



U.S. ENVIRONMENTAL PROTECTION AGENCY

OFFICE OF INSPECTOR GENERAL

Enforcement and Compliance

**EPA Has Not Met Statutory
Requirements for Hazardous
Waste Treatment, Storage
and Disposal Facility
Inspections, but Inspection
Rates Are High**

Report No. 16-P-0104

March 11, 2016



Report Contributors:

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Abbreviations

CEI	Compliance Evaluation Inspection
ECHO	Enforcement and Compliance History Online
EPA	U.S. Environmental Protection Agency
OECA	Office of Enforcement and Compliance Assurance
OIG	Office of Inspector General
RCRA	Resource Conservation and Recovery Act
RCRAInfo	Resource Conservation and Recovery Act Information
TSDF	Treatment, Storage and Disposal Facility

Cover photo: Picture of hazardous material barrels. (EPA photo)

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

THE INSPECTOR GENERAL

March 11, 2016

MEMORANDUM

SUBJECT: EPA Has Not Met Statutory Requirements for Hazardous Waste Treatment, Storage and Disposal Facility Inspections, but Inspection Rates Are High
Report No. 16-P-0104

FROM: Arthur A. Elkins Jr.

A handwritten signature in black ink, appearing to read "Arthur A. Elkins Jr.", is written over the printed name.

TO: Cynthia Giles, Assistant Administrator
Office of Enforcement and Compliance Assurance

This is our report on the subject evaluation conducted by the Office of Inspector General (OIG) of the U.S. Environmental Protection Agency (EPA). This report contains findings that describe the problems the OIG has identified and corrective actions the OIG recommends. This report represents the opinion of the OIG and does not necessarily represent the final EPA position. Final determinations on matters in this report will be made by EPA managers in accordance with established audit resolution procedures.

The Office of Compliance within the EPA's Office of Enforcement and Compliance Assurance is responsible for the issues discussed in this report.

Action Required

You are not required to provide a written response to this final report because you provided agreed-to corrective actions and a planned completion date for the report recommendation. Should you choose to provide a final response, we will post your response on the OIG's public website, along with our memorandum commenting on your response. Your response should be provided as an Adobe PDF file that complies with the accessibility requirements of Section 508 of the Rehabilitation Act of 1973, as amended. The final response should not contain data that you do not want to be released to the public; if your response contains such data, you should identify the data for redaction or removal along with corresponding justification.

We will post this report to our website at www.epa.gov/oig.

Table of Contents

Purpose	1
Background	1
<i>Resource Conservation and Recovery Act</i>	1
<i>TSDF Compliance Monitoring</i>	3
<i>TSDF Inspection Requirements</i>	4
Responsible Office	5
Scope and Methodology	5
Prior OIG Report	6
Results of Review	7
<i>EPA Cites Budget Constraints for Not Meeting the Requirement</i>	8
<i>EPA Could Not Estimate Resources Needed to Meet the Requirement</i>	9
<i>Potential Risks From Uninspected TSDFs</i>	9
Conclusion	10
Agency Actions Prompted by OIG Work	10
Recommendation	11
Agency Response and OIG Evaluation	11
Status of Recommendations and Potential Monetary Benefits	12

Appendices

A Agency Response to Draft Report	13
B Agency's Supplemental Response to Draft Report	16
C Distribution	17

Purpose

The U.S. Environmental Protection Agency (EPA), Office of Inspector General (OIG), conducted this review to determine the EPA's progress in meeting Resource Conservation and Recovery Act (RCRA) minimum inspection requirements at treatment, storage and disposal facilities (TSDFs).

Background

Resource Conservation and Recovery Act

The RCRA is the primary law governing the disposal of solid and hazardous waste. The act was enacted to ensure that solid and hazardous waste are managed in a manner that protects human health and the environment. Under RCRA Subtitle C, the hazardous waste program establishes a system for controlling hazardous waste from the time it is generated until its ultimate disposal (i.e., from "cradle to grave").



Above: The RCRA's cradle-to-grave hazardous waste management system. (EPA photos)

According to the EPA, about 60,000 RCRA facilities exist in the United States, generating and managing 30 to 40 million tons of hazardous waste annually.

