

COMMONWEALTH OF VIRGINIA
DEPARTMENT OF ENVIRONMENTAL QUALITY

FINAL APPROVAL OF September 23, 2003 REVISION

FIELD OPERATIONS MANUAL FOR AIR INSPECTORS
Air Standard Operating Procedures (ASOPs)

ASOP-17: COMPLIANCE ASSISTANCE

Per Collaboration Process Development Memo Dated July 20, 2000

- Revision coordinated by Manager, Office of Air Compliance Coordination
- Reviewed by regional Air Compliance Managers and designees
- Presented to Senior Management Team for review and comment
- Finalized by Manager, Office of Air Compliance Coordination




Alice G. Nelson

9/23/03

Date

- Approved by Division Director of Air Programs



John M. Daniel, Jr.

9/30/03

Date

**COMMONWEALTH OF VIRGINIA
DEPARTMENT OF ENVIRONMENTAL QUALITY**

**FIELD OPERATIONS MANUAL FOR AIR INSPECTORS
Air Standard Operating Procedures (ASOPs)**

**ASOP – 17
COMPLIANCE ASSISTANCE**

I. INTRODUCTION AND PURPOSE

The goal of inspections is to determine whether a source is in compliance with applicable requirements under the federal Clean Air Act, State Regulations, permits, and enforcement orders. Situations arise in which inspectors are asked to provide compliance assistance to a facility. This guidance outlines a framework of what is considered compliance assistance and what is beyond those bounds while preserving the role of an inspector.

II. DEFINITIONS

For purposes of this guidance, the following words or terms have the meaning stated:

- **CEDS** - the VA DEQ's Comprehensive Environmental Data System.
- **Compliance Assistance** – any activities, tools, or technical assistance that provides information/assistance to help the regulated community meet its obligations under environmental regulations.
- **Environmental Management System (EMS)** – a tool to improve environmental performance by systematically managing an organization's environmental affairs; focuses on continual improvement.
- **Evaluation/ Inspection** - a review of a facility's compliance status with applicable regulatory requirements; "inspection" normally refers to an on-site evaluation, but the two terms can be used interchangeably.
- **Inspector** – any VA DEQ employee designated as having the authority to conduct official compliance evaluations/inspections.

III. GUIDELINES FOR PROVIDING COMPLIANCE ASSISTANCE

Compliance assistance is an important part of enhancing the health of the environment by improving compliance and helping facilities avoid future noncompliance. Inspectors are encouraged to provide appropriate, general, and limited site-specific compliance assistance, without compromising the primary purpose of compliance determination.

Compliance assistance does NOT mean that inspectors should ignore violations. Inspectors are obligated to respond to any noncompliance findings in accordance with the DEQ Enforcement Manual and other federal and state policies and procedures.

Do's - The following section provides guidance regarding acceptable methods and examples of compliance assistance for air compliance staff.

- Provide copies of inspection checklists to the facility for internal auditing or other similar purposes if requested;
- Encourage facilities to develop environmental management systems (EMS), conduct self-audits, and explore pollution prevention opportunities;
- Suggest that facilities utilize the vast network of free or inexpensive technical assistance providers and programs to assist the facility in reaching or going beyond compliance;
- Document in field notes facility questions regarding compliance or enforcement issues and responses given, including any caveats. Also document all actions undertaken by the facility during the inspection to reach compliance;
- Use the Request for Corrective Action (RCA) as a means for informally addressing discovered noncompliance which cannot be corrected while the inspector is still on-site, but which can generally be corrected within thirty days.
- Hand out information sheets with information on the Small Business Assistance Program, websites, hotlines, and other materials;
- Provide prepared literature on pollution prevention techniques and opportunities, environmental management systems and practices, and innovative technologies;
- Provide facilities with the website for the EPA Audit Policy and Small Business Policy to encourage self-auditing;
- Share information from published material developed and recognized by EPA and the state on control practices and equipment used within a specific sector to comply with environmental regulations and potentially reduce their regulatory burden;
- Provide information, published material, material developed and recognized by EPA on industry sector-based practices and concepts, to reduce or eliminate pollution (e.g., chemical substitution, equipment changes);
- Provide physical copies of environmental statutes or regulations, conveying a general explanation of where to obtain the regulatory requirements, and providing information on where to find regulatory interpretations (e.g. CAA Applicability Determination Index); and
- Mention to regulated facilities that the federal requirements of a rule may be different than the state requirements.

Don'ts - Since this list is not all-inclusive, it is vital that inspectors rely on good judgment. There are several specific actions that would not be consistent with compliance assistance.

