

COMMONWEALTH OF VIRGINIA
Department of Environmental Quality

Subject: Waste Guidance Memorandum No. 02-2010
SOLID WASTE COMPLIANCE PROGRAM INSPECTION MANUAL

To: Regional Directors, Deputy Regional Directors

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Date: January 3, 2011

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Regional Waste Program Managers

Summary:

The Virginia DEQ Solid Waste Compliance Program conducts periodic inspections of waste management facilities subject to the Virginia Waste Management Act and its associated waste regulations. This manual provides procedural guidance on how to conduct a legally defensible inspection, and is designed to promote uniformity and consistency among DEQ Regional Offices. Procedures include pre-inspection preparation, on-site inspection protocols, and post-inspection procedures for report preparation and responding to observations of compliance and non-compliance. Suspected noncompliance is addressed using a classification system of severity levels to identify the significance of various noncompliance observations so a prioritized compliance and enforcement response may be initiated to resolve the matter. Attachments to this manual provide boilerplate forms and letters used to note, formalize and publish inspection observations.

Electronic Copy:

An electronic copy of this document is available for staff internally on the DEQnet, and for the public on DEQ's website at <http://www.deq.virginia.gov/waste/guidance.html>.

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Disclaimer:

This document is provided as guidance and, as such, sets forth standard operating procedures for the Agency. However, it does not mandate any particular method nor does it prohibit any alternative method.

If alternative proposals are made, such proposals should be reviewed and accepted or denied based on their technical adequacy and compliance with appropriate laws and regulations. The procedures established in this document are not intended and cannot be relied upon to create any rights enforceable by any party in litigation. DEQ reserves the right to act at variance with policies and procedures and to change them at any time without public notice.



**Division of Land Protection & Revitalization
Office of Waste Permitting & Compliance**

**Solid Waste Compliance Program
Inspection Manual
Revision 1**

May 2011

FORWARD

The procedures set forth here are designed to promote uniformity and consistency throughout the Department to conduct a legally defensible inspection. This manual provides guidance to Virginia Department of Environmental Quality (DEQ or the Department) staff conducting inspections under the Virginia Solid Waste Compliance Program at solid waste management facilities (SWMF) under.

- [Chapter 81](#) - Solid Waste Management Regulations
- [Chapter 85](#) - Coal Combustion By-Product Regulations
- [Chapter 120](#) - Regulated Medical Waste Management Regulations
- [Chapter 170](#) - Transportation of Solid and Medical Wastes on State Waters

Disclaimer: This document is provided as guidance and, as such, sets forth standard operating procedures for the Virginia Department of Environmental Quality (DEQ). The procedures established in this document are intended solely for the guidance of employees of the DEQ. They are not intended and cannot be relied upon to create any rights enforceable by any party in litigation. DEQ reserves the right to act at variance with policies and procedures and to change them at any time without public notice.

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- 2: On-Site Records Review Checklist**
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- 4: Final Consensus Statement for Use of Areas of Concern**
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CHAPTER 1 – PURPOSE AND SCOPE

The Virginia Department of Environmental Quality (DEQ or Department) conducts periodic inspections of solid waste management facilities. The purpose of this manual is to promote uniformity and consistency among DEQ regional offices by providing guidance on how to conduct a legally defensible inspection.

This manual provides procedural guidance for performing inspections of permitted facilities and other sites subject to the Virginia Waste Management Act and its associated waste regulations. Procedures include pre-inspection preparation, on-site inspection protocols, and post-inspection procedures for report preparation and responding to observations of compliance and non-compliance. Attachments to this manual provide boilerplate forms and letters used to note, formalize and publish inspection observations.

This manual intends to act as a Quality Management Plan for the Solid Waste Compliance Program. Where deviations from these procedures occur, regional program staff and management should maintain appropriate written documentation and justification regarding the specific actions taken.

DEQ staff should strive to achieve the Solid Waste (SW) Program Mission which is:

“To protect air, water, and land and ensure a healthy environment by promoting, guiding, and regulating the effective management of solid waste”

PRINCIPLES: We achieve the SW Program Mission through:

1. A collaborative focus on the environmental benefits as well as the impacts to those we regulate, agency resources, and the community.
2. Development of regulations that are clear and no more complex than necessary to achieve environmental results.
3. Prioritizing agency actions and resources based on existing and potential environmental threats.
4. Development of policies and practices that promote and facilitate waste minimization, beneficial reuse, and recycling.
5. Timely and consistent application of regulations and guidance while taking responsibility to proactively consider alternatives and find workable solutions.
6. Consideration and understanding of other agency programs and responsibilities.
7. Clear and certain internal and external communication (two-way, active listening, one DEQ voice).
8. Meeting our commitments to timeliness and quality.

This manual is designed to assist compliance staff with implementation of waste statutes and regulations for which the DEQ is authorized or approved to implement. Nothing in this manual may interfere or limit the agency or its personnel from fully implementing the solid waste program as designed and intended. If any information or procedure herein conflicts with other DEQ procedures or other state or federal statutes and regulations, regional staff or management should notify the Solid Waste Compliance Coordinator and obtain clarification before any action is taken. Further, if a planned compliance action is not covered by this Manual or applicable regulation or if it is the first time a procedure or regulation is applied, the proposed action should be discussed with the Solid Waste Compliance Coordinator for possible precedent and for consultation with outside agencies.

CHAPTER 2 - DEQ AUTHORITIES AND RESPONSIBILITIES

DEQ is authorized to conduct inspections of permitted solid waste management facilities and other waste management sites for purposes of determining compliance with the requirements of the statute, regulations, and permits.

2.1 Inspector Authority and Limitations

Right of entry to regulated facilities and access to abandoned waste sites is granted to DEQ representatives under the Code of Virginia

- **§10.1-1406.1.A.** states, in part: *“For the purposes of this section, “abandoned waste site” means a waste site for which (i) there has not been adequate remediation or closure as required by Chapter 14 (§ 10.1-1400 et seq.) of this title, (ii) adequate financial assurances as required by § 10.1-1410 or § 10.1-1428 are not provided, and (iii) the owner, operator, or other person responsible for the cost of cleanup or remediation under state or federal law or regulation cannot be located.”*
- **§10.1-1456** states, in part: *“Upon presentation of appropriate credentials and upon consent of the owner or custodian, the Director or his designee shall have the right to enter at any reasonable time onto any property to inspect, investigate, evaluate, conduct tests or take samples for testing as he reasonably deems necessary in order to determine whether the provisions of any law administered by the Board, Director or Department, any regulations of the Board, any order of the Board or Director or any conditions in a permit, license or certificate issued by the Board or Director are being complied with. If the Director or his designee is denied entry, he may apply to an appropriate circuit court for an inspection warrant authorizing such investigation, evaluation, inspection, testing or taking of samples for testing as provided in Chapter 24 (§ 19.2-393 et seq.) of Title 19.2.”*
- **§ 10.1-1186. General powers of the Department** states, in part, *“The Department shall have the following general powers, any of which the Director may delegate as appropriate: ...11. Perform all acts necessary or convenient to carry out the purposes of this chapter.”*

Also, facility permits and enforcement orders convey DEQ inspection authority. Typical permit provisions include **Permit Module I, Condition I.B.7** which states:

“The permittee shall allow the Director, or an authorized representative, at a reasonable time, upon the presentation of appropriate credentials, to:

I.B.7.a. Enter the permitted facility where a regulated unit or activity is located or conducted, or where records must be kept under the conditions of this permit;

I.B.7.b. Have access to and copy any records that must be kept under the conditions of this permit;

I.B.7.c. Inspect any unit, equipment (including monitoring and control equipment), practices, or operations regulated or required under this permit; and

I.B.7.d. Sample or monitor, for the purposes of assuring permit compliance or as

otherwise authorized by Virginia Waste Management Act, any substances or parameters at any location within his control.”

Each permit is unique and “right of entry” provisions may be located in a different section or include different language than stated here. DEQ enforcement orders follow boilerplate formats in the [Enforcement Manual](#).

When conducting an inspection or investigation, inspectors should focus on areas within the purpose and scope of the inspection, avoiding areas outside of general DEQ authority. If issues are identified outside the scope of the inspector’s responsibilities or authorities, the inspector should simply identify and document the problem for future referral to appropriate staff or authorities for follow-up.

2.2 Inspections

DEQ inspects solid waste management facilities and other sites as part of an overall compliance monitoring program. The inspections are conducted to verify:

- accuracy of information submitted by owners or operators,
- adequacy of methods and practices used by owners or operators to achieve or demonstrate compliance, and
- compliance with statutes, regulations, permits, and approved plans.

Through the course of verifying compliance, areas of concern or non-compliance may be identified.

The inspection process consists of several steps including:

- pre-inspection preparation
- on-site inspection protocols, and
- post-inspection procedures and follow-up.

2.2.2 Inspection Frequency

The frequency of routine inspections is set in accordance with the [Solid Waste Compliance Risk Based Inspection \(RBI\) Strategy](#). Under this Department strategy, an inspection schedule is developed on an annual basis by the regional offices based on the risk-based criteria. Depending on other factors, the schedule may be adjusted during the year if warranted and with notification to the Office of Waste Permitting and Compliance (OWPC) Director.

2.2.3 Additional Inspections

Other inspections may be conducted in response to complaints or in support of an active Enforcement Order. Regional Office procedures should be followed when coordinating complaint investigations. Inspections focusing solely on Enforcement Orders should be coordinated for inclusion in routine inspections, where possible.

2.3 Inspector Responsibility

It is essential that inspections be performed in a legally defensible and technically correct manner. Observing inspection protocols and procedures is fundamental to a successful inspection and purposeful use of the inspection findings. All legal and technical protocols should be observed during the inspection process. Failure to follow established procedures may limit or prohibit use of inspection findings.

2.3.1 Duties

In performing their duties, inspectors should:

- Follow inspection procedures contained herein.
- Identify, document, and report applicable facts of an inspection completely and accurately.
- Brief facility/site personnel on compliance observations in general or more specific terms as necessary.
- Continue to improve their knowledge and technical skills in conducting inspections and investigations.
- Avoid actions (or failure to act) that may be motivated by personal reasons or for personal gain.

Inspections and investigations should be conducted in a professional, courteous, and responsible manner.

2.3.2 Working Relationships

Inspectors should obtain and maintain cooperation and a good working relationship with the public and the regulated community through the use of diplomacy and tact. Hostile individuals should be treated with courtesy and respect. Inspectors should avoid offering personal opinions concerning any individual, facility/site representative, contractor, or other regulated entity including other governmental agencies. Information acquired during an inspection or investigation is for official use and becomes a part of the DEQ administrative record.

2.3.3 Conflict of Interest

Inspectors should be skilled in dealing with facility representatives, consultants, business owners, and the general public and in identifying conflicts of interest. A conflict of interest may occur when an inspector has personal or private interests in a matter related to their official responsibilities. Avoiding the appearance of a 'conflict of interest' projects a credible image of DEQ and the inspector.

If a bribe is blatantly offered or attempted, an appropriate response is to:

- 1) Ask why the offer is being made.
- 2) Politely decline and explain acceptance may violate Virginia law.
- 3) Document the incident fully and in detail.
- 4) The inspector should immediately report such incidences to the LPM.

Under no circumstances should an inspector accept money or goods in conflict with Virginia laws or the Employee Handbook, which states:

“As a state employee, you are in a position of public trust. Therefore, you may not accept gifts, gratuities, favors, or rewards for any services you perform in connection with state employment other than from the agency where you work. Likewise, it is unlawful for employees to solicit, offer, or accept money or any thing of value in exchange for appointment or selection to a position at a higher salary, or for special privilege with any state agency. Violation of this policy will be handled through the Standards of Conduct.”

2.4 Regional Land Protection Manager (LPM) Responsibilities

LPMs are responsible for ensuring quality and consistency of inspections and reports, which should be accomplished through the following opportunities:

- Conduct pre-inspection meetings, as necessary, with inspectors to discuss recent permitting or enforcement activities, correspondence with the facility, or changes in facility plans or compliance expectations, and to identify outstanding issues with the facility.
- Conduct post-inspection debriefings when necessary to discuss observations so compliance/enforcement actions and corrective measures can be prioritized and initiated in a timely manner.
- Ensure timely review and approval of inspection reports for uniformity and consistency with established procedures.
- Facilitate compliance coordination and tracking at the program level, ensuring required inspections are performed in accordance with the RBI Strategy;
- Participation in (or direct oversight of) high-profile or complex inspections.
- Arrange for staff training or assistance in the field during inspections, as needed.

LPMs should encourage compliance staff to understand and develop knowledge of current interpretations and the intent of existing regulatory standards for specific subject areas and to keep track of the changes. Inspectors should promote development of other staff by sharing and exchanging knowledge in these subject areas.

