

COMMONWEALTH OF VIRGINIA
Department of Environmental Quality

Subject: Land Protection and Revitalization Guidance Memo No. 02-2010
SOLID WASTE COMPLIANCE PROGRAM INSPECTION MANUAL

To: Regional Solid Waste Compliance Inspectors

From: Leslie Beckwith, Director, Office of Financial Responsibility & Waste Programs *LDB*

Date: December 17, 2018

Copies: Regional Land Protection 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 guidance is available on the Virginia Regulatory Town Hall website at: <http://townhall.virginia.gov/L/ViewGDoc.cfm?gdid=4391>

Contact Information:

Please contact the solid waste compliance coordinator, Priscilla Rohrer, at (540) 574-7852 or priscilla.rohrer@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 the analysis of data, unless specifically required by the regulations. 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.



**Division of Land Protection & Revitalization
Office of Financial Responsibility & Waste Programs**

**Solid Waste Compliance Program
Inspection Manual
Revision 4**

December 2018

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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- 1: Solid Waste Compliance Risk Based Inspection Strategy (RBIS)**
- 2: Pre-inspection Worksheet or Checklist**
- 3: On-Site Records Review Checklist**
- 4: Site Walkover Review Checklist**
- 5: Photo Documentation Template**
- 6: No Deficiency Letter Boilerplate**
- 7: Deficiency Letter Boilerplate**
- 8: Warning Letter Boilerplate**
- 9: Notice of Violation Boilerplate**
- 10: Documentation of Alleged Violations Subject to Pending or Executed Enforcement Orders**
- 11: Pending Enforcement Letter Boilerplate**
- 12: 24-hr/5-day Reporting Requirements**
- 13: Inspection Manual Revision Log**

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.

1.1 Adherence to Other DEQ Policies

Compliance staff is responsible for adhering to all other DEQ policies and procedures including internal guidance memos issued by the Division of Land Protection & Revitalization and applicable external guidance available on the [Virginia Regulatory Town Hall website](#), including, but not limited to:

- [General Compliance Procedures](#)
- [Civil Enforcement Manual](#)
- [Implementation of the New Operations Manual Requirements \(LPR-SW-01-2011A\)](#)
- [Solid Waste Special Waste Disposal Requests \(LPR-SW-02-2012\)](#)
- [Financial Assurance for Stockpiles of Materials for Beneficial Use or Other Uses \(LPR-SW-04-2011\)](#)
- [Landfill Mining Applicability and Application Requirements \(LPR-SW-2013-02\)](#)
- [Permitting, Sampling, Analysis, and Data Reporting associated with Solid Waste Landfill Underdrain Systems \(LPR-SW-2016-02\)](#)
- [Clarification of Landfill Gas Regulatory Requirements \(LPR-SW-2017-01\)](#)

1.2 Solid Waste Complaints at Unpermitted Sites

This manual does not detail the complete protocol for investigating solid waste complaints or incidents at sites not operating under a solid waste permit or permit-by-rule. Investigations of solid waste complaints or incidents at unpermitted sites should be conducted in accordance with the procedures outlined in the [Pollution Response Program \(PREP\) Manual \(PREP-2017-01\)](#), which provides:

- General guidance on responding to, investigating, and resolving complaints and pollution-related incidents,
- Minimum requirements for documenting investigations in the PREP database and ECM,
- Instructions for when and how to complete the Pollution Investigation Report,
- Criteria for selecting an appropriate compliance instrument (Request for Corrective Action (RCA) Form, Warning Letter, or Notice of Violation), and
- Case closure procedures.

The records retention schedule for PREP requires that complaint-related documents are stored in ECM under the PREP IR# and retained for 5 years after the last case activity (e.g. closure or referral date).

Some investigations of unpermitted sites result in the facility pursuing a permit, permit-by-rule, authorization, or other approval. Once an application for a permit, authorization or approval has been received, staff should transition to tracking facility information in the CEDS Solid Waste Module and storing documents in ECM in accordance with the records retention schedule for solid waste.

Other unpermitted sites may require implementation of components such as groundwater and/or gas monitoring, closure, or post-closure care outside of a permit in order to achieve compliance with the regulations or fulfill requirements of an enforcement order. These sites may be tracked in CEDS and ECM under a UNP #, and documents are managed in ECM in accordance with the records retention schedule for solid waste.

1.3 Solid Waste Complaints at Permitted Facilities

Investigations of solid waste complaints at permitted solid waste management facilities should be conducted in accordance with the procedures outlined in this manual, including documentation in CEDS. However, as the PREP database is the official and central repository for ALL complaints received by DEQ, all initial complaints regarding permitted facilities should also be documented in the PREP database. Documenting the complaint in the PREP database alerts other staff that the complaint was received and is being addressed. If an inspector receives and addresses a complaint and does not document it in the PREP database, the PREP coordinator or other staff may receive a call about the same incident and begin an investigation not knowing that the incident is already being addressed.

If the complaint will be addressed in an inspection that will be documented in CEDS under the solid waste permit or permit-by-rule, then the inspector may close out the complaint case in the PREP database and reference that more information can be found in CEDS and ECM under the solid waste permit or permit-by-rule number.

Normally, each individual complaint is captured in the PREP database as a separate incident. However, if frequent or numerous complaints are received regarding an ongoing compliance issue (e.g. odor or dust), documenting each complaint in the PREP database as a separate incident would be tedious and time consuming. If frequent or numerous related complaints are received for a permitted facility:

- Document the initial complaint in the PREP database with reference to where other subsequent related complaints are documented (e.g. CEDS or spreadsheet periodically uploaded to ECM); OR
- Document the initial complaint in the PREP database and list all subsequent related complaints as separate Events under the initial PREP incident.

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, alleged violations 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.

2.2.1 Inspection Frequency

The frequency of routine inspections is set in accordance with the Solid Waste Compliance Risk Based Inspection Strategy (RBIS, **Attachment 1**). 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 Solid Waste Compliance Coordinator.

2.2.2 Additional Inspections

Other inspections may be conducted in response to complaints or in support of an active Enforcement Order. Regional Office and PREP Program 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 RBIS;
- 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 Town Hall 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:

- Risk Based Inspection 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 maintained in the Enterprise Content Management system (ECM). Some historical records (pre-2013) or hard copies of documents may be located in the Regional Offices, and some program records may be 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 facility compliance standards.

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.

CEDS also provides Permit/Compliance Summaries for each permitted facility as well as blank inspection checklists for each unit type that can be reviewed prior to the inspection or printed for the inspector to use as a reference while onsite.

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;
- Monitoring requirements for groundwater, surface water, underdrains, or gas, as applicable, including knowledge of compliance monitoring networks (wells, probes, or other sampling locations)

- 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 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 Groundwater Staff

Prior to inspecting a facility subject to groundwater monitoring, the inspector should consult with regional solid waste groundwater staff to discuss any new or pending changes to the facility's groundwater and/or corrective action monitoring plans or compliance networks. Groundwater staff can indicate site-specific conditions or

requirements that the inspector may need to verify in the field, such as new monitoring well installations, repairs, replacements, or abandonments. Groundwater staff can also alert compliance staff of any new offsite contamination identified or corrective action remedy that should be in place at the facility, including any required operational or maintenance procedures.

Inspectors are encouraged through the LPM to periodically invite groundwater staff to accompany them on inspections, especially to facilities in groundwater corrective action.

3.3.2.1 Non-compliance Identified by Groundwater Staff

Groundwater specialists are responsible for the review of groundwater-related submittals, including, but not limited to, monitoring plans, annual and semi-annual monitoring reports, corrective action reports, and exceedance notifications. If non-compliance with regulatory or permit requirements (such as late submittals or notifications, failure to report GPS exceedances, failure to sample in accordance with the monitoring plan, etc.) is identified, then groundwater staff should provide the observation language to the inspector to include as an alleged violation in both the CEDS inspection checklist and appropriate non-compliance instrument (Deficiency Letter, Warning Letter, or NOV).

If an upcoming inspection is already planned for the facility (e.g. within the quarter), the inspector may include the groundwater alleged violation in the upcoming inspection report. If an upcoming inspection is not scheduled, the inspector should promptly complete a CEDS Record Review Inspection and issue a DL, WL, or NOV as appropriate.

The inspector may direct the facility to contact groundwater staff for follow-up on groundwater alleged violations as appropriate, and the inspector should track the return to compliance in CEDS. Inspection reports should be uploaded to ECM under the Compliance File Series.

Separately, groundwater staff should continue to prepare and issue groundwater report reviews or other documents as necessary.

3.3.3 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. Enforcement staff may ask that an inspector discuss or field verify compliance with scheduled milestone dates during the upcoming inspection.

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 for the inspection. 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 RBIS.

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 documented in the inspection report. However, results may need to be submitted via memorandum to enforcement personnel to expedite an enforcement action or response.

3.3.4 Coordinating with Financial Assurance Staff

The Office of Financial Responsibility and Waste Programs (OFRWP) evaluates SWMFs for compliance with financial assurance requirements, including the posting of financial assurance and any necessary updates for inflation. If non-compliance is identified, Deficiency Letters are prepared and issued by OFRWP staff. If necessary, Warning Letters and NOVs are prepared by OFRWP and then signed and issued by the regional LPM. It is not necessary for the inspector to include these types of alleged violations on the CEDS inspection checklist.

Deficiency Letters and Warning Letters direct the facility to follow-up with OFRWP staff, whereas NOVs direct the facility to follow-up with regional enforcement staff. OFRWP staff provide any necessary support to the region and should be updated on the status of any regional efforts to address the non-compliance. OFRWP staff also track the issuance of financial assurance compliance letters (Deficiency Letters, Ws, and NOVs) and return-to-compliance in CEDS under the financial assurance events tab.

While OFRWP staff handles the routine review of financial assurance, regional permit writers review and approve cost estimates and notify OFRWP of any approved changes. Regional compliance staff may evaluate whether conditions on-site (including stockpiles) are adequately reflected in the current cost-estimate and resulting posted financial assurance. If compliance staff identifies that current conditions on-site require a change to the cost-estimate for closure or post-closure and thus the resulting financial assurance, staff should consult and coordinate with OFRWP staff on the financial assurance portion of the alleged non-compliance. Identification of the non-compliance and resulting enforcement would be handled by the region. This is a unique situation and should not be interpreted to indicate that routine review of financial assurance should be conducted by compliance staff; this process should only be followed where identified site conditions viewed by the inspector are not adequately accounted for in the cost estimates and financial assurance.