- Recommend a specific product or consultant providing a service;
- Divulge any specifics that might give away trade secrets when discussing another facility that solved a similar technical problem;

- Advise on technical solutions, such as what process changes should be made or types of equipment that should be purchased;
- Direct or tell the facility to operate in a certain way or implement any specific procedures; or
- Offer opinions on recommendations made by others.

It is important to remind facilities that receiving compliance assistance does not shield them from possible enforcement actions for violations identified during the compliance inspection. If a RCA is issued to address any noncompliance, it may be helpful to explain that, while it is necessary for DEQ to document its findings, the informal aspect of the RCA allows DEQ to grant the facility time to correct its noncompliance without the need for the more formal and burdensome Notice of Violation process.

IV. TRACKING COMPLIANCE ASSISTANCE

During any facility visit it is important to keep detailed notes of the events that transpired. It is just as important to do so in instances of compliance assistance. These notes should be included in the "Comments" field on the "General Inspection" screen in CEDS.

When the inspection is solely for the purpose of providing compliance assistance, select the "Reason" for the inspection in CEDS as "Compliance Assistance". If compliance assistance is a secondary purpose or activity conducted during an inspection, select the appropriate inspection "Reason" in CEDS, but add an additional event at the bottom of the "General Inspection" screen to indicate "Compliance Assistance" was performed as well. This will enable the Small Business Assistance Program to pull reports from CEDS for air compliance assistance activities to meet grant commitments and other requests.

V. REFERENCES

"Final National Policy: Role of the EPA Inspector in Providing Compliance Assistance During Inspections", U.S. EPA memorandum June 25, 2003 (enclosed as Attachment A)

ATTACHMENT A

Final National Policy:

**Role of the EPA Inspector in Providing Compliance Assistance During Inspections,
U.S. EPA Memorandum June 25, 2003**



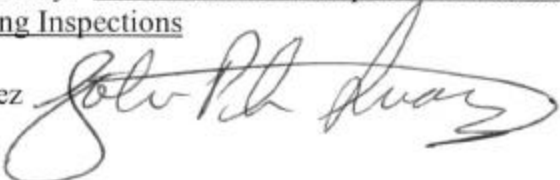
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

JUN 25 2003

ASSISTANT ADMINISTRATOR
FOR ENFORCEMENT AND
COMPLIANCE ASSURANCE

MEMORANDUM

SUBJECT: Final National Policy: Role of the EPA Inspector in Providing Compliance Assistance During Inspections

FROM: John Peter Suarez 

TO: Addressees

The purpose of this memorandum is to transmit the final national policy on The Role of the EPA Inspector in Providing Compliance Assistance During Inspections. This final policy incorporates many comments made by the regions and OECA offices on two previous drafts of the policy. We thank you for your comments.

This Policy will:

- ◆ Provide more consistency in how and when EPA inspectors provide compliance assistance.
- ◆ Respect the states' role in providing compliance assistance by limiting EPA inspectors to only providing assistance on state regulations that are identical to federal regulations.
- ◆ Clarify, not change, the existing practice of providing appropriate compliance assistance during inspections (recent results from the Inspection Conclusion Data Sheet project indicate that inspectors currently provide assistance during 75% of compliance inspections).

OECA will post the Policy on the EPA Website (Internet) and the OC Inspector Website (Intranet) and will include development of a training module in future offerings of the Basic Inspector Training course.



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For your information, here is a summary of the Policy's major points:

- EPA compliance inspectors are encouraged to provide appropriate general, and limited site-specific, compliance assistance, consistent with the primary purpose of compliance determination. The Policy provides examples of general and site-specific compliance assistance.
- The Policy is not intended to address every inspection scenario or situation. The Policy does not supplant the need for prudent judgement by EPA inspectors, based on their knowledge, experience, and expertise.
- EPA inspectors should **not** provide site-specific interpretive technical assistance during compliance inspections.
- EPA inspectors should **not** provide site-specific interpretive legal assistance during compliance inspections.
- EPA inspectors should not make applicability determinations in the field.
- Specific activities occurring during the inspection should be documented and reported after the inspection, including potential violations, actions taken to address potential violations, and compliance assistance provided.
- Facilities receiving compliance assistance are not shielded from possible enforcement actions for violations identified during the compliance inspection.

Please distribute this policy widely throughout the organization to all EPA employees, EPA contractors, and EPA grantees that conduct inspections. If you have questions, please call the Compliance Assessment and Media Programs Division (CAMPD) at 202-564-2300.