CHAPTER 3 – PREPARING FOR THE INSPECTION

Preparation is the key to performing a proper inspection. Adequate preparation results in complete, efficient, and accurate inspections, avoiding delays and ensuring timely inspection reports. Also, proper preparation minimizes disruption of site activities.

Prior to conducting an inspection, the inspector should:

- Determine the purpose and scope of the inspection.
- Review available information to develop a complete and thorough understanding of both regulatory and technical facility standards.
- Review relevant DEQ policy and guidance on the [Virginia Townhall website](#).
- Coordinate with appropriate DEQ staff or outside agencies as necessary.
- Develop an inspection strategy for conducting on-site inspections.
- Identify equipment needs.

Typically, inspection preparation takes longer than the site visit. The following Sections describe in further detail the inspection preparation process.

3.1 Inspection Purpose and Scope

The purpose of the inspection is to:

- Assess overall facility compliance with laws, regulations, permit conditions, and Enforcement Orders.
- Collect information and document observations about current facility operations.
- Confirm the accuracy of information submitted by owners or operators.
- Address any deficiencies identified.

The scope of the inspection may vary and will depend on the factors surrounding the inspection. The scope of the inspection is influenced by:

- RBI Strategy
- Compliance and enforcement history
- The potential for (or nature of) any releases
- Current and/or future site-specific permit conditions

The purpose and scope will assist an inspector in identifying the:

- Files and database records to be reviewed before the site visit,
- Appropriate DEQ staff or outside agencies to coordinate with,
- Areas or aspects of facility operations to focus on during the site visit,
- Records or plans to be reviewed or copied while on-site,
- Necessity for any field measurements during the inspection, and
- Appropriate response resulting from the pre-inspection preparation and the on-site inspection.

3.2 Pre-inspection File Review

DEQ maintains an administrative record for each regulated solid waste management facility. The administrative record includes, but is not limited to:

- General correspondence,
- Permits and approvals,
- Plans and approvals,
- Certifications and Notifications,
- Monitoring reports and data,
- CEDS
- Inspection reports and responses, and
- Enforcement documents.

DEQ's administrative and inspection records are located in the Regional Offices. However, some program records are located in Central Office such as recycling tax credits, solid waste management plans, etc. Key facility information is available to all DEQ offices through the Comprehensive Environmental Database System (CEDS).

3.2.1. Conducting the File Review

Prior to conducting any inspection, available files should be reviewed. The information gathered during the review may provide:

- Insight into historical and current practices and expected conditions at the facility.
- A better understanding of applicable compliance standards for the facility.

During the file review, field checklists should be reviewed for compliance issues that were identified prior to visiting the facility. This will help identify which documents should be obtained or reviewed during the site visit.

From the file review, the inspector should have an understanding of:

- Facility siting, design, construction, operation, monitoring, closure, and post-closure care technical requirements;
- Authorized wastes including waste management methods and practices;
- Waste management units employed and their status;
- Permit and compliance history of the facility including previous non-compliance and facility efforts to return to compliance. This should include any potential non-compliance that has not been remedied;
- Potential non-compliance to be evaluated during the inspection. This may be based on complaints, unresolved issues from previous inspections, or inconsistencies in file materials; and
- Applicable compliance standards and expectations from the laws, regulations, Enforcement Orders, and permits.

After the file review, the inspector should have a thorough understanding of permits, other site-specific documents and enforcement documents pertaining to the facility. It is important that inspectors use the most current information available. Often, solid waste management facilities are developed in stages. Permits and plans are continually amended and updated as the facility develops over time. Typically, the current permit or plans in effect at the time of the inspection should identify applicable compliance standards. Any proposed permit or plan amendment requests (not yet approved) should not be reflected in current compliance standards or considered enforceable.

3.3 Inspection Coordination

From the file review, the inspector should be able to identify what DEQ program staff or offices may be interested in the inspection. The inspector should contact interested parties to coordinate inspection needs and potential uses of inspection findings. Coordinating inspections will enhance and strengthen the overall program.

3.3.1 Coordinating with Permit Writers

Prior to each inspection, the inspector should consult with the solid waste and groundwater permit writers, particularly on permit amendment actions, authorizations, permit issuances, or monitoring and reporting requirements. The permit writer may be a valuable resource for information on current and proposed facility operations and plans and may have information from meetings held with the facility which is not available in the file. Also, they may have some informational needs that can be fulfilled during the inspection such as verifying on-site activities, operations, or structures.

When a permit is issued for a new facility, the permit writer can provide useful information for understanding site-specific requirements for construction, operation, monitoring, and closure as well as any compliance schedule imposed by the permit, which should be evaluated during the inspection. The permit writer can help identify potential problem areas that the inspector should evaluate during initial and future inspections.

3.3.2 Coordinating with Enforcement Specialists

For any facility subject to an enforcement action, close coordination between the inspector and enforcement staff is necessary to ensure timely and appropriate resolution of previous or on-going non-compliance issues. Specifically, the inspector should advise the enforcement specialist of the date and time of the planned inspection and meet **before** the inspection to review the status of the enforcement action and compliance schedule. Enforcement staff may be able to explain the specifics of the enforcement action and help identify areas that should be evaluated during the facility inspection. Also, they can discuss the schedule of compliance and expected outcomes that resolve the non-compliance.

If an anticipated inspection interferes with an on-going enforcement action or occurs before a critical milestone date in the compliance schedule, the inspector and enforcement specialist may coordinate a future date and time. Occasionally,

deferral of an inspection may be necessary; however, staff should coordinate closely with enforcement staff and ensure the facility is inspected at the appropriate frequency based on the RBI Strategy.

Following the inspection, the inspector should share their observations with the enforcement specialist and discuss whether the observations have any impact on the enforcement actions and how they should be reported. Typically, inspection results are submitted in the inspection report. However, results may need to be submitted via memorandum to enforcement personnel to expedite an enforcement action or response.

3.3.3 Coordinating on Multi-Media Inspections

While preparing for an inspection, the inspector should check with their LPM to determine if the facility has been selected for a multi-media inspection with the air, water or hazardous waste compliance programs. If the facility has been selected for a multi-media inspection, the inspector should work with the other staff to share information about the facility and discuss any potential issues ahead of the inspection. Specifically, the inspectors should collaborate on a strategy prior to the inspection to ensure the inspection is conducted efficiently to minimize disruption of facility operations. (Multi-media inspections are generally announced inspections. See Section 4.1.)

3.3.4 Coordinating with Local Inspectors

Some localities in Virginia administer their own landfill inspection program, where they may have an on-site inspector assigned to a particular facility or an inspector who inspects multiple facilities. Where appropriate, inspectors may coordinate with local inspectors *before* the on-site inspection and integrate them into the inspection process. The DEQ inspector may allow the local inspector to accompany him or her during the on-site inspection for observation purposes. Local inspectors can often provide valuable insight into issues based on their own observations and familiarity with daily operations and activities of the facility. DEQ can assist localities with concerns raised by local inspectors since DEQ is the primary regulatory authority over solid waste management in Virginia.

3.4 Inspection Strategies

The inspection strategy or plan is a general plan for conducting the on-site inspection and should be based on the purpose and scope of the inspection, as previously discussed. During the actual inspection, the inspection strategy may be adjusted to investigate potential non-compliance conditions identified while on-site.

When planning your pre-inspection strategy, you may mentally walk through the inspection process by considering the following areas, which are covered in greater detail in Chapter 4.

- Notification
- Facility Entry
- Record Review
- Site Walkover
- Interviews
- Exit Interview

3.4.1 Equipment Considerations

Appropriate equipment should be assembled prior to conducting any inspection. Typical equipment that may be utilized during inspections is listed in the below tables.

Typical Inspection Equipment

Camera	Calculator
Tape measure	Pens, pencils, highlighters
Flashlight (non-sparking)	Ruler
Binoculars	Regulations
Multi-tool	Brief case or backpack
Photo ID	Checklists and field notebook
Compass or Global Positioning System (GPS) unit	Current Permit and last inspection report

Personal Protective Equipment (PPE)

Hard hat	Safety glasses or sunglasses
Ear plugs	Safety vest
Steel-toed boots	Bug spray or sun screen
Hand sanitizer	Disposable towels or napkins

Not all equipment will be carried throughout the inspection but may be kept in the facility office or secured in the DEQ vehicle so it is available if needed.

The pre-inspection worksheet in **Attachment 1** identifies materials to assemble and review prior to conducting an inspection. The guide may be modified to address specific inspection needs.

3.5 Sampling Considerations

In cases where sampling of environmental media is needed, qualified staff or contractors with an appropriate Sampling and Analysis Plan (SAP) and equipment will be used. Since sampling will require extensive pre-planning, e.g., target constituents, analytical methods, sampling containers and so forth, the inspector should coordinate closely with the LPM.

CHAPTER 4 – CONDUCTING THE INSPECTION

An effective on-site visit is fundamental to a successful inspection. The on-site inspection process includes:

- Arrival and facility entry
- Opening conference
- Record review
- Site walkover
- Interview owner/operators
- Exit conference.

Inspectors may adjust the order of activities to meet the purpose of the inspection.

4.1 Arrival & Facility Entry

As discussed in Section 2.1, DEQ authority to conduct inspections and investigations is contained in the Virginia Waste Management Act and facility permits. The DEQ may conduct announced or unannounced inspections.

Compliance inspectors have the flexibility and discretion to arrange for announced inspections when the circumstances, facility history, security concerns, or facility personnel availability warrant it. Prior to a routine compliance or multi-media inspection, inspectors may notify a facility of the inspection in order to coordinate access and ensure that a facility representative is available when the inspector(s) arrives. VEEP E3 and E4 facilities are normally given a minimum 24-hour courtesy call before an inspection. Focused compliance inspections and investigations in response to a complaint are preferably unannounced inspections. However, if a facility is in Closure or Post-closure care, a facility representative may not be available unless notified in advance. Heightened security at certain military or supporting civilian facilities may require prior notification of inspections to coordinate access.

Considering the inspection strategy, the inspector should arrive early enough to allow all inspection activities to be completed during regular business or operating hours. Upon arrival, the inspector must:

- Locate appropriate facility personnel (owner or authorized representative) and determine who has authority to assist with the inspection (i.e., on-site access, custody of records, tour of facility, answer questions, etc.).
- State the reason for being at the facility (i.e., to conduct a compliance inspection).
- Present state-issued DEQ employee identification to appropriate personnel even when not requested. Display identification in sight while trying to locate appropriate facility personnel.
- Document entry in field notebook (or on inspection checklist) by indicating date, time, and name/title of facility personnel encountered that authorize (or deny) access to the site and consent to perform the inspection.

Upon arrival, if the property owner or authorized representative cannot be located and prior permission has not been given to enter a site, inspectors shall not continue to conduct an inspection and must exit the property.

Inspectors may be requested to sign a guest register or logbook upon arrival. These ledgers record visitor names, affiliations, and contact information and are useful in the event of a major emergency such as a fire or explosion where evacuation of personnel becomes necessary. Inspectors may sign guest registers but **must not sign any waivers** or other legal documents limiting the inspector's rights or the owner's responsibilities while at the facility. Also, the inspector should not sign any documents intended to limit the facility's liability in the event of an accident. See DEQ guidance memos dated February 18, 1992 and September 6, 2001, regarding waivers.

4.2 Consent

The owner or operator in charge at the time of the inspection must give consent to inspect the facility. Inspectors should be aware that consent to inspect may be withdrawn at any time by the facility representative.

If consent is withdrawn during an inspection, any portion of the inspection completed prior to such withdrawal is valid. If a facility representative withdraws consent, this equates to "denial of access" and should be addressed accordingly. See the section below for further discussion. Consent to enter a facility is not required for inspectors to make observations from public areas, such as public roadways and right-of-ways.

During an inspection, a facility representative may limit or prohibit access to certain portions of the facility (including records) temporarily or permanently. Such actions are similar to being denied access.

4.2.1 Denied Access

An inspector may be denied access for legitimate reasons such as failure to have proper ID or appropriate safety equipment, or if there is an on-going emergency creating unsafe conditions. In most cases, it is possible to gain access later that day or the next day by satisfying the objections. A warrant is not needed in these cases.

Refer to Enforcement Guidance Memorandum No. 1-2011, which identifies situations that may be considered a denial of access.

<http://www.deq.virginia.gov/export/sites/default/enforcement/documents/GuidanceMemorandum1-2011Mar032011.pdf>

If access is denied, an inspector should:

- politely ask the reason for denied access and document the responses in writing;
- not argue or threaten with potential action such as penalties;
- advise the facility of DEQ's right of entry under the Waste Management Act and the facility's permit and request entry again;
- document the date, time, names and titles of persons and reasons for denying access. If possible, obtain the signature of the facility

- representative denying access;
- exit premises and document all observations made relevant to the site conditions and the denial, particularly if there is any suspicious activities that may be indicative of non-compliance.
- report access denial to immediate supervisor and request direction on appropriate action; and
- consider options such as re-negotiating site access or obtaining administrative warrants.

