



Office of Inspector General

Audit Report

Identification and Enforcement of RCRA Significant Non-Compliers by EPA Region III and the Virginia Department of Environmental Quality

Audit Report No. 1999-P-00215

September 20, 1999

**Inspector General Division
Conducting the Audit:**

**Mid-Atlantic Audit Division
Philadelphia, PA**

EPA Region Covered:

Region III

**EPA Program Office Involved:
for Enforcement (RCRA)**

**Office of the Associate Director
Philadelphia, PA**

**Virginia Department of
Environmental Quality
Regions Covered:**

**Tidewater Regional Office
Virginia Beach, VA**

**Northern Virginia Regional
Office
Woodbridge, VA**

**West Central Regional Office
Roanoke, VA**



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September 20, 1999

MEMORANDUM

SUBJECT: Final Audit Report on the Identification and Enforcement of RCRA Significant Non-Compliers by EPA Region III and the Virginia Department of Environmental Quality
Audit Report Number 1999-P-00215

FROM: Carl A. Jannetti
Divisional Inspector General for Audit (3AI00)

TO: W. Michael McCabe
Regional Administrator (3RA00)

Attached is our final audit report on the Identification and Enforcement of Resource Conservation and Recovery Act (RCRA) Significant Non-Compliers. The overall objectives of this audit were to evaluate Environmental Protection Agency (EPA) Region III and Virginia Department of Environmental Quality adherence to the EPA Enforcement Response Policy, specifically, the identification and enforcement of Significant Non-Compliers.

This audit report contains findings that describe problems the Office of Inspector General (OIG) has identified and corrective actions the OIG recommends. This report represents the opinion of the OIG. Final determinations on matters in this report will be made by EPA managers in accordance with established EPA audit resolution procedures. Accordingly, the findings contained in this audit report do not necessarily represent the final EPA position, and are not binding upon EPA in any enforcement proceeding brought by EPA or the Department of Justice.

ACTION REQUIRED

In accordance with EPA Order 2750, you as the action official are required to provide us a written response to the audit report within 90 days of the final audit report date. For corrective actions planned but not completed by the response date, reference to specific milestone dates will assist in deciding whether to close this report.

We have no objections to the further release of this report to the public. Should you have any questions about this report, please contact Michael Wall or me at (215) 814-5800.

Attachment

EXECUTIVE SUMMARY

Objectives

The objectives of our audit were to determine if Region III and the Virginia Department of Environmental Quality (DEQ) took timely and appropriate enforcement actions against the most serious RCRA violators. Specifically, did the Region and the State comply with EPA's Enforcement Response Policies of 1987 and 1996 by:

- ◆ Identifying and classifying the most serious violators as "Significant Non-Compliers."
- ◆ Taking timely and appropriate enforcement actions in accordance with the applicable Enforcement Response Policy.
- ◆ Ensuring violators returned to compliance within a timely manner.
- ◆ Recording accurate data in the Resource Conservation and Recovery Information System (RCRIS).

Results-in-Brief

Our audit disclosed several areas needing improvement with respect to EPA's Enforcement Response Policy.

DEQ Compliance

The Virginia Department of Environmental Quality rarely classified facilities with serious RCRA violations as Significant Non-Compliers. Consequently, DEQ did not always take timely enforcement action against these violators. In some cases the State delayed taking any enforcement action, and sometimes these delays persisted for several years. The absence of Significant Non-Complier classifications occurred because DEQ did not incorporate Enforcement Response Policy criteria into its enforcement screening process. The delays occurred because DEQ

emphasized “compliance assistance” over “escalated enforcement.” As a result, most Significant Non-Compliers remained unaware of the gravity of their violations. Although DEQ usually took appropriate enforcement actions, these actions were unduly delayed, which may have increased the potential for harm to human health and the environment. In our opinion, compliance with EPA’s Enforcement Response Policy would alleviate these conditions.

Region III Compliance

The Region did not always classify facilities with serious violations as Significant Non-Compliers as required by EPA’s Enforcement Response Policy. Although for the most part the Region took enforcement action against violators, it did so at a delayed pace and entered inaccurate information into RCRIS, the Agency’s information system for RCRA. The absence of Significant Non-Complier classifications occurred because the Region did not incorporate the Enforcement Response Policy criteria into its enforcement screening process. The delays occurred because the Region’s screening process to decide the type of enforcement (i.e., informal or formal) can take up to a year to complete. The RCRIS inaccuracies occurred largely because regional enforcement personnel are not adequately trained. As a result, the most significant violators are unaware of the gravity of their violations, enforcement is unduly delayed, and RCRIS is inaccurate. In our opinion, compliance with EPA’s Enforcement Response Policy and better training would help remedy these conditions.

Region III Timely and Appropriate (T&A) List

EPA’s Enforcement Response Policy stipulates that a facility that has not responded to informal enforcement action and remains out of compliance for 180 days will be classified as a Significant Non-Complier. Despite this requirement, Region III allows State Agencies 300 days to consider: (a) classifying violating facilities as Significant Non-Compliers, and (b) initiating formal enforcement action.

Consequently, facilities can remain non-compliant and increase the potential for harm to human health and the environment.

Missing Records

The Region did not adequately maintain official RCRA enforcement and compliance files. Specifically, the contractor responsible for custody of the files was unable to provide certain documents pertaining to 10 of the 30 facilities in our random sample, taken from fiscal years 1996 and 1997 inspections conducted by the Region.

Recommendations

We recommend the Region III Administrator ensure that the Virginia DEQ:

- ◆ Adhere to the EPA Enforcement Response Policy; specifically, establish procedures for identifying Significant Non-Compliers, and take appropriate enforcement actions to ensure their timely return to compliance.
- ◆ Escalate to formal enforcement when a facility is recalcitrant, rather than continue with “compliance assistance.”
- ◆ Is aware how to refer facilities as possible Superfund candidates to Region III.

We also recommend the Region III Administrator:

- ◆ Ensure regional compliance with EPA’s Enforcement Response Policy regarding classifying Significant Non-Compliers and taking timely and appropriate enforcement action.
- ◆ Clearly define enforcement officer responsibilities.

- ◆ Conduct monthly Tier I meetings to expedite enforcement decisions and actions against violating facilities.
- ◆ Ensure that RCRA personnel are adequately trained in RCRIS data entry requirements and establish data verification procedures for RCRIS input.
- ◆ Streamline the enforcement screening process. One possibility would be to empower inspectors/enforcement officers to initiate informal enforcement actions.
- ◆ Cease the practice of issuing T&A lists to the States for facilities out of compliance for 300 or more days.
- ◆ Institute the practice of issuing T&A lists to the States for facilities out of compliance at the 180-day mark, and require the States to make a Significant Non-Complier determination and take appropriate enforcement action.
- ◆ Establish adequate custody controls over official RCRA files.
- ◆ Conduct a management review of the contractor responsible for the RCRA file room.

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CHAPTER 1

INTRODUCTION

Objectives

EPA advocates taking effective enforcement action against the most serious violators of hazardous waste regulations. The goal of the Agency's enforcement program is to attain and maintain a high rate of compliance within the regulated community, by establishing a comprehensive monitoring and inspection program. This program is to address the most serious violators with timely and effective enforcement actions, in order to return facilities to compliance as quickly as possible and to deter future noncompliance.

The objectives of our audit were to determine if Region III and the Virginia Department of Environmental Quality (DEQ) took timely and appropriate enforcement actions against the most serious violators. Specifically, did the Region and the State comply with the Enforcement Response Policies of 1987 and 1996 by:

- ◆ Identifying and classifying the most serious violators as "Significant Non-Compliers."
- ◆ Taking timely and appropriate enforcement actions in accordance with the applicable Enforcement Response Policy.
- ◆ Ensuring violators returned to compliance within a timely manner.
- ◆ Recording accurate data in the Resource Conservation and Recovery Information System (RCRIS).