Attachments: National Policy: A) Background and Sources of Information; and B) U.S. EPA Compliance Assistance Resources

Addressees: Regional Enforcement Division Directors, Regions 1, 2, 4, 6, and 8
Regional Science and Technology Division Directors, Regions 1-10
Regional Media Division Directors, Regions 1-10
Regional Enforcement Coordinators, Regions 1-10
Regional Compliance Assistance Coordinators, Regions 1-10
David S. Evans, Director, Oil Program Center
Steve Page, Director, Office of Air Quality Planning and Standards
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James Jones, Director, Office of Pesticide Programs
Charles Auer, Director, Office of Pollution Prevention and Toxics
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cc: Phyllis Harris, Principal Deputy Assistant Administrator, OECA
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David Kling, Director, FFEO
Diana Love, Director, NEIC
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Susan E. Bromm, Director, OSRE

NATIONAL POLICY

The Role of the EPA Inspector in Providing Compliance Assistance During Inspections

Summary of Policy

The main purpose of EPA conducting compliance inspections is to determine compliance with environmental regulations and enforcement agreements.

This policy clarifies, but does not change, the existing practice of providing appropriate compliance assistance during inspections (recent results from the Inspection Conclusion Data Sheet project indicate that inspectors currently provide assistance during 75% of compliance inspections). This policy applies during the course of the on-site compliance inspection and only to EPA inspectors as defined under the Inspection Process section. Here is a summary of the main points:

- EPA compliance inspectors are encouraged to provide appropriate general, and limited site-specific, compliance assistance, consistent with the primary purpose of compliance determination, as time allows. Examples of general and site-specific compliance assistance are provided in the Policy.
- The Policy is not intended to address every inspection scenario or situation. The Policy does not supplant the need for prudent judgement by EPA inspectors, based on their knowledge, experience, and expertise.
- EPA inspectors should **not** provide site-specific interpretive technical assistance during compliance inspections.
- EPA inspectors should **not** provide site-specific interpretive legal assistance during compliance inspections.
- EPA inspectors should not make applicability determinations in the field.
- EPA inspectors should only provide assistance on state requirements that are identical to federal environmental regulations.
- Specific activities occurring during the inspection should be documented and reported after the inspection, including potential violations, actions taken to address potential violations, and compliance assistance provided.
- Facilities receiving compliance assistance are not shielded from possible enforcement actions for violations identified during the compliance inspection.
- Facilities are subject to potential enforcement action, even if they correct potential violations observed during the compliance inspection.

This policy was developed based on information sources (Attachment A), tips from a Region III inspector, comments from the Regions/HQ offices, and the Region VII Documentation Guidelines for Compliance Related Field Activities.

- Index** This Policy includes the following:
- Introduction
 - Inspection process
 - Definition for this policy
 - Appropriate general assistance
 - Inappropriate assistance
 - Site-specific examples
 - Documentation
 - Reporting
-

Introduction In 1997, a workgroup of Headquarters and regional compliance inspectors and managers was formed to discuss and report on the proper role of the EPA inspector in providing compliance assistance. The workgroup developed a report that was circulated to the Regions. However, the 1997 report was never communicated as a national policy that EPA inspectors should follow. It was issued only as a guide. **This national policy document supercedes the 1997 report.**

This national policy describes the appropriate role of the EPA inspector when providing compliance assistance. The Regions and HQ offices played a significant role in formulating this revised policy. Their comments are incorporated in this final Policy.

- Inspection Process**
- During every compliance inspection, EPA inspectors (*i.e.*, EPA employees, contractors, and SEE enrollees, as well as state and tribal inspectors using federal credentials to conduct inspections) are tasked primarily with determining compliance and, secondarily, with determining the appropriate level of compliance assistance to provide to the facility being inspected. Generally, an EPA inspector conducts the following activities during an inspection:
- presents credentials and gains access to the facility;
 - identifies a facility representative with knowledge and authority to answer questions, and conducts interviews with various facility personnel;
 - announces the purpose of the inspection and, in some cases, presents a notification of inspection;
 - takes environmental samples when appropriate;
 - reviews a variety of records, reports, and other written documentation;
 - conducts an on-site review of the physical buildings, processes, pollution

- control equipment, and monitoring practices;
- makes notes of observations and interviews and takes photographs; and
- conducts a closing or exit conference.

At any time during these activities, the EPA inspector could be asked general and/or site-specific compliance-related questions. This policy provides guidance to EPA inspectors on how to respond to these questions and what types of assistance should, and should not be, provided.

Caution: If the facility fixes or corrects potential violation(s) observed during the inspection, the EPA inspector should make note of it in the inspection report. However, the facility is still subject to an enforcement action if the potential violation is deemed appropriate, and there is ample evidence documenting it. **Under no circumstances** should the EPA inspector tell the facility that it is exempt from enforcement actions if the facility corrects or fixes potential violations observed during the inspection.

