



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

JUN 29 2018

OFFICE OF
ENFORCEMENT AND
COMPLIANCE ASSURANCE

MEMORANDUM

SUBJECT: Interim Policy on Inspection Report Timeliness and Standardization

FROM: Susan Parker Bodine 
Assistant Administrator

TO: OECA Office Directors
Regional Counsels
Regional Enforcement Division Directors
Regional Enforcement Coordinators
Superfund Division Directors, HQ/Regions
Office of Land and Emergency Management Division Directors, HQ/Regions
Office of Water Division Directors, HQ/Regions
Office of Air and Radiation Division Directors, HQ/Regions
Office of Site Remediation Enforcement Division Directors
Federal Facility Enforcement Office Staff Directors

The attached final Interim Policy on Inspection Report Timeliness and Standardization (Interim Policy) establishes inspection practices and pilots for the appropriate and timely notification of EPA inspection results to facilities and the public, including any potential deficiencies or areas of concern observed during an on-site inspection, and the timely completion and release of inspection reports. The improvements to EPA's inspection practices set forth in this Interim Policy will help us meet the Agency Strategic Plan goals of reducing the time from violation identification to correction, as well as improving compliance rates.

During development of the Interim Policy, OECA solicited comments from the regions, programs, and unions. We have made two major changes as a result of these comments. First, the start date for implementing Phase I has moved from April 1, 2018 to July 1, 2018. Second, establishing a specific timeframe and procedures for releasing inspection reports to the public has been removed from the document and will be established once data from the Interim Policy is evaluated and the tool for distributing inspection reports to the public is available. These pilots in designated programs will run for six (6) months.

The Interim Policy establishes new national expectations, pilots, and goals. First, inspectors should request opening and closing conferences, whenever possible, and should provide real-time information to facilities about observed deficiencies. Inspectors should also discuss and document actions by a

facility to correct any potential deficiencies or areas of concern. Next, inspection reports should meet certain minimum requirements for content and the review process before becoming final. Last, all inspection reports should be completed within 60 calendar days of an inspection and be provided to the facility upon finalization.

Phase I of the pilots will be conducted within designated programs between July 1, 2018 and December 31, 2018, with a goal of having at least 60% of inspection reports meet the 60-day timeframe. In 2019, Phase II will expand the pilots nationally to all programs and there will be a goal of having 75% of all inspection reports meeting the 60-day timeframe. All data from the pilots will be reported to the Integrated Compliance Data Information System (ICIS).

This Interim Policy will remain in effect until a final policy is issued. In developing the final policy, we will evaluate the results of the pilots to determine whether there is a need for adjustments. OECA will also solicit regional and program office views on their experiences with the pilots and ideas for improvements to be made in the final policy. If you have any questions regarding this Interim Policy, please contact Chad Carbone at (202) 564-2523.

Attachment

cc: Lawrence Starfield, Principal Deputy Assistant Administrator
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Interim Policy on Inspection Report Timeliness and Standardization

June 29, 2018

I. Introduction

This Interim Policy establishes inspection practices and pilots for the appropriate and timely notification of EPA inspection results to facilities and the public, including any observed potential deficiencies or areas of concern during an on-site inspection, and the timely completion and release of inspection reports. It builds on the successful implementation of the Quality Assurance Field Activity Procedures (QAFAPs) and carries out the direction under EPA's FY2018-FY2022 Strategic Plan to move to a Lean management system, with standard work processes, that can be streamlined and measured.

This Interim Policy has our four main goals:

1. Supporting implementation of two of EPA's FY2018-FY2022 strategic measures to:
 - Reduce the time between identification of an environmental law violation and its correction.
 - Increase environmental compliance rates.
2. Supporting EPA's internal measure: "Percentage of EPA inspection reports that are timely completed and communicated to the regulated entity in accordance with the applicable policy."
3. Standardizing inspection work processes to make EPA's compliance monitoring program more effective and efficient.
4. Learning from the pilots to develop baseline data toward measurable goals to determine where opportunities for improvements exist related to the inspection process.