3.3.5 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.)

3.3.6 Coordinating with Local Inspectors

Before, during, or after an inspection, solid waste inspectors may encounter issues that are also subject to local ordinances or other requirements specific to the locality where the facility is located. In order to gain more information or resolve overlapping issues, inspectors may need to coordinate with local officials specializing in public works, zoning, planning, erosion and sediment control, or a variety of other programs, as applicable. Some localities in Virginia even 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 or other personnel *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 and personal protective equipment (PPE) should be assembled prior to conducting any inspection. Typical equipment and PPE that may be utilized during inspections is listed below.

Typical Inspection Equipment

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

Personal Protective Equipment

- Hard hat
- Ear plugs
- Steel-toed puncture resistant boots
- Hand sanitizer
- Safety glasses
- Sunglasses
- Safety vest
- Bug spray
- Sun screen
- Disposable towels or napkins
- Disposable nitrile gloves
- Splash protection (e.g. mask, face shield)
- Disinfectant spray

Inspectors should use the most appropriate PPE for the type of facility inspected. PPE should be donned as soon as arriving at the site (i.e. before or when exiting the vehicle and prior to entering the facility). If boots or other items become soiled during the inspection, they should be cleaned before returning to the vehicle or placed in a bag to be cleaned after returning to the office. If disinfection of PPE is needed, it is recommended that [EPA-registered disinfectants effective against mycobacterium](#) be used. Please note that all disinfectants should be used in accordance with the manufacturer's directions. Some products are not meant for direct contact with skin and have a minimum surface contact time to be effective.

If new or additional PPE is needed, the inspector may request it through their regional Office Manager. PPE related to eye, face, and foot protection must comply with the agency's [Prescription Safety Glasses and Protective Footwear Policy](#). Types of PPE used to prevent contact with blood or any other potentially infectious materials are described in the agency's [Infection/Exposure Control Plan](#).

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 2** also 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.

3.6 Health and Safety

All staff should be familiar with the [DEQ Safety Manual](#) and other agency [health and safety policies](#) addressing safety both in the office and in the field.

Staff that conduct inspections, site visits, and/or respond to pollution incidents and complaints should receive certain safety training relevant to job duties. For example, solid waste inspectors must complete an initial 24 hours of Hazardous Waste Operations and Emergency Response (HAZWOPER) training and an annual 8-hour refresher course in accordance with the agency's [HAZWOPER Policy](#). However, solid waste inspectors are generally not trained or permitted for confined space entry.

Solid waste inspectors are also encouraged to utilize free immunizations for Hepatitis and Tetanus, which are offered as part of the state's annual wellness visit.

3.7 Accident Reporting

Staff should IMMEDIATELY notify their supervisor and [regional safety officer](#) of all incidents, accidents, injuries, or illnesses related to work (including tick bites) in accordance with the agency's [Accident Reporting Procedures](#). "Immediately" means after seeking or receiving emergency medical treatment (for example, in the case of a life-threatening injury), and in non-emergency situations, as soon as possible.

If away from the office, inspectors are encouraged to call their supervisor to make them aware of the situation, though accidents should still be reporting in writing (via email). It is critical to document all incidents thoroughly (including date, time, location, persons involved, and details of the incident).

Supervisors should immediately forward incident notifications to appropriate Human Resources personnel if considered a reportable or major incident, or if a worker's compensation claim may be filed.

Additional resources regarding accident reporting and worker's compensation claims are available as follows:

[Incident Description - To Record or Not to Record](#)

[Recording First Aid v. Medical Treatment & Significant Diagnosed Injury or Illness](#)

[Worker's Compensation FAQ](#)

[Commonwealth of VA Worker's Compensation Services Website](#)

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 interview.

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 typically conduct unannounced inspections but 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 (i.e. no 24-hour courtesy call is given). 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.

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.

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 Interview 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 3** 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.

The inspector may also follow-up on any facility noncompliance or unusual conditions reported to DEQ since the last inspection. Unless otherwise specified, incidents shall be reported to DEQ orally within 24 hours and submitted in writing within 5 facility working days from the time the permittee becomes aware of the circumstances. An email will suffice for either/both the 24 hour (oral) and 5 day (written) notification as long as it contains the information required by the regulation. See **Attachment 12** for more info.

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 interview 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. Electronic storage of records (via computer, smartphone, tablet, etc.) is acceptable as long as the records are retained in accordance with required timeframes and available for review upon request.

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,
- compliance monitoring networks, as applicable,
- 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 4** as a reference for completing the site walkover.

4.5.1 Compliance Evaluations of the Groundwater Monitoring Program

Inspectors' evaluations of facility groundwater monitoring and corrective action programs (if applicable) should focus on the in-field elements that need to be reviewed to demonstrate compliance with the VSWMR and permit, as these aspects of the groundwater monitoring program are not routinely reviewed by the regional groundwater staff. The following questions may be used to gather information for evaluation of the compliance monitoring network and other in-field groundwater monitoring and corrective action requirements as applicable:

1. Are the groundwater monitoring wells maintained to ensure functionality?
2. Who performs maintenance of the wells (facility staff or consultant staff)?

3. Were any wells found to be damaged or non-functional since the last inspection? If so, was the condition reported to DEQ?
4. Were any wells installed, replaced, repaired, or abandoned since the last inspection?
5. Are the wells labeled with ID #s such that individual sampling points can be identified as shown on the facility's current site plan?
6. Are the wells locked to prevent unauthorized access or cross contamination and ensure no foreign material can be introduced into the casing?
7. Are the concrete well pads or aprons intact to prevent infiltration of runoff down the well bore?
8. Are the wells properly landscaped to prevent surface runoff infiltration?
9. Is there visual evidence of cracking, erosion, subsidence, or sedimentation around any well pad or apron?
10. Is access to and around the wells kept reasonably clear of vegetation?
11. Are the wells accurately located on the current site plan?
12. How is purge water from groundwater sampling collected and managed?
13. Have there been any unusual, discolored, or odorous end-of-pipe discharges, seeps, or suspected chemical or biological/benthic impairments to surface water, stormwater or sediment ponds?
14. Where is the facility's data repository for groundwater records and does it include historical reports, sampling records, approved variances, and other related documents?
15. Are records of the most recent groundwater monitoring event maintained at the facility?

The following are applicable to corrective action remedial systems/equipment:

16. Have there been any maintenance issues you are aware of with the corrective action remedial system?
17. Has the equipment been non-functional for any point of time since the last inspection? If so, was this reported to DEQ?
18. Who performs maintenance of the system (facility or consultant staff)?
19. Does the remedial system have an auto OFF mechanism?

At a minimum, inspectors should physically inspect each well in the compliance monitoring network once per year. Wells located near active facility operations should be checked during each inspection.

If groundwater compliance issues are observed, the inspector should coordinate with the groundwater staff and LPM after the inspection. If surface water or benthic impacts are observed, the issue may also need to be discussed with the regional biologist, and if issues with stormwater or sediment ponds are identified, the VPDES program may need to be consulted.

Note: The procedures for addressing alleged violations identified by groundwater staff during their review of groundwater submittals are detailed in Chapter 3, Section 3.3.2.1.

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 or CEDS inspection 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:

- Facility Name
- Solid Waste Permit Number or PBR number
- Facility Type (i.e. landfill, transfer station, MRF, composting facility, etc.)
- Inspection Date
- Approximate Arrival and Departure Times
- Inspector (and names of any other DEQ staff present)
- Facility Staff (Name/title of person authorizing/denying access and/or other facility staff accompanying inspector on inspection)
- Inspection Method (Unannounced or Announced)
- Inspection Type
- Weather conditions

When documenting weather conditions, avoid subjective descriptions (such as “hot” or “cold”) and instead use standard weather terminology (e.g. partly

cloudy, sunny, overcast, etc.) and approximate quantitative measurements for temperature, precipitation, or wind as applicable.

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 conference and exit interview.

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, particularly when documenting alleged violations. If the facility does not give the inspector permission to take a photo, the inspector may request that the facility provide a photo to DEQ.

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. Relevant photos should be labeled and included with the inspection report. Inspectors may use the Photo Documentation Template (**Attachment 5**) or a similar format to document and attach photos to the 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 cannot be altered. Photos that are not used as part of the compliance record or other purpose may be discarded.

All staff have access to agency cameras or other approved devices that can capture photographs. Inspectors should use agency cameras whenever possible and are discouraged from using personally owned devices (such as cell phones, tablets, cameras, etc.) to capture photos for work-related purposes as personal equipment could be subject to confiscation and review if the photographs are used as evidence in court. Furthermore, in accordance with the [DEQ Computer, Internet, and Electronic Communication Acceptable Use Policy](#), personally owned devices must not be used to transport or store DEQ data without an approved exception from the DEQ Information Security Officer.

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

The Exit Interview 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 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 non-compliant conditions observed or identified during the inspection, including potential DEQ responses to them. The inspector should stress that 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 and discuss any operational issues observed at a facility that, if left unaddressed, could become alleged violations in the future. Identifying operational issues early on provides the facility an opportunity to take action before the issue becomes an alleged violation. If the facility fails to address an issue 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, permit, and/or enforcement orders.

Types of issues that may be brought to the facility's attention during the exit interview or as a general comment (not an alleged violation) in the inspection checklist include:

- **Blowing Litter** – When natural 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, 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. Blowing litter should not be accumulating in state waters or on neighboring properties.
- **Daily Cover** – If a small amount of waste (boards, pipe, plastic bags, etc.) protrudes from daily, intermediate, or periodic covers at landfills. If pods or clusters of trash are visible within the cover, the problem should be addressed as an alleged violation.
- **Intermediate Cover** – If minor erosion rills are present in the intermediate cover and it has rained within the past week. 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." 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 issued.
- **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.

- **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.
- **Small Leachate Seeps** – If a small leachate seep appears on a landfill slope, is not causing an odor, vector or health problem, does not move beyond the edge of waste into stormwater ditches or surface waters, and is immediately addressed by the facility.

