UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, DC 20460

OFFICE OF
ENFORCEMENT AND
COMPLIANCE ASSURANCE

December 6, 2021

**MEMORANDUM**

Subject: Issuance of Revised Resource Conservation and Recovery Act Compliance Monitoring Strategy

From: John Dombrowski
Director, Office of Compliance

JOHN DOMBROWSKI Digitally signed by JOHN DOMBROWSKI
Date: 2021.12.13 15:28:08 -05'00'

To: Regional Enforcement and Compliance Assurance Division Directors
Regional Land, Chemicals and Redevelopment Division Directors

The attached Resource Conservation and Recovery Act (RCRA) Subtitle C Program Compliance Monitoring Strategy (CMS) revises the 2015 version. The revised strategy continues to provide national guidance for the RCRA compliance assurance program to achieve compliance monitoring goals.

The Office of Compliance revised the RCRA CMS to reorganize and streamline information, improve clarity, and make the document easier to use. The compliance monitoring goals for Treatment Storage and Disposal Facilities, consistent with RCRA § 3007, and for large quantity generators are still in place as are the flexibilities that allow for prioritization of compliance monitoring activities based on localized concerns. The most significant changes in this new version are the additions of an inspection goal for pharmaceutical reverse distributors and a new pre-approved flexibility to the CMS inspection goals. Other changes update the document to reference policy, guidance and tools that have been developed and issued since the previous version.

This RCRA CMS is being finalized during the COVID-19 public health emergency, and it recognizes the possible challenges of conducting inspections amidst locality-specific stay-at-home orders and travel restrictions and the importance of offsite compliance monitoring activities where inspections cannot be conducted. My staff and I will continue to regularly monitor and evaluate implementation of the CMS related to COVID-19 and other changes in the RCRA landscape, compliance monitoring tools, or administration priorities. In close coordination with the regional and state personnel who implement the policy, we will consider data-driven modifications to the CMS goals or the approaches to address any components for

which efficiencies can be realized or that are not producing the desired results. In addition, the CMS may be updated in the future if EPA establishes new policies for Agency priorities such as environmental justice.

I want to thank the individuals in the states, the Association of State and Tribal Solid Waste Management Officials, EPA regions and headquarters who have worked with us in developing this revision.

If you have any questions or concerns regarding the RCRA CMS, please contact Leslie Cronkhite at 202-564-3878 or cronkhite.leslie@epa.gov. Thank you in advance for your cooperation as we implement the revised RCRA CMS.

Attachment

cc: Lawrence Starfield, Acting Assistant Administrator, OECA
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U.S. Environmental Protection Agency
Office of Enforcement and Compliance Assurance

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

December 2021

# 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 Office of Civil Enforcement, and Office of Site Remediation Enforcement; EPA's Office of Land and Emergency Management and Regions; and states authorized to administer hazardous waste programs pursuant to the U.S. Resource Conservation and Recovery Act.

This document is intended to provide guidance to employees of EPA and authorized state programs who administer and implement an Agency RCRA compliance monitoring program. Any statutory and regulatory provisions cited in this document is still in effect. This document does not substitute for statutory and regulatory provisions cited herein and is not a regulation itself. Thus, this document 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.

Major Revisions

December 2021 – Revises the 2015 version of the RCRA CMS as follows:

- Adds a new inspection goal. The Office of Enforcement and Compliance Assurance is adding an inspection frequency goal for pharmaceutical reverse distributors. OECA is now asking States to inspect 20% of the combined large quantity generator and pharmaceutical reverse distributor universes.
- Explains the relationship among other guidance documents and the RCRA CMS.
- Incorporates the OECA memorandum, "Enhancing Effective Partnerships Between the EPA and the States in Civil Enforcement and Compliance Assurance Work."
- Puts greater emphasis on explaining the available flexibilities to the inspection policies herein.
- Merges inspection frequency flexibility policies previously described in Appendices H (Guidance for State Alternative Plans [Flexibility Plans] for RCRA LQG Compliance Monitoring) and J (Flexibility Implementation Guidance for the Resource Conservation and Recovery Act Compliance Monitoring Strategy Memorandum, October 17, 2012) of the 2015 version into a single appendix.
- Adds a fourth pre-approved flexibility to the 20% LQG inspection policy allowing for removal of a portion of pharmaceutic retailers that are large quantity generators.

**Table of Contents**

# Contents

# Acronyms

| | |
|---|---|
| BR | Biennial Report |
| CA | Compliance Assurance |
| CAC | Corrective Action Compliance Evaluation |
| CEI | Compliance Evaluation Inspection |
| CESQG | Conditionally Exempt Small Quantity Generator |
| CMS | Compliance Monitoring Strategy |
| DI | Direct Implementation |
| ECHO | Enforcement and Compliance History Online |
| EPA | Environmental Protection Agency |
| FCI | Focused Compliance Inspection |
| FRR | Financial Records Review |
| GME | Groundwater Monitoring Evaluation |
| ICIS | Integrated Compliance Information System |
| LQG | Large Quantity Generator |
| MOA | Memorandum of Agreement |
| NCI | National Compliance Initiative |
| NPG | National Program Guide |
| OAM | Operation and Maintenance Inspection |
| OC | Office of Compliance |
| OECA | Office of Environmental Compliance and Assurance |
| PPA | Partnership Performance |
| RCRA | Resource Conservation and Recovery Act |
| RCRAInfo | Resource Conservation and Recovery Act Information Data System |
| RD | Reverse Distributors |
| SNC | Significant Non-Compliance |

| | |
|---|---|
| SQG | Small Quantity Generator |
| SRF | State Review Framework |
| TSDF | Treatment, Storage and Disposal Facility |
| UST | Underground Storage Tank |
| VSQG | Very Small Quantity Generator |

# I. INTRODUCTION AND BACKGROUND

This document presents the national Compliance Monitoring Strategy (CMS) for Subtitle C of the Resource Conservation and Recovery Act (RCRA)[1]. The RCRA CMS is designed to provide strategic guidance for the U.S. Environmental Protection Agency (EPA or Agency) staff and RCRA-authorized states. It creates national consistency in how states and EPA perform compliance monitoring, and thus a level playing field for the regulated community. The CMS does so by providing a minimum set of expectations and a decision logic and structure for targeting inspections. While defining enough structure to ensure a level of national consistency, the CMS also provides states with flexibility to address local pollution and compliance concerns. The CMS describes ways in which EPA and the states can coordinate with respect to compliance monitoring program implementation.

During the drafting of this document, locality-specific stay-at-home orders and travel restrictions resulting from the COVID-19 public health emergency impacted EPA and state inspection field work. On July 22, 2020, the Assistant Administrator for the Office of Enforcement and Compliance Assurance (OECA), sent a letter to partner agencies recognizing the need for providing additional flexibility to assist partner agencies in meeting CMS and grant inspection commitments.[2] The letter encouraged the use of off-site compliance monitoring when planned inspections cannot be performed due to COVID-19. With advancements in technology, off-site compliance monitoring activities have the potential for being effective tools for determining noncompliance and for identifying inspection priorities. Some of the compliance monitoring activities and tools described within this CMS may provide useful guidance when inspections cannot be performed. OECA did not recommend that partner agencies submit alternative compliance monitoring plans based solely on COVID-19 reasons. Partnership principles that are referenced throughout this CMS take on even greater importance as states and EPA regions work together to maintain program compliance integrity amid reduced inspections.

The revised goals and flexibilities described in this CMS will be in effect at the start of the calendar year 2022 and should be applied from that date forward in planning and reporting cycles.

[1] 42 U.S.C. §§ 6901 – 6992k. Refer to www.epa.gov/lawsregs/laws for RCRA summary, tools and regulations.
[2] See July 22, 2020, OECA letter to Partner Agencies on Inspection Expectations During the COVID-19 Public Health Emergency at https://www.epa.gov/compliance/covid-19-inspection-commitments-letter.

# A. Introduction

EPA's ten regions and states with RCRA enforcement authority ("RCRA-authorized states") implement compliance monitoring. In partnership with state governments, tribal governments, and other federal agencies, the EPA's Office of Enforcement and Compliance Assurance (OECA) works to assure compliance with the nation's environmental laws and protect public health and the environment. Compliance monitoring is a cornerstone of the EPA's compliance assurance program to ensure that the regulated community complies with environmental laws and regulations.

This RCRA CMS provides long-term national guidance for the RCRA compliance assurance program to achieve the following compliance monitoring and enforcement goals:

- Promote an understanding of, and compliance with, minimum program requirements and inspection frequency goals.
- Promote national consistency in program implementation while acknowledging and allowing for flexibility.
- Provide a strategy for setting priorities that focus on the greatest risks to human health and the environment.
- Identify guiding principles of the strategic approach to assist EPA headquarters, regions, and states in allocating appropriate inspection resources across the RCRA compliance assurance program.
- Clarify the intersections of compliance monitoring for the ongoing RCRA core program, the national areas of focus, and state or tribal priorities.
- Clarify recommended procedures for reporting national program results.

Objectives, strategies, and tools associated with these goals are presented and discussed in the five remaining chapters: *Compliance Monitoring*, *RCRA Inspections*, *Priority Setting and Targeting*, *Data Management and Utilization*, and *Oversight of State Programs*.

# B. Background

## 1. Related Compliance Assurance Documents and Programs

The RCRA CMS defines the national long-term strategy and goals for RCRA compliance monitoring. It works in conjunction with the EPA Strategic Plan[3], the OECA National Program Guidance[4] (NPG), the State Review Framework[5] (SRF), EPA regional guidance for RCRA

[3] The EPA Strategic Plan is at https://www.epa.gov/planandbudget
[4] National Program Guidance documents are available at https://www.epa.gov/planandbudget/national-program-guidances
[5] Information about the State Review Framework is available at https://www.epa.gov/compliance/state-review-framework-compliance-and-enforcement-performance

Subtitle C grant work plan development and the resulting state work plans. Together these documents help shape RCRA compliance assurance work by defining goals, strategies, detailed objectives and oversight metrics that ensure consistency between EPA and state programs and a level playing field for the regulated community. The RCRA CMS also describes approved alternative strategies to provide co-regulators with flexibility to address localized pollution and compliance concerns.

EPA's Strategic Plans communicate the Agency's priorities and provide the roadmap for achieving its mission to protect human health and the environment. Government's role in environmental and human health protection is a shared responsibility at the local, state, tribal and federal levels. More than 50 years after the creation of EPA, state governments serve as primary implementers of many of the nation's environmental laws, including RCRA. Therefore, EPA strategic plans emphasize our shared governance and collaboration to ensure the early, meaningful, and substantial involvement of state partners, which is critical to the development, implementation, and enforcement of the RCRA programs. The EPA strategic plans also address use of compliance assurance tools and state associated high-level goals.

The OECA NPG is a national planning document that is issued every two years and used by regions, states, and tribes to implement programmatic activities protective of human health and the environment. It reflects state, tribal, and territory priorities identified through early engagement. The NPG broadly defines the national compliance and enforcement activities that EPA and state government agencies should perform to achieve its stated goals. The NPG defers to the CMS to provide the framework for how states and EPA work cooperatively to set priorities and target and conduct compliance monitoring activities over time to deter noncompliance. The NPG states that cooperative federalism does not mean that EPA will ignore noncompliance. EPA retains enforcement authority and will use it if states, territories, or tribes lack the authority, capability, or will to take timely and appropriate action to protect public health and the environment, which will ensure consistency, certainty and a level playing field for the regulated community across the country.

