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RCRA State Oversight Inspection Guide

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Office of Waste Programs Enforcement
U.S. Environmental Protection Agency
Washington, D.C.

PREFACE

The 1988 RCRA Implementation Plan states that EPA must assess the States' performance and progress in implementing quality RCRA programs. Oversight inspections are important tools for ensuring the quality of State inspections and can include joint inspections and/or independent EPA inspections. This guidance manual has been written for EPA and State enforcement staff. It describes the State oversight inspection, explains how to plan, coordinate and conduct the inspection, and explains methods to be used to report the findings of the inspection.

The manual has been organized and written to conform to the steps enforcement officials would follow in planning and conducting State oversight inspections.

Chapter One discusses the basis and the purpose for conducting State oversight inspections, and defines the terminology used in the guidance.

Chapter Two explains how EPA and State management should plan and coordinate the oversight inspection process, and describes the key items to discuss in the planning effort. It discusses the qualifications needed by the EPA inspector involved in performing oversight inspections.

Chapter Three explains how to prepare for the oversight inspection. It describes what should be done prior to conducting the field inspection and discusses the responsibilities of the EPA and State inspectors.

Chapter Four describes how to conduct both joint and independent State oversight inspections. A sample oversight inspection form is included as an appendix to help the inspector focus field activities and record field observations. A separate section is included for evaluation of the State inspection report.

Chapter Five describes post-inspection procedures including facility exit, debriefing with State personnel, review of the State inspection report, and procedures for reporting oversight inspection findings.

The Appendices include the sample oversight inspection form, a bibliography for reference, and a list of abbreviations.

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1.1

Background

Section 3006(b) of the Resource Conservation and Recovery Act (RCRA) of 1976 (as amended), provides that any State may make application to the U.S. Environmental Protection Agency (EPA) to administer and enforce the hazardous waste program. Further, EPA shall authorize a State to carry out its program in lieu of the Federal program if it can demonstrate that its program is equivalent (or more stringent) and consistent with the Federal program and it provides adequate enforcement of compliance with the requirements. An authorized State is required, among other things, to conduct compliance and evaluation inspections of hazardous waste management facilities for the purposes of developing regulations, preparing permits, or ensuring compliance with the provisions or regulations promulgated under the Act.

The RCRA Evaluation Guide provides guidance to EPA and the States on how to incorporate program quality criteria (and related policies) into their hazardous waste management activities. It provides both a valuable reference point for implementing national requirements and a complete protocol for conducting program reviews. The National Criteria for a Quality Hazardous Waste Management Program Under RCRA sets basic goals and performance expectations for the States and EPA in managing the RCRA program.

The RCRA State Program Review process by EPA involves a comprehensive review of State hazardous waste program activities, including file reviews, oversight inspection evaluations, enforcement evaluations, oversight record reviews, Hazardous Waste Data Management System information, and the Compliance and Enforcement Monitoring Logs. The actual state oversight inspection evaluation comprises only a portion of the overall RCRA review.

The FY'87 RCRA Implementation Plan (RIP) stated that Regions should identify areas of the State programs that need strengthening and that progress in these areas will be expected prior to making decisions to authorize a State for the RCRA program. The Regions should review the quality of the work States have done in the areas of permitting, closure, and enforcement. The Regions were to institute a mechanism to oversee approximately 10% of the State inspections, including both independent and joint inspections; and were to perform audits of State inspection records more frequently than on an annual basis.

The FY'88 RIP places greater responsibility upon the Regional offices by allowing the Regions to select the appropriate number of State oversight inspections. It stresses the point that State oversight inspections are important tools for ensuring the quality of State inspections and that review of inspection reports should be conducted as part of the grant oversight process.

It is the purpose of this guidance document to provide a uniform procedure under which State oversight inspections should be performed and to promote a nationally consistent approach to evaluating State performance. Among the anticipated benefits of a nationally consistent approach is a clearer understanding among EPA and State personnel on the scope and extent of each oversight inspection. Another goal is development of a reliable data base to facilitate such State oversight. Specific conditions will determine, within the scope of the inspection, the extent of oversight that a particular site will require. A consistent approach to conducting oversight inspections will aid in removing a source of variability, and thus focus more attention on the findings and the methods. Clearly, the findings of the oversight inspection program are integrally important to the overall enforcement effort in each State.

Finally, the Agency position is that quality oversight inspections must be conducted in order to ensure that the States are carrying out effective RCRA programs. The focus of this guidance document is to improve the quality of the oversight inspection program, to institute consistency among State oversight inspections, and to provide constructive feedback to improve the overall State RCRA program.

The following sections of this chapter provide an overview of the intended use and content of the RCRA State Oversight Inspection (SOI) Guide.

1.2

Purpose of the Guidance Document

The major purpose of this document is to provide guidance to designated EPA oversight inspection personnel on procedures to be used when conducting State oversight inspections and to provide RCRA program review personnel with information to be used in mid-year and end-of year reviews. Also, this guidance will clarify for State personnel the Agency objectives and procedures for conducting oversight inspections. This should help them better prepare for the inspection and improve their understanding of comments received after the inspection.

A secondary purpose of this document is to provide guidance to EPA oversight inspection personnel on procedures to be used when conducting oversight of EPA contractors performing RCRA inspections. The procedures detailed in this document can be used to conduct EPA oversight of contractor inspections with some minor modifications.

