

US EPA ARCHIVE DOCUMENT

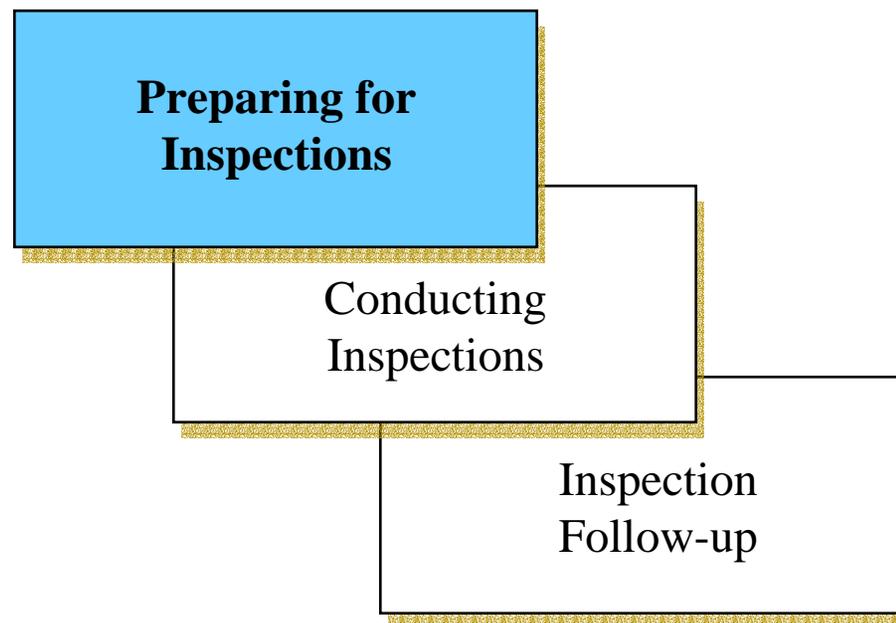
## **SESSION 18**

# **RCRA ENFORCEMENT AND COMPLIANCE PROCESS:**

## **Best Practices for Field Inspections**



# Preparing for an Inspection



## Preparing for an Inspection

- ▶ Define the scope of the inspection
- ▶ Coordinate/schedule the inspection
- ▶ Review the facility file
- ▶ Review applicable regulations
- ▶ Develop inspection plan and checklists
- ▶ Identify the necessary inspection equipment



## Define the Scope of the Inspection

- ▶ Determine inspection objectives and purpose
  - Routine periodic inspection of RCRA compliance
  - Evaluation of facility's activities with respect to an enforcement action
  - Evaluation of compliance with deadlines established in a RCRA Permit
  - Response to information received concerning alleged violations
  - Cross program compliance
  
- ▶ Identify appropriate preparation and inspection activities
  - The facility information is the focus of the review
  - Sampling objectives
  - Notification to facility in advance of the inspection (if announced)



## Coordinating the Inspection

- ▶ Identify other offices or agencies which may be interested in participating or interested in the results of the inspection
  - State or Federal agencies
    - State RCRA program should always be contacted
    - Other state agencies (e.g., Air Pollution, Water Quality Control)
  - Other RCRA personnel (e.g., enforcement, permitting)
  - Other media (e.g., Water Quality Control, Solid Waste, Toxic Substances Control Act [TSCA])



## Coordinating the Inspection (cont.)

- ▶ Types of coordination activities
  - Scheduling joint inspections with other offices or agencies
  - Discussing with other offices or agencies to ensure the inspection yields the necessary information
  - Providing information to other offices regarding the scope of the inspection and areas of particular interest to that office
  - Clarifying with the permit writer, permit conditions or with the state, a facility's permit application
  - Obtaining technical information on a facility from the permit writer
  - Obtaining facility information from other agencies
  - Working to further the goals of a memorandum of understanding that may exist between regions and states



## Reviewing the Facility File

- ▶ Purpose of the file review
- ▶ Sources of file material



## File Review Purpose

- ▶ Gain an understanding of the facility
- ▶ Identify potential violations
- ▶ Understand compliance history
- ▶ Determine applicable regulations
- ▶ Develop an inspection plan



## Sources of File Material

- ▶ Regional and state program offices
  - Responsibility for permitting, inspections, and enforcement may be split among several offices and separate files may be maintained by these offices
  - Key is to ensure that all necessary files are obtained
  