Background

Hazardous waste is solid waste which may pose a threat to human health or the environment because of its quantity,

concentration, or physical, chemical, or infectious characteristics. In 1976, Congress enacted the Resource Conservation and Recovery Act (RCRA) because of past hazardous waste mismanagement. Subtitle C of this Act established a framework for managing hazardous waste from its generation to final disposal. RCRA also mandated that EPA develop a comprehensive set of hazardous waste regulations. As a result, all solid waste “generators” must determine if their waste is hazardous, and thus subject to regulation under Subtitle C. Also, these generators, as well as any “transporters,” or “treatment, storage, and disposal facilities” must manage their hazardous wastes in accordance with Subtitle C. In addition, most treatment, storage, and disposal facilities must obtain a permit, which outlines precautions to be taken to manage waste in a manner that adequately protects human health and the environment.

Congress intended for the States to implement RCRA, coupled with oversight by the Federal Government. Under RCRA Section 3011, EPA awards annual grants to develop and implement State hazardous waste programs, which become “authorized” when EPA determines that the State programs are consistent with the Federal program. The States negotiate workloads with EPA and have primary responsibility for Subtitle C administration. However, EPA retains oversight responsibility, parallel enforcement authority, and can withdraw authorization if a State program fails to comply with RCRA regulatory requirements. Currently, all States within Region III are authorized and overseen by the Region.

In 1987, EPA issued an Enforcement Response Policy (ERP). In 1996, EPA revised this policy, which together with several other documents, define the Federal RCRA Enforcement Program. Basically, the ERP requires that when inspections disclose facilities with violations: (a) timely and appropriate enforcement action is warranted, and (b) such enforcement action can be either formal or informal depending upon the seriousness of the violations. Response time guidelines are established in the ERP for taking formal and informal

enforcement actions, and the policy establishes criteria for determining the appropriate action to be taken.

Inspections and Enforcement

Formal enforcement actions, which include administrative orders, civil or criminal lawsuits, and/or monetary penalties are reserved for Significant Non-Compliers, or “SNCs,” defined as:

Those facilities which have caused actual exposure or a substantial likelihood of exposure to hazardous waste or hazardous waste constituents; are chronic or recalcitrant violators; or deviate substantially from the terms of a permit, order, agreement or from RCRA statutory or regulatory requirements. (Note: The 1987 Enforcement Response Policy classified the worst facilities as High Priority Violators).

Specific formal enforcement tools include: (a) “Consent” or “Final Orders,” which are agreements between the State or EPA and the facility owner; (b) “Unilateral Orders,” which are issued by the State or EPA to assert the Agency’s position; or (c) a referral to the Department of Justice or the Attorney General’s Office for action.

Informal enforcement actions are minimal responses reserved for the less serious, or secondary violators. Such actions include letters of non-compliance, letters of warning, or notices of violation, but not monetary penalties. Nonetheless, a secondary violator can be reclassified as a Significant Non-Complier should the facility fail to return to compliance. Also, where appropriate, in lieu of enforcement, the Enforcement Response Policy advocates “compliance monitoring” or “compliance assistance” to bring facilities into compliance with regulations.

Region III inspections are conducted by both the RCRA Compliance and Enforcement Branch (of the Waste and Chemicals Management Division), and by the Region’s Environmental Services Division (in Annapolis, Maryland

and Wheeling, West Virginia). Inspections which yield violations are referred to the RCRA Compliance and Enforcement Branch. After screening for past violations, this Branch evaluates the seriousness of the current violation, its potential or actual harm to public health or the environment, any enforcement actions taken, and whether it is a repeat or recurring violation. The Branch's recommendation is then formulated into an enforcement action at a quarterly meeting attended by the Environmental Services Division; the Office of Enforcement, Compliance and Environmental Justice; the Office of Regional Counsel; and the Criminal Investigations Division.

In Virginia, State RCRA inspections and enforcement actions are conducted by six Department of Environmental Quality (DEQ) regional offices, using as criteria, DEQ's *Compliance and Enforcement Guidance Manual*, dated March 12, 1996. As this manual did not fully address the issue of Significant Non-Compliers, few facilities inspected by the State were designated as such. However, DEQ officials informed us that the manual would be revised and fully address this issue.

**Timely &
Appropriate List**

Region III maintains a list of facilities that have not responded to State informal enforcement actions and that have been non-compliant for more than 300 days. Monthly, the Region forwards this "timely and appropriate" (T&A) list to each State to determine appropriate enforcement action. Quarterly, the Region holds conference calls to discuss the status of these T&A facilities. According to the Enforcement Response Policy, EPA can initiate its own enforcement action if a State fails to take timely and appropriate enforcement. At the beginning of FY 1997, there were approximately 1,300 facilities on the Region's T&A list; by fiscal year's end this number had been reduced to 162 facilities.

**Noteworthy
Accomplishments**

Overall, we found Virginia DEQ's compliance and enforcement specialists very knowledgeable about the facilities within their jurisdiction. One particularly strong aspect of the State's program is that the personnel who perform the inspections, also prepare and sign the informal

enforcement letters, and do so usually within a month of the inspection. This helped ensure timely enforcement, as many of the secondary violators swiftly returned to compliance.

Scope and Methodology

This audit was performed in accordance with the *Government Auditing Standards* (1994 Revision) issued by the Comptroller General of the United States as they apply to program audits. Our audit included tests and other auditing procedures we considered necessary. We evaluated the effectiveness of the hazardous waste enforcement and compliance programs for Region III and Virginia DEQ. We also evaluated the extent of oversight and guidance that Region III provided to DEQ in the management of its program.

We conducted our fieldwork in EPA Region III and in three Virginia DEQ regional offices. At Region III, we reviewed the RCRA Compliance and Enforcement Branch under the Waste and Chemicals Management Division. In Virginia, we reviewed the Tidewater Regional Office in Virginia Beach, the Northern Virginia Regional Office in Woodbridge, and the West Central Regional Office in Roanoke. We also accompanied Virginia DEQ personnel on two facility visits.

For Region III, we randomly selected for review 30 of the 54 RCRA facilities inspected by regional inspectors during fiscal years 1996 and 1997. This sample included 21 facilities with violations to determine if they should have been classified as Significant Non-Compliers and 9 facilities with no violations to determine the accuracy of the reports on these facilities. However, we were only able to review 20 of the facilities, because the Region could not locate the files or inspection reports for the remaining 10 facilities.

We selected Virginia for review because it reported a high percentage of violations identified for fiscal years 1996 (21%) and 1997 (30%) as compared to other States within the Region, and because the State reported an 86% reduction on its T&A lists during FY 1997. We selected the three DEQ

offices based on percentages of violations reported during inspections, seeking one high, one medium, and one low.

INSPECTIONS WITH VIOLATIONS		
	1996	1997
Tidewater	30%	49%
Northern Virginia	32%	32%
West Central	22%	15%

We randomly selected for review the files for 92 of the 638 facilities inspected by the three DEQ offices as follows:

DEQ INSPECTIONS WITH VIOLATIONS		
	1996	1997
Tidewater	13	20
Northern Virginia	14	18
West Central	16	11

We also reviewed 54 facilities from EPA Region III's fiscal year 1997 T&A lists to determine if the facilities should have been classified as Significant Non-Compliers, and if so, whether enforcement and compliance actions were timely.

T&A LIST FACILITIES REVIEWED		
	11/01/96	3/30/98
Tidewater	11	1
Northern Virginia	13	2
West Central	27	0

At both Region III and DEQ, we reviewed RCRA compliance and enforcement documents including: inspection reports,

notices of violations, consent orders, administrative orders, and other related correspondence. We compared the data in RCRIS to other EPA and State records to determine if the information was accurate.

We reviewed management controls and procedures specifically related to our objectives. However, we did not review the internal controls associated with the input and processing of information into RCRIS or other automated records systems. We reviewed Region III's Fiscal Year 1997 Assurance Letter prepared to comply with the Federal Managers' Financial Integrity Act and noted no weaknesses pertaining to the scope of work audited.