Eighty percent of all U.S. citizens live within a 3-mile radius of a RCRA-regulated hazardous waste generator or treatment storage and disposal facility, and 50 percent of citizens live within a 1-mile radius.



A home located close to a hazardous waste facility. (EPA photo)

Through the RCRA, the U.S. Congress directed the EPA to regulate all aspects of hazardous waste, including minimum TSDf inspection requirements provided in RCRA Section 3007:

- “Federal Facility Inspections – The Administrator shall undertake on an annual basis a thorough inspection of each facility for the treatment, storage or disposal of hazardous waste which is owned or operated by a department, agency, or instrumentality of the United States to enforce its compliance with this subtitle and the regulations promulgated thereunder.¹
- “State Operated Facilities – The Administrator shall annually undertake a thorough inspection of every facility for the treatment, storage, or disposal of hazardous waste which is operated by a State or local government for which a permit is required under section 3005.²
- “Mandatory Inspections – The Administrator (or the State in the case of a State having an authorized hazardous waste program under this subtitle) shall commence a program to thoroughly inspect every facility for the treatment, storage, or disposal of hazardous waste for which a permit is required under section 3005 no less often than every two years as to its compliance with this subtitle (and the regulations promulgated under this subtitle).”³

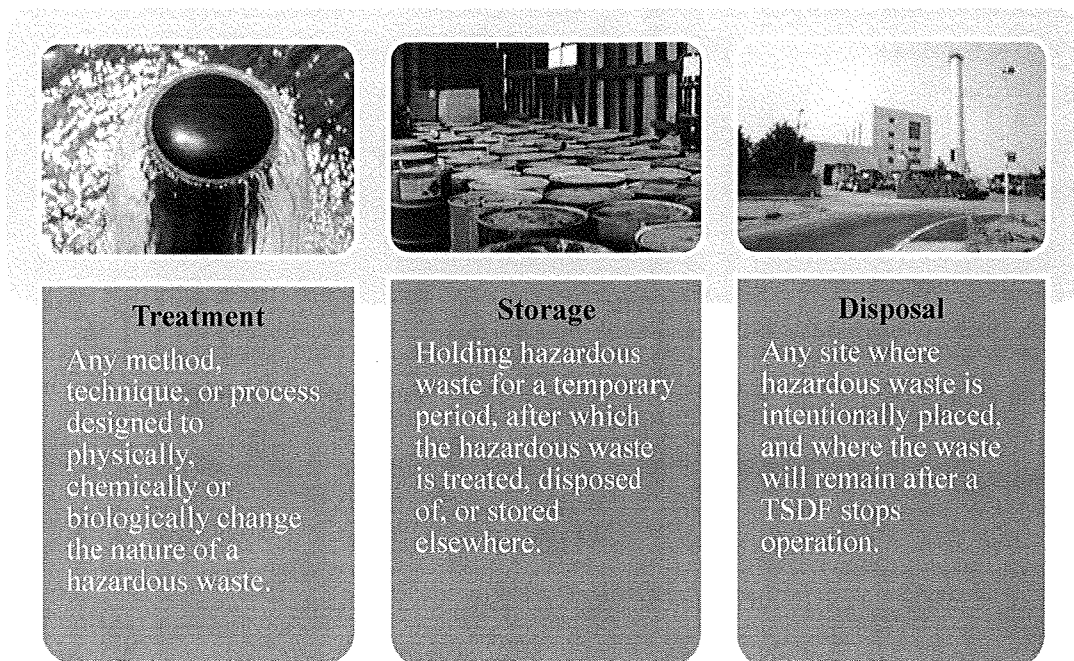
Generally, a RCRA TSDf is a facility engaged in one or more treatment, storage or disposal activities.

Common examples of TSDfs include hazardous waste landfills, incinerators and storage yards. According to the EPA, TSDfs are typically the largest handlers of hazardous waste, with many facilities located near water bodies and sometimes near residential areas. Based on their size and location, TSDfs warrant in-depth, process-based inspections to ensure the protection of human health and the environment now and in the future.

¹ § 3007(c).

² § 3007(d).

³ § 3007(e).