This guidance document can be used for all types of facilities (e.g., generators, land disposal, non-notifiers) and all types of inspections including:

- Compliance Evaluation Inspections (CEI)
- Comprehensive Monitoring Evaluations (CME)
- Record reviews
- Lab Audit Inspections
- Operation and Maintenance Inspections (O & M)
- Case Development Inspections (CDI)

However, the use of this guidance document is limited when performing inspections such as a CME, where a large portion of the inspection is performed in the office by a State hydrogeologist or geologist. The SOI relates mainly to a review by EPA personnel of State field activities. Therefore, performing the field portion of the CME which involves a review of well placement, and sampling and analysis procedures would be applicable to the guidance presented in this document.

The guidance document seeks to provide information that will improve the quality of oversight inspections and establish a framework for improving the overall performance of both State inspection programs and EPA contractor inspections.

1.3

Updating Procedures

As individual State RCRA programs are authorized under the Hazardous and Solid Waste Amendments of 1984 (HSWA) amendments and as more inspections are performed by the States, procedures for performing State oversight inspections may change; updates to this document will be issued to reflect these changes. The SOI guidance manual will be revised based upon regulations modifying requirements for State programs or procedural changes that occur due to statutory modifications to the RCRA program.

1.4

Definitions

This document presents terminology that needs to be clarified for the user of this guidance. Definitions are provided below for this purpose:

State Oversight Inspection

A RCRA inspection conducted by EPA personnel to determine the effectiveness of a State hazardous waste management program and to determine facility compliance. There are two types of State oversight inspections: joint and independent.

Joint Oversight Inspection

An oversight inspection performed jointly by EPA and the State. The State inspector would be designated the lead inspector with the EPA inspector mainly acting as an observer.

Independent Oversight Inspection

An oversight inspection performed on different dates and separately by EPA and the State. Each inspector would report their findings and the EPA inspector would compare the findings to determine whether the State inspection was complete and thorough.

The following chapters will describe in detail each of these inspections and the procedures to be followed when conducting these inspections.

2.1

General Program Commitments

RCRA grants for the FY '88 RIP were prepared on a Regional, rather than a State-by-State, basis. The grant formula reflects program emphasis on land disposal and incineration facilities. The FY '88 grants are performance-based, and this approach provides for a consistent nationwide method for managing and evaluating RCRA programs. As mentioned previously the State oversight inspection is an important tool for EPA to use when evaluating State performance under RCRA.

In order for the State oversight inspection process to achieve its desired goals, planning is required between EPA and State personnel at the beginning of each fiscal year. Two levels of planning are recommended:

1. Upper management planning to discuss overall workplans and State inspection targets; and
2. Middle-level management and first-line management planning to determine numbers, locations, and scheduling of EPA oversight inspections.

It is expected that some interaction between the two levels of planning will occur as the process moves toward its goals.

The first level of planning is necessary for upper management to focus on general program elements (i.e., land ban, used oil, incinerators) and State resource allocation. Planning of this type normally occurs as part of the State-EPA Agreement (SEA) process and is intended to define overall State program objectives. This level of planning normally may involve identifying certain procedures and defining ways to report findings.

During this level of planning there should be a discussion which concludes with a mutual understanding of what EPA and the State views as an effective, complete site evaluation. The EPA oversight inspection should attempt to evaluate State performance against this agreed upon standard.

There are inspection guidance documents published by EPA which describe in detail the procedures, observations and documentation required to meet the standard for a complete and thorough site inspection. These guidance documents are listed in the bibliography.

This first level of planning does not normally include detailed scheduling and reporting procedures for conducting State oversight inspections. Additional planning for these tasks is required at a lower management level. This additional planning is discussed in the following paragraphs.

The second level of planning is more critical to achieving a workable State-EPA relationship for conducting State oversight inspections. EPA personnel in either the RCRA Program Branch or the Environmental Services Division should meet with their State counterparts at the beginning of each fiscal year. Meeting more often during the year is encouraged to revise schedules and update the inspection targets. It should be emphasized that performing oversight inspections on a routine and organized basis is the responsibility of both the EPA and the State. This second level of management should concentrate on developing detailed plans for performing oversight inspections and should include the following items:

1. A rationale for selecting potential oversight candidates.

There should be a concerted effort by the EPA and the State to perform oversight inspections at various types of facilities, including generators, transporters, Treatment, Storage and Disposal Facilities (TSDF's), and non-notifiers. In addition, various types of inspections should be evaluated, including CEI, CME, records review, CDI, lab audit, and O & M. The RIP will prioritize the types of facilities that should be inspected on an annual basis. However, for the purposes of conducting State oversight inspections, the Regions should allow for some flexibility by the States in scheduling facilities and types of inspections to be performed due to the fact that some States target specific areas or have unique facilities requiring more intensive inspections.

2. Submittal of lists of scheduled inspections at the beginning of each quarter.

The State should submit a list of scheduled inspections to EPA at least three weeks prior to the beginning of each quarter. The list should include the name and type of the facility, the State inspector assigned and the type of inspection planned for the facility. Changes to the tentative schedule should be forwarded to EPA within a reasonable time frame. If possible, a list at the beginning of the fiscal year would assist in the planning process.

3. Criteria for selecting EPA/State oversight inspectors

EPA and State management should discuss the mechanism for selecting personnel that will perform State oversight inspections. Arrangements should be made, to the extent possible, to maximize the use of different State and Regional personnel to assure that the evaluations provide a broader base of information and are less a product of personal biases. Different State inspectors should be chosen for oversight trips as well as selected EPA personnel in offices that have a sufficient number of inspectors to allow for this activity.

4. Followup reporting procedures to be used by EPA.

EPA and State management should determine specific procedures to be followed for transmitting oversight inspection findings and recommendations. EPA and State management should also develop procedures for State responses to EPA oversight comments and recommendations (e.g., State response should usually be via telephone call, letter, etc.). Chapter Five presents various options for reporting the findings from the oversight inspections to the State and EPA Program Office.