In summary, we reviewed enforcement and compliance procedures taken by the Region and by DEQ against violators, especially Significant Non-Compliers, or those we believe should have been classified as such. Specifically, we:

- ◆ Discussed facility files with Region III and DEQ staff.
- ◆ Evaluated internal controls over the inspection and enforcement and compliance processes.
- ◆ Reviewed enforcement and compliance actions taken by Region III and DEQ against violators and evaluated the effectiveness of these actions.
- ◆ Analyzed the procedures followed for classifying Significant Non-Compliers.

Our audit noted weaknesses in both Region III's and DEQ's hazardous waste programs. These weaknesses are discussed in Chapters 2 through 5.

We completed our survey on June 16, 1998, and initiated an in-depth audit. We submitted position papers on potential issues to Region III on January 6, 1999. On the same day we issued excerpted position papers to DEQ on State-specific topics. We received DEQ's response on January 27, 1999,

and the Region's response on January 29, 1999, and adjusted our findings and recommendations accordingly.

We issued the draft report on June 30, 1999. Region III and Virginia DEQ submitted their responses on August 9, 1999. We changed the draft report where necessary, but our overall positions remained unchanged. The responses and our evaluation of the State's and Region III's responses are summarized at the end of Chapters 2 through 5, and provided in their entirety in Appendix B. Virginia DEQ declined an exit conference. We held an exit conference with Region III on September 8, 1999.

Prior Audit Coverage

No recent EPA Office of Inspector General (OIG) audit reports addressed Region III RCRA Enforcement & Compliance programs. Our review is similar to an OIG Headquarters Audit Division report entitled, *Significant Non-Complier Enforcement by EPA and Washington State* (Report No. E1GSF7-11-0019-8100093) issued on March 31, 1998, and two OIG Eastern Audit Division reports entitled: *RCRA Significant Non-Complier Identification & Enforcement by the Rhode Island Department of Environmental Management* (Report No. E1GSD8-01-0006-9100078) issued on January 21, 1999; and, *Region 2's Enforcement of the Resource Conservation and Recovery Act (RCRA)* (Report No. 1999-1-00224) issued on July 21, 1999.

CHAPTER 2

DEQ COMPLIANCE WITH ENFORCEMENT RESPONSE POLICY

The Virginia Department of Environmental Quality rarely classified facilities with serious RCRA violations as Significant Non-Compliers. Consequently, DEQ did not always take timely enforcement action against these violators. We also noted that in some cases the State delayed taking any enforcement action, and that sometimes these delays persisted for several years. This absence of Significant Non-Complier classifications occurred because DEQ did not incorporate Enforcement Response Policy criteria into its enforcement screening process. The delays occurred because DEQ emphasized “compliance assistance” over “escalated enforcement.” As a result, most Significant Non-Compliers remained unaware of the gravity of their violations. Although DEQ usually took appropriate enforcement actions, these actions were unduly delayed, which may have increased the potential for harm to human health and the environment. In our opinion, compliance with EPA’s Enforcement Response Policy would alleviate these conditions.

Significant Non-Compliers Not Designated

According to EPA policy, a facility is a Significant Non-Complier if it: (a) causes an actual or potential release of hazardous waste; (b) is recalcitrant; (c) experiences recurring violations; or (d) significantly deviates from RCRA regulations. DEQ conducted 638 inspections during fiscal years 1996 and 1997. From this amount, we randomly selected 92 facilities, plus 54 other Virginia facilities listed on EPA Region III’s fiscal year 1997 “timely and appropriate” lists. Whereas DEQ designated 2 of these 146 facilities as SNCs, we concluded that 12 facilities should have been so designated.

Following are two examples: the first illustrates the circumstances regarding one of the facilities deemed as a Significant Non-Complier by the State; the second example depicts a facility which we believe not only should have been a SNC, but also referred to EPA for a possible Superfund response.

**DEQ Example -
Case VA12**

DEQ classified this facility as a Significant Non-Complier following a December 1996 inspection, which revealed violations for: (1) inadequate training of hazardous waste handlers; (2) poorly labeled hazardous waste containers; (3) open containers; and (4) containers with missing accumulation dates. According to the Enforcement Response Policy, the State should have brought formal enforcement action against this facility by July 1997. Instead, DEQ engaged in only informal enforcement actions over a two-year period. This occurred because the enforcement specialist believed he could gain compliance using the underlying threat of a possible formal enforcement order containing a civil penalty. However, the cordiality of his communications with the facility appeared to belie this "threat" in that they contained language such as: "We regret the necessity. . . ." and "Won't you please" and ". . . we urge you to send it at your earliest convenience."

Having been unsuccessful in gaining compliance, in May 1998, the enforcement specialist recommended that DEQ assess a civil charge against the facility noting that ". . . the extent and gravity of the violation is major (capability and prior history with similar violations, respectively)." However, when DEQ attempted to attain the facility's agreement with a consent order, the facility refused to cooperate. And, instead of issuing a Unilateral Order to force the facility into compliance, DEQ conducted another inspection and issued an informal enforcement action. In July 1998, DEQ again considered trying the formal enforcement route. However, as of January 1999 the formal Enforcement Order had yet to be issued, and two years had passed since the facility was classified as a Significant Non-Complier.

**EPA OIG Example
- Case VA01**

Regarding the second example, we believe this facility should have been classified as a Significant Non-Complier, and also referred to EPA for possible Superfund action.

Chronology

January 1992 – Complaint about illegal dumping of broken batteries and gasoline.

August 1992 – The State inspection found problems regarding piles of tires and petroleum, gasoline, and antifreeze spills.

July 1993 – DEQ requested facility owner to immediately cease and close operation of unauthorized facility, remove all wastes, and sample soil and groundwater.

October 1993 – Soil and water samples revealed levels of lead ranging from 5.4 parts per million (ppm) to 730 ppm (the maximum allowable level is 5 ppm). DEQ continued to inspect the facility over the next two years, but in accordance with its policy of “compliance assistance” also continued to give the owner time extensions.

October 1995 – DEQ inspection disclosed the owner placed contaminated soil and batteries on adjacent Navy property, thus creating an unauthorized waste pile in violation of RCRA hazardous waste regulations. Thus, the facility was now subject to RCRA.

January 1996 to January 1997 – DEQ threatened owner with enforcement, but no Enforcement Order was issued due to the shortage of personnel. DEQ noted slow progress on the lead contamination and expressed concern over the owner releasing freon from crushed automobiles.

February 1997 – DEQ sent a “Notice of Violation” to the owner and threatened formal enforcement action.

March 1997 – DEQ and owner discussed actions he must take, including removing tires and checking for more buried batteries.

May 1997 – Facility assigned a “non-notifier” identification number; i.e., EPA made aware of hazardous waste on the site.

September 1997 – Federal judge fined the facility owner \$24,000 and sentenced him to six months of home detention for crushing thousands of vehicles, without first removing their CFC-laden freon. This was a violation of the Clean Air Act.

October 24, 1997 – Formal Enforcement Order signed whereby the owner agreed to: remove the waste from his site and the Navy property; conduct soil and groundwater monitoring; submit and implement closure plans; remove existing tires within nine months; develop and implement a petroleum waste management plan; and donate \$20,000 to a local Department of Emergency Medical Services.

November 1997 – Local municipality orders owner to remove tires located in an area adjoining a campground by March 1998, because it fears the tires will attract Asian Tiger Mosquitos, which are known carriers of encephalitis (inflammation of the brain). The abundance of tires at the facility was addressed by DEQ in the October 1997 Order as a solid waste violation.

February 1998 – Owner advised DEQ of his inability to pay \$250,000 for the removal and disposal of approximately 400 tons of waste.

August 1998 – Joint EPA OIG/DEQ site visit; facility contains approximately 50,000 tires and lacks adequate soil and groundwater testing. Thus owner is in violation of the DEQ “Enforcement Order.” [Note: Since the OIG completed audit fieldwork shortly after this visit, no further status was obtained.]