Above: Images depicting hazardous treatment, storage and disposal activities. (EPA photos)

TSDF Compliance Monitoring

Compliance monitoring encompasses all regulatory agency activities performed to determine whether a facility or group of facilities is in compliance with applicable law. The RCRA Compliance Monitoring Strategy provides guidance to EPA employees and authorized states, with respect to administering and implementing an agency program for RCRA compliance monitoring.

According to the RCRA Compliance Monitoring Strategy, there are many types of RCRA inspections. The Compliance Evaluation Inspection (CEI) is the primary mechanism for monitoring compliance with Subtitle C requirements and is the standard for inspections of operating TSDFs. A CEI is intended to be a comprehensive evaluation of the compliance status of a facility under all applicable RCRA regulations and permits. Upon completion of a CEI, the region or state should fully understand not only the plant's permit compliance status, but also the breadth of the facility's operations related to hazardous waste. CEIs are used to determine:

- What the plant manufactures, and how all major processes operate.
- Whether all waste streams have been identified, including those generated during start-up, shutdown, turnaround, and malfunction.
- Whether proper hazardous waste determinations have been made for all waste streams generated by those processes.
- Whether waste is being handled properly.

In conducting our work, we used the RCRA Compliance Monitoring Strategy’s reference to CEIs as the criteria to determine whether the EPA is meeting required TSDF inspections.

TSDF Inspection Requirements

The RCRA Compliance Monitoring Strategy provides minimum compliance evaluation inspection requirements for three types of TSDF facilities. The three types of TSDFs are operated or owned by the federal government (federal), state or local government (state), or are privately owned (private). Federal and state TSDFs are required to be inspected annually, and private TSDFs are required to be inspected biennially or every 2 years (Table 1).

Table 1: TSDF inspection requirements

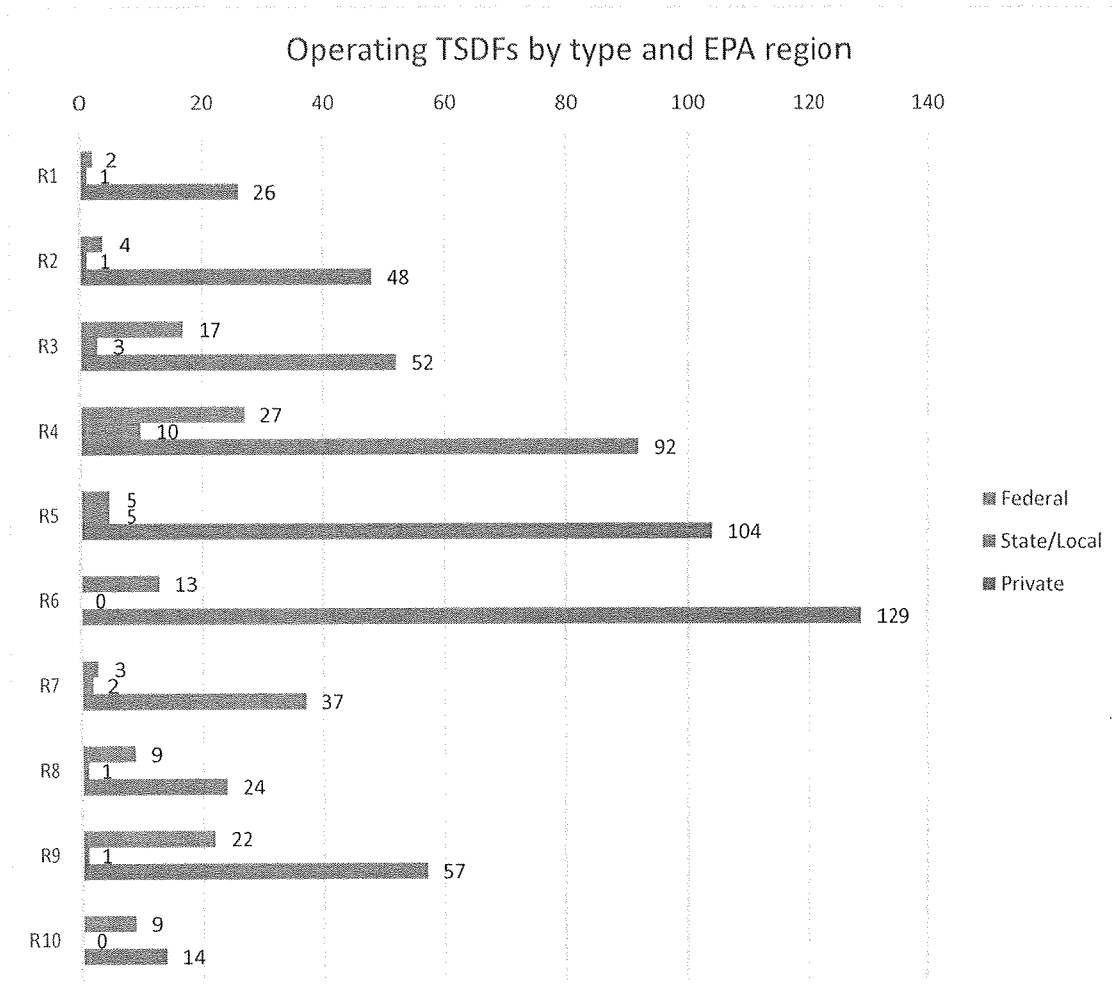
Facility type	Minimum inspection frequency	Who conducts inspections?
Federally owned or operated	Annual inspection	EPA or authorized states ⁴
State or locally operated	Annual inspection	EPA
Privately owned or operated	Biennial inspection	EPA or authorized states