- ▶ Automated Data Processing (ADP) systems such as the RCRA Information System (RCRIS)



## Review Applicable RCRA Regulations

- ▶ Review of the facility file material and coordination efforts should identify
  - Facility's generator status
  - Facility's permit requirements
  - Facility's processes and waste streams
  - Facility's RCRA compliance history
  
- ▶ Based on this information, the inspector should review appropriate RCRA regulations



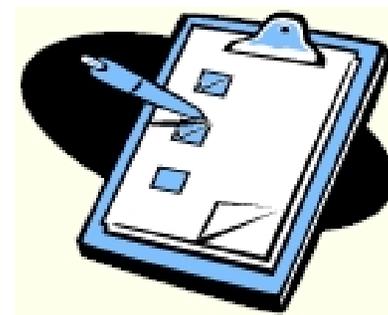
## Developing an Inspection Plan

- ▶ An inspection plan may include
  - Pre-inspection worksheet
  - Equipment needs
  - Health and safety
  - Facility-specific plans and checklists



## Pre-Inspection Worksheet

- ▶ Serves as internal check of all necessary pre-inspection activities
- ▶ Designed to ensure inspectors have
  - Identified, assembled, and reviewed all relevant material before departure
- ▶ Proper preparation by completion of the worksheet ensures that the inspection
  - Is performed efficiently
  - Meets all the objectives



## Pre-Inspection Worksheet (cont.)

- ▶ Worksheet is only a guide
  - Regional and state inspection needs, objectives, and procedures may vary
  - Worksheet should be modified to reflect and incorporate the needs of the inspector
  
- ▶ Pre-inspection worksheet or modified version should be used by all inspectors



## Identifying Inspection Equipment

- ▶ How to determine equipment needs
- ▶ Lists of inspection equipment
  - General equipment
  - Safety equipment
  - Paperwork
  - Sampling equipment



## Identifying Inspection Equipment

- ▶ Based on
  - Kind of inspection (Compliance Evaluation Inspection [CEI], Case Development Inspection [CDI], Comprehensive Groundwater Monitoring Evaluation [CME])
  - Type of facility
  - Understanding of inspection objectives
  - Training and experience
  - Consultation with other inspectors
  - Regional and state policies
  - Environmental and contaminant conditions



## General Equipment

GENERAL EQUIPMENT	
<ul style="list-style-type: none"><li>• Camera, film, and flash equipment</li><li>• Digital camera with memory cards</li><li>• Pocket calculator</li><li>• Tape measure</li><li>• Clipboard</li><li>• Waterproof pens, pencils, and markers</li><li>• Locking briefcase</li><li>• “Confidential Business Information” (CBI) stamp (if needed)</li><li>• Stamp pad</li><li>• Envelopes pre-addresses to Document Control Officer (for CBI)</li><li>• Plain envelopes</li></ul>	<ul style="list-style-type: none"><li>• Disposable towels or rags</li><li>• Flashlight and batteries</li><li>• Pocket knife</li><li>• Pocket tape recorder</li><li>• Level</li><li>• Range finder/optical tape measure</li><li>• Compass</li><li>• Global Positioning System (GPS) unit</li><li>• Stopwatch</li><li>• Wind meter or Admiral Beaufort wind scale</li><li>• Square</li><li>• Ruler (for use as scale in photos)</li><li>• Polyethylene bags</li></ul>



## Safety Equipment

SAFETY EQUIPMENT	
<ul style="list-style-type: none"><li>• Safety glasses or goggles</li><li>• Face shield</li><li>• Ear plugs</li><li>• Coveralls, long-sleeved</li><li>• Hard hat</li><li>• Plastic shoe covers (disposable)</li></ul>	<ul style="list-style-type: none"><li>• Rubber-soled, metal-toed, non-skid shoes</li><li>• Liquid-proof gloves (disposable if possible)</li><li>• Long rubber apron</li><li>• Respirators and cartridges</li><li>• Self-contained breathing apparatus</li></ul>



