Executive Summary

The US Environmental Protection Agency (EPA) and State inspectors can visit your facility at any time to conduct a hazardous waste inspection. To avoid the potential for substantial fines and penalties, it is critical to ensure that you and your employees are prepared for inspectors’ scrutiny.

The inspection includes an administrative audit and a physical site evaluation and, depending on the scope of your activities and compliance history, can last from one day to two weeks. This paper addresses best management practices to implement before, during, and after the RCRA inspection.
Plan Now for Compliance Success

By preparing ahead for a RCRA inspection, you’ll reap rewards that will benefit your company in several ways. First, by using self-assessment tools throughout the year and properly training your personnel, you will help ensure compliance with regulations designed to protect human health and the environment. Secondly, you will fulfill your fiduciary obligation to your company by avoiding hefty legal fees and fines that are now as high as $37,500 per day, per violation. Finally, “good will” is part of your company’s valuation, so protecting its image within the community of being an effective environmental steward is critical to stay competitive.

Read on for actionable best practices to plan for and handle the administrative and visual inspections, as well as the post-inspection consultation. Note: This information is not provided as legal advice, merely as a general guidance of issues related to being prepared for regulatory inspections. Corporate legal counsel should be involved in making decisions regarding these issues.

Pre-inspection Preparation

Planning ahead will give you the confidence to handle inspections in an organized and controlled manner. Most inspections consist of two distinct parts: the administrative audit where your recordkeeping and plans will be scrutinized and the “walk around” where the inspector will examine your on-site waste management operations.

1. Develop a Standard Operating Procedure

It’s essential to develop, practice, and follow a written Standard Operating Procedure (SOP) to handle inspection protocol. An SOP is an effective method for ensuring employees involved in a RCRA inspection are familiar with established company policies and expectations in advance. It can also provide consistency as personnel have a written standard to which they can refer. Some State agencies have formal inspection checklists. If you can obtain a copy of your state’s RCRA inspection checklist, you will have a better sense of what must be included in your inspection procedure.

At a minimum, your SOP should include:

- **A description of the administrative and walk-through process**, which explains a typical inspection process and provides clear direction for facility personnel. It should include, at a minimum, the name of lead company representative who is responsible for conducting a RCRA inspection with a State or Federal inspector, and his or her backup. This person should be the most qualified and knowledgeable employee regarding the facility’s operations and the RCRA compliance program. The description should include:
  - Location for inspector to review records/documents. This location should be easy to monitor and restrict inspector access to only those items necessary for the inspection;
  - Employee’s legal obligations and allowances during and after inspections;
  - Actions that trigger contacting your legal counsel; and
  - Actions and timelines to follow after the inspection.

- **Procedures for welcoming the inspector**:
  - Verifying credentials, requesting opening conference, briefing on security and safety, and issuing personal protective equipment (PPE) as appropriate.

- **Suggested direct routes to keep inspection focused on only those areas necessary for the RCRA inspection, including**:
  - Central (90-/180-day) storage, satellite accumulation points, universal waste accumulation areas, and used oil storage areas;
  - Recycling units and waste treatment activities (e.g., elementary neutralization units and wastewater treatment units), if applicable.
• A list of essential “do’s and don’ts” during the inspection.
  - Do take copious notes, duplicate photos, and split samples. Keep answers succinct and on point and politely ask for explanations and regulatory references.
  - Don’t take inspectors where they haven’t asked to go, become argumentative, or improvise if you’re unsure of an answer.

While the timing of routine inspections may be somewhat predictable based on historical precedence, an inspector may knock on your facility door at any time. To be ready for an unannounced inspection, assess your workplace for chemical, physical, and energy hazards to determine what protective equipment should be on hand to facilitate the inspection process. Your individual needs will be determined by physical site conditions, the dangers present, applicable OSHA standards, and other considerations (e.g., whether or not sampling will take place). See the list of Common Inspection Safety Items you might want at the ready.

### 2. Have Site Information at the Ready

Assemble a binder that contains an explanation of your operating processes, as well as an inventory of the waste streams generated and a description of waste management practices employed at the facility.

Providing a site map indicating hazardous waste central storage areas and satellite areas will allow for a more direct and focused walk-through.

### 3. Prepare Personnel to Handle Inspections

Train your personnel to answer questions posed by an inspector honestly and as succinctly as possible. If they are uncertain about how to answer, they may refer the question to a supervisor. This skill may need to be practiced so that personnel are comfortable under the pressure of the moment. Make it a practice throughout the year to ask your personnel questions that might reasonably be asked of them by a RCRA inspector.

#### Request a Pre-inspection Consultation

If possible, reserve office space for a pre-inspection consultation. Notify required attendees, such as State RCRA program representatives, management, legal counsel, and area supervisors.

At the opening conference, the inspector should define the scope of the inspection. Is it administrative only or a full audit? The purpose may be to discuss compliance with deadlines established in a RCRA permit or to address specific areas of concern that were previously identified. The inspector may be there in response to complaints or alleged violations or to follow up and verify corrections and compliance with an enforcement action.