Source: OIG summary of the EPA’s RCRA Compliance Monitoring Strategy.

Completed TSDF CEIs are recorded in RCRAInfo. The RCRAInfo system is a national program management and inventory system used by states, regions and EPA headquarters to track information on hazardous waste handlers. The EPA created the system to track activities related to the management of hazardous waste under Subtitle C of the RCRA. Figure 1 shows operating TSDFs in all EPA regions.

⁴ In September 2015, the EPA revised its RCRA Compliance Monitoring Strategy to recognize that authorized state inspections count toward the agency’s federal TSDF inspection requirement.

Figure 1: Operating TSDFs by type and EPA region



Source: OIG analysis of data from the EPA's Office of Enforcement and Compliance Assurance (OECA).

Responsible Office

The Office of Compliance within the EPA's Office of Enforcement and Compliance Assurance has primary responsibility for the issues evaluated in this report.

Scope and Methodology

We performed our work from February 2015 to December 2015. We conducted this performance audit in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objective. We believe that the

evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objective.

We interviewed personnel from OECA and EPA Region 9. We surveyed EPA Regions 1 through 8 and Region 10 regarding TSDF inspections. We analyzed inspection data for the EPA's national RCRA TSDF universe covering the period of October 1, 2012, to September 30, 2014. We queried the agency's Enforcement and Compliance History Online (ECHO) database containing compliance inspection data from the EPA's RCRAInfo database to determine the universe of operating TSDFs.

RCRAInfo data received from OECA staff identified an agreed-on universe of 718 operating TSDF facilities. We did not assess the overall reliability or validity of the RCRAInfo data; however, we believe the data are sufficient to address our evaluation objective.

We reviewed relevant documents related to RCRA TSDFs including, but not limited to:

- Relevant sections of RCRA, including the RCRA Section 3007(c) statute.
- The 2010 and 2014 RCRA Compliance Monitoring Strategies.
- The 2014 EPA report titled *RCRA's Critical Mission and the Path Forward*.

Prior OIG Report

EPA OIG Report No. 15-P-0099, *Quick Reaction Report: EPA Pesticide Inspections Must Resume in North Dakota to Determine Compliance and Protect Human Health and the Environment*, issued February 23, 2015, found that EPA Region 8 was not conducting inspections at establishments that produce pesticides in North Dakota. The report also found that North Dakota did not have a state inspector with qualifications equivalent to a federal inspector to conduct inspections on the EPA's behalf. As a result, federal inspections of establishments that produce pesticides in North Dakota had not occurred for 14 years.

Implementation of two of the report's four recommendations have been completed. The remaining two recommendations have estimated future completion dates in early 2016.

