The EPA Did Not Ensure that Two of the Largest Air Oversight Agencies Identified and Inspected Potentially Significant Sources of Air Pollution

July 24, 2024 | Report No. 24-P-0049

OFFICE OF INSPECTOR GENERAL
U.S. ENVIRONMENTAL PROTECTION AGENCY

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Abbreviations

CAA	Clean Air Act
CAA CMS	Clean Air Act Stationary Source Compliance Monitoring Strategy
C.F.R.	Code of Federal Regulations
EPA	U.S. Environmental Protection Agency
FY	Fiscal Year
OECA	Office of Enforcement and Compliance Assurance
OIG	Office of Inspector General
PTE	Potential to Emit
TCEQ	Texas Commission on Environmental Quality
TPY	Tons Per Year

Cover Image

Magnification of an area of a city resulting in identification of a high-emitting synthetic-minor source. (EPA OIG image derived from EPA stock photo)

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At a Glance

The EPA Did Not Ensure that Two of the Largest Air Oversight Agencies Identified and Inspected Potentially Significant Sources of Air Pollution

Why We Did This Audit

We conducted this audit to determine whether U.S. Environmental Protection Agency oversight has ensured that state and local air agencies with large compliance-monitoring programs identify high-emitting synthetic-minor sources, known as SM-80s, in accordance with the EPA's *Clean Air Act Stationary Source Compliance Monitoring Strategy.*

The Clean Air Act is a federal law that regulates air emissions from stationary sources. It protects public health and welfare from air pollution. Pursuant to the Act, the EPA delegates authority to state, local, and tribal regulatory agencies to implement air compliance-monitoring programs. The EPA's *Clean Air Act Stationary Source Compliance Monitoring Strategy* provides these delegated agencies with a framework to identify and inspect the most significant sources of air pollution. The EPA's regional offices oversee the delegated agencies using this compliance-monitoring strategy and the EPA's state review framework.

To support these EPA mission-related efforts:

- *Improving air quality.*
- *Compliance with the law.*
- *Partnering with states and other stakeholders.*

To address this top EPA management challenge:

- *Maximizing compliance with environmental laws and regulations.*

Address inquiries to our public affairs office at (202) 566-2391 or OIG.PublicAffairs@epa.gov.

List of OIG reports.

What We Found

The Clean Air Act requires delegated agencies to work with the EPA to reduce air pollution from stationary sources. From at least 2006, the EPA did not ensure that two large, delegated agencies, the Texas Commission on Environmental Quality, or the TCEQ, and California's South Coast Air Quality Management District, identified a subset of synthetic-minor sources of air pollution, or SM-80s. The permit limitations on SM-80s need to be clear and enforceable because, if the limitations are not adhered to, the source may operate at major source levels and should be subject to more stringent requirements.

We requested source data from TCEQ and South Coast to determine whether there were sources of air pollution in their jurisdiction that met the EPA definition of an SM-80. The TCEQ said that it did not identify SM-80s because there are no statutory or regulatory requirements to track or report SM-80 information to the EPA. While South Coast provided a list of 109 sources that appeared to meet the EPA definition of an SM-80, South Coast said that these sources were not SM-80s and it was unaware of concrete direction from the EPA that what it called "conditionally exempt" sources should be characterized as SM-80s. We asked the EPA to verify that the sources we identified were SM-80s and, after numerous attempts, the EPA has not done so. We identified 18 sources in Texas and 109 in California that appeared to meet the EPA's definition of SM-80. Of those potential SM-80s in Texas, the TCEQ had not visited 11 of the 18, from 2017 through 2022, and South Coast had not visited 27 of the 109 from 2016 through 2021, which does not meet the EPA's expectation that SM-80s are inspected every five years, pursuant to the EPA's *Clean Air Act Stationary Source Compliance Monitoring Strategy*, known as CAA CMS.

In 2013, EPA Region 6 recommended that the TCEQ identify SM-80s. Region 9 did not investigate South Coast's claim that SM-80s did not exist and did not collect CAA CMS plans from South Coast from fiscal year 2008 through 2021. The EPA's Office of Enforcement and Compliance Assurance's lack of in-depth evaluations of Regions 6 and 9, lack of SM-80 requirements, and reliance on unenforceable guidance contributed to the regional offices' oversight deficiencies. Per the EPA, identifying and inspecting SM-80s are essential to focus resources on the most environmentally significant sources and ensure industry compliance; however, the EPA's lack of oversight of the TCEQ and South Coast potentially increased the public's risk of exposure to air pollution.

Delegated agencies need to identify and inspect SM-80s to protect public health.

Recommendations and Planned Agency Corrective Actions

We added a new recommendation and modified one recommendation based on Agency comments to the draft report and follow-on discussions between the Agency and the Office of Inspector General. We make nine recommendations to improve EPA oversight of state and local air agencies. The EPA concurred or concurred in principle with the recommendations but provided unresponsive corrective actions. All recommendations are unresolved and resolution efforts are ongoing.

OFFICE OF INSPECTOR GENERAL
U.S. ENVIRONMENTAL PROTECTION AGENCY

July 24, 2024

MEMORANDUM

SUBJECT: The EPA Did Not Ensure that Two of the Largest Air Oversight Agencies Identified and Inspected Potentially Significant Sources of Air Pollution
Report No. 24-P-0049

FROM: Sean W. O'Donnell, Inspector General

TO: David Uhlmann, Assistant Administrator
Office of Enforcement and Compliance Assurance

Earthea Nance, Regional Administrator
Region 6

Martha Guzman, Regional Administrator
Region 9

This is our report on the subject audit conducted by the U.S. Environmental Protection Agency Office of Inspector General. The project number for this audit was OA-FY22-0036. This report contains findings that describe the problems the OIG has identified and corrective actions the OIG recommends. 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 and Regions 6 and 9 are primarily responsible for the issues discussed in this report.

Action Required

This report contains unresolved recommendations. EPA Manual 2750 requires that recommendations be resolved promptly. Therefore, we request that the EPA provide us within 60 days its responses concerning specific actions in process or alternative corrective actions proposed on the recommendations. Your response will be posted on the OIG's 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 www.epaoig.gov.

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Purpose

The U.S. Environmental Protection Agency's Office of Inspector General initiated this audit to determine whether the EPA's oversight has ensured that state and local agencies with large compliance-monitoring programs identify high-emitting synthetic-minor sources, known as SM-80s, in accordance with the EPA's *Clean Air Act Stationary Source Compliance Monitoring Strategy*. High emitting synthetic-minor sources are significant sources of air pollution that emit or have the potential to emit regulated pollutants at or above 80 percent of major-source thresholds.

Top management challenge addressed

This audit addresses the following top management challenge for the Agency, as identified in the OIG's *U.S. Environmental Protection Agency Fiscal Year 2024 Top Management Challenges* report, issued November 15, 2023:

- Maximizing compliance with environmental laws and regulations.

Background

The Clean Air Act Requires the EPA to Monitor Stationary Sources

The Clean Air Act, or CAA, requires delegated agencies to work with the EPA to reduce air pollution from stationary sources. Delegated agencies are states, local government agencies, federally recognized Indian tribes, and U.S. territories to which the EPA has transferred primary implementation and enforcement authority for a CAA program. To receive delegation, an agency must demonstrate adequate legal authorities and resources. The CAA defines a stationary source as any building, structure, facility, or installation that emits or may emit any air pollutant. Examples of stationary sources include factories, power plants, and refineries.

The EPA established a compliance-monitoring program for stationary sources of air pollution to protect the public's health under the CAA. The EPA's CAA compliance-monitoring program is designed to promote effective, cooperative, and coordinated efforts among the EPA and the delegated agencies. Although delegated agencies play the primary role in the prevention and control of air pollution, the CAA directs that the EPA regularly monitor the delegated agencies to ensure adequate implementation of their compliance-monitoring programs. According to the 1984 *EPA Policy on Oversight of Delegated Environmental Programs*, delegated agencies "are responsible for direct implementation of authorized programs consistent with national strategy and policy." The EPA's February 17, 2023 memorandum titled *Principles and Best Practices for Oversight of State Implementation and Enforcement of Federal Environmental Laws* reaffirms the 1984 policy.

The EPA's CAA stationary source compliance-monitoring program supports all seven of the EPA's environmental goals listed in the *FY 2022–2026 EPA Strategic Plan*:

- Goal 1: Tackle the climate crisis.

- Goal 2: Take decisive action to advance environmental justice and civil rights.
- Goal 3: Enforce environmental laws and ensure compliance.
- Goal 4: Ensure clean and healthy air for all communities.
- Goal 5: Ensure clean and safe water for all communities.
- Goal 6: Safeguard and revitalize communities.
- Goal 7: Ensure safety of chemicals for people and the environment.

In addition, one of the EPA's *FY2020–FY2023 National Compliance Initiatives*, "Creating Cleaner Air for Communities by Reducing Excess Emissions of Harmful Pollutants from Stationary Sources," identified the national compliance-monitoring and enforcement program as a priority.

According to the *Office of Enforcement and Compliance Assurance National Program Guidance, Fiscal Years 2023-2024*, OECA's program-specific activities include helping improve air quality across the nation, focusing compliance-monitoring and enforcement work in underserved and overburdened communities, and looking for opportunities to minimize the impacts of climate change. According to the guidance, as part of OECA's delegated Agency compliance-monitoring and enforcement program oversight, the EPA should do the following:

- "Communicate effectively … to ensure a clear understanding of expectations and consistency in the application of CAA regulations."
- "Hold regular meetings and discussions … to promote program implementation in accordance with national policy and guidance such as the CAA [Compliance Monitoring Strategy]."
- Negotiate Compliance Monitoring Strategy, or CMS, plans, "[m]aximize flexibilities by considering each agency's unique situation," and "develop strategies to reduce the number of nonattainment areas and address air pollution impacts to vulnerable populations."
- "Evaluate sources with potential significant noncompliance in nonattainment areas or sources with potential significant noncompliance that contribute to nonattainment."
- "Evaluate sources, located near communities, that are potentially emitting hazardous air pollutants in violation of the NESHAPs [EPA regulations]."
- "Evaluate sources … that may have a misclassified area source status and as a result, are improperly permitted or not permitted."
- Review state and local implementation plan submissions for enforceability and Title V permits.

Two key oversight tools established by the EPA to implement the CAA include the EPA CAA CMS and state reviews under the EPA's state review framework. The EPA's CAA CMS outlines the Agency's compliance-monitoring program and calls for delegated agencies to develop and implement their own

compliance-monitoring programs through issuing delegated agency CAA CMS plans. The EPA's CAA CMS states that "This document is not a regulation. It does not impose legally binding requirements." The EPA expects delegated agencies, to, however, follow the policy outlined in the EPA's CAA CMS to promote program effectiveness and national consistency while also providing delegated agencies with flexibility to address local air pollution and compliance concerns. As of this audit, the EPA last updated the EPA CAA CMS in October 2016. In 2004, the EPA initiated the state review framework, referred to as state reviews in this report, to oversee state and local compliance and enforcement programs, which include in-depth evaluations of delegated agencies' implementation of the EPA's CAA CMS.

