

US EPA ARCHIVE DOCUMENT

## **SESSION 17**

# **RCRA ENFORCEMENT AND COMPLIANCE PROCESS:**

## **Best Practices for Case Development**



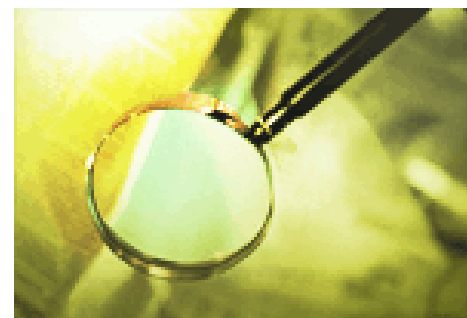
## Case Development Overview

- ▶ Case development is an integral part of the RCRA Enforcement Program
- ▶ Case development includes all activities leading to the identification of non-compliance and the ultimate return to compliance
- ▶ Inspections are the main tool used for case development



## Pre-Inspection Preparations

- ▶ Review the facility file
  - Gain an understanding of the facility and its operations
  - Identify the facility's generator status
  - Identify potential violations
  - Understand the facility's compliance history
  - Identify facility permits (e.g., RCRA, National Pollutant Discharge Elimination System [NPDES], Air)
  
- ▶ Review applicable regulations
  - Regulations according to generator status
  - RCRA exemptions
  - Permit requirements



## Pre-Inspection Preparations (cont.)

- ▶ Develop an inspection plan and checklists
  - Pre-inspection worksheet
    - Internal check of all necessary pre-inspection activities
  - List of equipment needs
  - Health and safety considerations
  - Facility-specific plans and checklists
    - Plan detailing facility-specific inspection strategy
    - Regulatory checklists appropriate for facility processes



## Conducting the Inspection

- ▶ Facility entry
- ▶ Opening meeting
- ▶ Visual inspection
- ▶ Review of facility records
- ▶ Exit briefing



## Facility Entry

- ▶ Type of inspections
  - Unannounced inspection
  - Announced inspection
  
- ▶ Prior to entering the facility, conduct a windshield survey of the facility property from public rights-of-way
  
- ▶ Procedures for facility entry
  - Conduct at a reasonable time, usually during normal working hours
  - Present identification upon arrival to the appropriate facility representative (even if identification is not requested)
  - Locate the appropriate facility representative
  - Document arrival time



## Opening Meeting

### ▶ Goals

- Outline inspection objectives
- Provide facility with information on RCRA
- Establish the order of the inspection
- Establish a meeting schedule
- Inform the facility owner/operator of their rights to claim information as confidential business information
- If sampling activities are planned, advise the facility of the availability of duplicate samples
- Request that facility representatives describe
  - Operating processes
  - Waste streams generated
  - Waste management practices





## Visual Facility Inspection

- ▶ A facility map should be obtained for use during the visual inspection
- ▶ Visual inspection should be conducted in a manner that allows for
  - A complete evaluation and understanding of the waste flow
  - A determination of the compliance status of each facility waste management system
- ▶ Inspections should be conducted on foot
  - Large facilities may require vehicles to ensure that the entire site is viewed



## Visual Facility Inspection (cont.)

- ▶ Inspectors should control the pace and direction of the inspection
- ▶ Inspectors should ask relevant questions to diverse personnel at the facility
- ▶ Examples of what to look for and document
  - Location of waste management units
  - Condition of waste management units
  - Labeling of waste management units and proper waste characterization
  - Visual signs of release(s)
  - Abandoned waste
  - General waste flow procedures



## Sampling

- ▶ Sampling during a Compliance Evaluation Inspection (CEI) is not normal practice; however, sampling is typically conducted during a Compliance Sampling Inspection (CSI) and/or Case Development Inspection (CDI)
  
- ▶ During a CSI/CDI, inspectors should collect samples in order to document
  - Owner/operators handling potentially hazardous waste as nonhazardous
  - Evidence of release(s) of hazardous waste
  - Wastes managed improperly
  - Inappropriate treatment and/or disposal



## Documentation

- ▶ If needed, sampling during a CEI should be conducted in accordance with Technical Case Development Guidance Document, OSWER Dir. 9938.3 (1988)
- ▶ During a CEI, inspectors should note where sampling might be needed in the future



## Documentation (cont.)

- ▶ Document control ensures accountability for all documents
  - Each document should have a unique number assigned and listed, with the number also included in the project document inventory
- ▶ Only waterproof ink should be used
- ▶ Opinions should not be documented – only facts and findings
- ▶ Photographs should be taken
  - Photo should reveal date and time taken
  - Photos should be saved on a recoverable disk



