



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**

September 2015

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.

Revisions

September 2015 – The CMS was revised to clarify that state CEI inspections do count towards the statutory inspection requirement for federally owned/operated TSDFs. Additionally the National Areas of Focus for Federal Facilities was updated.

This *Compliance Monitoring Strategy (CMS)* cites a variety of Agency guidance documents. Most of these are available via the Internet. 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.

CONTENTS

Foreword	ii
Contents	iii
I. Introduction	1
Terminology in this RCRA <i>CMS</i>	2
II. Background	3
B. Compliance Monitoring	3
C. The National RCRA Compliance Monitoring Program.....	6
1. Agency Leadership for RCRA Compliance Monitoring.....	7
2. Regional, State, and Tribal Roles in RCRA Compliance Monitoring.....	9
3. Mechanisms for Managing the National RCRA Compliance Monitoring Program....	9
D. Scope of this Document	10
III. Core Program:.....	12
A. Background	12
1. Scope of the Subtitle C Compliance Monitoring Program	12
2. Rationale for Goals and Measures Minimum Requirements	13
B. Treatment, Storage and Disposal Facilities.....	14
1. Statutory Background	14
2. Goals and Measures (and ACS Codes).....	14
3. Types of Inspections for TSDFs	16
4. Program Elements	17
C. Generators	17
1. Large Quantity Generators.....	18
2. Small Quantity Generators and Conditionally-Exempt Small Quantity Generators ..	21
D. Transporters	21
1. Goals and Measures	21
2. Program Elements	22
E. Federal Facilities	22
1. Statutory Background	22
2. Goals and Measures (and ACS Code)	22
IV. National Areas of Focus:	23
A. Background	23
B. National Priorities	23
1. Federal – State Relations in National Priorities.....	23
2. Potential Interface Between Core Program and National Priorities	24
C. Issues and Emerging Areas of National Significance	25
D. Federal Facility Enforcement Priority Areas	25
V. Program Infrastructure:	26
A. Planning	26
1. Federal - State - Tribal Relations.....	26
2. Inspection Priorities	27
B. Inspections.....	28
1. Compliance Evaluation Inspections.....	28
2. “Exploratory” Inspections.....	30

Resource Conservation and Recovery Act (RCRA) Compliance Monitoring Strategy

3. Inspection of “Mixed Type” Facilities.....	30
C. Program Oversight	30
D. Reporting and Data Quality	32
VI. “Best Practices” for Subtitle C	34
A. Search for Significant Environmental Harm.....	34
B. RCRA Inspection Reports.....	34

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.

OECA is revising the 2010 RCRA CMS as a result of the national dialogue on the expansion of compliance monitoring activities that OECA conducted with regions and states during FY2013. Based on the dialogue, the revised policy better reflects the range of important compliance monitoring activities that are an integral part of our program today and helps to ensure consistent national implementation and improved transparency. Additionally, the revised CMS reflects the key concepts of Next Generation Compliance, including clarifying additional flexibilities to states in determining the most effective use of limited compliance monitoring resources.

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

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.

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- Clarify the interface between compliance monitoring for the ongoing RCRA Core Program versus for national areas of focus (e.g., OECA National Priorities) that periodically may include RCRA.⁵
 - Clarify the Regions' responsibilities with respect to compliance monitoring for facilities in Indian country.⁶

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 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.

⁵ See Section IV, below.

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

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. The primary goals of compliance monitoring include:

- Assessing and documenting compliance with permits and regulations,
- Supporting the enforcement process through evidence collection,
- Monitoring compliance with enforcement orders and decrees,
- Creating deterrence, and
- Providing feedback on implementation challenges to permit and rule writers.

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.

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

Additionally, an expanded range of compliance monitoring activities that could be credited to a state was developed by OECA in coordination with the regions, states and state associations. Generally, compliance monitoring encompasses all of the means used to make a compliance determination, ranging for example from off-site record reviews to an on-site compliance evaluation.