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 Financial Responsibility & Waste Programs 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 selecting the "Alleged Violation" status on the CEDS inspection checklist. A 'Severity Level' is assigned to each regulatory citation on the CEDS inspection 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 to 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
- will result in corrective actions that 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;
- have 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
- will result in corrective actions that 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;
- have 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
- are first time occurrences of minor issues that do not meet the criteria listed above for Severity II or III violations;
- occur at a facility that is not a chronic violator facility; or
- will result in corrective actions that 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 Land Protection Program Manager or Solid Waste Compliance Coordinator.

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

Additionally, the Department 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, emails, 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 or email. 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:

- A named responsible party verified through the State Corporation Commission, land records, or other appropriate means. The name may or may not match the name on the permit;
- Facility name and permit or permit-by-rule number;
- A statement that DEQ has reason to believe that the responsible party may be in violation of applicable laws, regulations, or permit requirements at the facility;
- Observations: a description of each alleged violation – what was seen by DEQ staff, stated by facility representatives, or reported by the facility. The observations should correlate with the legal requirements that follow. Observations are not speculations, opinions or conclusions. Letters must not conclude that the observed or reported condition “has violated,” “has failed to meet,” or “is in violation of” an environmental requirement because that may imply incorrectly that a case decision has been made;
- Legal Requirements: the specific provision of law, regulation, permit condition, order or enforceable certification that has been allegedly violated. This includes a citation to the requirement and a concise quotation of the applicable portion of the requirement (not paraphrased), both in **bold font**. Legal requirements are set out adjacent to the related observations;
- Request that responsible party respond within 20 days detailing the corrective action it has or will take and a compliance schedule for intended actions, if necessary;
- Statement that this matter is being tracked by compliance staff;
- Statement explaining how compliance will be verified;
- Disclaimer that the letter is not a case decision under the Administrative Process Act, Va. Code § 2.2-4000 *et seq.*;
- DEQ contact information; and
- A copy of any supporting documentation to include the inspection checklist(s), photos, or other documentation of the alleged deficiency.

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 Solid Waste Compliance Coordinator should be contacted and approval 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

The following should be included in a Warning Letter:

- Items listed in Section 5.2.1.2 (Content of Deficiency Letter);
- Statement of statutory authority and enforcement options available to the agency;
- Statement of future actions and a request that the responsible party respond within 20 days, detailing the corrective action it has or will take;
- Request that the responsible party advise DEQ staff of any disputed observations or other pertinent information;
- The process for obtaining a case decision or fact finding on whether or not a violation has occurred, including the Process for Early Dispute Resolution (PEDR); and
- Signature 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 Solid Waste Compliance Coordinator should be contacted and approval 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 Notices of Alleged Violation (NOVs)

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.

The inspector and LPM are encouraged to consult with the regional enforcement specialist during preparation of an NOV to inform them of the alleged violations at the site and ensure that there are no concerns with issuing an NOV to the Responsible Party.

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 NOV's

NOV's 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:

- Items listed in Section 5.2.1.2 (Content of Deficiency Letter);
- Statement of statutory authority and enforcement options available to the agency;
- Statement of future actions and a request that the responsible party respond within 10 days to arrange a meeting with DEQ to discuss corrective actions it has or will take and a compliance schedule for intended actions, if necessary;
- Request that the responsible party advise DEQ staff of any disputed observations or other pertinent information;
- The process for obtaining a case decision or fact finding on whether or not a violation has occurred, including the Process for Early Dispute Resolution (PEDR); and
- Signature by 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 Solid Waste Compliance Coordinator should be contacted and approval 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 Letter of Agreement or Consent Order with Enforcement staff, the responsible party should continue to receive NOVs pursuant to any subsequent inspection where the violation is on-going unless the Enforcement Specialist advises otherwise.

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 additional NOV should not be sent for the underlying violation if the return-to-compliance action items in the Consent Order Appendix (Schedule of Compliance) are being addressed by the responsible party. However, non-compliance with an enforcement agreement or Consent Order should be noted as an alleged violation on the inspection checklist, and regional enforcement staff will determine if another NOV (or different response) is appropriate. In instances where the responsible party is noncompliant with a Consent Order requirement, elevation to an NOV is likely. Compliance staff should consult with regional enforcement staff to ensure compliance with a Consent Order and that underlying violations are being properly addressed.

If the responsible party is subject to a Letter of Agreement (LOA), compliance staff should note any missed deadlines or noncompliance with the LOA in the inspection checklist and consult with regional enforcement staff to discuss appropriate next steps for addressing the underlying alleged violation.

See **Attachment 10** (Scenario 2) for additional guidance on how to address alleged violations observed during inspections conducted when the responsible party is subject to an LOA or Consent Order.

5.2.4 Pending Enforcement Letters

When inspections are conducted while an enforcement agreement or order is being developed or negotiated (but is not yet final), the inspector may continue to observe the same or on-going alleged violations cited in the previous NOV. Alleged violations should be documented in the inspection checklist, and the Enforcement Specialist and LPM should be consulted to determine whether another NOV should be issued.

If the Enforcement Specialist determines that issuing another NOV may negatively impact negotiation of the pending enforcement action, then it may be more appropriate to issue a Pending Enforcement Letter. A Pending Enforcement Letter notes that the alleged violation is still ongoing and references the previous NOV and pending enforcement action.

See **Attachment 10** (Scenario 1) for additional guidance on when to issue a Pending Enforcement Letter. A boilerplate Pending Enforcement Letter is included as **Attachment 11**.

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	1st Occurrence of Violation	1st Consecutive Unaddressed Violation	2nd 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 Landfill Gas Exceedances Flowchart located in Land Protection and Revitalization [Guidance Memo No. LPR-SW-2017-01, Clarification of Landfill Gas Regulatory Requirements](#). 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 obtain a permit, permit-by-rule, or approval to own/operate a regulated unit or solid waste management facility

- Failure to comply with financial assurance requirements (Central Office staff will coordinate with the region to issue any compliance instruments related to financial assurance requirements; see Chapter 3, Section 3.3.4).
 - Failure to submit a timely/adequate solid waste Part B application or amendment request
 - Failure to respond to a formal information request
 - 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 recordkeeping 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. Multi-media impacts.** This factor takes into account whether the responsible party has allegedly violated additional legal requirements under laws, regulations, or permit conditions enforced by another media (such as the Air, Water, or Petroleum Program, etc.). Compliance staff should consult with potentially impacted programs (as well as enforcement staff) to assist with selecting the appropriate non-compliance instrument. The severity level of an alleged violation may be elevated if additional legal requirements apply, and this could result in selection of a non-compliance instrument higher in the enforcement hierarchy (i.e. an NOV instead of a WL).
- 5. 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.
- 6. 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.
- 7. 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,
- inspection checklists, and
- supporting documentation.

The cover letter follows a boilerplate format (e.g., **Attachments 6 through 11**). Applicable inspection 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. Information received subsequent to the onsite inspection may also be addressed in the next inspection report if not required to complete the current/pending report. 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 [CEDS Solid Waste Compliance Manual](#), 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 CEDS 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 a general comment on the CEDS inspection checklist.

Alleged violations should be described in a clear and concise manner. Inspectors should not include a description or verbatim wording of the legal requirements related to a particular reference in the comment section of the inspection checklist. The Department is providing notice of the legal requirement by providing the Code or Regulatory citation. In the event of an alleged violation, the wording of the legal requirement is included in the cover letter.

Do not state that a facility “has to,” “must,” or “shall” take a specific action or course of actions to comply with a particular requirement because the DEQ cannot direct, dictate, or compel anyone to take any specific action. The facility is free to take any action it wishes. Instead, the inspector may state what actions “should be taken” to comply with a specific standard or citation. 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.”

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 6 through 11**. 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, avoiding sentences that recommend specific follow-up actions. The inspector should not use language in the observations that could be interpreted as a case decision and should avoid paraphrasing legal requirements so there is no room for misinterpretation. The legal requirements in the cover letter should be consistent with the references marked as alleged violations on the inspection checklist.

6.3.1 No Deficiency Cover Letter

A No Deficiency Letter (NDL) 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 Letter is included in **Attachment 6**.

6.3.2 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 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. Cover letters should be signed by the appropriate staff (inspector or manager) as designated in the boilerplates (**Attachments 6 through 11**). Staff may use e-signatures (i.e. a scanned image or gif in place of a wet signature) unless advised otherwise.

Once the inspection report is finalized, the report should be sent to the facility and a copy should be placed in ECM as soon as possible and managed per the file retention policies.

Compliance staff should follow the [Solid Waste ECM Guidelines](#), including the [SW ECM Document Title Guidelines](#), when uploading documents to ECM.

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

For the majority of correspondence, delivery by email or first-class mail will suffice. Staff will know that the email or 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. The inspector may also contact the facility by email, telephone, or follow-up letter, or hand-deliver the report, if necessary, to confirm that the facility has received the correspondence.

6.5 Updating CEDS Inspection Event Codes

Inspectors are responsible for entering all inspection event codes into CEDS. Once the report has been provided to the facility, the inspector should update the CEDS event code with the date and letter type of the report issued. The inspection report cover letter date, the CEDS event code date, and the ECM Doc Date should all be consistent in order for the report to be linked from ECM to CEDS. The inspection record will be labeled “Draft” until an appropriate event code is entered. If a facility response is requested (such as when issuing a Deficiency Letter, Warning Letter, or NOV), the event code for the date the response is received by DEQ should also be updated in CEDS.

CHAPTER 7 – TRACKING COMPLIANCE

Inspectors are responsible for entering 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 [CEDS Solid Waste Compliance Manual](#).

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. Any correspondence with the responsible party regarding resolution of alleged violations should be maintained in ECM. Unless the responsible party provides reliable written or electronic verification of its actions, the inspector should verify the responsible party's action onsite during the next scheduled inspection or sooner as needed. 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.

7.1 Facility Return-To-Compliance

Tracking the facility's return-to-compliance (RTC) date is imperative to maintaining a complete and accurate compliance record. All alleged violations are tracked in CEDS with a RTC Status of "unresolved" or "resolved." An alleged violation remains "unresolved" in the CEDS database until an Actual Compliance Date is entered to signify that the facility has resolved that particular compliance issue.

The Actual Compliance Date is the earliest day the alleged violation is considered by DEQ to have been resolved by the facility. This may be the date a letter is received from the facility (or resolution date referenced in a letter) providing sufficient documentation that the alleged violation has been resolved. It could also be the date of field verification by DEQ (e.g. date of next inspection or site visit).