2.2

Qualifications

The role of the EPA inspector in performing State oversight inspections is demanding. The EPA inspector must objectively evaluate the State inspector's ability to observe and document violations of the hazardous waste regulations, and concomitantly evaluate the facility's compliance at the same time. In addition, the EPA inspector must perform the inspection in such a way that fosters a positive relationship between the State and EPA. These tasks are not easily accomplished in view of the facts that State programs operate differently; individual personalities are involved; and varying professional approaches can be assumed. It is for these reasons that EPA personnel assigned to perform State oversight inspections should, to the extent possible, be experienced, qualified and fully understand the objectives.

The EPA inspector should have sufficient experience in the field to evaluate different facilities (i.e., generators, TSD's) and should have a knowledge of both federal and State regulations. Upper management in EPA should attempt to assign oversight inspections to the more experienced personnel on their staffs. When experienced EPA personnel are not available, EPA management should closely review the findings to determine their suitability. In addition, EPA management should be willing to discuss the selection of personnel with their State counterparts prior to the inspection. If necessary, EPA may choose to change the inspection to a joint inspection, rather than a joint oversight inspection, until the EPA staff person gains more experience.

3.1

Objectives

The oversight inspection planning program involves the following key components:

- Planning by management/inspectors,
- Adequate preparation and coordination between EPA and State inspectors, and
- Adequate time to review pertinent facility information.

In some cases the preparation time will not be adequate and this can lead to scheduling difficulties. Such situations can be minimized by good planning which allows the inspectors at least one week to prepare for an oversight inspection.

3.2

Responsibility of the EPA Inspector

The EPA inspector should verify the name, address, location, and date for the oversight inspection at least two days prior to the actual inspection date. In most cases this will require calling the State inspector in advance to verify the information. It is the responsibility of the EPA inspector to review any files provided by the State on the particular facility, or to gather similar information through normal channels (e.g., regional files, inspection reports). The EPA inspector may visit State offices to obtain information on inspection candidates and review various enforcement files.

The EPA inspector should be prepared on the day of the inspection to meet the State inspector at an appropriate location prior to the inspection. EPA personnel should be prepared to discuss the objective of the oversight inspection and the procedures which will be followed during the inspection. It is also necessary that the EPA inspector understand the objective of the State inspection (e.g., followup inspection of a generator may not require a detailed review of all records). The EPA oversight inspector is responsible for objectively evaluating State inspection practices and determining the thoroughness and adequacy of the inspection.

The EPA inspector should discuss safety concerns with the State inspector prior to the oversight inspection. If the inspection involves sampling, the State inspector should provide the EPA inspector with a copy of the site safety plan and sampling plan. However, the EPA inspector should be prepared to deal with most safety problems and should have personnel protective equipment available (e.g. hard hat, safety glasses, safety boots, gloves, disposable clothing, foul weather gear). If sampling is involved, additional safety equipment may be necessary (e.g., full-face respirator with appropriate cartridges, self-contained breathing apparatus, chemical resistant clothing, air monitoring equipment).

In addition, the EPA oversight inspector is responsible for preparing a report summarizing the findings of the inspection. The oversight inspection reports should be completed and forwarded to the appropriate EPA and State offices. Chapter Five presents options for reporting inspection findings.

3.3**Responsibility of the State Inspector**

The State inspector has the responsibility of scheduling the inspection at the subject facility and informing the EPA inspector of the name, address, location, and date for the inspection. The State inspector must allow sufficient time, usually at least one week, to inform the EPA inspector of the above information. If there are changes to the schedule, the State inspector should inform EPA personnel within a reasonable time. The State inspector should make arrangements to get pertinent information about the subject facility to the EPA inspector by either:

1. forwarding copies of documents,
2. making arrangements for the EPA inspector to review the documents, or
3. verbally discussing the facility in detail prior to the oversight inspection.

This is extremely important if the scope of the inspection will be limited to reviewing compliance with specific State actions that the EPA inspector has not been informed of or is unfamiliar with.

State inspectors should review their own files and be familiar with available facility information prior to the inspection. State personnel should have all required safety equipment and other specialized equipment (i.e., sampling equipment, tools, etc.) needed to perform the inspection and should discuss safety concerns with the EPA inspector. If sampling is to be performed, the State inspector should give the EPA inspector a copy of the site safety plan and sampling plan.

The State inspector should be prepared to discuss with the EPA inspector the type of inspection to be conducted and the information to be reviewed with the owner/operator of the facility.

The State inspector is responsible for preparing the facility inspection report. Procedures for submission of State inspection reports to the EPA oversight inspector for review should be agreed upon during the second level of planning described in Section 2.1. Both EPA and State inspectors should know these procedures. It is the responsibility of the State inspector to meet the deadlines for submitting completed inspection reports.

In cases where enforcement action is initiated, the inspection report should be forwarded with a copy of the action (e.g., notice of violation, consent order) taken so that EPA can evaluate the enforcement response. Timing for forwarding of enforcement actions should be agreed upon by EPA and State management. Moreover, it is incumbent upon EPA to inform the State of untimely reporting through the procedures agreed to by management.

4.1

Purpose of the Oversight Inspection

The general purpose of the State oversight inspection is to assess the quality and completeness of a State RCRA inspection which will provide EPA and the State with information to assist in evaluating the overall State program; in addition it should serve to increase the level of proficiency of both State and EPA personnel by exposure to different field techniques employed by various inspectors. EPA and the States are equally accountable for establishing public confidence that hazardous waste is being properly handled and disposed of in compliance with all laws and regulations. The State oversight inspection is a useful tool to aid in accomplishing this objective.