- On-site activities may include either compliance evaluations designed to assess compliance of the facility as a whole, or those targeted to focus on only a portion of the facility such as a specific process, pollutant, or regulatory requirement. The on-site evaluations may include any of the following activities:
 - Review of facility reports or other documents; (e.g., review of waste manifests, wastes analysis plans, air emissions standards reporting under Subparts AA, BB and or CC, etc.);
 - Review of facility records, including underlying testing/sampling plans and data, and monitoring data;
 - Review of relevant process, emissions, and inventory information
 - Conduct sampling, and monitoring; and
 - Conduct facility-specific monitoring utilizing advanced monitoring technologies (e.g., ground water monitoring, FLIR infrared cameras, fenceline monitors, etc.) to detect and document emissions and record ambient conditions).

It is generally expected that on-site activities will be reported in RCRAInfo as CEIs or FCIs. See Appendix D for a complete list of the RCRA inspection types.

- Off-site activities also may include compliance evaluations designed to assess compliance of the facility as a whole, but generally will be targeted to focus on only a portion of the facility such as a specific process, pollutant, or regulatory requirement. The off-site evaluations may include any of the following activities:
 - Review of facility reports or other documents;
 - Review of facility records, including underlying testing/sampling plans and data, and monitoring data;
 - Review of agency-gathered testing, sampling and monitoring data;
 - Review of relevant process, emissions, and inventory information;
 - Review of facility-specific fenceline and ambient monitoring;
 - Evaluation of responses to formal information requests (e.g., RCRA § 3007 information requests); and

¹¹ See Appendix C for details.

Resource Conservation and Recovery Act (RCRA) Compliance Monitoring Strategy

- Conduct of ambient environmental screening using advanced monitoring technologies for a group of facilities or geographic area of interest for use in subsequent compliance evaluations and determinations.

It is generally expected that off-site activities will be reported in RCRAInfo as NRRs. See Appendix D for a complete list of the RCRA inspection types.

The decision to utilize the new categories included in the expanded range of compliance monitoring activities is optional and voluntary for a state/local agency. Because of statutory inspection requirements at TSDFs, a state/local agency will not receive any credit under the Annual Commitment System (ACS) for the use of expanded compliance monitoring activities. Additionally, because of policy requirements for large quantity generators (LQGs), a state/local agency will not receive credit under the ACS for meeting the requirement to inspect 20% of the LQG universe annually unless the state/local agency is operating under an approved alternative plan which includes details about the numbers, types and frequency of those activities. The expanded range of compliance monitoring activities highlighted earlier can be an important element in states' alternative plans, and/or part of their programs that go beyond the requirements tracked by EPA. The expanded range of compliance monitoring activities can help states reach more regulated entities effectively and efficiently. States should also consider conducting additional activities that support the concepts of OECA's Next Generation Compliance when developing alternative plans or developing the portions of their RCRA program that are not specifically part of their commitments with EPA. Through Next Generation Compliance, we are promoting the use of advanced monitoring and electronic reporting, designing rules that are easier to implement, expanding transparency and sharing of data, and using innovative enforcement approaches to increase compliance and reduce pollution.

EPA's and states' investment in a new paradigm called "Next Generation Compliance" will improve compliance and reduce pollution. Next Generation Compliance will achieve better compliance results by taking advantage of new information and monitoring technologies. Advanced pollution monitoring technologies allow us to identify pollution issues, and can be used by both government and industry to find and fix pollution and violation problems. Next Generation Compliance supports EPA's new E-Enterprise initiative by promoting electronic reporting, advanced monitoring, and transparency. Electronic reporting allows for more accurate and timely information on pollution sources, as well as public access to pollution and compliance information.

However, if a state/local agency decides to utilize the expanded range of activities and wants to receive credit for the activity from EPA for use under an alternative CMS (inspections at small quantity generators (SQGs), transporters, etc.), the following conditions apply:

- The activity must be conducted for the purpose of making a compliance determination;
- "On-site activities" must be conducted by an authorized inspector¹² (consistent with appropriate federal, state, or tribal authority); and

¹² Authorized inspector could include an approved 3rd party.