# Paperwork

## PAPERWORK

- |  |   |
|--|---|
| <ul style="list-style-type: none"><li>• Proper identification</li><li>• Copy of facility's inspection file, permit, and monitoring schedule, including:<ul style="list-style-type: none"><li>– Maps</li><li>– Photographs</li><li>– History of enforcement actions</li></ul></li><li>• Notebook</li><li>• Notice of inspection (if applicable)</li><li>• Chain of custody record</li></ul> | <ul style="list-style-type: none"><li>• Relevant checklists</li><li>• Code of Federal Regulations or applicable state code</li><li>• EPA Regional or state forms for:<ul style="list-style-type: none"><li>– Inspection confidentiality notice</li><li>– Enforcement actions notice</li><li>– Declaration of confidential business information</li><li>– Receipts for documents and samples</li></ul></li><li>• Field data sheets</li></ul> |
|--|---|



# Sampling Equipment

SAMPLING EQUIPMENT	
<ul style="list-style-type: none"> <li>• Bucket auger</li> <li>• Bucket</li> <li>• Containers                             <ul style="list-style-type: none"> <li>– Jars</li> <li>– Plastic (for metals)</li> <li>– Organic sample containers</li> </ul> </li> <li>• Bailers</li> <li>• Pumps</li> <li>• Rope</li> <li>• Glass tubes</li> <li>• Ice</li> <li>• Scoops</li> <li>• Trowels</li> <li>• Bacon Bomb</li> <li>• Tape                             <ul style="list-style-type: none"> <li>– Labelling</li> <li>– Duct</li> <li>– Electrical</li> </ul> </li> </ul>	<ul style="list-style-type: none"> <li>• Conductivity meter</li> <li>• Thermometer</li> <li>• Dissolved oxygen meter</li> <li>• Steel tape measure</li> <li>• Sampling safety equipment                             <ul style="list-style-type: none"> <li>– Tyvek suit</li> <li>– Booties</li> <li>– Gloves</li> <li>– Harnesses</li> <li>– Chemical Vapor Analyzer (OVA)</li> </ul> </li> <li>• Decontamination equipment                             <ul style="list-style-type: none"> <li>– Buckets</li> <li>– Alconex</li> <li>– Brushes</li> <li>– Grate</li> <li>– Deionized water</li> <li>– Solvents for equipment cleaning</li> <li>– Steam cleaning machine</li> <li>– Plastic bags</li> </ul> </li> </ul>



## Health and Safety Considerations

- ▶ Due to the potential for exposure to hazardous chemicals
  - Determine nature of chemical hazards
  - Identify and obtain proper safety equipment
  - Become familiar with the equipment
  - Check the equipment for proper functioning
  - Perform necessary maintenance on the equipment
  
- ▶ Equipment Needs
  - Personal Protective Equipment
    - Level of protection (D, C, or B)
    - Are air supplied respirators provided or required?
    - Facility-specific health and safety training requirements



## Health and Safety Considerations (cont.)

- ▶ Obtain and know applicable safety guidelines and practices
  - EPA directives on safety and health
  - Occupational Safety and Health Administration (OSHA) standards for hazardous waste facilities
  
- ▶ Determine facility-specific safety requirements
  - Contact the facility (indicate that inspection date is undetermined)
  - Review previous inspection notebooks
  - Talk with previous inspectors