**Definition for
this Policy**

While EPA has a broader definition of Compliance Assistance for other purposes, this policy defines compliance assistance as:

- Providing tools or regulatory assistance to the facility during an on-site compliance inspection to help the facility understand and comply with federal environmental regulations/requirements.

Compliance assistance for this policy does **not** include the following two situations:

- EPA inspectors may observe situations where there are significant problems that rise to the level of an imminent and substantial endangerment to human health or the environment. If the inspector believes such a situation exists, he/she must notify the facility during the inspection and refer the facts to the appropriate office for subsequent action. This is an obligation EPA inspectors assume as part of their normal duties.
- EPA inspectors may share information about, or provide a review of the compliance status of the facility including a preliminary evaluation of some, but possibly not all, of the potential violations observed during the closing conference. These preliminary findings could change at a later date subject to research, management or legal review, or new information received by the Agency. This information is part of the routine compliance and enforcement process and is not considered compliance assistance.

Regional and HQ inspection programs vary on whether EPA inspectors share initial inspection results, and even final inspection reports, with facility owners/operators. This national policy does not alter these existing regional or HQ inspection program practices or policies.

**Appropriate
General
Assistance**

EPA compliance inspectors are encouraged to provide general compliance assistance during the compliance inspection. The following examples illustrate appropriate general compliance assistance during inspections:

- Providing physical copies of environmental statutes or regulations, conveying a general explanation of where to obtain the regulatory requirements, and providing information on where to find regulatory interpretations (*e.g.*, CAA Applicability Determination Index);
- Providing information including prepared guidance, manuals, and technology transfer documents;
- Providing information on what assistance can be obtained from EPA, State, local assistance programs, trade associations, and other organizations;
- Informing facilities regarding the physical equipment or processes and reports and/or records they need to maintain, as well as a general idea of what these documents should contain to ensure compliance;
- Distributing the small business information sheet with information on web sites, hotlines, and other materials;
- Providing prepared literature on pollution prevention techniques and opportunities, environmental management practices, and innovative technologies;
- Providing information on visible compliance problems (*e.g.*, labeling, aisle space), which do not pose any issues of first impression requiring legal or technical interpretation by the inspector, potentially enabling the facility to undertake quick action to remedy the non-compliance problem;
- Providing facilities with the website for the EPA Audit Policy and Small Business Policy to encourage self-auditing;
- Providing suggestions from published material developed and recognized by EPA on simple techniques and concepts to reduce or eliminate pollution (*e.g.*, housekeeping tips);

- Sharing information from published material developed and recognized by EPA on control practices and equipment used within a specific sector to comply with environmental regulations and potentially reduce their regulatory burden;
- Providing information published material developed and recognized by EPA on recognized industry or sector-based practices and concepts to reduce or eliminate pollution (*e.g.*, chemical substitution, equipment changes);
- Explaining regulations or guidance that describe how to collect a sample, but not providing advice on the number or location of samples necessary to meet “representative” criteria; and
- Mentioning to regulated facilities that state requirements, which may apply to them, may be different than federal requirements.

Inappropriate

Assistance

EPA inspectors should **not** provide site-specific interpretive technical assistance, nor should they provide site-specific interpretive legal assistance during compliance inspections. Legal assistance involves providing advice to the facility on how to deal with EPA or the state on a potential violation or enforcement action, or stating that no action will be taken if potential violations are corrected by the facility.

Examples of **inappropriate** site-specific technical and legal assistance that should **NOT** be provided during EPA compliance inspections include:

- Providing information on specific commercial consultant services, or recommending a specific product or consultant providing a service;
- Providing interpretive site-specific legal or technical advice on how a site or facility can achieve compliance with environmental regulations;
- Providing interpretations that do not already exist in writing or are not written agency policy;
- Providing determinations of whether a facility, unit, waste, or piece of equipment is subject to federal environmental requirements, providing regulatory interpretations, or approving alternative monitoring approaches. These are typically known as applicability determinations;
- Providing specific design information on a facility's particular problem, engineering design, or materials management process;

- Divulging information that could be classified as confidential business information;
- Advising on technical solutions, such as process changes that should be made or types of equipment that should be purchased; and
- Offering opinions on recommendations made by others, particularly state, tribal, or local inspectors. EPA inspectors should only provide assistance on state requirements that are identical to federal environmental regulations.