Types of Stationary Sources

The EPA's CAA CMS provides guidance for identifying, inspecting, and reporting two types of stationary sources identified as environmentally significant, namely, Title V major sources and synthetic-minor sources that emit or have the potential to emit, or PTE, at or above 80 percent but less than 100 percent of the Title V major-source threshold, known as SM-80s. Title V major sources are sources whose actual emissions or PTE are equal to or above specified amounts, known as major-source thresholds. The CAA under Title V requires that major sources of air pollution obtain operating permits. Title V major-source operating permits contain monitoring, reporting, and recordkeeping provisions to ensure that affected sources, federal and state regulators, industry, and the public know the air quality requirements the source must meet to comply with the CAA. Synthetic minors, including SM-80s, are not subject to all of the requirements for Title V major sources. In 40 C.F.R. section 70.2, the EPA defines PTE, in part, as "the maximum capacity of a stationary source to emit any air pollutant under its physical and operational design." Table 1 describes relevant stationary source types.

Table 1: Stationary sources

Source type	Description
Title V major	Actual emissions are or have the PTE equal to or above: • 100 tons or more of a regulated pollutant per year.* • 10 tons or more of a single hazardous air pollutant per year. • 25 tons or more of a combination of hazardous air pollutants per year. The thresholds above are called major-source thresholds.
Synthetic minor	Actual emissions or the PTE exceeds the major-source threshold, but the source voluntarily agrees to an enforceable permit restriction to limit its emissions. By agreeing to this restriction, a major source synthetically becomes a minor source.
SM-80	An SM-80 is the highest emitting synthetic-minor source. The source voluntarily agrees to an enforceable restriction to limit PTE to 80 percent or more of the major-source threshold, but less than 100 percent of the threshold.

Source: OIG analysis of EPA documents. (EPA OIG table)

* Lower thresholds apply in areas with poor air quality. For example, California's South Coast Air Basin's major-source threshold for two regulated pollutants is 10 tons or more per year.

The EPA's Clean Air Act Compliance Monitoring Strategy and State Review Framework Establish State SM-80 Identification and Inspection Responsibilities

Pursuant to the EPA's CAA CMS, delegated agencies, such as the Texas Commission on Environmental Quality, known as TCEQ, and California's South Coast Air Quality Management District, are to identify and oversee SM-80s. The EPA CAA CMS states that every two years, delegated agencies are to submit a CAA CMS plan that includes a list of all SM-80s in their jurisdiction. The EPA CAA CMS further states that delegated agencies should inspect SM-80s at least once every five years and maintain records of their compliance-monitoring activities at SM-80s and report related data in the EPA data systems. According to the EPA's CAA CMS, the EPA regions should use this information to conduct in-depth evaluations of delegated agencies' compliance-monitoring programs every five years using the state reviews. During the state reviews, the regions compare delegated agency performance against a standardized set of metrics, such as the accuracy of reported minimum data requirements—or the data that the EPA believes is necessary to manage the national compliance-monitoring program—and SM-80 inspection coverage. The regions also compare delegated agency performance metrics to the national averages. In cases where the region finds that a delegated agency's performance deviates from federal policy or guidance, the EPA issues recommendations for corrective actions, which the EPA monitors until the delegated agency fully implements the actions.

The Health Impacts from Stationary Sources of Air Pollution

Title V major sources and SM-80s have the PTE significant amounts of harmful air pollutants, which can pose serious health concerns when the pollutants accumulate in certain concentrations. Table 2 describes the health impacts of air pollutants that are directly emitted by stationary sources of air pollution or formed through chemical reactions in the atmosphere.

Table 2: Health impacts from common stationary-source pollutants

Pollutant	Health Impacts
Carbon monoxide	Exposure to high levels can cause dizziness, confusion, and death. Short-term exposure to high levels may result in reduced oxygen to the heart accompanied by chest pain.
Hazardous air pollutants	Cancer or other serious health problems.
Nitrogen dioxide	Short periods of exposure can irritate airways and aggravate respiratory diseases, particularly asthma. Longer exposures can contribute to the development of asthma and increase susceptibility to respiratory infections.
Ozone*	Sore or scratchy throat; coughing; inflamed and damaged airways; and aggravated lung diseases such as asthma, emphysema, and chronic bronchitis. Lungs may also become more susceptible to infection.
Particulate matter	Decreased lung function, increased respiratory problems, and premature death in people with heart and lung disease.
Sulfur dioxide	Short periods of exposure can harm the respiratory system and make breathing difficult.
Volatile organic compounds	Eye, nose, and throat irritation; headaches; loss of coordination; nausea; and damage to the liver, kidney, or nervous system.

Source: OIG analysis of EPA information. (EPA OIG table)

* Ozone forms when volatile organic compounds react with nitrogen oxides in sunlight.

The EPA's Focus on Environmental Justice

The EPA's *FY 2022–2026 EPA Strategic Plan* states that the EPA "is deeply committed to protecting human health and the environment for all Americans, including those historically marginalized, overburdened, underserved, and living with the legacy of structural racism." The Agency's second strategic goal, which focuses on environmental justice, has three objectives: (1) promote environmental justice and civil rights at the federal, tribal, state, and local levels; (2) embed environmental justice and civil rights into the EPA's programs, policies, and activities; and (3) strengthen civil rights enforcement in communities with environmental justice concerns. Also, by 2026, the EPA forecasts that its research office will increase its environmental justice activities by 40 percent.

According to an EPA webpage regarding the Agency's research on environmental justice and air pollution, the EPA is working to better understand the relationship between poor air quality and health disparities. The EPA's research linking environmental justice and air pollution includes studies on disproportionate health effects of air pollutants. The EPA's research has shown that certain populations are more susceptible to air pollutants and that residents of low-income communities may experience increased health impacts from air pollution due to various environmental, social, and economic factors. Its research also showed how living near sources of air pollution can lead to such health effects as the ones listed in Table 2.

The EPA defines environmental justice as "the fair treatment and meaningful involvement of all people regardless of race, color, national origin, or income with respect to the development, implementation, and enforcement of environmental laws, regulations, and policies." It defines fair treatment as meaning that "no group of people should bear a disproportionate burden of environmental harms and risk."

Responsible Offices

Ensuring compliance with and the enforcement of the nation's environmental laws is foundational to achieving the EPA's mission. OECA is responsible for overseeing the implementation of the national CAA stationary source compliance-monitoring programs and is assisted by the ten EPA regions' enforcement and compliance offices. Their roles and responsibilities are described in Table 3.

Table 3: Roles and responsibilities of OECA and the EPA regional offices

Office	Roles
OECA	• Conduct in-depth evaluations and routine oversight of EPA regional programs. • Ensure consistency in the implementation of the national CAA compliance monitoring program by delegated agencies. • Provide the framework for the development of the stationary source compliance monitoring program by the delegated agencies. • Establish a consistent level of inspection coverage and public health protections by all delegated agencies. • Review alternative CMS plans. • Review EPA regions' state reviews. • Identify the minimum data requirements.

Office	Roles
EPA regional offices	• Conduct in-depth evaluations through state reviews of the overall compliance monitoring program of their delegated agencies. • Collect delegated agency CMS plans and negotiate with delegated agencies that create alternative CMS plans and submit these plans to OECA for review. • Serve as the primary liaison with the delegated agencies. • Verify accuracy of reported compliance-monitoring data.

Source: OIG analysis of EPA information. (EPA OIG table)

The EPA's and delegated agencies' CAA stationary source compliance-monitoring and enforcement programs are intended to ensure that the regulated community complies with environmental laws and regulations through on-site inspections and record reviews—efforts that help ensure a level playing field in the marketplace among regulated sources. According to the EPA's annual Budget in Brief documents, funding for the EPA's compliance-monitoring program was about $98 million in fiscal year 2021, about $109 million in fiscal year 2022, about $105 million in fiscal year 2023, and about $113 million in fiscal year 2024. For fiscal year 2025, the EPA requested about $168 million for the program. The EPA requested more funds for fiscal year 2025 to focus on implementation of the National Enforcement and Compliance Initiatives, including efforts to rebuild the EPA's inspector cadre, build capacity for inspections and case development, and to restore the National Enforcement Training Institute. The request for increased funding is also to enhance the EPA's efforts to address pollution in overburdened and vulnerable communities, modernize the EPA's Integrated Compliance Information System, and develop smart tools for field inspectors, among other activities.

The EPA also provides annual grants, known as categorical grants, to support state, local, and tribal air quality management programs. State environmental agencies use these grants, in addition to their own funds, to help implement and enforce the Clean Air Act. According to the EPA's annual Budget in Brief documents, funding for State and Local Air Quality Management grants totaled about $241 million in fiscal year 2021; about $226 million in fiscal year 2022; about $246 million in fiscal year 2023; about $249 million in fiscal year 2024; and the EPA requested about $400 million for fiscal year 2025, an increase of almost $151 million.

Scope and Methodology

We conducted this performance audit from November 2021 through February 2024. We conducted this 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 audit objective. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objective.

We assessed the internal controls necessary to satisfy our audit objective.[1] In particular, we assessed the internal control components—as outlined in the U.S. Government Accountability Office's *Standards for Internal Control in the Federal Government*—significant to our audit objective. Any internal control deficiencies we found are discussed in this report. Because our audit was limited to the internal control components deemed significant to our audit objective, it may not have disclosed all internal control deficiencies that may have existed at the time of the audit.

To answer our objective, we reviewed applicable statutes, EPA regulations, policies, procedures, and guidance related to the EPA's oversight framework for SM-80s. We selected two delegated agencies for review using judgmental or nonstatistical sampling: TCEQ and South Coast. Specifically, during our audit, out of 99 delegated agencies, 31 were considered large agencies based on the number of stationary sources within their jurisdiction. Out of the large, delegated agencies, we selected the TCEQ and South Coast because they had not reported synthetic minor sources to the EPA. Another factor that we considered when selecting the TCEQ and South Coast was the large populations they serve that reside in nonattainment areas, or areas that do not meet National Ambient Air Quality Standards.

> The **National Ambient Air Quality Standards** are health-based standards that are set by the EPA for certain pollutants. The EPA sets these standards so that the level of each pollutant in the air is protective of human health and the environment. Geographic areas with air quality meeting these standards are known as attainment areas, while areas with air quality failing to meet the standards are known as nonattainment areas.

In addition, we interviewed staff and managers from OECA, the EPA Office of Air and Radiation, and EPA Regions 6 and 9 to determine the EPA's policies and procedures for identifying SM-80s and how the EPA oversees delegated agency identification of SM-80s. We also interviewed staff and managers from the TCEQ and South Coast to determine how they identify SM-80s and what oversight they perform as part of their efforts to manage SM-80s.

We requested policies and procedures, as well as prior reports, from Regions 6 and 9 on their oversight of the TCEQ's and South Coast's compliance-monitoring programs and regional reviews of the TCEQ and South Coast's synthetic-minor and Title V permitting programs, which would support the existence of SM-80s.

