



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
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ASSISTANT ADMINISTRATOR
FOR ENFORCEMENT AND
COMPLIANCE ASSURANCE

MEMORANDUM

Subject: *Compliance Monitoring Strategy for the Resource Conservation and Recovery Act*

From: Cynthia Giles 

To: Regional Administrators
Deputy Regional Administrators
Regional Compliance/Enforcement Division Directors
Regional RCRA Division Directors

I am pleased to announce the availability of the Office of Enforcement and Compliance Assurance's (OECA's) first *Compliance Monitoring Strategy for the Resource Conservation and Recovery Act (RCRA) Subtitle C Program (RCRA Strategy or Strategy)*. OECA uses compliance monitoring strategies to provide guidance on how Regions and states¹ should work together to target for and conduct inspections to address the most serious environmental problems in communities. This *RCRA Strategy* synthesizes the existing elements of the national Subtitle C compliance monitoring program² into a holistic framework which allows for appropriate flexibility and alternative approaches for ensuring that we are addressing the most serious problems, while also meeting statutorily mandated obligations.

The *Strategy* reinforces minimum program requirements for Regions and expectations for state and tribal inspection activities, while referencing the State Review Framework as the primary means for verifying that the minimum expectations are being met. Additionally, the *Strategy* requires that Regions report the outcomes of their activities (environmental benefits, waste management benefits, etc.) into ICIS (the Integrated Compliance Information System). Regions and states should use the *Strategy* in developing their annual inspection plans, and Regions should consult the *Strategy* in devising and implementing oversight plans for each state. Regions should be establishing clear expectations with our state partners regarding appropriate targeting and adequate levels of inspections; where these expectations are not being met, Regions should be following up directly with the state to make sure the necessary adjustments to the state

¹ In the event that tribes may be given authority to implement the RCRA Subtitle C program, then the term "state" in this document refers to state and tribal programs.

² These elements appear in a variety of existing guidance and procedural directives, including OECA's *National Program Managers Guidance (NPMG)* and Annual Commitment System (ACS). OECA currently has a Clean Air Act CMS and Clean Water Act CMS.

approach are made. The specific performance expectations in this *Strategy* will be reflected in the Agency's *National Program Managers Guidance* for FY 2011; however the concepts described in this *Strategy* should be adopted immediately, as feasible, during this current year.

OECA developed the *Strategy*, in consultation with the Office of General Counsel, Regions and authorized states, to optimize our capacity to achieve RCRA's penultimate goal of ensuring that hazardous waste is managed in a manner that is protective of human health and the environment. The compliance monitoring program is a cornerstone of EPA's compliance assurance mission. As explained in more detail in the *Strategy*, Regional and state compliance monitoring programs should accurately identify and document compliance and noncompliance with RCRA requirements; support the enforcement process; monitor adherence to enforcement orders and decrees; ensure an adequate presence among the regulated community for its general deterrent effect; and support the permitting process. There is a continued expectation that when serious violations are discovered, states and Regions follow up with timely and appropriate enforcement actions. Because attaining these multiple objectives continues to be challenging, EPA and state inspection programs must be increasingly innovative and efficient, and direct resources toward the most serious areas of noncompliance and environmental problems.

If you have questions regarding this memorandum or the *RCRA Strategy*, contact Tom Ripp (202-564-7003) or Stephanie Brown (202-564-2596) in OECA's Office of Compliance.

Attachments:

Compliance Monitoring Strategy for the Resource Conservation and Recovery Act (RCRA) Subtitle C Program (January, 2010)
Appendices A-I

cc: OECA Office Directors
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John Michaud, Acting Associate General Counsel, SWERLO, Office of General Counsel
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U.S. Environmental Protection Agency
Office of Enforcement and Compliance Assurance

**Compliance Monitoring Strategy
for the
Resource Conservation and Recovery Act
(RCRA)
Subtitle C Program**

January 2010

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Foreword

This document is a publication of the U.S. Environmental Protection Agency (EPA or Agency) Office of Enforcement and Compliance Assurance (OECA). It was developed by OECA's Office of Compliance, in consultation with OECA's Federal Facilities Enforcement Office, Office of Civil Enforcement, and Office of Site Remediation Enforcement; EPA's Office of Solid Waste and Emergency Response; EPA Regions; and state enforcement agencies authorized to administer hazardous waste management programs pursuant to the U.S. Resource Conservation and Recovery Act (RCRA).

This document provides guidance to employees of EPA and authorized states with respect to administering and implementing an Agency program for RCRA compliance monitoring. Any statutory and regulatory provisions cited in this document contain legally binding requirements. This document does not substitute for those provisions, and is not a regulation itself. Thus, it does not impose legally binding requirements on EPA, states, federally-recognized tribes, or the regulated community; and does not create any rights or benefits enforceable by any person. EPA may revise this policy at any time without public notice and after consultation with authorized state agencies.

This *Compliance Monitoring Strategy (CMS)* cites a variety of Agency guidance documents. Most of these are available via the Internet, and Internet addresses or hyperlinks are provided. Certain documents, however, were developed for Agency personnel, and are posted only on EPA's Intranet. Where possible, Intranet documents have been included in the Appendices to this *CMS*. For information in Intranet documents *not* included in this *CMS*, authorized states may consult their respective Regional RCRA contact persons.

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Office of Enforcement and Compliance Assurance

RCRA Compliance Monitoring Strategy

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OFFICE OF ENFORCEMENT AND COMPLIANCE ASSURANCE
RCRA COMPLIANCE MONITORING STRATEGY

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I. INTRODUCTION

This document presents the national *Compliance Monitoring Strategy (CMS)* for Subtitle C of the Resource Conservation and Recovery Act (RCRA).¹ The U.S. Environmental Protection Agency (EPA or Agency) Office of Enforcement and Compliance Assurance (OECA) has developed this *CMS* to consolidate the various existing elements -- e.g., the principles, program requirements, and activities -- of the national RCRA compliance monitoring program. These elements are set forth in a variety of sources, including OECA's *National Program Managers Guidance (NPMG)*,² and other guidance and procedural directives.

This *CMS* does not impose new or additional requirements, nor modify existing Regional or state agreements or commitments.³ Rather, it synthesizes the existing program elements into a unified conceptual framework to help Regions and RCRA-authorized states better understand and implement the program. Specifically, this *CMS* is intended to:

- Promote understanding of, and compliance with, minimum program requirements.
- Clarify the respective roles and responsibilities of Regions and states.
- Promote national consistency in program implementation, while allowing appropriate flexibility to improve health and environmental outcomes.
- Begin to shift the perspective of the national program from solely counting outputs (e.g., inspections) to encompass identifying environmental outcomes (e.g., increasing the degree to which regulated waste is handled properly as a result of inspections and enforcement).⁴
- Clarify the interface between compliance monitoring for the ongoing RCRA Core Program versus for national areas of focus (e.g., OECA National Enforcement Initiatives) that periodically may include RCRA.⁵
- Clarify the Regions' responsibilities with respect to compliance monitoring for facilities in Indian country.⁶

¹ 42 U.S.C. §§ 6901 – 6992k. www.epa.gov/lawsregs/laws.

² www.epa.gov/ocfo/npmguidance/index.htm.

³ This *Compliance Monitoring Strategy (CMS)* modifies current policy in one regard: it provides the option under certain conditions to perform a Focused Compliance Inspection (FCI), rather than a Compliance Evaluation Inspection (CEI), at a facility. See Sections V.B.1 and V.C, below.

⁴ This *CMS* does not establish new outcome measures, nor impose additional data collection or reporting obligations on states. Program outcome reports are already required of states using approved Alternative Plans (see Section III.C.1(c), below). This *CMS*, however, encourages all states to be cognizant of outcomes derived from their compliance monitoring activities, and to provide OECA outcome information, if available, so that OECA can better understand the state's performance under the State Review Framework (SRF). This *CMS* also encourages states that already provide outcome information to the Region to continue to do so.

⁵ As of 2010, OECA uses the term "National Enforcement Initiative," rather than "National Priority." Therefore, this *CMS* uses the latter term for focus areas prior to 2010. See Section IV, below.

⁶ See e.g., Sections II.C.2, III.B.2, V.A.1, and V.C, below.

This *CMS* is effective immediately upon publication.

Terminology in this RCRA CMS

This *CMS* uses acronyms, which are defined in the *CMS* text and in Appendix A.

Also, this *CMS* uses the following generic terms, which are provided solely for the reader's convenience and are *not* legally defined terms or official Agency nomenclature:

- “*Coverage*” means how frequently Regions, or states, inspect the regulated universe.
- “*National areas of focus*” or “*national focus areas*” mean OECA National Enforcement Initiatives (formerly known as “National Priorities”); other emerging areas or issues of national significance warranting EPA response, direction, or involvement; and Federal Facility Integrated Strategies (as distinguished from the ongoing RCRA Core Program).
- “*Other RCRA Handlers*” means Used Oil Facilities, Universal Waste Handlers, entities involved in reclamation of Hazardous Secondary Materials, and any other type of facility, operation, entity or handler subject to Subtitle C *other than* a Generator, Transporter, or Treatment, Storage, and Disposal facility (TSDF).
- “*Universe*” means the array of RCRA-regulated facilities, operations and handlers subject to inspection.

Generally, except as noted, discussion of “requirements,” “obligations,” “expectations,” or “required” activities refer to OECA’s expectations for Regions and states *for the operation of the RCRA compliance monitoring program*, rather than to substantive legal requirements imposed by the statute or regulations. See Foreword for further clarification regarding the scope and limitations of this document.