## Facility Record Review

- ▶ Files maintained at the facility will vary according to the facility's regulatory status
  - Generator
  - Transporter
  - Treatment, storage, disposal (TSD)
  
- ▶ Examples of records to be reviewed
  - Hazardous waste manifests
  - Inspection logs
  - Solid waste manifests (bills of lading)
  - Training documents
  - Contingency plans
  - Spill Prevention Control and Countermeasures (SPCC) Plan





## Exit Briefing

- ▶ Review inspection notes and checklists in private prior to the closing meeting
  - Identify any additional questions where information is needed
  - Determine inspection results to discuss with the facility and how to approach this discussion
    - Inspectors must be able to discuss all obvious violations – especially when immediate correction is necessary
  - Anticipate questions posed by the facility
  
- ▶ All inspection findings are preliminary until reviewed by the inspector's supervisor



## Report Preparation

- ▶ Potential impact
- ▶ Organization is key
- ▶ Timely and expeditious preparation
- ▶ Inspections support enforcement
  - Administrative Actions (e.g., Warning Letters, Administrative Orders)
  - Civil Court Actions
  - Criminal Court Actions





## Inspection Report Objectives

- ▶ The report should organize and coordinate all relevant information and evidence gathered during an inspection in a comprehensive and usable manner
  
- ▶ The information in the inspection report must be accurate
  - Observations should be objective and factual
  - Observations should be based on sound inspection practices
  - Observations should be verifiable results of first-hand knowledge or analytical results from sampling (if available)



## Inspection Report Objectives (cont.)

- ▶ The information in the inspection report must be relevant
  - Irrelevant data clutter reports and reduce clarity and usefulness
  
- ▶ The information in the inspection report must be comprehensive
  - Suspected violations should be substantiated by factual, relevant information
  - The more comprehensive the evidence, the easier the case development process becomes
  - The information in the inspection report must be organized into a complete lucid package



## Follow-Up Discussions

- ▶ Procedures
  - Brief your supervisor
    - Inspection results
    - Observed violations
  - Brief others
    - Other personnel, as appropriate
    - Regional case development staff, including attorneys
    - State-equivalent case development officer
    - Enforcement Decision Group



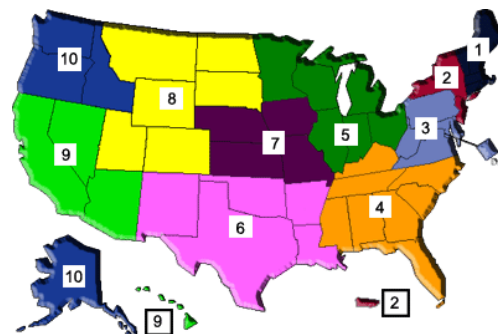
## Follow-Up Discussions (cont.)

- ▶ Briefings
  - Assist in determining the need for possible enforcement action
  - Answer questions about performance of the inspection
  - Clarify inspection results to develop additional evidence in support of enforcement case development
  
- ▶ Did you refer the facility representative to other regional or state personnel?
  - Contact these personnel and brief them about the conditions at the facility and the types of questions the facility may ask



## Follow-Up Discussions (cont.)

- ▶ Is the facility subject to both federal and state jurisdiction?
- ▶ Did you observe potential violations at units not within your jurisdiction?
  - Contact the regional or state agency with enforcement authority over the unit(s) with violations
  - Regions and states may have policies concerning the need to consult with other agencies with whom they share joint authority over hazardous waste management facilities
  - Become familiar with and follow policies applicable to your respective jurisdictions



## Follow-Up Discussions (cont.)

- ▶ If a facility has applied for a permit, or is operating under a permit, and current conditions conflict with the permit application or permit requirements, inform the permit writer of these conflicting conditions



## Permit Writer Briefing

### ▶ Potential Violations

- Check with the permit writer to determine if a modification to the permit has been granted
- Discuss the potential violation with the permit writer prior to determining how to present the conditions in the inspection report; this may save time





## Prepare Inspection Files

- ▶ Organize the files
  - Forward inspection report to supervisor/facility
  - Copy field reports and all supporting information
  
- ▶ What happens next?
  - Regional case development staff, or state equivalent, reviews the file in depth to determine the information's adequacy in order to
    - Support any necessary enforcement actions
    - Substantiate elements of a violation
  - Review results
    - Recommendation to proceed with an enforcement action, or
    - Decision to utilize enforcement discretion with respect to the violations





## Enforcement Action

- ▶ Information gathered under the case development activities is now used to support appropriate enforcement actions