The nine additional facilities that we believe should have been classified as Significant Non-Compliers were:

FACILITY	SUMMARY
Case VA02	Facility had outstanding violations regarding: improper storage of hazardous waste for five to six years; manifest requirements; pre-transport requirements; and other generator requirements. DEQ took informal enforcement in 1997 and formal enforcement in 1998 without classifying the facility as a SNC, even though there were significant deviations from RCRA regulations and the possibility of a release of hazardous waste.
Case VA03	An inspection on 04/21/94 noted four violations dealing with record-keeping requirements and container requirements. In 03/96, DEQ determined that two of the 04/94 violations remained uncorrected, and although DEQ signed a final order in 06/97 (more than 3 years later), it never classified the facility as a SNC, despite it being cited for recurring violations.
Case VA04	An inspection on 04/21/94 noted serious violations, such as unpermitted storage and treatment of hazardous waste and other violations concerning training and record-keeping requirements. DEQ did not sign a final order until 06/97, and it never classified the facility as a SNC, despite it being cited for recurring violations.
Case VA05	An inspection on 12/14/95 noted several types of violations similar to those reported on past inspections, i.e., open containers, poorly labeled containers, and inadequate contingency plans. The facility was a repeat and chronic violator; therefore, DEQ should have classified it as a SNC.
Case VA06	While removing an underground storage tank, the facility discovered it contained 2,700 gallons of pentachlorophenol. The unpermitted storage of this waste, as well as an actual release of hazardous waste, should have resulted in this facility being classified as a SNC.

FACILITY	SUMMARY
Case VA07	An inspection on 12/13/94 noted more than 20 violations, including the unpermitted storage of hazardous waste. Although the facility removed the waste within 16 days of the inspection, there had been the potential for harm to human health and the environment. Also, DEQ did not finalize an enforcement order until three years after the inspection and never classified the facility as SNC.
Case VA08	An inspection on 01/08/97 noted violations similar to those reported for past inspections, i.e., poorly labeled containers, missing accumulation dates, and open containers. Although DEQ took timely and appropriate enforcement action, it never classified this repeat violator as a SNC.
Case VA09	An inspection on 02/12/96 noted several violations, including the transportation of waste to an unpermitted facility. Although DEQ finalized an Enforcement Order, it failed to classify the facility as a SNC, even though it was cited for repeat deviations from RCRA regulations.
Case VA10	Five violations remained outstanding from a 01/31/95 inspection. DEQ's primary concern was that the facility's "drip pad" could not contain the hazardous waste because of cracks. DEQ should have classified the facility as a SNC, because it was recalcitrant and violated the conditions of its 11/96 Consent Order.

Delay in Enforcement Action

In addition to not identifying Significant Non-Compliers, DEQ was also found to have taken delayed enforcement action against facilities, and that these delays persisted for years. Specifically, DEQ delayed enforcement against 13 of the 94 facilities we reviewed for timeliness (92 facilities from our random sample + 2 Significant Non-Complier facilities from the "Timely and Appropriate Lists") and these delays ranged from 180 to 1,395 days as follows:

FACILITY	INSPECTION DATE	ORIGINAL VIOLATION DATE	ENFORCEMENT		DAYS LATE AS OF AUDIT
			DUE	TAKEN	
Case VA06	08/25/94	08/25/94	01/95	Pending	1,395
Case VA07	12/13/94	12/13/94	04/95	04/98	1,080
Case VA03	03/21/96	04/21/94	12/94	06/97	910
Case VA04	03/21/96	04/21/94	12/94	06/97	910
Case VA01	01/03/97	09/27/95	10/95	10/97	730
Case VA11	11/19/96	02/02/95	05/95	11/96	570
Case VA12	08/05/97	12/12/96	07/97	Pending	450
Case VA10	01/31/97	01/31/95	09/95	11/96	420
Case VA13	10/31/96	10/31/96	02/98	None	240
Case VA14	10/25/95	10/25/96	01/96	09/96	240
Case VA02	11/01/96	11/01/96	09/97	04/98	210
Case VA15	11/20/95	11/20/95	03/96	09/96	180
Case VA16	02/13/96	02/13/96	05/96	11/96	180

Case VA06, at 1,395 days late, was the extreme case of delayed enforcement. We believe this facility should have been classified as a Significant Non-Complier, because it stored pentachlorophenol without a permit for more than nine years. Pentachlorophenol is a hazardous waste which can harm the liver, kidneys, blood, lungs, nervous systems, immune systems, and gastrointestinal tracts. In September 1994, the State learned that the soil adjoining the tank was contaminated and that the tank contents had seeped through the subsurface and entered a nearby creek. Nonetheless, DEQ did not classify the facility as a Significant Non-Complier and it delayed taking formal enforcement for several years. According to the enforcement specialist currently assigned to this case, the delay occurred because DEQ was undergoing a major reorganization and the enforcement function was being decentralized.

Conclusion

DEQ experienced difficulties classifying facilities with serious RCRA violations as Significant Non-Compliers and taking expedient and appropriate enforcement action against such violators. According to DEQ personnel, these problems derived from a variety of reasons. These reasons included:

- ◆ DEQ did not incorporate Enforcement Response Policy Significant Non-Complier criteria into its enforcement screening process because State personnel were unaware of these criteria.
- ◆ DEQ personnel did not refer any facilities as possible Superfund candidates because they never thought to do so, or did not know how to do so.
- ◆ Lengthy enforcement delays occurred because DEQ emphasized “compliance assistance” to violators.
- ◆ Frequent reorganizations of DEQ functions severely disrupted enforcement efforts between the Central Office in Richmond and the six State Regional Offices.

Nonetheless, we did note progress. For example, the inspectors and specialists in the DEQ Regional Offices we visited were empowered to initiate the enforcement process where warranted, and most did so within a month of the inspection. This is a “best practice” that we will recommend that EPA Region III adopt. Nevertheless, we are convinced that DEQ should take further action, namely, to lessen the emphasis on “compliance assistance,” and to abide by the criteria provided in EPA’s Enforcement Response Policy. We also believe that both DEQ and Region III should discuss the referral of facilities as possible Superfund candidates.

Recommendations

We recommend the Region III Administrator ensure that the Virginia DEQ:

- 2.1 Adhere to the EPA Enforcement Response Policy; specifically, establish procedures for identifying Significant Non-Compliers, and take appropriate enforcement actions to ensure their timely return to compliance.
- 2.2 Escalate to formal enforcement when a facility is recalcitrant, rather than continue “compliance assistance.”
- 2.3 Is aware how to refer facilities as possible Superfund candidates to Region III.

Region III's Response to Recommendations

The Region concurred with the recommendation regarding Virginia DEQ's compliance with EPA's Enforcement Response Policy. The Region indicated it is working with the Office of Enforcement, Compliance and Environmental Justice, and with DEQ to review and finalize the State's Policy such that it is equivalent to EPA's.

Regarding escalation of enforcement actions, the Region asserted that many of Region III states (including Virginia) do not have the ability to issue unilateral complaints, and therefore, must rely on negotiated settlements for the majority of their formal enforcement actions.

According to the Region, Virginia asserted that the DEQ staff is aware of when and who to contact at EPA when it has a facility that may require action under Superfund.

DEQ's Response to Recommendations

Virginia responded that its current revision to the DEQ Enforcement Manual established procedures for identifying Significant Non-Compliers and for taking appropriate enforcement actions to ensure timely return to compliance. The State's Manual also discusses guidance and procedures

for ensuring that cases involving recalcitrant facilities are escalated to formal enforcement in a timely manner. DEQ emphasized that compliance assistance remains an important part of its efforts to assure consistent compliance among the regulated community. However, when a facility is recalcitrant, or when the environment or public health is at risk, DEQ will escalate such cases to formal enforcement.

The State also maintained that its Office of Remediation Programs (ORP) continuously interacts with EPA's Superfund staff, and cross-trains its ORP and RCRA staff on hazardous waste and Superfund issues.

