



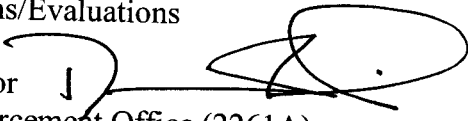
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

SEP 19 2006

OFFICE OF
ENFORCEMENT AND
COMPLIANCE ASSURANCE

MEMORANDUM

SUBJECT: Clarification on the Use of Contract Inspectors for EPA's Federal Facility Compliance Inspections/Evaluations

FROM: David J. Kling, Director 
Federal Facilities Enforcement Office (2261A)

TO: Regional Federal Facilities Senior Managers
Regional Federal Facilities Program Managers

We are clarifying, with this memorandum, our position on the use of contract inspectors for Clean Air Act (CAA) evaluations at federal facilities, as described in my November 1, 2005, memorandum entitled "Use of Contract Inspectors for EPA's Federal Facility Compliance Inspections/Evaluations."

Upon issuance of the November memorandum, this office received comments from a number of EPA enforcement and compliance personnel that we appeared to suggest that it was almost always inappropriate for EPA to rely on contract inspectors to conduct CAA compliance evaluations. That was not our intention. Rather, given the split in the federal circuit courts of appeals regarding the use of contract inspectors in CAA matters, we wanted to ensure that Regional personnel first consulted with their legal counsel and with this office before utilizing contract inspectors for CAA evaluations at federal facilities.

Accordingly, I ask that you replace the November memorandum with this one, which is identical to the earlier version apart from new, clarifying CAA language. Our thanks goes out to those of you who helped us make this position clear.

Use of Contract Inspectors for EPA's Compliance Inspections/Evaluations at Federal Facilities

Since some EPA Regional enforcement and compliance personnel have recently raised questions regarding the use of contract inspectors in compliance inspections/evaluations of federal facilities, **we are writing to confirm that properly trained and authorized contract inspectors are appropriate for federal facility compliance inspections/evaluations under the Clean Water Act (CWA), the Resource Conservation and Recovery Act (RCRA), the Toxic**

Substances Control Act (TSCA), the Oil Pollution Act (OPA) and the Safe Drinking Water Act (SDWA). The federal courts are split as to whether contract inspectors are authorized to conduct evaluations under the Clean Air Act (CAA), and the Federal Insecticide, Fungicide and Rodenticide Act's (FIFRA's) language limits those who are authorized to conduct inspections.

Under the CAA, the Courts of Appeals for the Sixth, Ninth, and Tenth Circuits have considered the issue of contract inspectors, but have reached different conclusions that depend, in part, on the specific area being evaluated. Without a definitive answer from the Supreme Court, we advise Regional personnel to first consult with their legal counsel and with this office before utilizing contract inspectors for CAA evaluations at federal facilities

Further, FIFRA's language limits those authorized to conduct inspections to "any officer or employee of the Environmental Protection Agency or of any State or political subdivision." FIFRA § 9, 7 U.S.C. § 136g. Accordingly, we do not advise using contract inspectors for FIFRA compliance inspections.

Regional enforcement personnel should reacquaint themselves with the requirements for authorizing contractors to conduct inspections/evaluations. These requirements include:

- The inspection contract must contain language per EPA Order 3500.1 requiring the contract inspector to meet the training requirements of the Order, including completion of the Basic Inspector Course, health and safety training, and medium-specific training requirements – prior to leading an inspection/evaluation.
- Contractors who merely assist, rather than lead, inspections/evaluations are not required to comply with all of the requirements of EPA Order 3500.1, although meeting the requirements is still recommended. Even if not leading inspections/evaluations, contract inspectors are obliged to have health and safety training, as specified in EPA Order 1440.3.
- The inspections/evaluations must be carried out in accordance with approved Quality Assurance/Quality Control plans (that are part of the Regions' Quality Assurance Management Plan) and use established procedures, such as those set forth in EPA's Inspection Manuals.
- Depending on the nature of the inspections/evaluations to be conducted, a background investigation may be required for contract inspectors. Any background investigation requirements should be included in the contract. Background investigations are especially important in the Federal facilities context – particularly at high-risk facilities (e.g., certain military bases, nuclear weapons plants and classified facilities).
- A contract inspector may not request or review Confidential Business Information (CBI) unless she or he has been cleared for CBI by EPA under the particular statute for which the authorization is given.

- EPA does not issue the same federal credential which EPA employees carry to contractors. A few programs issue a statute specific credential authorizing the contractor to carry out inspections/evaluations under a specific statute. It clearly identifies the bearer as a contractor. In most cases, EPA provides contractors with a letter of authorization. The letter identifies the bearer as a contractor.

Please note that OECA and OARM are developing an EPA order that addresses the issuance of credentials to Federal employees, state/tribal government employees, Senior Environmental Employees (SEEs), and contractors.

Thank you for your interest in this matter and your support for using contract inspectors in appropriate circumstances. If you have any questions regarding this memorandum, please contact Gracie Garcia at (202) 564-2588 in OECA's Federal Facilities Enforcement Office or Phyllis Flaherty at (202) 564-2300 in OECA's Office of Compliance.

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