4.2.2 Access by Warrant

Where necessary, enforcement personnel may prepare or assist the inspector with preparing relevant documents to obtain an inspection warrant. An [affidavit](#) will be developed to justify why an inspection warrant is necessary. When a warrant is obtained, it will be forwarded to the inspector or appropriate law enforcement authority who will accompany the inspector to the facility.

Refer to Enforcement Guidance Memorandum No. 1-2011, which establishes general procedures for obtaining an administrative inspection warrant. <http://www.deq.virginia.gov/export/sites/default/enforcement/documents/GuidanceMemorandum1-2011Mar032011.pdf>

When accessing a facility under an inspection warrant, the inspector should:

- Read and understand the warrant, including its authorities and limitations. If anything is unclear, questions should be asked and addressed **prior** to arrival at the facility.
- Be accompanied by a State Police Officer or equivalent local law enforcement officer particularly when there is a high probability site access will be refused again or have been threats of violence; and
- Not attempt to make forceful entry into a facility or enter in a manner inconsistent with the terms of the warrant.

4.2.3 Conducting Inspections under a Warrant

Inspections conducted under warrant must be performed in strict accordance with the terms of the warrant. The warrant may restrict the scope of the inspection to very specific areas or only certain records. The inspector must adhere to all warrant conditions and restrictions.

4.2.4 Dealing with Threats

In rare cases, inspectors may be threatened during inspections. The manner in which individuals conduct themselves and the nature of the threat will dictate the most appropriate response.

Non-violent threats, such as complaining to an inspector's supervisor, are not grounds for terminating the inspection unless accompanied by access denial or withdrawal of consent. In these cases, circumstances should be fully documented per Section 4.6 and the inspector should avoid making any

statements to the facility officials that could be construed as inflammatory, threatening, or retaliatory.

If violence is threatened directly or indirectly, or a real threat is perceived, the inspector should terminate the inspection and follow procedures for “Denied Access” in Section 4.2.1. but most importantly the inspector should leave the premises **immediately**. In these cases, the inspector should not return to the facility until further discussion with his/her supervisor and/or unless accompanied by other appropriate DEQ staff or law enforcement.

4.3 Opening Conference

After locating the appropriate facility representative, the inspector should conduct a brief Opening Conference. During the Opening Conference, the inspector should:

- Discuss the inspection purpose and scope.
- Establish the inspection schedule, identify critical records to review and establish when key personnel will be needed to assist with the walkover.
- Verify current facility status and discuss any changes since the last inspection;
- Provide any new information on program requirements.
- Set up an Exit Conference to brief the facility on inspection observations and provide a final opportunity to gather information, answer questions, and explain any future actions to be taken by DEQ or the facility.

The Opening Conference allows the inspector to establish control of the inspection in a firm and professional manner. Inspectors should remember they are in-charge of the inspection; facility personnel should not be allowed to direct or otherwise steer the course of the inspection.

In some cases, conducting the Opening Conference immediately after obtaining access may not be the most strategic approach. For example, the inspector may want to go directly to an area that is the subject of a complaint or is an area of suspected non-compliance to observe an activity *before* facility personnel have an opportunity to stop, or otherwise conceal the condition. In these cases, the opening conference may be held while gaining entry or en route to the area of interest with a full Opening Conference being deferred until later.

After the Opening Conference, the inspector should proceed based on their inspection strategy. The inspector should act as an auditor, and investigate all aspects of the facility to verify compliance.

4.3.1 Interviewing

During the site walkover and the file review, the inspector may have the opportunity to interview facility personnel about operations, inspection, monitoring, and recordkeeping activities. These discussions allow the inspector to:

- obtain answers to questions identified during the pre-inspection review;

- gain a thorough understanding of facility operations as the facility understands them;
- gauge the effectiveness of the facility's training programs;
- identify changes in facility operations since the last inspection; and
- reconcile discrepancies between the pre-inspection file review and the operations described by facility personnel.

Discussions may be formal or informal, as appropriate.

4.4 Record Review

Facilities are required to maintain a variety of records and make them available to DEQ upon request. Records provide insight into facility operations and site conditions on days DEQ is not present. The record review process allows the inspector to become familiar with facility activities and past site conditions, and can help identify specific areas that should be investigated further during the site walkover.

The inspector should verify that records and documents are complete, accurate, and consistent with applicable requirements. The inspector may use the checklist in **Attachment 2** as a field reference for reviewing records. Throughout the record review, the inspector should complete appropriate sections of field checklists and leave blank any items to be evaluated during the site walkover.

Any records, logs and other materials documenting potential non-compliance should be photocopied. All copies should be clear and legible. The inspector should immediately highlight areas of potential non-compliance for discussion during the exit conference and in the inspection report. If copies are not made available, the inspector should record the location, title, date, and specific content of each record or document so it can be properly referenced in the future. Some records may be maintained at alternate locations, which should be factored into the inspection strategy and schedule.

4.5 Site Walkover

The site walkover should proceed per the inspection strategy and the inspector should ensure that the facility is evaluated in the preferred order. However, the inspector should remain flexible and adjust the planned approach to accommodate or capitalize on information gathered during the opening conference, record review, interviews, and site conditions encountered as the walkover progresses.

During the initial inspection, the inspector may best understand how waste is managed by following waste flow from 'first receipt through final disposition.' Ancillary operations can then be evaluated to understand how they support the overall waste management operation. Following this approach ensures that the inspector identifies and evaluates the following:

- practices and procedures implemented by the facility,
- waste management units and sub-systems,
- areas where wastes may be released or discharged, and
- suspicious conditions or activities that may indicate non-compliance.

The inspector should complete the remaining field checklist items as the walkover proceeds. After a few inspections, the best route for the site walkover will be identified. The inspector should conduct the site walkover with the facility representative(s) and for safety reasons should avoid conducting a site walkover alone.

The inspector should not feel hurried or pressured by facility personnel, nor should facility personnel be allowed to direct the course of the walkover. The inspector should be able to ask questions of facility personnel to verify information regarding waste management procedures. This may reveal the adequacy of facility training programs as consistent answers indicate a high level of training and use of established procedures.

The inspector should walk the site to ensure all areas are evaluated, and a site plan/map and compass/GPS may prove useful for this purpose. Inspectors should continually re-orient themselves to ensure accurate identification of facility features, potential release points, and any areas of non-compliance. Facility operators may assist by identifying key points of reference throughout the site.

For efficiency, both vehicular and walking tours may be employed at larger facilities. The inspector should always direct the course of facility tours, requiring frequent stops at all appropriate locations and features.

If an inspection cannot be completed during normal working hours, it should be continued on the next business day or as soon as possible. An inspection may be completed after normal working hours if facility representatives do not object and there is sufficient time to do so.

The inspector may use the checklist in **Attachment 3** as a reference for completing the site walkover.

4.6 Recording Observations

Thorough and accurate documentation of inspection observations is key to completing the inspection process and pursuing necessary and successful enforcement actions. The inspector should record the observations or findings using:

- Field checklists
- Field notebook
- Photographs
- Maps, sketches or diagrams
- Photocopied records

4.6.1 Documentation of Findings

Inspectors should use the field checklists to guide them through the inspection process and ensure areas of the facility are identified and evaluated. Field checklists are tools for organizing and recording inspection observations. The inspection should not be limited solely to the items listed on the field checklist, particularly at unique or complex facilities. When exploring potential non-compliance, the inspector should never feel limited by the field checklists.

Generally, the inspector will verify items on the field checklists and make extensive notes or comments in the field notebook where explanations or sketches can be used to fully and completely document inspection activities and observations.

It is strongly recommended that the inspector record information collected during an inspection in the following types of records only: field notebooks, checklists, photographs, maps, and drawings.

Use of a field notebook in conjunction with field checklists is strongly encouraged. A waterproof legal logbook is not necessary or required, but a bound notebook of any type is acceptable.

Field notebooks are used to document inspection activities and the following information is required for each inspection:

- Arrival: date, time, departure time, person authorizing/denying access, facility point of contact & contact phone number.
- Facility type (i.e. landfill, transfer station, MRF, composting facility, etc.)
- Solid Waste Permit Number or PBR number.
- Weather conditions.

The following should be included as appropriate:

- Observations:
- Notes on conversations and verbal comments,
- Photography points, sketches, diagrams,
- Areas of potential non-compliance and compliance; and
- Summary of the opening and exit conference.

Field notebooks are considered part of DEQ's administrative record, not the inspector's personal records.

4.6.2 Photographs

Photographs should be used to support field observations, as appropriate. For each photograph, a notation should be made in the field notebook which identifies the:

- Facility name and permit number
- Date and time
- Photographer's name
- Location within the facility
- Direction of the photograph
- Unique or non-compliant item or area photographed
- Any other pertinent information (i.e., weather)

Photographs can provide excellent documentation of site conditions and may be the best way to document situations that are difficult to describe verbally or in writing. Photographs can provide information for use in:

- Preparing the inspection report,
- Briefing other staff not present during the inspection,
- Meetings, and
- Preparing for future inspections.

Maps may be used to show photograph points and their direction. When taking photographs, it may be useful to include an item for scale. Items of suspected non-compliance should be highlighted for future identification.

Whether digital or film, photographs should never be altered. They should be printed, labeled, and included with the inspection report. Digital images should also be saved on a 'read only' computer media for archiving in the administrative record. The 'read only' format ensures the original image can not be altered.

4.6.3 Maps

Maps, sketches and diagrams can provide accurate, graphic representations of facility features and conditions. Maps and diagrams should be simple and clear. Avoiding overly detailed maps and diagrams eliminates the potential for confusion or misinterpretation later. Maps should include compass points for orientation.

4.7 Exit Interview or Conference

The Exit Interview or Conference allows the inspector to meet with facility officials to ask follow-up questions, review inspection findings, and respond to questions. It is held at the end of the inspection and is lead by the inspector. This meeting is an opportunity to:

- Ask and answer questions,
- Obtain documents not previously gathered from the facility,
- Request additional information not available at the time of the inspection,
- Provide information about program changes and the impact on their facility, and
- Advise the facility of inspection observations and potential actions from DEQ.

The inspector should take a few minutes to prepare *prior* to conducting this meeting. In preparing, the inspector should:

- Review their inspection notes,
- Identify any questions that still require answers before leaving the facility,
- Determine the best order and approach to discuss inspection findings,
- Consider how definitively to present inspection findings, and
- Anticipate questions the facility may ask and be prepared to respond to them.

Facility personnel will be anxious to hear and discuss the inspection findings. The inspector should maintain a professional and courteous demeanor, even if facility representatives are not cordial or polite.

The inspector should discuss areas of concern or non-compliant conditions observed or identified during the inspection, including potential DEQ responses to them. The inspector should stress all inspection observations are preliminary and final compliance

status will be provided in a written inspection report issued by DEQ. The inspector is not expected or obligated to finalize inspection findings at the end of the inspection.

The inspector should avoid overly detailed discussions on tentative observations when further review is required to determine compliance. In such cases, the inspector should inform the facility of the each suspect condition and briefly discuss how the compliance determination will be made.

Facility personnel may challenge specific observations, ask for clarification of requirements, or request assistance in understanding how to correct or respond to non-compliance. Inspectors should be prepared to answer relevant compliance questions, but should not hesitate to defer answering questions for which they are uncertain or do not have authority. In these instances, the inspector should simply advise the facility of plans to follow-up on deferred questions or refer them to appropriate DEQ staff for answers to questions outside the inspector's authority.

The exit interview is a good time to provide compliance assistance. The inspector should be tactful when discussing problems and providing compliance assistance and avoid dictating, demanding, or recommending a specific action be taken. The facility is ultimately responsible for determining how best to meet the compliance standard. Inspectors should avoid making guarantees that performing certain actions will obtain compliance. The inspector should not make recommendations that imply DEQ has a "consultant" role. Further, the inspector should not recommend any specific consultant or consulting firm, even upon request. If requested, simply recommend the facility perform an Internet search or consult the phone directory.

CHAPTER 5 – CLASSIFYING AND RESOLVING NON-COMPLIANCE

All non-compliance is subject to enforcement action by the Department. This principle applies to all solid waste management facilities (permitted, permit-by-rule, unpermitted, exempted, conditionally exempted, etc). Because of the minimal nature of federal oversight of RCRA Subtitle D, there is no federal classification or federal enforcement policy to address non-compliance with solid waste program requirements. DEQ addresses suspected noncompliance in the manner consistent with the Department's Office of Waste Permitting and Compliance (OWPC) philosophies and guidance, as well as the Department Division of Enforcement's Enforcement Manual and guidance. This chapter explains the:

- Severity Level classifications of Non-compliance;
- Instruments to Address Non-Compliance; and
- Selection of Appropriate Instrument to Address Non-Compliance

The classification system of severity levels is used to identify the significance of various noncompliance observations so a prioritized compliance and enforcement response can be initiated to resolve the matter. These systems do not imply that lower severity violations will not be subject to enforcement or that corrective action taken by the facility will fully resolve the matter at hand. It merely indicates the level of attention that should be given to non-compliance and should be based on the violation's environmental and programmatic significance.