Results of Review

Overall, the EPA’s inspection compliance completion rate was high at 91 percent for the universe of 718 TSDFs reviewed. Inspection compliance rates were 94 percent (549/583) for private TSDFs, 85 percent (94/111) for federal TSDFs, and 54 percent (13/24) for state or local TSDFs. Although overall inspection rates are high, the EPA did not fully meet the legal requirement for inspecting 100 percent of operating TSDFs for the fiscal year ending 2014. Inspections for facilities such as state and local TSDFs are just over 50 percent.

Inspections deter and monitor for noncompliance. TSDF inspections can identify and reduce potential risks to human health and the environment resulting from operations that treat, store and dispose of hazardous waste. RCRA TSDF inspections have identified violations, such as the storage of hazardous waste in an unpermitted area and failure to minimize the possibility of the release of hazardous waste.

OECA acknowledged that the EPA is not meeting the inspections requirement due to resource limitations caused by other competing priorities, such as inspector training or state oversight activities. OECA was unable to provide an estimate of the additional resources it would need to meet TSDF inspection requirements (Table 2). Figure 2 provides uninspected⁵ facilities by region.

Table 2: EPA compliance with required inspection frequency

Facility type	Number	Minimum inspection frequency	Number and percent of facilities inspected
Federal	111	Annual	94 (85%) ⁶
State or local	24	Annual	13 (54%) ⁷
Private	583	Biennial	549 (94%) ⁸
Totals	718		656 (91%)

Source: OIG analysis of OECA-provided data.

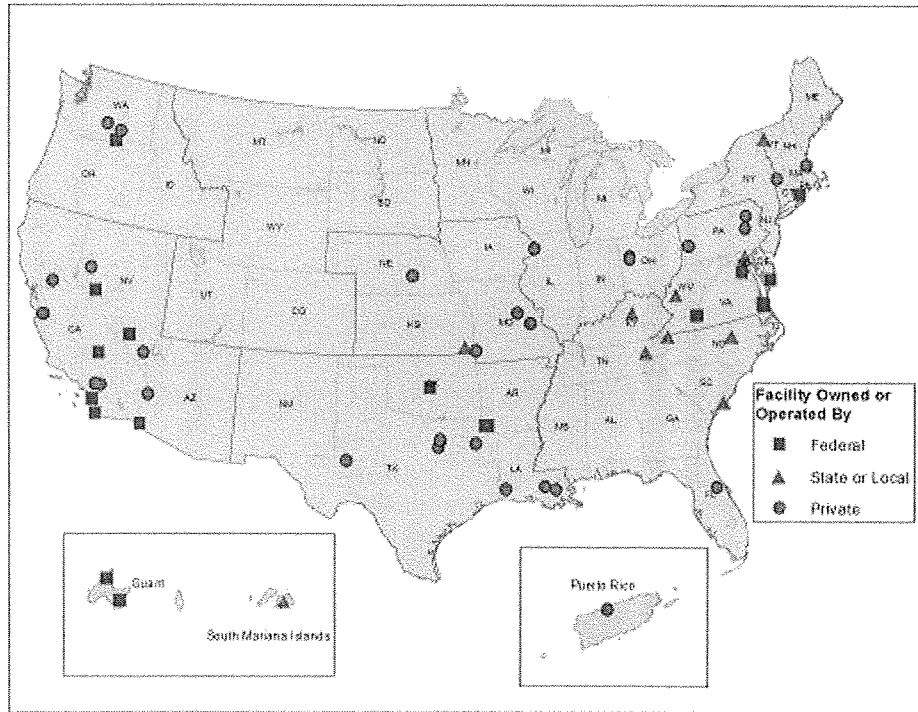
⁵ “Uninspected” specifically refers to Compliance Evaluation Inspections

⁶ Data covers October 1, 2013, to September 30, 2014, including state inspections of federal facilities.

⁷ Data covers October 1, 2013, to September 30, 2014.

⁸ Data covers October 1, 2012, to September 30, 2014.

Figure 2: Location of 62 uninspected TSDFs



Source: OIG analysis of OECA data.