To determine the number of SM-80 sources in the TCEQ's and South Coast's jurisdiction, we requested a list of SM-80s for these delegated agencies from the air enforcement and air permitting offices in Regions 6 and 9. We also requested lists of SM-80s directly from the TCEQ and South Coast, with the goal of comparing these lists to the TCEQ's and South Coast's regionally approved CAA CMS plans. Neither the regions nor the TCEQ provided lists of SM-80s. South Coast's Engineering and Permitting Office provided a spreadsheet of 219 sources that have taken limits on their PTE at or above 50 percent of major source thresholds. The South Coast spreadsheet also included a column labeled "PTE at or

[1] An entity designs, implements, and operates internal controls to achieve its objectives related to operations, reporting, and compliance. The U.S. Government Accountability Office sets internal control standards for federal entities in GAO-14-704G, *Standards for Internal Control in the Federal Government*, issued September 10, 2014.

above 80% of major source thresholds." This column either included a pollutant name, if the PTE was at or above 80 percent of major source threshold, or was left blank if the source did not have a PTE at or above 80 percent. We identified the names and number of potential SM-80s by using a spreadsheet function to count the South Coast sources with an entry in this column.

To obtain additional information regarding the TCEQ's minor-source permitting process and to identify potential SM-80s, we requested a list of minor-permitted sources from the TCEQ that do not have a Title V permit. In response, the TCEQ provided a list of minor permitted sources that never had a Title V permit. A minor source is a stationary source with actual emissions or PTE below major-source thresholds. Using the TCEQ's data, we conducted an analysis to determine the total number of permits and the total number of sources, since some sources obtained multiple minor source permits. From this list, we judgmentally selected two types of the TCEQ's minor source permits for further review: permit-by-rule permits and case-by-case permits. A permit-by-rule permit is a type of minor source permit established by a delegated agency's promulgation of a rule that contains a standard set of requirements that can apply to multiple stationary sources with similar emission characteristics. Sources that do not qualify for a permit-by-rule permit or other type of standard permit submit what the TCEQ calls a case-by-case permit.

We used the TCEQ Records Online database to find the source files for our sample. For the sources using a permit-by-rule authorization, we searched the various documents for emissions data to ascertain each source's PTE. For the sources for which we were able to ascertain the PTE, we compared the PTE to the major source threshold to determine whether the source potentially could be classified as a SM-80. For the case-by-case permits, we looked for the latest emissions data for the source, which was usually found in the document called Maximum Allowable Emission Rates table to identify whether the source was a potential SM-80.

The information that we collected from the TCEQ and South Coast included on-site visit and inspection information. We did not, however, review the TCEQ's or South Coast's on-site visit or inspection reports because the audit objective was to determine "whether the EPA's oversight has ensured that state and local agencies" identified SM-80s, meaning the review of these reports would not address the objective. Additionally, we did not evaluate the depth, type, or quality of visits or inspections that the TCEQ and South Coast conducted to determine whether the visits or inspections met the guidance in the EPA CAA CMS or whether the TCEQ and South Coast identified violations.

Prior Reports

We previously evaluated the EPA's oversight of delegated agency compliance-monitoring programs in Report No. 16-P-0164, *Clean Air Act Facility Evaluations Are Conducted, but Inaccurate Data Hinder EPA Oversight and Public Awareness*, issued May 3, 2016. We found that 89 percent of the 35 local air districts in California, including South Coast, had outdated CAA CMS plans. We found that, as a result, the EPA had less assurance that local agencies in California were conducting adequate compliance activities, which increased the risk that excess emissions could impact human health and the environment. We recommended that the Region 9 regional administrator direct California's local air

districts that did not have a current CAA CMS plan to submit draft plans to Region 9 by a specific date and provide guidance to California's local air districts as to how and when to submit new draft plans. The EPA reported that corrective actions for this recommendation were complete as of July 2016. However, we found that the corrective actions the Agency took to address this recommendation were ineffective in ensuring that all California local air districts submitted a plan because many local agencies had not yet submitted updated plans. As of August 2022, 22 California air districts had not provided updated CAA CMS plans to Region 9. During our audit, additional local air districts submitted their CAA CMS plans to Region 9. As of May 2024, there were still 12 local air districts that had not updated their CAA CMS plans. Eleven of these districts' plans expired in 2011 and therefore are almost 13 years past due as of this audit.

We previously evaluated the EPA's oversight of synthetic minor permitting in Report No. 21-P-0175, *EPA Should Conduct More Oversight of Synthetic-Minor-Source Permitting to Assure Permits Adhere to EPA Guidance*, issued on July 8, 2021. This report found that without clear and enforceable limitations in synthetic-minor-source permits, sources may emit excess pollution that would otherwise subject them to the more stringent requirements of the Clean Air Act major-source permitting programs. The report made five recommendations to the EPA's Office of Air and Radiation, including the need to collaborate with OECA and the EPA regions. All recommendations were considered resolved with corrective actions pending. As of May 15, 2024, all corrective actions are still pending. Two of the five corrective actions were to be completed in 2023; however, the Agency revised these dates.

Results

The EPA Did Not Ensure that Two Large Air Agencies Identified and Inspected SM-80s

From at least 2006 through 2021, the EPA did not ensure that two large, delegated agencies, namely the TCEQ and South Coast, identified SM-80s. Pursuant to the EPA's CAA CMS, each delegated agency is to submit a CAA CMS plan that identifies SM-80s every two years. However, Regions 6 and 9 did not fully implement oversight tools such as the EPA CAA CMS and the state review framework, or state reviews, to identify SM-80s. The EPA *State Review Framework Compliance and Enforcement Program Oversight, SRF Reviewer's Guide, Round 4 (2018-2022)*,[2] describes the state reviews as the primary means by which the EPA conducts oversight of delegated agencies' compliance and enforcement programs which includes identifying SM-80s. OECA's failure to monitor Region 6's and Region 9's use of oversight tools to oversee the TCEQ and South Coast resulted in:

- At least 18 potentially unidentified SM-80s in the TCEQ's jurisdiction, 11 of which had not had an on-site visit from 2017 through 2022.
- 109 potentially unidentified SM-80s in South Coast's jurisdiction, 27 of which had not been inspected from 2016 through 2021.

[2] SRF refers to state review framework.

- Diminished deterrent effect against SM-80 noncompliance with CAA requirements intended to protect human health and the environment.
- Reduced quality of data that the EPA and public can use to help make informed decisions regarding health risks from harmful air pollutants that impact communities.
- Potentially increased public risk of exposure to air pollution.

TCEQ and South Coast Did Not Identify SM-80s

From at least 2006 through 2021, the TCEQ and South Coast did not identify and report SM-80s to the EPA, contrary to the EPA's CAA CMS.

TCEQ

We requested Region 6 and the TCEQ provide us a list of identified SM-80s in Texas, but they were unable to do so because the TCEQ does not track or identify SM-80s. However, in a January 2006 memorandum to the TCEQ concerning its 2006 CAA CMS plan, Region 6 noted that the TCEQ's jurisdiction had 1,900 stationary sources, 200 of which were SM-80s. Although the TCEQ agreed with Region 6's assessment in its 2006 response to Region 6's memorandum, subsequent TCEQ CAA CMS plans did not identify SM-80s. A TCEQ manager told us that they could not speak about the TCEQ's actions prior to their employment; however, they thought that the TCEQ clearly communicated in 2011 that it did not intend to track SM-80s. In addition, Region 6 did not mention SM-80s in future CAA CMS plan reviews; however, its fiscal year 2011 state review of the TCEQ recommended that the TCEQ identify SM-80s.

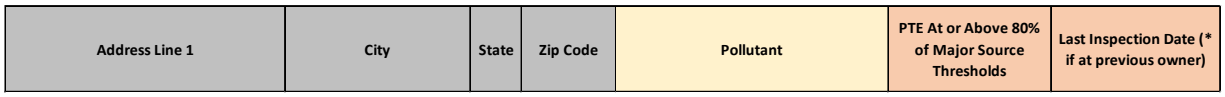
Since the TCEQ was not able to provide a list of SM-80s, we requested a list of all permitted minor sources that did not have a Title V major source permit. In response to our request, the TCEQ provided a list of over 66,100 minor sources. To identify potential SM-80s in Texas, we reviewed 98 out of 50,871 permit-by-rule source files and found 11 sources with permit-by-rule permits that potentially were SM-80s at some point. We also reviewed source files for 69 of the TCEQ's 3,047 minor sources with case-by-case permits and found seven sources that potentially were SM-80s at some point. Based on our nonstatistical review of these two types of minor-source permits, the TCEQ potentially had at least 18 sources that were not, but could have been, identified as SM-80s at some point.

South Coast

South Coast reported in its fiscal year 2007 and 2021 CAA CMS plans to Region 9 that it did not categorize any sources as SM-80s. Its 2021 CAA CMS plan also said that it was evaluating whether any sources fit the EPA's definition of an SM-80 source. South Coast failed to meet the EPA's CAA CMS recommendation that delegated agencies submit CAA CMS plans every two years because, as a South Coast manager told us, it was South Coast's understanding that CAA CMS plans did not need to be updated unless there was a change to South Coast's plan, and that South Coast's focus was on conducting inspections. In mid-December 2021 and January 2022, we requested Region 9 and South

Coast provide us a list of SM-80s. Region 9 stated that South Coast did not have SM-80s; however, in late January 2022, South Coast's Engineering and Permitting office provided a list of 109 sources labeled "PTE at or above 80% of major source thresholds," which we concluded appeared to meet the EPA definition of SM-80s. Figure 1 provides the column headings of the spreadsheet provided by South Coast. In summary, the lack of prior reporting of SM-80s by South Coast and Region 9 was due to the belief that South Coast did not have any SM-80s.

Figure 1: Screenshot of South Coast's column labels in its spreadsheet titled, "List of Facilities with Title V related Facility PTE Limits for EPA audit"



Address Line 1	City	State	Zip Code	Pollutant	PTE At or Above 80% of Major Source Thresholds	Last Inspection Date (* if at previous owner)

Source: South Coast. (South Coast image)

Although South Coast provided a list of 109 sources labeled as having the "PTE at or above 80% of major source thresholds," a South Coast Engineering and Permitting manager stated that the list it provided to us was not an acknowledgement that those sources were SM-80s, and Region 9, in its response to the draft report, agreed. We followed up with South Coast, Region 9, and OECA to clarify the reasons for their position, and if possible, to identify with more certainty the population of SM-80s. For example, in a May 2024 response from South Coast, it affirmed that these sources were not SM-80s and that it was unaware of concrete direction from the EPA that what it called "conditionally exempt" sources or any others in its jurisdiction should be characterized as SM-80s. After numerous solicitations for clarity, however, South Coast, Region 9, and OECA failed to provide adequate rationale or documentation to establish that the sources labeled "PTE at or above 80% of major source thresholds" did not meet the EPA's definition of an SM-80.

Definition of SM-80

An SM-80 is the highest emitting synthetic-minor source. The source voluntarily agrees to an enforceable restriction to limit PTE to 80 percent or more of the major-source threshold, but less than 100 percent of the threshold.

Source: OIG analysis of EPA documents.

In addition, Region 9, in its response to the draft report, questioned the accuracy of South Coast's list of 109 sources. Region 9 provided documentation from its enforcement database showing that South Coast reported 41 of the 109 potential SM-80 sources, or about 38 percent, as closed, with closures from 2008 through 2021. For example, Region 9's documentation also showed that 34 sources, or about 83 percent, were documented in the system as closed from 2014 through 2021. However, we compared the date of closure to the last inspection date from South Coast's spreadsheet and found that South Coast had conducted on-site inspections for some of these "closed" sources years later, which calls into question the completeness and accuracy of the EPA's data. According to South Coast and the EPA, California's air quality control regulatory program was developed prior to the development of the federal Title V program, which may account for why South Coast refers to some sources as Title V

"conditionally exempt." Due to the complexity of California's air quality control regulatory program and the possible inaccuracy of South Coast's data, the EPA needs to ensure that South Coast is identifying and overseeing the sources that meet the EPA's definition of a SM-80 on a routine basis.