The inspector should update CEDS to identify any resolved alleged violations as soon as possible after resolution in order to ensure that the agency's database is a current and accurate reflection of the facility's compliance record.

7.2 RTC under Consent Orders and Letters of Agreement

7.2.1 Consent Orders

A Consent Order effectively resolves alleged violations by establishing an enforceable schedule that compels the facility to return to compliance in an expeditious manner. If a Consent Order has effectively resolved an alleged violation, the Actual Compliance Date is the effective date of the Consent Order. In other words, the inspector does not have to wait until the facility completes the items in the Consent Order's Schedule of Compliance to note the alleged violation as resolved in CEDS.

Further, if the alleged violation was actually resolved prior to finalizing a Consent Order (e.g. the issue is no longer ongoing but an Order and civil charge may be pending), then CEDS should reflect the earlier (actual) date that the alleged

violation was resolved by the facility rather than the effective date of the Order.

7.2.2 Letters of Agreement

RTC is handled differently under a Letter of Agreement (LOA). An LOA is an informal enforcement tool that represents an agreement between the Responsible Party and the DEQ following the issuance of an NOV to return the Responsible Party to compliance within 12 months. An LOA does not effectively resolve an alleged violation, so the Actual Compliance Date will be left blank until the Responsible Party completes all actions in the LOA's Schedule of Compliance OR a Consent Order is executed to resolve the alleged violation.

7.3 Maintaining CEDS and ECM

The LPM and the inspector should ensure CEDS and ECM are 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 Solid Waste Quarterly Compliance Report and other relevant agency reports, 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.

7.4 Logi AdHoc Shared Reports

[Logi AdHoc Shared Reports](#) have been created specific to Solid Waste Compliance and are available for all compliance staff and managers to review detailed summaries or lists of compliance inspections and reports completed by each inspector, which can facilitate the evaluation of regional and statewide workflow. Specific Logi Reports have also been created to quickly identify draft inspection reports, unresolved alleged violations, and facility responses that are due to DEQ.

ATTACHMENTS

Attachment 1: Solid Waste Compliance Risk Based Inspection Strategy (RBIS)

Solid Waste Compliance RISK BASED INSPECTION STRATEGY (RBIS)

1. Introduction

The Department of Environmental Quality's (DEQ's) Solid Waste Compliance Program encompasses permitting, monitoring, inspection, and enforcement to assure solid waste is properly managed in accordance with applicable regulations. Inspections are the primary mechanism for ensuring compliance verification. Inspections may be initiated as part of regular compliance oversight of permitted waste management facilities, for administrative or verification purposes such as pre-operational inspections and closure verification inspection, or "for cause" where probable non-compliance has been observed or brought to the attention of DEQ through reporting, complaints, or other mechanism.

2. Purpose

The purpose of this plan is to set forth the Risk Based Inspection Strategy (RBIS) and its approach for DEQ's solid waste inspection program. This strategy identifies inspection authorities, objectives, types, frequencies, scheduling, and reporting.

3. Strategy Goals

The major goal of this strategy is to help focus agency efforts based on areas that are of the highest risk to human health and/or the environment. This strategy will assist the regional offices in implementation of a risk based compliance inspection plan and will:

- provide a framework for compliance and assure optimum coverage and thoroughness during inspection activities of the regulated community;
- assure that obligations under the solid waste regulations are met;
- provide guidance and assistance for commitments, budgeting, and resource requirements;
- ensure inspections are conducted in a consistent manner;
- provide for cross media training; and
- provide a framework for a risk based inspection protocol.

4. Inspection Authority

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. The DEQ's authority to conduct inspections is provided for in the VSWMR, [9VAC20-81-490](#). Per this section, each facility permitted to accept solid waste requires periodic inspection and review of records and reports. The permittee by accepting the permit or permit-by-rule agrees to these periodic inspections.

5. Inspection Types

Solid waste inspections are necessary to insure compliance with the regulatory requirements by permittees and others. To that end, various types of inspections are regularly conducted. These types are:

- **Regular Compliance Inspections** are routine inspections of permitted and permit-by-rule solid waste treatment, storage, and disposal facilities. The purpose is to evaluate and determine facility compliance with requirements of applicable laws, regulations, and permit or permit-by-rule documents.
 - **Compliance Evaluation Inspections (CEIs)** are the standard inspection type for routine, scheduled site inspections, during which the facility is comprehensively evaluated for all applicable statutory, regulatory, and permit or permit-by-rule requirements on the CEDS inspection checklist.
 - **Focused Compliance Inspections (FCIs)** may be conducted as a routine site inspection as part of the risk based inspection strategy, in lieu of or in addition to CEIs based on the application of the Risk Based Inspection Strategy, during which the facility is evaluated for specific requirements applicable to the facility that have the greatest potential to impact human health or the environment. An FCI may focus on only a specific portion or section of the applicable laws, regulations, or permit conditions on the inspection checklist.

- **Special Purpose Inspections** are non-routine inspections of permitted and permit-by-rule solid waste treatment, storage, and disposal facilities. The purpose is to evaluate and determine facility compliance with specific requirements or milestone of applicable laws, regulations, and permit or permit-by-rule documents, or determine facility compliance with specific provisions of an Enforcement Order (or equivalent).
 - **Record Reviews** may be used to evaluate compliance with specific gas or groundwater monitoring data or other facility reports, notifications, or records submitted to DEQ, particularly when evaluation of the data does not coincide with a regularly scheduled onsite CEI or FCI.
 - **Other Investigations/Inspections** are non-routine special purpose inspections not part of the regular inspection schedule that are conducted as needed throughout the year to evaluate a particular area or activity at the facility. For example, an inspection may be conducted to verify appropriate installation of an active gas system or other engineered structure; to observe construction or monitoring procedures; to inspect the partial or complete closure of a disposal unit; to assess the status of a previously observed alleged violation; to verify actions taken to return-to-compliance; or to assess progress with a schedule of compliance in an enforcement order; etc.

- **Complaint Investigations** are inspections of facilities or sites that are triggered by a complaint regarding actual or potential mismanagement of solid waste. The purpose is to evaluate and determine compliance with applicable laws, regulations, and/or permit or permit-by-rule documents. Complaint investigations may be full (*CEI – Complaint Received*) or focused (*FCI – Complaint Received*).

- **Compliance Assistance Visits** are site visits conducted for the purpose of providing any information or technical assistance to assist the regulated community in meeting the requirements of the law, regulations, or permit.

The risk based inspection strategy is to be applied to the regular compliance inspections only. Other inspections will need to be conducted at the frequencies dictated by their particular drivers, such as enforcement order provisions, complaints received, etc.

6. Risk Based Protocol

This initiative is a process designed to direct staff resources towards facilities with higher risk factors and/or poor performance records. Resources to conduct these higher risk inspections will be made available by conducting focused inspections and/or decreasing inspection frequency at facilities that historically demonstrate excellent compliance and pose less risk of impact to human health or the environment. The following is a generalized discussion of risk factors that could be applied to compliance program inspection strategies in order to accomplish environmental protection goals or to insure resources are used in the most environmentally effective manner as possible. These factors will be used to evaluate each facility on a case-by-case and such evaluation may be required to be documented per Attachment A for any facility deemed to be a reduced risk.

The risk factors are divided into categories that are facility specific, programmatic, or Agency specific. Primary and secondary risk factors may be applicable. For instance, a facility with an excellent compliance history (primary risk factor) may be deemed suitable for a reduced inspection frequency; however, the facility is of a type/class or at a location for which the Agency has an initiative in place for further evaluation (secondary risk factor). Therefore, a reduced inspection schedule may not be suitable. The following risk factors should be evaluated when proposing the risk based inspection plan/schedule:

Virginia Environmental Enhancement Program (VEEP) Participation (EE) - Facilities that have achieved E3 or E4 status are eligible for reduced frequency or focused inspections. Other facilities participating in DEQ VEEP program or EPA performance track may also be candidates for reduced inspection frequency or focused inspections.

Compliance History and Facility Type (CH) - The compliance history is the major consideration for risk based inspection scheduling. This factor in consideration with facility type should be used to determine whether fewer or more focused inspections are necessary at a facility with a good compliance history or whether increased inspections are necessary for facilities with on-going issues. Compliance history shall be considered with type of unit(s) at a facility to ensure the value added for conducting the inspection is equivalent to the resources expended. For "minor" storage or treatment units with good compliance histories (such as small scale onsite regulated medical waste treatment units/autoclaves, transfer stations, materials recovery facilities, and category I compost facilities) lesser inspection frequency based on less risk posed may be appropriate.

Environmental Sensitivity (ES) - If the facility is located in areas of particular environmental or public health concern, increased inspection frequency may be necessary.

Multi-media Applicability (MM) – Evaluate risk based plans to include potential multi-media opportunities ranging from single inspectors covering simple multiple program areas to a team approach for larger more complex facilities. For instance, a permitted landfill may be a potential impact to an impaired watershed in which case a surface water issue may need to be brought to a water compliance inspector's attention. Other options would include solid waste compliance inspectors attending an inspection with inspectors from another media to a smaller or minor type facility (cross-training), or going to a larger facility with multi-media programs as part of an inspection team.

Agency Exposure/Sectors (AES) – Evaluate agency obligations relative to legislative mandates and sector initiatives (i.e., identification of particular groups or categories) relative to risk. If we

lack the resources to complete everything then what we do not accomplish should be based on an evaluation of risk to the agency. These risks may include consideration of concerns by staff or public regarding a particular facility, or identification of particular sectors for any number of considerations including any newly regulated/permitted facilities, particular pollutant concerns, minimal agency resources applied historically, etc.

Specific metrics for the above categories are provided below for regional office use. These metrics can help identify which facilities may require more or less compliance attention. However, the best measure for that determination is the compliance history and inspector's knowledge of the facility.