II. BACKGROUND

A. Resource Conservation and Recovery Act

RCRA was enacted to ensure that solid waste and hazardous waste are managed in a manner that is protective of human health and the environment. EPA's RCRA authorities encompass:

- The Subtitle C Hazardous Waste program,⁷ which regulates hazardous waste Generators; Transporters; Treatment, Storage, and Disposal facilities (TSDFs); and other operations, such as Used Oil Facilities, Universal Waste Handlers, and entities involved in reclamation of Hazardous Secondary Materials (collectively herein, Other RCRA Handlers).
- The Subtitle D non-hazardous waste program, which sets standards for solid waste management.⁸
- The Subtitle I Underground Storage Tank (UST) program.⁹
- Section 7003 "imminent and substantial endangerment" authority.¹⁰

This document discusses the compliance monitoring programs under OECA's purview. Thus, this document covers only the RCRA Subtitle C compliance monitoring program.

B. Compliance Monitoring

Compliance monitoring encompasses all regulatory agency activities performed to determine whether a facility (or group of facilities, such as plants related geographically, by sector, or corporate structure) is in compliance with applicable law. Compliance monitoring includes:

- Formulation and implementation of compliance monitoring strategies.
- Compliance inspections, evaluations, and investigations (including review of permits, data, and other documentation).
- Data collection, review, and reporting.
- Program coordination, review, oversight, and support.
- Inspector training and support.¹¹

⁷ 42 U.S.C. §§ 6921-6939e.

⁸ 42 U.S.C. §§ 6941-6949a.

⁹ 42 U.S.C. §§ 6991-6991m.

¹⁰ 42 U.S.C. § 6973.

¹¹ See Appendix C for details.

Compliance monitoring is one dimension of OECA's Compliance Assurance program. Compliance monitoring does *not* include (and this document does not cover) the other components of compliance assurance, i.e.:

- Compliance assistance;¹²
- Compliance incentives, such as Compliance Assistance Program (CAP) initiatives; or
- Case Development and Enforcement (e.g., preparing notices of violation, warning letters, or formal complaints; or developing evidence where an area of concern or potential violation has been identified).

C. The National RCRA Compliance Monitoring Program

The RCRA compliance monitoring program is designed to attain and maintain a high level of compliance throughout the regulated community with statutory requirements, and applicable RCRA regulations, permits, orders, and settlement agreements.

A seminal objective of RCRA Subtitle C compliance monitoring should be to determine whether facilities:

- Have identified all of their regulated waste streams;
- Have properly characterized each waste stream; and
- Are properly handling each waste stream.¹³

OECA's national RCRA compliance monitoring program encompasses the Core Program, and any designated national areas of focus that may include RCRA.

- The Core Program encompasses ongoing compliance monitoring activities performed to achieve and maintain compliance with all RCRA requirements, by all types of regulated operations (e.g., TSDFs, LQGs, etc.), across all sectors subject to Subtitle C.
- National focus areas -- OECA National Enforcement Initiatives and Federal Facility Integrated Strategies -- are designated for a finite number of fiscal years (FYs), to address specific patterns of non-compliance that have not been sufficiently addressed by the Core Program. National Enforcement Initiatives and Federal Facility Integrated Strategies may or may not include a RCRA component. Periodically, EPA also may identify other emerging areas or issues of national significance warranting EPA response, direction, or involvement. A national focus could be designated for RCRA to respond to non-compliance with a specific RCRA requirement (e.g., financial responsibility), among particular types of operations/handlers (e.g., TSDFs), and/or by a particular sector of the regulated universe (e.g., mineral processing industry).

Figure 1 summarizes these constituents of OECA's national RCRA compliance monitoring program. Section IV, below, discusses the strategic and operational interface between the Core Program and national focus areas.

¹² Agency policy limits the extent to which an inspector may provide compliance assistance in connection with an inspection. See *National Policy: Role of the EPA Inspector in Providing Compliance Assistance During Inspections* (June 25, 2003), http://kodiak.r07.epa.gov/intranet/enviroprograms/role_of_inspector.pdf.

¹³ This principle is discussed in Section V.B.1 and elsewhere in this document.

Fig. 1. National RCRA Subtitle C Compliance Monitoring Program

	Core Program	National Areas of Focus	
		National Enforcement Initiatives and Other Issues of National Significance (If designated for RCRA)	Federal Facility Integrated Strategy (If designated for RCRA)
Duration	Ongoing	Designated Periodically	Designated Periodically
Regulated Operations	- TSDFs - Generators - Transporters - Other RCRA Handlers	- TSDFs - Generators - Transporters - Other RCRA Handlers	- TSDFs - Generators - Transporters - Other RCRA Handlers
Sector (Owners / Operators)	- State/local/tribal governments - Private entities - Federal facilities	- State/local/tribal governments - Private entities - Federal facilities	Federal entities (agencies, departments, etc.)
Objective	Ensure compliance ... - With all requirements, - By the regulated universe, and - At all types of operations	Focus on compliance ... - With specific requirements, ^{1/} - By a subset of the regulated universe, ^{2/} and/or - At particular types of operations.	Focus on compliance by federal entities ... - With specific requirements, and/or - At particular types of operations. ^{3/}
Examples: ^{1/} RCRA Financial Responsibility National Priority (FY2008-2010) ^{2/} RCRA Mineral Processing National Priority (FY2008-2010) ^{3/} Federal Underground Storage Tank Integrated Strategy (FY2006-2010)			

1. Agency Leadership for RCRA Compliance Monitoring

Readers new to the RCRA program may be unaware of the multiple aspects of EPA’s responsibility for RCRA, and of the several headquarters offices that administer (or oversee) RCRA compliance monitoring programs and activities. This information, however, may be important because coordination with, and collaboration among, the various offices often is required.

- OECA’s Office of Compliance (OC) has primary responsibility for the compliance monitoring and compliance assistance for non-federal facilities subject to Subtitle C.
- OECA’s Office of Civil Enforcement (OCE) is responsible for civil enforcement for non-federal facilities subject to Subtitle C. OCE and OC work cooperatively and through complementary efforts on compliance monitoring for such facilities.
- OECA’s Federal Facilities Enforcement Office (FFEO) has authority for compliance assistance, monitoring, and enforcement, for federal facilities subject to Subtitle C.
- OECA’s Office of Site Remediation Enforcement (OSRE) has purview for the compliance assistance, monitoring and enforcement aspects of the RCRA corrective action program.¹⁴

¹⁴ RCRA corrective action applies to Subtitle C facilities at which releases have been identified. This document does not address compliance monitoring requirements for the corrective action program, but does encourage programmatic coordination to promote facility compliance with corrective action requirements. See Sections II.D and III.B.3, below. Information about corrective action is available from OSRE, <http://intranet.epa.gov/oeca/osre/>. See also OSRE’s guidance, *National Enforcement Strategy for Corrective Action*, set for publication early FY2010.

- EPA’s Office of Solid Waste and Emergency Response’s Office of Underground Storage Tanks (OSWER/OUST)¹⁵ administers the compliance monitoring program for Subtitle I USTs.
- OSWER’s Office of Resource Conservation and Recovery (OSWER/ORCR) oversees Subtitle D (non-hazardous waste) activities, which are almost exclusively the responsibility of the states. EPA has issued standards for solid waste landfills (40 C.F.R. Parts 257 and 258). Implementation of these standards generally is left to states, however, states generally do not have authority in Indian country.¹⁶

Figure 2 summarizes the alignment of responsibility among EPA headquarters offices for compliance monitoring programs under these various RCRA authorities.

Fig. 2: EPA Headquarters Responsibility for RCRA Compliance Monitoring and Enforcement						
	OECA				OSWER	
	OC	OCE	FFEO	OSRE	OUST	ORCR
Subtitle C Core Program (TSDFs, Generators, Transporters, Other RCRA Handlers)						
• Non-Federal facilities	✓					
• Non-Federal facilities		✓				
• Federal facilities			✓			
• Corrective Action				✓		
Subtitle D (Non-hazardous waste)						✓
Subtitle I (USTs)					✓	
§ 7003 (No compliance monitoring requirements)						

2. Regional, State, and Tribal Roles in RCRA Compliance Monitoring

Implementation of RCRA compliance monitoring activities is a collaborative effort between Regions and authorized states. Since RCRA does not provide for Tribes to obtain Subtitle C authorization, EPA has a direct implementation role in Indian country.¹⁷ State and Regional compliance monitoring programs, however, serve slightly different functions. Figure 5 (Section V.A.1, below) summarizes the distinctions between Regional and state compliance monitoring programs.

States determine facility compliance, and have primary responsibility for ensuring adequate inspection coverage of the regulated universe for its general deterrent effect. (The federal government, however, is responsible for ensuring compliance by facilities in Indian country.) As of June 2009, 48 states are authorized to administer and enforce RCRA Subtitle C. Thus, states conduct the majority of Subtitle C inspections. States also play a vital role in alerting EPA to regulatory implementation issues on-the-ground by, for example, identifying problems among the regulated community concerning regulatory interpretation or proper application of exemptions.

¹⁵ www.epa.gov/swerst1/.

¹⁶ See http://radiation.custhelp.com/cgi-bin/radiation.cfg/php/enduser/std_adp.php?p_faqid=1273. General information about Subtitle D is available at www.epa.gov/epawaste/nonhaz/index.htm.