The State Review Framework (SRF), developed by EPA and states, is a national program to periodically evaluate the performance of RCRA programs in authorized states and in EPA regions for direct implementation activities. The SRF's approach ensures that:

(1) states and EPA programs are evaluated consistently
(2) the regulated community enjoys a level playing field nation-wide
(3) the public enjoys equal protection in all states from impacts of illegal pollution
(4) compliance with national laws is widely achieved.

OECA reviews the regional programs using the same process and procedures followed for all state program SRF reviews. Strategies to target onsite inspections described in the RCRA CMS are reflected in the SRF evaluation metrics.

The strategies and compliance monitoring goals and activities described in the RCRA CMS should be reflected in the RCRA grant work planning guidance provided to states by their

regions. The cooperative agreements that result from annual grant work planning that occurs between each authorized state and its region detail the activities that each state will perform to assist EPA in implementing the national RCRA program consistent with the RCRA CMS.

## 2. Relationship between EPA and States with Enforcement Authority

In the face of increasing and shifting environmental protection challenges, environmental agencies (both EPA and states for RCRA) can maximize resources and ensure better overall compliance by coordinating compliance monitoring activities and continuing to strengthen lines of communication.

OECA's July 2019 memorandum, "Enhancing Effective Partnerships Between the EPA and the States in Civil Enforcement and Compliance Assurance Work" policy (2019 Partnership Policy)[6] sets out expectations and procedures for enhancing effective partnerships in civil enforcement and compliance assurance work between EPA and authorized states. As described in the policy, EPA aims to maintain its partnerships with its state, local, and tribal co-regulators by effectively carrying out our shared responsibilities under environmental laws through general deference to state-implemented programs, consistent with EPA's oversight responsibilities; effective communication with the states; clear standards for review of state programs and predictable processes; and a clear process for elevating issues to facilitate resolution of disagreements. Implementation of RCRA compliance monitoring activities is a collaborative effort between the EPA, EPA regions and authorized states. Since RCRA does not provide for tribes obtaining Subtitle C authorization, EPA directly implements RCRA Subtitle C in Indian country.

[6] See OECA Memorandum, "Enhancing Effective Partnerships Between the EPA and States in Civil Enforcement and Compliance Assurance Work" (July 11, 2019). https://www.epa.gov/sites/production/files/2019-07/documents/memoenhancingeffectivepartnerships.pdf

# II. COMPLIANCE MONITORING

This chapter describes OECA's RCRA compliance monitoring program and EPA's expectations for compliance monitoring in EPA regions, states and tribes. It also describes essential components of a compliance monitoring program and identifies typical compliance monitoring activities. Chapters III and IV address strategies for effective compliance monitoring programs, RCRA inspection types and EPA priorities for regional compliance monitoring.

## A. Compliance Monitoring Program Description

The primary goal of the combined EPA and state compliance monitoring efforts is to evaluate and document whether entities regulated under RCRA are complying with their RCRA obligations. Achieving this goal requires EPA and state collaboration. EPA and state compliance monitoring programs should accurately identify and document noncompliance, support the enforcement process, monitor compliance with enforcement orders and decrees, establish presence in the regulated community, deter noncompliance, support the permitting process, identify program areas requiring resolution through EPA and/or state policy actions, and ensure a level playing field among regulated entities.

OECA's Office of Compliance (OC) is responsible for implementing the national RCRA compliance monitoring program and coordinates and collaborates with other EPA offices at headquarters and in regions with RCRA-related responsibilities. OECA's RCRA Compliance Monitoring Program encompasses all agency activities performed to determine compliance with RCRA regulations and applicable law. Compliance monitoring includes compliance evaluations of individual facilities, or groups of facilities – such as those related geographically, by sector, or corporate structure – to determine if they comply with applicable laws or if there are notable compliance trends. OC, with input from its partners, establishes policies that define expectations for RCRA Subtitle C inspections and other compliance monitoring activities, including frequency goals.

Each RCRA-authorized state is responsible for monitoring compliance of their regulated universe and ensuring adequate inspection coverage of the universe. As of April 2021, 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 problems; for example, identifying legitimate difficulties experienced by the regulated community in complying with regulatory requirements.

EPA regions also conduct compliance monitoring activities in states to determine facility compliance and provide state program oversight or capacity-building support. During inspections, regions may take the lead or provide support to states to address complex or multi-state compliance matters. Regions consult with states to identify new and emerging issues that may warrant designation as areas of national focus.

## B. Compliance Monitoring Program Requirements, Expectations and Alternative Approaches

OECA's RCRA Compliance Monitoring Program encompasses the core program for RCRA Subtitle C Hazardous Waste program, 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). OECA's RCRA Subtitle C core program includes air emissions standards for TSDFs found in Title 40 of the Code of the Federal Regulations (CFR), parts 264 and 265, subparts AA, BB and CC. Releases from hazardous waste facilities, including air emissions, can contain constituents known or suspected to cause cancer or birth defects and can contribute to non-attainment with the National Ambient Air Quality Standards (NAAQS). In some cases, hazardous waste facilities are located near or in communities already overburdened by compounding environmental contamination. The core program refers to the basic inspection expectations and goals – types of facilities, methods for inspecting, and frequencies of inspections as well as any approved alternative CMS approaches. Periodically, EPA may identify national focus areas related to emerging areas or issues of national significance warranting EPA response, direction, or involvement. When OECA designates national areas of focus, through National Compliance Initiatives, for instance, EPA regions will be responsible for compliance monitoring to address the national priority. Chapter IV discusses priorities and targeting in greater detail.

Inspection frequency measures for the core program have historically revolved around the statutory RCRA monitoring requirements for TSDFs and a recommended minimum of annual inspections for 20% of the large quantity generator (LQG) universe to achieve the national goal of inspecting every LQG at least once every five years. A new type of hazardous waste management facility, Reverse Distributors, resulted from the promulgation of the "Hazardous Waste Management Pharmaceutical Final Rule," published in the Federal Register on February 22, 2018. RDs are defined in 40 CFR part 266.500 as any person, including forward distributors, third-party logistics providers, and pharmaceutical manufacturers, that processes prescription hazardous waste pharmaceuticals for the facilitation or verification of manufacturer credit. RDs are now subject to 40 CFR part 266 Subpart P, and no longer subject to regulation as generators under 40 CFR part 262.

OECA is now including, as a new type of Subtitle C facility, RDs in the national inspection frequency goal effective January 2022[7]: 20% of the combined LQGs and pharmaceutical reverse distributor (RD) universes inspected annually so that facilities in each of these groups are inspected at least once every five years. For instance, if a state has 100 LQGs and 10 RDs, it should inspect 20% of the 110-facility universe, annually. This expectation should not increase the size of the annual inspection universe, since RDs are believed to have been part of the LQG universe before promulgation of Subpart P.

Regions and individual states discuss and negotiate annual program commitments and potential resource trade-offs during RCRA grant work plan development. The RCRA requirements and national inspection frequency goal serves as a starting point for negotiations. States and regions may utilize the flexibilities set forth in this CMS to tailor an alternative approach so that compliance monitoring resources are targeted in a way that address state needs. Trade-offs should be considered in the context of supporting overall RCRA Subtitle C program integrity.

If a state/local agency decides to use the flexibility for an alternative approach and wants to receive credit toward its work plan commitments, all 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 inspector (EPA credentialed if inspecting on behalf of EPA or otherwise-authorized consistent with appropriate state or tribal authority).
- "Off-site activities" must be conducted by an authorized inspector or other credible regulator (i.e., an individual with enough knowledge, training, or experience to assess compliance).
- The approach should be documented in an Alternative Compliance Monitoring Plan (Alternative CMS Plan) and the corresponding activity reported in EPA's Resource Conservation and Recovery Act Information (RCRAInfo) data system to ensure transparency, accountability, and appropriate follow-up. Reporting includes:
    - Facility-specific information and compliance evaluation actions consistent with RCRAInfo; and
    - Results of activities consistent with the RCRA program (e.g., violations, significant non-compliance (SNC) determinations).

The Appendix to this CMS describes OECA's flexibility policy for RCRA inspections. It lists and explains pre-approved flexibilities and the processes for requesting flexibility for an alternative approach.

## C. Compliance Monitoring Activities

A successful Compliance Monitoring CM program relies on activities such as:

[7] Inspection frequency goals are effective assuming the COVID-19 public health emergency has subsided.

- On-site inspections and/or off-site compliance monitoring activities (discussed in more detail later in this chapter) and investigations, including review of permits, data, and other documentation.
- Data collection and review.
- Inspector training and support.

Generally, compliance monitoring encompasses all means used by a region or state to make a compliance determination, ranging from off-site record reviews to an on-site compliance evaluation. Inspections may or may not detect violations of specific RCRA requirements evaluated, but in either case inspection findings do not relieve a facility of its obligation to comply with RCRA and other environmental regulations and statutes. Compliance monitoring helps to create deterrence not only for the facilities that are monitored but also for other facilities.

EPA encourages new and creative approaches to compliance monitoring afforded by technological advances. For instance, states are beginning to use advanced monitoring[8] and electronic reporting, and sharing data, which can help in compliance monitoring. Additionally, there is an expanded range of compliance monitoring tools that can be used to maximize the efficacy of compliance monitoring efforts. EPA and states can also take advantage of Smart Tools recently developed by EPA and States, working through E-Enterprise for the Environment, to aid RCRA inspections. Smart Tools uses the conveniences of electronics to support environmental field inspectors through the entire inspection process from scheduling to conducting inspections to generating inspection reports. Federal regulations/citations are built into the application and state regulations/citations will be included, as well. Find information about Smart Tools for RCRA Inspections at the E-Enterprise Smart Tools web page.

OECA has historically focused on comprehensive on-site inspections to track, nationally, compliance monitoring activities. OECA recognizes there are additional compliance monitoring activities, such as off-site desk audits, that can play a vital role in helping EPA and states achieve our broader compliance monitoring goals.

## 1. On-Site Compliance Monitoring Activities

On-site compliance monitoring activities may include either compliance evaluation inspections (CEIs) designed to assess compliance of the whole facility (i.e., CEIs including an in-depth, process-based inspection that comprehensively evaluates the facility's waste management practices), or focused compliance inspections targeted to focus on a portion of a facility or a specific process, pollutant, or regulatory requirement. RCRA inspections are discussed in greater detail in Chapter III. On-site inspections generally include the following activities (as applicable):

[8] Advanced monitoring technology refers to a broad range of sampling and analytical equipment, systems, techniques, practices, and technologies for detecting and measuring environmental conditions, and is generally not yet in widespread use in a particular sector; measures in real-time or near-real-time, is less expensive, easier to use, or potentially more sensitive/selective compared to technologies currently in widespread use, is a new technology or an existing technology that is being used in a new way to provide better information on pollutants, pollution sources, or environmental conditions. (Giles, C. Use of Next Generation Compliance Tools in Civil Enforcement Settlements. 2015.)