Risk Factor	Criteria	Metric	Lesser Risk: Reduced or focused inspections?	Elevated Risk: Increased inspections?
VEEP Participant (EE)				
	EE Participation	EE Ranking	E3 or E4	NA
Compliance History and Facility Type (CH)				
	Inspection Related Compliance	Inspection Reports	Satisfactory reports; Good operations and maintenance (i.e., Less than 2 deficiency or warning letters within last 2 years; No NOVs within last 3 years)	Unresponsive, chronic non-compliance, or operational and maintenance issues. Outstanding NOVs/enforcement issues.
	Monitoring Data	Gas Data and Groundwater Data	Below established permit or regulatory limits	Alleged violations of regulatory or permit limits; Deficiencies in data QA/QC
	Type	Unit Type	Unit type poses less risk to human health and/or the environment, such as storage units (MRFs and transfer stations), smaller capacity units (such as small units for regulated medical waste treatment), or category I compost units.	Disposal units
Environmental Sensitivity (ES)				
	Surrounding Land Use	Public Use - residential, recreational; Ecological Sensitive Areas; Potable Water Supply	Public water supply; non-residential surrounding area	Drinking water wells in close proximity; residents, parks, daycares, hospitals, etc. in proximity; endangered species or habitat located nearby

Risk Factor	Criteria	Metric	Lesser Risk: Reduced or focused inspections?	Elevated Risk: Increased inspections?
	Proximity to environmentally sensitive areas	Proximity to impaired water body		Discharges or potential to discharge to and impaired water body
		Non-attainment and attainment maintenance areas		
	Source Classification	Permit Type	PBR Permit	Full Permit
		Intake Volumes	<1000 tons/day	>1000 tons/day
	Environmental Justice		Not within or adjacent to EJ areas	Facility within or adjacent to EJ areas
	Population	Population Density	Rural areas	Suburban/Urban areas
Multimedia (MM)				
	Multi-Media Issues	TBD by Regional Program Managers (Facility is included on more than one media's RBS inspection list)	TBD by Regional Program Managers	TBD by Regional Program Managers
Agency Exposure/Sectors (AES)				
	Community Concerns	Complaints	No complaints or only minor or unfounded complaints received	Multiple substantiated complaints from different sources regarding facility.
	Funding Sources	Mandated priorities	Non-EPA or State mandated priority	EPA or State mandated priority

Regions have two options for high performing facilities; to either perform a lower intensity inspection (e.g. focused inspection in lieu of a full compliance evaluation inspection), and/or to reduce the inspection schedule to less than the baseline schedule. The focused compliance inspection shall key in on inspection parameters which have the greatest potential to impact human health or the environment. For instance, examples of focused inspection types for the Solid Waste programs are listed below:

- Waste screening at permitted facilities
- Groundwater monitoring at permitted landfills
- Methane emissions at permitted landfills
- Leachate management at permitted landfills

The option chosen is a function of many factors. In addition to the above, regions should carefully consider mitigating factors such as: the last compliance evaluation inspection date; the condition of the facility; the size of the facility; facility appearance and maintenance; and regional inspection resources. Permittees participating in the Virginia Environmental Excellence Program (VEEP) that have attained E3 or E4 status are eligible for reduced inspection frequency. E3 and E4 facilities are identified in CEDS and listed on the [DEQ's VEEP webpage](#).

Additionally, Inspectors familiar with the SWMFs should participate in identifying facilities with good operations, monitoring, and maintenance that are candidates for reduced/focused inspection activity.

As an example, the following could be used to identify a particular facility for a decreased inspection activity:

- Excellent facility compliance history based on last three years of inspections (CH);
- Facility groundwater monitoring data indicates no GPS exceedance and facility gas monitoring data indicates no action/compliance level exceedance (ES);

Based on the above, the facility was determined to qualify as a lesser risk facility. Therefore, for the inspections that are reduced in scope (focused compliance inspection or FCI) or are not done, the risk based factor evaluation for lower inspection frequency will be CH and ES.

Another advantage of the risk based protocol is that it provides DEQ an opportunity to focus multi-media inspection resources on specific areas of concern for the Agency, such as impaired watersheds or mercury reduction initiatives. The risk based protocol can be used to determine if a permitted SWMF is contributing to the initiative. This will require that coordination take place between different program areas and media to insure coverage of all permitted facilities. For these types of added inspections, a brief narrative in the inspection schedules should be added describing the purpose of the initiative. Year end reporting which details the inspection findings may be necessary to evaluate and determine future activities and should be coordinated with other media programs, as necessary.

7. Inspection Frequency

Under a normal solid waste compliance inspection frequency, DEQ inspects solid waste management facilities operating under permits and permit-by-rule status at the following minimum frequency:

- Active and inactive facilities inspected **quarterly**; and
- Closed facilities subject to Post-Closure Care inspected **annually**.

This normal inspection frequency is determined by the operational status of the permit or permit-by-rule SWMF. If a SWMF is deemed to be a lower risk based on evaluation of the risk based factors and, therefore, would qualify for a reduced inspection frequency, the *suggested* inspection frequency for these lower risk SWMFs during the compliance year is:

- *Lower risk full permit SWMFs*: conduct semi-annual inspections with a minimum of two full CEIs OR one full CEI and one FCI (for a minimum of two inspections per year);
- *Lower risk permit-by-rule SWMFs*: conduct at least an annual CEI;
- *Lower risk closed landfills under post-closure care*: conduct at least one CEI biennially; and
- *Lower risk barge receiving facilities*: conduct at least quarterly inspections, a maximum of two of which may be FCIs (for a minimum of four inspections).

For all other facilities that would not qualify for decreased CEIs or FCIs, the minimum inspection frequency shall be the applicable baseline inspection schedule. Conversely, if a facility is deemed to be a higher risk based upon the evaluation of the risk factors, additional inspections beyond the baseline frequency may be necessary. The *suggested* inspection frequency for these higher risk SWMFs during the compliance year is:

- *Higher risk full permit SWMFs*: conduct one CEI per quarter and an additional two FCIs (for a total of six inspections);
- *Higher risk permit-by-rule SWMFs*: conduct one CEI per quarter and an additional two FCIs (for a total of six inspections);
- *Higher risk closed landfills under post-closure care*: conduct at least one annual CEI and one additional CEI or FCI (for a total of two inspections); and
- *Higher risk barge receiving facilities*: conduct at least quarterly CEIs and an additional two FCIs (for a total of six inspections).

8. Inspection Scheduling

As noted in Section 7, the operational status of the facility is used for the normal inspection frequency. This normal inspection frequency is used to create a 'baseline' inspection schedule. The Risk Based Protocols, described in the Section 6, are then applied to this baseline schedule to decide at which facilities a change in inspection frequency is warranted.

Scheduling Process Using the Risk Based Protocols:

1. Develop a schedule for solid waste compliance evaluation inspections on a federal fiscal year basis (October 1 through September 30th) conforming to the normal inspection frequencies as listed in Section 7. This is your baseline schedule.
2. Apply the risk based protocols to the facilities on this baseline inspection schedule to determine which facility inspections are modified (added, reduced, postponed, focused) from the baseline inspection schedule to develop the risk based inspection schedule (see format example in Table 1 below).
3. **By August 15th of each year**, Regional Office Land Protection Program Managers shall send their Region's finalized Risk Based Inspection Schedule to the Central Office (CO) Solid Waste Compliance Coordinator. The excel format as provided below shall be used (see Table 1). During the course of the compliance year, please update the RBI excel spreadsheet and email changes to the RBI schedule to the Solid Waste Compliance Coordinator as they occur along with the reason for the change.

Table 1. Risk Based Inspection Schedule

<u>Region</u>	<u>Permit No.</u>	<u>Facility Name</u>	<u>Unit Type</u>	<u>Unit Status</u>	<u>Annual Baseline Inspections</u>	<u>Inspections Added or Reduced per Risk</u>	<u>Annual Risk Based Inspections</u>	<u>Risk Factors Applied (indicate if doing focused inspections)</u>
XXRO	SWP001	County ABC Landfill	Sanitary Landfill	Active	4	1	5	CH, AES
XXRO	PBR111	Solid Waste TS	Transfer Station	Active	4	-2	2	CH
XXRO	PBR116	Waste Material Recovery	Materials Recovery Facility	Active	4	-2	2	CH
XXRO	PBR219	Yard Waste Composting Facility	Compost Facility	Active	4	-2	2	CH, ES

4. Central Office may request that the region use **Attachment A** to document the risk based decision to reduce inspection frequency at a facility. If requested, place this document in the facility's inspection/compliance file describing the rationale. This documentation provides an easy to follow paper trail for anyone reviewing the file.
5. **If requested**, each region will also develop a multi-media plan. Air, Waste, and Water Compliance Program Managers shall meet to review their inspection plans and, based on the below criteria, draft a list of multi-media inspections/initiatives for their Region. Criteria for multi-media consideration are:
 - a. Same facility on two or more inspection lists
 - b. Facility holds multiple media permits
 - c. Similar agency priorities for sectors of facilities
 - d. Multi-media compliance issues or complaints at same facility
 - e. Multi-media cross training opportunity
6. **If requested**, by November 1st of each year, the Regional Deputy Director shall submit the region's multi-media plan to each media's CO compliance program coordinator.

9. Resources and Reporting

If assistance is needed with implementation or clarification of the risk based strategy, please contact the Solid Waste Compliance Coordinator. Please note that CEDS and Logi will be utilized to pull quarterly and annual inspection summaries for distribution within the agency regarding the solid waste compliance program. Staff should utilize the [Solid Waste Compliance CEDS Manual](#) to document the type of inspections conducted in support of the RBIS.

Attachment A
Department of Environmental Quality
Documentation of Baseline Inspection Frequency Reduction

Regional Office: _____ **LPM Initials & Date:** _____

Facility Name: _____

Solid Waste Permit Type: Full SW Permit Permit-by-Rule

Solid Waste Permit Number: _____

Facility Type:

- | | | |
|--|---|--|
| <input type="checkbox"/> Sanitary Landfill | <input type="checkbox"/> Transfer Station | <input type="checkbox"/> Surface Impoundment |
| <input type="checkbox"/> CDD Landfill | <input type="checkbox"/> MRF | <input type="checkbox"/> Barge Facility |
| <input type="checkbox"/> Industrial Landfill | <input type="checkbox"/> Incinerator | <input type="checkbox"/> RMW Facility |
| <input type="checkbox"/> Compost Facility | <input type="checkbox"/> Waste to Energy Facility | <input type="checkbox"/> Other: _____ |

Federal Fiscal Year: _____

Date of last COMPLIANCE EVALUATION INSPECTION: _____

Date of last Inspection: _____

Reason for Change (check all that apply):

- | | |
|--|---|
| <input type="checkbox"/> Compliance History (CH) | <input type="checkbox"/> Multi-media (MM) |
| <input type="checkbox"/> Environmental Excellence (EE) | <input type="checkbox"/> Agency Exposure/Sectors (AES) |
| <input type="checkbox"/> Environmental Sensitivity (ES) | |

Justification (provide short synopsis of why specific factors were chosen):

Proposed Actions:

- FCI in lieu of CEI

Number of CEIs reduced to FCIs: _____

- Reduced # of Inspections from the Baseline Inspection Frequency

Number of Inspections reduced: _____

Other Comments:

Attachment 2: 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
 - _____ Operator Certifications
 - _____ Plans and approvals (such as closure, post-closure care, special wastes, etc.)
 - _____ Environment monitoring plans and associated reports or notifications (such as groundwater, gas, or odor management)
 - _____ Solid Waste Information & Assessment Report (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 permit writer, groundwater staff, and enforcement staff.