The specific purposes of the State oversight inspection are to satisfy EPA's obligation to:

1. Determine facility compliance, including all Class I violations.
2. Check for federal requirements only (e.g. HSWA and future amendments to RCRA).
3. Obtain factual information about facility processes, waste generation, and waste handling practices in those instances when the State inspector fails to do so.

NOTE: This should include questions to the owner/operator required to complete the inspection.

One goal of the oversight inspection program is to improve the quality of inspections performed by the State by identifying deficiencies that can aid State management in concentrating their limited resources on specific problem areas. However, EPA does not intend to use the oversight inspection program to reprimand individual inspectors or have EPA oversight inspectors perform appraisals reserved for and the responsibility of the State first-line supervisors. EPA oversight inspectors should evaluate State personnel on an unbiased basis keeping in mind the overall objectives of improving both facility compliance and the State hazardous waste management program.

4.2

Pre-Inspection Meeting

A critical step in performing a thorough and organized State oversight inspection is for EPA and State personnel to meet prior to the inspection. This meeting should take place on the day of the inspection, if possible, at a location other than the facility to be inspected. The major purpose of the pre-inspection meeting is to discuss the procedures to be used by EPA and State personnel during the inspection. EPA and State personnel should discuss the following:

- Type of inspection (i.e., CME, CEI, records review)
- Information to be reviewed (i.e., plans, permit applications, inspection records)
- Sampling, if appropriate, to be performed
- Enforcement orders, if appropriate, to be reviewed
- Actions to be taken if EPA observes a violation not observed by the State
- EPA participation during the inspection
- Exit interview with owner/operator
- Procedures for feedback to the State and submission of inspection report to EPA

It should be emphasized that the State inspector at this time should inform EPA personnel of specific items that will not be reviewed. For example, various plans, including the contingency plan, training plan, and waste analysis plan might not be reviewed during the inspection. State personnel should inform EPA of specific reasons for not reviewing certain information or not conducting a complete inspection (e.g., records reviewed during previous inspections).

In the event that a pre-inspection meeting between State and EPA personnel cannot be arranged, the State inspector should contact the EPA inspector to discuss the information described in the previous paragraph sometime prior to the oversight inspection. Failure to discuss the scope of the oversight inspection may lead to inaccurate information being presented by EPA in the followup report or lead to misunderstanding about the scope and intended purpose of the inspection.

4.3

Facility Entry

State personnel should make arrangements with the facility, or conduct a surprise inspection, depending on the individual State operating procedure. The EPA inspector will follow the procedure used by the State. The owner/operator should be informed that the inspection will be a joint oversight review with the State inspector having the lead. The owner/operator should be made aware of EPA's role to evaluate the State program and also to determine compliance with federal requirements not enforceable by the State (e.g., HSWA requirements).

EPA oversight inspectors and State inspectors should review the specific procedures for handling confidential business information and for presenting government identification to the owner/operator. These procedures are described in the RCRA Inspection Manual (1988 version).

In the event that the owner/operator refuses entry to EPA and/or State personnel, all inspectors should document the name and title of the individual denying entry, and should leave the facility immediately. The appropriate inspector should then contact their legal counsel for assistance in how to proceed.

4.4

Inspection Procedures

State personnel will gather related information, review the facility records, and perform the inspection according to State standard operating procedures. EPA personnel should observe and document procedures used by the State inspector to ascertain facility compliance. The EPA inspector should evaluate the thoroughness and adequacy of the overall inspection based on the criteria established in Section 4.5. The EPA inspector also should make preliminary judgments regarding the facility's compliance. The EPA inspector should participate during the inspection if:

1. the State inspector specifically requests assistance;
2. the EPA inspector requires information to complete the inspection or verify facility status;
3. the EPA inspector observes errors during the inspection.

The State inspector or inspection team may require assistance during a sampling inspection. The EPA inspector may assist in ancillary functions, such as helping inspection personnel don protective equipment or storing sample containers for transport to the laboratory. The EPA inspector will determine in specific instances whether, and to what extent, assistance to State personnel is appropriate.

Examples of errors that may cause the EPA inspector to intervene in the inspection include:

- Incorrect statements to the owner/operator that a particular process or unit is not regulated.
- State inspector does not observe a release of hazardous waste (e.g., leaking tank or drums)
- Inadequate documentation of a violation (e.g., no photo taken of an actual release of hazardous waste)

NOTE: When an error is observed at a facility, it is very important for the inspectors to use discretion and never argue or appear confused during discussions with facility representatives. If possible, request the use of a meeting room to discuss and compile notes prior to a final meeting with the facility manager. Use this time to resolve differences, make informational phone calls, or develop a strategy to deal with the observed problems.

4.5

Oversight Evaluation Criteria

The specific task of the EPA oversight inspector is to determine if the State is:

1. Following its inspection and compliance monitoring procedures.
2. Detecting all violations at RCRA facilities.
3. Providing adequate training and guidance to its inspection staff.
4. Providing adequate safety equipment and field equipment to its staff.
5. Properly informing the regulated community of the subject regulations.