**OIG's Evaluation
of Responses**

EPA's and DEQ's responses concerning DEQ's establishment of guidance and procedures to comply with the requirements of the EPA Enforcement Response Policy meet the intent of our recommendation.

We disagree with Region III's comments that DEQ does not have the ability to issue unilateral complaints against recalcitrant violators. According to Virginia Code, the State does have the ability to issue unilateral complaints against recalcitrant violators, and that such complaints may include a penalty of up to \$10,000. Therefore, we still recommend that formal enforcement be initiated.

We disagree with Region III's comments that DEQ employees were aware when to refer sites to EPA. During our review, several DEQ employees/managers informed us that they had been unaware of the option of referring sites to EPA. DEQ's actions to provide additional training meets the intent of our recommendation. No further recommendation is offered.

CHAPTER 3

REGION III COMPLIANCE WITH EPA ENFORCEMENT RESPONSE POLICY

The Region did not always classify EPA-inspected facilities with serious violations as Significant Non-Compliers as required by EPA's Enforcement Response Policy. Although for the most part the Region took enforcement action against violators, it did so at a delayed pace and entered inaccurate information into RCRIS, the Agency's information system for RCRA. The absence of SNC classifications occurred because the Region did not incorporate the Enforcement Response Policy criteria into its enforcement screening process. The delays occurred because the Region's screening process to decide the type of enforcement (i.e., informal or formal) can take up to a year to complete. The RCRIS inaccuracies occurred largely because regional enforcement personnel are not adequately trained. As a result, the most significant violators are unaware of the gravity of their violations, enforcement is unduly delayed, and RCRIS is inaccurate. In our opinion, compliance with EPA's Enforcement Response Policy and better training would help remedy these conditions.

In the previous chapter we discussed RCRA cases where DEQ inspected the facilities and was responsible for enforcement. In this chapter we will discuss RCRA cases where Region III performed these functions.

Significant Non-Compliers Not Designated

We reviewed inspection reports for 20 facilities, none of which had been classified by the Region as Significant Non-Compliers. We believe that 4 of the 20 facilities warranted SNC classification as follows:

FACILITY	SUMMARY
Case 01	Significant and potentially health-threatening violations for elevated levels of lead being stored without a permit for almost three years. There was a substantial potential for harm to the environment because the sludge stored at the facility contained lead toxicity at 12 times the regulatory level and was believed to have been leaking from the storage tank.
Case 02	Numerous violations considered as chronic/repeat violations since the mid-1980s, as well as violations of the Federal Facility Compliance Agreement.
Case 03	Chronic/repeat violations for improper labeling and accumulation dates that were also identified in prior inspections as long as four years earlier.
Case 04	Numerous permit violations considered as major deviations from RCRA regulations.

Even though the facilities were not classified as Significant Non-Compliers, in three of the four cases the Region took “formal” enforcement action, the appropriate response for Significant Non-Compliers. But in Case 03 the Region opted instead to take “informal” enforcement, the minimally appropriate response for secondary violators, despite the fact that repeated inspections identified identical violations.

Delay in Enforcement Action

The Region also did not always take timely enforcement action against violators. Specifically, Region III delayed enforcement against 4 of the 20 facilities in our review as follows:

FACILITY	INSPECTION DATE	ENFORCEMENT DUE DATE	DAYS LATE (AS OF AUDIT)
Case 02	12/12/96	06/10/97	350+
Case 05	03/25/97	09/27/97	250+
Case 06	03/26/97	09/22/97	250+
Case 07	06/04/97	12/04/97	180+

Regarding the delays, RCRA regional personnel stated that the enforcement screening process takes from several months to over a year to complete. In one instance, an enforcement officer's unawareness of his responsibility for the screening process led to a case remaining idle for more than a year. We were also informed by Region III personnel that informal enforcement cases are sometimes ignored, because they are considered as a lesser priority than formal enforcement actions. Another element in the time it takes the Region to process an enforcement action is the fact that its inspectors are "observers," i.e., they do not draw conclusions as to whether or not a facility committed a violation. This decision is made jointly by upper management and the Office of Regional Counsel. Although we did not review the Region III screening process time frames, we did note that the DEQ empowered its compliance specialists to process informal enforcement actions, and that these specialists generally accomplished this within 30 days of the inspection.

Inaccuracies with RCRIS Data

Finally, Region III also experienced difficulty with inputting accurate data in RCRIS, the national information system used by EPA for program management, regulation development, and regulation enforcement. We noted discrepancies with such data for fiscal years 1996 and 1997 inspections on 13 of the 20 cases we reviewed. These included unrecorded violations, missing or inaccurate compliance dates, invalid violations, duplicate inspections, and incorrect inspection types as follows:

FACILITY	DISCREPANCIES
Case 01	8 violations on inspection report, only 1 violation in RCRIS. Facility should have been coded as a SNC.
Case 02	Facility should have been coded as a SNC for chronic violations.
Case 03	Compliance date of 06/23/97 missing in RCRIS. Facility should have been coded as a SNC for chronic violations.

FACILITY	DISCREPANCIES
Case 04	Facility should have been coded as a SNC for violations considered to be a potential and imminent threat to human health and the environment.
Case 05	7 violations on inspection report, only 5 violations in RCRIS.
Case 06	4 violations on inspection report, only 2 violations in RCRIS.
Case 08	5 violations on inspection report, only 2 violations in RCRIS.
Case 09	8 violations on inspection report, only 2 violations in RCRIS. Compliance date of 06/26/97 missing in RCRIS.
Case 10	Compliance date should have been 05/22/97 instead of 02/10/97.
Case 11	Erroneous violation.
Case 12	Erroneous violation; facility reclassified as Conditionally Exempt Small Quantity Generator and not liable for violations.
Case 13	Erroneous violation; facility reclassified as a Conditionally Exempt Small Quantity Generator and not liable for violations.
Case 14	Inspection report cited only 1 violation yet 3 violations entered in RCRIS.

Inaccurate data has a cascading effect on the entire program. If the data is incorrect, Region III cannot devote the proper number of program resources to the enforcement program, and management cannot make sound compliance decisions about the worst violators. Inaccurate data could also lead to erroneous conclusions of RCRA accomplishments.

Conclusion

According to regional RCRA personnel, Region III has yet to incorporate the Agency's Enforcement Response Policy

criteria into its enforcement screening process, or to begin a policy whereby it informs facilities of violations. We were also informed that RCRA personnel were either: (a) unaware of the definition for a Significant Non-Complier; (b) found it too subjective; and/or (c) unfamiliar with RCRIS data-entry requirements for Significant Non-Complier facilities.

Recommendations

We recommend the Region III Administrator:

- 3.1 Ensure regional compliance with EPA's Enforcement Response Policy regarding classifying Significant Non-Compliers and taking timely and appropriate enforcement action.
- 3.2 Clearly define enforcement officer responsibilities.
- 3.3 Conduct monthly Tier I meetings to expedite enforcement decisions and actions against violating facilities.
- 3.4 Ensure that RCRA personnel are adequately trained in RCRIS data entry requirements and establish data verification procedures for RCRIS input.
- 3.5 Streamline the enforcement screening process. One possibility would be to empower the inspectors/enforcement officers to initiate informal enforcement actions.

**Region III's
Response to
Recommendations**

The Region recognizes the importance of properly classifying Significant Non-Compliers and taking timely enforcement actions, and has therefore taken actions to correct the "perceived" weaknesses in the program. To ensure that SNC determinations are made for facilities that warrant such a determination, EPA revised its enforcement screening form to include additional questions about the nature of the violations. *[This screening form was provided to the OIG as an attachment to EPA's official response; however, because it*

is enforcement sensitive, it is not included as an attachment to this report.]

The Region recognizes that it has areas needing improvement regarding timely response, and has taken steps to improve its ability to move facilities through the pipeline in a more expeditious manner. These changes include: (a) the use of contractors to provide support during EPA-lead inspections; (b) monthly Tier 1 Meetings; and (c) the addition of one full-time employee to conduct inspections and process enforcement cases. The Region is also looking at shortening the time frame for receipt of inspection reports from the Environmental Services Division, and developing a stand-alone database to track RCRA Enforcement from targeting through compliance.