- Opening and closing inspection conferences with the facility.
- Walk-through of facility for observations and process-based inspection.
- Review of facility documents:
    - waste determinations, profiles and information used to support determinations based on "generator knowledge."
    - waste manifests.
    - land Disposal Restriction records
    - wastes analysis plans.
    - air emissions standards reporting under subparts AA, BB and or CC
    - underlying testing/sampling plans and data.
    - monitoring data.
    - RCRA unit inspections.
- Review of financial records to ensure facilities maintain adequate financial responsibility, if applicable.
- Review of relevant process, emissions, and inventory information.
- In coordination with Corrective Action staff, general review of corrective action effectiveness and monitoring systems for sites in RCRA Corrective Action or Post-Closure. The review may include any applicable engineering or institutional controls for sites in long-term operation and maintenance.
- Conduct sampling and other forms of monitoring. Note that regions should be prepared to conduct sampling in appropriate circumstances such as where a waste stream has been (a) potentially mischaracterized; (b) characterized solely on knowledge rather than sampling; or (c) sampled, but there is concern that the sample may not have been a representative sample of the actual waste stream in question.

EXAMPLES: An Inspector may conduct sampling as necessary if there may be metals contamination in paints, oils or solvents; as part of an inspection involving hazardous waste organic air emissions; if a waste stream may be mixed with listed hazardous waste; when a waste separates into phases and not all phases have been sampled; or when process information or other documentation leads the inspector to question whether an identified non-hazardous waste may actually be a hazardous waste.

It is generally expected that on-site activities will be reported in RCRAInfo as CEIs or focused compliance inspections.

## 2. Off-site Compliance Monitoring Activities

Off-site activities may include compliance evaluations designed to assess compliance of the entire facility or can be targeted to focus on only a portion or aspect of the facility such as a specific process, pollutant, or regulatory requirement. The key definitional criterion for an off-site compliance monitoring activity is that EPA/state/local/tribe reviews information that is sufficiently detailed to form a reasonable view of a facility's compliance status with respect to a requirement, without physically entering the facility. These activities may also be entered in RCRAInfo. Off-site evaluations may include evaluation or review of any of the following activities:

- Facility reports or other documents and records, including underlying testing/sampling plans and data, and monitoring data.
- Testing, sampling and monitoring data.
- Relevant processes and emissions.
- Facility-specific fence line and ambient monitoring data.
- Financial records to ensure facilities maintain adequate financial responsibility
- Responses to formal information requests (e.g., RCRA § 3007 information requests).
- Screening data of ambient environmental conditions using advanced monitoring technologies for a group of facilities or geographic area of interest for use in subsequent compliance evaluations and determinations. Electronic manifest and biennial report data.

Regions are expected to capture and report their compliance monitoring outcomes into RCRAInfo and into the Integrated Compliance Information System (ICIS). States also use RCRAInfo to capture and report to the regions their compliance monitoring activities agreed to in MOAs and annual work plans, and EPA encourages them to do so for additional compliance monitoring activities. Regions and states should work together following the inspection and enforcement planning principles outlined in the memo, entitled "Enhancing Effective Partnerships Between the EPA and the States in Civil Enforcement and Compliance Work" dated July 11, 2019[9] (or subsequent policy).

[9] See Partnership Policy, July 11, 2019 at: https://www.epa.gov/compliance/enhancing-effective-partnerships-between-epa-and-states-civil-enforcement-and-compliance.

# III. RCRA INSPECTIONS

## A. Federal Inspector Credentials and Training

RCRA authorizes EPA and its representatives to conduct inspections and assess compliance at regulated facilities with applicable regulations. EPA credentials serve as proof of the inspector's authority to conduct inspections under federal law. EPA issues federal credentials to EPA employees, employees of state and tribal governments, and contractors and senior environmental employees conducting inspections on EPA's behalf.

Inspectors with federal credentials must be trained and receive EPA credentials in accordance with requirements established in EPA Orders 3510 and 3500.1 prior to conducting inspections. These Orders require, among other things, basic inspector training, health and safety training, media-specific training, including on-the-job training and annual refresher training.

EPA RCRA Inspector Training[10] is required for EPA RCRA inspectors, but is also available to state and tribal inspectors and their supervisors. More information on how states and tribes can obtain EPA federal credentials can be found in the "Guidance for Issuing Federal EPA Inspector Credentials to Authorize Employees of State/Tribal Governments to Conduct Inspections on Behalf of EPA" (2004).

## B. Types of Subtitle C Facilities

Hazardous waste handlers subject to compliance monitoring under the RCRA Subtitle C program include:

- TSDFs
- Generators – large quantity generators (LQGs), small quantity generators (SQGs), and very small quantity generators (VSQGs) (previously-known in the federal regulations as conditionally-exempt small quantity generators)
- Pharmaceutical reverse distributors (RDs)
- Transporters and Other RCRA Handlers (e.g., universal waste handlers, used oil handlers, destination facilities, and recyclers).

[10] Information about EPA RCRA inspector training can be found at https://inspector.epa.gov/inspector/images/6/6f/2020_Inspector_Training_Requirements_Template_-_Attachment_1_-6-3-2020.pdf

RCRA-authorized states may have generator categories different than the federal categories.

Compliance monitoring for federal facilities under RCRA occurs in the context of the core compliance monitoring program, federal facility priority areas and regional federal facility enforcement enhancement plans, which change over time and, thus, may be described in the recurring biennial OECA NPG as needed. For further information concerning current and proposed federal facility priority areas as well as federal facility inspections, consult the NPG and Federal Facilities Enforcement Office (FFEO) guidance currently in effect.

## 1. Treatment, Storage and Disposal Facility Program Elements

The TSDF universe includes facilities that receive hazardous wastes from off-site for treatment, storage or disposal, store hazardous waste generated on-site, and former TSDFs that have ongoing corrective action obligations. Permits are required for all TSDFs, including those with corrective action. TSDFs may be privately-owned or owned or operated by federal, state, or local governments. RCRA requires "governmental" TSDFs be inspected at a more frequent rate than "non-governmental" TSDFs (See RCRA § 3007(c) – (e)).

TSDF inspections generally should be CEIs and should verify compliance with permit conditions as well as all applicable regulatory requirements.

## 2. Generators

Generators of hazardous waste (defined in 40 CFR part 260.10) include LQGs, SQGs, and VSQGs – each is subject to a unique subset of the RCRA regulations. The large, small and very small generator categories are defined based on the quantity (and types) of hazardous waste generated per month, with the regulatory burden increasing with the amount of waste generated (i.e., LQGs are subject to more regulatory requirements than VSQGs).

### a. Large Quantity Generators

The number of inspections a state commits to conduct annually, as part of the work plan agreement, is based on the total number of facilities in its LQG universe. The universe is the total number of LQGs in the most recently certified Biennial Report (BR)[11]. The LQG universe in a given state may be influenced by fluctuating generator category of regulated entities (such as those within the pharmaceutical and retail sectors, for example), which can result in annual numbers varying significantly from the most recent BR. A state may derive an alternative universe number for their annual planning from another reliable data source, such as their own state database. For work planning purposes, the region and state should agree to, and document with an electronic date-stamped copy of the inventory data, the alternative number.
Inspections of LQGs generally should be CEIs and should verify compliance with all applicable requirements.

[11] Information about and access to the latest BR can be found on EPA's website at https://www.epa.gov/hwgenerators/biennial-hazardous-waste-report

**b. Small Quantity and Very Small Quantity Generators**

EPA does not set specific inspection expectations on the states for SQGs and VSQGs, but under RCRA state programs should be able to comprehensively inspect all regulated facilities (including SQGs and VSQGs) and have a program for periodically inspecting those facilities[12]. Inspections of SQG and VSG should include a review of the applicable requirements listed above for LQGs.

## 3. Pharmaceutical Reverse Distributors

Facilities that meet the definition of reverse distributors, as defined in Part 266 Subpart P, must notify using the Site ID form. Therefore, once authorized states have adopted Subpart P, they can identify their RD universes by querying RCRAInfo for this specific handler type. EPA expects states to inspect 20% of the combined LQG and RD universes annually. This expectation should not significantly increase the size of the annual inspection universe, since reverse distributors had likely been included in the LQG universe before promulgation of Subpart P.

Inspections of RDs generally should be CEIs and should verify compliance with all applicable requirements.

## 4. Transporters and Other Hazardous Waste Handlers

Hazardous waste transporters are hazardous waste handlers that move hazardous waste from one site to another by highway, rail, water, or air (see 40 CFR 260.10). While EPA does not impose specific inspection requirements on the states for transporters, states are required by statute to be able to comprehensively inspect all regulated facilities (including transporters) and have a program for periodically inspecting those facilities.

In accordance with the statute, inspections of transporters should verify compliance with at least the following requirements:

- Recordkeeping.
- Properly labeled waste.
- Use of the manifest system.
- Proper management of hazardous waste in the event of a discharge during transportation.
- Hazardous waste delivered to permitted TSDFs, recycler or wastewater treatment facility as required, under regulations.

"*Other RCRA Handlers*" means Used Oil Handlers, 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 TSDF. Compliance monitoring for other RCRA handlers occurs largely in context of national, regional and/or state priority areas designed to address compliance concerns.

[12] 40 CFR § 271.15 – Requirements for compliance evaluation programs.

## C. Types of 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.

RCRA requires that EPA undertake "a thorough inspection" of TSDFs. EPA has identified the comprehensive CEI as the type of inspection to be conducted to thoroughly evaluate compliance with Subtitle C requirements at operating TSDFs and generators. A CEI can be quite complex and may require multiple visits to a facility over several days to complete. A region/state may conduct only a single CEI, whether that is done within one visit or over the course of multiple visits, at a facility within an inspection period – as defined in the regional strategic plans or work plan agreements – to satisfy the requirement.[13] For a state or region to get credit for conducting a RCRA Subtitle C CEI during a site visit, the inspector should evaluate compliance with all applicable regulations.

If an inspector evaluates only a subset of the applicable regulations during a site inspection, the inspection is defined and reported as a focused compliance inspection (FCI). For example, if only employee training was reviewed during an inspection it would be considered an FCI. (However, in the case that an inspector evaluates all of the RCRA Subtitle C permit conditions of a TSDF that is also an LQG, then the inspection would be considered a CEI for the TSDF. If the inspector then inspected the same site later in the same inspection period and evaluated the applicable RCRA generator regulations, it would be considered a CEI for the LQG.) In some cases, at facilities with good compliance histories, an FCI can substitute as a CEI (see the Appendix).

The region or state is expected to conduct at least as many financial records reviews (FRRs), 40 CFR Parts 264/265 Subpart H, as the number of TSDF CEIs agreed upon in the regional strategies or grant work plans. Once a region exceeds the CEI annual commitment, additional FRRs are optional.

Some TSDFs may be operating while also implementing corrective action. Others may no longer be managing hazardous waste but may have corrective action or closure/post-closure obligations (e.g., TSDFs subject to corrective action-only permits or with units closed with waste in place). In such situations, a corrective action compliance evaluation (CAC), groundwater monitoring evaluation (GME) or an operation and maintenance inspection (OAM) may be appropriate as a substitute for a CEI and be carried out at least every three years. The Appendix provides detail on frequency recommendations for using these types of inspections as substitutes for CEIs at TSDFs.