Attachment 3: 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)
- _____ 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 self-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
- _____ 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 disposal requests, evaluations, and analyses
- _____ Asbestos containing material disposal documentation
- _____ Petroleum contaminated soil (PCS) analysis
- _____ Tire or white good transport documentation or invoices
- _____ Other records as specified by statute, regulation, permit, or enforcement order

Permit-specific notes

Attachment 4: 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 5: Photo Documentation Template

VIRGINIA DEPARTMENT OF ENVIRONMENTAL QUALITY Regional Office

Photos have not been altered except to change the size of the file.

Facility Name: _____ Permit# _____

Taken By: [Inspector Name]

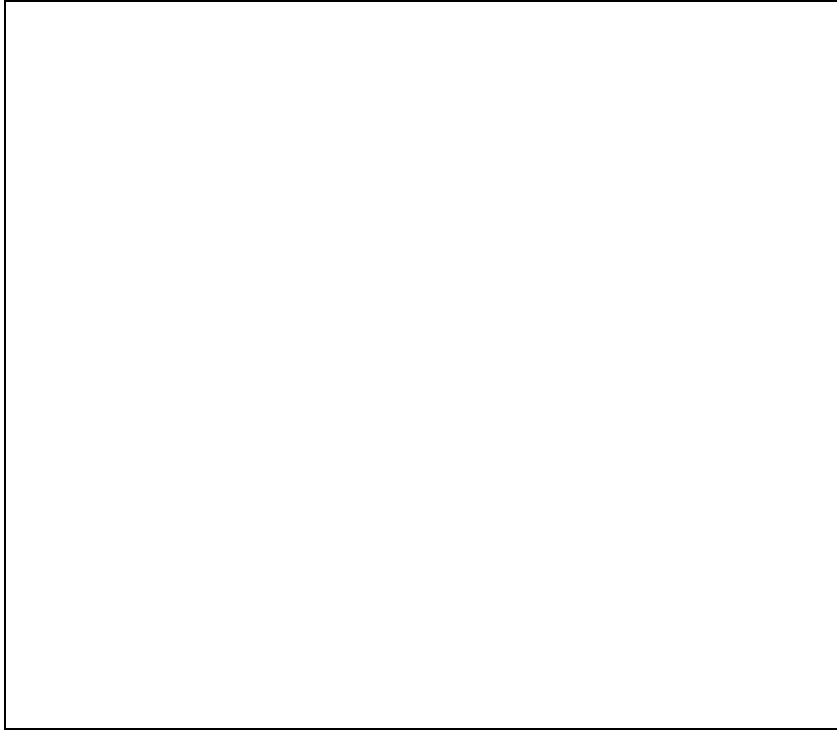


Photo Number: 1

Date: _____

Comments: *[e.g. location within the facility, direction of the photograph, unique or non-compliant item or area photographed, any other pertinent information such as weather]*

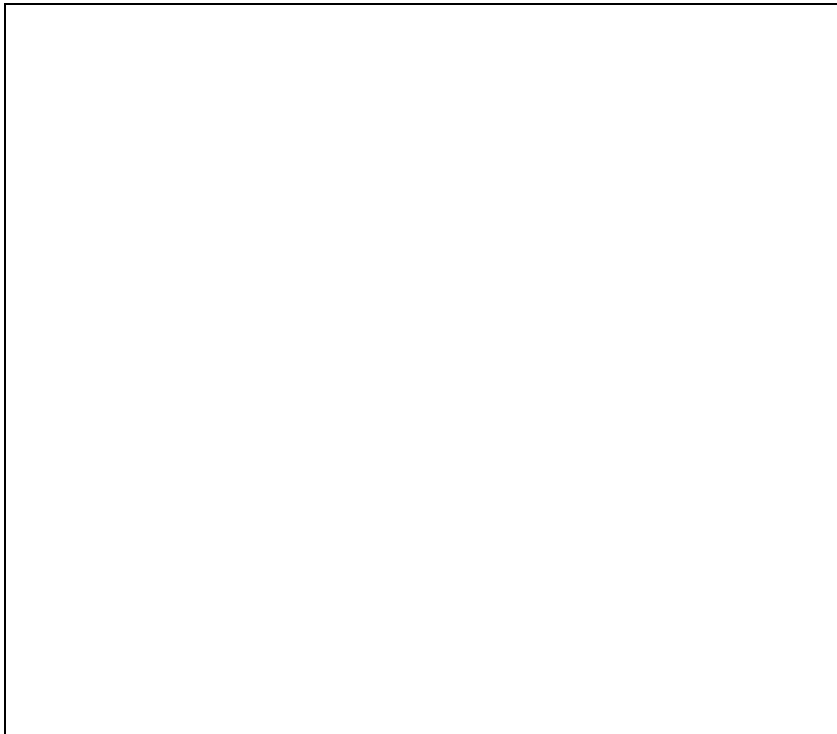


Photo Number: 2

Date: _____

Comments: _____

Attachment 6: No Deficiency Letter Boilerplate

[AGENCY LETTERHEAD]

[Date]

[Facility Contact]

[Title]

[Facility Name]

[Street Address]

[City, State, Zip Code]

NO DEFICIENCY LETTER

Re: [Facility Name] – [Facility Location]
[Solid Waste Permit (SWP) or Permit-by-Rule (PBR) #]

Dear [Facility Contact]:

On [Date], the Virginia Department of Environmental Quality [Regional office] staff conducted a compliance 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, Va. Code § 10.1-1400 *et seq.* (“Act”), the Virginia Solid Waste Management Regulations, 9 VAC 20-81-10 *et seq.* (“Regulations”), [specify other regulations as applicable], and [SWP or PBR # and/or any applicable enforcement documents].

During the inspection, no apparent violations of the Act, Regulations, or [SWP or PBR # and/or any applicable enforcement documents] were observed. A copy of the inspection checklist is enclosed.

If you have any questions, please contact me at [(xxx) xxx-xxxx] or [\[Name\]@deq.virginia.gov](mailto:[Name]@deq.virginia.gov).

Sincerely,

[Name]
RO Solid Waste Compliance Inspector

cc: ECM – [SWP or PBR #]

Attachment 7: Deficiency Letter Boilerplate

[AGENCY LETTERHEAD]

[Date]

[Facility Contact]

[Title]

[Facility Name]

[Street Address]

[City, State, Zip Code]

DEFICIENCY LETTER

Re: [Facility Name] – [Facility Location]
[Solid Waste Permit (SWP) or Permit-by-Rule (PBR) #]

Dear [Facility Contact]:

On [Date], the Virginia Department of Environmental Quality [Regional office] staff conducted a compliance 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, Va. Code § 10.1-1400 *et seq.* (“Act”), the Virginia Solid Waste Management Regulations, 9 VAC 20-81-10 *et seq.* (“Regulations”), [specify other regulations as applicable], and [SWP or PBR # and/or any applicable enforcement documents]. 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 Act, Regulations, and/or [SWP or PBR # and/or any applicable enforcement documents]. This information is noted on the enclosed inspection checklist and is summarized below:

1. *Observations:* [Give details of factual observations only; do not describe them in terms of violation(s) or conclusions of law. Then, for each set of observations, state specifically the applicable statutory or regulatory provision and/or permit condition that applies in a separate paragraph in **bold font**. This section should refer to the inspection summary or inspection checklist, and may include a brief discussion of recommendations for corrective measures; avoid mandates. Use numbered paragraphs for each factual condition being addressed.]

***Legal Requirements:* 9 VAC 20-81-xxx states “...”**

2. *Observations:* ...

***Legal Requirements:* 9 VAC 20-81-xxx states “...”**

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 [(xxx) xxx-xxxx] or [\[Name\]@deq.virginia.gov](mailto:[Name]@deq.virginia.gov).

Sincerely,

[Name]
RO Solid Waste Compliance Inspector

cc: **[Name]**, CO Solid Waste Compliance Coordinator
ECM – **[SWP or PBR #]**

Attachment 8: Warning Letter Boilerplate

[AGENCY LETTERHEAD]

[Date]

[Facility Contact]

[Title]

[Facility Name]

[Street Address]

[City, State, Zip Code]

WARNING LETTER

Re: WL No. 00-00-RO-000 [if numbered]
[Facility Name] – [Facility Location]
[Solid Waste Permit (SWP) or Permit-by-Rule (PBR) #]

Dear [Facility Contact]:

The Department of Environmental Quality (“DEQ” or “Department”) has reason to believe that the [Facility Name] may be in violation of the Virginia Waste Management Act, Va. Code § 10.1-1400 *et seq.* (“Act”), the Virginia Solid Waste Management Regulations, 9 VAC 20-81-10 *et seq.* (“Regulations”), [specify other regulations as applicable], and/or [SWP or PBR # and/or any applicable enforcement documents].

This letter addresses conditions at the facility named above and also cites compliance requirements of the Act, Regulations, and [SWP or PBR # and/or any applicable enforcement documents]. 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”). DEQ requests that you respond **within 20 days of the date of this letter.**

OBSERVATIONS AND LEGAL REQUIREMENTS

On [Date], DEQ [Regional Office] staff conducted a compliance inspection of the [Facility Name]. A copy of the inspection checklist 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.

1. *Observations:* [Give details of factual observations only; do not describe them in terms of violation(s) or conclusions of law. Then, for each set of observations, state specifically the applicable statutory or regulatory provision and/or permit condition that applies in a separate paragraph in **bold font**. This section should refer to the inspection summary or inspection checklist. Use numbered paragraphs for each factual condition being addressed.]