II. Applicability and Definitions

This Interim Policy applies to on-site inspections or other field location where EPA is the lead for an inspection or a co-lead with an authorized state or tribe for an inspection to determine compliance. The following are the key definitions governing the scope of this Interim Policy:

- a) "Inspection" refers to any on-site civil inspection and/or field investigation and does not include activities related to consent decree monitoring.
- b) "Field location" may include, for example, locations that are not part of a facility where upstream or downstream water or air sampling is conducted, a retail establishment that markets regulated products, or a warehouse that holds regulated products for import.
- c) "Release" of an inspection report refers to providing an inspection report to any individual or party outside the EPA (e.g., to Congress, a facility or company, nongovernmental organizations, co-regulators, whether state, federally-recognized Indian tribe, territory, or local government, or any other member of the public).
- d) "EPA" refers to EPA employee, Senior Environmental Employee, and contractor inspectors who conduct inspections on behalf of EPA with a federal credential. It does not apply to state, tribal, or inter-tribal consortia inspectors who conduct inspections on behalf of EPA with a federal credential.

This Interim Policy will be implemented in two phases.

Phase I -

Timeframe: July 1, 2018 – December 31, 2018

Inspection Report timeliness goal: All inspection reports should be finalized within 60 calendar days from the completion of an inspection.

Report release: Provide the inspection report to the facility upon finalization.

Program(s): All regions will do construction stormwater (potentially partnering with an authorized state); the SPCC program (learning from the current practices in that program); and in the following region specific program areas:

Region 1 – all inspections for: CAA (excluding 112r); CWA; EPCRA 313; and TSCA PCBs.

Region 2 – all inspections for all programs.

Region 3 – all inspections for: CAA; NPDES; and Multi Media.

Region 4 – all inspections for all programs.

Region 5 – all inspections for all programs.

Region 6 – all inspections for all programs.

Region 7 – all inspections for all programs (excluding FRP; FIFRA; TSCA PCBs; and UIC).

Region 8 – all inspections for all programs.

Region 9 – all inspections for all programs.

Region 10 – all inspections for: construction stormwater and SPCC.

Federal Facilities – all federal facility inspections for Regions 2, 3, 5, 6 and 8.

OECA – disseminating information from SPCC program and coordinating stormwater pilot.

Phase II -

Timeframe: January 1, 2019, until Interim Policy modified or replaced by final policy.

Inspection Report timeliness goal: All inspection reports should be finalized within 60 calendar days from the completion of an on-site or field location inspection for all programs.

Report release: Provide the report to the facility upon finalization.

Regions and OECA offices provide the inspection report to the public as early as possible. Beginning in 2019 a nationally consistent process and repository will be developed in coordination with the regions.

Program(s): All regions all programs.

III. Interim Policy Elements

The following content updates and supplements prior existing inspection program content.

A. Opening Conference

The lead inspector should request an opening conference with available senior officials as designated by the facility, whenever possible. The opening conference should commence as early as possible upon arrival at the facility. The inspector should document in the field notes the time of the conference and who was present. The lead inspector should discuss the overall objectives of the inspection and establish themselves as a spokesperson for the EPA during the inspection. Areas that should be covered during the opening conference include, but are not limited to:

1. present credentials;
2. request access to the facility to perform the inspection;
3. statutory and regulatory purpose of the inspection;
4. if required, have facility sign notice of inspection;
5. areas of the facility to be inspected;
6. records needed for review, if known;
7. facilities' right to make a claim of confidential business information (CBI);¹
8. approximate duration of inspection;
9. health and safety, personal protective equipment (PPE), including ensuring ventilation is turned on in any areas to be inspected that contain hazardous chemicals;
10. equipment that will be used during the inspection (camera, IR camera, etc.);
11. potential for opportunity for the facility to "fix" potential deficiencies or areas of concern either during or shortly after the inspection (but no assurances should be provided by the inspector that such a "fix" will ensure that the Agency will not bring an enforcement action);
12. right for employees and their representatives to participate in CAA 112(r) inspections, where applicable;
13. a need for, and the purpose of a closing conference; and
14. what should be expected from the EPA after the inspection including the timeframe for the inspection report completion (i.e. an inspection report, information request or similar documentation). This may be more appropriately covered in the closing conference depending on the scale of the inspection.

If additional inspection members are present, the lead inspector or the members should discuss the respective roles during the inspection. This may include inspection members present for sampling purposes, training purposes or state, tribal, or local government inspection personnel.