¹⁷ For more information, see <http://www.epa.gov/lawsregs/laws/rcra.html> and <http://www.epa.gov/indian>.

Regions also ensure coverage through compliance monitoring, but focus primarily on state program oversight and capacity-building. Also, Regions provide leadership and support to states where federal intervention is needed to address complex or multi-state compliance issues. Furthermore, Regions consult with states to identify new and emerging issues that may warrant areas of national focus. Section V, below, discusses Regional and state planning, and program oversight.

3. Mechanisms for Managing the National RCRA Compliance Monitoring Program

OECA employs a variety of mechanisms to administer the RCRA compliance monitoring program. OECA's *NPMG*¹⁸ sets forth and explains annual Regional and state compliance monitoring obligations (e.g., goals, measures, reporting codes) for RCRA. Also, OECA and Regions negotiate – and each Region commits to – annual compliance monitoring measures (commitments/obligations) and goals (projections/targets) through OECA's Annual Commitment System (ACS). In addition, Regions memorialize their respective inspection commitments (and state projections) in ACS's Budget Automated System (BAS) database – and report their fulfillment of those commitments through BAS. Furthermore, Regions report *facility-specific* compliance monitoring information and compliance determinations in RCRAInfo, the official data system for RCRA inspections.¹⁹ Also, Regions and states generally use the Biennial Report (BR)²⁰ to determine the universe of regulated facilities, the amount of hazardous waste generated in a state, and other RCRA-related information. Moreover, each Region also negotiates inspection goals with each of its respective RCRA-authorized states. The agreed-upon goals are memorialized in documents, such as state Performance Partnership Agreements (PPAs), and Performance Partnership Grants (PPGs) where EPA grants are involved.

Certain expected compliance monitoring activities, however, are not captured by the ACS process, such as:

- Review and resolution of facilities on EPA's Watch List²¹;
- Data and permit reviews; and
- States' implementation of their own priorities.

D. Scope of this Document

This document discusses compliance monitoring principles, goals and measures, activities, and “best practices” for the Core Program of RCRA Subtitle C. While this document focuses largely on the Core Program, it also discusses compliance monitoring for national focus areas that involve RCRA Subtitle C.

This document covers compliance monitoring conducted:

¹⁸ www.epa.gov/ocfo/npmguidance/index.htm.

¹⁹ This document uses the inspection titles and acronyms established in RCRAInfo (2009). See also Appendix D.

²⁰ <http://www.epa.gov/osw/inforesources/data/biennialreport/index.htm>.

²¹ www.epa-otis.gov/watchlist.

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- By authorized states (known as “state-only activities”);
- Solely by EPA (“federal-only activities”) of facilities that are owned and/or operated by the federal government, state or local governments, tribes, or non-governmental entities; and of any facilities located in Indian country; and
- By both EPA and authorized states (“combined federal/state activities”) of non-government facilities.

States may conduct compliance monitoring activities beyond those required by EPA under the ACS process or PPAs/PPGs.²²

The RCRA program encompasses an array of compliance monitoring programs and functions performed by OECA, other EPA headquarters offices, Regions, and states. This document, however, examines only the Subtitle C Core Program and, specifically, those aspects of Subtitle C for which OECA has established a national compliance monitoring program. Thus, this document does *not* examine the full array of compliance monitoring activities that Regions or states may perform.²³

²² EPA has not established the number or type of RCRA inspections a state should conduct if a state elects to undertake inspections *in addition to* those required by the Agency.

²³ For clarification, and since there may be a need to coordinate inspections, the reader should be aware that other compliance monitoring activities *pursuant to* Subtitle C (or at facilities *subject to* Subtitle C) include the following types of inspections.

(1) Inspections of RCRA-regulated facilities for compliance with other legal authorities, such as the Clean Air Act or Clean Water Act.

(2) Inspections pursuant to other RCRA compliance authorities. For example, under RCRA Section 3013, EPA may conduct (or order) monitoring, testing, or analyses where the presence (or release) of hazardous waste may present a substantial hazard to human health or the environment. 42 U.S.C. § 6934.

(3) RCRA Section 7003. EPA encourages Regions to use Section 7003 where appropriate, in accordance with applicable Agency policies and guidance. See e.g., *Guidance on the Use of Section 7003 of RCRA* (Oct. 12, 1997) <http://intranet.epa.gov/oeca/ore/rcra/ise/documents/tab5.pdf>, or

<http://www.epa.gov/compliance/resources/policies/cleanup/rcra/971020.pdf>. States should use their comparable authorities as appropriate.

(4) RCRA corrective action. The Agency, however, strongly encourages inspectors of RCRA facilities that are subject to corrective action requirements to coordinate with other EPA or state personnel who also have responsibility for corrective action at such facilities (e.g., project managers, permit writers) to monitor compliance with corrective action requirements while conducting inspections, as appropriate. Because post-closure and corrective action requirements often overlap, similar coordination may be appropriate to ensure compliance with post-closure care requirements. To ensure the protectiveness and long-term stewardship of environmental control(s), OECA encourages inspectors evaluating facilities in the post-closure category to focus on the requirements of RCRA Sections 264/265.117-120. Particular attention should be focused on the requirements in both Section 264/265.117(c) to ensure that post-closure uses do not disturb the integrity of the environmental controls, and Section 264/265.119 to monitor the continued effectiveness of required notices. In addition, OECA encourages inspectors to evaluate the effectiveness of the recorded notices and, as appropriate, consider additional layers of institutional controls (ICs). For guidance on the selection, implementation, monitoring and enforcement of ICs, including links to information on ICs at RCRA corrective action facilities, see <http://www.epa.gov/superfund/policy/ic/index.htm>.

III. CORE PROGRAM: GOALS AND MEASURES, PROGRAM ELEMENTS

A. Background

1. Scope of the Subtitle C Compliance Monitoring Program

The RCRA Subtitle C program encompasses compliance monitoring for a variety of hazardous waste operations, i.e.:

- Treatment, Storage, and Disposal Facilities;
- Generators -- Large Quantity Generators (LQGs), Small Quantity Generators (SQGs), and Conditionally-Exempt Small Quantity Generators (CESQGs);
- Transporters; and
- Other RCRA Handlers.

As explained fully in the sections below, RCRA imposes inspection requirements for TSDFs – and OECA’s *NPMG* states corresponding expectations for those, and other, facilities. In summary:

- The statute mandates minimum inspection frequencies for TSDFs: annually for government-owned or operated TSDFs, and biennially for non-government TSDFs. OECA has established corresponding annual commitments.²⁴
- OECA has set minimum annual inspection expectations for LQGs: at least 20 percent of the universe.²⁵
- States may elect to inspect SQG, CESQG, Transporter, Non-notifier, and/or Other RCRA Handler facilities, in lieu of inspecting 20 percent of their LQG universe, under OECA’s policy for State Alternative Plans (or “State Flexibility Plans”).^{26, 27}

The foregoing inspections are covered by OECA’s ACS process,²⁸ and most of these inspection expectations have a dedicated BAS reporting code (e.g., RCRA01).

²⁴ See Section III.B, below.

²⁵ See Section III.C, below.

²⁶ See Section III.C.1(c), below. See also Appendix H, *Guidance for RCRA Core LQG Pilot Projects* (2007).

²⁷ Many states choose to conduct such inspections *in addition to*, rather than *in lieu of*, inspecting 20 percent of their respective LQG universes.

²⁸ See Section II.C.3, above. Certain other compliance monitoring activities are not within the ACS process. See *id.*

2. Rationale for Goals and Measures Minimum Requirements

OECA formulated the minimum goals and measures for the RCRA Subtitle C Core Program based upon the statutory mandate (for TSDFs), as well as the Agency’s obligation to ensure effective oversight of state programs and a federal presence throughout the regulated community. The annual goals and measures are summarized in Figure 3, and detailed in the following sections.

ACS Nomenclature	
•	ACS codes without “.s” are federal inspections, whereas codes with “.s” are state inspections.
•	ACS distinguishes between inspection “commitments” (measures based on statutory requirements and minimum program expectations) versus “projections” (goals or targets).

Fig. 3: Summary: Annual Goals and Measures for RCRA Subtitle C Core Program

	ACS #	Regulated Entity	Annual Goal/Measure/ Targets	
			EPA Region Goals/Measures	State Goals
TSDFs	(None)	Federal Government TSDF	Inspect each TSDF <i>owned or operated</i> by a department, agency or instrumentality of the United States.	
	RCRA03	State/local/tribal TSDF	Inspect each TSDF <i>operated</i> by a state, local or tribal government.	
	RCRA01	Non-government TSDF	Commit to inspect at least two (2) TSDFs in each state ^{1/} – and project by state the number of TSDFs to be inspected <i>by the Region</i> .	
	RCRA01.s	Non-government TSDF	<i>Project</i> by state the number of TSDFs to be inspected <i>by the state</i> .	Inspect at least 50% of the universe
LQGs	RCRA02	LQG	Commit to inspect at least 6 LQGs in each state ^{2/} – and project by state the number of LQGs to be inspected <i>by the Region</i> .	
	RCRA02.s	LQG	<i>Project</i> by state the number of LQGs to be inspected under state authority.	Inspect at least 20% of the universe (unless otherwise approved ^{3/})
Others Operations	(None)	-SQG -CESQG -Transporter -Other RCRA Handlers	States may substitute inspections of SQGs, CESQGs, Non-notifies, and/or Other RCRA Handlers (in lieu of LQG inspections) under an approved Alternate Plan. ^{1/}	
Federal Facilities	FED-FAC05	Federal Facilities	Conduct ten (10) inspections to support annually designated Federal Facility Integrated Strategies or exploratory areas (which may include RCRA Subtitle C or other media programs depending upon the particular Strategy).	
^{1/} OECA may approve a deviation from this obligation. See Section III.B.2(c), below. ^{2/} OECA may approve a deviation from this obligation. See Section III.C.1(a), below. ^{3/} Under an approved Alternative Plan, OECA (or the Region) may modify the 20 percent LQG requirement (RCRA02.s) to allow a state flexibility to inspect other RCRA facilities. See Section III.C.1(c).				