***Legal Requirements:* 9 VAC 20-81-xxx states “...”**

2. *Observations:* ...

***Legal Requirements:* 9 VAC 20-81-xxx states “...”**

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. Va. Code §§ 10.1-1455(D) and 10.1-1455(I) provide for other additional penalties.

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 may 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. Also, if informal discussions do not lead to a satisfactory conclusion, 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. For further information on the [Process for Early Dispute Resolution](#), please see Agency Policy Statement No. 8-2005 posted on the Department's website under "Programs," "Enforcement," and "Laws, Regulations, & Guidance" (<http://www.deq.virginia.gov/Programs/Enforcement/Laws,Regulations,Guidance.aspx>) or ask the DEQ contact listed below.

Your contact at DEQ in this matter is **[Contact 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 **[(xxx) xxx-xxxx]** or [\[Contact Name\]@deq.virginia.gov](mailto:[Contact Name]@deq.virginia.gov).

Sincerely,

[Name]
RO Land Protection Program Manager

cc: **[Name]**, RO Solid Waste Compliance Inspector
[Name], CO Solid Waste Compliance Coordinator
ECM – **[SWP or PBR #]**

Attachment 9: Notice of Violation Boilerplate

[AGENCY LETTERHEAD]

[Date]

[Facility Contact]

[Title]

[Facility Name]

[Street Address]

[City, State, Zip Code]

NOTICE OF VIOLATION

RE: NOV No. [x]
[Facility Name] – [Facility Location]
[Solid Waste Permit (SWP) or Permit-by-Rule (PBR) #]

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 Virginia Waste Management Act, Va. Code § 10.1-1400 *et seq.* (“Act”), the Virginia Solid Waste Management Regulations, 9 VAC 20-81-10 *et seq.* (“Regulations”), [specify other regulations as applicable], and/or [SWP or PBR # and/or any applicable enforcement documents].

This letter addresses conditions at the facility named above and also cites compliance requirements of the Act, Regulations, and [SWP or PBR # and/or any applicable enforcement documents]. 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”). DEQ requests that you respond **within 10 days of the date of this letter** to arrange a prompt meeting.

OBSERVATIONS AND LEGAL REQUIREMENTS

On [Date], DEQ [Regional Office] staff conducted a compliance inspection of the [Facility Name]. A copy of the inspection checklist 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:

1. *Observations:* [Give details of factual observations only; do not describe them in terms of violation(s) or conclusions of law. Then, for each set of observations, state specifically the applicable statutory or regulatory provision and/or permit condition that applies in a separate paragraph in **bold font**. This section should refer to the inspection summary or inspection checklist. Use numbered paragraphs for each factual condition being addressed.]

Legal Requirements: 9 VAC 20-81-xxx states “...”

2. *Observations:* ...

Legal Requirements: 9 VAC 20-81-xxx states “...”

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. Va. Code §§ 10.1-1455 (D) and 10.1-1455 (I) provide for other additional penalties.

FUTURE ACTIONS

DEQ staff wishes to discuss all aspects of their observations with you, including any actions needed to 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. Also, if informal discussions do not lead to a satisfactory conclusion, 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. For further information on the [Process for Early Dispute Resolution](#), please see Agency Policy Statement No. 8-2005 posted on the Department's website under "Programs," "Enforcement," and "Laws, Regulations, & Guidance" (<http://www.deq.virginia.gov/Programs/Enforcement/Laws,Regulations,Guidance.aspx>) or ask the DEQ contact listed below.

Please contact **[Enforcement Staff Name]** at **[(xxx) xxx-xxxx]** or [\[Contact.Name\]@deq.virginia.gov](mailto:[Contact.Name]@deq.virginia.gov) **within 10 days** to discuss this matter and arrange a prompt meeting.

Sincerely,

[Name]
RO Land Protection Program Manager

cc: **[Name]**, RO Enforcement Specialist
[Name], RO Solid Waste Compliance Inspector
[Name], CO Solid Waste Compliance Coordinator
ECM – **[SWP or PBR #]**

Attachment 10: Documentation of Alleged Violations Subject to Pending or Executed Enforcement Orders

MEMORANDUM

Department of Environmental Quality
Division of Land Protection & Revitalization

Mail Address:
P.O. Box 1105
Richmond, VA 23218

Location:
629 East Main Street
Richmond, VA 23219

SUBJECT: Documentation of Alleged Violations Subject to Pending or Executed Enforcement Orders

TO: Regional Land Protection Managers

FROM: Leslie Beckwith, Director of the Office of Financial Responsibility & Waste Programs

DATE: June 21, 2017

COPIES: Regional Solid Waste Compliance Inspectors, Regional Enforcement Specialists, Priscilla Fisher, Kristen Sadtler

The Solid Waste Compliance Program's Risk Based Inspection Strategy (RBIS) establishes the baseline inspection frequency for permitted solid waste management facilities based on the operational status of the facility. Active and inactive facilities are routinely inspected on a quarterly basis, and closed facilities subject to Post-Closure Care are routinely inspected on an annual basis. The RBIS allows for inspection frequencies to be increased or decreased based on defined risk factors, including but not limited to, compliance history, environmental sensitivity, community concerns, and multi-media issues.

When an alleged violation is identified during a routine inspection, DEQ may address the issue in accordance with the Solid Waste Inspection Manual using informal or formal compliance and enforcement methods depending upon the severity of the alleged violation. This includes determining the risk of exposure to humans or other environmental receptors and the degree of adverse effect on statutory regulatory purposes or procedures for implementing the regulatory program. If compliance cannot be achieved following informal compliance methods OR if the severity of the alleged violation warrants it, a Notice of Violation (NOV) may be issued, which acts as a referral for enforcement action by the DEQ. Enforcement actions typically involve the execution of a Letter of Agreement (LOA) or Consent Order, but could also result in a hearing or other action.

Following the issuance of an NOV or an executed LOA or Consent Order, DEQ staff may conduct additional inspections of the facility (beyond the baseline inspection frequency) in order to:

- Observe potential or actual releases or risks to human health and/or the environment resulting from alleged non-compliance
- Observe whether alleged non-compliance is still ongoing or if corrective actions have been taken
- Obtain additional information that will inform the development of a pending order
- Determine compliance with specific provisions of an executed enforcement order, including assessing progress made towards items in the order's Schedule of Compliance

The regional Enforcement Specialist is responsible for monitoring the facility's compliance with terms of an enforcement agreement or order unless other staff has been designated in writing. However, solid waste inspectors may assist with checking the facility's progress towards a Schedule of Compliance. Additional inspections (beyond the baseline) may be comprehensive or focused, and the frequency may vary from one additional inspection to daily inspections, depending upon site-specific conditions and risk factors. Inspectors should always consult the regional enforcement specialist to confirm that an inspection will not negatively impact negotiation of a pending enforcement order (such as when the

draft order has already been presented to the RP for concurrence). It may be necessary to postpone an inspection unless site-specific risk factors (including environmental sensitivity or community concerns) outweigh the potential impacts to enforcement order negotiations. Regional Enforcement staff should consult with Central Office Enforcement staff for concurrence as appropriate.

The program recognizes that when a facility is inspected more than once per quarter due to ongoing alleged violations or risk to human health and the environment, it may be difficult to make distinct compliance determinations and issue the inspection report for each individual inspection before the next inspection occurs. For that reason, these guidelines establish the protocol for documenting additional inspections in a manner that is:

- appropriate for the conditions observed
- beneficial to any pending or executed enforcement action
- consistent and fairly implemented
- time and resource-efficient
- properly recorded in CEDS and ECM

Implementation Guidelines

The inspector should discuss observations and potential alleged violations with facility representatives during the exit interview OR immediately following the inspection via phone call or email if facility staff is not available for an exit interview. DEQ should always notify the facility of alleged violations and any non-compliance with an enforcement agreement or order, and all CEDS inspection reports should be shared with the facility. All efforts should be made to issue the inspection report to the facility within 30 days of the inspection. For complex cases or NOV's that require additional review and concurrence by other staff, the inspection report may be issued to the facility within 45 days of the inspection.

When a facility is inspected multiple times per quarter (especially if monthly, weekly, or daily), the program recognizes that the amount of time and resources needed to evaluate and document the inspections is compounded. **If it is not feasible to issue a report for each individual inspection before the next subsequent inspection occurs, then multiple inspections may be addressed under one correspondence.** For example, if a facility is inspected weekly for one month, then all four weekly inspection checklists may be attached to one cover letter. In order to avoid accumulating a backlog of unissued inspection reports, **the inspector should issue an appropriate letter with attached inspection checklist(s) a minimum of once per quarter when multiple inspections are conducted within that quarter.** Each CEDS inspection record's event code should reflect which letter was issued.

The following protocols should be followed to address ongoing compliance issues following the issuance of an NOV or an executed LOA or Consent Order.

Scenario 1: Inspections are conducted while an enforcement agreement or order is being developed or negotiated to address alleged violation(s) cited in a previous NOV.

A. Same/Ongoing Alleged Violations

If the same alleged violation (as identified in the previous NOV) continues to be observed during the inspection, AND there are NO NEW alleged violations, then the inspector should document the ongoing alleged violation in the CEDS inspection checklist, and immediately consult the regional LPM and Enforcement Specialist to determine the appropriate response, which may include issuing another NOV.

However, if the Enforcement Specialist determines that issuing another NOV may negatively impact negotiation of the pending enforcement action, it may be more appropriate to issue the inspection report using the boilerplate letter provided as an attachment to this memorandum. In lieu of issuing another NOV, this letter notes that the alleged violation is still ongoing and references the previous NOV and pending enforcement action. The letter and attached inspection checklist(s) should be issued to the facility with a copy retained in ECM under the *Waste Facility Compliance Inspections and Correspondence* File Series and *SW Compliance Inspection Report (CIR)* Document Type with the keywords "Pending Enforcement." The CEDS inspection event code "PENDENF" with description "Send Letter Referencing NOV and Pending Enforcement" should be used.

B. New Alleged Violations (Not Previously Addressed)

If a NEW alleged violation (not addressed by the previous NOV) is observed during the inspection, the inspector should document the alleged violation in the CEDS inspection checklist and then immediately consult the regional LPM and Enforcement Specialist to determine the appropriate response. The response may include issuance of a DL, WL, or NOV as appropriate, depending upon the severity level of the new alleged violation and its impact on negotiating the pending enforcement order. If new/subsequent alleged violations are identified prior to execution of an LOA or Consent Order, the draft LOA or order and any civil charge may need to be modified to address those alleged violations as appropriate.