EPA Cites Budget Constraints for Not Meeting the Requirement

According to OECA, the EPA is not meeting the statutory requirement for frequency of inspections, because the office receives a budget for “compliance monitoring,” but the budgeted monies are used to fund inspections and other activities that help support the efficiency and effectiveness of the compliance and enforcement program as a whole. Any increase in the number of TSDF inspections would result in a corresponding decrease in other activities. According to OECA headquarters’ personnel, other activities that would be impacted include:

- Inspector training development and implementation.
- Development of smart software tools to help automate the inspection process from start to finish.
- State oversight activities, including the State Review Framework reviews.
- Targeting for problematic compliance issues.
- Conducting other compliance monitoring activities, such as permit reviews, record reviews and gathering information from facilities.

EPA Could Not Estimate Resources Needed to Meet the Requirement

OECA was unable to provide the specific process and methodology used to determine resource allocations for the “compliance monitoring” activities budget. According to OECA, during the development and execution of its budget, OECA senior leaders work collaboratively to align funding with the office’s highest priorities. OECA also tries to be consistent with the funding directions contained in its annual appropriations bill, and the constraints and requirements of the agency’s budget formulation process.

OECA was unable to tell us how many additional resources would be necessary to meet the inspections requirement, because OECA staff has not performed this analysis.

Potential Risks From Uninspected TSDFs

EPA websites identify common RCRA violations, such as:

- Failure to clearly label and mark satellite accumulation containers with the words “hazardous waste” and other words that identify the contents of the containers, such as the chemical name.
- Failure to provide and document initial hazardous waste training.
- Failure to obtain a permit when storing hazardous waste for greater than 90 days.
- Failure to maintain and operate the facility in a manner to minimize the possibility that any planned or unplanned release of hazardous constituents to air, soil or surface water could threaten human health or the environment.
- Failure to separate or otherwise protect containers of hazardous waste from other containers storing incompatible materials or wastes.
- Failure to provide secondary containment around hazardous waste container storage areas in an area with a functional floor drain.

TSDF inspection reports we reviewed from the EPA’s ECHO⁹ database cite actual violations that include:

- Failure to make hazardous waste determinations.
- Inadequate container marking.
- Failure to maintain an adequate training program.
- Storage of hazardous waste in an unpermitted area.
- Failure to minimize the possibility of a release.
- Inadequate container management.
- Failure to maintain adequate secondary containment.

⁹ EPA Enforcement and Compliance History Online found at <http://echo.epa.gov/?redirect=echo>.

We also surveyed all 10 EPA regions, and they provided examples of potential impacts that could result if inspections are not done, along with potential benefits. Some examples include:

- Because TSDFs manage large quantities of hazardous waste and/or are the end point destination of the majority of hazardous waste generated in the U.S., violations of RCRA may pose significant potential harm to human health and the environment. Inspections are needed to provide a deterrent effect and to ensure compliance with RCRA and minimize such risk.
- Since TSDFs are typically the largest handlers of hazardous waste, many of these facilities are also near water bodies and sometimes near residential areas. As a result, these facilities warrant in-depth, process-based inspections to ensure the protection of human health and the environment now and in the future.
- Compliance is more likely maintained when an inspection is anticipated. In addition, RCRA differs from other regulatory programs in that the rules require very little self-reporting or recordkeeping, making inspections one of the only means available for routine compliance monitoring activities.
- According to one EPA region, states within EPA regions have found that frequent presence at regulated facilities improves compliance more than anything else. Because regions do not have the resources to conduct routine compliance assistance, the TSDFs in the regions understand that if EPA conducts an inspection and finds violations, there will be an enforcement response in line with EPA enforcement response policy. This encourages facilities to work with states to maintain compliance.

Conclusion

Recent inspections data show the EPA has not fully met legal requirements for inspections at hazardous waste treatment, storage and disposal facilities, because according to the agency it lacks resources. The EPA has completed nearly 100 percent of inspections at the largest category of these facilities (privately owned). However, full monitoring for noncompliance and potential risk to human health and the environment is not occurring based on what law requires. The EPA has not taken steps to manage this challenge or developed any solutions or contingency plans.

Agency Actions Prompted by OIG Work

During our review we found that the EPA recognizes state-conducted inspections of federally owned TSDFs as meeting the EPA inspection requirement. Because

this practice was inconsistent with the EPA's documented compliance monitoring strategy, the EPA updated its strategy in September 2015 to allow this practice.