Finally, the Region outlined a number of ongoing actions to focus attention on RCRIS training and establishing data verification procedures that should improve the quality of EPA's RCRIS data.

**OIG's Evaluation
of Region III's
Response**

Most of the Region's responses meet the intent of our recommendations, but with notable exceptions. We still recommend that the Region empower inspectors/enforcement officers to initiate informal enforcement actions to streamline the enforcement process. We strongly believe that this "best practice" of the Virginia DEQ has resulted in extremely timely compliance from the State's hazardous waste violators.

We also believe that shortening the time frame for receipt of inspection reports from the Environmental Services Division by 15 days will not significantly improve the enforcement process, which currently takes anywhere from several months to over a year to complete.

CHAPTER 4

REGION III TIMELY AND APPROPRIATE LIST

EPA's Enforcement Response Policy stipulates that a facility that has received informal enforcement action and remains out of compliance for 180 days will be classified as a Significant Non-Complier. Despite this requirement, Region III allows State Agencies 300 days to consider: (a) classifying violating facilities as Significant Non-Compliers, and (b) initiating formal enforcement action. Consequently, facilities can remain non-compliant and increase the potential for harm to human health and the environment.

Region III's 300-Day T&A List

Region III maintains a list of facilities that have not responded to State informal enforcement actions, and that have been non-compliant for more than 300 days. The Region forwards this "timely and appropriate" (T&A) list monthly to each State, and holds quarterly conference calls to discuss the enforcement status of the facilities. According to regional personnel these facilities are considered "potential" Significant Non-Compliers. However, we noted that Region III and Virginia DEQ rarely classified such facilities as Significant Non-Compliers at this point.

As explained in the Enforcement Response Policy, States with authorized RCRA programs have the primary responsibility for ensuring compliance with the program requirements. However, EPA retains the authority to take independent enforcement action in authorized States in accordance with Section 3008 (a) (2) of RCRA. Pursuant to this Section, EPA may take direct action after notice to the authorized State if the State fails to take timely and/or appropriate action.

Significant Non-Compliers on the FY 1997 T&A Lists

We randomly selected for review the files for 92 facilities inspected by three Virginia DEQ offices. Of these 92 facilities, there were 19 facilities on the Region's fiscal year 1997 T&A lists. Of these 19 facilities, 6 met the criteria for Significant Non-Complier classification. Although formal enforcement actions were taken in most cases, these actions were untimely. The following table shows the six facilities that were on the fiscal year 1997 T&A lists that met Significant Non-Complier criteria.

FACILITY	NUMBER OF VIOLATIONS	DAYS OUT OF COMPLIANCE	DATE OF T&A LIST
Case VA12	7	1,749	11/01/96
Case VA07	1	1,022	03/30/98
Case VA03	4	929	11/01/96
Case VA04	13	929	11/01/96
Case VA10	5	644	11/01/96
Case VA08	6	411	11/01/96

Case VA12 was discussed in Chapter 2, as it was classified by Virginia DEQ as a Significant-Non-Complier. The following are summaries of the events related to the remaining T&A cases from our sample, and which we believe should have also been classified as Significant Non-Compliers (or High Priority Violators as defined in the 1987 Enforcement Response Policy).

Case VA07

This facility was 1,022 days out of compliance according to the T&A list. The violation, being an unpermitted storage facility for hazardous waste, resulted from an inspection DEQ conducted in December 1994. Because this violation was deemed major ("Class 1"), DEQ should have classified the facility as a "High Priority Violator" and initiated formal enforcement action by April 30, 1995. Instead, DEQ did not

initiate a formal enforcement action until August 1997, which the facility did not agree to sign until April 1998, over three years after the original inspection.

Case VA03

This facility was 929 days out of compliance according to the T&A list, with four violations found during a DEQ April 1994 inspection. Two of these violations were corrected at the time of another DEQ inspection in March 1996. Due to the two violations being unresolved since 1994, the State should have classified the facility as a Significant Non-Complier and initiated formal enforcement action. The actual Consent Order was eventually issued in June 1997, over three years after the original inspection.

Case VA04

This facility was 929 days out of compliance according to the T&A list, with 13 Class 1 and Class 2 violations found during a DEQ April 1994 inspection. Five of these violations were corrected at the time of another DEQ inspection in March 1996. Due to the eight violations being unresolved since 1994, the State should have classified the facility as a Significant-Non-Complier and initiated formal enforcement action. The actual Consent Order was eventually issued in June 1997, over three years after the original inspection.

Case VA10

This facility was 644 days out of compliance according to the T&A list, with five violations found during an inspection DEQ conducted in January 1995. Failing to return to compliance after DEQ attempted informal enforcement, the facility should have been classified as a High Priority Violator in July 1995. Failing that, the facility should have been classified as a Significant Non-Complier in April 1996, with the issuance of the revised Enforcement Response Policy.

Case VA08

This facility was 411 days out of compliance according to the T&A list, with six violations found during an inspection DEQ conducted in September 1995. When the State reinspected the facility in January 1997, it reported that two of the six violations remained uncorrected. DEQ also reported that there were several new violations that were similar to those found during the September 1995 inspection, as well as during a March 1994 inspection. Based on DEQ's findings, this facility should have been classified as a Significant Non-Complier.

Conclusion

According to the 1996 Enforcement Response Policy, the facilities discussed above should have been classified as Significant Non-Compliers after 180 days of non-compliance. However, Region III placed these facilities on the T&A lists because their non-compliance exceeded 300 days. The use of the 300-day criteria promotes untimely compliance, because it does not encourage State Agencies, such as Virginia DEQ, to make Significant Non-Complier classifications and formal enforcement decisions at the 180-day mark, as prescribed in EPA's 1996 Enforcement Response Policy.

Recommendations

We recommend the Region III Administrator:

- 4.1 Cease the practice of issuing T&A lists to the States for facilities out of compliance for 300 or more days.
- 4.2 Institute the practice of issuing T&A lists to the States for facilities out of compliance at the 180-day mark, and require the States to make a SNC determination and take appropriate enforcement action.

**Region III's
Response to
Recommendations**

The Region is currently issuing T&A reports to the states for both 180 and 300 days. The 300-day report allows the states to track progress towards issuance of final compliance

agreements and compliance orders. As such, the Region expects to continue providing both reports to the states.

**OIG's Evaluation
of Region III's
Response**

According to EPA's Enforcement Response Policy, facilities that have had informal enforcement and remain out of compliance for more than 180 days should be considered Significant Non-Compliers and have formal enforcement initiated against them. This is not currently being accomplished by Region III. Therefore, our recommendations remain unchanged.

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CHAPTER 5

MISSING RECORDS

Missing Data

Region III did not adequately maintain official RCRA enforcement and compliance files. Specifically, the contractor responsible for custody of the files was unable to provide certain documents pertaining to 10 of the 30 facilities in our sample taken from fiscal years 1996 and 1997 inspections conducted by the Region. The missing data is as follows.

FACILITY NAME & FACILITY ID NO.	INSPECTION DATE	MISSING DOCUMENTS
AllWaste Container Service MDD981737521	09/25/96	Inspection Report
Beltsville Agric. Res. Ctr. West MD2120500119	09/25/96	Entire File
Beltsville Agric. Res. Ctr. East MD0120508940	09/25/96	Files after 1990
Pepco Benning Generating Sta. DCD000819516	04/28/97	Entire File
Anacostia Marina Inc. DCD983968538	03/04/97	Inspection Report
St. Elizabeth's Hospital DC9751305997	06/03/97	Inspection Report
USDA National Arboretum DC7120507432	02/19/97	Inspection Report
Garage 4134 PAR000016071	01/12/97	Inspection Report
Steamtown Nat'l. Historic Site PAD987285715	04/14/97	Entire File
St. Mary's Refining Co. WVD004337135	10/31/96	Inspection Report

In response to our position papers, the Region explained that:

Based on discussions with the [contractor name deleted] file room staff, for files listed as: *no inspection report in file*; files did not physically exist within the file room at the time of the audit since no information was contained on the specific facilities in the RCRIS data base. The contractor stated that this was explained to the IG auditor but the auditor may not have understood. Additionally, there were some inspection reports that may not have been entered into the file room system at the time of the audit.