The above examples are not appropriate for the following reasons:

Complexity – Due to the scope of regulatory requirements, routine changes to manufacturing processes, technological advances, and limited time for reviewing and observing on-site procedures and practices, EPA inspectors may not always have the information and time needed to provide appropriate compliance assistance. Also, the facility owner or operator may provide EPA inspectors with incorrect or misleading information. This lack of, or incorrect, information may lead the EPA inspector to make statements that do nothing to improve the facility’s operations or its ability to achieve compliance with environmental requirements.

Potential legal implications – It may affect the Agency’s ability to develop and prosecute civil and criminal enforcement actions. For example, if a facility relied upon assistance that the EPA inspector provided to initiate action to achieve compliance and a subsequent enforcement action was taken for non-compliance or imminent and substantial endangerment resulting from that assistance, it could cause problems in successfully prosecuting the case and achieving environmental compliance. The Office of Regional Counsel or Office of Regulatory Enforcement should be consulted if this issue arises during, or after, a compliance inspection.

Potential to develop new policy in the field – Policy decisions at one facility can have a precedential effect on all other facilities. It is important that EPA inspectors follow established procedures for developing national compliance and enforcement policies. EPA inspectors may not have all of the facts or the authority necessary to make policy decisions in the field. They may need to consult existing guidance and obtain technical advice to ensure consistency on how to address the issue, which may not be available during the inspection.

**Site-Specific
Examples**

The following examples are provided to assist the EPA inspector in identifying appropriate and inappropriate site-specific assistance during a compliance inspection. These examples are illustrative only and do not represent the entire

spectrum of all possible site-specific compliance assistance situations.

Example 1 - Missing Labels: An inspector on a tour of a facility observes a number of electric transformers on-site. The transformers have no labels posted on them. The inspector inquires as to the type of transformers. The plant operator states that the transformers contain polychlorinated biphenyls (PCBs).

Appropriate assistance

The inspector tells the facility, “the regulations require that you will need to put labels on transformers containing PCB’s. The labels must say ‘Caution Contains PCBs and other specific language.’” The inspector directs the facility to the specific regulatory citation for the exact wording for the labels.

Inappropriate assistance

The inspector either places the labels on the transformers for the facility or recommends a specific company or brand of label by saying, “here is X company who sells and can provide you with the correct labels.”

Example 2 - Open Containers – In the aerosol fill area of a facility, the inspector observes a 55-gallon satellite accumulation container that is open. The inspector verifies that the container is full. A plant operator informs the inspector that the container is used to collect spent line flushing solvent (lacquer thinner) used to wash paint out of the fill equipment. The inspector asks the plant operator if the spent solvent is classified a hazardous waste by the company. The plant operator affirms it is classified a hazardous waste.

Appropriate assistance

The inspector tells the facility, “the regulations specify that you need to make sure containers holding hazardous waste that are full are closed except when it is necessary to add or remove waste.” The inspector directs the facility to the specific regulatory citation requiring the containers to be closed. The inspector also discusses standard industry practices from published material developed and recognized by EPA to ensure proper handling of hazardous waste.

Inappropriate assistance

The inspector tells the facility that if it fails to keep containers holding hazardous waste closed, it will have to change its process to avoid generating the waste. Alternatively, the inspector suggests a different process design for the facility that will allow waste to be generated but will keep the containers closed. The inspector advises the facility on how to avoid penalties for drums remaining open.

Example 3 - Sludge Deposits – The state waste water permit for a facility requires that “[w]aters shall be free from substances in sufficient amounts to cause formation of putrescent, unsightly, or harmful bottom deposits.” At the facility’s outfall, the inspector observes the receiving stream to have 4-5 inches of sludge deposit at the bottom, as well as significant bloodworm populations. After

discussion with the facility, the facility operator signs a statement that the facility has been losing solids to the stream for four months due to an increased organic load from a meat packing company.

Appropriate assistance

The inspector inquires whether there are other discharges from the facility, what treatment processes and controls are in place to prevent solids from reaching the outfalls, and what problems have occurred. The inspector asks the facility about its understanding of permit conditions regarding sludge deposits in the receiving stream, and whether the facility is meeting its permit conditions. The inspector tells the facility that it should limit solids reaching the outfall to meet its state permit requirements. The inspector directs the facility to the specific permit language regarding protection of the receiving stream and to agency guidance discussing wastewater requirements and various treatment methods for solids.

Inappropriate assistance

The inspector tells the facility it will have to stop accepting waste from the meat packing plant to meet the permit limits. Alternatively, the inspector suggests a different process design for the facility that will prevent solids from reaching the outfall. The inspector advises the facility on how it can renegotiate its permit with the state.