Other types of inspections may be appropriate depending on the purpose of the inspection and the type and status of the facility. The full list of inspection types used for RCRA Subtitle C

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

inspections is available in the RCRA Inspection Manual. The list identifies and defines the various types of inspections. The RCRA Inspection Manual[14] provides greater detail on how to choose, prepare, conduct, and report different types of inspections. Guidance for reporting inspections is available on the EPA RCRAInfo website.

## D. Inspection Frequency

Statutory requirements as well as federal and state policy dictate inspection frequency goals and measures. The RCRA statute imposes inspection requirements, for both frequency and quality, for TSDFs, and long-standing OECA policy has established expectations for LQGs and is now also being applied to pharmaceutical RDs. OECA recommended that, during the COVID-19 public health emergency, our partner agencies and EPA's regional enforcement directors discuss adjustments to inspection commitments as set forth in the July 22, 2020 OECA letter to Partner Agencies on Inspection Expectations During the COVID-19 Public Health Emergency.[15]

OECA has a policy in place to allow states flexibility in the traditional LQG inspection expectations in order to achieve better environmental protection outcomes from their compliance monitoring activities for SQG, VSQG and other RCRA handlers. (The Appendix describes the process for using the flexibility.) Other OECA policies, such as national priority areas as part of National Compliance Initiatives (NCIs), stem from the intent of the statute and implementation experience.

OECA formulated, with regional and state input, inspection frequency goals for the RCRA Subtitle C core program. The frequency goals are based upon the statutory mandate for TSDFs; EPA's obligation to ensure effective oversight of state programs; and the deterrence effect generated from having a federal and state presence throughout the regulated community. Inspection goals are translated into minimum inspection numbers for regional strategic plans and work plan commitment negotiations, which are detailed in the following sub-sections and summarized in Table 1 at the end of this section.

### 1. Treatment, Storage, and Disposal Facilities

#### a. Inspection Frequency Considerations

RCRA Section 3007 establishes minimum inspection frequencies for TSDFs: annually for federal, state, and local government owned or operated TSDFs, and biennially for non-government TSDFs.

A GME inspection can be done in place of a CEI when a TSDF is no longer accepting waste. Once it is determined that the groundwater monitoring system is adequately designed and installed, an OAM inspection may become the appropriate inspection for groundwater

[14] See RCRA Inspection Manual 1993 Edition at NSCEP.
[15] See July 22, 2020 OECA letter to Partner Agencies on Inspection Expectations During the COVID-19 Public Health Emergency at https://www.epa.gov/compliance/covid-19-inspection-commitments-letter.

monitoring. The Appendix describes the frequency and conditions under which GME and OAM inspections may be substituted for CEI inspections.

OECA encourages states and regions to coordinate with each other on their respective technical and financial reviews, and to include closure/post-closure and corrective action financial assurance compliance determinations for TSDFs. For example, pre-inspection activities for a CEI could include intra-agency coordination, so that the financial reviewer is aware of the pending CEI and the field inspector is aware of the facility's financial responsibility compliance status, such as any recent or pending compliance determination or whether the facility has submitted up-to-date financial documentation, as required.

**b. Inspection Frequency Measures**

*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. An authorized state may also conduct an inspection at a federally owned/operated TSDF. State CEI inspections may fulfill the statutory inspection requirement for federally owned/operated TSDFs.

*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. This regional obligation includes inspecting TSDFs operated by tribes. An authorized state may also inspect a state or local TSDF, although this is not required by the statute and is not considered under EPA's compliance monitoring obligation.[16]

A TSDF that is owned – but not operated – by state, local or tribal governments is subject to inspection as a non-government TSDF, as discussed immediately below.

*Non-government TSDFs:* Consistent with RCRA Section 3007(e), the region should annually:

- Inspect at least two TSDFs in each state, unless OECA approves a deviation from this obligation.
- Project in the Regional Strategy, by state, the number of TSDFs to be inspected *by the Region* during the year.
- Project, by state, the number of TSDFs to be inspected *by the state* during the year.
- Ideally, inspection targets should be identified by the inspecting agency.

The state should:

- Inspect at least 50% of the universe of non-government TSDFs annually.

[16] Federally recognized tribes may conduct compliance monitoring activities in Indian country under tribal environmental laws, but such inspections are not considered under EPA's compliance monitoring obligations.

Since a non-government TSDF must be inspected at least once every two years, generally 50 percent (50%) of the TSDF universe should be inspected annually.[17] Also, because this is a coverage commitment, multiple inspections at the same facility during a single inspection period would be recorded as only one 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 state and local government TSDFs, and all TSDFs in Indian country.

## 2. Large Quantity Generators

### a. Inspection Frequency Policy Considerations

The minimum inspection frequency goal is for states to inspect at least 20 percent (20%) of the combined LQG and RD universe annually. This frequency ensures the entire universe is inspected every five years. This is a coverage commitment, so multiple inspections at the same facility would be credited as only one inspection during the same EPA fiscal year. LQG inspections, whether conducted by the region or state, should be CEIs. The state may deviate from the 20% LQG and RD inspection expectation using the option for flexibility with an Alternative CMS Plan, described in detail in the Appendix.

State grant work plans should reflect the state's inspection plan including the specific numbers of inspections the state will conduct. If the state has an approved Alternative CMS Plan in place the state grant work plan should note that and specify the numbers and types of facilities to be inspected under the Alternative CMS plan.

### b. Inspection Frequency Measures

The regional and state inspection guidance below is based on the OECA national policy goal for inspecting 20% of the LQG and RD universe.

The region should annually:

- Inspect at least six LQGs in each state, unless OECA approves a deviation from this obligation.
- Project, by state, in the Regional Strategy the number of LQGs to be inspected *by the region* during the year.
- To ensure a level of protectiveness in Indian country comparable to that afforded in other areas of the state, OECA expects regions to annually inspect at least 20% of the LQG and RD universe in Indian country.
- Project, by state, the number of LQGs to be inspected *by the state* during the year (Generally, the inspecting agency should identify its own inspection targets.)

The state should annually:

[17] A region/state, however, may elect to divide the universe otherwise (e.g., 55 % the first year - 45 % the second year), but should satisfy the statutory mandate to inspect each TSDF every two years.

- Inspect at least 20% of its combined LQG and RD universe, with the goal of inspecting the total combined universe in five years.

OR

- States may elect to inspect SQG, VSQG, transporter, non-notifier, and/or other RCRA handler facilities, in lieu of inspecting 20% of their combined LQG and RD universe, under OECA's policy for flexibility.

An appropriate portion of the six EPA LQG inspections the regions conduct may fulfill the state's 20% coverage commitment. To avoid shifting the region's focus and resources from program oversight, the Region's contribution should constitute only a small portion of the state's 20% commitment (e.g., less than 10%).[18]

## 3. Pharmaceutical Reverse Distributors

### a. Inspection Frequency Policy Considerations

The minimum inspection frequency goal is for regions and states to inspect RDs once every five years. States should inspect 20% of their combined LQG and RD universes annually. Since RDs are a new category as of the writing of this document, EPA suggests that regions and states include RD inspections among the facilities inspected early in their five-year cycle to help promote compliance in the regulated community and inform rule implementation efforts. This is a coverage commitment, so multiple inspections at the same facility would be credited as only one inspection. Reverse distributor inspections, whether conducted by the region or state, should be CEIs.

State grant work plans should reflect the state's inspection plan including the specific numbers of RD inspections the state will conduct.

### b. Inspection Frequency Measures

The regional and state inspection guidance below is based on the OECA policy goal for inspecting annually 20% of the combined LQG and RDs universes.

The region should annually:

- Project by state in the Regional Strategy the number of reverse distributors to be inspected *by the region* during the year.

[18] For example, given a universe of 100 LQGs, the state's annual commitment should be 20 LQG inspections (usually, CEIs). The region's contribution to the state's coverage commitment should not exceed two inspections (i.e., 10% of the 20 inspections). The region can do more inspections, but such additional inspections will not count toward the state's coverage commitment.

- To ensure a level of protectiveness in Indian country comparable to that afforded in other areas of the state, OECA expects regions to inspect 20% of RDs or each facility at least once every five years in Indian country.
- Project by state the number of RDs to be inspected *by the state* during the year. (Generally, the inspecting agency should identify its own inspection targets.)

The state should annually:

- Inspect at least 20% of its combined RD and LQG universes each year or inspecting the total universe in five years.

OR

- States may elect to inspect SQG, VSQG, transporter, non-notifier, and/or other RCRA handler facilities, in lieu of inspecting 20% of their RD universe, under OECA's policy for flexibility.

## 4. Other Generator Types, Transporters, and Other RCRA Handlers

### a. Inspection Frequency Policy Considerations

EPA has not established specific goals concerning the type, or minimum number, of inspections for SQG, VSQG, transporter, non-notifier, and/or other RCRA handler facilities. Work plans identify the total number of inspections planned for the year, and that may be far greater than the minimum number of TSDF, LQG and RD inspections defined by RCRA and OECA policy. The balance of inspections is typically made up of these other generator categories and/or RCRA handlers.

Regions and states may elect to inspect less than 20% of their LQG and RD combined universes, in favor of inspecting other generator types or other RCRA handlers, under OECA's policy for flexibility (see the Appendix).

### b. Inspection Frequency Measures

Any agreed-upon measures for state programs are developed by the program and negotiated between regions and states during the grant work planning process. Those measures should be documented in the work plan, and they may also be entered into RCRAInfo.

## 5. National Priorities Areas

A national focus may also be designated to evaluate suspected non-compliance with a specific RCRA requirement (e.g., financial responsibility). Regions may be asked to focus some of their inspection resources to address national priorities, such as NCIs. For example, for the period of FY 2020-2023, EPA selected a RCRA NCI focused on reducing hazardous waste organic air emissions from hazardous waste facilities. The NCI prioritized inspection work to identify and

address violations of leak detection and repair requirements[19] for specific hazardous waste treatment units and equipment. In order to ensure compliance with regulations that control hazardous waste emissions, EPA Regions and authorized states should ensure that all CEIs conducted at LQGs and TSDFs evaluate whether the facility is potentially subject to 40 CFR 264/265 Subparts AA, BB, or CC ("RCRA Air").

After the national priority has achieved its goal of focusing efforts to address an issue, the expectation is that work associated with the NCI will become part of the core program work. Continuing with the RCRA Air example, as part of routine coordination with authorized states, Regions should continue to regularly evaluate state capacity with regards to Subparts AA, BB, and CC in order to provide training and resources to support these activities as needed.

OECA's FFEO has authority for compliance assistance, monitoring, and enforcement, for federal facilities subject to Subtitle C of RCRA. FFEO asks regions to commit to conduct ten inspections annually to support NCIs, federal facility priority areas, and regional enforcement priorities. Depending on the years' NCIs 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.