Recommendation

We recommend that the Assistant Administrator for Enforcement and Compliance Assurance:

1. Implement management controls to complete the required TSDF inspections.

Agency Response and OIG Evaluation

In response to the draft report, the EPA did not concur with the conclusions and recommendation in this report and provided no alternative actions to meet the intent of the recommendation. The EPA's response reflected that the agency made a strategic decision on how to use its limited resources to best protect human health and the environment. In a meeting to discuss its comments, EPA management stated that it strives to meet the inspection requirement. However, the EPA did not provide any evidence that it uses a risk-based decision-making process. The agency also did not provide any policies, methodology or prioritization procedures that it uses to make risk-based inspection decisions.

OIG staff and management met with OECA officials on three separate occasions to discuss the agency's response. Based on these meetings, we modified the recommendation. OECA agreed with the modified recommendation, and provided acceptable corrective actions for the recommendation. The recommendation is resolved and open with agreed-to corrective actions pending.

Status of Recommendations and Potential Monetary Benefits

RECOMMENDATIONS						POTENTIAL MONETARY BENEFITS (in \$000s)	
Rec. No.	Page No.	Subject	Status ¹	Action Official	Planned Completion Date	Claimed Amount	Agreed-To Amount
1	11	Implement management controls to complete the required TSDF inspections.	O	Assistant Administrator for Enforcement and Compliance Assurance	3/31/18		

¹ O = Recommendation is open with agreed-to corrective actions pending.
 C = Recommendation is closed with all agreed-to actions completed.
 U = Recommendation is unresolved with resolution efforts in progress.

Agency Response to Draft Report

January 19, 2016

MEMORANDUM

SUBJECT: EPA Comments on the OIG December 11, 2015 Draft Report: “Inspection Rates Are High at Hazardous Waste Treatment, Storage and Disposal Facilities, but EPA Needs to Allocate Resources to Complete Required Inspections,” Project No. OPE-FY15-0018

FROM: Cynthia Giles, Assistant Administrator /s/
Office of Enforcement and Compliance Assurance

TO: Carolyn Copper, Assistant Inspector General
Office of Program Evaluation

Thank you for the opportunity to comment on the Office of Inspector General’s (OIG) December 11, 2015 draft report “Inspection Rates Are High at Hazardous Waste Treatment, Storage and Disposal Facilities, but EPA Needs to Allocate Resources to Complete Required Inspections,” Project No. OPE-FY15-0018.

OECA agrees that the fundamental issue that the OIG is addressing here is important: protecting the public and the environment from improper handling of hazardous waste. That is the concern that gave rise to the Hazardous and Solid Waste Amendments of 1984 that the OIG references in the report regarding inspection of treatment, storage and disposal facilities. Fortunately, our ability to protect the public has come a long way since then; we now have many additional tools to find and address the most serious threats from hazardous waste, and EPA has many efforts underway to utilize those tools. The E-manifest program is just one example of the ways that new technologies and greatly improved data analytics can help us to do a better job of achieving the important goals that motivated Congress in enacting the Resource Conservation and Recovery Act.

As we develop new ways to find the most serious hazardous waste issues and assure improved compliance with the law, on the ground inspections will continue to be a fundamental part of an effective hazardous waste protection program. OECA appreciates the recognition contained in the OIG report of how successfully we have continued to conduct these inspections even as our budget shrinks and we invest in a stronger program for the future. We are proud of our record, thoroughly inspecting 92% of TSDFs during the review period, and under these circumstances, we think that this very high inspection rate – which is significantly higher than virtually any other enforcement program – is justifiably commended in your report.