For files listed as: *cannot locate files*; a check was made by the contractor on the site specific files and there was existing documentation showing who had signed out the files (PAD987285715 signed out since 3/12/96). The contractor believed this information was conveyed to the IG auditor during the audit.

The facility that was listed as: *missing files after 1990*; did not have files after 1990 because these files were not listed in the RCRIS data base and therefore did not exist in the file room at the time of the audit.

Regarding missing inspection reports, it should be pointed out that the universe from which we sampled was RCRIS information for fiscal years 1996 and 1997 inspections. Therefore, if there is data in RCRIS, logic dictates that an inspection should have been conducted. If there was an inspection, there should have been an inspection report placed in the official file and available for review.

Regarding missing files, on several occasions the custodial contractor confirmed that there was no record that these files had been checked out. We repeatedly followed up on this issue with regional RCRA personnel over a period of months. At no time were we informed that the files were available for our review.

The fact remains that it is a prudent business management practice to maintain adequate custody over official files. Region III is paying a contractor to perform this function in the RCRA File Center. That there was such confusion over whether documents and files exist or not, indicates that the controls over these records are inadequate. The contractor was unable to provide us with a third of the documents requested. Finally, we would also point out that during our visits to three individual DEQ offices, we obtained the files for 146 inspections without incident.

Recommendations

We recommend the Region III Administrator:

- 5.1 Establish adequate custody controls over official RCRA files.
- 5.2 Conduct a management review of the contractor responsible for the RCRA file room.

**Region III's
Response to
Recommendations**

Region III concurs with our recommendations and will undertake a review to determine where these breakdowns have occurred. In addition, it already has a plan in place to update all enforcement file information over the next six weeks.

**OIG's Evaluation
of Region III's
Response**

EPA's response meets the intent of our recommendations. We ask that the Region provide us a copy of the results of its review in order that we may close out this issue.

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APPENDIX A

GLOSSARY

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Glossary

CEI – Compliance Evaluation Inspection.

Class 1 Violation – The most serious type of RCRA violation, which is a deviation from regulations or provisions of formal enforcement orders.

Class 2 Violation – Any violation of a RCRA requirement that does not meet the criteria for Class I violations.

DEQ – For the purposes of this report, Virginia’s Department of Environmental Quality.

ERP – Enforcement Response Policy. Provides guidance for classifying violations, selecting appropriate enforcement action in response to various RCRA violators, and for taking Federal enforcement action in States with authorized programs.

Generator – Any person or business that produces hazardous waste or first causes hazardous waste to become subject to RCRA regulations.

Hazardous Waste – Wastes that meet EPA’s definition for solid waste and possess the characteristics of ignitability, corrosivity, reactivity, or toxicity (as defined by RCRA).

HPV – High Priority Violator. A category of violator that merits the most stringent and immediate enforcement response. It is the 1987 ERP equivalent of a SNC for which formal enforcement was required within 135 days of the inspection.

NVRO – Northern Virginia Regional Office of the Virginia DEQ, which is located in Woodbridge, VA.

Permit – An official license that specifically allows a facility to treat, store, or dispose of hazardous waste and outlines the precautions that must be taken to manage the waste in a manner that adequately protects human health and the environment.

Regulatory Agency – Either the EPA or State Agencies that are responsible for implementing, monitoring, and enforcing the RCRA program.

RCRA – Resource Conservation and Recovery Act. This Congressional Act encourages environmentally sound methods for disposal of household, municipal, commercial, and industrial waste.

RCRIS – Resource Conservation and Recovery Information System. The national RCRA information system used by EPA for program management, regulation development, and regulation enforcement.

SNC – Significant Non-Complier. The 1996 ERP classification which is used for the most serious RCRA violators.

State Authorization – The process by which States are given authority to run the RCRA program instead of EPA.

Subtitle C – The section of RCRA which establishes a regulatory framework for managing the generation, storage, treatment, and disposal of certain wastes defined as hazardous.

T&A List – A list of RCRA facilities which have not responded to State informal enforcement actions and have been non-compliant for more than 300 days.

TIER I – The Region III quarterly meeting, which is held to determine the appropriate enforcement action to take against RCRA violators.

TRO – Tidewater Regional Office of the Virginia DEQ, which is located in Virginia Beach, VA.

TSDF – Treatment, Storage and Disposal Facility. Facilities that receive hazardous waste from generators or other facilities for treatment, storage or disposal of waste.

WCRO – West Central Regional Office of the Virginia DEQ, which is located in Roanoke, VA.

APPENDIX B

Region III's Response to Draft Report

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UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION III
1650 Arch Street
Philadelphia, Pennsylvania 19103-2029

August 9, 1999

SUBJECT: Response to Draft Audit Report on RCRA Identification and Enforcement of Significant Non-Compliers

FROM: W. Michael McCat 
Regional Administrator (3KA00)

TO: Carl A. Jannetti
Divisional Inspector General for Audit (3AI00)

Thank you for the opportunity to provide comments on the above referenced document. The draft audit report identifies several problem areas that we have recognized as areas of concern and have already taken steps that should resolve or limit the reoccurrence of the issues that you have raised. Our comments are as follows:

Response to Recommendations 2.1 to 2.3

Chapter 2 recommends that Virginia Department of Environmental Quality (DEQ) should adhere to the procedures for identifying Significant Non-Compliers (SNC) and take appropriate action as outlined in EPA's Enforcement Response Policy (ERP), that DEQ escalate to formal enforcement when a facility is recalcitrant (rather than continue compliance assistance) and DEQ be aware of how to refer potential Superfund candidates to Region III. We agree with these recommendations in that we, along with the Office of Enforcement, Compliance and Environmental Justice, have been working with DEQ to review and finalize DEQ's ERP such that it is equivalent to EPA's.

With regard to escalation of enforcement actions, please recognize that many of Region III states (including Virginia) do not have the ability to issue unilateral complaints and therefore must rely on negotiated settlements for the majority of their formal enforcement actions. Furthermore, some are required to exhaust all administrative (informal) options before they can consider a referral to the state's Attorney General's Office. As a result of these procedural restraints, we have allowed the states the full 300 days provided for in the ERP to negotiate final administrative orders that return the violating facility to compliance.

Virginia has indicated that its staff is aware of when and who to contact at EPA when it believes it has a facility that may require action under Superfund. The DEQ, however, was previously unaware that EPA must record the referral to Superfund in Resource Conservation and Recovery Information System (RCRIS) to have the facility removed from the Timely and Appropriate (T&A) list.

Customer Service Hotline: 1-800-438-2474

Response to Recommendations 3.1 to 3.5

Chapter 3 identifies four (4) facilities where the Region did not "appropriately" classify facilities as Significant Non-Compliers and did not take "timely" enforcement action. These are areas that the Waste and Chemicals Management Division has also identified as areas of concern. We recognize the importance of properly classifying facilities that warrant a SNC determination and the need to take timely enforcement actions. As such, we have taken actions to correct these perceived weaknesses in the program. To ensure that SNC determinations are made for facilities that warrant such a determination, we have included questions in our Tier I screening form that will assist the Tier I Screening Panel in determining whether a facility has caused an actual exposure or if there is a substantial likelihood of exposure to hazardous waste or hazardous waste constituents; are chronic or recalcitrant violators or have deviated substantially from the terms or requirements of a permit, order or from RCRA statutory or regulatory requirements (see attached screening form). Once a determination is made whether a facility should be classified as a Significant Non-Compliers Yes or Significant Non-Compliers No, these designations will be updated in RCRIS within five working days.

