



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

NOV - 1 2005

OFFICE OF
ENFORCEMENT AND
COMPLIANCE ASSURANCE

MEMORANDUM

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

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

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

Since some EPA Regional enforcement and compliance personnel have recently raised questions regarding the use of contract inspectors in compliance inspections/evaluations of Federal facilities, **we are writing to confirm that properly trained and authorized contract inspectors are appropriate for Federal facility compliance inspections/evaluations under the Clean Water Act (CWA), the Resource Conservation and Recovery Act (RCRA), the Toxic Substances Control Act (TSCA), the Oil Pollution Act (OPA) and the Safe Drinking Water Act (SDWA).** The Federal courts are split as to whether contract inspectors are authorized to conduct inspections under the Clean Air Act (CAA), and the Federal Insecticide, Fungicide and Rodenticide Act's (FIFRA's) language limits those who are authorized to conduct inspections.

Under the CAA, the Courts of Appeals for the Sixth, Ninth, and Tenth Circuits have considered the issue of contract inspectors, but have reached different conclusions that depend, in part, on the specific area being inspected. Without a definitive answer from the Supreme Court, we advise that Regions should not use contract inspectors for CAA inspections. In the *rare* circumstance where contract inspectors may be needed to conduct a CAA evaluation/inspection, written approval for the use of such inspectors must first be granted by the Federal Facilities Enforcement Office (FFEO).

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

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

- ▶ The inspection contract must contain language per EPA Order 3500.1 requiring the contract inspector to meet the training requirements of the Order, including completion of the Basic Inspector Course, health and safety training, and medium-specific training requirements – prior to leading an inspection.

- ▶ Contractors who merely assist, rather than lead, inspections are not required to comply with all of the requirements of EPA Order 3500.1, although meeting the requirements is still recommended. Even if not leading inspections, contract inspectors are obliged to have health and safety training, as specified in EPA Order 1440.3.
- ▶ The inspections must be carried out in accordance with approved Quality Assurance/Quality Control plans (that are part of the Regions' Quality Assurance Management Plan) and use established procedures, such as those set forth in EPA's Inspection Manuals.
- ▶ Depending on the nature of the inspections to be conducted, a background investigation may be required for contract inspectors. Any background investigation requirements should be included in the contract. Background investigations are especially important in the Federal facilities context – particularly at high-risk facilities (e.g., certain military bases, nuclear weapons plants and classified facilities).
- ▶ A contract inspector may not request or review Confidential Business Information (CBI) unless she or he has been cleared for CBI by EPA under the particular statute for which the authorization is given.
- ▶ EPA does not issue the same Federal credential which EPA employees carry to contractors. A few programs issue a statute specific credential authorizing the contractor to carry out inspections under a specific statute. It clearly identifies the bearer as a contractor. In most cases, EPA provides contractors with a letter of authorization. The letter identifies the bearer as a contractor.

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

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

cc (electronic only)

Michael S. Alushin, OECA/OC
 Kenneth A. Gigliello, OECA/OC
 Phyllis E. Flaherty, OECA/OC
 Sandra L. Connors, OECA/FFEO
 Bernadette Rappold, OECA/FFEO
 Gregory Snyder, OECA/FFEO
 Gracie Garcia, OECA/FFEO
 FFEO Liaisons
 Regional Enforcement Division Directors
 Regional Media Division Directors
 Regional Enforcement Coordinators