Example 4 - Chromate Coating Process – A steel plant facility states it is “galvanizing” steel with a 55% aluminum and 45% zinc coating followed by a chromate dip. The inspector consults the EPA development document and concludes that the chromate coating process is actually “electroplating” and that residues from treating the spent chromate solution would be a listed hazardous waste. If the process is defined as “electroplating”, the facility could have significant noncompliance with hazardous waste requirements.

Appropriate assistance

The inspector asks the facility what processes and controls it has in place for handling the spent chromate solution. The inspector inquires whether the facility has looked into whether the spent chromate solution requires special handling as hazardous waste, what it found, and the rationale for operating the controls that are currently being implemented. The inspector asks the facility to explain why it determined that the process is “galvanizing” rather than “electroplating”.

The inspector tells the facility that there are some questions about the process, specifically its definition of the process as “galvanizing” rather than “electroplating”. The inspector states that an applicability determination will have to be made, after a review and research, as part of evaluating the facility’s compliance status and consultation with EPA management and legal counsel. The Agency may also request additional information about the process.

The inspector directs the facility to available agency, state, or local materials and

websites dealing with galvanizing, electroplating, and chromate coating processes, such as the Metal Finishing Compliance Assistance Center (1-800-AT-NMFRC or <http://www.nmfrc.org>), the Self-Audit and Inspection Guide for Facilities Conducting Cleaning, Preparation, and Organic Coating of Metal Parts (EPA 305-B-95-002, August 1998), and/or the CAA Applicability Determination Index at <http://www.epa.gov/Compliance/planning/data/air/adi.html>.

Inappropriate assistance

The inspector tells the facility it needs to stop operating the galvanizing process until the Agency determines whether the operation generates a hazardous waste. Alternatively, the inspector advises the facility to modify its process to allow it to be defined as a “galvanizing” process.

Example 5 - Record keeping – An inspector observes that a facility did not maintain good air emission monitoring records over a two-year period. The managers at the facility had a system to record readings from their continuous monitoring system, but no one at the facility had direct responsibility to ensure the readings were properly recorded every day. A review of the records revealed that a daily report was being used for several days of readings. The standards specifies separate records for each 24-hour period.

Appropriate assistance

The inspector tells the facility: “the underlying standards clearly specify that separate records must be maintained for each 24-hour period.” The inspector directs the facility to the standards requiring the record keeping requirements.

Inappropriate assistance

The inspector tells the facility that to ensure the records are maintained it should include the responsibility in the plant engineer’s job description.

Documentation EPA inspectors should document in their field notes, and subsequent inspection reports, the following information:

- any and all actions actually observed that were taken by the facility to come into compliance; and
- any assistance provided (both written and oral) to the facility.

In FY 2003, some EPA inspection programs (CAA-Stationary Source, CWA-NPDES, TSCA lead-based paint, Good Laboratory Practices, and CAA-Mobile Source) are required to complete an Inspection Conclusion Data Sheet (ICDS). The ICDS form is designed to capture information on deficiencies observed and communicated, actions taken to address deficiencies, and compliance assistance provided during inspections.

Reporting

EPA currently has two existing databases that capture instances where EPA inspectors provide compliance assistance during inspections.

1. The Integrated Compliance Information System has a data field for capturing compliance assistance during inspections. In a December 4, 2002 memo to the Regions, Headquarters described the process for reporting the ICDS information.
 - In FY 2003, for the five regional and HQ inspection programs targeted to complete the ICDS, the regions had the option of using either entering the data into ICIS or completing and sending a manual form as part of the mid-year and end-of-year RECAP request.
 - In FY 2004 and later years, additional media-specific inspection programs (*e.g.*, RCRA Hazardous Waste and TSCA) will be added to the ICDS reporting.
 - The Regional Compliance Assistance Tracking System (RCATS) tracks **only** the number and type of tools distributed during on-site activities, including inspections. RCATS does not capture the other ICDS information (deficiencies observed and communicated, specific actions taken to address deficiencies, and site-specific compliance assistance).

The preferred approach is the Regions and HQ offices conducting compliance inspections to use ICIS to report general and site-specific compliance assistance provided during inspections.

Attachment A: Background Sources of Information and SBREFA Information Sheet

Attachment B: SBREFA Information Sheet (revised)

ATTACHMENT A
Role of the EPA Inspector in Providing Compliance Assistance During Inspections
Background and Sources of Information

- Sources** This policy was developed based on the following sources of information:
- Role of the EPA Inspector in Providing Compliance Assistance Final Report, July, 1997.
 - Regional Inspector Dialogues, February-May, 1998.
 - National EPA Inspector Workshop, November 28-30, 2000.
 - National EPA Inspector Workshop, December 11-13, 2001.
 - Informal discussions between OECA managers, staff and the Regions.
 - SBREFA law and handout.
 - Draft Region III Compliance/Corrective Assistance Tips for Inspectors, Summer, 2002.
 - Documentation Guidelines for Compliance Related Field Activities, October 17, 2002, Region VII Enforcement Coordination Office.