**Table 1 – Summary: Annual Requirements and Goals Subtitle C Core Program**

| Regulated Entity | As Part of Regional Strategy, Requirements and Goals | State Goals |
|---|---|---|
| Federal Government TSDF[20] | Inspect each TSDF *owned or operated* by a department, agency or instrumentality of the United States. States may also conduct federal facility TSDF inspections. | |
| State/local/ tribal TSDF | Inspect each TSDF *operated* by a state, local or tribal government. | |
| Non-government TSDF | Commit to inspect at least 2 TSDFs in each state – and project by state the number of TSDFs to be inspected *by the Region.* | |
| Non-government TSDF | *Project* by state the number of TSDFs to be inspected *by the state*. | Inspect at least 50% of the universe, unless applying the 3-year inspection frequency flexibility (see Appendix). |

[19] 40 C.F.R. Parts 264 and 265, Subparts AA, BB, and CC

[20] RCRA mandates inspection frequencies for TSDFs for which a permit is required under Section 3005 RCRA 42 U.S.C.§ 6925. For non-operating TSDFs with Post-Closure status, regions and states may apply a 3-year inspection frequency if certain conditions, as described in the Appendix, are met.

| Regulated Entity | As Part of Regional Strategy, Requirements and Goals | State Goals |
|---|---|---|
| LQG | Commit to inspect at least 6 LQGs in each state – and project by state the number of LQGs to be inspected *by the Region*. | |
| LQG | *Project* by state the number of LQGs to be inspected under state authority. | Inspect at least 20% of the LQG and RD combined universe (unless flexibility approved[21] ) |
| RD | *Project* by state the number of RDs to be inspected under state authority. | Inspect at least 20% of the LQG and RD combined universe (unless flexibility approved) |
| Other Operations<br>-SQG<br>-VSQG<br>-Transporter<br>- Other RCRA Handlers | | States may substitute inspections of SQGs, VSQGs, Non-notifies, and/or Other RCRA Handlers (in lieu of LQG inspections) under an approved Alternate Plan[22]. |
| Federal Facilities | Conduct ten (10) federal facility inspections. These inspections may be done in 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. 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. | |
| National Priority | Adhere to measures associated with national priority efforts, combining with core program requirements as possible. | Consider adopting an inspection strategy that aligns with EPA national priorities if it serves the interest of the state program. |

[21] The Appendix describes the process for requesting and granting alternative plan to the 20% LQG inspection policy.
[22] See the Appendix.

## E. Division of Responsibilities Among EPA, States, and Tribes

EPA regions and the authorized states should work together to identify which inspections the EPA or a state will perform, consistent with the guidelines in EPA's 2019 Partnership Policy (or subsequent policy). Federal compliance monitoring activities should complement and provide appropriate oversight of state activities. Federal inspectors inspect using state regulations in authorized states. Regions and states should work together to determine the appropriate mix of federal and state compliance monitoring activities to meet RCRA Subtitle C core program expectations including compliance monitoring activities in Indian country. In making such determinations, each region should examine the compliance status of facilities within the region.

The federal government is responsible for ensuring compliance by facilities 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. Adequate coverage in Indian country means, at a minimum, annually inspecting each tribally operated TSDF and biennially inspecting each non-tribal TSDF, and at least 20% of the LQGs and pharmaceutical reverse distributors, if any, in Indian country in each state. 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. Therefore, federal compliance monitoring should complement tribal environmental programs implemented under tribal laws.

Authorized states determine facility compliance and have primary responsibility for ensuring adequate inspection coverage of the regulated universe for its general deterrent effect.

# IV. PRIORITY SETTING AND TARGETING

Priority setting, targeting, and commitments for compliance monitoring activities are part of an annual dialog that occurs between EPA and states. This dialog is the foundation of cooperative agreement negotiations. Decisions made about compliance monitoring priorities, targets and commitments shall be reflected in cooperative agreement work plans. As part of the mutual planning process and to allow for targeting of regional inspections, regions should assess their own resource levels in relation to each state and tribe's identified priorities, targets and commitments.

## A. Priority Setting

The goal of priority setting is to focus compliance monitoring resources on program areas based on legal requirements, policy goals, and the relative risk to human health and the environment. Regions and states should set risk-based priorities using the criteria listed below. Once the greatest risks are identified, a holistic compliance monitoring strategy should be developed to address priorities but to also provide a balanced compliance monitoring program and overall deterrent effect.

For EPA regions, RCRA compliance monitoring occurs in the context of both the basic statutory and policy goals and any national focus areas – i.e., NCIs, issues of national significance, or Federal Facility strategies – that include RCRA. If a national focus area includes RCRA, then compliance monitoring for the core program and focus area(s) should be complementary, and not mutually exclusive. Generally, regions should, to the extent practicable direct an appropriate portion of their inspection resources to facilities targeted under the national focus area(s).

### 1. Criteria

Risk-based prioritization should reflect the following criteria:

**a. Potential harm to human health or the environment.**
Consider the degree of harm to human health or the environment, whether actual or potential, when setting priorities. Factors to consider are the amount and toxicity of the hazardous waste, potential pathways of migration and the potential impact on health or the environment if an accidental release occurs. While assessing chemical risks, decision makers should consider the

vulnerability of populations in environmental justice communities to exposure, and the potential of exposure to children and workers.

**b. Types and number of past violations.**
The types and number of past violations is an indicator of a facility's level of compliance with RCRA requirements. Past violations may be an indicator that a facility needs attention (compared to facilities that have been inspected a similar number of times with no or fewer serious violations found). The type of violations provides information about specific regulatory areas that must be reviewed thoroughly (either during a CEI or an FCI). The criteria used to evaluate the significance of past violations include: violations that resulted in harm to humans, animals or to the environment; significant major violations as set forth in the Hazardous Waste Civil Enforcement Response Policy; multiple violations, repeat violations, patterns of violations within a facility or among facilities owned or operated by the same entity; and violations involving highly toxic waste or violations that caused economic harm.

**c. Health and environmental indicators.**
Prioritization should consider relevant ecological and health studies when available. For example, a groundwater survey may reveal high levels of contamination also found in hazardous waste generated or stored nearby.

**d. TSDF Prioritization Scheme**
For TSDFs, inspection activity is established in the RCRA. In 2018, OECA sought to formally recognize and initiate a more nationally consistent implementation process that has been used by environmental regulators to prioritize inspections of TSDFs[23]. The inspection prioritization scheme is a tool to assist RCRA regulators when deciding which facilities to inspect in 2-year mandatory statutory cycle to prioritize them using a consistent approach that distinguishes lower from higher priorities. This does not exclude any facilities from the TSDF operating universe, nor does this exclude any facilities from inspections.

EPA's TSDF Inspection Prioritization Scheme Components:

1. Identify facilities that are not actively treating and/or disposing waste to make sure their operating status is up to date using the database of record,
2. Identify facilities that may be inspected due to other ongoing activities, such as those already under an enforcement action, and
3. Identify facilities that are permitted for storage only.

OECA and EPA regions have agreed to this inspection prioritization process to identify categories of facilities that regions may choose to adjust their inspection frequency toward.

[23] EPA is formalizing this prioritization scheme by adding it to the CMS in response to an EPA Office of Inspector General recommendation in the report, "EPA Has Not Met Statutory Requirements for Hazardous Waste Treatment, Storage and Disposal Facility Inspections, but Inspection Rates Are High, Report No. 16-P-0104." March 11, 2016. U.S. EPA OIG.

### 2. Maintaining a Deterrent Effect

EPA and states can provide a deterrent effect by maintaining a visible presence in the RCRA regulated community. Areas to consider for deterrence purposes include:

- Never-inspected LQGs.
- Non-notifier facilities believed to generate hazardous waste in quantities that would require notification.
- Facilities 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 in RCRA or other media-based environmental protection programs.
- Facilities with complex operations or processes that increase the likelihood of mischaracterizing 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.)
- OECA national priorities.
- Facilities that generate, transport, treat, store, or dispose of hazardous waste in multiple states, particularly those where patterns of noncompliance have been observed.

## B. Targeting

Once priorities are identified, targeting of specific facilities follows. Targeting is used to identify ***specific*** facilities or types of facilities that may pose the greatest risk of harm to human health or the environment due to noncompliance. Targeting may be for inspections or other activities that are designed to raise compliance rates (e.g., screening activities conducted by other media inspectors that may provide useful information for the RCRA program). With the growing availability of electronic environmental information, targeting often involves use of data mining and analysis tools to increase the efficacy of a compliance monitoring program. Examples of data mining and analysis tools are the mining of manifest information through the e-manifest system, visual mapping and machine learning. These allow for improved potency of off-site compliance monitoring activities through strategic deployment of inspection resources. It is generally expected that off-site activities will be reported in RCRAInfo as NRRs or NRR-OCMs.

EXAMPLE: OC and the University of Chicago Energy and Environment Lab have developed a robust predictive analytics model to forecast the likelihood that a hazardous waste facility will violate RCRA regulations. The model is based on 15 years of historical data generated from across EPA programs. When used in combination with inspectors' experience, skills, and knowledge, the predictive model can help regulators drastically increase the likelihood of finding violations – allowing scarce inspection resources to be better focused. A field test has demonstrated that the model yields a substantial increase (approximately 47%) in the detection of hazardous waste violations compared to the EPA's status quo practices, with no increase in operational cost.

Generally, information used for targeting could include:

- Collaborative discussion between state or federal co-regulators
- Review of compliance monitoring and violations data, volume data, and tips and complaints.
- Location factors, such as proximity to underserved and vulnerable populations, impaired water bodies; or non-attainment areas.
- Records for facility worker safety.

Specific targeting strategies for any given time period should be influenced by priorities emphasized in the NPG, NCIs, or other national priority announcements as well as regional, state and tribal priorities.

## 1. 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 basic core enforcement program.[24] EPA regions conduct national priority inspections, with no expectation of state involvement. National priorities may affect a single media program or multiple programs and are designated for a finite number of fiscal years, to address specific patterns of non-compliance that have not been sufficiently addressed by the core program.

When OECA designates one or more national priority/ies for RCRA Subtitle C, it is important to ensure coordination, and an appropriate allocation of resources, between the core program and the 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).

Periodically, OECA 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.

## 2. Regional Priority Targeting

[24] For general information about OECA National Priorities, see OECA's NCI web page and OECA's National Program Guidance

Regions also have flexibility to target compliance trends and environmental risks that are unique to their regions and may develop region-specific targeting methods. EPA encourages regions and states to strive to deploy their resources most effectively to locate the most significant environmental risks.

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 considering the following areas:

- 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.

## C. Coordination with States and Corrective Action Programs

Consistent with the 2019 Partnership Policy (or subsequent policy), strategic planning for the core program and national priorities should involve joint planning between senior EPA and State program managers that include discussions of: (1) the environmental compliance problems and needs in the state; (2) national, regional, and state compliance assurance priorities; (3) emerging issues; and (4) how the combined resources of the EPA and the state could be used to address these needs. Strategic planning should also include a discussion of how EPA and the state may mutually build their respective capabilities to conduct inspections and develop and prosecute cases.

Traditionally, regions conduct national priority inspections, with limited state involvement. OECA, however, encourages regions to appropriately coordinate with their states. Coordination may include maintaining a dialog to keep states informed and to get the state perspective on certain facilities or types of facilities, discussing which facilities should be or will be inspected, and/or considering state priorities and potential involvement.

Coordination between RCRA regulatory inspection and program implementation staff (including Corrective Action and Permitting) in the regions and states is important to help ensure compliance with Corrective Action requirements. In addition, Corrective Action personnel may identify RCRA regulatory compliance issues that should be brought to the attention of personnel responsible for RCRA regulatory inspections. Because post-closure and corrective action requirements often overlap, similar coordination may be appropriate to ensure compliance with post-closure care requirements.