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- “Off-site activities” must be conducted by an authorized inspector (consistent with appropriate federal, state or tribal authority) or other credible regulator (e.g., an individual with sufficient knowledge, training, or experience to assess compliance); and
 - The activity must be documented in an alternative compliance monitoring plan as defined in this compliance monitoring strategy, and reported to EPA’s RCRAInfo data system to ensure transparency, accountability, and appropriate follow-up. Reporting includes:
 - Facility-specific information and compliance evaluation actions consistent with RCRAInfo¹³; and
 - Results of activities consistent with the RCRA program (e.g., violations, SNC).
 - 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;¹⁴
- 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.¹⁵

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

¹³ Please note: the ambient environmental screening activities not associated with a specific facility will need to be reported manually.

¹⁴ 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.

¹⁵ This principle is discussed in Section V.B.1 and elsewhere in this document.

Resource Conservation and Recovery Act (RCRA) Compliance Monitoring Strategy

- 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 Priorities 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 Priorities 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.

Fig. 1. National RCRA Subtitle C Compliance Monitoring Program			
	Core Program	National Areas of Focus	
		National Priorities and Other Issues of National Significance (If designated for RCRA)	Federal Facility Priority Areas (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

Resource Conservation and Recovery Act (RCRA) Compliance Monitoring Strategy

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.¹⁶
- EPA’s Office of Solid Waste and Emergency Response’s Office of Underground Storage Tanks (OSWER/OUST)¹⁷ 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.¹⁸

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 (compliance monitoring)	✓					
•Non-Federal facilities (enforcement)		✓				
•Federal facilities			✓			
•Corrective Action (Non-Federal facilities)				✓		
Subtitle D (Non-hazardous waste)						✓
Subtitle I (USTs)					✓	
§ 7003 (No compliance monitoring requirements)						

¹⁶ 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.

¹⁷ www.epa.gov/swrust1/.

¹⁸ 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.

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.¹⁹ State and Regional compliance monitoring programs, however, serve slightly different functions. Figure 4 (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.

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 NPMG20 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.²¹ Also, Regions and states generally use the Biennial

¹⁹ For more information, see <http://www.epa.gov/lawsregs/laws/rcra.html> and <http://www.epa.gov/indian>.

²⁰ www.epa.gov/ocfo/npmguidance/index.htm.

²¹ This document uses the inspection titles and acronyms established in RCRAInfo (2009). See also Appendix D.

Report (BR)22 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 List;
- 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:

- 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 federal government and non-government facilities.

States may conduct compliance monitoring activities beyond those required by EPA under the ACS process or PPAs/PPGs.²³ For example, while EPA does not impose inspection requirements on the states for SQGs through the ACS commitment process, states are required by regulation to be able to comprehensively inspect all regulated facilities and have a program for periodically inspecting those facilities. In order to meet those requirements, EPA encourages the use of the flexibilities offered in the CMS as appropriate and encourages the use of Next Generation Compliance tools in implementation of the state’s RCRA program. Through these efforts, states may design the compliance programs of the future and work to improve compliance even in a time of declining resources. EPA, states, tribes, and other partner agencies are beginning to invest in this transformation together—and anticipate realizing both efficiencies and cost savings while protecting human health and the environment.

The RCRA program encompasses an array of compliance monitoring programs and functions performed by OECA, other EPA headquarters offices, Regions, and states. This document,

²² <http://www.epa.gov/osw/inforesources/data/biennialreport/index.htm>.

²³ 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.

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.²⁴

²⁴ 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.²⁵
- OECA has set minimum annual inspection expectations for LQGs: at least 20 percent of the universe.²⁶
- 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”).^{27, 28}

The foregoing inspections are covered by OECA’s ACS process,²⁹ and most of these inspection expectations have a dedicated BAS reporting code (e.g., RCRA01).

²⁵ See Section III.B, below.

²⁶ See Section III.C, below.