Background In March, 1995 the Office of Compliance initiated a headquarters and regional work group co-chaired by Region III to review the traditional roles and assess innovative roles for EPA compliance monitoring inspectors with regard to providing compliance assistance and technical assistance to regulated facilities and to facilitate multi-media and sector-based activities.

The reader is encouraged to obtain a copy of the 1997 report titled the “Role of the EPA Inspector in Providing Compliance Assistance” and read it as a main companion piece to this policy. The report is available on the OC Inspector Website, under Reference Materials. The URL for the website is:
<http://intranet.epa.gov/oeca/inspector>.

The workgroup produced a report that discussed options for providing on-site compliance assistance during inspections, implementation issues, conclusions and recommendations. The workgroup conclusions were:

- On-site compliance assistance during inspections can be viewed as a continuum from the simple to more complex. The most technically complex and site-specific level of assistance, Tier III, is not an appropriate EPA inspection activity, but the use of any compliance assistance depends on the training and expertise of the particular inspector in techniques and substance.
- To be most effective, EPA decisions about when and how to use compliance assistance to address an environmental problem or non-compliance situation should be made during up-front planning and targeting processes, particularly in the development of sector-based strategies.

Since October 1, 2001, the Regions have been completing ICDS forms for the CAA-Stationary, CWA-NPDES, Lead-based paint, and Good Laboratory Practices (GLP) inspections. The Office of Compliance recently sent a memo to the Regions summarizing the results of the mid-year data. The results showed that EPA inspectors provided compliance assistance on 77% of a total of 1269 inspections for the first half of FY 2002 in the above programs.

**Inspector's
Guide**

OC expects to finalize the Inspector's Compliance Assistance Resource Guide in the late 2002 or early 2003. This guide will provide information to EPA inspectors on how to use the compliance assistance resources that OECA has developed. These resources range from hard copy documents to interactive on-line tools. The Guide's main purpose is to enable EPA inspectors to know what is available to provide to inspected facilities. The Guide includes information on:

- Sector Notebooks
- Compliance Assistance Centers
- Compliance Assistance Clearinghouse
- Audit Protocols
- Sector-specific tools

The draft guide can be found at <http://www.ergweb.com/projects2/inspectorguide/>.

SBREFA

The Small Business Regulatory Enforcement Fairness Act (SBREFA) was signed into law on March 29, 1996. The Act required agencies conducting enforcement at facilities "subject to an audit, on-site inspection, compliance assistance effort, or other enforcement related communication or contact by agency personnel" have a means to comment on such enforcement actions.

To implement this provision, OECA has developed a revised SBREFA Information Sheet (following attachment). SBREFA information should be provided when EPA has its initial enforcement contact with a small business, which may or may not be at the time of the inspection. A small business is defined by the Small Business Administration and is based on the SIC/NAICS code, number of employees, and annual receipts. The inspector should distribute the SBREFA sheet if he/she is uncertain whether the business meets the definition of a "small business".

ATTACHMENT B

U.S. EPA Compliance Assistance Resources

If you own a small business, the United States Environmental Protection Agency (EPA) offers a variety of compliance assistance resources and tools to assist you in complying with federal and State environmental laws. These resources can help you understand your environmental obligations, improve compliance and find cost-effective ways to comply through the use of pollution prevention and other innovative technologies.

Hotlines, Helplines, and Clearinghouses

EPA sponsors approximately 89 free hotlines and clearinghouses that provide convenient assistance regarding environmental requirements.

The National Environmental Compliance Assistance Clearinghouse provides quick access to compliance assistance tools, contacts, and planned activities from the U.S. EPA, states and other compliance assistance providers:
<http://www.epa.gov/clearinghouse>

Pollution Prevention Clearinghouse
<http://www.epa.gov/opptintr/library/ppicindex.htm>

EPA's Small Business Ombudsman Hotline Can provide a list of all the hot lines and assist in determining the hotline best meeting your needs. (800) 368-5888

Emergency Planning and Community Right-to-Know Act (800) 424-9346

National Response Center (to report oil and hazardous substance spills) (800) 424-8802

Toxics Substances and Asbestos Information
(202) 554-1404

Safe Drinking Water
(800) 426-4791

Stratospheric Ozone and Refrigerants
(800) 296-1996

Clean Air Technology Center
(919) 541-0800

Wetlands Hotline
(800) 832-7828

EPA Websites

EPA has several Internet sites that provide useful compliance assistance information and materials for small businesses. If you don't have access to the

Internet at your business, many public libraries provide access to the Internet at minimal or no cost.