In order to accomplish this task, the EPA inspector must ask certain specific questions of the State inspector and must evaluate State performance during an actual inspection. In the case of an independent oversight inspection, the same evaluation should be made, but the findings reported must be carefully reviewed by supervisory personnel for their suitability. Among the criteria to be used to evaluate the State inspection program on a consistent and objective basis are:

- Inspector preparedness (knowledge of facility history)
- Knowledge of applicable Federal/State hazardous waste regulations
- Ability to obtain facility information to determine whether operations and regulated units meet the RCRA requirements
- Determination of facility type, including facility processes and regulated waste streams
- Field documentation practices
- Elements of field presence (i.e., ability of inspector to actively control the inspection agenda)
- Conduct of exit interview with owner/operator
- Post inspection documentation practices (inspection report and findings)

4.6

Use of Oversight Inspection Form

The EPA inspector should utilize an oversight inspection form to aid in evaluating and organizing observations made during the inspection. A sample form that can be used is included in Appendix I. It is recommended that each Region tailor the form to its needs and the needs of the individual States.

General questions asked by the EPA oversight inspector regarding the amount and quality of training, safety and sampling equipment availability, and inspector experience are focused to objectively aid in determining the adequacy of the State hazardous waste management program.

The form includes a narrative section to be used by the EPA oversight inspector to record the following information:

- specific observations regarding facility compliance
- inspector's ability to deal with the owner/operator
- unexpected problems occurring during the inspection
- overall quality of the inspection
- mitigating factors that may have a bearing on the inspector evaluation (e.g., facility complexity or ongoing litigation)

The oversight inspection form allows the EPA inspector to discuss site specific factors that are beyond the State inspector's control and may complicate the inspection. Examples include interim status vs. permitted status questions, definition of solid waste interpretations, on-site recycling activities, and large facility inspections involving numerous regulated units.

The name of the State inspector should not be included on the EPA oversight inspection form.

The form is divided into two parts. Part 1 is used during the actual inspection to record observations made in the field. Part 2 of the form is to be used to evaluate the State inspection report relative to field observations. Both parts of the oversight inspection form should be completed by the EPA inspector.

4.7

Independent Oversight Inspections

Discussions up to this point in the guidance manual have focused upon the procedures to be used when conducting joint EPA/State oversight inspections. As an alternative to a joint inspection, independent oversight inspections can be performed at the same RCRA facility on different dates by EPA and State personnel. The inspections should occur within a two week period in order to minimize inspecting the facility during various states of compliance, ongoing industrial process operations, and management changes. Independent oversight inspections pose difficult scheduling problems, place additional burdens upon the EPA oversight inspector, and may disturb the owner/operators that are inspected twice in a short period of time. This may appear to them as poor communications between the State and the Region.

Independent State oversight inspections may not be routinely conducted, but may be a component of the Regions' oversight policy. Independent oversight inspection should be used when joint oversight inspections cannot be performed due to strained State relations, scheduling problems with State personnel, or to verify the status of facilities requiring intense oversight by Regional personnel.

EPA does not envision that independent oversight inspections will be carried out without prior discussion with and notification to the State. However, this procedure may be appropriate when EPA has concerns about the quality of State inspections that is not verifiable through the joint oversight inspection process or through the Regional review of the State program. In these cases, Regional management should be apprised of the interagency problems which may result. The following paragraphs present guidance on performing independent oversight inspections involving prior State notification, or unscheduled EPA inspections.

In cases where the State and EPA have discussed and planned to conduct independent oversight inspections, scheduling should be done so that the State inspection is performed initially, followed within two weeks by the EPA inspection. If this procedure cannot be followed, the EPA inspection can be performed initially with the State inspection performed within two weeks. However, every attempt should be made to schedule the State inspection as the initial inspection.

An element in performing scheduled independent oversight inspections is that there should be some minimal discussion between the EPA and State inspector to clarify the scope of the inspection. If possible, a pre-inspection meeting to discuss the facility and any related matters can be arranged prior to either the State inspection or the EPA inspection.

EPA and State personnel should then complete the scheduled oversight inspections within the specified time frame. The State inspector should forward the completed inspection report to the EPA oversight inspector for review. The EPA oversight inspector should then review the report to determine whether the State inspector has observed and documented violations accurately. Reporting procedures for the completed oversight inspection form are discussed in Chapter Five.

Unscheduled independent oversight inspections also may be conducted under this program. In these situations, EPA will have to obtain a list of completed inspections from the State and attempt to inspect these facilities within a reasonable time frame (should be less than one month). After the oversight inspection is completed, the EPA inspector should review the State inspection report to determine whether EPA observed violations were reported by the State.

Independent oversight inspections can be a useful tool to determine State performance. However, there are disadvantages to the use of these inspections. Even though EPA and State personnel inspect the same facility within a relatively short time frame, there is no way of verifying that both inspectors actually observed similar situations. The owner/operator could have changed operations based on business considerations, or the previous State or EPA inspector's comments and observations. In the event that EPA and State oversight inspectors do not discuss the facility prior to conducting the inspections, it may be difficult to evaluate the overall quality of State inspections. However, if violations are unreported repeatedly by State personnel at a number of facilities, more definitive information can be used to discuss State performance at the mid-year and end-of-year reviews.

Another disadvantage of performing independent oversight inspections are that they are more time consuming and inconvenient for the facility that receives two inspections within a relatively short time. Also, enforcement against a particular facility may be a problem if EPA and State inspection reports differ in their findings.

There also can be advantages to utilizing independent oversight inspections. One of these is that ultimately the use of independent oversight inspections may force accommodation and resultant cooperation between EPA and the State. This may be the case where State oversight work is targeted when the Region identifies performance problems. Although the State may initially view the use of independent oversight inspections as an unnecessary tool, the final State response could be a positive reaction that will result in improved performance.