¹ Inspectors should, consistent with EPA guidance, provide facilities with an Inspection Confidentiality Notice, describing the procedures and timeframes associated with the CBI process under 40 CFR Part 2. A facility may claim CBI either at the time of the inspection or within ten (10) calendar days following the inspection. If a CBI claim is made and EPA is going to make a CBI determination, EPA should provide the facility with 15 days to substantiate any claim. Once a determination is made, the relevant information will be releasable under Section E of this document, or should be redacted prior to public release. OECA will work with OGC and the regions to develop a model Inspection Confidentiality Notice that can be used for any inspection. OECA and regions may also consider developing a tool or method for sharing determinations broadly, in order to discourage false CBI claims from being made in the future.

There may be circumstances where holding an opening conference is not practical. For example, if the inspection team is concerned that the facility may attempt to hide evidence or otherwise impede an inspection while an opening conference takes place, then an opening conference should not be held. If staff is uncooperative or access becomes an issue, inspectors should follow procedures in EPA's January 21, 2015, Final Policy Affirming the EPA Authority to Access Facilities and Conduct Inspections without Providing Personally Identifiable Information. In addition, there may be instances where inspections are conducted entirely outside of the facility's property line (such as surveillance or monitoring). In this case, holding an opening conference is not appropriate.

B. Closing Conference

The lead inspector should request a closing conference with available senior officials as designated by the facility, whenever possible. This may not be possible, for example, where an inspection is conducted at a geographically isolated municipal outfall, and no facility or staff are located nearby. When a closing conference is provided, the inspector should document in the field notes the time of the conference and who was present. The lead inspector should:

1. briefly restate the purpose of inspection;
2. clarify any questions the inspector may have regarding the observed process
3. remind facility representative of their right to make a CBI claim;
4. discuss the process for the facility to obtain copies of the photographs taken during the inspection;
5. discuss potential deficiencies, areas of concern, and observations made during the inspection;
6. remind the facility that compliance is the facility's responsibility, that any identified potential deficiencies or areas of concern are not a final determination of compliance;²
7. inform the facility that it is EPA's intent, after further review at the office, to provide subsequent written correspondence describing any potential deficiencies or areas of concern identified during the inspection review process and that EPA reserves the right to bring an enforcement action;
8. discuss the opportunity for the facility to fix and document any actions that it took to correct potential deficiencies or areas of concern (but again, no assurances should be provided by the inspector that such a "fix" will ensure that the Agency will not bring an enforcement action);
9. suggest the facility either amend practices during the course of the inspection or if not possible, suggest the facility send the inspector a certified letter from the appropriate

² For field citations (FCs), such as those issued by the Underground Storage Tank Program (whether in the field or from the office), the inspector makes a finding of violation in the field before issuing the FC pursuant to Delegation 8-25. Administrative Enforcement (Subtitle I) at ¶¶ 1.a and 4.a. These may be an exception to the general rule that final compliance determinations are made after an inspection (rather than in the field), typically by a manager. For delivery prohibitions, as required by Delegation 8-25, an EPA manager, rather than an inspector, must make the decision on whether or not to prohibit deliveries. See the June 20, 2012 Pamela J. Mazakas memo, EPA Policy on Underground Storage Tanks Delivery Prohibition at: <https://www.epa.gov/sites/production/files/documents/ustdeliveryproguidance.pdf>.

- corporate official describing any efforts to correct potential deficiencies or areas of concern, with documentation and/or a picture where applicable;
10. document in the field notes, inspection report, or in the record, as appropriate, any actions that the facility took to correct potential deficiencies or areas of concern, that occurred either on-site or after the inspection;
 11. itemize any outstanding data or materials requested during the inspection and establish a schedule for delivery;
 12. describe follow-up correspondence related to the inspection that the facility should expect, and establish a schedule for such;
 13. describe as needed the process of converting field and record review observations into areas of compliance or noncompliance;³
 14. if appropriate, provide Small Business Resources Information Sheet (SBREFA) fact sheet;⁴ and
 15. if appropriate, provide a receipt for samples taken.

C. Inspection Reports

An inspection report is a document written by the inspector that includes accurate and objective observations and environmental conditions during a field inspection, along with other associated information from an inspection, that may be used to determine a facility's compliance with environmental regulations.⁵ An inspection report does not need to include information requested by the inspector after leaving a facility through a formal or informal information request as these are considered part of the process for case development.