The specific goals and measures in this *CMS* are taken from OECA's *NPMG* for FY2010.²⁹

B. Treatment, Storage and Disposal Facilities

1. Statutory Background

Section 3007 of RCRA requires that:

- EPA annually undertake “a thorough inspection” of every TSDF “which is owned or operated by a department, agency, or instrumentality of the United States” (§ 3007(c)). An authorized state also may conduct inspections.
- EPA annually “undertake a thorough inspection” of every TSDF “which is operated by a State or local government” (§ 3007(d)).
- EPA or an authorized state conduct a program to “thoroughly inspect” every TSDF “no less often than every two years” (§ 3007(e)).³⁰

2. Goals and Measures (and ACS Codes)

a. Federal Government TSDFs

Pursuant to RCRA Section 3007(c), the Region must annually inspect each TSDF owned or operated by a department, agency or instrumentality of the United States.

(There is no ACS measure for this requirement.)

The statute mandates that EPA inspect these facilities, without regard to whether a state also conducts an inspection.

b. State-, Local-, and Tribally-Operated TSDFs

Pursuant to RCRA Section 3007(d), the Region must annually inspect each TSDF operated by a state or local government.
(ACS Commitment RCRA03)

This Regional obligation includes inspecting TSDFs operated by Tribes.^{31, 32}
(States generally are not authorized to carry out RCRA programs within Indian

²⁹ www.epa.gov/ocfo/npmguidance/index.htm. The *NPMG* is updated annually. Any changes to goals and measures for the RCRA compliance monitoring program would be announced in the *NPMG*.

³⁰ 42 U.S.C. § 6927(c)-(e).

³¹ The statute omits Tribes from its definition of “state,” 42 U.S.C. § 6903(31), and includes Tribes in its list of local governmental entities, 42 U.S.C. § 6903(13) (“municipality” means city, town, county, parish, district, or “an Indian tribe or authorized tribal organization or Alaska Native village”).

³² According to EPA's national Online Tracking Information System (OTIS), as of September 2009, one (1) TSDF was located in Indian country. Section V.A.1, below, discusses Regional compliance monitoring activities in Indian country.

country absent an express EPA finding.³³) An authorized state also may inspect a state or local TSDf, although this is not required by the statute and does not help EPA meet its compliance monitoring obligation.³⁴

RCRA03 pertains to TSDFs that are *operated* by state, local or tribal governments.³⁵ A TSDf that is owned – but not operated – by such a government is subject to inspection as a non-government TSDf (RCRA01/01.s), as discussed immediately below.

c. Non-government TSDFs

Consistent with RCRA Section 3007(e), the Region is to annually:

- Commit to inspect at least two (2) TSDFs in each state, unless OECA approves a deviation from this obligation.³⁶
(ACS Commitment RCRA01)
- Project by state the number of TSDFs to be inspected *by the Region* during the year. (ACS Commitment RCRA01)
This information should be recorded in the Comment field of BAS.³⁷
- Project by state the number of TSDFs to be inspected *by the state* during the year.
(ACS Commitment RCRA01.s)
Inspection targets should be identified by the inspecting agency.

Since a TSDf must be inspected at least once every two (2) years,³⁸ generally 50 percent (50%) of the TSDf universe should be inspected annually.³⁹ Also, because this is a coverage commitment, multiple inspections at the same facility count as only one (1) inspection. The Region and state together provide the required coverage, although the state has primary responsibility for this obligation (excluding TSDFs in Indian country). Regions help ensure coverage of the total TSDf universe since, in accordance with the statute, EPA must inspect federal, state, and local government TSDFs, and all TSDFs in Indian country.

For ACS Commitment RCRA01 and RCRA01.s (TSDFs), commitment levels are based on the RCRAInfo operating universe for TSDFs. The same RCRAInfo

³³ See also Section II.C.2, above, and references therein.

³⁴ Similarly, federally-recognized Tribes may conduct compliance monitoring activities in Indian country under tribal environmental laws, but such inspections do not help EPA meet any of its compliance monitoring obligations.

³⁵ 42 U.S.C. § 6927(d).

³⁶ Generally, a reduced commitment is allowed only where the TSDf universe in the state is small, since a minimum number of Regional inspections is necessary for effective program oversight. See Section V.C.

³⁷ The comment is to clarify whether the Region is fulfilling the standard obligation for two (2) inspections per state, or is committing to an OECA-approved alternative.

³⁸ RCRA § 3007(e), 42 U.S.C. § 6927(e). At the level of inspection activity required under RCRA01/01.s, Regions and states should be able to fulfill the statutory mandate to inspect each TSDf biennially.

³⁹ A Region/state, however, may elect to divide the universe otherwise (e.g., 55 % the first year - 45 % the second year), but must satisfy the statutory mandate to inspect each TSDf every two years.

inspection types will be counted for inspections under RCRA01 (non-government TSDFs) and RCRA03 (state/local/tribal TSDFs). See Appendix D.

3. Types of Inspections for TSDFs

RCRA mandates “thorough” inspections for TSDFs. Therefore, for purposes of this *CMS*, Compliance Evaluation Inspections (CEIs) generally are expected for operating TSDFs. A CEI encompasses pre-inspection preparation; field inspection; possible follow-up activities, such as re-visits to sample; and information requests. See Appendix D for more information on the elements of a CEI.

Ensuring that facilities maintain adequate financial responsibility is an important aspect of the RCRA compliance monitoring program.⁴⁰ Typically financial assurance reviews are not a field inspection activity nor conducted by field inspectors, or may follow a different regulatory schedule than field inspections. At a minimum, however, determining whether a facility is in compliance with requirements to keep financial assurance records on-site is an appropriate part of any CEI. Some states address compliance monitoring for financial responsibility by conducting Financial Record Reviews at least annually for each facility. Where this is not the case, it is beneficial for field inspectors to have financial records information prior to visiting the facility (or at least before the CEI is concluded) to have a complete picture of the facility’s compliance status.

OECA encourages states and Regions to coordinate their respective technical and financial reviews, and to include closure/post-closure and corrective action financial assurance compliance determinations for TSDFs, to the extent this can be accomplished within the current program framework.⁴¹ For example, pre-inspection activities for a CEI could include intra-agency coordination, so that the financial reviewer is aware of the pending CEI - and the field inspector is aware of the facility’s financial responsibility compliance status, such as any recent or pending compliance determination or whether the facility has submitted up-to-date financial documentation as required. Appendix D (Types of RCRA Inspections) explains the basic function and scope of RCRA CEIs. Section V.B.1, below, discusses qualitative standards for CEIs.

For non-operating TSDFs that have not completed clean closure, other types of RCRA inspections may be appropriate, in place of CEIs, under certain circumstances. For example, Groundwater Monitoring Evaluations (GMEs) should be conducted at any new or newly-regulated land disposal facility, as defined under RCRA Section 3004(k).⁴² Once it is determined that the groundwater monitoring system is adequately designed and

⁴⁰ OECA’s FY2010 *NPMG* states explicitly that, consistent with RCRA Section 3004(a), TSDF inspections include RCRA financial responsibility. FY2010 *NPMG*, at 41-42. www.epa.gov/ocfo.

⁴¹ Financial assurance reviews continue to be important even if RCRA financial assurance is not an OECA National Enforcement Initiative. Therefore, OECA will work with states to determine how this objective can best be addressed over the long term.

⁴² 42 USC § 6924(k).

installed, an Operation and Maintenance (OAM⁴³) inspection may become the appropriate inspection for groundwater monitoring. More frequent GMEs should be conducted in certain situations, such as those involving complex compliance or corrective action requirements, inadequate groundwater monitoring systems, significant changes to groundwater monitoring systems, or actual or suspected changes in local groundwater regimes. Regions and states are expected to inspect at least every three (3) years TSDFs that are no longer in the operating universe but still have compliance requirements (e.g., via a CEI, GME and/or OAM).⁴⁴ Section V.B.1, below, also discusses inspections at TSDFs that are no longer accepting waste.

4. Program Elements

In accordance with the statute and *NPMG*,⁴⁵ TSDF inspections should verify compliance with at least the following requirements:

- Maintaining records of all hazardous waste that is treated, stored, or disposed, and the manner in which all such waste is treated, stored, or disposed.
- Satisfactory reporting and compliance with the manifest system.
- Proper treatment, storage, or disposal of all waste received by the facility.
- Establishing contingency plans for effective action to minimize unanticipated damage from any treatment, storage, or disposal of hazardous waste.
- Submission of Biennial Reports.
- General inspection requirements, security, and preparedness and prevention.
- Personnel training.
- Financial responsibility.⁴⁶

C. Generators

Although RCRA imposes different inspection frequency requirements for non-government TSDFs versus government owned/operated TSDFs,⁴⁷ there is no such distinction for Generators. Thus, all federal, state, tribal, and local government Generators are included within the Generator universes discussed below.