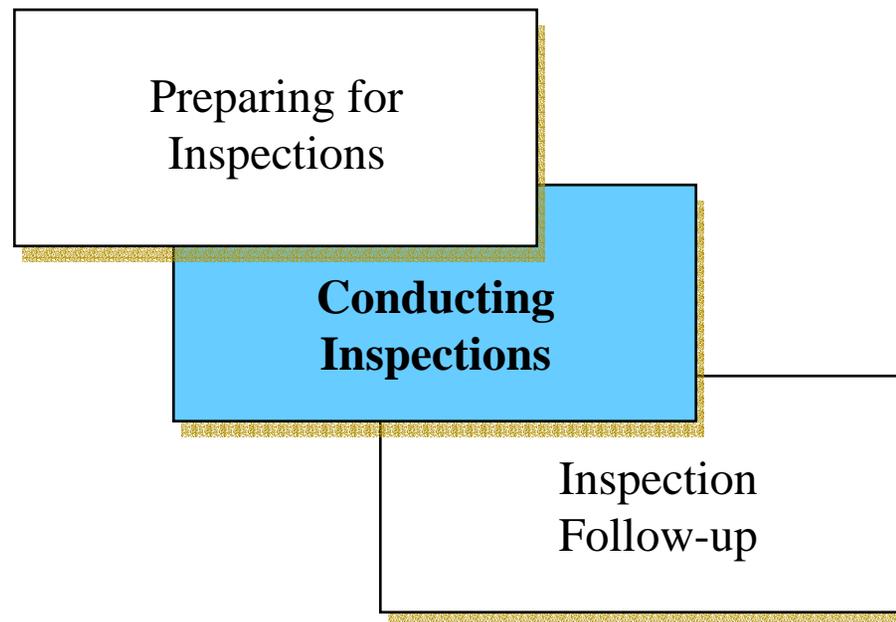


## Facility-Specific Plans and Checklists

- ▶ Plan Development
  - How to proceed during the inspection
  - Highlight key site-specific issues for resolution
- ▶ Review existing checklists for usefulness
- ▶ Develop facility-specific checklist (if needed)
  - Site-specific issues or problems
    - Past violations or regulatory concerns
    - New requirements or regulations
    - Process or waste management changes



## Conducting the Inspection



# Conducting an Inspection

- ▶ Facility entry
- ▶ Denial of access
- ▶ Search warrants
- ▶ Opening meeting
- ▶ Visual inspection
- ▶ Records to be maintained

AO 89 (Rev. 5/93) Search Warrant

**United States District Court**  
SOUTHERN DISTRICT OF FLORIDA

In the Matter of the Search of  
(name, address or brief description of person or property to be searched)  
RESIDENCE OF LAZARO GONZALEZ, LOCATED AT  
2319 N.W. 2ND STREET, MIAMI, MIAMI-DADE  
COUNTY, FLORIDA

**SEARCH WARRANT**  
CASE NUMBER:

TO: SIA Mary A. Rodriguez, U.S. Immig. & Natl. Service and any Authorized Officer of the United States

Affidavit(s) having been made before me by SIA Mary A. Rodriguez who has reason to believe that  on the person of or  on the premises known as (name, describe sector/location) THE RESIDENCE OF LAZARO GONZALEZ, LOCATED AT 2319 N.W. 2ND STREET, MIAMI, MIAMI-DADE COUNTY, FLORIDA

in the SOUTHERN District of FLORIDA there is now concealed a certain person or property, namely (specify the nature of person/property) THE PERSON OF ELIAN GONZALEZ, DATE OF BIRTH DECEMBER 8, 1983, A NATIVE AND CITIZEN OF CUBA.

I am satisfied that the affidavit(s) and any record testimony establish probable cause to believe that the person or property so described is now concealed on the person or premises above-described and establish grounds for the issuance of this warrant.

YOU ARE HEREBY COMMANDED to search on or before 5-1-0 (Date)

(not to exceed 10 days) the person or place named LAZARO GONZALEZ for the person or property specified, serving this warrant and making the search (first/next/last/whenever) (at any time in the day or night as I find reasonable cause has been established) and if the person or property be found there to seize same, leaving a copy of this warrant and receipt for the person or property taken, and prepare a written inventory of the person or property seized and promptly return this warrant to U. S. Magistrate Judge Hugo as required by law.

21 APR 2002 10:00 AM at Miami, Florida  
Date and Time Served U.S. Magistrate Judge Hugo  
Signature of Judicial Officer

[Signature]  
Signature of Officer

This form and instructions are used by the Federal Bureau of Investigation.



## Facility Entry

- ▶ Getting on the site
  - Unannounced inspection
  - Announced inspection
  
- ▶ Procedures for facility entry
  - Conduct at a reasonable time, usually during normal working hours
  - Present identification upon arrival and to the appropriate facility representative (even if not requested)
  - Locate the appropriate facility representative
  - Document arrival
  - Do not sign
    - Liability forms or release of liability (waiver)
    - Visitor register



## Denial of Access

### ▶ Procedural steps

- Present the proper identification and clearly state the purpose of the inspection
- Thoroughly document the event, noting the time, date, and facility personnel encountered
- Obtain reasons for denial
- Suggest that the facility contact their attorney
- Do not discuss potential penalties or do anything that might be construed as threatening
- Provide a copy of §3007 to the facility representative
- Contact staff attorney and have staff attorney speak to the facility representative or facility attorney