Scenario 2: Inspections are conducted following execution of an LOA or Consent Order.

A. Compliance

If the facility is in compliance with the LOA or Consent Order's Schedule of Compliance during an inspection, and no new alleged violations are observed, the inspector should document compliance in the inspection checklist, clearly indicating there were no new alleged violations. A No Deficiency Letter should be issued to the facility with attached inspection report. An LOA does not effectively resolve an alleged violation, so the Return-to-Compliance (RTC) date in CEDS for the original alleged violation will be left blank until all items in the LOA's Schedule of Compliance are completed OR a Consent Order is executed to resolve the alleged violation. A Consent Order does, however, effectively resolve alleged violations by establishing an enforceable schedule that compels the facility to return to compliance in an expeditious manner. Therefore, the CEDS RTC date for alleged violations in a Consent Order is the effective date of the order. If a violation is actually resolved prior to finalizing an order (e.g. the issue is no longer ongoing but an Order and civil charge may be pending), then the RTC date is the earlier (actual) date the violation was resolved by the facility.

B. Non-Compliance with LOA or Consent Order

If the facility is NOT in compliance with an LOA or Consent Order's Schedule of Compliance during an inspection, the inspector should document the alleged violation in the CEDS inspection checklist and immediately consult the regional Land Protection Manager (LPM) AND Enforcement Specialist to determine the appropriate response. The response may include issuing another NOV and/or amending the current LOA or Consent Order as appropriate.

C. New Alleged Violations (Not Previously Addressed by LOA or Consent Order)

If a NEW alleged violation (not captured by the current LOA or Consent Order) is observed during the inspection, the inspector should document the alleged violation in the inspection checklist and consult with the regional LPM and Enforcement Specialist prior to issuing a Deficiency Letter, Warning Letter, or NOV as appropriate, depending upon severity level of the new alleged violation.

Attachment 11: Pending Enforcement Letter Boilerplate

[AGENCY LETTERHEAD]

[Date]

[Facility Contact]

[Title]

[Facility Name]

[Street Address]

[City, State, Zip Code]

INSPECTION REPORT

Re: [Facility Name] – [Facility Location]
[Solid Waste Permit (SWP) or Permit-by-Rule (PBR) #]

Dear [Facility Contact]:

On [Date], the Virginia Department of Environmental Quality's [Regional office] staff conducted a compliance 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, Va. Code § 10.1-1400 *et seq.* ("Act"), the Virginia Solid Waste Management Regulations, 9 VAC 20-81-10 *et seq.* ("Regulations"), [specify other regulations as applicable], and [SWP or PBR # and/or any applicable enforcement documents].

Alleged violations identified during the inspection will be addressed under a pending [Letter of Agreement/Consent Order] for similar alleged violations observed during a previous compliance inspection which resulted in a Notice of Violation dated [DATE]. A copy of the inspection checklist is enclosed. 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.*

If you have any questions, please contact me at [(xxx) xxx-xxxx] or [\[Name\]@deq.virginia.gov](mailto:[Name]@deq.virginia.gov).

Sincerely,

[Name]
RO Solid Waste Compliance Inspector

cc: [Name], RO Enforcement Specialist
[Name], RO Land Protection Program Manager
[Name], CO Solid Waste Compliance Coordinator
ECM – [SWP or PBR #]

Attachment 12: 24-hr/5-day Reporting Requirements

VSWMR Permittee Reporting Requirements

9VAC20-81-530.C.3

The permittee shall report to the department any noncompliance or unusual condition that may endanger health or environment. Any information shall be provided orally within 24 hours from the time the permittee becomes aware of the circumstances. A written submission shall also be provided within five days of the time the permittee becomes aware of the circumstances. The written submission shall contain a description of the circumstances and its cause; the period of occurrence, including exact dates and times, and, if the circumstance has not been corrected, the anticipated time it is expected to continue. It shall also contain steps taken or planned to reduce, eliminate, and prevent reoccurrence of the circumstances resulting in an unusual condition or noncompliance.

Applicable Conditions

The following list includes examples of noncompliant or unusual situations that may endanger human health or the environment, and would therefore require the permittee to notify DEQ within 24 hours and submit a written report within 5 working days. An email will suffice for either/both the 24-hr and 5-day notifications as long as the email contains the information required by the VSWMR. A separate 5-day email is needed only if the initial 24-hr email does not contain all information required for the written submittal. This list is not intended to be all-inclusive, but is provided as guidance for compliance inspectors in order to promote consistent application of the VSWMR requirements. The facility should report accordingly unless a variance has been approved regarding a site-specific allowance.

Pollution incidents that may endanger human health or the environment (such as fires, explosions, and leachate or waste releases to surface waters) may also require PREP or multi-media response.

Landfill Gas & Odor
Damage to gas monitoring well that would impair function, prevent representative sampling, introduce surface water, leachate, or otherwise contaminate the well [9VAC20-81-200.B]
Methane at or above LEL at compliance boundary or 25% LEL in structure [9VAC20-81-200.C.5]
Compliance level exceedances detected during routine or non-routine maintenance activities [9VAC20-81-200.C.5]
Planned or unplanned shutdowns of active gas control or remediation systems (including odor systems) lasting longer than 48 hours [9VAC20-81-200.C.5]
Other noncompliance or unusual conditions that may endanger health or environment, such as when an active gas remediation system is damaged or not operating in a manner to maintain compliance [9VAC20-81-200.C.5]
Odor complaint received from public (if notification required by odor management plan) [9VAC20-81-200.D.1]
Leachate Control
Unauthorized discharge of leachate, washwater, or other pollutant to surface water (i.e., offsite, natural water body or tributary, including wetlands) [9VAC20-81-140.A.6; -340.A.1.g; -A.2.i; -B.4; -C.5; -D.5; -E.5; -F.4]
Leachate overflow, leachate in sediment basin, or failure of leachate collection system [9VAC20-81-140.A.14; -210; -340.A.1.g; -A.2.i; -B.4; -C.5; -D.5; -E.5; -F.4]
Punctures or other failures of a leachate basin, tank, secondary containment, or piping system conveying leachate to a storage structure or sanitary sewer [9VAC20-81-140.A.14; -210; -530.C.3]

Leachate Control

Leachate seeps resulting in leachate outside the lined waste disposal area [9VAC20-81-210.F]

Leachate head exceeding 30 cm (12 in) on bottom liner system (or alternate head/timeline in permit) [9VAC20-81-210.A.2]

Temporary or emergency storage of leachate in landfill causing leachate head to exceed 30 cm (12 in) to facilitate repairs or prevent releases [9VAC20-81-210.A.2]

Power (or other) failures at the pump station resulting in a spill [9VAC20-81-210]

Authorized leachate disposal method is disrupted or halted [9VAC20-81-210]

Releases from pump & haul trucks when within the facility boundary [9VAC20-81-210]

Unauthorized Waste Control & Operations

Unauthorized waste discovered at facility (e.g. regulated hazardous waste, PCB waste, RMW, friable asbestos or other inadequately characterized wastes) [9VAC20-81-100.E.5.e; -140.B.4; -300.F.2]

Exceedance of daily disposal limit, process rate, or permitted capacity [9VAC20-81-100.B; -130.A; -300.B]

Unable to apply daily cover at end of workday or intermediate or progressive cover at the frequency required by the permit [9VAC20-81-140.B.1; -C.1; -D.1]

Unable to remove putrescible waste from tipping floor at end of workday [9VAC20-81-340.B.1; -D.1; -E.1; -F.1]

Failure to obtain substitute equipment within 24 hours of landfill operational equipment becoming inoperable or unavailable [9VAC20-81-140.A.15]

Any interruption to operations that requires diversion of waste to another solid waste management facility [9VAC20-81-140; -340; -530.C.3]

Any interruption to operations that requires the operator to implement emergency or contingency plans [9VAC20-81-140; -340; -485; -530.C.3]

Other Noncompliance or Unusual Conditions that May Endanger Human Health or Environment

Any explosion or fire at a facility (including landfill surface or subsurface fires, subsurface reactions, equipment fires, tipping floor fires, etc.) [9VAC20-81-140.A.4; -340; -530.C.3]

Slope failure associated with the waste fill, final cover, or supporting slopes & structures (including MSE berms) [9VAC20-81-140.B.1; -C.1; D.1; -170.A.1.a]

Suspected damage to landfill liner or cap system, liner support berm, or leachate collection system [9VAC20-81-140.A.14]

Reportable spills of any regulated substance at facility, such as those covered under a 40CFR112 SPCC Plan

Groundwater extraction system or other corrective action remedy nonoperational [9VAC20-81-140.A.14; -260.E]

Other Noncompliance or Unusual Conditions that May Endanger Human Health or Environment

Damage to groundwater monitoring well that would impair function, prevent representative sampling, introduce surface water, leachate, or otherwise contaminate the well [9VAC20-81-250.A.3.e]

Attachment 13: Inspection Manual Revision Log

Revision Number	Date	Description
1	May 2011	<ul style="list-style-type: none"> • General revisions
2	October 2017	<ul style="list-style-type: none"> • General revisions • Remove superseded Landfill Gas Guidance and Flowchart • Remove references to Areas of Concern (no longer using) • Add solid waste complaint procedures consistent with PREP Manual • Clarify compliance evaluations of the groundwater monitoring program • Incorporate financial assurance procedures • Add policies for maintaining CEDS, ECM, and Logi • Add Risk Based Inspection Strategy (Attachment 1) • Add Photo Documentation Template (Attachment 5) • Update Boilerplate Letters (Attachments 6 through 9) • Add Documentation of Alleged Violations Subject to Pending or Executed Enforcement Orders (Attachment 10) • Add Pending Enforcement Letter Boilerplate (Attachment 11) • Add Inspection Manual Revision Log (Attachment 12)
3	May 2018	<ul style="list-style-type: none"> • Add 24-hr/5-day Reporting Requirements (new Attachment 12)
4	December 2018	<ul style="list-style-type: none"> • Update inspection equipment and PPE considerations • Add agency safety policies and accident reporting procedures • Update recommendations for capturing inspection photos • Clarify additional considerations in selecting non-compliance instruments (including NOVs)