# V. DATA MANAGEMENT AND UTILIZATION

OECA employs a variety of mechanisms to administer the RCRA Subtitle C Compliance Monitoring Program. RCRA compliance monitoring data provides a basis for EPA and states to identify priorities, evaluate program effectiveness, and plan future program activities at the state, regional and national level. Additionally, as RCRA databases become more nimble, EPA and states can sort data to identify trends and help identify the most effective use of inspection resources.

EPA, states and regulated entities are all responsible for submitting compliance monitoring and enforcement data into the national databases of record. Data quality, accuracy and completeness are essential for EPA, states and the public to analyze and understand the state of compliance with environmental regulations.

## A. RCRAInfo and ICIS Database Compliance Monitoring Information

RCRAInfo serves as the data system of record for most RCRA Subtitle C-related activities. It contains comprehensive information about hazardous waste handlers, EPA and state compliance monitoring and permitting activities, corrective action, and enforcement. As such, RCRAInfo provides access to data that supports the RCRA Compliance Monitoring Program. For example, with respect to handlers, it identifies facility status, regulated activities, and compliance histories in addition to capturing detailed data on the generation of hazardous waste from LQGs (i.e., biennial reporting data) and on waste management activities conducted by TSDFs. Some states may also require VSQGs and/or SQGs to report the nature, quantities and disposition of hazardous waste generated at their facility. States may use their own databases to track program information (e.g., compliance monitoring activities), but must ensure that such data is transferred to RCRAInfo.

Section 3010 of Subtitle C of RCRA requires any person who generates, transports, or recycles regulated wastes or who owns or operates a TSDF to notify EPA or the state, if authorized, of their activities, including the location and general description of the activities and the regulated wastes handled. The state agencies in turn pass on information to EPA through RCRAInfo. The system enables cradle-to-grave waste tracking of many types of information regarding the regulated universe of RCRA hazardous waste handlers.

Each region annually negotiates inspection goals with each of its respective RCRA-authorized states, and the agreed-upon goals are memorialized in documents such as workplans.

Information about a state's compliance monitoring activity, as well as violations identified and any subsequent enforcement activity, is reported in RCRAInfo, and is used to evaluate whether annual inspection goals are met. Besides documenting the compliance monitoring activity identified in work plans, EPA encourages states to also document all other compliance monitoring activity in RCRAInfo.

Regions are expected to capture and report their compliance monitoring activities, as well as violation findings and enforcement-related activities, in RCRAInfo. EPA regions also record some aspects of compliance monitoring inspections for RCRA in the Integrated Compliance Information System (***ICIS***) database. ICIS is a database that houses federal enforcement and compliance data, integrating data currently located in several separate data systems.

Other important sources of data within RCRAInfo that may be used to enhance compliance monitoring data include the Biennial Report and E-Manifest.

## 1. RCRAInfo Biennial Report

Federal regulations require LQGs and TSDFs to submit a report every two years summarizing the nature, quantities and disposition of hazardous waste generated at their facility. EPA refers to this as the National Biennial RCRA Hazardous Waste Report or the Biennial Report (BR). LQGs must re-notify every other year via the Biennial Report.

RCRAInfo contains the reporting form that generates the BR. The BR form must be submitted to the authorized state agency or EPA by March 1 of every even-numbered year (for example, a report due by March 1, 2022, would report activities from calendar year 2021).

EPA and states use the BR data contained in RCRAInfo to annually define the LQG universes within each state to base inspection strategies. Some states may choose to identify their LQG universe using its own state database, or the RCRAInfo active LQG universe.

## 2. E-Manifest

On June 30, 2018, EPA launched the e-Manifest module in RCRAInfo. E-Manifest is a national system, made available with RCRAInfo version 6.0, for tracking hazardous waste shipments electronically, that modernizes the nation's cradle-to-grave hazardous waste tracking process. Facilities that receive hazardous waste from generators are responsible for ensuring that copies of final, signed manifests, whether electronic or paper, are entered into EPA's e-Manifest system. The e-Manifest system enhances compliance monitoring targeting and pre-inspection work. For instance, regulators can use e-Manifest to compare types and volumes of waste generated and received to other RCRAInfo data, such as generator category and TSDF permit conditions.

EPA and states can use the data in RCRAInfo to characterize, understand the scope, identify trends and conduct other analysis for RCRA facilities. Some uses include:

- Characterization of sites that are conducting RCRA Subtitle C activities.
- Track the generation, management, and final disposition of the nation's hazardous waste.
- Extract information from permits about owners and operators of RCRA facilities where hazardous waste is treated, stored, or disposed.
- Better apply inspection resources through data mining, trend analysis, time series analysis and other data manipulation.
- Use the Commitment Utility to keep track of Alternative Compliance Monitoring Plans (i.e., flexibilities) described in Appendices A and B, and progress toward meeting inspection commitments[25].
- Identify national trends to understand the effect of policies or the need for a national area of focus.

The public may use the tools on EPA's website including Enforcement and Compliance History Online (ECHO), Envirofacts, RCRAInfo Search, RCRAInfo Web, and Cleanups in My Community to find a wide range of information on hazardous waste handlers, including location, treatment, storage, and disposal facilities regarding permit/closure status, compliance with federal and state regulations, cleanup activities, and more.

## B. Enforcement and Compliance History Online (ECHO)

The Enforcement and Compliance History Online (ECHO) system is public facing, with additional content available to government staff through secure login. ECHO incorporates enforcement and compliance data from RCRAInfo and ICIS. The data is updated to the ECHO system on a weekly basis.

ECHO provides integrated environmental regulatory compliance and enforcement information for over one million regulated facilities nationwide. The public can use EPA's ECHO website to search for facilities to assess their compliance with environmental regulations. Regions and states can utilize ECHO.gov for inspection targeting and program management tools, such as State Review Framework (SRF) data metrics.

[25] The commitment utility allows commitments to be entered and tracked in RCRAInfo. When an inspection is entered, you have the option to then link it to any of the commitments in the system. This enables inspections to be categorized and tracked by commitments

# VI. OVERSIGHT OF STATE PROGRAMS

EPA conducts oversight of authorized state programs and EPA regions' direct implementation (DI) in Indian country to ensure that applicable statutes and regulations are fully implemented, and progress is made toward achieving national environmental goals and expectations. This chapter focuses on oversight of state-authorized programs. Oversight of authorized state programs is generally performed in three ways, as laid out in the "Principles and Best Practices for Oversight of Federal Environmental Programs Implemented by States and Tribes Memorandum"[26], that together ensure overall integrity:

1. Formal, retrospective reviews of authorized state programs using established national criteria and procedures. For the RCRA enforcement and compliance assurance program, the SRF[27] is the mechanism for systematic review of the enforcement program implementation. EPA regional DI programs are also subjected to SRF reviews.

2. Regular meetings and discussions between EPA regional offices and authorized states related to the RCRA Subtitle C program. These meetings may occur on at least an annual basis between senior EPA regional and state leadership, and often on a more frequent basis between EPA regional and state program managers. These meetings and discussions are to include joint planning, provide EPA with an up-to-date understanding of how the state is implementing the program, and provide both parties with a clear understanding of expectations. These regular meetings and discussions typically include grant-related discussions, annual work planning, inspection strategy development, requests and plans for flexibility using alternative CMSs, and joint and/or oversight inspections, among others.

3. Matter-specific consultation between EPA regions and authorized states or tribes to address urgent, precedential or high-profile matters in the state or tribe; to execute EPA obligations established by statute or memoranda of understanding; to review state decisions or changes to states' regulations; or to respond to significant violations of federal law.

Oversight activities are intended to help states and EPA regions maintain strong performance and ensure a level playing field nationally. Four key principles informing the EPA's oversight of state-implemented programs are general deference to states in state-implemented programs,

[26] See Memorandum from Andrew Wheeler, Administrator, "EPA Principles and Best Practices for Oversight of Federal Environmental Programs Implemented by States and Tribes" (October 30, 2018).
[27] https://www.epa.gov/compliance/state-review-framework-compliance-and-enforcement-performance

effective communication, clear standards of review and predictable and clear processes for elevating issues.

## A. State Review Framework

The SRF provides a nationally consistent process for reviewing the performance of authorized states, as well as local, and tribal compliance and enforcement programs. Under the SRF, each program is reviewed once every five years. EPA evaluates the performance of authorized programs for a one-year period, typically the one-year period prior to review, using a standard set of metrics to make findings on performance in five areas (elements): data, inspections, violations, enforcement, and penalties. Specific to inspections, SRF evaluates:

- Completeness and accuracy of inspection data,
- Inspection coverage,
- Inspection report quality, and
- Inspection report timeliness

EPA relies on the activities and results reported into RCRAInfo when conducting SRF reviews. Therefore, accurate and timely reporting to these databases is critical.

When a program falls short of their commitments, or performance is found to deviate significantly from federal policy or standards, then EPA issues recommendations for corrective action. To ensure commitments are met and/or performance is improved, these corrective actions are monitored by EPA until implemented. Program reviews conducted under the SRF process, including reviews of the CAA, CWA and RCRA, are organized into a final report which is made public on the EPA site.

## B. Cooperative Agreement Work Plan Reviews

Regions conduct annual data metric reviews of state work plan commitments that were negotiated at the beginning of each year as part of the state and tribal cooperative agreements, Performance Partnership Agreements (PPAs) and/or Performance Partnership Grants (PPGs). The purpose of these reviews is to determine whether the commitments in the work plans were met and evaluate the adequacy of the state or tribal RCRA program. These reviews also include data on enforcement actions taken by the state to aid in determining how state and tribal programs have targeted monitoring and enforcement activities in their respective programs.

## C. Joint and Oversight Inspections

EPA regions and the states should work together to identify which inspections EPA or a state will perform, consistent with the guidelines in the 2019 Partnership Policy (or subsequent policy)

and in Section II. Inspection planning will prevent duplicating compliance monitoring efforts, improve efficiency, reduce unnecessary burdens on the regulated community, and could provide EPA regions and states with more flexibility in setting and adjusting inspection targets and compliance monitoring strategies. Cooperative inspection planning also helps EPA meet its oversight responsibilities to ensure compliance with federal statutes. Best practices for the joint inspection planning process are spelled out in the 2019 Partnership Policy (or subsequent policy).

EPA regions may conduct joint or independent oversight inspections with or after state or tribal inspectors to monitor the quality of inspections and expand the compliance knowledge base. As a component of oversight inspections, EPA regions may review state inspection reports to ensure that inspections are conducted properly, appropriate inspection procedures are followed, and sufficient evidence is collected.

The Agency is authorized to inspect any facility, in any state or territory (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, the regions conduct a minimum number of inspections for oversight purposes. Secondly, they help regions maintain a familiarity with practices and customs within their states in the Subtitle C core program.