## Denial of Access (cont.)

- ▶ Procedural steps (cont.)
  - If access is still denied, complete a “Denial of Access Report” and obtain a signature of the facility representative, if possible
  - Exit the premises and document any observations made pertaining to the denial, particularly any potential violations
  - Report all aspects of denial to the regional or state enforcement office
  - Obtain assistance from the attorney in preparing documentation necessary to obtain a search warrant



## Denial of Access (cont.)

- ▶ Legally indefensible actions resulting in the denial of access
  - Refusing to allow an inspector to bring necessary equipment (e.g., camera)
  - Refusing an inspector access to documents
  - Refusing entry due to a strike or plant shutdown
  - Refusing entry due to the inspectors refusal to sign a waiver or other legal document restricting the owner/operator's liabilities or obligations



## Search Warrants

- ▶ Use of a federal warrant to gain entry
  - The inspector should be accompanied by a U.S. Marshal (or the state police) if there is a high probability that entry will be refused even with a warrant or when there are threats of violence
  - The inspector should never attempt to make any forceful entry to the facility
  - If entry is refused to an inspector holding a warrant, but not accompanied by a U.S. Marshal (or the state police), the inspector should leave the facility and inform the U.S. Marshal or state police and request assistance



## Search Warrants (cont.)

- ▶ Use of a warrant to conduct the inspection
  - A warrant supersedes the provisions in RCRA; therefore, the inspection must be conducted in strict accordance with the warrant. If the warrant restricts the inspection to certain areas of the premises or to certain records, those restrictions must be followed.
  - If sampling is authorized, all standard procedures must be followed carefully, including presentation of receipts for all samples taken. Under a warrant, the law requires that split samples be provided to the facility. The facility can refuse to accept the split samples.



## Search Warrants (cont.)

- ▶ Use of a warrant to conduct the inspection (cont.)
  - If records or property are authorized to be taken, the inspector must provide receipts to the owner/operator and maintain an inventory of all items removed from the premises.
  - In accordance with the warrant, the inspector should take photographs of all areas where violations are suspected. Photographs should also be taken at each sampling location as a normal procedure.



## 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 CBI
- If sampling activities are planned, advise the facility of the availability of duplicate samples
- Gather facility information
  - 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 to
  - Allow a complete evaluation and understanding of the waste flow
  - Determine compliance status of each facility waste management system
- ▶ Inspections should be conducted on foot
  - Large facilities may require vehicles to ensure the entire facility 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 during an inspection
  - Condition of waste management units
  - Labeling of waste management units and proper waste characterization
  - Visual signs of release(s)
  - Location of waste management units
  - Abandoned waste
  - General waste flow procedures



## Inspection Checklists

- ▶ Inspectors should use checklists while conducting the inspection
  - Fill in as much of the checklist as possible during the opening meeting
- ▶ Checklists are not the sole purpose of inspections
  - Understanding of waste flow is important and may not be captured in the checklist
- ▶ Checklists are divided into several sections; only applicable sections should be completed
  - If there are no treatment, storage, or disposal (TSD) units at the facility, some sections would not be applicable



## Sampling

- ▶ Sampling during a CEI is not normal practice; however, if needed, sampling should be conducted in accordance with Technical Case Development Guidance Document, OSWER Dir. 9938.3 (1988).
- ▶ During the CEI, inspectors should note where sampling might be needed in the future
  - Owner/operators handling potentially hazardous waste as nonhazardous
  - Visible or observable evidence of release
  - Wastes managed improperly or inappropriate treatment and disposal



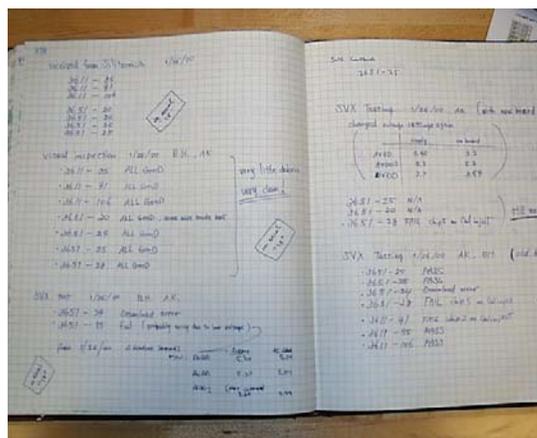
## Documentation

- ▶ All printed and mechanical media produced that inspectors copy or take to provide evidence of suspected violations
  