1. Large Quantity Generators

a. Goals and Measures (and ACS Codes)

The Region and state together must annually inspect at least 20 percent (20%) of the LQG universe, so that the entire universe is inspected every five (5) years,

⁴³ Formerly referred to as “O&M.”

⁴⁴ See e.g., FY2010 *NPMG*, at 44, www.epa.gov/ocfo.

⁴⁵ See RCRA § 3004(a); 42 USC § 6924(a); FY2010 *NPMG*, at 41-42, www.epa.gov/ocfo.

⁴⁶ FY2010 *NPMG*, at 42. www.epa.gov/ocfo.

⁴⁷ RCRA § 3007, 42 U.S.C. § 6927.

unless the state obtains approval to deviate from this requirement under an approved Alternative Plan.⁴⁸ This is a coverage commitment, so multiple inspections at the same facility count as only one (1) inspection. LQG inspections, whether conducted by the Region or state, should be CEIs.⁴⁹

The Region is to:

- Commit to inspect at least six (6) LQGs in each state, unless OECA approves a deviation from this obligation.⁵⁰
(ACS Commitment RCRA02)
- Project by state the number of LQGs to be inspected *by the Region* during the year.
(ACS Commitment RCRA02)
This information should be recorded in the Comment field of BAS.⁵¹ To ensure a level of protectiveness in Indian country comparable to that afforded other areas in a state, OECA expects Regions to annually inspect at least 20 percent of the LQGs in Indian country.⁵²
- Project by state the number of LQGs to be inspected *by the state* during the year.
(ACS Commitment RCRA02.s)
Inspection targets should be identified by the inspecting agency.

Regions are encouraged to perform inspections in any of the following areas, in the following order of priority:

- National Enforcement Initiative sectors.
- In environmentally sensitive areas.
- In Indian country.
- Emerging sectors.
- Entities with violations in more than one state, and particularly recalcitrant violators.
- To support state referrals, or address illegal recycling.
- Areas with environmental justice concerns.

The state is to:

- Inspect at least 20 percent (20%) of its LQG universe each year.
(ACS Commitment RCRA02.s)

An appropriate portion of the Region's six (6) required LQG inspections (RCRA02), may be counted toward the state's 20 percent coverage obligation

⁴⁸ Section III.1(c), below.

⁴⁹ See e.g., Section V.B.1 and citations therein.

⁵⁰ Generally, a reduced commitment is allowed only where the Generator universe in the state is small, since a minimum number of Regional inspections is necessary for effective program oversight. See Section V.C.

⁵¹ The comment is to clarify whether the Region is fulfilling the standard expectation for six (6) inspections per state, or committing to an OECA-approved alternative.

⁵² According to OTIS, as of September 2009, approximately 30 LQGs were located in Indian country. Section V.A.1, below, discusses Regional compliance monitoring activities in Indian country.

(RCRA02.s). To avoid shifting the Region's focus and resources from program oversight to a "work-sharing" arrangement (which is *not* contemplated by the national program), the Region's contribution should constitute only a small portion of the state's 20 percent obligation (e.g., less than ten percent).⁵³

The LQG universe is the total number of Generators in the most recent Biennial Report.⁵⁴ A state, however, may derive an alternative universe number from another reliable data source, provided the Region and state agree to, and document, the alternative number. If the Region accepts an alternative universe number for any state, then the Region should record for that state both the alternative universe number and the data source in the "Comment" field of BAS.

b. Program Elements

In accordance with the statute and *NPMG*,⁵⁵ inspections of LQGs generally should be CEIs, and should verify compliance with at least the following requirements:

- Identification of all hazardous waste streams, and proper characterization of all hazardous waste.
- Provision of information on the general chemical composition of hazardous waste to persons transporting, treating, storing and disposing such waste.
- Recordkeeping on the management and disposition of waste.
- Proper labeling and identification of waste for storage, transport, and disposal.
- Proper handling of hazardous waste on-site, including use of a containment building, proper containers, and tanks and drip pads.
- Use of the manifest system and all other means necessary to ensure that hazardous waste is sent to the appropriate TSDF.
- Submission of Biennial Reports reporting the waste generated.
- Contingency plan, general inspection requirements, security, and preparedness and prevention.
- Personnel training.

c. Alternative Plans (State Flexibility Plans)

To improve environmental outcomes from its compliance assurance activities, a state may seek approval of an alternative inspection plan that allows flexibility from the obligation to inspect at least 20 percent of its LQG universe

⁵³ For example, given a universe of 100 LQGs, the state annually must conduct 20 LQG inspections (usually, CEIs). The Region's contribution to the state's coverage requirement should not exceed two (2) inspections (i.e., 10% of the required 20 inspections). The Region, however, can do more inspections, but such additional inspections will not count toward the state's coverage requirement.

⁵⁴ <http://www.epa.gov/osw/inforesources/data/biennialreport/index.htm>.

⁵⁵ See RCRA § 3002(a); 42 USC § 6922(a); FY2010 *NPMG*, at 42, www.epa.gov/ocfo.

(RCRA02.s). The state may use this flexibility to provide for compliance monitoring of SQGs, CESQGs, Transporters, Non-notifiers, and/or Other RCRA Handlers.

For any proposed alternative approach, this policy dictates that the level of inspection resources will remain the same. Inspection resources should not decrease, although they may be directed to different targets and may be coordinated more closely with other resources such as compliance assistance or compliance incentives.

Information on Alternative Plans is provided in OECA's *Guidance for RCRA Core LQG Pilot Projects* (2007).⁵⁶ In short, a state seeking flexibility must present a written plan to the Region. The state may adopt one of three (3) pre-approved alternative approaches,⁵⁷ or may design its own flexibility alternative. If the state uses one of the pre-approved approaches, then the Region will approve, seek modifications, or deny approval of the state's plan under the Region's own authority. If, however, the state devises its own alternative approach, then the state must submit its written plan in accordance with the SRF (Element 13), and the Region must consult with OECA before approving the plan.

In brief, the state's written plan must include, at a minimum:

- A description of the overall level of effort (number of inspections), and how it will deviate from the standard 20 percent LQG obligation.
- The scope of the inspections proposed under the alternative approach (e.g., number of each type of Generator to be inspected, industrial sectors to be focused upon, etc.).
- The outcomes expected from the alternative approach.
- A strategy to measure actual outcomes to demonstrate whether the alternative approach achieved the anticipated outcomes.

The Region should identify in the "Comment" field of BAS any state that is following an approved Alternative Plan.

⁵⁶ See Appendix H, or <http://www.epa.gov/compliance/resources/policies/monitoring/rcra/fy08rcraguidancelqgproject.pdf>.

⁵⁷ The pre-approved flexibility alternatives allow for an "80 Percent," "Greater than 5 Ton," or "Straight Trade-off" approach.

2. **Small Quantity Generators and Conditionally-Exempt Small Quantity Generators**

a. **Goals and Measures**

EPA has not established requirements concerning the type, or minimum number, of inspections for SQGs or CESQGs. A state, however, may elect to inspect these facilities in lieu of inspecting 20 percent of its LQG universe under an approved Alternative Plan (above), or in addition to inspections called for by EPA.

b. **Program Elements**

See the Program Elements for LQGs, above.

D. **Transporters**

1. **Goals and Measures**

EPA has not established requirements concerning the type, or minimum number, of inspections for Transporters. A state, however, may elect to inspect these facilities in lieu of inspecting 20 percent of its LQG universe under an approved Alternative Plan (above), or in addition to inspections called for by EPA.

2. **Program Elements**

In accordance with the statute and *NPMG*,⁵⁸ Transporter inspections should verify compliance with at least the following requirements:

- Recordkeeping.
- Properly labeled waste.
- Use of the manifest system.
- Proper management of hazardous waste during transportation.
- Hazardous waste delivered to TSDFs that are permitted by law to take such waste.

E. **Federal Facilities**

Compliance monitoring for federal facilities under RCRA (and other statutes) occurs largely, but not exclusively,⁵⁹ in the context of Integrated Strategies and exploratory areas which change over time and, thus, are described in the annual OECA *NPMG*. Section IV.C discusses Federal Facility Integrated Strategies.

⁵⁸ See RCRA §3003(a); 42 U.S.C. § 6923(a); FY2010 *NPMG*, at 42. www.epa.gov/ocfo.

⁵⁹ Federal facilities are a part of the Core Program (e.g., the statutory mandate to inspect each federal TSDF annually), and may be included in OECA National Enforcement Initiatives.

1. Statutory Background

Section 3007(c)⁶⁰ of RCRA requires that EPA annually undertake “a thorough inspection” of each TSDf owned or operated by a federal department, agency or instrumentality. Furthermore, Section 3007(c) provides that authorized states “also may conduct an inspection” of such TSDFs.

2. Goals and Measures (and ACS Code)

The Federal Facilities Core Program section in OECA’s yearly *NPMG* outlines annual goals and measures for EPA’s federal facilities enforcement and compliance program. These are often focused on particular Integrated Strategies which balance compliance monitoring, compliance assistance, and enforcement activities.

FFEO asks Regions to commit to conduct ten (10) inspections to support identified Integrated Strategy areas (ACS Commitment FED-FAC05). Depending on the Integrated Strategies currently in effect, these inspections could include RCRA Subtitle C and other media programs. Inspections identified for federal facilities are unique to the Federal Facilities program, and are in addition to inspections outlined for other OECA Core Programs.