Regions 6 and 9 Did Not Ensure that Delegated Agencies Identified SM-80s Consistent with the CAA CMS

EPA Regions 6 and 9 did not ensure that the TCEQ and South Coast identified SM-80s from fiscal year 2006 through 2021, consistent with the EPA's CAA CMS. Pursuant to the EPA's CAA CMS, each delegated agency submits to its respective EPA region a CAA CMS plan that identifies SM-80s every two years. However, our review of documents related to the TCEQ's CAA CMS plans from fiscal year 2006 through 2021 did not identify a list of SM-80s. Further, Region 9 did not collect CAA CMS plans from South Coast for about 14 years, from fiscal year 2008 through 2021, and South Coast's fiscal years 2022–2026 CAA CMS plan did not contain a list of SM-80s.

Region 6 Did Not Ensure that the TCEQ Identified SM-80s in Its Clean Air Act Compliance Monitoring Strategy Plans

Region 6 did not ensure that TCEQ addressed its 2006 finding that TCEQ did not identify SM-80s in its CAA CMS plan. Region 6's January 2006 memorandum to the TCEQ summarizing its review of the TCEQ's fiscal year 2006 CAA CMS plan indicated that the TCEQ had difficulty determining whether a synthetic-minor source was an SM-80 and that the TCEQ would have to go back to its permit applications to separate the SM-80s from the other synthetic-minor sources. However, after 2006, Region 6 did not reference the TCEQ not identifying SM-80s during subsequent CAA CMS plan reviews. Region 6 representatives could not locate any CAA CMS plans that covered fiscal years 2007, 2008, and 2009; however, Region 6's 2009 memorandum documented its review of the TCEQ's fiscal year 2010 CAA CMS plan, and both documents referenced synthetic minors but not SM-80s. These documents were the last time synthetic minors were mentioned in any of the TCEQ documents we reviewed or in Region 6's review of the TCEQ's strategy documents. Therefore, Region 6 did not resolve its 2006 finding concerning the TCEQ not identifying SM-80s.

Region 9 Did Not Ensure that South Coast Submitted CAA CMS Plans

The minimum frequency to submit CAA CMS plans to the respective EPA region is once every two years unless an agency negotiates an alternative frequency with the region and the alternative frequency is reviewed by OECA. Region 9 provided California's delegated agencies with a six-year time frame for updating CAA CMS plans rather than the two years as described in the EPA's CAA CMS. As of August 2022, Region 9 had not obtained nor reviewed CAA CMS plans from 22 of its 35 delegated agencies, or 63 percent, and 19 of these CAA CMS plans had not been submitted by the local delegated agency in almost 11 years. In response to our draft report, Region 9 reported that as of May 2024, the number of outstanding CAA CMS plans from the California local agencies is 12 out of 35. However, 11 of the 12 delegated agency CAA CMS plans expired in 2011 and therefore they are almost 13 years overdue at the time of this audit. Region 9 said that it provided a CAA CMS template to California's delegated

agencies and frequently raised the lack of CAA CMS submissions with local delegated agencies in meetings, but it was difficult getting local air agencies to submit their plans.

Region 9 did not ensure that South Coast submitted CAA CMS plans every six years. South Coast submitted CAA CMS plans to Region 9 only two times over a 14-year period, in fiscal year 2007 and May 2021 after OIG inquiry; however, these plans did not identify SM-80s. Hence, Region 9 did not resolve the lack of submission of South Coast CAA CMS plans, and it told us that the EPA does not have leverage to force the delegated agency to comply with the directive to submit CAA CMS plans.

The EPA Did Not Ensure that Two of the Largest Delegated Agencies Identified SM-80s During the State Review Process

OECA's oversight of the Region 6 and 9 state reviews did not ensure that the TCEQ and South Coast identified SM-80s. For example, in Region 6's 2013 state review report to the TCEQ, the region recommended steps that would enable the TCEQ to identify SM-80s; however, Region 6 did not follow up on the recommendation in its 2017 state review report and OECA did not ensure that Region 6 addressed the recommendation. Additionally, Region 9 and OECA did not scrutinize South Coast's claim that it did not have SM-80s in Region 9's 2015 state review report.

Region 6 Did Not Use the State Review Framework to Ensure that the TCEQ Identified SM-80s

Region 6 and OECA did not use the state review process to verify that the TCEQ identified SM-80s. We reviewed the 2007, 2013, and 2017 Region 6 state review reports on the TCEQ. In the 2007 state review report, Region 6 established that the TCEQ had SM-80s, but also indicated that the TCEQ had difficulty distinguishing SM-80s from other synthetic-minor sources. In the 2013 state review report, Region 6 recommended that the TCEQ identify SM-80s. However, Region 6 and OECA did not ensure that the TCEQ addressed the recommendation. Lastly, Region 6 and OECA did not address the TCEQ's lack of identification of SM-80s in Region 6's 2017 state review report.

Region 6 requested that OECA participate in its 2013 state review of the TCEQ because of the effort and workload involved in reviewing such a large program. In the 2013 state review report, the region recommended steps that would enable the TCEQ to identify and report SM-80s. For example, Region 6 noted that the TCEQ had developed an air permits database, which when implemented would allow the TCEQ to identify SM-80s as it issued new permits and renewed existing permits. In the 2013 report, the region set a goal for the TCEQ to identify and report SM-80s by January 2014. In our review of the TCEQ's response to the 2013 state review report, we found that the TCEQ did not agree with Region 6's recommendation and stated that its regulatory framework was more comprehensive than tracking what the EPA defines as SM-80s and that maintaining data about SM-80s was not a direct requirement of the CAA.

Ultimately, the TCEQ did not complete the 2013 state review report's recommended actions to identify SM-80s and Region 6 and OECA did not ensure that the TCEQ addressed that recommendation.

Region 6's former air section chief said that the TCEQ may not have addressed the recommendation because, around 2013, the EPA did not consistently track state review recommendations to resolution, but an OECA manager told us that OECA and Region 6 should have followed that recommendation to completion. In addition, according to the EPA's CAA CMS, delegated agency CAA CMS plans should describe how the delegated agency will address program deficiencies, such as those identified during the 2013 state review. Hence, the TCEQ should have discussed the deficiency in its subsequent CAA CMS plans.

Region 6 did not follow up on its 2013 state review recommendation in later state reviews and it did not discuss the TCEQ not identifying SM-80s. For example, Region 6's 2017 state review report did not identify the lack of SM-80s as a deficiency or reference the 2013 report recommendation. Instead, the report simply stated that the TCEQ does not report data on minor or synthetic-minor sources. A TCEQ manager said that when Region 6 did not note the lack of identification of SM-80s as a deficiency in the 2017 state review report, the TCEQ assumed its practice of not identifying these sources was acceptable to the EPA.

OECA established a national state review recommendation tracking system in 2008 to help EPA regions track state review recommendations. However, regional use of the tracker to document resolution of state review report recommendations was inconsistent. An OECA manager said that resolving recommendations is key to making the state review process effective and that the state review recommendation tracking system is only as good as the attention senior management pays to it. The manager noted that once OECA started holding regional senior managers accountable for resolving state review recommendations in 2017, there was an increase in the number of resolved recommendations. However, the Region 6 recommendation to the TCEQ on identifying and reporting SM-80s remained unresolved because the Region 6 staff and manager who conducted the 2017 state review did not follow up on the recommendation and OECA did not ensure that Region 6 addressed the recommendation. The EPA needs to continue holding regional managers accountable for the resolution of state recommendations and needs to resolve the 2013 Region 6 recommendation that the TCEQ identify SM-80s.

Region 9 Conducted One State Review of South Coast and Accepted Its Claim that SM-80s Did Not Exist

Region 9 conducted three state reviews of local air districts in California from 2004 through 2019, consistent with the state review required frequency. The region only reviewed South Coast once during this time, even though it is the seventh largest air control agency in the nation. This occurred because OECA has not established a required review frequency for large local agencies. In comparison, during this same time period, Region 6 conducted three state reviews of the TCEQ. More frequent state reviews of South Coast would aid OECA in achieving its goal of developing a nationally consistent compliance-monitoring program and could have enabled Region 9 to question the lack of identification of SM-80s in South Coast.

During the fiscal year 2011 state review, Region 9 and OECA did not scrutinize South Coast's claim that there were not any SM-80s within South Coast's jurisdiction during the state review process. Region 9 also used different terminology than South Coast for identifying SM-80s and the lack of coordination between Region 9's permitting and enforcement divisions hindered identification of SM-80s in South Coast's jurisdiction. OECA and Region 9 air enforcement division's perception that South Coast was a model of excellence for compliance-monitoring programs hindered the Agency's oversight of South Coast. For example, Region 9 commended South Coast for "being a model agency" twice in its 2015 state review report. In addition, a Region 9 deputy director said that the region did not need to do much oversight of South Coast because California's state regulations are stricter than the EPA's. An OECA manager said that Region 9 decided that there was little reason to dive into the minutia of data reporting issues for minor sources when pollution from vehicles was a more significant problem for South Coast. That manager also said that, because South Coast is the gold standard in so many ways, Region 9 has no incentive to conduct more thorough oversight.

Region 9 did not recognize that South Coast referred to synthetic-minor sources and SM-80s as "Title V conditionally exempt" or "conditionally exempt" sources. In January 2022, OECA, in its written response to our request for information, informed us that it was aware of the use of this terminology and stated that South Coast refers to synthetic minors as "conditionally exempt." OECA did not identify this issue in its review of Region 9's fiscal year 2011 state review on South Coast and therefore did not require Region 9 to investigate the use of this terminology when looking to identify SM-80s. In comparison, when OECA participated in the TCEQ's 2013 state review, it worked with Region 6 to recommend that the TCEQ identify and report its SM-80s.

In addition, although Region 9's enforcement staff accepted that there were no SM-80s to identify, the region's air permitting staff, in a 2016 report, identified the existence of SM-80s in South Coast's jurisdiction. Region 9's air permitting office reviewed 14 permits that South Coast provided and identified ten that met the definition of SM-80s. The lack of coordination and communication between the two Region 9 offices that oversaw South Coast prevented Region 9's enforcement staff from identifying the SM-80s. Improved communication and coordination between Region 9's enforcement and compliance office and its air permitting office would have alerted Region 9 to the existence of SM-80s in South Coast's jurisdiction after the release of the 2016 report by Region 9's air permitting staff.

OECA Did Not Conduct In-Depth Evaluations of the Regions and Has Not Established Requirements for Its Compliance-Monitoring Program

OECA did not monitor whether Regions 6's and 9's oversight of the TCEQ and South Coast included whether the agencies identified SM-80s. OECA's lack of in-depth evaluations of Regions 6's and 9's oversight of the TCEQ and South Coast, and use of a policy document to fulfill CAA implementation and oversight responsibilities, led to an inconsistent understanding and application of the EPA's CAA CMS and contributed to TCEQ and South Coast not identifying SM-80s.