In order to protect human health and the environment (HH&E) and ensure responsible parties are adhering to the agency's regulations, DEQ must take consistent and fair actions to resolve non-compliance. This means that the regulated community should expect a similar response to a comparable violation regardless of the region in which it occurs. While it is important to recognize that each case is fact-specific and must be managed accordingly, consistency should always be a factor in determining the appropriate compliance action. Consistency does not mean, however, unnecessary adherence to past decisions that may no longer be appropriate for one reason or another.

DEQ believes fairness will result when compliance is determined consistently and in accordance with the law and applicable regulations. To ensure fairness, DEQ remains receptive to good-faith claims - based on fact, state or federal law, or policy - that a given situation is different and should be treated differently or that a facility is in fact in compliance.

The appropriate compliance response to a situation is one that will achieve DEQ's goals of compliance, correction, and deterrence. It is DEQ's intent, however, to use the full range of compliance and enforcement instruments available to it as necessary to achieve its mission and goals.

5.1 Severity Level Classification of Non-Compliance

The Solid Waste Program generally classifies noncompliance by assigning Severity Levels to specific regulatory citations. Non-compliance is identified by marking the designator “Violation” on the Comprehensive Environmental Database System (CEDS) checklist. A ‘Severity Level’ is assigned to each regulatory citation on the CEDS checklist. The Severity Level acts as a general indicator of significance for violation of the specified standard(s). The Severity Levels generally consider the 1) risk of exposure of humans or other environmental receptors; and 2) adverse effect on statutory or regulatory purposes or procedures for implementing the regulatory program.

Three (3) Severity Levels are used to classify violations and progress downward in significance:

Severity III violations are ones where (1) the violation has caused actual exposure or presents a *substantial* risk of exposure of humans or other environmental receptors to waste or constituents; and/or (2) the actions have or may have a *substantial* adverse effect on statutory or regulatory purposes or procedures for implementing the regulatory program.

Typically, Severity III violations are those that:

- have caused actual exposure or a substantial likelihood of exposure to solid waste or hazardous constituents from solid waste;
- have deviated substantially from the terms of a permit, permit-by-rule, approval, order, agreement or from the Solid Waste statutory or regulatory requirements; or
- for which corrective actions will take 90 days or longer from the evaluation date.

The actual or substantial likelihood of exposure should be evaluated using facility-specific environmental and exposure information whenever possible. This may include evaluating potential exposure pathways and the mobility and toxicity of the solid waste being managed including examining proximity of receptors such as groundwater or surface water. It should be noted, however, that environmental impact alone is not required for consideration of a violation to be equal to a Severity III; particularly where the environmental media affected or threatened requires special protection (e.g., wetlands or sources of underground drinking water).

Severity II violations are ones where (1) the violation presents or may present a *significant* risk of exposure of humans or other environmental receptors to waste or constituents; and/or (2) the actions have or may have a *significant* adverse effect on statutory or regulatory purposes or procedures for implementing the regulatory program.

Typically, Severity II violations are those that:

- have caused actual exposure or a significant likelihood of exposure to solid waste or hazardous constituents from solid waste;
- there has been moderate environmental impact;
- have deviated significantly from the terms of a permit, permit-by-rule, approval, order, agreement or from the Solid Waste statutory or regulatory requirements; or

- for which corrective actions can be completed within 90 days of the evaluation date.

The actual or significant likelihood of exposure should be evaluated using facility-specific environmental and exposure information whenever possible. This may include evaluating potential exposure pathways and the type of solid waste being managed.

Severity I violations noncompliance issues are ones where (1) the violation presents or may present a *relatively low risk* of exposure of humans or other environmental receptors to waste or constituents; and/or (2) the actions have or may have a *small adverse effect* on statutory or regulatory purposes or procedures for implementing the regulatory program.

Typically, Severity I violations are those that:

- pose no actual threat or a low potential threat of exposure to solid waste or hazardous constituents from solid waste;
- there has been no environmental impact;
- have deviated slightly from the terms of a permit, permit-by-rule, approval, order, agreement or from the Solid Waste statutory or regulatory requirements
- first time occurrences of minor issues that do not meet the criteria listed above for Severity II or III violations;
- the facility is not a chronic violator facility; or
- for which corrective actions can be completed within 30 days of the evaluation date.

Inspectors can determine the Severity Level associated with a particular violation by examining the inspection checklist provided in CEDS. The Department has assigned a Severity Level to each regulatory requirement for various regulated entities. If the inspector cannot identify an associated Severity Level for a violation, he or she should check with the regional Waste Program Manager or Solid Waste Compliance Program Coordinator.

If a Severity Level has not been previously attached to a violation, the Regional Office, in conjunction with the Central OWPC, should use the criteria provided above to determine the appropriate Severity Level.

Additionally, the Department, through the OWPC, may occasionally revise or update Severity Levels for each regulatory requirement.

5.2 Instruments to Address Non-Compliance

Where non-compliance is identified, there are a variety of instruments available to DEQ staff to address the issues and bring facilities and sites into compliance. The least adversarial method is considered informal enforcement that notifies a facility of suspected noncompliance and encourages self-correction without further Department action. In such a case, the Department does not progress to another level of enforcement or render any decisions regarding whether violations have actually occurred so long as the non-compliance is timely and appropriately corrected. This

“informal correction” method is accomplished through use of compliance instruments called **Deficiency Letters (DL)**, and **Warning Letters (WL)**.

Deficiency Letters are used for low severity violations with infrequent occurrences. Warning Letters are used for medium severity violations of infrequent occurrence.

Deficiency and Warning Letters are effective compliance instruments with many benefits including preservation of scarce DEQ resources, since the informal letters typically resolve non-compliance without the use of further enforcement action. These instruments are typically used in concert with personal contact, telephone calls, and informal meetings to bring facilities into compliance expeditiously and to reach a mutual understanding about actions necessary to resolve suspected noncompliance.

The formal enforcement method involves use of a high-level compliance instrument called a **Notice of Alleged Violation (NOV)**, which acts as a referral for enforcement action by the DEQ. In response to an NOV, the enforcement action typically results in issuance of a Consent Order but includes more formal actions such as special orders or a judicial decree. Examples of the more formal enforcement methods include Consent Orders, Informal Fact Finding proceedings, Formal Hearings, 1186 Special Order proceedings, Emergency Order proceedings, and civil suits.

5.2.1. Deficiency Letters

The Deficiency Letter is the most basic approach for rectifying suspected noncompliance. It is used by the compliance staff when responding to observed facts that suggest a noncompliance situation may exist. This is an Informal Correction method and is intended for:

- Suspected deficiencies that can usually be corrected within 30 days or less, and
- are a Severity Level I violation that has not been previously documented and unaddressed.

Upon obtaining reliable information that suggests a violation may exist, the compliance staff should do the following:

- Document the information;
- Inform the facility of the information in its possession either while on-site or at a later time when information is received in submittal;
- Document that the facility was so informed of the potential alleged violation by recording the date, time, place, and person notified.

A Deficiency Letter is not a case decision or determination that violations have in fact occurred, which would require administrative process to be afforded to the facility prior to such a decision or determination being made.

5.2.1.1 General

Compliance staff is encouraged to discuss the alleged violation in person or contact the facility by telephone. Also, staff may wish to hold an informal meeting with the facility to discuss the situation and circumstance involved. Compliance assistance should be provided on-site whenever possible if warranted under the circumstances.

Compliance staff should also seek a response from the facility regarding when it intends to take action to correct the alleged violation and, if so, within what time period. This information should be given to the facility orally and followed up in writing through an informal or formal compliance response. If the facility agrees and takes corrective action within 30 days, no further enforcement action should be required. All contacts and requests to the facility should be well-documented in the file to avoid any confusion or rebut any challenges or claims which may be made in the future by the facility or their legal representatives.

No civil charge or Consent Order is associated with a Deficiency Letter and management is minimally involved above the compliance staff level. The corrective action outcome should be documented in an inspection report or other document. However, as with all compliance actions, a Deficiency Letter may be the initial pre-cursor of a higher level informal or formal enforcement later. Therefore, appropriate documentation is key to establishing a firm foundation for potential future actions that may be required by the DEQ later.

5.2.1.2. Content of Deficiency Letters

The following should be included in a Deficiency Letter:

- Statement of facts – not opinions, conclusions, or conjecture – as the Department knows them to be.
- Citations to applicable standards or regulation for each fact; must not state that a facility “has violated” because that may imply incorrectly that a case decision has been made.
- Request for corrective action to include a compliance plan and schedule, if necessary. Do not state that a facility “has to” or “must” take a specific action or course of actions because the DEQ cannot direct, dictate, or compel anyone to take any specific action. The facility is free to take any action they wish. Instead, the letter should state what actions “should be taken” to comply with the specific standard or citation provided. Ex: “To comply with 9 VAC 20-81-140.B.1.c, the facility should apply daily cover at the end of each operating day.”
- Suggestion of a reasonable date-certain for performance.
- Statement that this matter is being tracked by compliance staff.
- Statement explaining how compliance will be verified.
- Disclaimer that the letter is neither a case decision under the Administrative Process Act, Code §2.2-4000 et seq., nor an adjudication.
- Department contact person.

- Request that responsible party respond within 20 days.

5.2.1.3. Boilerplate Deficiency Letter

A boilerplate Deficiency Letter is found at Attachment 7 and should be used for the issuance of all Deficiency Letters except where the boilerplate does not address a particular or unique situation. In these cases, the OWPC should be contacted and approval be gained before proceeding with use of a modified Deficiency Letter boilerplate.

5.2.1.4. Additional Deficiency Letters

Additional Deficiency Letters should not be issued for suspected violations which have not been resolved. Instead, more serious enforcement action should be taken through issuance of a Warning Letter in accordance with this Manual and the Department's Division of Enforcement Manual and guidance. Additionally, if the responsible party does not respond to the initial Deficiency Letter, a Warning Letter should be issued.

See also Section 5.5, Inability to Meet Compliance Deadlines

5.2.2. Warning Letters

The Warning Letter is an informal enforcement action initiated by DEQ, upon compliance staff recommendation, to clarify the nature of the alleged violation for the benefit of the facility and to address alleged violations that:

- can usually be corrected within 90 days or less, and
- are a Severity Level II violation that has not been previously documented and unaddressed.

A Warning Letter is not a case decision or determination that violations have in fact occurred, which would require administrative process to be afforded to the facility prior to such a decision or determination being made.

Warning Letters should not be used for:

- serious threats to human health or the environment,
- uncontrolled environmental releases,
- high severity violations,
- chronic non-compliers,
- when the alleged violations would trigger the issuance of a Notice of Violation, or
- where it is anticipated that corrective action will take longer than 90 days.

5.2.2.1. General

The Warning Letter should be provided in a timely manner to the operator of the facility, with a copy sent to the owner. Issuance of a Warning Letter requires a written confirmation that the suspected violation was addressed. This may be done by receiving written information submittal demonstrating compliance, a follow-up site visit for visual verification, or both. Receipt of demonstration documents should be reviewed and compliance acknowledged in writing in either a subsequent letter or follow-up inspection report to document the return to compliance. Follow-up site visits must be documented in the file and should be followed in writing to acknowledge return to compliance. Compliance assistance decisions at this level should be made with broad staff participation.

5.2.2.2. Content of Warning Letters

A Warning Letter should include

- All items listed in Section 5.2.1.2 (Content of Deficiency Letter),
- Statement of statutory authority and enforcement options available to the agency.
- How the Responsible Party may dispute any of the observations or make the Department aware of any other information.
- The Responsible Party's ability to participate in Early Dispute Resolution.
- Requirement that responsible party respond within 20 days.
- Signed by LPM.

5.2.2.3. Boilerplate Warning Letter

A boilerplate Warning Letter is found in Attachment 8 and should be used for the issuance of all Warning Letters except where the boilerplate does not address a particular or unique situation. In these cases, the OWPC should be contacted and approval be gained before proceeding with use of a modified Warning Letter boilerplate.

5.2.2.4. Additional Warning Letters

Additional Warning Letters should not be issued for suspected violations that have not been resolved. Instead, more serious enforcement action should be taken through issuance of a Notice of Alleged Violation (NOV) in accordance with this Manual and the Department's Division of Enforcement Manual and guidance. Additionally, if the responsible party does not respond to the initial Warning Letter, an NOV should be issued.

See also Section 5.5, Inability to Meet Compliance Deadlines

5.2.3. Notice of Alleged Violation (NOV) Letter

An NOV is a written notice to a facility informing it of facts that suggest a possible violation of the law or regulations may have occurred, coupled with an invitation to respond. An NOV does not include suggested actions to be taken to comply.