²⁷ See Section III.C.1(c), below. See also Appendix H, *Guidance for State Alternative Plans (Flexibility Plans) for RCRA LQG Compliance Monitoring*.

²⁸ Many states choose to conduct such inspections *in addition to*, rather than *in lieu of*, inspecting 20 percent of their respective LQG universes.

²⁹ 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. States may also conduct federal facility TSDF inspections.	
	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/}	

Resource Conservation and Recovery Act (RCRA) Compliance Monitoring Strategy

Federal Facilities	FED-FAC05	Federal Facilities	<p>Conduct ten (10) federal facility inspections. These inspections may be done in <u>federal facility enforcement priority areas, national areas of focus, national enforcement initiatives, regional priority areas, priorities established in federal facility regional enforcement enhancement plans, or as otherwise deemed necessary by the region.</u> These 10 inspection commitments can be achieved through any combination of single media or multimedia inspections. FFEO will be as flexible as possible in assisting the regions in meeting this vital federal facility commitment. These inspections may include RCRA Subtitle C or other media programs.</p>
<p>^{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).</p>			

The specific goals and measures in this *CMS* are taken from OECA’s *NPMG* for FY2010.³⁰

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)).³¹

2. Goals and Measures (and ACS Codes)

a. Federal Government TSDFs

Pursuant to RCRA Section 3007(c), EPA 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.) An authorized state also may conduct an inspection.

³⁰ 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*.

³¹ 42 U.S.C. § 6927(c)-(e).

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.^{32, 33} (States generally are not authorized to carry out RCRA programs within Indian country absent an express EPA finding.³⁴) 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.³⁵

RCRA03 pertains to TSDFs that are *operated* by state, local or tribal governments.³⁶ 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.³⁷
- (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.³⁸
- 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,³⁹ generally 50 percent (50%) of the TSDF universe should be inspected annually.⁴⁰ Also, because this is a coverage

³² 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”).

³³ 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.

³⁴ See also Section II.C.2, above, and references therein.

³⁵ 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.

³⁶ 42 U.S.C. § 6927(d).

³⁷ 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.

³⁸ 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.

³⁹ 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.

⁴⁰ 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.

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 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.⁴¹ 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. Ultimately, the expectation is that financial record reviews (FRRs) will be conducted, as required, for TSDFs that have a CEI conducted in accordance with the ACS commitments. This FRR need not occur at the same time or be conducted by the same people who conduct the CEI.

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.⁴² 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

⁴¹ 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.

⁴² Financial assurance reviews continue to be important even if RCRA financial assurance is not an OECA National Priority. Therefore, OECA will work with states to determine how this objective can best be addressed over the long term.

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).⁴³ Once it is determined that the groundwater monitoring system is adequately designed and installed, an Operation and Maintenance (OAM⁴⁴) 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).⁴⁵ 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*,⁴⁶ 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.⁴⁷

C. Generators

Although RCRA imposes different inspection frequency requirements for non-government TSDFs versus government owned/operated TSDFs,⁴⁸ there is no such distinction for Generators.

⁴³ 42 USC § 6924(k).

⁴⁴ Formerly referred to as “O&M.”

⁴⁵ See e.g., FY2010 *NPMG*, at 44, www.epa.gov/ocfo.

⁴⁶ See RCRA § 3004(a); 42 USC § 6924(a); FY2010 *NPMG*, at 41-42, www.epa.gov/ocfo.

⁴⁷ FY2010 *NPMG*, at 42. www.epa.gov/ocfo.

⁴⁸ RCRA § 3007, 42 U.S.C. § 6927.

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, unless the state obtains approval to deviate from this requirement under an approved Alternative Plan.⁴⁹ 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.⁵⁰

The Region is to:

- Commit to inspect at least six (6) LQGs in each state, unless OECA approves a deviation from this obligation.⁵¹
- (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.⁵² 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.⁵³
- 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 Priority 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.

⁴⁹ Section III.1(c), below.