⁶⁰ 42 U.S.C. § 6927(c).

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IV. NATIONAL AREAS OF FOCUS: NATIONAL ENFORCEMENT INITIATIVES, ISSUES AND EMERGING AREAS OF NATIONAL SIGNIFICANCE, FEDERAL FACILITY INTEGRATED STRATEGIES

A. Background

RCRA compliance monitoring occurs in the context of both the Core Program and any national focus areas – National Enforcement Initiatives, issues of national significance, or Federal Facility Integrated Strategies – that include RCRA. If a national focus area includes RCRA, then compliance monitoring for the Core Program and focus area should be complementary, and not mutually exclusive. Generally, Regions and states should be able to fulfill their compliance monitoring obligations for the Core Program and national focus area concurrently, by directing an appropriate portion of their ACS-required inspections to facilities targeted under the national focus area.

B. National Enforcement Initiatives

OECA periodically selects National Enforcement Initiatives from among its various media programs to address significant and/or national patterns of non-compliance that have been under- or unaddressed by the Core Program.⁶¹ National Enforcement Initiatives may affect a single media program or multiple programs. For example, for FY2008-2010, OECA designated two National Enforcement Initiatives that included a Subtitle C component: Financial Responsibility, and Mineral processing.⁶²

1. Federal – State Relations in National Enforcement Initiatives

Traditionally, Regions conduct National Enforcement Initiative inspections, with limited state involvement. OECA, however, encourages Regions to appropriately coordinate with their states. States may play an important role in addressing the issues targeted in a National Enforcement Initiative, particularly if the compliance problem is pervasive and will need to be addressed after the initiative ends. For example, a national initiative that involves surface impoundments that improperly accept hazardous waste could affect over 7,000 facilities, and it would be impracticable for the Region to cover them all. In such a case, both the Region and state would need to conduct compliance monitoring: the Region, to determine facility compliance under the initiative, and to build the state's capacity to adequately address the issue in its Core Program; and the state, to help the

⁶¹ For general information about OECA National Enforcement Initiative (and earlier National Priorities), see <http://epa.gov/compliance/data/planning/priorities/index.html#priorities>.

⁶² See <http://intranet.epa.gov/oeca/oc/npmas/priorities/index.html>.

Region with the national initiative, and to focus more on the issue in its Core Program while, and after, the initiative is in effect.

2. Potential Interface Between Core Program and National Enforcement Initiatives

When OECA designates a National Enforcement Initiative(s) for RCRA Subtitle C, it is important to ensure coordination, and an appropriate allocation of resources, between the Core Program and enforcement initiative. The Core Program depends on an adequate, sustained commitment to achieve and maintain compliance with all RCRA requirements by all types of operations/handlers throughout all sectors of the regulated community. Similarly, an appropriate level of effort is needed for any RCRA National Enforcement Initiative, to ensure that EPA can successfully address important national environmental problems associated with a particular regulatory obligation, industry sector, and/or type of operation (e.g., TSDFs versus LQGs).

Compliance issues that become RCRA Subtitle C National Enforcement Initiatives may or may not impact compliance monitoring for the Core Program. Whether such impact occurs depends, for example, on which type of RCRA operations/handlers are subject to the National Enforcement Initiative, and the Region/state's previous practice in conducting inspections. For example, a RCRA financial assurance national initiative that involves TSDFs should not adversely affect Core Program resources because the Core Program already accounts for these inspections. That is, the Core Program already requires Regions and states to conduct annual and biennial CEI inspections at TSDFs (RCRA01, RCRA01.s, RCRA03⁶³) - and the *NPMG* already provides that TSDF inspections include determining compliance with financial assurance requirements.⁶⁴

Similarly, a National Enforcement Initiative that involves LQGs should have no impact on a state's Core Program because states are already required to conduct CEI inspections at 20 percent of their LQG universe (RCRA02.s).⁶⁵ On the other hand, a state may observe an effect if its CEI inspections typically had been less extensive than ordinarily expected for a qualitative CEI and the state must now meet a higher standard for purposes of the National Enforcement Initiative. Sections V.B.1 and V.C, below, discuss qualitative standards for CEIs.

Conversely, a National Enforcement Initiative might impact a state's Core Program if it imposes an *additional burden* on resources by calling for inspections not already mandated, such as at SQG, CESQG, Transporter, Non-notifier, and/or Other RCRA Handler facilities. In such an event, OECA would clarify what trade-offs it may permit in the Core Program to help accommodate the National Enforcement Initiative.

⁶³ See Section III.B, above.

⁶⁴ FY2010 *NPMG*, at 42. www.epa.gov/ocfo. See also Section III.B.3-4, above.

⁶⁵ See Section III.C.1(a), above.

C. Issues and Emerging Areas of National Significance

Periodically, EPA may identify issues or emerging areas of national significance that warrant a coordinated EPA response, but which may not rise to an OECA National Enforcement Initiative or for which it would be untimely to await the next OECA enforcement initiative selection cycle. Similar to National Enforcement Initiatives, these issues and areas may be sector-based or problem-based, or may be limited to one corporate entity operating in multiple states or Regions. Recent examples of these efforts which involved RCRA Subtitle C, include EPA investigations of polyvinyl chloride facilities, electronic waste recyclers, and power plants. EPA attempts to coordinate these activities with the states but sometimes these types of investigations will impact the Core Program by directing federal inspection resources to areas outside the LQG and TSD universe.

D. Federal Facility Integrated Strategies

FFEO and the Regions periodically select Integrated Strategies to focus on particular federal facility issues. These strategies may continue for multiple fiscal years. For example, in FY2009 the Integrated Strategies were:

- CWA/NPDES Stormwater Integrated Strategy;
- Federal Underground Storage Tank Integrated Strategy⁶⁶; and
- Federal Laboratories Integrated Strategy.

Also, for instance, for FY2010, FFEO and the Regions designated the following Integrated Strategies:

- CWA/NPDES Stormwater Integrated Strategy;
- Federal Underground Storage Tank Integrated Strategy; and
- Federal Prisons Integrated Strategy.

For further information concerning current and proposed Federal Facility Integrated Strategies, consult the *NPMG* and FFEO guidance currently in effect.

⁶⁶ FFEO administered this UST strategy in collaboration with OSWER/OUST.

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V. PROGRAM INFRASTRUCTURE: PLANNING, INSPECTIONS, OVERSIGHT, REPORTING

A. Planning

1. Federal - State - Tribal Relations

Federal compliance monitoring activities should complement and provide appropriate oversight of state activities. Regions and states should work together to determine the appropriate mix of federal and state compliance monitoring activities to meet Subtitle C Core Program expectations consistent with ACS obligations,⁶⁷ including compliance monitoring activities in Indian country (for which the Region generally is responsible⁶⁸). In making such determinations, each Region should examine the compliance status of facilities within the Region. Figure 4 summarizes the respective program objectives and requirements for Regional and state compliance monitoring programs.

Federal compliance monitoring also should include adequate coverage in Indian country. Since RCRA does not provide for Tribes to obtain RCRA Subtitle C authorization, EPA has a direct implementation role in Indian country. The Region should provide a federal presence in Indian country comparable to the level of coverage provided outside of Indian country by the Region and state together. This helps ensure that the level of protection in Indian country is no less robust than elsewhere in the state. Adequate coverage in Indian country means, at a minimum, annually inspecting each tribally-operated TSDf (RCRA03),⁶⁹ and at least 20 percent of the LQGs in Indian country in each state (RCRA02).⁷⁰ Furthermore, federal compliance monitoring should complement tribal environmental programs implemented under tribal laws.⁷¹

⁶⁷ See Section III, above.

⁶⁸ States generally are not authorized to conduct RCRA compliance monitoring activities in Indian country. See Section II.C.2, above, and citations therein.

⁶⁹ See Sections III.B, above. The Region should inspect a TSDf that is located in Indian country – but not operated by a Tribe – every two years (RCRA01).

⁷⁰ See Section III.C.1(a), above. This level of coverage is equivalent to the OECA requirement for a state to annually inspect at least 20 percent of its LQG universe (RCRA02.s).

⁷¹ Tribes may develop hazardous waste management programs under tribal law, distinct from the federal RCRA program. A Tribe's hazardous waste program can include compliance monitoring and enforcement activities. Regions should, therefore, consult with Tribes to identify ongoing, new and emerging issues that may warrant the attention of the federal RCRA program.

Resource Conservation and Recovery Act (RCRA) Compliance Monitoring Strategy

Fig. 4. Regional and State Core Program Compliance Monitoring Objectives & Goals/Measures^{1/}		
	Regions	States
Program Objectives	<ul style="list-style-type: none"> - Federal presence among regulated universe - Determine facility compliance - State program oversight & capacity-building - Leadership/support to states on complex issues - Compliance monitoring in Indian country 	<ul style="list-style-type: none"> - Primary responsibility for coverage of regulated universe - Determine facility compliance - Alert EPA to regulatory implementation issues
Annual Goals / Measures (ACS)	<ul style="list-style-type: none"> - Inspect each federal TSDf (No ACS Code) - Inspect ≥ 2 non-government TSDfs per state (RCRA01)^{2/} - Inspect ≥ 6 LQGs per state (RCRA02)^{2/} - Inspect each state/local/tribal government TSDf (RCRA03) 	<ul style="list-style-type: none"> - Inspect ≥ 50 % of non-government TSDf universe (RCRA01.s) - Inspect ≥ 20 % of LQG universe^{3/} (RCRA02.s)
^{1/} See also discussion in Section II.C.2. ^{2/} OECA may approve a deviation from this commitment. See Sections III.B.2(c)(TSDfs), and III.C.1(a)(LQGs), above. ^{3/} Unless using approved Alternative Plan. See Section III.1.C(c).		