An NOV is not a “case decision” or determination that violations have in fact occurred, which would require some type of administrative process (i.e., Informal Fact Finding or Formal Hearing) be afforded to the facility prior to such a decision or determination being made. For a more thorough discussion of case decisions and these types of proceedings, see the Enforcement Manual and Case Decision Guidance.

Once an NOV is issued, the Regional Office enforcement staff initiates talks with the facility, if it has not done so already, to achieve compliance as expeditiously as possible. Issuance of an NOV acts as formal referral to the Enforcement Program for those items of non-compliance. Upon referral, the Compliance staff provides technical and regulatory support to the Enforcement Program as they work to resolve the noted non-compliance issue(s). The Compliance Program retains compliance oversight responsibilities for all other aspects of the regulated facility and should coordinate future compliance actions which may affect any on-going enforcement response by DEQ.

5.2.3.1. Appropriate Uses of NOVs

NOVs should be used whenever the staff has facts giving it reason to believe that one of the following situations may exist. This is not an exhaustive list.

- Uncontrolled environmental release(s).
- High severity violations.
- Where it is anticipated that corrective action will take longer than 90 days.
- Repeated and/or continuing suspected violations despite previous informal actions, chronic non-compliers.
- An environmental impact or evidence of suspected violations which appear to have caused potential or demonstrated adverse human health or environmental impacts.
- Serious threat to human health or the environment or suspected violations which appear to present an imminent and substantial hazard to human health or the environment.
- Suspected significant violations of administrative orders or judicial mandates and decrees.
- Failure to report violations when required by law.
- Failure to pay civil charges.
- Failure to take timely and appropriate required action in response to a spill or other release to the environment.
- Suspected falsification of certifications, reports, or other documents.

- Suspected violations that appear to include gross negligence and/or that appear to be knowing or willful.
- Cumulative violations of the Waste Program requirements, not necessarily repeated or continuing which demonstrate chronic non-compliance.
- Multiple Severity II or I alleged violations of a regulation or permit for which previous informal actions have not resolved.
- Where a facility fails to comply with a condition of the Letter of Agreement (LOA) or Consent Order
- Where a facility does not resolve non-compliance identified in a Warning Letter within 90 days and no extension has been requested by the facility or granted by DEQ.
- Failure to meet a submission date required by law or regulation
- Failure to meet a compliance schedule in the law, regulations, permit, enforcement action, or other approval (including approved extensions).

5.2.3.2. Content of NOVs

The following should be included in an NOV:

- Statement of facts – not opinions, conclusions, or conjuncture – as the Department knows them to be.
- Citations to each applicable standard, statute, or regulation for each fact. An NOV must not state that a facility “has violated” or “is in violation of” a standard or regulation because that may imply incorrectly that a case decision has been made.
- Statement of statutory authority and enforcement options available to the Department.
- Request that the facility to respond to the NOV within 10 days.
- Request for corrective action taken or schedule for corrective action to be taken.
- A disclaimer that the NOV is neither a case decision under the Administrative Process Act, Code § 2.2-4000 et seq., nor an adjudication.
- Department contact person.
- If not already provided, the NOV should also include a copy of the inspection checklist(s), other documentation, or a summary of documentation of the alleged deficiency.
- Whether the Responsible Party disputes any of the observations or wishes to make the Department aware of any other information.
- The Responsible Party’s ability to participate in Early Dispute Resolution.
- Signed by Regional LPM.

5.2.3.3. Boilerplate NOVs

A boilerplate NOV form is found at Attachment 9. The boilerplate should be used for the issuance of all NOVs except where the boilerplate does not address a particular or unique situation. In these cases, the OWPC should be contacted and approval be gained before proceeding with use of a modified NOV.

5.2.3.4. Additional NOVs

Where a responsible party has been issued an NOV and is negotiating a Consent Order with Enforcement staff, the responsible party should continue to receive NOVs pursuant to any subsequent inspection where the violation is on-going.

Where a responsible party has already received an NOV and requested the Process for Early Dispute Resolution (PEDR), then no further NOVs should be sent to the responsible party while the PEDR is pending.

Where non-compliance is being addressed pursuant to a fully executed Consent Order, then an NOV should not be sent for the underlying violation unless the responsible party is in non-compliance with the Consent Order. (Compliance staff should work closely with enforcement staff to ensure compliance with the Consent Order and that underlying violations are being properly addressed.)

5.3 Selection of Appropriate Instrument to Address Non-Compliance

When addressing non-compliance issues, the appropriate instrument (Deficiency Letter, Warning Letter, or NOV) should be selected. The instrument should be commensurate with the significance and occurrence(s) of non-compliance identified and allow for the most prompt and appropriate return to compliance.

The Severity Level classifications are designed to assist compliance staff with properly identifying the significance of noncompliant issues which may be identified. The system allows for a ‘weighted’ consideration of noncompliance issues so the most effective compliance instrument can be selected to resolve the matter.

In the case of escalating or repeat continuing non-compliance, the instrument selected should increase in significance over time until the facility resolves the non-compliant condition(s). Issuance of an NOV and referral for enforcement action should be utilized for an environmental impact, serious threats to human health or the environment, uncontrolled environmental releases, high severity violations, and chronic non-compliers.

Table I outlines the baseline application of compliance instruments based on the general Severity Level and Occurrences of violations.

Table I

Violation Level	1 st Occurrence of Violation	1 st Consecutive Unaddressed Violation	2 nd Consecutive Unaddressed Violation
Severity I	Deficiency Letter	Warning Letter	NOV
Severity II	Warning Letter	NOV	NOV
Severity III	NOV	NOV	NOV

The matrix in Table I should be followed when selecting the most appropriate instrument for non-compliance, absent extraordinary circumstances. In using the matrix,

compliance staff should use the highest Severity Level violation(s) identified during the inspection.

Additionally, where more than one violation exists of the same Severity Level, compliance staff should consider using the most appropriate compliance instrument available given the number of violations identified. Generally, where several Severity Level I violations have been identified, compliance staff should consider using a Warning Letter in lieu of a Deficiency Letter.

One exception to the matrix is as illustrated on the flowchart and discussed in the guidance for methane gas exceedances (refer to Attachment 10). In this case, the selection of the non-compliance instrument will be determined primarily by whether the responsible party is adequately and timely addressing these issues in accordance with the VSWMR.

All non-compliance is subject to enforcement action appropriate to the significance of the violation. Appropriate enforcement action means that the mechanism used by DEQ to achieve compliance is proportional to the alleged violation, responsive to the facility's compliance history, consistent with prior enforcement action, and protective of human health and the environment. In addition, an appropriate enforcement action, which may include referral for formal enforcement and a civil charge (including recovery of economic benefit), sends a message of deterrence to the regulated community.

5.4 Further Considerations in Selecting Non-Compliance Instruments

When considering selecting a non-compliance instrument other than the one presented in the matrix, compliance staff should take in account the following factors:

1. Risk of Exposure. Risk of exposure involves both the probability of exposure and potential consequences that may result from exposure.

a. Probability of Exposure. Where a violation involves the actual management of waste, the selection of non-compliance instrument should reflect the probability that the violation could have or has resulted in a release of waste or constituents or could have or has resulted in a condition that creates a threat of exposure to waste or waste constituents. The likelihood of a release is determined based on whether the integrity and/or stability of the waste management unit is likely to have been compromised. Some factors to consider in making this determination are:

- (1) Evidence of release (e.g., existing soil, air, surface water or groundwater contamination),
- (2) Evidence of waste mismanagement (e.g., waste disposal on or in the ground or surface water), and
- (3) Adequacy of provisions for detecting and preventing a release (e.g., monitoring equipment and inspection procedures).

A selection of a non-compliance instrument higher in the enforcement hierarchy (i.e. an NOV instead of a WL) would be appropriate where the violation significantly impairs the ability of the waste management system to prevent and/or detect releases of waste or constituents.

b. Potential Consequences. In considering risk of exposure, compliance staff should weigh the harm that would result if the waste or constituents were in fact released to the environment. Some factors to consider in making this determination are:

- (1) Quantity and toxicity of wastes (potentially) released;
- (2) Likelihood or fact of transport by way of environmental media (e.g., air, surface water and groundwater); and
- (3) Existence, size, and proximity of receptor populations (e.g., local residents, fish and wildlife, including threatened or endangered species) and sensitive environmental media (e.g., surface waters, wetlands and aquifers).

When considering the risk of exposure, emphasis should be placed on the *potential* for harm posed by a violation rather than on whether harm *actually* occurred. The presence or absence of direct harm in a noncompliance situation is something over which the facility may have no control. Such facilities should not be rewarded with lower ranking of non-compliance simply because the violations happened not to have resulted in actual harm.

2. Effect on the regulatory program. There are some requirements of the Waste Program that, if violated, may not likely give rise directly or immediately to a significant risk of environmental contamination or threat to human health. Nonetheless, all regulatory requirements are fundamental to the continued integrity of the regulatory program. Violations of such requirements may have serious implications and merit a non-compliance instrument higher in the enforcement hierarchy (i.e. an NOV instead of a WL) where the violation undermines the statutory or regulatory purposes or procedures for implementing the regulatory program. Examples of regulatory harm include, but are not limited to:

- Failure to register as a transporter of regulated medical waste
- Failure to obtain a permit, permit-by-rule, or approval to own/operate a regulated solid waste management facility
- Failure to comply with financial assurance requirements (e.g. financial assurance requirements are marked as Severity Level II violation but in cases of a facility with no financial assurance, an NOV may be issued instead of a WL.).
- Failure to submit a timely/adequate solid waste Part B application or amendment request
- Failure to respond to a formal information request
- Operating a regulated unit or facility without a solid waste management permit
- Failure to prepare, maintain, and update monitoring, closure, or post-closure care plans
- Failure to install or conduct adequate groundwater, gas, or leachate monitoring
- Certain failures to comply with record keeping that undermine DEQ's ability to determine compliance or implement the Solid Waste Program

3. Extent of deviation from the regulatory requirement. This factor takes into account the degree to which the violation represents a deviation from the regulations, permit, statute, or Consent Order. As noted in the example above, where a Severity Level is tied to a regulatory requirement that has multiple

requirements, then adjustment to the non-compliance instrument selected may be appropriate to reflect the number or extent that any of the multiple requirements were not met.

- 4. Repeat nature of the violation.** This factor takes into account whether the particular violation has been previously identified during an inspection without any interim corrective action or return to compliance. A repeat violation that has not been properly addressed or corrected warrants a non-compliance instrument higher in the enforcement hierarchy (i.e. an NOV instead of a WL), or a repeated violation particularly having a greater threat to human health or the environment or impact on the regulatory program.
- 5. Amount of time required to correct the violation.** A violation which cannot be corrected with the timeframe specified above for each Severity Level may require adjustment to the Severity Level to reflect the time required for corrective action.
- 6. Responsible party self-reports a violation.** Where a responsible party self-reports a violation, compliance staff, in conjunction with Enforcement staff and LPMs, should consult with the Department's Guidance on Voluntary Environmental Assessments to determine if immunity from enforcement is appropriate. Where certain conditions are met, responsible parties are not subject to administrative penalties and disclosure of certain documents. These conditions are described in the Department's Enforcement Guidance (Memorandum 01-2006; TH No. CEM-09); the guidance should be fully reviewed and applied to the facts prior to any decisions are made regarding immunity.

Taking into account the above factors, compliance staff may select a non-compliance instrument different from the one proposed in the matrix where extraordinary circumstances warrant. In doing so, regional staff should seek input and concurrence from Central Office staff. Additionally, documentation should be placed in the file to demonstrate why a different non-compliance instrument was selected other than the instrument provided for in the matrix in Table I.

5.5. Inability to Meet Compliance Deadlines

The responsible party is solely responsible for compliance at all times. If a facility is unable to meet a compliance deadline, the facility should immediately notify DEQ and provide it with documentation supporting the inability to do so. A compliance date may be extended by DEQ if the delay is caused by circumstances beyond the facility's control and not due to a lack of good faith or diligence on its part and if the facility has notified the Department as soon as those circumstances became apparent.

It is incumbent upon the responsible party to make timely notification and provide sufficient, legitimate supporting documentation. DEQ typically requires at least 7 working days from the time of submittal to evaluate and respond to these notifications. Facilities are solely responsible for compliance before, during and after these notifications.

All extension requests and supporting documents must be reviewed for legitimacy, and only extension requests with merit should be granted. Any extension by DEQ should be done in writing and should specify:

- the reason for the extension,
- the duration of the extension, and
- actions which may be taken if the extended deadline is not met.

Failure to meet the extended deadline without just cause or a failure to notify DEQ of the inability to meet the deadline should result in an escalation in the type of enforcement pursued. The first day in exceedance of the compliance date should be the Evaluation Date for compliance tracking purposes.