# APPENDIX

## Guidance for State Alternative CMS Plans (Flexibilities) for RCRA LQG and TSDF Compliance Monitoring[28]

This Appendix to the RCRA CMS describes four options for an alternative CMS to the inspection regime ("flexibilities") described in the body of the CMS. The Appendix is organized as follows:

- Background
- Basic Criteria to Use for Evaluating Flexibility Requests
- Description of the Three Options for Flexibility
- Flexibility Tracking

## Background

EPA's RCRA CMS offers specific flexibilities to adjust RCRA core program inspection commitments under those compliance monitoring programs that partner agencies are authorized to implement and that OECA oversees, as well as inspection commitments made as part of RCRA grant work plans to:

- Improve compliance assurance outcomes.
- Help identify non-notifiers/non-reporters and develop a more complete and better defined RCRA universe.
- Locate and address currently unknown sources of potential environmental risks.
- Potentially reduce the cost per inspection.

The areas of flexibility available include:

1. Substituting CEIs at LQGs with inspections at other types of RCRA regulated facilities (known as LQG flexibility).
2. Substituting FCIs for CEIs at operating TSDFs that have good track records of compliance (known as FCI/CEI flexibility at operating TSDFs)
3. Substituting GMEs and/or OAM inspections for CEIs at post-closure TSDFs (known as GME/OAM flexibility for post-closure TSDFs)

In general, the CMS flexibilities allow states to redirect some compliance monitoring resources from traditional CEI activities at routinely inspected facilities to inspections that may address more pressing needs or areas of interest.

## Basic Criteria to Use for Evaluating Flexibility Requests

Recognizing that a diversion of resources may pose some risk of not finding some potential violations, or not finding potential violations as quickly at LQGs and TSDFs, the EPA regions, in reviewing state program requests for flexibility, should consider the following criteria developed by OECA to evaluate a state's ability to effectively utilize any of the flexibilities. While the evaluation of a state's request for flexibility may rely on information from previous routine state program reviews, the flexibility evaluation is independent of those reviews since additional factors should be considered that may not have been covered in the routine reviews.

Evaluation Criteria

- Maintenance of an authorized RCRA program –
  - The region must be kept apprised of significant changes made to the state program (e.g., staffing, resource levels), as last authorized, and the region and state must agree that these changes do not adversely impact the effective operation of the program.
  - The RCRA compliance monitoring program fulfills statutory, regulatory, and program grant obligations, including timely inspection reports with all applicable elements identified in the RCRA inspector's manual (e.g., narrative information, checklists, and documentary support).

- The state program has achieved satisfactory results from EPA and has not been apprised of performance issues during any formal and informal oversight activities such as:
  - SRF review
  - Annual reviews, if applicable
  - Oversight inspections, if applicable
  - Other state program monitoring activities such as regularly scheduled conference calls or meetings (e.g., these routine calls have not identified any issues in the state's program or that any issues are being satisfactorily addressed).

The EPA region and states should have routine discussions about state RCRA programs, including implementation challenges, and coordinate as needed to ensure concerns are resolved as soon as possible. Routine, informal discussions between regions and states can be an important factor in evaluating a state's request to use CMS flexibility.

Flexibilities requiring approval are not automatically renewed every year: States are asked to submit year-end results from the previous year's use of flexibilities and plans for the upcoming year. The year-end report should identify benefits achieved by use of a flexibility, as well as any lessons learned. OECA encourages the regions to request additional information, if needed, to clarify how the flexibility achieved the desired results. To reduce administrative burden, a state could time its request for flexibility to coincide with annual routine planning discussions.

## Description of the Three Options for Flexibility

### 1. LQG Flexibility

The RCRA Subtitle C CMS establishes an inspection frequency goal that each state inspects at least 20% of its combined LQG and RD universes. The LQG Flexibility offers states the option, with an approved plan, to implement an alternative CMS (flexibility) to reduce the minimum number of annual CEIs conducted at LQGs, and to redirect the equivalent compliance monitoring resources to inspect other facilities (e.g., SQGs, VSQGs, etc.).

This flexibility applies only to a state's commitment for LQG compliance monitoring and not to TSDFs; it also does not generally apply to other compliance assurance activities (e.g., enforcement, compliance assistance, or incentives), except under an approved, state-specific alternative approach. OECA encourages states, when using this flexibility, to redirect resources from only LQG inspections and not from RD inspections for at least two, 5-year cycles. At the time of this writing, RDs are a new type of RCRA handler and as such, OECA believes it is important to establish and maintain an inspection presence in the regulated community.

A state may propose an alternative approach by submitting a plan for approval by the EPA. OECA, in consultation with states, established four pre-approved approaches for which the region alone may approve the state's plan. Regions must consult with OECA before approving Alternative CMS proposals not included in pre-approved alternatives. The four pre-approved alternative approaches are:

1. The 80% Approach
2. The Greater Than 5 Tons BRS Approach
3. The Straight Trade-Off Approach
4. The Retail Pharmacy Differentiation Approach

If a state uses this flexibility (either a pre-approved approach or an alternative approach), it should prepare and submit to the region a brief written plan and an end-of-year report that documents the outcomes. It is expected that if use of this flexibility does not achieve desired outcomes, the state will reassess its approach and either return to the standard 20% LQG and RD annual inspection frequency or, in consultation with the region, select another approach.

Procedures for Requesting Flexibility and End-of-Year Reporting

For plans that follow one of the pre-approved alternatives, states only need to identify what option they are selecting, the numbers of LQG inspections and alternative inspections (identified by each type of facility to be inspected, SQG, VSQG, etc. as applies) and agree to collect the identified outcomes and perform a year end analysis of the benefits/outcomes from implementing the alternative approach. This should be done during negotiation for the annual work plans. The state should then follow up by submitting a written plan containing the information requested below. The region will review to ensure that all the elements are appropriately captured, and it may be approved by the region without much, if any, need for negotiation (there may be special

circumstances or conditions where additional information is needed for the region to approve a state submittal).

To pursue an alternative that is not one of the pre-approved alternatives, the state should follow the same procedure, but the region will seek consultation with OECA before approving or negotiating the state's alternative plan. If an alternative plan cannot be agreed upon by mid-September, then it is expected that the state will follow the standard approach (inspect 20% of the LQG and RD universe) for the federal fiscal year.

For any proposed alternative, 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 incentive resources.

Regions should send copies of all state plans and end-of-year reports to OECA. Having the plans and reports will help OECA prepare national end-of-year analyses.

Written Plan Details

1) Description of the state's known universe – This information will help in describing the size and benefits/outcomes of the program. This section should include the number of each type of generator and the estimated quantities of waste generated in the state based on the most recent BR data or state data.

2) Baseline - Using BR or another agreed upon database, identify the number of inspections (CEIs) that the state would have had to conduct to meet the standard approach of inspecting 20% of the LQG universe each year.

3) Problem statement – This should describe the problems being missed by the standard approach.

4) Planned mix of inspections – This is essentially the replacement for the commitment to inspect 20% of the LQG universe and while this is a projection, the information reviewed in this element will help show that the state's overall level of effort for inspections does not decrease.

5) Mix of tools – If applicable, describe how the alternative approach for inspections will be used in conjunction with assistance or incentive approaches to try to maximize outcomes.

6) Expected outcomes – A qualitative description of the outcomes the state expects to achieve by adopting this alternative approach compared to what the state would expect by following the standard approach.

7) Measurement plan – A description of the quantitative measures for which the state will collect data and report on, and how it intends to collect/document and store the information.

The plan should also include a description of any other ways the state may follow up to collect outcome measures along with where it will keep the data (state database, RCRAInfo, etc.) and how it plans to report the outcomes to the region (e.g., brief reports during the normal quarterly calls and a complete written end of year report submitted to the region).

Year-End Reporting for States

An end-of-year report describing the Alternative CMS implementation should be submitted to the region by the end of October. It should include the elements of the written plan and an analysis and outcomes of using the alternative approach. 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.

If outcomes have not been realized yet, then the state could project the outcomes). The end-of-year report should recommend the alternative approach be continued, altered or discontinued.

Pre-Approved Alternatives

Alternative 1 – The 80% Approach

States should use the latest National BRS report (or other agreed upon alternative) to identify the number of LQGs and the amount of waste generated by the LQGs and "non-LQGs." Instead of inspecting at least 20% of the LQG universe, a state choosing this option should inspect LQGs that account for at least 80% of the waste generated by the LQGs and "non-LQGs," and then with the remaining resources that would have gone to inspecting other LQGs, the state may target inspections to try to maximize outcomes described in its plan. There should be at least two outcomes for LQGs from this alternative. One would be reported as the amount of waste generated by the facilities where no violations were found and were therefore being handled properly at the time of inspection (use BR numbers to generate this). The second outcome would be amount of waste that was not being handled properly by facilities at the time of inspection that will now be handled properly when the facility returns to compliance. This same outcome information should also be collected and reported for the other entities inspected in lieu of the LQGs under this alternative.

For example, a theoretical state has 180 LQGs meaning that they would have to inspect 36 LQGs to meet the current expectation. For this state, the amount of waste generated by 180 LQGs and all non-LQGs is 874,750 tons. Eighty percent of that is 699,800 tons. For this example, assume 5 of the 180 LQG facilities in the state, account for 80% of the waste generated by LQGs and non-LQGs together generate ≥ 699,800 tons. This means

that the state must inspect five LQGs and could direct up to 31 of its 36 inspections to facilities other than LQGs.

*Outcome measures for Alternative 1*

The LQGs inspected should be put into perspective of the state's overall universe. Additionally, the outcomes should relate to the amount of waste being handled properly. For example, the theoretical state inspected five LQGs accounting for ≥80% of the waste generated by LQGs in the state. Let's assume the five LQGs handle waste totals of 710,000 tons. At one of the five facilities, the state found that 3 streams of waste were not identified, and those streams generated an estimated 50 additional tons of waste which were not properly handled. Additionally, the state identified 8 drums (approximately 1.75 tons) of hazardous waste which were not properly marked and at risk for not being handled properly. No violations were identified at the remainder of the facility, so there is no evidence that the rest of the waste was handled improperly. This could be summed up as: Out of the four facilities accounting for 710,000 tons (81%) of the waste generated by LQGs, no violations were identified for facility operations that account for approximately 710,000 tons, 1.75 tons were not being handled properly at the time of inspection and therefore at risk of improper treatment or disposal but will now be handled properly, and waste streams accounting for an estimated 50 tons of waste not previously identified are now identified and will be handled properly as a result of the state's actions.

For other generators/handlers inspected in lieu of the LQGs (plus any other inspections the state may want to count) additional outcome measures should be collected and be put into perspective regarding the portion of the universe and amount of waste that they accounted for (to the extent that information is easily available). In any event, the direct outcomes of how much waste was being handled properly and how much waste was not should be collected in a similar manner to the LQGs.

Continuing the above example for the theoretical state, for the 31 inspections, 20 SQGs, 5 VSQGs, 4 transporters and 2 potential non-notifiers were inspected. Examples of what is then described are: the amounts of waste generated/handled by each category, what was confirmed to be handled properly, what was not being handled properly, whether or not the generators were identified correctly (e.g., 16 of the SQGs were confirmed to be SQGs with no significant violations and together they generated 34 tons of hazardous waste in the last year, four of the inspected SGQs were determined to be LQGs generating 300 tons of waste which was not being sent to a permitted TSD facility but they only reported and properly handled 15 tons of waste, and one of the potential non-notifiers were identified to be SQGs generating 2 tons of waste which was not being sent to a permitted TSD), etc.

Outcome examples used in Alternative 1 should be used in the remaining alternatives unless the state identifies additional outcome measures to use.