- ▶ Types of records
  - Field notebooks (i.e., daily diary) – no loose papers, all pages signed and dated
  - Checklists – all applicable completed
  - Photographs – should be logged in field notebooks and include date, time, photo number, direction taken, and other comments
  - Maps – provided by facility or sketches from inspection
  - Drawings – sketches or charts to depict inspection observations



## Documentation (cont.)

- ▶ Document control ensures accountability for all documents
  - Each document should have a unique number assigned and listed, with a number in the project document inventory
- ▶ Only waterproof ink should be used
- ▶ Opinions should not be documented – only facts and findings



## Facility Record Review

- ▶ Files maintained at the facility will vary according to the facility's regulatory status
  - Generator
  - Transporter
  - 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 Countermeasures (SPCC) Plan



## Closing Meeting

- ▶ Closing meeting or conference conducted after records review and visual inspection
- ▶ Inspectors should be prepared to answer questions and request any final information needed
- ▶ Inspectors should also discuss general follow-up procedures
  - How the results of the inspection will be used
  - How the future communications with the Region or State will occur

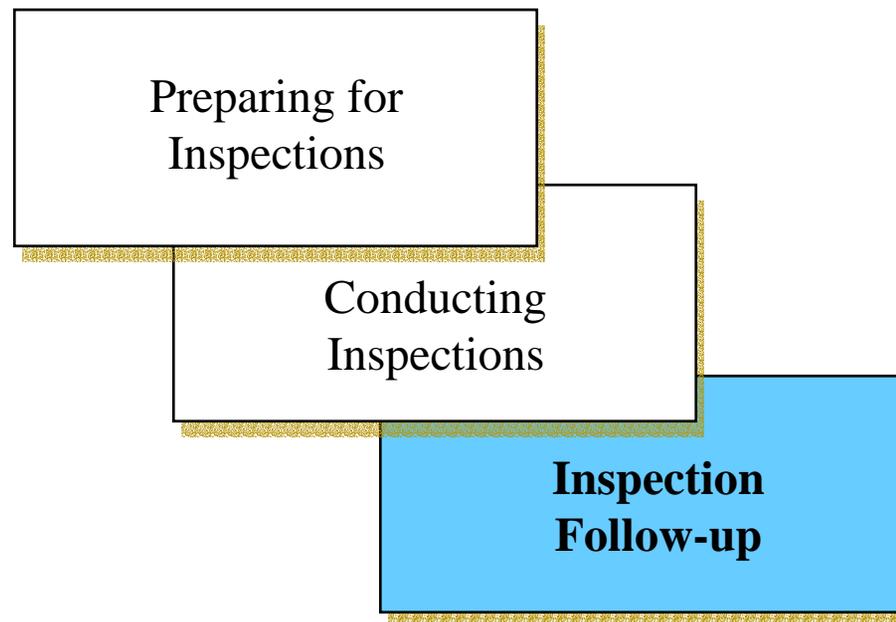


## Approach to Closing Meeting

- ▶ 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

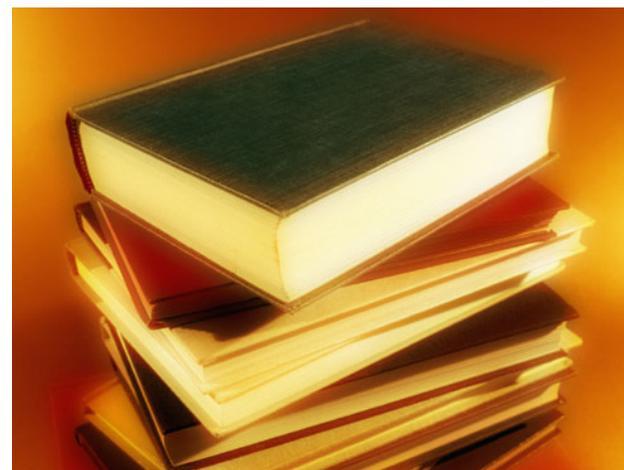


# Inspection Follow-up



## Inspection Follow-up

- ▶ Report preparation
- ▶ Inspection report objectives
- ▶ Report preparation procedures
- ▶ Elements of the report