CHAPTER 6 – PREPARING INSPECTION REPORTS

The inspection report organizes and documents the inspector's observations as related to the facility's compliance status. The inspection report includes only pertinent and accurate information relevant to inspection observations.

A typical inspection report includes the:

- cover letter,
- checklists, and
- supporting documentation.

The cover letter follows a boilerplate format (e.g., Attachments 5 through 9). Applicable checklists should be completed and attached, followed by all supporting documentation that is either included or referenced in the inspection report.

6.1 Reviewing the Information

Prior to developing the inspection report, the inspector should assemble and organize all information collected during the inspection and review it for relevance and completeness. Any additional or outstanding information required to complete the inspection should be obtained and reviewed promptly. When additional information is gathered subsequent to the inspection, the inspector should document the data source and the date acquired. Where information does not clearly indicate compliance or non-compliance, the inspector should discuss the inspection observations with the LPM or other appropriate staff and obtain guidance for evaluating compliance.

6.2 Preparing the Checklists

All applicable checklists should be completed in CEDS, per the Solid Waste Compliance CEDS Manual (April 2008) for inclusion in the inspection report. Field checklists and notebook entries completed during the on-site inspection will assist the inspector in entering the information into CEDS. For each area evaluated on the checklist, the compliance status must be indicated, and where appropriate, a comment provided to support the compliance observations.

Operational issues observed at a facility that, if left unaddressed, could become alleged violations in the future, may be brought to the attention of the facility through documentation in the Compliance Inspection Reports (CIRs) as an Area of Concern (AOC). Refer to Attachment 4 for further guidance on use of the Area of Concern designation.

Areas of concern or alleged non-compliance items should be described in a clear and concise manner.

Compliance items that remain outstanding from the previous inspection should be carried forward into the new inspection report. This ensures tracking of outstanding compliance issues.

6.3 Writing the Cover Letter

The cover letter should present inspection observations in a clear and objective manner so the reader has a complete overview and understanding of compliance issues.

Cover letters should follow formats provided in Attachments 5 through 9. Each boilerplate format allows the inspector to present inspection observations and legal requirements in a consistent, uniform manner and has been developed to meet specific legal requirements. The inspector should prepare a complete, concise narrative by keeping observations brief and to the point.

6.3.1. No-Deficiency Cover Letter

A No-Deficiency (NDL) Letter is used for facilities which are found to be fully compliant and no compliance issues are identified during the inspection cycle. This letter documents the basic factual points of the inspection and identifies the facility as compliant. No further action is required by the facility or department and compliance is reassessed during the next compliance cycle. A boilerplate No-Deficiency is included in Attachment 5.

6.3.2. Area of Concern Cover Letter

An Area of Concern (AOC) Letter is used for facilities which are found to be compliant during the inspection cycle; however an Area of Concern was identified. Refer to Attachment 4 for further explanation of "Area of Concern". This letter documents the basic factual points of the inspection and identifies the Area(s) of Concern. The AOC designating is intended to serve as a reminder of to provide the facility an opportunity to resolve issues before they become alleged violations. No further formal action is required by the facility or department and compliance is reassessed during the next compliance cycle. A boilerplate Area of Concern Letter is included in Attachment 6.

6.3.3. Alleged Non-Compliance

Refer to Chapter 5 – Classifying and Resolving Non-Compliance, for guidance in preparing a Deficiency Letter (Attachment 7), a Warning Letter (Attachment 8), and a Notice of Alleged Violation (Attachment 9).

6.4. Finalizing the report

After completing the cover letter, the inspector should assemble and organize all checklists and supporting documentation and coordinate with the LPM on the review process for their regional office. Once the inspection report is finalized, the report should be sent to the facility and a copy should be placed in the regional office files and/or otherwise managed per the file retention policies.

Inspection reports should be mailed to the facility within 30 days of the inspection. For overly-complex cases or NOV's that require additional review and concurrence by other staff, the inspection report may be mailed to the facility up to 45 days of the inspection.

For the majority of correspondence, delivery by first-class mail will suffice. Staff will know that first class mail was received when the facility contacts them as directed in a non-compliance notice. It is recommended that certified mail be used strategically when effective delivery is uncertain.

CHAPTER 7 – TRACKING COMPLIANCE

Inspectors enter all compliance actions into CEDS to document administrative timelines are met and to address non-compliance. Compliance and enforcement activities should follow the guidance in Chapter 5 and the Enforcement Manual and should be entered into CEDS according to the Solid Waste Compliance Program CEDS Manual (April 2008).

Tracking and follow-up are critical to the success of the agency's effort to emphasize compliance assistance. Every deadline for corrective action should be tracked in CEDS and checked within 15 working days after the established deadline date. If the deadline has not been met, follow-up action should be initiated at the next highest level so that the compliance effort increases until compliance is achieved. Follow-up action should be coordinated with the next scheduled inspection or sooner, as necessary.

The LPM and the inspector should ensure CEDS is properly maintained so complete, accurate, and current information is available to coordinate and track compliance activities throughout each inspection cycle. This ensures that all necessary work is conducted and completed as required, including resolution of non-compliance.

The LPM and the inspector may confer monthly to evaluate on-going compliance actions and pending compliance resolutions that are due. At a minimum, compliance actions and non-compliance resolution tracking should be reviewed quarterly.

As part of the Agency Quarterly Operations Report, solid waste inspection activities are tracked. It is important to keep CEDS up to date with the most recent inspection data so that the Regional Office is given appropriate credit for its compliance activities. Maintaining CEDS with up-to-date data will assist regional management and staff with program management. Additionally, if solid waste compliance staff perform inspections not captured in CEDS, regional management may wish to track that information so that appropriate credit is also provided for that work effort.

ATTACHMENTS

Attachment 1: Pre-Inspection Worksheet or Checklist

Inspector(s) _____ Date _____ Time _____
Site _____ Permit # _____

_____ Complete and verify general information on field checklists

_____ Identify, acquire, and review all relevant file information such as:

_____ Applicable regulations and statutes

_____ Permit (including all attachment and approved or pending amendments)

_____ Recent inspection reports and facility responses

_____ Associated enforcement documents

_____ Disclosure Statement

_____ Plans and approvals (such as unauthorized waste control, contingency, fire, training, closure, post-closure care, special wastes, etc.)

_____ Environment monitoring plans and associated reports or notifications

_____ Financial Assurance documents and approvals

_____ Annual permit fees

_____ Solid Waste Information & Assessment Report and Form DEQ 50-25

_____ Detailed maps and drawings

_____ Notifications or Certifications

_____ Construction quality assurance documents

_____ Records of recent phone conversations with the facility

_____ Recent permit amendment requests and agency responses

_____ Incident notifications to DEQ

_____ Records of any recent complaints

_____ Collect and assemble inspection equipment

_____ Discuss inspection purpose and strategy with the LPM, solid waste and groundwater permitting staff, and enforcement staff.

Attachment 2: On-Site Records Review Checklist

Inspector(s) _____ Date _____ Time _____
Site _____ Permit # _____

The Waste Management Act, regulations, and permits (or equivalent) include the requirements for facilities to keep and maintain records available for DEQ access. Facility specific requirements should be found in the facility's permit.

- _____ Disclosure statement
- _____ Operator's certification (license)
- _____ Financial assurance documents
- _____ Incident notifications to DEQ
- _____ Waste assessment program - SWIA (DEQ Form 50-25)
- _____ Control Plan for Unauthorized Waste
- _____ Unauthorized waste inspection reports
- _____ Waste received and processed
- _____ Operations Manual and Certification
- _____ Written operating plan
- _____ Facility inspection records
- _____ Equipment maintenance records
- _____ Safety plan and OSHA accident notifications; safety training records
- _____ Written emergency contingency plan
- _____ VPDES permit or Stormwater Pollution Prevention Plan
- _____ Disease vector control – Federal Fish and Wildlife Depredation Permit
- _____ Design plans
- _____ Construction, operation, and maintenance records and inspection logs
- _____ Closure and post-closure care plans
- _____ Gas monitoring plans and monitoring data
- _____ Leachate monitoring data
- _____ Leachate transport and treatment invoices
- _____ Groundwater monitoring plans and monitoring data
- _____ Groundwater corrective action program
- _____ Special waste evaluations and analyses
- _____ Asbestos containing material disposal documentation
- _____ Petroleum contaminated soil (PCS) analysis
- _____ Tire or white good transport documentation or invoices
- _____ Records as specified by statute, regulation, or permit (or equivalent)

Permit-specific notes

Attachment 3: Site Walkover Review Checklist

Inspector(s) _____ Date _____ Time _____
Site _____ Permit # _____

The Waste Management Act, regulations, and permits (or equivalent) include the requirements for facility operations.

- _____ Road condition, grading, and materials
- _____ Run-on/runoff control structures such as ditches, sedimentation traps/basins, etc.
- _____ Condition of side slopes and vegetative cover
- _____ Leachate outbreaks on-site or off-site
- _____ Seeps
- _____ Releases of uncontrolled leachate or waste that may be leaving the disposal unit
- _____ Cover systems including daily, intermediate, and final
- _____ Gas management system including wells, vents, or flares
- _____ Groundwater wells or remediation system components
- _____ Leachate collection system components, e.g., piping, pump stations, tanks, ponds
- _____ Leachate re-circulation
- _____ Areas used for mulching, scrap metal, tire storage, HHW (speculative accumulation)
- _____ Maintenance facilities
- _____ Vehicle routing patterns and waste unloading areas
- _____ Waste handling techniques
- _____ Sufficient equipment and operators
- _____ Number of spotters and local inspectors
- _____ Workface size and authorized waste acceptance
- _____ Amount and availability of cover material stockpiles
- _____ Unauthorized waste inspection areas and processes
- _____ Methods for controlling blowing litter
- _____ Methods for controlling vectors
- _____ Unauthorized waste accumulation and storage areas
- _____ Other areas that may require further on-site evaluation
- _____ Alternate Daily Cover (ADC) Demonstrations

Permit specific/Notes

Attachment 4: Final Consensus Statement for Use of Areas of Concern

The WPM Team has agreed that effective January 1, 2008; the solid waste inspection program can utilize the area of concern (AOC) designation for their inspection reports provided that such usage is in accordance with the following criteria and that in no case will an AOC be used for an alleged violation. The WPMs will insure, based on review of the CIRs, that inspectors properly use AOCs designations.

Inspectors often observe operational issues at solid waste management facilities that, if left unaddressed, may become alleged violations in the future. DEQ inspectors may bring such issues to the attention of the facility through documentation in the Compliance Inspection Reports (CIRs) as an Area of Concern (AOC). The identification and use of AOCs serves as a compliance assistance tool for DEQ inspectors, providing the facility an opportunity to resolve issues before they become alleged violations. AOCs are not to be viewed by the inspector as being low level alleged violations, particularly ones involving regulatory action limits. If an observed condition at the facility does not meet the requirements of the statute, regulations, permits and/or enforcement orders, the condition must be identified as an alleged violation. An alleged violation is still an alleged violation no matter the severity level, and use of an AOC designation is not appropriate.

Separate issues may be listed as AOCs in a CIR in order to bring these items to the attention of the facility (and, hopefully, encourage appropriate response by the facility). The inspector shall monitor the AOC to attempt to minimize the impact of the AOC condition or situation so that it does not degrade into an alleged violation.

If the facility fails to address any issue listed as an AOC prior to the next inspection, the inspector should re-evaluate the issue and determine whether observed conditions have changed and whether the facility remains in compliance with the statute, regulations, permits, and/or enforcement orders.

If an issue has been identified as an alleged violation in a CIR, the exact same issue cannot be cited in the next inspection report as an AOC. An AOC may become an alleged violation if the facility does not take action; however, an alleged violation may not become an AOC. However, an AOC may be used for an appropriate issue that is identified and occurs in a different section of the facility; however, the distinction must be made clear in the CIR. AOCs may be utilized to document the following types of issues:

- o **Required Report** – An AOC may be utilized as a reminder in the CIR to notify a facility that a regulatory or permit required report or document (e.g., financial assurance documentation, SWIA, CAP, Annual Groundwater Monitoring Report, gas monitoring reports, Disclosure Statements) is due on a future date.
- o **Blowing Litter** – When natural conditions or severe weather conditions (e.g., high winds, heavy rainfall and excessive snow fall) occur on the day of or on the days preceding the inspection, the facility cannot be expected to completely control and remove blowing litter. Blowing litter problems may be addressed in the inspection report as an AOC provided the facility has blowing litter control measures in place (e.g., litter control fencing), the facility is actively addressing the problem (e.g., scheduled pickups), and the blowing litter is not causing a

health, environmental, vector or nuisance problem. Further, the blowing litter should not be accumulating in state waters or on neighboring properties.