A second advantage may be that EPA obtains a more accurate evaluation of the State inspection program. The State may choose to have senior inspectors participate in the oversight inspection program and this group may not fully represent the overall inspection workforce. By performing independent oversight inspections EPA will obtain information on a broader range of State inspection personnel that can be used more effectively in evaluating the overall State program.

Another point to be considered is that complex sites, such as land disposal facilities, or incinerators, require more intensive inspections to ascertain compliance. These facilities are required to comply with numerous regulations. The use of independent oversight inspections is one mechanism to allocate resources for the purpose of ascertaining whether these facilities are complying with the regulations on a more frequent basis.

The comments stated above are not meant to discourage the use of independent oversight inspections to determine State performance, but to emphasize that their use as a tool for State program review should be carefully planned and coordinated to minimize misunderstandings between EPA and the State.

5.1

Facility Exit

For a significant number of RCRA inspections, the exit interview with the owner/operator is the most difficult portion of the inspection. The inspector must be prepared to answer questions, to the extent possible, to prepare necessary receipts for samples, to provide relevant information on the State hazardous waste management program, and to request additional information not available at the time of the inspection. During an oversight inspection, the State inspector has the additional knowledge that the EPA inspector has observed the inspection and may have varying opinions. Such potential uneasiness can be minimized if the EPA and State inspectors have discussed exit interviews during the pre-inspection meeting.

If the EPA oversight inspector believes that erroneous or incomplete information may be passed on to the owner/operator during the exit interview, he should request private consultations with the State inspector and conflicts should be resolved at that time. If these conflicts cannot be resolved, it is the EPA inspector's obligation to advise the owner/operator of problems observed at the facility regarding potential violations of either State requirements or other federal requirements not enforceable by the State (e.g. HSWA or other changes to RCRA). These actions by the EPA inspector will be important in cases where a future enforcement action is taken by EPA. Section 5.2 discusses concerns that arise with State inspector enforcement authority that should be considered when performing State oversight inspections.

5.2

State Enforcement Authority

State hazardous waste regulations can vary greatly in the authority granted inspectors relative to issuance of formal, i.e. legal notices of violations and/or orders mandating compliance. It is advisable for EPA oversight inspectors to know relevant State regulations in order to better understand the limitations which such regulations may impose on the State inspector. In any case, the EPA oversight inspector should note the procedures used by the State inspector in the reporting of violations occurring at the facility to the owner/operator. In addition, the EPA inspector should compare the State inspector's findings with their own assessment of the facility's compliance.

Relative to actual enforcement authority, Section 3008 (a)(2) of RCRA reserves to EPA the right to initiate unilateral enforcement actions in an authorized State-but only upon giving notice to such State prior to issuing an order or commencing a civil action. The reasons for EPA taking such unilateral actions can be many and varied and include:

- State may have taken no action against a violator,
- State may be untimely in its enforcement response,
- State response may not be considered appropriate to the level and seriousness of the alleged violations (including penalties, or lack of such),
- State may not have sufficient enforcement personnel to handle the case, or
- The case would establish a legal precedent (these cases are expected to arise infrequently).

Specific guidance on these issues can be found in the 1984 Enforcement Response Policy (ERP) and the respective State/EPA Enforcement Agreements.

EPA oversight inspectors should also realize that they may be called as a witness in future State or EPA administrative or other enforcement actions. Therefore, they should take all measures necessary to assure that all observations, field notes, and other evidence obtained during the oversight inspection are accurate and factual as if they were the lead inspector for compliance of the site.

5.3

Debriefing State Personnel

At the conclusion of the exit interview with the owner/operator, the State and EPA inspector should meet at a location other than the facility inspected to discuss their observations and conclusions. The EPA oversight inspector should review the oversight inspection form with the State inspector, commenting on strengths and weaknesses noted. EPA oversight personnel should note that these comments are only informal and that after submission and review of the State report, formal written comments will be transmitted to the State. Every attempt should be made to provide constructive feedback.

If debriefing with State personnel cannot be conducted immediately after the oversight inspection, arrangements should be made to discuss the inspection within three days. It is very important that EPA and State inspectors discuss their mutual observations, findings, and application of the hazardous waste regulations noted during the inspection. This is the forum to present observed problems and for the State inspector to explain his approach and any rebuttal of EPA observations or comments.

The procedures and time frames for completion and forwarding of the State inspection report should have been established by management in prior discussions (see Section 2.1). The EPA oversight inspector should discuss these procedures with the State inspector.

The EPA inspector will review the State inspection report and prepare Part 2 of the oversight inspection form. The EPA inspector should inform the State inspector that the completed oversight inspection report will be sent to the office designated by the State, and to the EPA program office for its use in mid-year and end-of-year reviews.

5.4

Review of State Inspection Report

After completion of the field portion of the State oversight inspection, the EPA inspector should prepare Part 1 of the oversight inspection checklist. Upon receiving a copy of the State inspection report, the EPA inspector should review the State report for the following items:

1. Observations and documentation of such
2. Timeliness of report
3. Accuracy of report in relation to field observations
4. Documentation of findings and/or conclusions

After reviewing the State report, the EPA inspector should complete Part 2 of the oversight inspection report and the completed report should be forwarded to the appropriate offices in the State and in the EPA.

NOTE: Any comments or conflicting views stated in the EPA and State reports could be potentially dangerous to an enforcement action if obtained during discovery. Care must be taken in how written comments are made about specific findings.

5.5

EPA Reporting Procedures

The oversight inspection report prepared by the EPA inspector should be used by State personnel as a tool to improve performance and focus on potential programmatic problems, including insufficient training, and improper safety and/or sampling equipment. Also, the State should use the report to implement appropriate program changes and provide a response to EPA via the agreed to procedures (i.e., specific response to each oversight inspection form or feedback on program changes during mid-year and end-of-year reviews).