⁵⁰ See e.g., Section V.B.1 and citations therein.

⁵¹ 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.

⁵² 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.

⁵³ 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.

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 (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).⁵⁴

The LQG universe is the total number of Generators in the most recent Biennial Report.⁵⁵ 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*,⁵⁶ 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.

⁵⁴ 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.

⁵⁵ <http://www.epa.gov/osw/inforesources/data/biennialreport/index.htm>.

⁵⁶ See RCRA § 3002(a); 42 USC § 6922(a); FY2010 *NPMG*, at 42, www.epa.gov/ocfo.

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 (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 State Alternative Plans (Flexibility Plans) for RCRA LQG Compliance Monitoring*.⁵⁷ 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,⁵⁸ 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.). Additionally, the type of monitoring activities to be used should be addressed (this includes the use of an expanded range of compliance monitoring activities and Next Generation Compliance activities).
- 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.

⁵⁷ See Appendix H. An earlier version of this document, which is substantively identical to Appendix H, is OECA's *Guidance for RCRA Core LQG Pilot Projects* (2007),

<http://www.epa.gov/compliance/resources/policies/monitoring/rcra/fy08rcraguidancelqgproject.pdf>.

⁵⁸ 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.

Additionally, while EPA does not impose specific inspection requirements on the states for SQGs and CESQGs through the ACS commitment process, states are required by regulation to be able to comprehensively inspect all regulated facilities (including SQGs and CESQGs) and have a program for periodically inspecting those facilities. In order to meet those requirements, EPA encourages the use of the flexibilities offered in the CMS as appropriate and encourages the use of Next Generation Compliance tools in implementation of the state's RCRA program. Through these efforts, states may design the compliance programs of the future and work to improve compliance even in a time of declining resources. EPA, states, tribes, and other partner agencies are beginning to invest in this transformation together—and anticipate realizing both efficiencies and cost savings while protecting human health and the environment.

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.

Additionally, while EPA does not impose specific inspection requirements on the states for transporters through the ACS commitment process, states are required by regulation to be able to comprehensively inspect all regulated facilities (including transporters) and have a program for periodically inspecting those facilities. In order to meet those requirements, EPA encourages the use of the flexibilities offered in the CMS as appropriate and encourages the use of Next Generation Compliance tools in implementation of the state's RCRA program. Through these efforts, states may design the compliance programs of the future and work to improve compliance even in a time of declining resources. EPA, states, tribes, and other partner agencies are beginning to invest in this transformation together—and anticipate realizing both efficiencies and cost savings while protecting human health and the environment.

2. Program Elements

In accordance with the statute and *NPMG*,⁵⁹ 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,⁶⁰ in the context of national enforcement initiatives (NEIs), federal facility priority areas and regional federal facility enforcement enhancement plans which change over time and, thus, are described in the annual OECA *NPMG*. For further information concerning current and proposed federal facility priority areas as well as federal facility inspections, consult the *NPMG* and FFEO guidance currently in effect.

1. Statutory Background

Section 3007(c)⁶¹ 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 federal facility priority areas and regional enforcement priorities which focus on compliance monitoring and enforcement activities.

FFEO asks Regions to commit to conduct ten (10) inspections to support NEIs, federal facility priority areas, and regional enforcement priorities (ACS Commitment FED-FAC05). Depending on the particular years’ NEIs and federal and regional priorities, 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.

⁵⁹ See RCRA §3003(a); 42 U.S.C. § 6923(a); FY2010 *NPMG*, at 42. www.epa.gov/ocfo.

⁶⁰ 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 Priorities.

⁶¹ 42 U.S.C. § 6927(c).