Regarding timely response, we recognize that we have some areas that need improvement and we have taken steps to improve our ability to move facilities through the pipeline in a more expeditious manner. Some of the changes we have made include:

- ✓ Use of contractors to provide support during EPA-lead inspections. Contractors provide support to RCRA staff when they conduct inspections. This allows the staff to conduct more inspections and/or perform and prepare inspection reports in a more timely manner.
- ✓ Tier I Meetings have been held on a monthly basis since approximately March 1998. This has allowed us to screen cases on a more frequent basis, thereby shortening the time required to make an enforcement response recommendation.
- ✓ In December 1998, we added one additional FTE to the Branch in the Wheeling Office. In addition to allowing the Region to have a greater presence in the western part of the Region, this additional FTE will provide an additional resource that can conduct inspections and process enforcement cases, thus leading to a more timely response.

Others areas where we are looking to improve include:

- ✓ Shortening the time frame in which inspection reports are received from the Environmental Services Division (ESD). Over the past fiscal year, the RCRA program received inspection reports from ESD approximately 45-60 work days after the inspection date. We have signed a work plan with ESD's Office of Environmental Programs that requires that inspection reports be submitted to

the RCRA Enforcement Program within 45 calendar days after the completion of the inspection.

- ✓ We have developed a separate stand-alone data base that will allow us to track the entire RCRA Enforcement Pipeline from targeting through completion of compliance tasks required as a result of compliance orders. The system has built-in tickler dates that will facilitate tracking of time frames described in the ERP.

Regarding your recommendation that RCRA personnel receive RCRIS training and that we establish data verification procedures, we recognize that this is an area where we need to focus additional attention and have a number of actions ongoing (some of which have already been described above) that should improve the quality of EPA's RCRIS data. We now have a fully trained Senior Environmental Employment Program person on board who is responsible for our inspection and program tracking data and have dedicated an additional FTE as an Enforcement Program Manager that would allow us to improve our oversight of the state data.¹ We also have provided RCRIS data entry training to each Compliance Officer at the end of fiscal years 1996, 1997, and 1998. We hope to extend this training to all data entry personnel to ensure that the likelihood of a reoccurrence of data errors is minimized.

The examples that your audit found regarding violations unrecorded in RCRIS are likely also the result of the enforcement staff not being able to substantiate violations reported by the inspector. It is very common for the inspector to record potential violations in their inspection reports that the enforcement staff cannot verify or backup with the necessary evidence to prove a violation. Because of this, the violations entered in RCRIS may not match the initial violations described in the inspection report.

Response to Recommendations 4.1 and 4.2

Chapter 4 recommends that Region III cease issuing Timely and Appropriate (T&A) reports to states for facilities out of compliance for 300 days or more and instead issue T&A reports which identify those out of compliance facilities at the 180 day mark. We are currently issuing T&A reports to the states for both 180 and 300 days. The 300 day report allows the states to track progress towards issuance of final compliance agreements and compliance orders. As such, we expect to continue providing both reports to the states.

1

This FTE was filled for approximately 1 month but has since become vacant and the division's FTE cap has prevented us from backfilling this position at this time.

Response to Recommendations 5.1 and 5.2

Chapter 5 recommends that the Region establish adequate custody controls over official RCRA files and conduct a management review of the contractor responsible for the RCRA file room. We agree with these recommendations and will undertake a review to determine where these breakdowns have occurred. In addition, we already have a plan in place to update all enforcement file information over the next six weeks. Since the time of the audit, there have been very few complaints received about staff inability to access facility files.

Conclusion

In summary, we have recognized many of the areas pointed out in the draft audit report as matters that need to be addressed and have taken action to correct them. Also, we have provided several clarifications which we hope you will incorporate into your final report. If you have any questions regarding these comments, please contact either Jim Webb at (215) 814-3169 or Harry Daw at (215) 814-3244 of my staff. Again, thank you for the opportunity to provide our comments.

Attachment

cc: Tom Voltaggio (3DA00)
James Webb (3WC30)
Harry Daw (3WC31)
Mary Coe (3RC30)
Bill Early (3RC00)
Samantha Fairchild (3EC00)
Richard Pepino (3ES30)

APPENDIX B

Virginia DEQ's Response to Draft Report

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COMMONWEALTH of VIRGINIA

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James S. Gilmore, III
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Secretary of Natural Resources

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Director

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August 9, 1999

Mr. Carl A. Jannetti
Division Inspector General for Audit
United States Environmental Protection Agency
Office of Inspector General
Mid-Atlantic Division
1650 Arch Street
Philadelphia, PA 19103-2029

Dear Mr. Jannetti:

Thank you for the opportunity to review the draft audit report on "RCRA Identification and Enforcement of Significant Non-Compliers," covering the federal fiscal years 1996 and 1997. We are pleased that your report recognized the appropriateness of DEQ's enforcement actions and the knowledge of our staff. We also appreciate your recognition of DEQ's empowerment of inspectors and enforcement specialists as a "best practice" for others to follow.

While DEQ may have differences of opinion or perspective regarding positions of the report, we have addressed or are in the process of addressing each of the recommendations to assure that all hazardous waste violations are properly classified and handled. DEQ will continue to work with EPA Region III to assure that the recommendations are fully implemented. Attached are specific responses to each of the recommendations.

Very truly yours,

A handwritten signature in black ink, appearing to read "Dennis H. Treacy".

Enclosure

Department of Environmental Quality
RCRA Identification and Enforcement of Significant Non-Compliers
Office of Inspector General - Draft Audit Report - June 30, 1999
Recommendations and Responses

Recommendations: We recommend that the Region III Administrator ensure that the Virginia DEQ:

- 2.1 Adheres to the EPA Enforcement Response Policy; specifically, establish procedures for identifying Significant Non-Compliers, and take appropriate enforcement actions to ensure their timely return to compliance.

DEQ Response: Procedures for designating facilities as Significant Non-Compliers (SNCs) are in place in DEQ Regional Offices, which have been delegated authority over compliance and enforcement cases. Those offices have reviewed their pending hazardous waste cases to confirm that violators have been designated as SNCs in accordance with those procedures. In its current revision of the Enforcement Manual, Virginia DEQ has established procedures for identifying SNCs, and for taking appropriate enforcement actions to ensure their timely return to compliance, consistent with EPA's Hazardous Waste Civil Enforcement Response Policy. DEQ has provided EPA a copy of the current revision for information and comment. It is DEQ's intent that adherence to the Enforcement Manual will ensure timely return to compliance in accordance with EPA's expectations.

- 2.2 Escalate to formal enforcement when a facility is recalcitrant, rather than continue "compliance assistance."

DEQ Response: It is DEQ's policy to escalate the enforcement activities when a facility is recalcitrant and to reach a prompt conclusion to enforcement actions. The draft Enforcement Manual establishes guidance and procedures to ensure that cases involving recalcitrant facilities are escalated to formal enforcement in a timely manner. Compliance assistance remains an important part of DEQ's efforts to assure consistent compliance among the regulated community. However, when a facility is recalcitrant, or when the environment or public health is at risk, DEQ will escalate such cases to formal enforcement. The current revision of the Enforcement Manual has been provided to EPA for information and comment.

- 2.3 Is aware how to refer facilities as possible Superfund candidates to Region III.

DEQ Response: DEQ maintains an Office of Remediation Programs (ORP) that handles Superfund and other remediation issues and that continuously interacts with the Superfund staff in EPA Region III. Sites are referred through the ORP (or through the Virginia Department of Emergency Services) as possible candidates for Superfund response action. Indeed, in July 1999, three sites were added to the final list of sites on the National Priorities List. In addition, the procedure for site evaluations under the Virginia Solid Waste Management Regulations specifically

recognizes that sites with releases of hazardous substances may warrant federal involvement.

To ensure that the staff are aware of the procedures for potential Superfund involvement, DEQ has conducted cross-training for ORP and RCRA staff in hazardous waste and Superfund issues. ORP is conducting additional training for the staff in all media programs in each of the six DEQ Regional Offices.

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APPENDIX C

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