There are a number of options for transmitting the EPA oversight inspection report to the State. These include:

- Forwarding the report directly to the State inspector.
- Forwarding the report directly to the State inspector's first-line supervisor.
- Forwarding the report directly to the State central office with a copy to the State inspector.

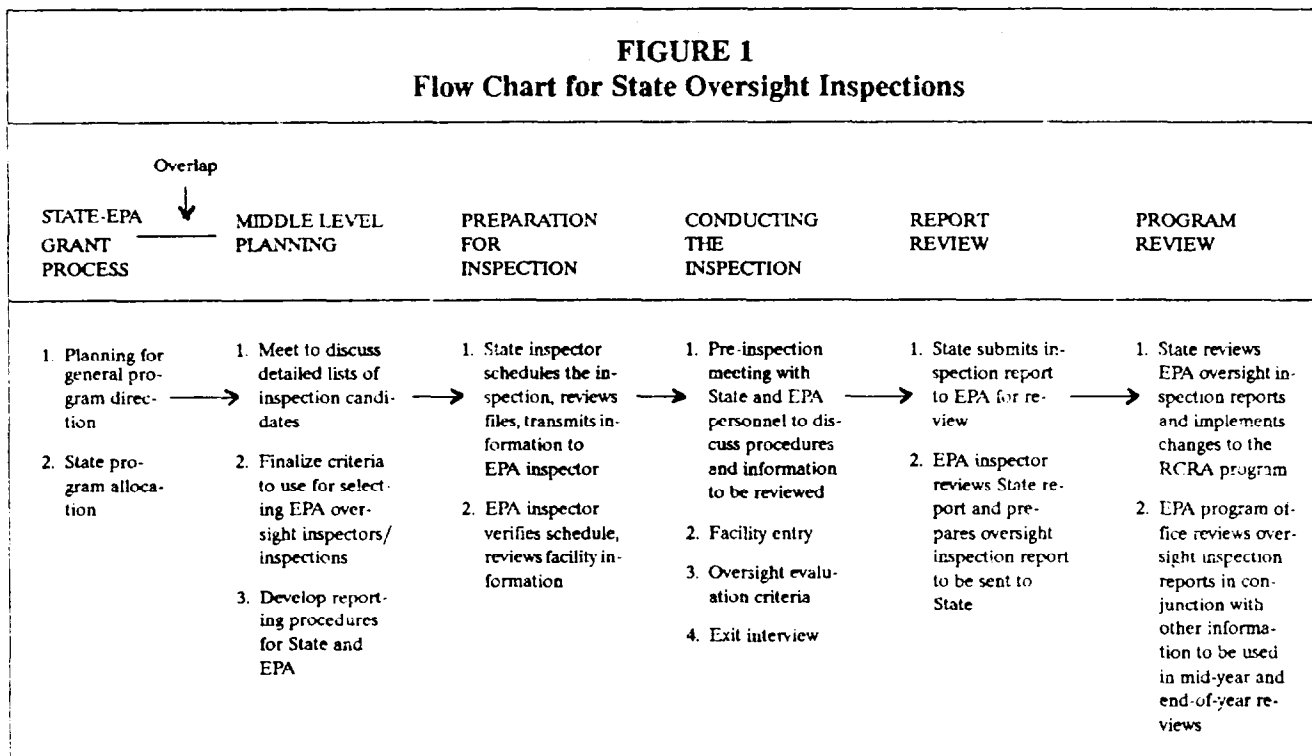
As mentioned in Chapter 2.1, EPA and State management should discuss and agree upon the mechanism for transmittal of the oversight inspection reports.

EPA RCRA program offices also should use oversight inspection reports as a tool for focusing the State program management on improving State inspections via better training, possible redistribution of resources to more important areas, or other needed improvements. The EPA program office also should be open to the fact that the States' deficiencies may be indicative of lack of sufficient EPA/State guidance or training, inadequate transmittal of information to or within the State, poor communication between and within the State and the Region, or changing priorities for inspections.

Satisfactory evaluations by EPA oversight personnel indicate the State inspection program is adequate during the period reviewed by EPA. However, oversight inspections should continue to be used as a major tool to assess the States' hazardous waste program and for determining whether the States are maintaining a quality inspection workforce.

A flowchart depicting the RCRA oversight inspection process is presented in Figure 1.

FIGURE 1
Flow Chart for State Oversight Inspections



APPENDIX I
Oversight Inspection Form

Instructions:

The form is divided into two parts. Part 1 is used during the actual inspection to record observations made in the field. Part 2 of the form is used to evaluate the State inspection report relative to field observations. Both parts of the oversight inspection report have to be completed by the EPA oversight inspector. In the remarks column, N/A may be appropriate in some instances.