EPA's Home Page
<http://www.epa.gov>

Small Business Assistance Program
<http://www.epa.gov/ttn/sbap>

Office of Enforcement and Compliance Assurance
<http://www.epa.gov/compliance>

Compliance Assistance Home Page
<http://www.epa.gov/compliance/assistance>

Office of Regulatory Enforcement
<http://www.epa.gov/compliance/civil/index/htm>

Office of Site Remediation Enforcement
<http://www.epa.gov/compliance/cleanup>

Innovative Programs for Environmental Performance
<http://www.epa.gov/partners>

Small Business Ombudsman
www.sba.gov/ombudsman

Compliance Assistance Centers
In partnership with industry, universities, and other federal and state agencies EPA has established national Compliance Assistance Centers that provide Internet and "faxback" assistance services for several industries with many small businesses. The following Compliance Assistance Centers can be accessed through the Center's gateway at <http://www.assistancecenters.net> or by calling the phone numbers below and at their respective websites.

Metal Finishing
(1-800-AT-NMFRC or <http://www.nmfrc.org>)

Printing
(1-888-USPNEAC or <http://www.pneac.org>)

Automotive Service and Repair
(1-888-GRN-LINK or <http://www.ccar-greenlink.org>)

Agriculture

(1-888-633-2155 or <http://www.epa.gov/oeca/ag>)

Printed Wiring Board Manufacturing

(1-734-995-4911 or <http://www.pwbr.org>)

The Chemical Industry

(1-800-672-6048 or <http://www.chemalliance.org>)

The Transportation Industry

(1-888-4509-0656 or <http://www.transource.org>)

The Paints and Coatings Center

(1-800-286-6372 or <http://www.paintcenter.org>)

Three new centers are under development for the auto salvage sector, the construction industry, and the U.S. Mexican border waste issues.

State Agencies

Many state agencies have established compliance assistance programs that provide on-site and other types of assistance. Contact your local state environmental agency for more information. For assistance in reaching state agencies, call EPA's Small Business Ombudsman at (800)-368-5888 or visit the Small Business Environmental homepage at <http://www.smallbiz-enviroweb.org/state.html>.

Compliance Incentives

EPA provides incentives for environmental compliance. By participating in compliance assistance programs or voluntarily disclosing and promptly correcting violations, businesses may be eligible for penalty waivers or reductions. EPA has two policies that potentially apply to small businesses: the Audit Policy (<http://www.epa.gov/oeca/auditpol.html>) and the Small Business Policy (<http://www.epa.gov/oeca/smbusi.html>). These do not apply if an enforcement action has already been initiated.

Commenting on Federal Enforcement Actions and Compliance Activities

The Small Business Regulatory Enforcement Fairness Act (SBREFA) established an ombudsman ("SBREFA Ombudsman") and 10 Regional Fairness Boards to receive comments from small businesses about federal agency enforcement actions. The SBREFA Ombudsman will annually rate each Agency's responsiveness to small businesses. If you believe that you fall within the Small Business Administration's definition of a small business (based on your North American Industry Classification System (NAICS)

designation, number of employees or annual receipts, defined at 13 CFR 121.201; in most cases, this means a business with 500 or fewer employees), and wish to comment on federal enforcement and compliance activities, call the SBREFA Ombudsman's toll free number at 1-888-REG-FAIR (1-888-734-3247).

Every small business that is the subject of an enforcement action is entitled to comment on the Agency's actions without fear of retaliation. EPA employees are prohibited from using enforcement or any other means of retaliation against any member of the regulated community because the regulated community previously commented on its activities.

Your Duty to Comply

If you receive compliance assistance or submit comments to the SBREFA Ombudsman or Regional Fairness Boards, you still have the duty to comply with the law, including providing timely responses to EPA information requests, administrative or civil complaints, other enforcement actions or communications. The assistance information and comment processes do not give you any new rights or defenses in any enforcement action. These processes do not affect EPA's obligation to protect human health or the environment under any of the environmental statutes it enforces, including the right to take emergency actions when appropriate. Those decisions will be based on the facts in each situation. The SBREFA Ombudsman and Fairness Boards do not participate in the resolution of EPA's enforcement actions. Also remember that to preserve your rights, you need to comply with all rules governing the enforcement process.

EPA is disseminating this information to you without making a determination that your business or organization is a small business as defined by Section 222 of the Small Business Regulatory Enforcement and Fairness Act (SBREFA) or related provisions.