Inspection reports should contain common elements and data including being:

1. Completed in accordance with national program guidance and applicable EPA QAFAP Standard Operating Procedures (SOPs) regarding what must be included in an inspection report (i.e., name, date and location of inspection; name of the inspector, narrative observations of fact, documented evidence, etc.);
2. Free of violation determinations (statements of compliance or noncompliance);⁶
3. Free of CBI and Personally Identifiable Information (PII);⁷ and

³ The process typically occurs by an inspector drafting an inspection report to include field and record review observations, the inspection report being signed by the program supervisor, and the inspection report being reviewed by appropriate management for any potential follow-up as necessary. This Interim Policy is intended to have no effect on enforcement discretion.

⁴ See June 20, 2017 Update to the U.S. EPA Small Business Resource Information Sheet and Reminder to Disseminate the Information Sheet to Small Businesses at the Time of an Enforcement or Other Compliance Assurance Activity.

⁵ An inspection report does not include Notices of Oil Inspections and attachments, NPDES Compliance Inspection Report Form 3560-3, Notice of Deficiencies, Warning Letters, and Notices of Violations.

⁶ Inspectors should still reference issuance of field citations in inspection reports, and any observations or instructions provided to a facility regarding delivery prohibitions, or imminent and substantial endangerment situations, without stating in the inspection report that the facility was "out of compliance." See also the June 20, 2012 Pamela J. Mazakas memo, EPA Policy on Underground Storage Tanks Delivery Prohibition.

⁷ PII is information that can be used to distinguish or trace an individual's identity, such as a social security number, driver's license number, credit card number, fingerprints, or a birthday or birthplace. PII for the purposes of this

4. Signed and dated by the inspector, and approved (signed and dated) by the inspector's supervising manager or designee.⁸

An inspection report should not be considered final⁹ unless it meets all of the elements above. Inspection reports should also follow common templates that, in coordination with the Regions and programs, may be developed for statute-specific programs after this Interim Policy is issued. These templates when complete may be distributed by the Office of Compliance and should be incorporated into program and regional QAFAPs where applicable. Templates may assist with ensuring that at least minimum standards and information is included. The quality of the inspection reports must be maintained and inspector supervisors will be responsible for ensuring that quality of inspection reports does not diminish.

D. Timeliness Expectations for Completing Inspection Reports

EPA expects that inspection reports will be completed as soon as possible after an inspection is conducted. Prompt completion helps to ensure the accuracy of the inspector's recollection of observations, discussions with facility officials and staff, and memorialization of all applicable details in writing.

In the first phase on this Interim Policy, starting on July 1, 2018, all inspection reports in the pilot program areas referenced in Section II should be finalized within 60 calendar days from the completion of an inspection and provided to the facility upon finalization.

In the second phase, starting January 1, 2019, all inspection reports in all programs should be finalized within 60 calendar days from the completion of an on-site visit and provided to the facility upon finalization.

For all inspections in the pilot programs in Phase 1, Regions should enter into ICIS three key dates: the date of the last day of inspection, the date of the inspection report finalization, and the date that the inspection report is provided to the facility. Commencing at the start of Phase 2 on January 1, 2019, regions should enter this key date information into ICIS for all inspections programs.¹⁰

Regions and all OECA offices will enter inspection information into ICIS within 30 calendar days from the last day of the inspection. Inspection report completion dates and release dates will be reported to ICIS within 10 business days of report finalization. To enter this data into ICIS, users go to the "sub Activities" page for the inspection, using the sub activity type "Inspection

document does not include information normally listed in an inspection report, such as an inspector's name, title, employment address and telephone number. It also does not include an inspected facility's address, owner/operator, public telephone number, or other publicly accessible information.

⁸ "Designee" includes a person acting in place of usual the supervising manager. For example, a person serving as an acting branch chief, while a vacancy is waiting to be filled, would be considered a designee.

⁹ "Final" for internal measurement purposes equates to "complete."

¹⁰ Currently, no mechanism exists for automatic transfer of data from non-ICIS inspection databases (e.g., RCRAInfo and the National Oil Database) to ICIS. Until a solution is developed, data entry into ICIS will be required for certain data elements (e.g., facility identification, date of inspection, date of inspection report completion, date of inspection report release to facility) in order to measure results.

Report Completed” and “Inspection Report Sent to Facility.” ICIS queries will take into account the 10 business day period.

The EPA’s goal during this pilot for meeting this new timeliness requirement for Phase I is 60% and 75% for Phase II. The EPA will measure both: (1) the total percentage of inspection reports that are provided to the facility before and after 70 calendar days; and (2) the total average time for providing to the facility measured against 70 calendar days. For the inspection programs not included in Phase I, those inspections should begin to timely finalize inspection reports and track their own performance beginning in 2018, even though that data will not be used to measure progress towards the goal until Phase II, Individual regions and programs should also track their progress towards these goals.

