

EPA RCRA COMPLIANCE INSPECTION PROCESS

WHAT TO EXPECT WHEN YOU'RE INSPECTED

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WHAT'S THE PROCESS?

- Inspection planning
- Inspection
- Creating the report
- Report review
- Information gathering
- Compliance determination
- Report closure or enforcement

INSPECTION PLANNING

- Required inspections
 - Large Quantity Generators
 - Treatment, Storage, and Disposal Facilities
 - Federal Facilities
- Strategic planning (examples)

Rail car cleaning

Healthcare

Chrome plating

Academic facilities

Dry cleaners

Warehousing

Printing

Flooded areas

Non-reporters

- National Compliance Initiatives
 - Air emissions from RCRA facilities (Subparts AA, BB, and CC)

COMPLIANCE INSPECTION (DAY 0)

- Section 3007 of RCRA provides authority
- Unannounced, but during working hours
- Could be an EPA contractor
- Inspector seeks cooperative atmosphere
- Federal Code requires honest answers
- Request to review and copy documents
- Tour the facility
 - Trace the process
 - View the points of generation
 - View the accumulation areas
- Closing conference
 - Receipt for documents
 - Confidential information notice and list
 - Notice of Preliminary Findings

WHAT DOCUMENTS WILL BE REQUESTED

- Site Plan
- P&ID / Process Flow Diagrams
- Contingency Plan
- Inspection Records
- Training Records
- Notifications to Emergency Authorities
- Manifests and Shipping Records
- Hazardous Waste Determinations
- SDS
- Other relevant documents

WHAT HAPPENS WHEN THE INSPECTOR LEAVES?

- Notice of Preliminary Findings
 - Requests facility respond to findings in 14 days
- Follow-up questions by inspector
 - Timely additional information will be used in the report
- Inspector drafts report for review
- Report signed by inspector and supervisor (day 30)
- Report sent to the facility with form letter (day 70)

INSPECTION ALTERNATIVES – COVID-19

- Information Request Letter (§3007 RCRA)
 - Asks for documents typical of an inspection
 - No tour through the facility – misses container management
 - Compares reported generator status with manifest records
- Virtual Inspection
 - Opening conference and documents requests by telephone
 - Facility tour using Zoom, FaceTime, Skype, Teams, etc.
- Hybrid Inspection

WHAT HAPPENS TO THE REPORT?

- Report assigned to a compliance officer (typically not the inspector)
- CO reads the report to determine the facility's compliance status
- CO reviews additional information supplied by the facility
- CO might request additional information (formal §3007 order or informally)
- CO makes a compliance determination

COMPLIANCE DETERMINATION (DAY 120)

- Compliance officer has choices
 - Violations are minor and resolved – case closed
 - Case closure letter sent to facility
 - Violations are minor and unresolved
 - Letter of Warning sent to facility – assumes violations will be corrected
 - Violations remain or questions are unanswered
 - Information request letter sent to facility with a Letter of Warning – investigation continues
 - Violations are significant or unresolved – enforcement action

ENFORCEMENT RESPONSES

- Case closure letter (Day 120)
 - No violations
 - Minor resolved violations
- Letter of Warning
 - Minor unresolved violations – closes case (Day 120)
 - Significant unresolved violations (accompanies an information request and ongoing investigation)

ENFORCEMENT RESPONSES (CONT)

- Pre-filing Letter (day 295)
 - Notice that EPA plans to file an administrative complaint
 - Invites discussion of the violations and associated penalty
 - Typically 60-day deadline to negotiate terms
 - Results in a Consent Agreement/Final Order (CAFO)
- Expedited Settlement Agreement (ESA) (day 420)
 - Non-negotiable terms of settlement – take it or leave it
 - Lesser violations
 - Lower penalties

ENFORCEMENT RESPONSES (CONT)

- Administrative Complaint (day 420)
 - Significant violations
 - Expected uncooperative respondent
- Judicial Referral (day 420)
 - Department of Justice leads the enforcement action
 - In RCRA, this is typically reserved for big cases or multi-media cases (air, water, etc.)

AFTER ENFORCEMENT

- Penalty payment
- Injunctive relief – compliance actions or remediation

I'LL ANSWER YOUR QUESTIONS

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