The EPA established a compliance-monitoring program for stationary sources of air pollution to protect the public's health under the CAA. Delegated agencies play an important role in the prevention and control of air pollution, and the EPA's CAA compliance-monitoring program is designed to promote effective, cooperative, and coordinated efforts among the EPA and the delegated agencies. Additionally, according to the 1984 EPA *Policy on Oversight of Delegated Environmental Programs*, delegated agencies "are responsible for direct implementation of authorized programs consistent with national strategy and policy," such as the EPA's CAA CMS. However, OECA has not established requirements for delegated agencies' CAA compliance-monitoring programs to ensure identification and inspection of SM-80s.

OECA Did Not Conduct In-Depth Evaluations of the EPA Regional Enforcement and Compliance Offices

OECA has not conducted in-depth evaluations of the EPA regional enforcement and compliance offices' oversight of delegated agencies' implementation of the EPA's CAA CMS, including evaluations to determine that delegated agencies identify SM-80s. OECA determined that its routine oversight activities—such as meetings with the regions—were sufficient. The EPA's April 2001 CAA CMS stated that OECA would conduct in-depth evaluations of the regional offices, which would include identifying SM-80s. However, OECA was unable to provide evidence that it conducted in-depth evaluations of the regional offices. In addition, in 2010, OECA updated the EPA CAA CMS language to indicate that it would conduct evaluations as part of its routine oversight activities, thereby effectively changing its process. OECA used similar language in the 2014 and 2016 versions of the EPA CAA CMS. An OECA manager, however, asserted that the 2010 text revision did not change OECA's oversight process, but rather clarified that OECA would oversee the regions using routine oversight activities. According to the Government Accountability Office's *Standards for Internal Control in the Federal Government*, organizations should conduct both routine oversight activities and separate in-depth evaluations, both of which must be documented. Based on our review, OECA's regional oversight approach did not comport with these standards because OECA changed its process to focus solely on routine oversight activities, which were not documented.

OECA said that its routine oversight activities focused on conducting regular CMS meetings with the regions, providing monthly reports to the regions on delegated agency inspection data, answering questions and providing training on underlying policies, and ensuring that regional state reviews of delegated agencies were conducted in a consistent manner among the ten EPA regions. One of the OECA managers also said that although OECA's oversight is informal, it looks to see whether the EPA's CAA CMS is being implemented and that OECA has a good idea of how well the regions are doing.

OECA Has Not Established SM-80 Requirements for Its Compliance-Monitoring Program

OECA has not taken steps to require delegated agencies to identify or inspect SM-80s consistent with the terms of the EPA's CAA CMS. Instead, OECA issued the EPA CAA CMS as a guidance document with the disclaimer that "[t]his document is not a regulation. It does not impose legally binding

requirements," and, according to OECA, the delegated agency responsibilities specified in the EPA's CAA CMS are not requirements that delegated agencies must adhere to. With respect to inspections, we sought the opinion of the EPA's Office of General Counsel, which informed us that it is not aware of any statutory or regulatory provision that allows the EPA to require delegate agencies to inspect SM-80s. The Office of General Counsel noted, however, that if the EPA seeks to require delegated or approved states to inspect SM-80s, it may seek to do so through a rulemaking action, consistent with law. With respect to the identification of SM-80s, several provisions of the CAA, including, for example, sections 110(p) and 114(a)(1), provide the EPA with broad information collection authority. This is relevant because the EPA asserts that reporting of compliance information, specifically minimum data requirements, by delegated agencies is critical and essential to oversee the national CAA compliance monitoring program and implement the CAA.[3]

According to OECA, periodic inspection and the collection of information on SM-80s are needed to implement the CAA. For example, OECA stated that periodic inspections of regulated sources are essential to ensure industry compliance with CAA environmental requirements and that the minimum amount of data necessary to conduct oversight of delegated agency compliance monitoring programs are called minimum data requirements. In addition, the EPA's CAA CMS provides delegated agencies with recommended evaluation or inspection frequencies for SM-80s by stating that an inspection "should be conducted, at a minimum, once every five years." In contrast, we reviewed two other CMS policies, the *Clean Water Act National Pollutant Discharge Elimination System* CMS and the *Resource Conservation and Recovery Act* CMS, to determine how they establish requirements. Although both CMS policies contain a similar disclaimer to the CAA CMS that the policies do not impose legally binding requirements, the Clean Water Act CMS references regulations that the EPA established that require identification of sources and periodic inspections, and the *Resource Conservation and Recovery Act* CMS specifically outlines requirements for delegated agencies that are based upon statutory language. The Clean Water Act and the Resource Conservation and Recovery Act CMS policies clearly communicate the program requirements of delegated agencies per regulation and statute, which is not accomplished by the EPA's CAA CMS policy.

We believe that the voluntary nature of the actions described in the EPA's CAA CMS for delegated agencies is not sufficient to support activities that OECA has called "essential" and "critical." According to the EPA's 2018 consultations with delegated agencies, out of 31 large air control agencies, the TCEQ and South Coast are the only ones that did not report having SM-80s. If periodic inspections are essential to ensure regulated sources' compliance with CAA requirements, and minimum data requirements are critical for EPA oversight, then the EPA needs to clearly communicate and, where appropriate, establish requirements of delegated agencies to ensure compliance monitoring programs are implemented in a way that is safe, effective, and conducted in a nationally consistent manner.

OECA's use of a guidance document to implement important elements of the CAA, along with its lack of in-depth evaluations of Regions 6 and 9, contributed to an inconsistent understanding and application of

[3] See the EPA's *Air Stationary Source Compliance and Enforcement Information Reporting (Renewal)*, EPA ICR Number 0107.11, OMB Control Number 2060-0096, EPA-HQ-OECA-2018-0248.

the EPA's CAA CMS. For example, some regional staff told us that they did not know whether delegated agencies were to identify SM-80s and they did not know what SM-80 data the delegated agencies were to report. Specifically, one Region 6 manager told us that they did not know whether it was a requirement to report compliance-monitoring data on SM-80s. The manager said that although they had a general awareness of the minimum data requirements, they would not be able to name them. A Region 9 manager said that they had no knowledge of the minimum data that delegated agencies were to report to the EPA, but instead focused on the sources that the delegated agencies included in their CAA CMS plans. However, as reported above, South Coast did not submit a CAA CMS plan for over 14 years and did not include a list of SM-80s in the two CAA CMS plans that it submitted to Region 9. An OECA manager stated that it did not make sense that EPA enforcement staff in the regions do not know the minimum data requirements.

We also found that OECA does not fully define a SM-80 in the EPA CAA CMS. For example, the EPA CAA CMS states that a SM-80 is a synthetic minor source, but it does not provide a definition of a synthetic minor source. To articulate a definition of a SM-80 and synthetic minor source for the purposes of this report, we worked extensively with the Agency. Several rounds of communication were necessary to settle on a definition that the Agency confirmed was accurate; that is the definition we use in this report. The EPA CAA CMS's lack of a clear definition of a SM-80 and need for multiple documents to provide a full definition may have also contributed to an inconsistent understanding.

The lack of clear requirements and consistent oversight regarding SM-80s demonstrate the need for training and clarification of OECA's policies and guidance. Additional information and clarification will better communicate OECA's expectations for identifying SM-80s as well as for inspecting, reporting, and verifying SM-80 compliance-monitoring data so that the data can be reported to the EPA. Unless the EPA's compliance-monitoring program clarifies delegated agency SM-80 responsibilities and improves monitoring and oversight of EPA regions to ensure adherence to the EPA's CAA CMS, the EPA will not be able to adequately ensure that the CAA is implemented as described in its CAA CMS and consistent with the law.

The TCEQ and South Coast Did Not Inspect SM-80s Consistent with the Minimum Inspection Frequency, Potentially Increasing the Public's Risk of Exposure

OECA's ineffective oversight of Region 6's and Region 9's use of CAA CMS plans and state reviews to identify SM-80s resulted in the TCEQ and South Coast not inspecting some SM-80s every five years, which is the minimum inspection frequency stated in the EPA's CAA CMS. The lack of identification and inspection of SM-80s by two of the largest delegated agencies in the nation reduced the deterrent effect that inspections have on CAA noncompliance; accuracy of the data; and the information that the EPA, researchers, and the public can use to help make informed decisions regarding health risks from harmful air pollutants that impact communities, including communities with environmental justice concerns. The lack of inspections and EPA regional oversight potentially increased the public's risk of exposure to air pollution in Texas and along California's southern coast.

The Lack of Identification of SM-80s Resulted in Uninspected Sources

As discussed previously, the TCEQ did not provide a list of SM-80s, but the EPA lacks reasonable assurance that SM-80s do not exist in Texas. For example, in 2006, Region 6 determined that the TCEQ had about 200 SM-80s within its jurisdiction. We reviewed 167 minor-source files, representing approximately 0.25 percent of the 66,159 minor-source files within the TCEQ's jurisdiction, and found 18 potential SM-80s. Based on our limited analysis, we concluded that there are SM-80s within the TCEQ's jurisdiction that need to be identified and inspected. We looked at the records for the 18 potential SM-80s and found that the TCEQ had not visited 11 of them from 2017 through 2022. Based on the TCEQ records, it conducted an on-site visit at seven of the 18 potential SM-80s; however, these on-site visits may not have met the EPA's CAA CMS standard of a full inspection.

In January 2022, we requested a list of SM-80s from South Coast and it provided us with a list of 109 sources that we deemed to be SM-80s along with inspection information. We reviewed the information and found that South Coast did not inspect 27 of these potential SM-80 sources within a five-year time frame, as recommended by the EPA CAA CMS. Two of these sources had their last on-site inspection in 2008—more than ten years before our audit. During Region 9's review of the draft report, Region 9 questioned the accuracy of South Coast's data and provided information from its enforcement database showing that nine of the 27 potential SM-80 sources had permanently closed. However, we compared the closure dates from the EPA's database against South Coast's listed last inspection date and found that South Coast reported inspecting five of the nine sources that the EPA's database shows as permanently closed years after the date of closure, which calls into question the completeness and accuracy of the EPA's data.

The Lack of Oversight of SM-80s Diminishes the Deterrent Effect Against Noncompliance and Reduces the Quality of Data to Make Informed Decisions

Two goals of the EPA's CAA CMS are to deter noncompliance and to provide national consistency among air compliance-monitoring programs. The lack of identification and inspection of SM-80s within the TCEQ's and South Coast's jurisdiction diminishes the deterrent effect against noncompliance and decreases the assurance that stationary sources are complying with statutory and regulatory requirements intended to protect human health and the environment. The identification and inspection of SM-80s are important because these sources have the potential to emit pollutants above Title V major source levels which can pose serious health concerns as identified in Table 2. Title V major sources are subject to more stringent requirements than SM-80s. Therefore, the permit limitations on SM-80s need to be clear and enforceable and if these limitations are not adhered to, the source could emit pollutants at major source levels. Also, the TCEQ's and South Coast's lack of oversight of SM-80s creates an uneven playing field for delegated agencies in bordering states or California air districts that have identified and inspected SM-80s. OECA stresses the need for maintaining a level playing field, stating that noncompliance with the law "unfairly tilts the field of economic competition in favor of those that skirt the law." The lack of inspection of SM-80s also hinders OECA's achievement of national consistency

goals and promotion of a level playing field for businesses. Further, the lack of SM-80 inspections is contrary to the EPA's goal of shared accountability for consistent enforcement of the law.