- o **Intermediate Cover** – If minor erosion rills are present in the intermediate cover and it has rained within the past week an AOC may be cited. 9 VAC 20-81-140.B.1.d. states, "...all areas with intermediate cover exposed shall be inspected as needed, but not less than weekly. Additional cover material shall be placed on all cracked, eroded, and uneven areas as required to maintain the integrity of the intermediate cover system." Essentially this allows a facility one week to fix eroded or desiccated intermediate cover. If erosion exists and it has not rained at the facility in over a week, then an alleged violation should be cited.
- o **Stormwater Structures** – If a stormwater ditch or pond is starting to accumulate significant amounts of sediment, but the normal function of the structure is not impaired, the inspector may utilize an AOC to bring the issue to the attention of the facility.
- o **Small Leachate Seeps** – Small leachate seeps often appear on the slopes of landfills. If the seeps are not causing an odor, vector or health problem and do not move beyond the edge of the waste cell into stormwater ditches or surface waters, then the inspector can identify the issue as an AOC in the CIR.
- o **Leachate Collection** – If a leachate collection tank has insufficient storage for the flow from a significant storm event (unless the permit prescribes a different set of criteria for anticipating storm events), the issue may be cited as an AOC in the CIR.
- o **Mud, Dust & Odor** – If DEQ has received complaints about mud on roads, blowing dust or odors, but on-site inspections reveal no problems or minimal problems, an AOC may be used to document that an issue has been noted and that the facility should take steps to address potential or developing issues.
- o **Build-out of Required Appurtenances** - If DEQ learns that the facility will be constructing a new cell and they have not installed the required monitoring appurtenances (groundwater wells, landfill gas probes, etc.), an AOC may be used to put the facility on notice that the issue needs to be addressed prior to CTO inspection being scheduled.
- o **Daily Cover** – An AOC may be utilized to draw attention to a small amount of waste (boards, pipe, plastic bags, etc.) protruding from daily, intermediate, or periodic covers at landfills. If pods or clusters of trash are visible within the cover, the problem should be handled as an alleged violation.

Consensus achieved on this issue effective 3/17/2008. WDD briefed on 3/20/2008.

Attachment 5: Boilerplate No Deficiency Letter

[LETTERHEAD]

[Date]

[Facility Contact]
[Facility Name]
[Street Address]
[City, State, Zip Code]

NO DEFICIENCY LETTER

Re: [Facility Name]
Permit No. _____
[DEQ Identification Number]

Dear [Facility Contact]:

On [date] the Virginia Department of Environmental Quality [specify regional office] conducted an inspection of the solid waste management facility operating under [SWP or PBR #]. During this inspection, the facility was evaluated for compliance with the Virginia Waste Management Act, Virginia [specify regulation app.], and the [specify permit or permit-by-rule documents as app.].

During the inspection no apparent violations of your [permit or PBR], or the [state the appropriate regulation] were observed. A copy of the inspection checklist is enclosed.

If you have any questions, please contact me at (XXX) XXX-XXXX.

Sincerely,

Solid Waste Inspector

cc: CASE FILE

Attachment 6: Boilerplate Area of Concern Letter

[LETTERHEAD]

[Date]

[Facility Contact]
[Facility Name]
[Street Address]
[City, State, Zip Code]

AREA OF CONCERN LETTER

Re: [Facility Name]
Permit No. _____
[DEQ Identification Number]

Dear [Facility Contact]:

On [date] the Virginia Department of Environmental Quality [specify regional office] conducted an inspection of the solid waste management facility operating under [SWP or PBR #]. During this inspection, the facility was evaluated for compliance with the Virginia Waste Management Act, Virginia waste regulations, and the [specify permit or permit-by-rule documents as app.]. A copy of the inspection checklist is enclosed.

During the inspection no apparent violations of your [permit or PBR] or the [appropriate regulation] were observed. However, the following Area(s) of Concern was(were) identified:

[Give details of inspector's factual observations only; do not describe them in terms of violations. Use numbered paragraphs for each factual condition being addressed. A brief discussion of recommendations for corrective measures may be provided; avoid mandates.]

This information was discussed with facility representatives during the inspection. Area(s) of Concern will be re-evaluated during the next inspection to determine whether observed conditions have changed and whether the facility remains in compliance with the statute, regulations, permits, and/or enforcement orders.

If you have any questions, please contact me at (XXX) XXX-XXXX.

Sincerely,

Solid Waste Inspector

cc: CASE FILE
DEQ CO/SW Compliance Program Coordinator (L Richardson)

Attachment 7: Boilerplate Deficiency Inspection Letter

[LETTERHEAD]

[Date]

[Facility Contact]
[Facility Name]
[Street Address]
[City, State, Zip Code]

DEFICIENCY LETTER

Re: [Facility Name]
Permit No. _____
[DEQ Identification Number]

Dear [Facility Contact]:

On [date] the Virginia Department of Environmental Quality [specify regional office] conducted an inspection of the solid waste management facility operating under [SWP or PBR #]. During this inspection, the facility was evaluated for compliance with the Virginia Waste management law and regulations, and the [specify permit or permit-by-rule documents as app.]. A copy of the inspection checklist is enclosed.

Based on review of observations, responses, and documents obtained during this inspection, the Department has reason to believe that [Facility Name] may be in violation of the Virginia Waste Management Act, Virginia [specify regulation app.], or the [permit or permit-by-rule documents as app.]. This information is noted on the enclosed inspection checklist(s) and is summarized below:

[Give details of inspector's factual observations only; do not describe them in terms of violations or conclusions of law. For each factual condition, state specifically the applicable statutory, regulatory, and permit provision that applies. Follow each factual condition with, brief discussion of recommendations for corrective measures; avoid mandates. Use numbered paragraphs for each factual condition being addressed.]

These issues were discussed with facility representatives during the inspection. Please advise this office in writing within 20 calendar days of receipt of this letter if your facility has taken or intends to take corrective action to address these issues, or if there is other information that DEQ should consider. A schedule should be provided for any intended actions.

Your letter will assist our staff in maintaining a complete and accurate record of the compliance status of your facility. Compliance may be verified by on-site inspection or other appropriate means.

Pursuant to Va. Code § 10.1-1455(G), this letter is not a case decision under the Virginia Administrative Process Act, Va. Code § 2.2-4000 et seq. (APA). In the event that discussions with staff do not lead to a satisfactory conclusion concerning the contents of this letter, you may elect to participate in DEQ's Process for Early Dispute Resolution, or you may request in writing that DEQ take all necessary steps to issue a final decision or fact finding under the APA on whether or not a violation has occurred. If you have any questions, please contact me at

Sincerely,

Solid Waste Inspector

cc: CASE FILE
DEQ CO/SW Compliance Program Coordinator (L Richardson)

Attachment 8: Boilerplate Warning Letter

[AGENCY LETTERHEAD]

[Date]

[Facility Contact]
[Facility Name]
[Street Address]
[City, State, Zip Code]

WARNING LETTER

Re: WL No. 00-00-RO-000
[Facility Name, Permit or Identification Number]

Dear [Facility Contact]:

The Department of Environmental Quality (“DEQ” or “the Department”) has reason to believe that the [Facility Name] may be in violation of the Waste Management Law and Regulations.

This letter addresses conditions at the facility named above, and also cites compliance requirements of the Waste Management Law and Regulations. Pursuant to Va. Code § 10.1-1455 (G), this letter is not a case decision under the Virginia Administrative Process Act, Va. Code § 2.2-4000 et seq. The Department requests that you respond **within 20 days of the date of this letter**.

OBSERVATIONS AND LEGAL REQUIREMENTS

On [Date], DEQ staff conducted an inspection of the [Facility Name]. The inspection checklist is attached. The following describe the staff’s factual observations and identify the applicable legal requirements.

[Give details of factual observations only; do not describe them in terms of violation(s) or conclusions of law. Then, for each fact, state specifically the applicable statutory or regulatory provision that applies.

This section should refer to the inspection summary or inspection checklist. Use numbered paragraphs for each factual condition being addressed.]

ENFORCEMENT AUTHORITY

Va. Code § 10.1-1455 of the Waste Management Act provides for an injunction for any violation of the Waste Management Act, Waste Management Board regulations, an order, or permit condition, and provides for a civil penalty up to \$32,500 per day of each violation of the Waste Management Act, regulation, order or permit condition. In addition, Va. Code § 10.1-1455 (G) authorizes the Waste Management Board to issue orders to any person to comply with the Waste Management Act and regulations, including the imposition of a civil penalty for violations of up to \$100,000. Also, Va. Code § 10.1-1186 authorizes the Director of DEQ to issue special orders to any person to comply with the Waste Management Act and regulations, and to impose a civil penalty of not more than \$10,000. Va. Code §§ 10.1-1455(D) and 10.1-1455(I) provide for other additional penalties.

The Court has the inherent authority to enforce its injunction, and is authorized to award the Commonwealth its attorneys' fees and costs.

FUTURE ACTIONS

After reviewing this letter, please respond in writing to DEQ **within 20 days of the date of this letter** detailing actions you have taken or will be taking to ensure compliance with state law and regulations. If corrective action will take longer than 90 days to complete, you may be asked to sign a Letter of Agreement or enter into a Consent Order with the Department to formalize the plan and schedule. *It is DEQ policy that appropriate, timely, corrective action undertaken in response to a Warning Letter will avoid adversarial enforcement proceedings and the assessment of civil charges or penalties.*

Please advise us if you dispute any of the observations recited herein or if there is other information of which DEQ should be aware. In the event that discussions with staff do not lead to a satisfactory conclusion concerning the contents of this letter, you may elect to participate in DEQ's Process for Early Dispute Resolution. If you complete the Process for Early Dispute Resolution and are not satisfied with the resolution, you may request in writing that DEQ take all necessary steps to issue a case decision where appropriate. For further information on the Process for Early Dispute Resolution, please visit the Department's website under "Laws & Regulations" and "DEQ regulations" at: http://www.deq.virginia.gov/regulations/pdf/Process_for_Early_Resolution_8260532.pdf or ask the DEQ contact listed below.

Your contact at DEQ in this matter is [Staff Name]. Please direct written materials to [his/her] attention. If you have questions or wish to arrange a meeting, you may reach [him/her] directly at [Staff Phone Number] or [Staff Email].

Sincerely,

Land Protection Manager

cc: FACILITY OWNER
CASE FILE
SW INSPECTOR
DEQ CO/SW Compliance Program Coordinator (L Richardson)
DEQ Central Office, Shawn Davis

Attachment 9: Boilerplate Notice of Violation

[AGENCY LETTERHEAD]

[Date]

[Facility Contact]
[Facility Name]
[Facility Address]
[City, State, Zip Code]

NOTICE OF VIOLATION

RE: NOV No. 0000-RO-000
[Facility Name, Permit or Identification Number]

Dear [Facility Contact]:

This letter notifies you of information upon which the Department of Environmental Quality (“Department” or “DEQ”) may rely in order to institute an administrative or judicial enforcement action. Based on this information, DEQ has reason to believe that the [Facility Name] may be in violation of the Waste Management Law and Regulations.

This letter addresses conditions at the facility named above, and also cites compliance requirements of the Waste Management Law and Regulations. Pursuant to Va. Code § 10.1-1455 (G), this letter is not a case decision under the Virginia Administrative Process Act, Va. Code § 2.2-4000 *et seq.* The Department requests that you respond **within 10 days of the date of this letter**.

OBSERVATIONS AND LEGAL REQUIREMENTS

On [date], DEQ [specify regional office] staff conducted a compliance inspection of the [Facility Name]. A copy of the inspection report is attached. Staff also reviewed documents provided to DEQ during the course of the inspection. The following describe the staff’s factual observations and identify the applicable legal requirements:

[Give details of factual observations only; do not describe them in terms of violation(s) or conclusions of law. Then, for each fact, state specifically the applicable statutory and/or regulator provision that applies. Use numbered paragraphs for each factual conditional being addressed]

ENFORCEMENT AUTHORITY

Va. Code § 10.1-1455 of the Waste Management Act provides for an injunction for any violation of the Waste Management Act, Waste Management Board regulations, an order, or permit condition, and provides for a civil penalty up to \$32,500 per day of each violation of the Waste Management Act, regulation, order, or permit condition. In addition, Va. Code § 10.1-1455 (G) authorizes the Waste Management Board to issue orders to any person to comply with the Waste Management Act and regulations, including the imposition of a civil penalty for violations of up to \$100,000. Also, Va. Code § 10.1-1186 authorizes the Director of DEQ to issue special orders to any person to comply with the Waste Management Act and regulations, and to impose a civil penalty of not more than \$10,000. Va. Code §§ 10.1-1455 (D) and 10.1-1455 (I) provide for other additional penalties.

The Court has the inherent authority to enforce its injunction, and is authorized to award the Commonwealth its attorneys' fees and costs.