PART 1

I. Facility Name: _____

EPA ID #: _____

Facility

Activities: _____ Small Quantity Generator

_____ Generator

_____ Transporter

_____ Treatment/Storage/Disposal Facility

II. Inspection

Type: _____ CEI	_____ O & M
_____ CME	_____ Lab Audit
_____ Records Review	_____ Compliance Monitoring
_____ CDI	_____ Other (specify) _____

Items To Be

Reviewed: _____ Full Scope _____ Limited Scope

Inspection

Format: _____ Joint _____ Independent

III. EPA Oversight

Inspector: _____

Organization: _____

Telephone: _____

IV. Inspection

Date(s): _____

Yes No Remarks

V. Pre-Inspection Review

- 1. Did the State inspector arrange the logistics of the inspection by assuring:
 - a. facility actively operating? _____
 - b. EPA properly notified? _____

- 2. Did the State transmit requested documents according to the established schedule? _____

- 3. Was the inspector prepared to conduct the inspection? The inspector should have pertinent information (permit application, previous inspection reports, waste types handled) and equipment (safety and sampling)? _____

- 4. Did the inspector present the appropriate identification and advise the owner/operator of the purpose of the inspection and briefly describe the agenda? _____

VI. Facility Information (Observations)

- 1. Did the inspector demonstrate or obtain knowledge of the facility processes and an understanding of its RCRA history? _____

- 2. Did the inspector conduct a thorough walk-through of the industrial processes and associated hazardous waste generation areas in the facility? Were there any areas not inspected? If so, why? _____

	<u>Yes</u>	<u>No</u>	<u>Remarks</u>
3. Did the inspector fail to note any violations or improper waste handling activities?	_____	_____	_____
4. Did the inspector fail to identify any hazardous waste handling areas not previously identified in previous reports or records?	_____	_____	_____
5. Upon identifying a potential violation, did the inspector initiate case development procedures (i.e., gather detailed evidence to support the findings of violations)?	_____	_____	_____
6. Did the inspector check the requirements for preparedness and prevention, including adequate aisle space, emergency equipment availability, and access to communications during hazardous waste handling operations?	_____	_____	_____
7. If applicable, was sampling performed by State personnel in accordance with standard operating procedures specified by the State and/or EPA?	_____	_____	_____
8. Was proper safety and sampling equipment used to perform the sampling?	_____	_____	_____
9. Was the inspector helpful to the owner/operator by providing explanation of the regulations?	_____	_____	_____

Yes No Remarks

10. Was the inspector able to answer questions accurately or commit to provide answers at a later date?

11. If the facility was permitted, did the inspector determine compliance with permit-specific conditions?

12. Did the inspector perform an exit interview with the owner/operator summarizing the key findings of the inspection?

NOTE: The inspector should not make a finding of violation during the inspection, but should only discuss the findings.

VII. Knowledge of the Regulations

1. Was the inspector knowledgeable about hazardous waste regulations applicable to the facility?

2. Was the inspector aware of recent amendments to the regulations that may affect the conduct of the inspection?

Yes No Remarks or Not Applicable

VIII. Document Inspection (Review)

(Please note if review was performed prior to or during inspection)

1. Did the inspector thoroughly review the following documents?

A. For Generators:

- Inspection records for hazardous waste storage areas _____
- Personnel training records _____
- Contingency plan _____
- Emergency equipment testing and maintenance records _____
- Waste analysis records _____
- Manifests and exception reports _____
- State annual and/or EPA biennial reports _____
- Waste minimization plan _____

B. In addition, for TSDF's:

- Part A permit application or final issued permit _____
- Part B application prior to permit issuance _____
- Operating record _____
- Waste analysis plan _____
- Inspection schedule _____
- Closure and Post Closure Plan _____
- Financial instruments _____
- Ground Water Monitoring/Reports _____
- Other information (treatment plant operations, internal correspondence) _____

PART 2

INSPECTION REPORT REVIEW

	<u>Yes</u>	<u>No</u>	<u>Remarks</u>
<u>I. Review of Inspection Report</u>			
1. Did the inspector submit the completed inspection report within the established SEA or grant deadlines?	_____	_____	_____
2. Did the inspection report contain factual observations rather than opinion?	_____	_____	_____
Comments:	_____		

3. Was the report accurate and did it sufficiently document all the violations? Were the regulations interpreted correctly?	_____	_____	_____
4. Did the report contain a discussion of changes that have occurred at the facility since the previous inspection?	_____	_____	_____
If not explain items that should have been included:	_____		

5. Did the inspection report accurately reflect the EPA oversight inspector's observations? If not, explain the differences:	_____	_____	_____

II. Remarks

1. What is your overall assessment of the inspection and the inspection report?

2. Describe recommendations that may improve the quality of the State inspection and/or inspection report?

NOTE: Indicate whether the inspector is in need of additional training or is lacking in a particular skill (e.g. hazardous waste sampling) needed for an adequate inspection.

3. Comments on the inspection that could have a bearing on the State inspector evaluation (e.g., facility status under litigation, inadequate time allocated to perform inspection, complex industrial processes and waste handling practices, or numerous regulated units located on site).

APPENDIX II
Bibliography

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7. United States Environmental Protection Agency. Final Version Due 1988.
Technical Case Development Guidance. Washington, D.C.
8. United States Environmental Protection Agency. Final Version Due 1988.
Inspection Manual for Hazardous Waste Storage and Treatment Tank Systems. Washington, D.C.
9. United States Environmental Protection Agency. Final Version Due 1988.
Laboratory Audit Inspection Guidance. Washington, D.C.
10. United States Environmental Protection Agency. Final Version Due 1988.
Operation and Maintenance Inspection Guide: RCRA Ground Water Monitoring Systems. Washington, D.C.

APPENDIX III**List of Abbreviations**

CDI	Case Development Inspection
CEI	Compliance Evaluation Inspection
CME	Comprehensive Monitoring Evaluation
EPA	U.S. Environmental Protection Agency
ERP	Enforcement Response Policy
HSWA	Hazardous and Solid Waste Amendments of 1984
HWDMMS	Hazardous Waste Data Management System
O & M	Operation and Maintenance Inspection
RCRA	Resource Conservation and Recovery Act
RIP	RCRA Implementation Plan
SEA	State-EPA Agreement
SOI	State Oversight Inspection
TSDF	Treatment, Storage, and Disposal Facility