The lack of the TCEQ and South Coast inspections of SM-80s also reduces the quality of data that the EPA and the public can use to help make informed decisions regarding health risks from harmful air pollutants that impact communities. The identification of SM-80s and the reporting of SM-80 inspection data to the EPA is important because the Agency and regions use the data to oversee delegated agency compliance-monitoring programs, to identify national trends, and to help make informed decisions regarding health risks. In addition, the EPA makes this data available to the public via its Enforcement and Compliance History Online website. The lack of the TCEQ and South Coast identification and reporting of SM-80s reduces the quality of the data that the EPA and the public use concerning those sources. The public has a compelling need to be aware of delegated agencies' compliance-monitoring activities at SM-80s because the public can bring lawsuits against the EPA or other parties under the CAA. The public should expect transparency from regulatory agencies because without up-to-date information, it does not have accurate information about the compliance-monitoring activities undertaken at sources in its communities. Hence, OECA needs to ensure that the regions are confirming that the delegated agencies are implementing the EPA's CAA CMS and reporting accurate and complete SM-80 information in the EPA data systems.

The Lack of SM-80 Inspections Potentially Increased Public Exposure to Air Pollutants from Noncompliant Sources

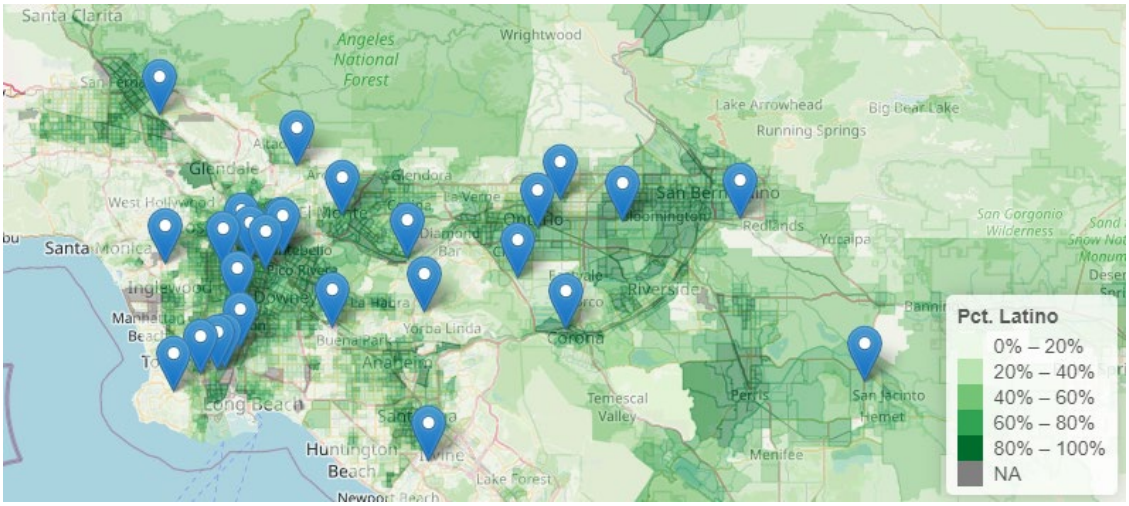
We found that 13 of the 18 potential SM-80s in Texas emit volatile organic compounds, which the EPA determined can damage the liver, kidneys, and nervous system as shown in Table 2. In addition, volatile organic compounds in the presence of sunlight and nitrogen oxides form ground-level ozone, which negatively affects lung function and aggravates diseases such as asthma and emphysema. The TCEQ had not visited seven of the 13 sources that emit volatile organic compounds from 2017 through 2022 and had not visited five of the seven from 2012 through 2022 to assess whether these sources were complying with their permit limits. About 14 million of the 25.1 million people in Texas reside in counties that do not meet the EPA's air quality standards for ozone. Because the TCEQ did not identify and inspect some of the potential SM-80s, residents near the potentially noncompliant sources might be at greater risk of exposure to air pollution. In addition, the lack of inspections reduces the likelihood that air quality will improve in these areas. For example, five out of the 18 potential SM-80s were in Harris County, Texas, which includes Houston. Harris County is designated as severe nonattainment for the 2008 ozone standard and is home to about 4.7 million people. If OECA ensured that Region 6's oversight of the TCEQ addressed the CAA CMS and the state review recommendation to identify SM-80s, there would be greater assurance that the TCEQ identified and inspected SM-80s to protect the public from potential excess emissions. Therefore, there is an urgent need for the EPA to ensure that the TCEQ identifies and inspects the SM-80s within its jurisdiction.

Environmental Justice Communities May Have Potential Disproportionate Exposure to Air Pollution from Noncompliant SM-80s

For South Coast, we created a map and plotted the locations of the 27 potential SM-80s that had not been inspected once every five years and compared them with 2020 Census tract data on race and ethnicity to determine who is impacted by the uninspected SM-80s. Regarding race, we found that 26 of the 27 potential SM-80s are in communities in which over 50 percent of the population identified as other than White. According to the Census, these groups are Black or African American; American Indian or Alaska Native; Asian, Native Hawaiian, or other Pacific Islander; some other race; and multiracial. Further, we found that 21 of the SM-80s are in communities in which over 70 percent of the population identified as other than White.

According to the EPA, environmental justice requires fair treatment, which means that no group of people should bear a disproportionate burden of environmental harms and risk. However, regarding ethnicity, we found that the uninspected SM-80s were located in areas with a high Hispanic or Latino population. Figure 2 provides percentages of Latino populations located near these uninspected SM-80s. Due to the lack of inspection, these communities in South Coast's jurisdiction may have a potentially increased risk of exposure to pollutants such as volatile organic compounds and nitrogen oxides. Furthermore, South Coast's oversight includes the Los Angeles area, which is home to about 16 million people who reside in counties that do not meet the EPA's air quality standards for ozone and fine particulate matter. Therefore, consistent with the EPA's environmental justice goals, there is an urgent need for the EPA to ensure that South Coast identifies and inspects SM-80s and addresses the potential disproportionate effects on populations.

Figure 2: A map of the 27 uninspected potential SM-80 sources in South Coast by the population that identified as Latino in the 2020 Census



Source: EPA OIG image of South Coast Air Quality Management District using Geographic Information System software.

Recommendations

We added a new recommendation and modified one recommendation based on Agency comments to the draft report and follow-on discussions between the Agency and OIG. We provide details in the "Agency Response and OIG Assessment" section.

We recommend that the assistant administrator for Enforcement and Compliance Assurance:

1. Conduct in-depth evaluations to monitor the performance of EPA regional offices' oversight of delegated agencies' implementation of the EPA's *Clean Air Act Stationary Source Compliance Monitoring Strategy*.

2. Ensure that Region 9 develops a plan to conduct Clean Air Act state reviews of California's largest air quality management districts every five years, in accordance with the *State Review Framework Compliance and Enforcement Program Oversight, SRF Reviewer's Guide*.

3. Formalize a state review framework recommendation resolution process to ensure that the EPA's senior managers and delegated agencies are accountable for the resolution of state review framework recommendations.

4. In collaboration with the Office of General Counsel and the Office of Air and Radiation, determine to what extent the Clean Air Act authorizes the EPA to require periodic identification and inspection of nonmajor stationary sources such as SM-80s by states, local government agencies, federally recognized Indian tribes, and U.S. territories. Document the EPA's determination and exercise such authority, if applicable, as the EPA deems appropriate.

5. Clarify Agency policies and guidance to:

    a. Communicate the EPA's expectations for the EPA regions and states, local government agencies, federally recognized Indian tribes, and U.S. territories to identify, inspect, report, and verify data for SM-80 sources.

    b. Communicate steps the EPA will take, if any, to periodically identify and inspect SM-80s if these entities do not meet such expectations, and

    c. Clearly define SM-80 sources.

6. Establish routine training to reinforce EPA guidance and policies regarding delegated Agency requirements and responsibilities to identify and inspect SM-80 sources. Training is to include coordination among EPA regional managers, including division directors, deputy directors, branch chiefs, section chiefs, managers, and staff in the Office of Air and Radiation and the Office of Enforcement and Compliance Assurance.

We recommend that the regional administrator for Region 6:

7. In coordination with the Office of Enforcement and Compliance Assurance and the Texas Commission on Environmental Quality, determine a complete and accurate list of SM-80 sources in Texas and ensure that each *Clean Air Act Stationary Source Compliance Monitoring Strategy* plan includes a list of SM-80s along with an expected inspection date. This corrective action should be completed by August 2025.

We recommend that the regional administrator for Region 9:

8. In coordination with the Office of Enforcement and Compliance Assurance and the South Coast Air Quality Management District, confirm that California's South Coast Air Quality Management District's list of SM-80 sources is complete and accurate and ensure that the district reports SM-80 data in the EPA's data systems by August 2025.

9. Collect and review California's South Coast Air Quality Management District's *Clean Air Act Stationary Source Compliance Monitoring Strategy* plan by October 2026 and biennially thereafter and ensure that each plan includes a list of SM-80 sources along with an expected inspection date.

Agency Response and OIG Assessment

OECA, Region 6, and Region 9 responded to our draft report on April 5, 2024. The Agency also provided technical comments, which we reviewed and used to make appropriate changes for the final report. The Agency's written response to the draft report is in Appendix A.

The EPA agreed with Recommendation 3 and reported that it had completed the corrective actions to address the recommendation. We agree with OECA in its response to Recommendation 3 that it has established a formal framework for the EPA to track and elevate state review recommendations; however, OECA's corrective actions do not provide assurances that senior managers will be held accountable for state review resolution.

The Agency concurred in principle with Recommendations 1, 2, 5, 6, 7, 8 and 9 but provided unresponsive corrective actions.[4] As such, these recommendations are unresolved pending our receipt of acceptable corrective actions and estimated completion dates.

The corrective actions proposed by OECA do not meet the intent of Recommendations 1, 2, 5, and 6 because they lack measurable and specific elements that the Agency intends because it used the terms "if needed" and "as necessary." Without additional details from OECA regarding its approach to address Recommendations 1, 2, 5, and 6, we are unable to determine the sufficiency of OECA's proposed corrective actions. We modified Recommendation 5 to add specificity. We shared the updated

[4] Recommendations 5 through 9 in this final report were numbered Recommendations 4 through 8 in the draft report. The Agency's response in Appendix A refers to the draft report recommendation numbering.

recommendation with OECA, and it concurred with the modified recommendation. The Agency should provide details of its corrective actions and an estimated completion date for this modified recommendation during the 60-day response period.

Regarding Recommendation 1, OECA's corrective actions need to identify an evaluation frequency and the risk factors that OECA intends to use to determine when an evaluation of each regional office is needed. For Recommendation 2, it is unclear from the details provided how the provision of an annual data metric analysis to South Coast and San Joaquin Valley in California will result in improved oversight. The number of sources in these two air districts is larger than most states; therefore, additional oversight beyond a data metric analysis is needed for national consistency, such as conducting a state review of the two largest air districts in California every five years.

