG-identified potential violations at the Baton Rouge and Houston facilities to determine if the CD requirements were violated. The CD enforcement file should include all determinations made and any decisions about stipulated penalties.	Region 6 will assess Rhodia’s self-disclosed potential emissions violations and OIG-identified potential violations at the Baton Rouge and Houston facilities to determine if the consent decree requirements were violated. Region 6 will ensure that the consent decree enforcement file includes all determinations made and any decisions about stipulated penalties.	1 st Quarter - FY 16/ December 31, 2015	

Partially Agree:

No.	Recommendation	Agency Explanation/Response	Proposed Alternative
1.a, 1.b, 1.d.	<p>Update and reissue the Manual on Monitoring and Enforcing Administrative and Judicial Orders. The manual should:</p> <ul style="list-style-type: none"> a. Require the use of an automated tracking system. b. State the requirements for regional monitoring of CDs. This should include what specific documents should be in regional enforcement files. d. Include documentation of supervisory review. 	<p>EPA has in place an electronic system that tracks EPA oversight of consent decree compliance (the Integrated Compliance Information System or ICIS), as required by the 2010 Guidance on tracking consent decrees issued in response to OIG Audit Report No. 2001-P-0006, <i>Compliance with Enforcement Instruments</i>. The 2010 Guidance carefully balances important EPA interests, particularly the desire to assure that we are adequately tracking defendant’s compliance with the terms of our consent decrees, and appropriately managing the portion of EPA limited enforcement resources dedicated to this element of the enforcement program. The 2010 Guidance and its implementation in ICIS do not include all of the features suggested in recommendations 1 and 2. It does, however, meet the terms of the OIG’s recommendations from its earlier report. EPA does not have the resources to either develop or maintain a system that has all of the functions described in recommendations 1 or 2. However, the successful implementation of the 2010 Guidance assures that a proper level of consent decree oversight is being done. Further, as noted above, between 1990 and 2015, EPA issued, in addition to the 2010 Guidance referenced above, four other guidance documents regarding the monitoring and oversight of settlement agreements to make settlement agreement monitoring more efficient and effective in ensuring compliance. Consistent with this perspective, we acknowledge that EPA should continue its ongoing efforts to make settlement agreement monitoring more efficient and effective in ensuring compliance.</p>	<p>To the extent it has not been superseded, the Office of Civil Enforcement will update and reissue Chapter 1 (Monitoring and Reporting the Status of Orders) of the Manual on Monitoring and Enforcing Administrative and Judicial Orders. The revised manual should ensure that EPA is able to routinely track and identify violations of final order requirements and quickly take action to address violations. The revised manual will require:</p> <ul style="list-style-type: none"> a. the continued use of ICIS as the electronic tracking system for major consent decree milestones, as provided in the 2010 Guidance, per OIG Audit Report no. 2001-P-0006; b. the maintenance of a case file and a description of what documents are necessary in the case file to verify compliance; and, d. regular supervisory review of the status of active orders.

Disagree:

No.	Recommendation	Agency Explanation/Response	Proposed Alternative
1.b, 1.c	<p>Update and reissue the Manual on Monitoring and Enforcing Administrative and Judicial Orders. The manual should:</p> <p>b. State the requirements for regional monitoring of CDs. This should include . . . responsibilities for ensuring that applicable CAA permits incorporate CD requirements as soon as practicable.</p> <p>c.. Include more specific procedures that the EPA should follow when terminating CDs.</p>	<p>b. As noted below in the response to Recommendations 4 and 5, the suggestion in Recommendation 1.b that enforcement personnel undertake responsibility for ensuring that “permits incorporate CD requirements as soon as practicable” inappropriately intrudes into the independent permitting function. It is also not necessary to ensure enforceability of consent decree requirements during the life of the consent decree; it is only relevant at the time of termination.</p> <p>c. Because of the great variety and differences in the nature, extent and complexity of consent decrees, it is not possible or practicable to articulate detailed procedures for termination of consent decrees in the abstract. Each consent decree is a negotiated document and thus contains often unique and varying provisions arrived at via compromise. Consequently, different consent decrees have different objectives, requirements, and varying provisions that would survive termination. Each consent decree has its own specifications for what is needed at the time of termination.</p>	<p>The Office of Civil Enforcement will issue a memorandum that will remind staff to follow the legally-required provisions for termination as provided in individual consent decrees.</p>