## 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



## Inspection Report Objectives (cont.)

- ▶ The information in the inspection report must be relevant
  - Irrelevant data clutter report 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 better and easier the case development process becomes
  - The information in the inspection report must be organized into a complete lucid package



## Report Preparation Procedures

- ▶ Four Basic Steps
  - Review information
  - Organize material
  - Reference accompanying material
  - Write narrative report
  
- ▶ Review information
  - Gather information developed during inspection
  - Assemble checklists
  - Assemble field notebooks, photos, maps, photocopies, and drawings



## Report Preparation Procedures (cont.)

- ▶ Review material for relevance and completeness
- ▶ When gaps are discovered, obtain necessary data by
  - Calling facility representative
  - Conducting a follow-up visit
  - Sending an information request
- ▶ Organize material
- ▶ Methods of organization
  - Follow the order illustrated under the “Review Information” bullet on the previous slide
  - Present information in a logical comprehensive manner



## Report Preparation Procedures (cont.)

- ▶ Narrative should be understandable
- ▶ Reference accompanying material
  - Clearly reference all documentary support that accompanies an inspection report
- ▶ Check all documentary support for clarity prior to writing the inspection report



## Report Preparation Procedures (cont.)

- ▶ Write the Narrative Report
  - Present factual record of procedures used and resulting findings
  - Use the field notebook and checklist as a guide for preparing the narrative report
  - Refer to the routine procedures and practices used during the inspection
  - Describe in detail facts relating to potential violations and discrepancies
  
- ▶ Recommended Outline
  - Recommended Narrative Outline for Inspection Report (Exhibit 4-1 1993 RCRA Inspection Manual)



## Report Preparation Procedures (cont.)

- ▶ Two methods for incorporating CBI materials into reports
  - Reference CBI materials (preferred method)
    - By Document Control Number and general description of the information contained in document
  - Include confidential information and treat entire report as a confidential document (use only where CBI is prevalent throughout)
    - Note: the report must be logged with the Document Control Officer to ensure all persons cleared for access are permitted to review it



## Non-Confidential Inspection File

### ▶ Contents

- Field notebooks
- Documents relating to sampling, as appropriate (e.g., custody records, analytical results)
- Photographs
- Drawings and maps



## CBI File

- ▶ Contents
  - All CBI material collected during an inspection
  - Results of analyses for samples considered to be CBI
  
- ▶ Procedures
  - Log the CBI with the Document Control Officer, or the state equivalent
  - Can only be reviewed in accordance with RCRA CBI control and security procedures.
  
- ▶ Refer to the RCRA Confidential Business Information Security Manual available from the Office of Solid Waste, Office of Program Management and Support for more information on CBI procedures

**CONFIDENTIAL**



## Report Elements

- ▶ Each report will usually have three elements
  - Narrative information
  - Checklists
  - Documentary support



## Narrative Information

- ▶ Explain the overall nature of a facility's activities
- ▶ Discuss manufacturing and waste management operations at the facility
- ▶ Describe the generation and handling of wastes
- ▶ Describe apparent violations and discuss the documentary evidence supporting the violation
- ▶ Should explain and support findings documented in any inspection checklists
- ▶ May also include recommendations for follow-up actions



## Narrative Information (cont.)

- ▶ Tips for effective narrative discussion
  - Use a simple writing style; avoid stilted language
  - Use active rather than passive voice (e.g., “I observed...” rather than “It was observed...”)
  - Keep paragraphs brief and direct
  - Avoid repetition
  - Proofread the narrative carefully upon completion



## Checklists

- ▶ Promote collection of standard reviewable information
- ▶ Function as a guide to ensure inspectors collect all basic data
- ▶ Only one component of a complete report, not sufficient in and of themselves
- ▶ Vary according to individual state and regional procedural requirements
- ▶ Further Clarification
  - Use information recorded in field notebooks and other information (e.g., from inspection file) to expand upon checklist results in the narrative section of the report



## Documentary Support

- ▶ Include all documentation intended to provide evidence of suspected violations
  
- ▶ Documentation may include
  - Statements
  - Photographs
  - Photocopies
  - Drawings and maps
  - Printed matter
  - Mechanical recordings
  - Copies of permits and records



## Follow-Up Discussions

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