The corrective actions proposed by Region 6 and Region 9 do not meet the intent of Recommendations 7 and 8. Region 6 nor Region 9 committed to ensure that TCEQ and South Coast develop a list of SM-80s to address the recommendations.

The corrective actions proposed by Region 9 do not meet the intent of Recommendation 9. Region 9's corrective actions do not commit to requesting a biennial submission from South Coast of its CAA CMS plan. In addition, Region 9 does not describe how it will determine when and if an update to South Coast's CAA CMS will be considered appropriate. However, we acknowledge that South Coast's next CAA CMS plan is due on September 30, 2026, which is beyond the one-year time frame we requested for completion of this corrective action in the original recommendation. Therefore, we are requesting a change to the corrective action estimated completion date to the date that the CAA CMS plan expires, which is September 30, 2026. Therefore, all the recommendations remain unresolved. We added Recommendation 4 to the final report. We shared the new recommendation with OECA, and it concurred with the new recommendation. The Agency should provide details of corrective actions and estimated completion date for this new recommendation during the 60-day response period.

Status of Recommendations

Rec. No.	Page No.	Recommendation	Status*	Action Official	Planned Completion Date
1	22	Conduct in-depth evaluations to monitor the performance of EPA regional offices' oversight of delegated agencies' implementation of the EPA's *Clean Air Act Stationary Source Compliance Monitoring Strategy*.	U	Assistant Administrator for Enforcement and Compliance Assurance	
2	22	Ensure that Region 9 develops a plan to conduct Clean Air Act state reviews of California's largest air quality management districts every five years, in accordance with the *State Review Framework Compliance and Enforcement Program Oversight, SRF Reviewer's Guide*.	U	Assistant Administrator for Enforcement and Compliance Assurance	
3	22	Formalize a state review framework recommendation resolution process to ensure that the EPA's senior managers and delegated agencies are accountable for the resolution of state review framework recommendations.	U	Assistant Administrator for Enforcement and Compliance Assurance	
4	22	In collaboration with the Office of General Counsel and the Office of Air and Radiation, determine to what extent the Clean Air Act authorizes the EPA to require periodic identification and inspection of nonmajor stationary sources such as SM-80s by states, local government agencies, federally recognized Indian tribes, and U.S. territories. Document the EPA's determination and exercise such authority, if applicable, as the EPA deems appropriate.	U	Assistant Administrator for Enforcement and Compliance Assurance	
5	22	Clarify Agency policies and guidance to: a. Communicate the EPA's expectations for the EPA regions and states, local government agencies, federally recognized Indian tribes, and U.S. territories to identify, inspect, report, and verify data for SM-80 sources. b. Communicate steps the EPA will take, if any, to periodically identify and inspect SM-80s if these entities do not meet such expectations. c. Clearly define SM-80 sources.	U	Assistant Administrator for Enforcement and Compliance Assurance	
6	22	Establish routine training to reinforce EPA guidance and policies regarding delegated Agency requirements and responsibilities to identify and inspect SM-80 sources. Training is to include coordination among EPA regional managers, including division directors, deputy directors, branch chiefs, section chiefs, managers, and staff in the Office of Air and Radiation and the Office of Enforcement and Compliance Assurance.	U	Assistant Administrator for Enforcement and Compliance Assurance	
7	23	In coordination with the Office of Enforcement and Compliance Assurance and the Texas Commission on Environmental Quality, determine a complete and accurate list of SM-80 sources in Texas and ensure that each *Clean Air Act Stationary Source Compliance Monitoring Strategy* plan includes a list of SM-80s along with an expected inspection date. This corrective action should be completed by August 2025.	U	Regional Administrator for Region 6	
8	23	In coordination with the Office of Enforcement and Compliance Assurance and the South Coast Air Quality Management District, confirm that California's South Coast Air Quality Management District's list of SM-80 sources is complete and accurate and ensure that the district reports SM-80 data in the EPA's data systems by August 2025.	U	Regional Administrator for Region 9	

Rec. No.	Page No.	Recommendation	Status*	Action Official	Planned Completion Date
9	23	Collect and review California's South Coast Air Quality Management District's *Clean Air Act Stationary Source Compliance Monitoring Strategy* plan by October 2026 and biennially thereafter and ensure that each plan includes a list of SM-80 sources along with an expected inspection date.	U	Regional Administrator for Region 9	

* C = Corrective action completed.
R = Recommendation resolved with corrective action pending.
U = Recommendation unresolved with resolution efforts in progress.

Agency Response to Draft Report

WASHINGTON, D.C. 20460

April 5, 2024

MEMORANDUM

SUBJECT: Response to Office of Inspector General Draft Report: "*The EPA Did Not Ensure that Two of the Largest Air Oversight Agencies Identified and Inspected Significant Sources of Air Pollution*." Project No. OA-FY22-0036, February 26, 2024

FROM: Cecil Rodrigues, Acting Principal Deputy Assistant Administrator
Office of Enforcement and Compliance Assurance
Rodrigues, Cecil — Digitally signed by Rodrigues, Cecil Date: 2024.04.05 13:38:55 -04'00'

Earthea Nance, Regional Administrator
Region 6
STACEY DWYER — Digitally signed by STACEY DWYER Date: 2024.04.05 13:41:54 -05'00'

Martha Guzman, Regional Administrator
Region 9
MARTHA ACEVES — Digitally signed by MARTHA ACEVES Date: 2024.04.05 16:36:07 -07'00'

TO: Michael D. Davis, Director
Environmental Investment and Infrastructure Directorate
Office of Audit
Office of Inspector General

The EPA's Office of Enforcement and Compliance Assurance (OECA), Region 6, and Region 9 appreciate the opportunity to respond to the draft findings and recommendations presented in the Office of Inspector General's (OIG) draft report, "*The EPA Did Not Ensure that Two of the Largest Air Oversight Agencies Identified and Inspected Significant Sources of Air Pollution*" ("Draft Report"). OECA, Region 6, and Region 9 agree with the OIG that ensuring compliance with the Nation's environmental laws is foundational to achieving the EPA's mission. We also recognize that agency oversight of state programs implementing federal environmental laws and EPA regulations is critical to protect human health and the environment for all residents of the United States, including those communities that have been disproportionately burdened by environmental pollution and its negative health impacts. To ensure fair and equitable implementation of state-implemented Clean Air Act (CAA) programs, our oversight responsibilities are carried out through a wide range of activities, including the State Review Framework (SRF), with the agency's regional offices having primary responsibility for overseeing the delegated states and local agencies. Together with the regional offices, OECA supports effective

oversight by providing oversight resources and guidance documents, as well as regularly evaluating regional activities.

Delegated agency compliance with the guidance document, the EPA's Clean Air Act Stationary Source Compliance Monitoring Strategy (CMS), forms the basis of the Draft Report. As the OIG notes, "the EPA's Clean Air Act Stationary Source Compliance Monitoring Strategy provides [] delegated agencies with a framework to identify and inspect the most significant sources of air pollution." (See Draft Report, *At a Glance* Page). As such, delegated agencies are responsible for incorporating the guidance set forth in the CMS as they deem appropriate in their own oversight plans, given local air pollution and compliance concerns.

We appreciate the OIG's acknowledgement that 115 of 117 delegated agencies have identified synthetic minor sources that emit or have the potential to emit at or above 80 percent of the Title V major source threshold (i.e., "SM-80s") within their CMS plans. We understand the Draft Report concludes that two agencies, the Texas Commission on Environmental Quality (TCEQ) and the South Coast Air Quality Management District (South Coast), have not identified SM-80s within their CMS plans. Instead, these agencies exercise their discretion to employ alternative strategies to evaluate minor source compliance. OECA, Region 6, and Region 9 do not concur with the inference, unsupported by the Draft Report, that TCEQ's and South Coast's decision not to designate certain sources as SM-80s diminished national deterrence and increased public risk and exposure to air pollution, particularly in areas with environmental justice concerns. (See Draft Report, *At a Glance* Page). We respectfully request removal of such inferences from the Draft Report.

To leverage limited resources to maximize compliance with environmental laws, the EPA and its co-regulators often divide enforcement responsibilities. Regions 6 and 9 appreciate their strong collaboration with TCEQ and South Coast, respectively, which enables the regions to focus on the largest and most significant sources of air pollution, and the delegated agencies to prioritize their own resources, consistent with regulatory requirements. We believe Regions 6 and 9 conduct adequate oversight of TCEQ and South Coast, and OECA, in turn, conducts adequate oversight of the regions, through tools including, but not limited to, the SRF. Regions 6 and 9, with the support of OECA, regularly communicate with TCEQ, South Coast, and other delegated agencies about a range of compliance monitoring and enforcement activities and local air quality and community concerns. To that end, Regions 6 and 9 will request TCEQ and South Coast identify a list of SM-80s and update their CMS plans as needed. However, it is important to note that the EPA's CAA CMS does not direct, but rather it is a policy that provides guidance and requests delegated agencies to develop their CAA CMS plans.

For your consideration, we respectfully submit narrative responses to the Draft Report's recommendations, corrective actions, and technical comments (attached), which reference, in relevant part, our response to the OIG's April 2023 Statement of Findings.

OIG Recommendation 1: Conduct in-depth evaluations to monitor the performance of the EPA regional offices' oversight of delegated agencies' implementation of the EPA's *Clean Air Act Stationary Source Compliance Monitoring Strategy*.[5]

[5] OIG note: Recommendations 4 through 8 in the draft report were renumbered in the final report. In addition, we modified Recommendation 4 from the draft report.

EPA Response – Concur in Principle

The EPA concurs in principle with this recommendation. We appreciate the Draft Report's recognition of certain activities OECA performs to monitor the performance of the EPA regional offices' oversight of delegated agencies' implementation of the CAA CMS. Additionally, OECA performs the following activities on a regular and consistent basis:

- Analyzes state-reported CAA CMS data and develops CMS Reports to use with the regional offices in evaluating CMS implementation.
- Maintains the ECHO Air Dashboard to make state-reported CAA CMS data more accessible and easier to review.
- Discusses CAA CMS-related issues on regularly scheduled calls with regional offices, as needed.
- Provides guidance on underlying policies impacting CAA CMS implementation.
- Directly participates in meetings with delegated agencies, upon request of regional offices, to assist in addressing questions and issues raised by the agencies.
- Reviews proposed alternative CAA CMS plans to track such plans, maintain national consistency and ensure OECA concerns are addressed prior to approval.
- Reviews regional offices' annual strategic plans that include, as needed, CAA CMS issues.
- Manages the SRF program that includes multiple regional and delegated agency oversight functions, including the evaluation of CAA CMS implementation.

In response to the recommendation, in conjunction with the above activities, OECA will conduct "separate evaluations," and document and share the results with regional offices and delegated agencies, as needed, in accordance with the Standards for Internal Control in the Federal Government. (*Green Book*, Principle 16.09; GAO-14-704G; Sept. 2014). In accordance with the *Green Book*, such separate evaluations "are used periodically" and the scope and frequency will be based upon certain factors, including the effectiveness of our ongoing monitoring/oversight activities and assessment of risks (*Green Book*, Principle 16.04-16.07).