IV. NATIONAL AREAS OF FOCUS:

NATIONAL PRIORITIES, ISSUES AND EMERGING AREAS OF NATIONAL SIGNIFICANCE, FEDERAL FACILITY ENFORCEMENT PRIORITY AREAS

A. Background

RCRA compliance monitoring occurs in the context of both the Core Program and any national focus areas – National Priorities, 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 Priorities

OECA periodically selects National Priorities 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.⁶² National Priorities may affect a single media program or multiple programs. For example, for FY2008-2010, OECA designated two National Priorities that included a Subtitle C component: Financial Responsibility, and Mineral processing.⁶³

1. Federal – State Relations in National Priorities

Traditionally, Regions conduct National Priority 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 priority, particularly if the compliance problem is pervasive and will need to be addressed after the priority ends. For example, a priority which 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 priority, and to build the

⁶² For general information about OECA National Priorities, see <http://epa.gov/compliance/data/planning/priorities/index.html#priorities>.

⁶³ See <http://intranet.epa.gov/oeca/oc/npmas/priorities/index.html>.

state's capacity to adequately address the issue in its Core Program; and the state, to help the Region with the priority, and to focus more on the issue in its Core Program while, and after, the priority is in effect.

2. Potential Interface Between Core Program and National Priorities

When OECA designates a National Priority/ies for RCRA Subtitle C, it is important to ensure coordination, and an appropriate allocation of resources, between the Core Program and National Priority. 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 Priority, 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 Priorities 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 Priority, and the Region/state's previous practice in conducting inspections. For example, a RCRA financial assurance priority 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, RCRA03⁶⁴) - and the *NPMG* already provides that TSDF inspections include determining compliance with financial assurance requirements.⁶⁵

Similarly, a National Priority 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).⁶⁶ 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 Priority. Sections V.B.1 and V.C, below, discuss qualitative standards for CEIs.

Conversely, a National Priority 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 Priority.

⁶⁴ See Section III.B, above.

⁶⁵ FY2010 *NPMG*, at 42. www.epa.gov/ocfo. See also Section III.B.3-4, above.

⁶⁶ 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 Priority or for which it would be untimely to await the next OECA priority selection cycle. Similar to National Priorities, 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 TSDF universe.

D. Federal Facility Enforcement Priority Areas

Throughout FY 2014 and FY 2015, EPA's federal facilities enforcement and compliance program, in conjunction with the regions, has reassessed its national Program Agenda, its traditional Integrated Strategies and other program components in an effort to "right-size" its activities in the face of recent resource reductions. In FY 2015, FFEO sought to more closely align its various federal facility sector activities, including its Annual Commitment System (ACS) obligations, with EPA's National Enforcement Initiatives (NEIs) and other Agency-wide and regional environmental enforcement priorities whenever possible. As FFEO completes its "right-sizing" efforts, the EPA, in addition to increased emphasis on the NEIs and other Agency and regional environmental enforcement priorities, will continue its focus on identified federal facility enforcement priority areas as set forth in the *NPMG* and FFEO guidance currently in effect.

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"> - Ensure inspection of each federal TSDf by EPA or State (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 Priorities.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) or other less

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.

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

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.

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.
- 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

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.

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 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 Priority 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

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 State Alternative Plans (Flexibility Plans) for RCRA LQG Compliance Monitoring*, at Appendix H.

⁹⁶ See Section V.C, above.

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.
- 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
<p><u>State Inspection and Findings:</u> State A inspected four LQGs, which the latest BR reported as generating 707,692 tons of hazardous waste. The state found that:</p> <ul style="list-style-type: none">• 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:<ul style="list-style-type: none">- 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.
<p><u>Outcome Report:</u> 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:</p> <ul style="list-style-type: none">• 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 State Alternative Plans (Flexibility Plans) for RCRA LQG Compliance Monitoring*, 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.

Through these and other Next Generation Compliance efforts, EPA and states will design the compliance programs of the future and work to improve compliance even in a time of declining resources. EPA, states, tribes, and other partner agencies are beginning to invest in this transformation together—and anticipate realizing both efficiencies and cost savings (particularly through better targeting of limited resources) while protecting human health and the environment.

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

⁹⁸ See e.g., Section V.B.1, above.

Resource Conservation and Recovery Act (RCRA) Compliance Monitoring Strategy

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.

⁹⁹ Appendix F.