FUTURE ACTIONS

DEQ staff wishes to discuss all aspects of their observations with you, including any actions needed ensure compliance with state law and regulations, any relevant or related measures you plan to take or have taken, and a schedule, as needed, for further activities. In addition, please advise us if you dispute any of the observations recited herein or if there is other information of which DEQ should be aware. In order to avoid adversarial enforcement proceedings, [Facility Name] may be asked to enter into a Consent Order with the Department to formalize a plan and schedule of corrective action and to settle any outstanding issues regarding this matter, including the assessment of civil charges.

In the event that discussions with staff do not lead to a satisfactory conclusion concerning the contents of this letter, you may elect to participate in DEQ's Process for Early Dispute Resolution. If you complete the Process for Early Dispute Resolution and are not satisfied with the resolution, you may request in writing that DEQ take all necessary steps to issue a case decision where appropriate. For further information on the Process for Early Dispute Resolution, please visit the Department's website under "Laws & Regulations" and "DEQ regulations" at: http://www.deq.virginia.gov/regulations/pdf/Process_for_Early_Dispute_Resolution_8260532.pdf or ask the DEQ contact listed below.

Please contact [Staff Name] at [Staff Phone Number] or [Staff Email] **within 10 days of the date of this letter** to discuss this matter and arrange a meeting.

Sincerely,

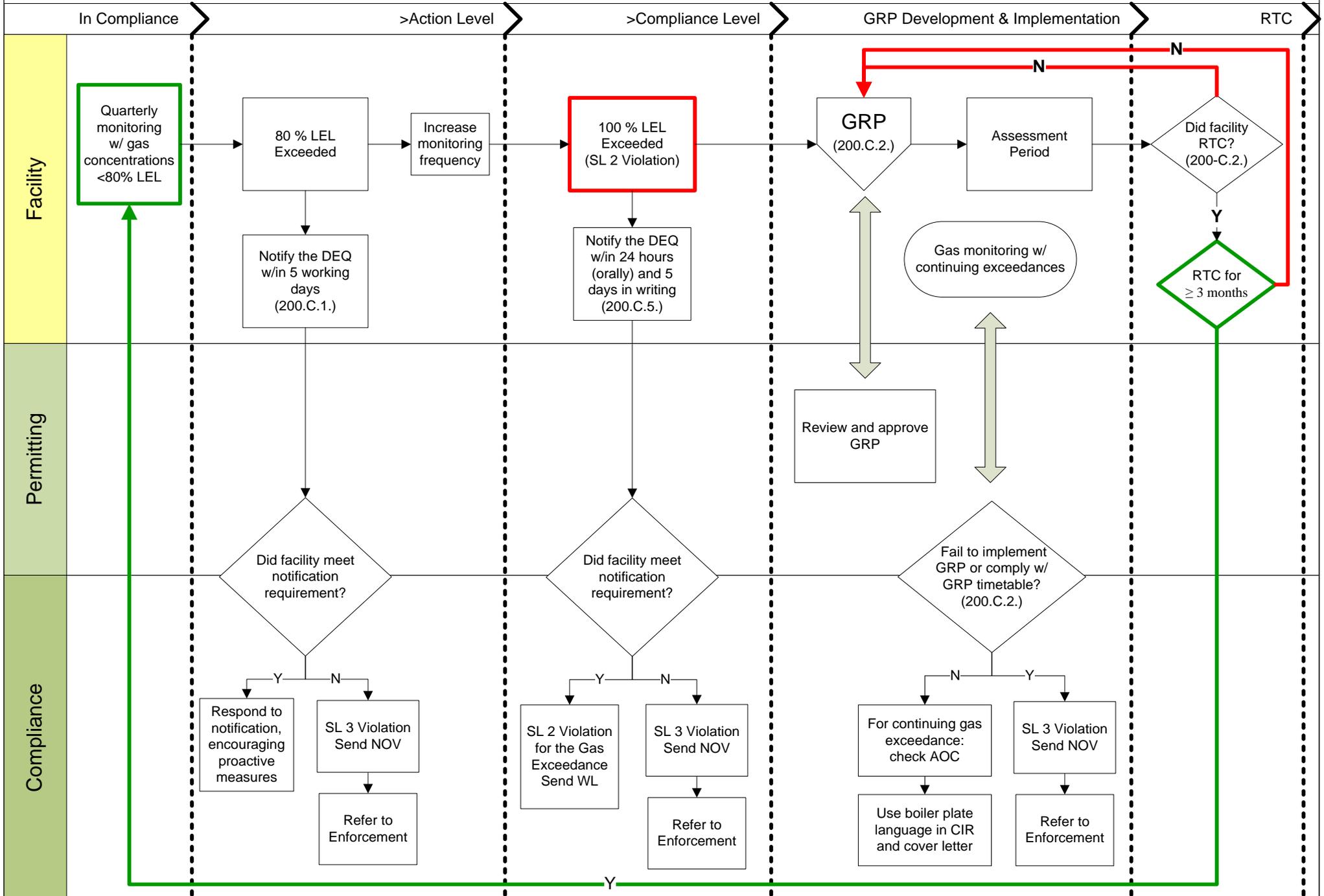
[Name]
Land Protection Manager

cc: Responsible Party Decision Makers
CASE FILE
SW INSPECTOR
DEQ Regional Director / Deputy Regional Director
DEQ CO/SW Compliance Program Coordinator (L Richardson)
DEQ Central Office, Shawn Davis

Attachment 10: Methane Gas Exceedances

10-1 Flowchart

10-2 Guidance



COMMONWEALTH OF VIRGINIA
Department of Environmental Quality

Memorandum

To: Regional Land Protection Managers

From: Jeffery Steers, Director, Land Protection Division

Date: December 22, 2010

Subject: Solid Waste Inspection Manual (SWIM) – Attachment 10-2
Selection of Appropriate Enforcement Instrument for Alleged Violations
of 9 VAC 20-81-200

Summary:

This guidance provides waste program staff with a framework for evaluating and responding to alleged violations of the requirements found under 9 VAC 20-81-200 for the control of decomposition gases at landfills.

Electronic Copy:

An electronic copy of this guidance is available on DEQ's website at:
<http://www.deq.virginia.gov/waste/guidance.html>.

Contact Information:

Please contact Linda Richardson at (804)698-4318 or Linda.Richardson@deq.virginia.gov with any questions regarding the application of this guidance.

Disclaimer:

This document is provided as guidance and, as such, sets forth standard operating procedures for the agency. However, it does not mandate any particular method nor does it prohibit any alternative method for evaluating and responding to alleged violations, especially those outlined in the Agency's Enforcement Manual.

I. Introduction

Landfill gas is generated as organic wastes (e.g., food, garden waste, textiles, wood and paper) decompose and volatilize. Landfill gas is composed primarily of methane and carbon dioxide and smaller amounts of nitrogen, oxygen, ammonia, sulfides, hydrogen, carbon monoxide, and non-methane organic compounds.

The rate and amount of landfill gas generated are dependent on the characteristics of the wastes disposed in the landfill, including composition, age, presence of oxygen, moisture, and temperature. As landfill gas is generated, the gases expand and tend to move upward, but when inhibited by densely compacted waste or cover material, landfill gas may migrate laterally into surrounding soils.

Owners or operators of landfills are required to develop a gas management plan in accordance with 9 VAC 20-81-200. Within the plan, venting and control of decomposition gases are required to protect the landfill cap and prevent migration of gases into structures or beyond the facility boundary and must be controlled during the periods of operation, closure and post-closure care.

The owner or operator is required to establish and maintain a monitoring network to detect the presence of decomposition gases migrating beyond the landfill boundary and into facility structures. When gas monitoring results indicate methane concentrations have exceeded the established action and/or compliance levels, the facility is required to notify the Department and to begin preparing and implementing a gas remediation plan (GRP) to control the migration of landfill gas.

The purpose of this guidance is to provide waste program staff with a framework to evaluate a facility's compliance with the requirements of 9 VAC 20-81-200 and to establish a framework for responding to alleged violations of the requirements.

II. Background

This guidance document was developed as a supplement to the DEQ's Solid Waste Inspection Manual (SWIM), which establishes guidance for conducting inspections and preparing inspection reports. Since a landfill GRP may take several months to develop and implement and the DEQ may conduct several inspections over the same period, the guidance was specifically developed to address on-going gas exceedances while the facility is implementing its gas remediation plan in a timely fashion.

III. Authority

Section 10.1-1402 of the Virginia Waste Management Act, Chapter 14 (§ 10.1-1400 *et seq.*) of Title 10.1 of the Code of Virginia, authorizes the Virginia Waste Management Board to promulgate regulations necessary to carry out its powers and duties and the intent of the Act.

IV. Definitions

The definitions in the Virginia Waste Management Act and the Virginia Solid Waste Management Regulations, 9 VAC 20-81 *et seq.* (VSWMR or Regulation) apply to these Procedures. Definitions included in the VSWMR are not included here.

V. Guidance Document

Unless otherwise exempt, landfill operators are required to install and maintain a gas monitoring network to detect the migration of gas into facility structures or beyond the landfill boundary. At a minimum, the operator is required to monitor the approved network on a quarterly basis, unless site specific conditions require a higher frequency to protect human health and the environment (9VAC20-81-200.B.4).

Table 1 of SWIM Section 5.3 provides guidance on selecting the most appropriate enforcement instrument for non-compliance (e.g., Deficiency Letter, Warning Letter, or NOV), absent extraordinary circumstances. An exception to the guidance is in the case of gas exceedances where the instrument selection will be based on whether the responsible party is adequately and timely addressing these issues in accordance with the VSWMR.

V.1. Exceeding Action Levels

When the gas monitoring results indicate concentrations of methane are in excess of the action levels, 25% of the LEL for methane in facility structures or 80% of the LEL for methane at the landfill boundary, the operator is required to take immediate steps to protect human health and safety and notify the DEQ within five working days of learning that action levels have been exceeded (9VAC 20-81-200.C.1) The notification is fundamental to tracking the facility's efforts to control the migration of decomposition gasses and ensure the facility stays within the response timelines required by the VSWMR.

Provided the facility meets the notification requirement, the DEQ may respond with a letter that acknowledges receipt of the notification, encourages the facility to begin preparing its Gas Remediation Plan (GRP), and requests the facility to increase gas monitoring frequency from quarterly to monthly or weekly, depending on site-specific conditions.

Failure to notify the DEQ within five working days is a Severity Level (SL) 3 violation and staff should issue a Notice of Alleged Violation (NOV) followed by a referral to Enforcement.

V.2. Exceeding Compliance Levels

When the gas monitoring results indicate concentrations of methane are in excess of the compliance levels, 25% of the LEL for methane in facility structures or 100% of the LEL for methane at the landfill boundary, the operator is required to, within 60 days of detection, implement a gas remediation plan for the methane gas releases and submit it to the DEQ for amendment of the facility permit (9VAC20-81-200.C.2). Additionally, the facility is required to notify the DEQ of an exceedance of the compliance level orally within 24 hours and in writing within five days (9VAC20-81-200.C.5; 9VAC20-81-530.C.3).

Exceeding the compliance level for methane is a SL 2 violation, and staff should prepare and issue a Warning Letter (WL). However, if the operator fails to notify the DEQ within the reporting timelines outlined in 9VAC20-81-530.C.3, staff should prepare and send a NOV, followed by a referral to enforcement, for the gas exceedance and the missed notification.

If the operator fails to implement and submit the GRP within 60 days, the staff should prepare and send an NOV, followed by a referral to enforcement.

V.3. Continuing Gas Exceedance During GRP Implementation

While the operator implements the approved GRP, landfill gas concentrations will most likely continue to exceed compliance levels. Provided the operator continues to implement the GRP according to the approved timetable, DEQ staff may acknowledge on-going gas exceedances by marking 20-81-200.A as an “Area of Concern” and using the following recommended language in compliance inspection reports:

“On XX, XX, 20XX, the facility exceeded the compliance level for methane. The facility submitted a gas remediation plan within 60 days of the exceedance and is implementing the plan in accordance with the approved timetable.”

The staff may send a regular cover letter with the compliance inspection report.

However, failure to implement the GRP in accordance with the approved timetable is a SL 3 violation, and the DEQ staff should issue a NOV with a referral to Enforcement.

V.4. Following an Assessment of Corrective Actions

Once the operator has constructed the remedy for the gas exceedance, the operator will have a period for assessing the successfulness of the remedy and the period for this assessment should be described in the GRP. Once the assessment period has passed and once the facility has achieved compliance for three consecutive months, the operator may return to quarterly monitoring.

However, if at the end of the assessment period, the landfill concentrations have not fallen below action and compliance levels, the operator is required to proceed with implementing additional corrective actions (9 VAC 20-81-200.C.2). Provided the operator takes these additional actions, the DEQ may respond to continuing gas exceedance per V.3. above.

However, failure to take additional corrective action steps as required is a SL 3 violation, and the DEQ staff should prepare and send a NOV, followed by a referral to enforcement.