We know that the OIG is primarily concerned with assuring that people are safe and that the environment is protected. It is for that reason that we think the conclusion of the report is not well supported by the findings. We have four principal concerns: 1) the majority of the facilities that OIG suggests EPA find the resources to inspect do not actively treat or dispose of hazardous waste, and/or they only store such wastes. While facilities that do not actively treat, store or dispose of hazardous waste and active storage facilities certainly can pose a risk, such risks are not confined to TSDFs; generators that handle large quantities of hazardous wastes are often the larger risk, and EPA appropriately directs inspection resources to them. 2) The top fifty TSDFs (less than 5% of the TSDFs) manage 85% of the waste; the remaining TSDFs are relatively small. 3) Most of the facilities that were not inspected with Compliance Evaluation Inspections (CEIs) during the review period were either inspected using another type of inspection during the period, were inspected shortly before or after the review period, or had enforcement actions that required the facility to address identified problems, so it is not the case, as the report implies, that we know nothing about the compliance status of those facilities. 4) The general summary of potential risks from TSDFs as a group cited on pages 8-9 of the report do not appear to apply to the actual facilities that the OIG suggests EPA should divert resources to inspect, nor does the OIG address the much bigger risks that could occur if resources were diverted from higher risk facilities to inspect these TSDFs.

OIG Response: OECA suggested that “bigger risks... could occur if resources were diverted from higher risk facilities” to complete required TSDF inspections. OECA did not provide support for risk-based resource allocation decisions with any policy, methodology, prioritization strategy or supporting data. OECA’s response acknowledges that the legal requirement for inspecting 100 percent of operating TSDFs was not met.

According to the EPA’s Compliance Monitoring Strategy, RCRA mandates “thorough” inspections for TSDFs, and identifies a CEI as the standard for inspections. The EPA uses RCRAInfo as the official data system for RCRA inspections. The agency’s RCRAInfo Download Summary and Data Element Dictionary describes an operating TSDF universe as capturing every facility that currently has an operating treatment, storage or disposal unit.

Given the very high inspection rate, and the additional factors noted above, EPA does not concur with the conclusion and recommendation in the report.

We think the Agency has done a good job focusing resources on the biggest risks and addressing the biggest problems, and that we are strategically managing the national program to reduce the risk of harm to human health and the environment. Congress has charged EPA with enforcing all elements of the RCRA statute, and in order to do so effectively, the Agency must make strategic decisions on how to effectively use our limited resources to best protect human health and the environment.

We are also attaching are a number of more specific technical comments on the draft report for your further review.

Please let us know if you have any questions or would like to further discuss our comments. If you have any questions concerning this response, please feel free to contact Gwendolyn Spriggs, the OECA Audit Liaison, at 202-564-2439.

Attachment (Technical Comments)

cc: Gwendolyn Spriggs
Suzanne Bohan
Betsy Smidinger

Agency's Supplemental Response to Draft Report

February 23, 2016

MEMORANDUM

SUBJECT: EPA Supplemental Response to OIG Draft Report on TSDF Inspections,
Project No. OPE-FY15-0018

FROM: Cynthia Giles, Assistant Administrator /s/
Office of Enforcement and Compliance Assurance

TO: Carolyn Cooper, Assistant Inspector General
Office of Program Evaluation

OIG issued a draft report entitled, "*Inspection Rates Are High at Hazardous Waste Treatment, Storage and Disposal Facilities, but EPA Needs to Allocate Resources to Complete Required Inspections*" on December 11, 2015,¹⁰ and we provided initial comments on January 19, 2016 (copy attached). This is a supplement to those comments.

We understand that the OIG recommendation in the report, as revised, is as follows: "Implement management controls to complete the required TSDF inspections." In order to address that recommendation, OECA agrees to take the following actions:

- (1) Formalize our existing process for prioritizing RCRA TSDF inspections based on the risks posed to human health and the environment. (Milestone: December 31, 2017)
- (2) Revise OECA policies and procedures to clarify those facilities that properly fall within the definition of a TSDF. (Milestone: March 31, 2018)
- (3) Even after taking steps 1 and 2, OECA's experience is that there will continue to be a fair number of very low priority facilities in the TSDF universe. OECA anticipates strategically prioritizing inspections and addressing hazardous waste management facilities that present the greatest concerns. EPA will approach OMB about whether a clarification to the statute is appropriate or necessary. (Milestone: February 28, 2018)

Based on discussions with your Office, it is our understanding that these actions, with milestones, resolve the OIG recommendation.

Please contact us if need additional information.

¹⁰ Our understanding is that OIG has revised the title of the report to read, "*EPA Has Not Met the Statutory Requirements for Hazardous Waste Treatment, Storage and Disposal Facilities Inspections, But Inspection Rates Are High.*"

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