No.	Recommendation	Agency Explanation/Response	Proposed Alternative
2	<p>In compliance with the Manual on Monitoring and Enforcing Administrative and Judicial Orders, require the use of an automated tracking system with:</p> <ul style="list-style-type: none"> a. An alert system to notify enforcement staff of deadlines for CD requirements. b. A document repository. c. The ability to electronically document and track the receipt and review of CD deliverables, EPA decisions made with respect to company deliverables and supervisory review. 	<p>EPA has in place an electronic system that tracks EPA oversight of consent decree compliance (the Integrated Compliance Information System or ICIS), as required by the 2010 EPA Guidance on tracking consent decrees issued in response to OIG Audit Report No. 2001-P-0006, <i>Compliance with Enforcement Instruments</i>. The 2010 Guidance carefully balances important EPA interests, particularly the desire to assure that we are adequately tracking defendant's compliance with the terms of our consent decrees, and appropriately managing the portion of EPA limited enforcement resources dedicated to this element of the enforcement program. The 2010 Guidance and its implementation in ICIS do not include all of the features suggested in recommendations 1 and 2. It does, however, meet the terms of the OIG's recommendations from its earlier report. EPA does not have the resources to either develop or maintain a system that has all of the functions described in recommendations 1 or 2. However, the successful implementation of the 2010 Guidance assures that a proper level of consent decree oversight is being done. Further, as noted above, between 1990 and 2015, EPA issued, in addition to the 2010</p>	<p>The Office of Civil Enforcement will identify and distribute to the Regions a list of best practices related to consent decree monitoring.</p>

No.	Recommendation	Agency Explanation/Response	Proposed Alternative
		<p>Guidance referenced above, four other guidance documents regarding the monitoring and oversight of settlement agreements to make settlement agreement monitoring more efficient and effective in ensuring compliance. Consistent with this perspective, we acknowledge that EPA should continue its ongoing efforts to make settlement agreement monitoring more efficient and effective in ensuring compliance.</p>	
4	<p>Ensure that the CD requirements for continuous operation of flue gas desulfurization controls at the AEP John Amos facility are incorporated into the facility's Title V permit as soon as practicable.</p>	<p>Issuance of permits is not an enforcement function, and the enforcement program has no authority over the relevant permitting entity. Doing so would be an inappropriate mixing of functions and could create conditions that would lead to a commingling violation.</p>	<p>Consistent with the consent decree, AEP's Title V permit will be evaluated by Region 3 at the time that AEP seeks termination of its consent decree.</p>
5	<p>Ensure the CD requirements stating that sulfur dioxide and sulfuric acid mist permit limits shall not be relaxed are incorporated into the Rhodia-Baton Rouge facility's Title V permit as soon as practicable.</p>	<p>Issuance of permits is not an enforcement function, and the enforcement program has no authority over the relevant permitting entity. Doing so would be an inappropriate mixing of functions and could create conditions that would lead to a commingling violation.</p>	<p>Consistent with the consent decree, Rhodia-Baton Rouge's Title V permit will be evaluated by Region 6 at the time that AEP seeks termination of its consent decree.</p>

If you have any questions concerning this response, please feel free to contact Gwendolyn Spriggs, the OECA Audit Liaison, at 202-564-2439.