2. Inspection Priorities

In light of continuing concerns regarding threats to human health and the environment posed by improper management of hazardous waste, Regions and states should focus compliance monitoring efforts on facilities that pose the greatest risk to human health or the environment, particularly:

- OECA National Enforcement Initiatives.⁷²
- Never-inspected LQGs (Section III.C.1(a), above, also discusses LQG inspection priorities.)
- Non-notifier facilities believed to generate hazardous waste in quantities that would require notification.
- Persons that generate, transport, treat, store, or dispose of significant quantities of hazardous waste, particularly those in proximity to population centers, areas with environmental justice concerns, or environmentally sensitive areas.
- Repeat violators.
- Facilities with complex operations or processes that increase the likelihood of missing waste streams or making improper exemption determinations.
- Facilities that are the subject of citizen complaints. (Regions and states should perform an appropriate level of follow-up to citizen complaints. Regions/states should determine whether such follow-up necessitates an on-site inspection or an alternative action based upon the circumstances, such as the nature of the complaint, or the Region’s knowledge about past violations or risks associated with the facility.)

Regions and states, however, should address all identified non-compliance with RCRA Subtitle C, in accordance with applicable policies. Regions are expected to capture and report all compliance monitoring outcomes, and states are encouraged to do so as well.

⁷² See Section IV.B, above.

B. Inspections

1. Compliance Evaluation Inspections

There are many types of RCRA inspections, the applicability of which varies based upon the facility status; and the intended purpose, focus, scope, and anticipated use of the inspection results. Appendix D identifies the various types of inspections defined in RCRAInfo. Consistent with EPA policy, the CEI is the primary mechanism for monitoring compliance with Subtitle C requirements, and is the standard for inspections of LQGs and operating TSDFs.⁷³ When a TSDF is no longer accepting waste, then an OAM or GME inspection may be appropriate as a substitute for a CEI. Also, if a closed facility has a post-closure permit, then the inspection should include determining compliance with the terms of that permit. Section III.B.3, above, also discusses inspections at non-operating TSDFs that have not completed clean closure.

EPA policy also has established that a CEI is intended to be a comprehensive evaluation of the compliance status of a facility under all applicable RCRA regulations and permits.⁷⁴ Thus, upon completion of a CEI, the Region or state should fully understand not only the plant's permit compliance status, but also the breadth of the facility's operations related to hazardous waste, for example:

- What the plant manufactures, and how all major processes operate;
- Whether all waste streams have been identified, including those generated during start-up, shut-down, turnaround, and malfunction;
- Whether proper hazardous waste determinations have been made for all waste streams generated by those processes; and
- Whether waste is being handled properly.

Regions and states should be prepared to conduct sampling in appropriate circumstances, such as where a waste stream has been: (a) missed and, therefore, not characterized; (b) characterized, but based only on process knowledge rather than sampling; or (c) sampled, but the sampling did not represent all potential operating parameters and conditions (e.g., chemical and process changes, start-up, shut-down, upset, malfunction).⁷⁵

After the Region/state has become adequately familiar with a facility (a TSDF or LQG) that has a good track record of compliance, then a Focused Compliance Inspection (FCI)

⁷³ See e.g., *RCRA Inspection Manual* (Rev., Nov. 1998), at 1-8,

<http://www.epa.gov/compliance/resources/policies/civil/rcra/rcrarevinspman-rpt.pdf>.

⁷⁴ See e.g., Appendix D (RCRAInfo definition of CEI inspections). See also generally, *RCRA Inspection Manual* (Rev., Nov. 1998), <http://www.epa.gov/compliance/resources/policies/civil/rcra/rcrarevinspman-rpt.pdf>.

⁷⁵ As a tool in determining that the facility has made adequate hazardous waste determinations or handled waste properly, the Region or state should collect, or require the facility to collect, samples of the waste in question and the environmental media in which it is placed. To support enforcement actions, it is important to ensure that sampling methodology follows appropriate EPA guidance or standard operating procedures for quality assurance and quality control. Use of this tool should be evaluated during the pre-inspection file and background data review, so that the inspector will have appropriate resources available during the inspection.

or other less extensive review may be the appropriate compliance evaluation tool.⁷⁶ The Region/state would acquire such familiarity after conducting a sufficient number of inspections that verify that all waste streams have been identified and properly characterized, and that such waste is being handled properly. Although state inspections need not strictly follow EPA's guidance and may differ in form or be more stringent than EPA's protocol, the Agency views its inspection guidance as the benchmark for the *minimum qualitative* aspects of a RCRA inspection. Section V.C discusses oversight inspections, and the conditions under which it may be appropriate for a Region to allow a state to conduct an FCI, rather than a CEI, at a facility with a good compliance history.

OECA has reviewed various data entries and reports of RCRA inspections conducted by Regions and states. This review indicates that some inspections may not have been conducted in accordance with applicable inspection protocol, and/or may have been mischaracterized. For instance, OECA found several instances reporting that two or three "CEIs" had been conducted at a single plant within one year – and one state reported conducting 250 "CEIs" at a single facility within a nine (9) month period. When a CEI is conducted, ordinarily a Region/state need conduct only a single CEI at a facility within that year for purposes of RCRA requirements.⁷⁷ Furthermore, for coverage purposes multiple inspections at the same facility count as only one (1) inspection (RCRA01/01.s for TSDf inspections; RCRA02/02.s for LQG inspections).⁷⁸ Nonetheless, a state may have an appropriate reason for visiting a facility several times within a year (although the number of visits should not be excessive). For example, because of the time required to perform a thorough analysis of a facility or to have a regular field presence at a facility, a state may spread out the visits necessary to complete a CEI over several months. When such multiple visits over an extended period of time are appropriate, the first day of the final inspection (known as Day Zero⁷⁹) should be recorded as the date of the CEI – and the previous visits (which may have occurred months prior) should be recorded as FCIs or another type of RCRA inspection as appropriate for the activities conducted during those visits. Appendix D defines the types of RCRA inspections recognized by RCRAInfo. Guidance on RCRA inspections is available in the *Revised RCRA Inspection Manual* (Nov. 1998).⁸⁰

⁷⁶ The state may designate "hazardous waste determination" as the focus of such an FCI. Also, to ensure the state receives credit for a Region-approved FCI performed instead of a CEI, the state may either: (a) when reporting the FCI in RCRAInfo, note in the Comment field that the inspection was performed in lieu of a CEI per the Region's approval, consistent with this CMS; and/or (b) when reviewing its SRF data report, confirm that the report accurately reflects (or correct the report to reflect) the state's agreement with the Region to perform the FCI in lieu of a CEI. (The state may also take such an opportunity to ensure the SRF report reflects any Regional approval to use an alternative facility universe, if applicable.)

⁷⁷ Some states, however, have laws or policies that require more frequent inspections, or CEIs twice a year at facilities that receive CERCLA wastes.

⁷⁸ See Sections III.B and C, respectively, above.

⁷⁹ See e.g., generally, *Hazardous Waste Civil Enforcement Response Policy* (2003), at Appendix H or <http://www.epa.gov/compliance/resources/policies/civil/rcra/finalerp1203.pdf>.

⁸⁰ <http://www.epa.gov/compliance/resources/policies/civil/rcra/rcrarevinspman-rpt.pdf>.

2. **“Exploratory” Inspections**

EPA encourages the appropriate use of “exploratory” inspections to identify potentially significant non-compliance issues. For example, OECA investigated the extent to which facilities with surface impoundments may be receiving hazardous waste in violation of Subtitle C. OECA examined this issue because hazardous waste in unregulated surface impoundments can cause significant harm to human health and a variety of environmental media, and anecdotal evidence indicated widespread non-compliance with applicable regulations. This investigation entailed a preliminary database screening to identify potential inspection targets, followed by on-site inspections.⁸¹ The inspections confirmed that a high percent of the targeted facilities are using non-RCRA-permitted surface impoundments to handle Subtitle C hazardous waste.

3. **Inspection of “Mixed Type” Facilities**

For “mixed type” facilities (e.g., a facility that is a TSDf, Generator, and/or Transporter), a CEI is deemed to be complete only when full inspections of all aspects of that facility have been completed. Additionally, if a facility is a TSDf as well as a Generator and/or Transporter, then it is counted as a TSDf for purposes of universe coverage.

C. **Program Oversight**

To ensure a level playing field and adequate oversight of state compliance monitoring activities, Regions should use a variety of available mechanisms, including:

- Implementation of the State Review Framework (SRF).⁸²
- The Watch List.⁸³
- Annual Commitment System grant reviews.
- Oversight inspections, alone or in collaboration with state inspectors.

OECA uses the SRF as the primary tool for evaluating states’ performance of compliance monitoring programs. OECA also uses the activities and results reported to RCRAInfo and the Integrated Compliance Information System (ICIS) to conduct Regional and state reviews. Therefore, timely reporting to these databases is critical. In particular, since EPA seeks to quickly address violations that pose the greatest risk to human health or the environment, the Agency will look at the:

- Number of inspections, investigations, and citizen complaints.
- Number of facilities identified as being in Significant Non-Compliance (SNC), and the percent of the universe these facilities comprise.