E. Release of Inspection Reports

a. Release of Inspection Reports to Facilities

This policy establishes a nationally consistent expectation, beginning July 1, 2018, that all inspection reports for all programs will be released to the facility upon finalization unless an exception referenced in this policy applies.¹¹

b. Release of Inspection Reports to the Public

There is also an expectation that starting January 1, 2019, inspection reports will be released as early as possible to the public and the co-regulating agency¹² unless an exception applies. During 2018, OECA will consider which exceptions should be established and include these in the 2019 final policy.

In order for an inspection report to be considered “timely completed *and* communicated” as described in Section I.3., inspection reports need to be both finalized as described in Section III D *and* released no later than ten calendar days after the date of finalization.

Beginning in 2019, the Data, Innovation and Systems Council (DISC) will be developing a nationally consistent plan to enable the uniform and consistent release of all inspection reports from all regions and programs to support easy public access.

¹¹ This policy applies to all inspection reports issued under all programs, including the UST program. For UST FCs or any Expedited Settlement Agreement (ESA) where the offer of settlement is issued in lieu of preparing an inspection report, the UST FCs and ESAs are already made available to the inspected facility. In preparation for 2019, data will be collected by the national UST program to determine what constitutes a UST inspection report, whether there should be a common national inspection report template developed and used for UST inspections, whether it is appropriate and desirable to use inspection reports for all UST inspections, and whether FCs and ESAs if used in lieu of an inspection report should be released to the public under this policy in 2019.

¹² Although the public also includes co-regulators as referenced in Section II 3., when inspections are conducted jointly with a co-regulator, in the spirit of cooperative federalism it may be appropriate to share a draft inspection report with that co-regulator for review and consultation when it will not impact EPA’s ability to meet the requirements of this policy.

F. Post-Inspection Report Process / Determination of Compliance and Enforcement

EPA expects that there will be prompt movement from finalizing of an inspection report to making a determination of compliance and a decision about whether to pursue enforcement. Determinations should be conducted in accordance with existing guidance.¹³

G. Evaluation of This Interim Policy and Limitations

This Interim Policy is effective on July 1, 2018 and will remain in effect until modified or superseded by a final policy. Beginning in January 2019, the requirements and goals expressed above will be evaluated to determine whether there is a need for any further adjustments. OECA will solicit Regional and Program office views on how well the Interim Policy is working and areas for improvement. In examining the effectiveness of the Interim Policy, we intend to look at the effect it has on inspection and compliance rates, so that evidence-based decisions can be made regarding the balance between timeliness standards and maintaining an effective field presence. This Interim Policy may be revised at any time to make adjustments to conform to changes in resources, law, regulations, or other conditions.

This Interim Policy supersedes existing EPA policies regarding inspection procedures and reports, timeframes, and the sharing of inspection reports where they conflict and is intended solely for internal management purposes.¹⁴ It does not create any rights, substantive or procedural, enforceable at law. EPA may periodically revise this Interim Policy to make improvements and/or to reflect changes in EPA policy. EPA reserves the right to act at variance with this policy.

If you have any questions about this guidance, please contact Chad Carbone at carbone.chad@epa.gov or (202) 564-2523.

¹³ See December 3, 1990 James Strock memo, *Regional Enforcement Management: Enhanced Regional Case Screening*, discussing consultation with legal counsel and program managers.

¹⁴ To the extent this policy is consistent with existing national policy and QAFAP SOPs, existing policy and procedures should be followed. For example, EPA's NPDES Compliance Inspection Manual states that: "All inspection reports including those for potential enforcement cases will be completed within 30 days of inspection date." Completing NPDES inspection reports within 30 days is consistent with finalizing inspection reports within 60 days from the completion of an onsite visit, as described in Section D. This obligation is not intended to relax or otherwise supersede any timeliness guidelines that may be more stringent per statutory or regulatory requirements. To the extent this policy is inconsistent with existing policies and QAFAP SOPs regarding inspection procedures and reports, timeframes, and the sharing of inspection reports, this Interim Policy supersedes and QAFAP SOPs should be revised as soon as practicable. For example, if an SOP does not require an inspector to present credentials, state the purpose of the inspection, and other procedures identified in this Interim Policy, those items should be added to QAFAP SOPs as soon as practicable.