Attachments

cc:

Charles Sheehan, OIG
Carolyn Cooper, OIG
James Hatfield, OIG
Larry Starfield, OECA
Susan Shinkman, OCE
Lisa Lund, OC
Rosemarie Kelley, OCE
Betsy Smidinger, OC
John Fogarty, OCE,
Lauren Kabler, OCE
Mamie Miller, OC
Lorraine Fleury, Region 3
Susan Jenkins, Region 6
Gwendolyn Spriggs, OAP

OIG Response to Agency's Corrective Action Plan for Recommendation No. 1

OECA partially agreed with Recommendation 1 and proposed alternatives to Recommendation 1. The agency agreed to update the *Manual on Monitoring and Enforcing Administrative and Judicial Orders* to include what specific documents should be in regional enforcement files. However, the agency did not agree to include in the updated *Manual on Monitoring and Enforcing Administrative and Judicial Orders* the other items listed in Recommendation 1 because it believed that the agency already has an electronic system (i.e., ICIS) that tracks EPA oversight of CD compliance. The agency also stated in its response that it is inappropriate for enforcement staff to intrude on the permitting function, and it is not practicable to articulate detailed CD termination procedures given that each CD has its own specifications for what is needed at termination. We disagree with the agency's reasoning because:

1. ICIS cannot track all CD requirements.
2. Enforcement staff have a duty to review permit applications and draft permits to determine whether CD requirements are incorporated.
3. CDs do not specify EPA responsibilities for CD termination.
4. The *Manual on Monitoring and Enforcing Administrative and Judicial Orders* needs to address how supervisory review will be documented.

We revised Recommendation 1 considering OECA's draft report comments. Recommendation 1 is unresolved pending the agency's final response to the report.

OIG Response to Agency's Corrective Action Plan for Recommendation No. 2

OECA disagreed with Recommendation 2 and offered to identify and distribute a list of best practices related to CD monitoring to the regions. As noted above, the agency believed that it already has an electronic system that tracks EPA oversight of CD compliance (i.e., ICIS). We do not believe ICIS is adequate for tracking CD compliance since it does not:

- Track receipt of all CD deliverables.
- Flag overdue CD deliverables.
- Provide timely access to all CD deliverables.
- Document EPA decisions as to whether deliverables meet the CD requirements.
- Record all CD violations and EPA decisions on whether and how much stipulated penalties were assessed.
- Demonstrate supervisory review and approval of enforcement staff's CD monitoring activities.

The agency's proposed corrective action does not meet the intent of our recommendation. We revised Recommendation 2 to provide more flexibility to the regions in developing systems to monitor CD compliance. Recommendation 2 is unresolved pending the agency's final response to this report.

OIG Response to Agency's Corrective Action Plan for Recommendation No. 3

OECA agreed with Recommendation 3 and provided us with an acceptable corrective action plan. Recommendation 3 is resolved and open pending completion of the corrective action. No further response is required for Recommendation 3.

OIG Response to Agency's Corrective Action Plan for Recommendation No. 4

EPA Region 3 disagreed with the draft report Recommendation 4 and proposed alternative actions. During the exit conference and follow-up with the region, Region 3 managers stated that they have no record of the AEP-John Amos facility submitting a federally enforceable non-Title V permit application to incorporate the flue gas desulfurization controls, a prerequisite to incorporating the requirements into the Title V permit. We revised Recommendation 4 for Region 3 to confirm whether the AEP-John Amos facility submitted a Title V permit renewal application and corresponding copy of the draft permit that included the consent decree requirements for flue gas desulfurization controls, and to take appropriate follow-up action as needed. Recommendation 4 is unresolved pending the agency's final response to this report.

OIG Response to Agency's Corrective Action Plan for Recommendation No. 5

EPA Region 6 disagreed with Recommendation 5 and proposed alternative actions. The region proposed to evaluate the Title V permits at consent decree termination. After a discussion with Region 6 managers, we revised our final report recommendation. We recommend that Region 6 review the Rhodia-Baton Rouge Title V permit renewal application and the draft permit and take appropriate follow-up action as needed. The agency provided a revised corrective action plan for the revised recommendation on August 7, 2015, stating that:

Within 60 days of receiving the Rhodia-Baton Rouge Title V permit renewal application and corresponding draft permit, Region 6 will review the application and draft permit to determine if the consent decree requirement stating that the sulfur dioxide and sulfuric acid mist permit limits shall not be relaxed has been incorporated into the permit, and take appropriate follow-up action as needed.