⁸¹ OECA identified potential inspection targets by cross-referencing two EPA databases to locate TSDf’s that *had* NPDES permits that indicated discharges to apparent surface impoundments, *but lacked* Subtitle C permits for those impoundments. This cross-referencing resulted in hundreds of potential targets. Thereafter, each Region selected several facilities to inspect to verify the conclusions drawn from the database screening.

⁸² www.epa-otis.gov/otis/stateframework.html.

⁸³ www.epa-otis.gov/watchlist.

- Number, and percent of the universe, addressed and resolved in a timely and appropriate manner.
- Watch List.⁸⁴

OECA also will consider the types of outcomes the state is obtaining from its compliance assurance program if this information is available, e.g., whether, as a result of inspections and enforcement, facilities *decrease* the amount of hazardous waste they generate or handle improperly, and *increase* process and operational improvements by substituting non-hazardous materials or other means.

Regions should use oversight inspections to both maintain a credible federal presence, and provide appropriate program oversight. Therefore, for example, Regions are expected to annually inspect at least two (2) non-government TSDFs (RCRA01⁸⁵) and six (6) LQGs (RCRA02⁸⁶) in each state, unless OECA approves a deviation. The Region's role, however, is not limited to oversight, since the Agency is authorized to inspect any facility, in any state (and in Indian country), at any time.

There are two primary purposes for federal inspection commitments (beyond meeting any requirements imposed by the statute). First, Regions should maintain a federal presence in the Subtitle C Core Program, including full program implementation in Indian country.⁸⁷ Oversight inspections help serve this purpose.

Second, oversight inspections enable Regions to assess and support state compliance monitoring programs. For instance, as discussed above,⁸⁸ although CEIs are the primary mechanism for evaluating compliance at LQGs and operating TSDFs, in the appropriate circumstance, a Region may allow a state to perform a less extensive evaluation at a facility, such as an FCI. A Region should exercise its discretion to allow less extensive inspections only where the Region has confirmed that both: (a) the particular facility has a track-record of compliance; and (b) the state's CEI compliance monitoring activities meet minimum *qualitative* standards set by EPA's inspection guidance (although the form of the state's inspections may differ).

For example, the Region should not be the first to identify an obvious, longstanding compliance problem (e.g., unpermitted surface impoundment) that the state should have, but had not, identified in a previous CEI. If, through an oversight inspection done after a state CEI, the Region finds such a previously unidentified compliance problem, then the Region should *not* relax the inspection requirements for that facility. Rather, finding such omissions by the state's compliance monitoring program indicates that the Region should: (a) expect a CEI, rather than a less rigorous inspection, at the facility; (b) work with the state to analyze the situation concerning the facility and/or the state's inspection capabilities if there is a pattern; and (c) increase training and support to the state program. Conversely, if the Region finds that the state's CEI did not miss compliance problems that probably existed at the time of the state's CEI, then it may be appropriate for the Region to allow the state to conduct an FCI (or other less extensive

⁸⁴ FY2010 NPMG, at 45-46, www.epa.gov/ocfo.

⁸⁵ See Section III.B.2(c), above.

⁸⁶ See Section III.C.1(a), above.

⁸⁷ See Section V.A.1, above.

⁸⁸ Section V.B.1, above.

evaluation) at the facility. Section V.B.1, above, discusses apparent anomalies in reporting CEIs. Appendix E identifies OECA-recommended “best practices” for oversight inspections.

D. Reporting and Data Quality

OECA issues an annual Enforcement and Compliance Reporting Plan each fiscal year that provides Core Program and National Enforcement Initiative reporting expectations, measures pursuant to the Government Performance Results Act (GPRA), schedules, and other information.⁸⁹ That memorandum is OECA’s comprehensive guide to annual reporting obligations for compliance monitoring (and other compliance tools) for RCRA and other media programs.

Reporting Reminders

Use the “Comment” field of BAS to report if:

- A state:
 - Uses a data source other than the Biennial Report to determine its LQG universe. Record the alternative universe number and the data source.⁹⁰
 - Uses an Alternative Plan.⁹¹
- A Region deviates from the expectation to inspect at least two (2) non-government TSDFs (RCRA01⁹²), or six (6) LQGs (RCRA02⁹³) annually.

Properly characterize and record CEIs and other types of inspections in RCRAInfo.⁹⁴

Regions and states are expected to report their number of inspections (outputs). Regions are required to capture inspection outcomes using Inspection Conclusion Data Sheets (ICDS). Regions also should encourage states to report their inspection outcomes in a data system (e.g., in the Comment field of RCRAInfo), or in an alternative report agreed upon by the Region and state. Outcome reporting is required of states operating under approved Alternative Plans.⁹⁵ Also, SRF reviews will consider state outcomes if that information is available.⁹⁶

Examples of reporting inspection outcomes include:

- Recording the approximate quantities of waste confirmed as being handled in accordance with applicable regulations.
- Updating the Generator status of regulated facilities, as necessary (e.g., from SQG to LQG) in RCRAInfo.

⁸⁹ This *CMS* does not modify or replace any OECA data collection or reporting policies, guidance, or obligations.

⁹⁰ See Section III.C.1(a), above.

⁹¹ See Section III.C.1(c), above.

⁹² See Section III.B.2(c), above.

⁹³ See Section III.C.1(a), above.

⁹⁴ See Section V.B.1, above.

⁹⁵ See Section III.C.1(c), above, citing *Guidance for RCRA Core LQG Pilot Projects* (2007), at Appendix H.

⁹⁶ See Section V.C, above.

- Reporting the quantities of waste not being handled properly at the time of inspection but, thereafter, being handled properly because of complying actions taken by the facility as a result of compliance assistance, enforcement (formal or informal), or other means.

Outcome reports should be brief and use data from the Biennial Report (or the agreed-upon alternative data source). Examples of simple outcome reports are provided in Figure 5, below, and in OECA's guidance for Alternative Plans.⁹⁷ Appendix G also discusses how to calculate outcome measures.

Fig. 5. Hypothetical State A's Hazardous Waste Outcome Report

State Inspection and Findings:

State A inspected four LQGs, which the latest BR reported as generating 707,692 tons of hazardous waste. The state found that:

- At three facilities, which the BR says generated 673,518 tons of waste, there were no significant violations.
- At one facility, which the BR says generated 34,174 tons of waste:
 - three waste streams (which generated approx. 50 additional tons of unreported waste) were not identified or handled properly;
 - eight drums of reported waste (approx. 1.75 tons) were not properly marked and were at risk of improper handling; and
 - there were no additional violations concerning the remaining 34,172 tons of reported waste.

Outcome Report:

Of four LQGs accounting for 707,692 tons of reported waste, State A found no violations for operations that account for approximately 707,690 tons. However, **as a result of the State's actions:**

- **One and three-quarter (1.75) tons of reported waste** that were not being handled properly at the time of inspection and, therefore, were at risk of improper treatment or disposal **will now be handled properly; and**
- **Waste streams accounting for approx. 50 tons of previously unreported waste** that had not been identified are now identified and **will be handled properly.**

Data quality, accuracy and completeness are elements of the SRF. Therefore, Regions should ensure that states enter all appropriate data into the state's respective data system in a timely fashion, so that it can be uploaded to RCRAInfo, the national system of record.

⁹⁷ *Guidance for RCRA Core LQG Pilot Projects* (2007), at Appendix H

VI. “BEST PRACTICES” FOR SUBTITLE C COMPLIANCE MONITORING

A. Search for Significant Environmental Harm

EPA encourages Regions and states to strive to deploy their resources most effectively to locate the most significant environmental risks. Inasmuch as RCRA’s purview and EPA’s compliance determinations stem from the identification of hazardous waste, the seminal objective of compliance monitoring for a RCRA Subtitle C operation should be to acquire sufficient knowledge about all of the facility’s activities associated with hazardous waste. Hence, as discussed above,⁹⁸ CEIs are required for LQGs and operating TSDFs, to provide a complete picture of what the plant manufactures, how its processes operate, whether proper hazardous waste determinations have been made for all waste streams, and whether hazardous waste is being handled properly. Once this level of knowledge has been attained, as long as the facility has a good compliance track record, future inspections can focus more on any *changes* to or affecting the waste streams, such as new process units, operating parameters, or materials. Sections V.B.1 and C, above, discuss the qualitative standards for CEIs, and when it may be appropriate to perform a limited inspection (e.g., FCI) in lieu of a CEI.

Furthermore, although the RCRA Core Program aims to address every potential violation, OECA encourages Regions and states to develop strategies aimed at identifying the most significant risks with the smallest reasonable investment of resources. Thus, for example, it generally is more appropriate to focus on finding and addressing substantial potential risks, such as never-inspected LQGs or large-volume unregulated hazardous waste streams, than to focus significant attention on *de minimis* compliance errors and omissions.

B. RCRA Inspection Reports

Thorough and clear inspection reports provide vital support to potential enforcement actions, and make it easier to measure compliance monitoring outcomes. OECA has analyzed over 120 Subtitle C inspection reports. Based on this review, in 2007 OECA issued a report entitled *Review of RCRA Inspection Report Practices*,⁹⁹ which identifies common problems inspectors encounter in developing effective inspection reports, and recommends “best practices” for formulating such reports. OECA encourages Regions and states to adopt these best practices. OECA’s report also includes details of its findings, excerpts from exemplary inspection reports, a Model RCRA Inspection Report Outline, and other information.

⁹⁸ See e.g., Section V.B.1, above.

⁹⁹ Appendix F.