OIG Recommendation 2: Ensure that Region 9 develops a plan to conduct Clean Air Act state reviews of California's largest air quality management districts every five years, in accordance with the *State Review Framework Compliance and Enforcement Program Oversight, SRF Reviewer's Guide*.

EPA Response – Concur in Principle

The EPA recognizes the importance of continually reviewing and evaluating the performance of the largest districts. The SRF is one component of a region's effective oversight program, and the SRF Reviewer's Guide recognizes that in a large state with many district offices, such as California, reviewing most of the districts may not be possible every five years.

In response to the recommendation, OECA will work with Region 9 to provide a Data Metric Analysis (DMA) to the California air quality management districts designated as large agencies, currently South Coast Air Quality Management District and San Joaquin Valley Air Pollution Control District, annually, rather than conducting a SRF review every five years. A DMA is an important analytical step in the SRF review process, which provides information on program compliance monitoring and enforcement activities, including the percent of full compliance evaluations completed, to establish initial findings

and determine which areas may need additional focus. This approach would serve to balance available resources and the need for effective and regular oversight of all district offices.

OIG Recommendation 3: Formalize a state review framework recommendation resolution process to ensure that the EPA's senior managers and delegated agencies are accountable for the resolution of state review framework recommendations.

EPA Response – Corrective Action Completed

The EPA has a detailed process for post-review recommendation monitoring and closeout defined in its SRF Reviewer's Guide. The EPA takes an annual inventory of outstanding and overdue recommendations, and EPA senior managers and staff discuss the status of such recommendations with relevant delegated agencies. For a recommendation to be considered complete, the EPA verifies that all parts of the recommendation have been resolved, or substantial and consistent progress has been made towards a resolution. Regions enter the verification information into the SRF Manager database, and OECA reviews the materials to ensure recommendation criteria are met before close out. There is an elevation process for issues that have been unresolved for an extended period, which is outlined in the policy on Enhancing Effective Partnerships Between the EPA and the States in Civil Enforcement and Compliance Assurance (June 21, 2023).

Additionally, the EPA has an internal performance measure to track the implementation and timeliness of SRF recommendations. Annually, OECA coordinates with each region to establish quarterly targets for the number of SRF recommendations to close and provides quarterly updates to senior management on progress in closing such recommendations. Thus, senior management has the information to intervene to resolve open issues, as appropriate.

OIG Recommendation 4: Clarify agency policies and guidance to communicate the EPA's expectations for the EPA regions and delegated agency requirements and responsibilities to identify, inspect, report, and verify data for SM-80 sources.

EPA Response – Concur in Principle

The EPA concurs in principle with this recommendation. In nationally managing CAA CMS implementation, OECA recognizes the importance of a clear and uniform understanding of the guidance to promote a consistent level of evaluation coverage and environmental and public health protection by all delegated agencies, while taking into account needed flexibility to address local air pollution and compliance concerns, as appropriate. Thus, we have developed guidance and instructional material to assist the regional offices and delegated agencies with sufficient awareness and knowledge of all elements of the CAA CMS, such as the recommended evaluation frequencies and the applicable source universes.

In response to the recommendation, OECA will review agency guidance and instructional material and clarify it as needed and consistent with regulation to communicate the EPA's expectations for the EPA regions and delegated agency requirements and responsibilities to identify, inspect, report, and verify data for SM-80 sources.

OIG Recommendation 5: Establish routine training to reinforce EPA guidance and policies regarding delegated agency requirements and responsibilities to identify and inspect SM-80 sources. Training is to include coordination between EPA regional managers, including division directors, deputy

directors, branch chiefs and managers, and section chiefs and managers, and staff in the Office of Air and Radiation and the Office of Enforcement and Compliance Assurance.

EPA Response – Concur in Principle
The EPA concurs in principle with this recommendation.

In response to the recommendation, OECA will review and update, as appropriate, training and instructional material that have been developed for CAA CMS implementation and data reporting, which includes guidance on the identification and inspection of SM-80s. Training and associated instructional material will be routinely provided to EPA headquarters and regional managers and staff involved in CAA CMS implementation and the identification, inspection, and reporting of SM-80s.

OIG Recommendation 6: In coordination with the Office of Enforcement and Compliance Assurance and Texas Commission on Environmental Quality, determine a complete and accurate list of SM-80 sources in Texas, and ensure that each Clean Air Act Stationary Source Compliance Monitoring Strategy plan includes a list of SM-80s along with an expected inspection date. This corrective action should be completed within one year.

Region 6 Response – Concur in Principle
Region 6 concurs in principle with this recommendation. Region 6 recognizes it is important to focus on sources deemed most environmentally significant. As the draft report points out on page 3 and as stated above, the CMS guidance is not a regulation and does not impose legally binding requirements. TCEQ is not required by any law or regulation to develop a list of SM-80s.

In response to the recommendation, in continuing to work with TCEQ in implementing the guidance while taking into account state priorities and the resources available to the state, Region 6 will continue to assist TCEQ in inspecting and addressing the most significant sources of air pollution in the state of Texas.

OIG Recommendation 7: In coordination with the Office of Enforcement and Compliance Assurance and the South Coast Air Quality Management District, confirm that California's South Coast Air Quality Management District's list of SM-80 sources is complete and accurate and ensure that the district reports SM-80 data in the EPA's data systems within one year.

EPA Response – Region 9 Concurs in Principle
Region 9 concurs in principle with this recommendation in that Region 9 confirms that South Coast focuses on sources deemed most environmentally significant. As acknowledged in the Draft Report, the CMS is not a regulation and does not impose legally binding requirements. South Coast is not required by any law or regulation to develop a list of SM-80s.

In response to the recommendation, Region 9 will continue to work with South Coast in implementing the CMS while taking into account district priorities and available resources. Region 9 will continue to support South Coast in inspecting and addressing the most significant sources of air pollution in the South Coast's jurisdiction.

OIG Recommendation 8: Collect and review California's South Coast Air Quality Management District's *Clean Air Act Stationary Source Compliance Monitoring Strategy* plans biennially and ensure that each plan includes a list of SM-80 sources along with an expected inspection date. This corrective action should be completed within one year.

EPA Response – Region 9 Concurs in Principle

Region 9 concurs in principle with this recommendation in that it recognizes the importance of having up-to-date CMS plans in place. Given the flexibility provided in the CMS and the fact that Region 9 oversees 35 local districts in California, California local district CMS plans are on a six-year timeframe review.

In response to the recommendation, within two years of the effective date of the CMS plan, Region 9 will work with South Coast to review and update, as appropriate, their CMS plan, in accordance with Recommendation #7 and its planned corrective action. At that time, Region 9 and South Coast will determine if the CMS plan requires further revision.

Table of Corrective Actions

Rec #	OIG Draft Report Recommendations	Corrective Actions	Estimated Completion Dates
1	Conduct in-depth evaluations to monitor the performance of the EPA regional offices' oversight of delegated agencies' implementation of the EPA's *Clean Air Act Stationary Source Compliance Monitoring Strategy*.	The EPA concurs in principle with this recommendation. OECA will enhance its in-depth oversight activities and ongoing monitoring of regional offices' oversight of the delegated agencies' implementation of the CMS by conducting "separate evaluations" as needed in accordance with the *Standards for Internal Control in the Federal Government.*	April 30, 2025
2	Ensure that Region 9 develops a plan to conduct Clean Air Act state reviews of California's largest air quality management districts every five years, in accordance with the *State Review Framework Compliance and Enforcement Program Oversight, SRF Reviewer's Guide*.	The EPA concurs in principle with this recommendation. To address this recommendation OECA will coordinate with Region 9 to identify the large air quality management districts in California based on the total number of permitted sources, then annually provide a DMA to the identified districts. Region 9 will continue to complete SRF reviews every five years in accordance with the flexibilities for selecting district offices outlined in the SRF Reviewer's Guide.	October 1, 2024
3	Formalize a state review framework recommendation resolution process to ensure that the EPA's senior managers and	The EPA believes this recommendation is met through its recommendation close out and elevation process. The EPA also has an internal performance measure to track the number of SRF	**Complete**

	delegated agencies are accountable for the resolution of state review framework recommendations.	recommendations implemented, which is reported quarterly to senior management.	
4	Clarify agency policies and guidance to communicate the EPA's expectations for the EPA regions and delegated agency requirements and responsibilities to identify, inspect, report, and verify data for SM-80 sources.	The EPA concurs in principle with this recommendation. OECA will clarify agency guidance/instructional material as appropriate to better communicate the EPA's expectations for the regional offices and delegated agencies concerning responsibilities associated with the CMS source universes, including SM-80s.	April 30, 2025
5	Establish routine training to reinforce the EPA guidance and policies regarding delegated agency requirements and responsibilities to identify and inspect SM-80 sources. Training is to include coordination between the EPA regional managers, including division directors, deputy directors, branch chiefs and managers, and section chiefs and managers, and staff in the Office of Air and Radiation and the Office of Enforcement and Compliance Assurance.	The EPA concurs in principle with this recommendation. OECA will review and update, as appropriate, training and instructional material that has been developed for CMS implementation and data reporting, which includes guidance on the identification and inspection of SM-80s. Training and associated instructional material will be routinely provided to the EPA employees involved in CMS implementation and the identification, inspection, and reporting of SM-80s.	April 30, 2025
6	In coordination with the Office of Enforcement and Compliance Assurance and Texas Commission on Environmental Quality, determine a complete and accurate list of SM-80 sources in Texas, and ensure that each Clean Air Act Stationary Source Compliance Monitoring Strategy plan includes a list of SM-80s along with an expected inspection date.	In continuing to work with TCEQ in implementing the CMS while taking into account state priorities and the resources available to the state, Region 6 will continue to assist TCEQ in inspecting and addressing the most significant sources of air pollution in the state of Texas. Region 6 will review with TCEQ their CMS plan and based on our discussions, update as appropriate.	April 30, 2025

	This corrective action should be completed within one year.		
7	In coordination with the Office of Enforcement and Compliance Assurance and the South Coast Air Quality Management District, confirm that California's South Coast Air Quality Management District's list of SM-80 sources is complete and accurate and ensure that the district reports SM-80 data in the EPA's data systems within one year.	In continuing to work with South Coast in implementing the CMS while taking into account district priorities and the resources available to the district, Region 9 will continue to assist South Coast in inspecting and addressing the most significant sources of air pollution in the South Coast jurisdiction. Region 9 will discuss with South Coast their CMS plan and based on our discussions, update as appropriate.	April 30, 2025
8	Collect and review California's South Coast Air Quality Management District's *Clean Air Act Stationary Source Compliance Monitoring Strategy* plans biennially and ensure that each plan includes a list of SM-80 sources along with an expected inspection date. This corrective action should be completed within one year.	Within two years of the effective date of the CMS plan, Region 9 will work with South Coast to review and update, as appropriate, their CMS plan, in accordance with Recommendation #7 and its planned corrective action. At that time, Region 9 and South Coast will determine if the CMS plan requires further revision.	April 30, 2027

If you have any questions regarding this response, please contact Gwendolyn Spriggs, OECA Audit Follow-up Coordinator at spriggs.gwendolyn@epa.gov; Josephine Hah, Region 6 Audit

Follow-up Coordinator at hah.josephine@epa.gov; Mendy Guan, Region 9 Audit Follow-up Coordinator at guan.mendy@epa.gov.

Attachment

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