EPA provided an acceptable correction plan with milestones to address Recommendation 5. Recommendation 5 is resolved and open pending completion of the corrective action. No further response is required for Recommendation 5.

OIG Response to Agency's Corrective Action Plan for Recommendation No. 6

EPA Region 6 provided an acceptable correction plan with milestones to address Recommendation 6. Recommendation 6 is resolved and open pending completion of the corrective action. No further response is required for Recommendation 6.

Region 3 Comments on Draft Report



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION III
1650 Arch Street
Philadelphia, Pennsylvania 19103-2029

MEMORANDUM

SUBJECT: EPA Comments on Draft Report: "EPA Can Reduce Risk of Clean Air Act Violations Through Better Monitoring of Settlement Agreements," Project No. OPE-FY-0016, May 5, 2015

FROM: Shawn M. Garvin, Regional Administrator
Region III

TO: Arthur A. Elkins Jr., Inspector General
Office of Inspector General

Thank you for the opportunity to respond to the issues and recommendations in the draft report, *EPA Can Reduce Risk of Clean Air Act Violations Through Better Monitoring of Settlement Agreements*. Region III's position is included in the summary of the Agency's overall position in the memorandum from Cynthia Giles, Assistant Administrator, Office of Enforcement and Compliance Assurance, dated June 11, 2015, along with my position on recommendation four as Action Official. Please refer to this document for my comments on the draft report. If you have any questions concerning this response, please feel free to contact Lorraine Fleury, the Region III Audit Liaison, at 215-814-2341.

cc: Charles Sheehan, OIG
Lisa Lund, OC
Lauren Kabler, OCE
Lorraine Fleury, Region III
Susan Jenkins, Region 6
Gwendolyn Spriggs, OAP
Renee McGhee-Lenart, OIG
Diana Esher, Region III

Region 6 Comments on Draft Report

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 6
1445 ROSS AVENUE, SUITE 1200
DALLAS, TEXAS 75202-2733

July 2, 2015

Office of the Regional Administrator

MEMORANDUM

SUBJECT: EPA Comments on Draft Report: "EPA Can Reduce Risk of Clean Air Act Violations Through Better Monitoring of Settlement Agreements," Project No. OPE-FY-0016, May 5, 2015

FROM: Ron Curry
Regional Administrator

TO: Arthur A. Elkins, Jr.
Inspector General, Office of Inspector General

Thank you for the opportunity to respond to the issues and recommendations in the draft report, *EPA Can Reduce Risk of Clean Air Act Violations Through Better Monitoring of Settlement Agreements*.

The Region 6 position is included in the summary of the agency's overall position in the attached memorandum dated June 11, 2015, from Cynthia Giles, Assistant Administrator, Office of Enforcement and Compliance Assurance, along with my position on recommendations five and six as Action Official. Please refer to this document for my comments of the draft report.

If you have any questions concerning, please contact Susan Jenkins, Audit Liaison, at (214) 665-6578.

Attachment

cc: Charles Sheehan, Office of Inspector General
Carolyn Cooper, Office of Inspector General
James Hatfield, Office of Inspector General

Distribution

Office of the Administrator
Assistant Administrator for Enforcement and Compliance Assurance
Regional Administrator, Region 3
Regional Administrator, Region 6
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Associate Administrator for Public Affairs
Principal Deputy Assistant Administrator for Enforcement and Compliance Assurance
Director, Office of Regional Operations
Audit Follow-Up Coordinator, Office of Enforcement and Compliance Assurance
Audit Follow-Up Coordinator, Region 3
Audit Follow-Up Coordinator, Region 6