Alternative 2 - The Greater Than 5 Ton BR Approach

The largest possible SQG can generate 12 metric tons (long tons) or 13.2 English (short tons). This means that some LQGs can actually generate less waste than some SGQs since a facility can be an LQG because it had one month where it generated over one metric ton of waste. The idea under this option is to allow for flexibility in the middle of the range of where a facility could be an SQG or an LQG. For a theoretical state, assume 234 LQG facilities, 206 of them generated greater than 5 tons of waste. That means 42 (20% of 206 = 42) would need to be inspected to meet the target of inspecting at least 20% of the LQG universe, leaving flexibility inspections at other handler types equivalent to the resources that would have gone to inspecting 5 LQGs.

Alternative 3 – The Straight Trade-off Approach

The straight trade off approach. This is a straight cut of up to 50% from the number that constitutes 20% of the LQG universe. In other words, inspect at least 10% of the BRS LQG universe. For the theoretical state described in Alternative 2, this means inspecting 24 LQGs (at least 10% of the 234 universe), and then State A could direct the freed-up resources (23 inspections if we assume that each substitute inspection takes as much resources as an LQG inspection) to facilities other than LQGs. Again, the idea is that the level of effort for inspections (personnel and/or dollars) should remain the same. So, if each of the alternative facilities inspected only took half the time it takes to inspect the average LQG then State A would inspect 46 other facilities (2:1 trade-off).

Alternative 4 – The Retail Pharmacy Differentiation Approach

Many large retail pharmacy chains have submitted notification forms on behalf of their individual stores changing the regulatory category of those stores to LQGs - primarily in response to their generation of P-listed pharmaceuticals and over-the-counter consumer products (e.g., warfarin and nicotine) that are non-salable (e.g., returned, expired, overstock, etc.) and therefore must be disposed. Under the final "Management Standards for Hazardous Waste Pharmaceuticals and Amendment to the P075 Listing for Nicotine" published on February 22, 2019, FDA-approved, over-the-counter nicotine replacement therapies (i.e., nicotine patches, gums and lozenges) are no longer be considered hazardous waste when discarded. This change should result in many retail pharmacy chains resubmitting notification forms changing the regulatory category of their individual stores back to either SQG or VSQG. However, the number of, and rate at which, retail pharmacy chains renotify their stores as SQGs or VSQGs will depend on whether the retailers discard other forms of nicotine that are still regulated as acute hazardous waste (e.g., nicotine-containing e-liquids and e-cigarettes), and if/when states adopt the new EPA regulations. Adoption of these regulations by states could take several years.

This approach recognizes chain retail-pharmacy stores as "non-traditional" LQGs, a universe distinct from traditional LQGs, and allows states to not include them when defining their LQG universes for the purpose of compliance monitoring. Note that the term "chain retail pharmacy" is not defined under RCRA but does not include retail facilities that have on-site pharmacies (e.g., "big box stores"), or auto repair facilities and

gas stations that may sell nicotine cessation products. Note that States may propose an alternative compliance monitoring flexibility to address these sectors.

Under this approach states would inspect 5% of that nontraditional chain pharmacy universe each year (while continuing to inspect 20% of the traditional LQG universe). Prior to this approach, a state with 400 notified LQGs, of which 220 are traditional LQGs and 180 are non-traditional chain pharmacy stores notified as LQGs, the state would have been expected to inspect 20% of this entire LQG universe (i.e., 80 facilities). States choosing to utilize this approach can now remove the 180 chain pharmacy stores from its notified LQG universe, leaving just 220 traditional LQGs, of which 20% (i.e., 44) are subject to inspection annually, provided the state also inspects 5% (i.e., nine) of the chain pharmacy stores notified as LQGs. In summary, under this approach the state would conduct a total of 53 combined traditional and non-traditional LQG inspections – 29 fewer than if it had applied the 20% LQG inspection policy to its entire universe of notified LQGs.

A full CEI should be conducted at each of the selected nontraditional chain pharmacy stores. The inspection should include standard questions about disposal of hazardous waste pharmaceuticals and specifically, if any is disposed via trash or sewer (which is not allowed).

This flexibility will allow the states to monitor compliance of this nontraditional LQG universe while continuing to focus their limited resources on inspecting more of the higher-risk, traditional LQGs and maintaining established compliance monitoring programs for SQGs and VSQGs.

*Outcome Measures for Alternative 4:*

Outcome measures States could track include compliance rates that compare retail pharmacies and traditional LQGs; the number and type of the violations found at the Retail Pharmacies. The end-of-year report should include lessons learned and an analysis of patterns of non-compliance within the sector that may be of national significance.

## 2. FCI/CEI Flexibility for Operating TSDFs

This flexibility allows FCIs to be conducted in lieu of CEIs at operating TSDFs with "good track records of compliance." Since the RCRA statute requires that "thorough inspections" be completed with a minimum frequency at TSDFs, this guidance establishes criteria to ensure that FCIs conducted in lieu of CEIs at TSDFs are "thorough" but does not change the frequency of inspections.

A CEI is typically an on-site evaluation of the compliance status of a facility with regard to all applicable RCRA regulations and permit requirements. The major objective of a CEI is to gain an overall assessment of facility compliance. Although portions of a CEI may be conducted off-site in an office-based setting (e.g., financial records review), such "office" evaluations can be an

integral part of a CEI. As a rule, however, CEIs are very time consuming and require a significant allocation of compliance monitoring resources.

An FCI is an on-site inspection that evaluates some (but not all) specific RCRA and/or authorized state regulations (e.g., Subpart CC of 40 CFR Part 264, BIF, or Universal Waste) and permit conditions. For the purposes of this flexibility, an FCI should focus on any significant changes implemented at a TSDF since the previous inspection. Inspectors should also evaluate all hazardous waste determinations made by the facility, waste profiles provided to the facility by generators, and be satisfied that the inspection is sufficiently thorough. If the inspector is not convinced that a FCI will be sufficient to meet the thorough inspection requirement, the inspector should then proceed with a CEI inspection.

For the purposes of this flexibility, an FCI, when considered with previous CEI inspections at the facility, is considered a thorough inspection if the following criteria are met. The state or region should provide documentation to show the criteria have been met.

TSDF Criteria. Where a region/state has established that the facility has a good track record of compliance, an FCI may be substituted for a CEI provided the following criteria are met:

- At least two CEIs have already been conducted at a facility.
- The facility was in compliance in the most recent CEI.
- The facility is not a current significant non-complier (SNC). An FCI may be allowed at a facility where there is injunctive relief in place, such as a consent order or another formal mechanism, to address prior violations.

FCI Criteria—Frequency**.** When used in conjunction with CEIs, FCIs can be an important component of an efficient and effective compliance monitoring program. It is important that a region/state maintain adequate familiarity with a TSDF through the measured use of FCIs. As such, an FCI should only be substituted for a CEI when the following conditions are met:

- FCIs are substituted for CEIs only two times consecutively.
- A CEI is conducted following renewal of a facility permit.
- A CEI is conducted following the change of a facility owner or operator.
- A CEI is conducted following a significant change in process, operating procedure, production, or the wastes generated or managed at a facility, etc.

FCI Criteria—Minimum Inspection Elements. When an FCI is conducted at a TSDF in lieu of a CEI, the FCI should, at a minimum:

- Determine if financial assurance requirements are met.
- Determine if all waste streams have been identified and properly characterized, and all hazardous waste streams are being handled properly.
- Evaluate facility operations to determine if any process changes have occurred at the facility since the last inspection that would affect hazardous waste management practices.

- Spot check facility compliance with the regulations and permit requirements for those areas that have not changed.

### 3. GME/OAM Flexibility for Post Closure TSDFs

This alternative applies only to "post-closure TSDFs" which, for the purposes of this document only, means a TSDF that meets all of the following: (1) has no units receiving waste; (2) has met all closure requirements of 40 CFR Part 264/265 and the permit; (3) has received closure certification from the appropriate state agency in authorized states or EPA in unauthorized states; (4) has begun the post-closure monitoring period; and (5) is in substantial compliance with all post-closure monitoring and permit requirements (i.e., is not SNC).

Because this flexibility provides a common-sense approach to conducting inspections with limited resources, states may implement this flexibility without prior notification to, or approval by, their EPA region.

The RCRA statute requires "thorough" inspections of TSDFs. Generally, a "thorough" inspection is performed via a CEI, which is an evaluation of all aspects of a facility's compliance with applicable regulations and, in the case of TSDFs, the permit.

Many of the normal CEI inspection items are not applicable for TSDFs that are no longer receiving waste but have land-based units that preclude clean closure of the site, including manifests, contingency plans, personnel training, and waste storage requirements. However, these TSDFs still have significant regulatory obligations that must be met. This alternative allows the TSDFs to receive a thorough inspection at least every three years.

To establish a CEI baseline, during years one through three of the post-closure monitoring period, the state or region should perform on-site CEIs at the post-closure TSDF. The CEI should evaluate compliance with the site security requirements of 264/265.117; the financial assurance requirements of 264/265.145; and the permit. In addition, the CEIs will evaluate compliance with the requirements of 40 CFR 264/265.228 for surface impoundments; 40 CFR 264/265.258 for waste piles; 40 CFR 264/265.280 for land treatment; 40 CFR 264/265.310 for landfills; 40 CFR 264.603 for miscellaneous units; 40 CFR 264/265.1102 for containment buildings; and 40 CFR 264/265.1202 for hazardous waste munitions and explosives storage units. These CEIs will be separate evaluations from any GME/OAM evaluations that may be performed.

At facilities that are in substantial compliance with their post-closure maintenance and monitoring requirements, it would be cost-effective in both personnel time and costs that the physical areas of compliance be evaluated at the same time as the GME/OAM evaluation. Therefore, during years 4 through 30 of the post-closure monitoring period, the state may incorporate the requirements identified above into the GME/OAM evaluations, provided those elements are thoroughly evaluated and included within the written GME/OAM report.

The state shall perform separate CEI evaluations if the facility is determined to be a SNC. Once the state has changed the RCRAInfo status to SNN, the combined inspections may resume.

## Flexibility Tracking

LQG flexibility. The region/state using this flexibility should use the commitment field in RCRAInfo. The commitment should be identified as "LQG flexibility facility." Then any facility identified in the LQG flexibility plan as being inspected in lieu of an LQG should be linked to this commitment. Additionally, the region should forward a copy of the state's plan to the Pesticides, Wastes and Toxics Branch (PWTB) Branch Chief in the Monitoring, Assistance and Media Programs Division (MAMPD) in the Office of Compliance. At the end of the year, the region should forward a copy of the state's end of year report to PWTB.

FCI/CEI at Operating TSDF flexibility. The region/state using this flexibility should use the commitment field in RCRAInfo. The commitment should be identified as "TSDF flexibility facility." Any facility identified in the TSDF flexibility plan as being inspected with an FCI in lieu of a CEI should be linked to this commitment. Additionally, the state should identify all TSDFs that meet the requirements for allowing an FCI in place of a CEI and that the state intends to inspect.

Post-closure TSDFs**.** RCRAInfo generates a report called, "Evaluations for TSDs with Units Closed with Waste in Place" that regions should use to ensure TSDFs closed with waste in place are inspected at the specified frequency.