Always take notes. Capture full contact data of those present and summarize the conversation. You may make note of:
- Why the inspection was initiated (e.g., routine, random, follow-up to previous violation, complaint)
- An outline of inspection objectives
- What facility information was requested by and provided to the inspector
- Planned sampling activities
- Regulatory references discussed

Keep inspection-related records per your legal policies for record retention.

### Common Inspection Safety Items

- Safety glasses, goggles, or face shield
- Hard hat
- Rubber-soled, metal-toed, non-skid shoes
- Gloves (disposable if possible)
- Ear plugs (for noise protection)
- Protective clothing, such as rubber aprons or coveralls
- Respirators and cartridges (if inhalation hazards are present)
- Self-contained breathing apparatus (for certain confined spaces)
- Disposable plastic shoe covers (for sterile/clean areas)
- Disposable towels or rags
- Digital camera with memory cards
- Flashlight and batteries
- Pocket calculator
- Pocket knife
- Tape measure
The Administrative Audit

If your paperwork is not in order, it will send up red flags to your inspector. Begin by knowing the location of your RCRA records. Any records required to be retained under the RCRA regulations should be immediately available for inspection, whether they are kept in electronic form, in a special inspection binder, or in a file cabinet. Incomplete or inaccurate recordkeeping may convince an inspector that a closer examination of your operations is needed. The following are some common records required by inspectors during an administrative audit.

Training Records—Dot Your “I”s and Cross Your “T”s

Inspectors will likely examine your RCRA training records. The recordkeeping standards for large quantity generators are at 40 CFR 265.16. You must include the job title for each position at the facility related to hazardous waste management and the names of the employees filling each job. Develop a complete written job description for each employee who meets the definition of hazardous waste “personnel” at 40 CFR 260.10. Remember to include any outside contractors who meet the definition of personnel as well.

The training standard requires the job description include at least the requisite skills, education or other qualifications, and duties required of the position. In addition, each description must indicate the type and amount of introductory and continuing training that will be provided to each person within that job description.

The training requirements for small quantity generators (SQG) do not require documentation. Your SQG personnel must be “thoroughly familiar” with their waste handling and emergency response procedures per 40 CFR 262.34(d)(5)(iii). It is a good management practice to have some sort of written proof you’ve complied with this mandate.

Large and small quantity handlers of universal waste must also be trained per 40 CFR 273.36 and 273.16, respectively. Again, it is a best practice to record the completion of this training even though documentation is not explicitly required.

Manifests and Exception Reports

Generators are required to keep a copy of the Uniform Hazardous Waste Manifest for three years from the date of shipment. [40 CFR 262.40] Anyone who signs a manifest must also receive comprehensive training in the DOT hazardous materials transportation regulations. (The DOT requires proof of training in 49 CFR 172, Subpart H.) If you had to submit an exception report, keep copies of those as well. [40 CFR 262.42]

Waste Minimization and Pollution Prevention Documentation

Every time you sign a hazardous waste manifest, you are attesting to the fact that your facility either has a program in place to “reduce the volume and toxicity of waste generated” if you are an LQG or have made a good-faith effort to minimize waste generation if you are a SQG. Some State RCRA programs also require written plans. Remember: If an EPA inspector audits your facility, he or she will be evaluating compliance based on your State RCRA program's mandates. Therefore, you should also keep waste minimization and pollution prevention plans if required by your state.
On-site Recycling Activities

The EPA has developed a pre-inspection and inspection guidance tool to assist Federal and State waste inspectors in evaluating a generator’s compliance with RCRA requirements governing the recycling of hazardous secondary materials. You can review EPA’s inspection checklist online: [http://www.epa.gov/wastes/hazard/dsw/hsm-inspector-checklist.pdf](http://www.epa.gov/wastes/hazard/dsw/hsm-inspector-checklist.pdf)

Under the Federal regulations, if you are a 90-/180-day facility operating without a RCRA permit, the recycling process itself is exempt from RCRA regulation (see 40 CFR 261.6(c)(1)). However, the hazardous waste must be managed in accordance with the generator accumulation rules at 40 CFR 262.34 while it is being stored prior to recycling. [40 CFR 261.6(b)] Requirements may vary by state.

Documentation for Tank and Container Inspections

Container inspections must be conducted weekly. [40 CFR 265.174] In various letters of interpretation, the EPA has consistently stated that “weekly” means at least once every week. Some states specify that “weekly” means once every seven days. The Federal regulations do not explicitly require documentation of these inspections, but it is virtually impossible to prove compliance without written records. Some states have added a recordkeeping requirement into their RCRA programs.

The regulations at 40 CFR 265.174 state that the facility owner or operator must look for leaking containers and for deterioration of containers caused by corrosion or other factors.

Hazardous waste storage tanks are subject to inspections once each operating day. [40 CFR 265.195] The specific elements of the tank inspection will depend on the specific components of your facility’s tank system. These inspections must be recorded in the facility’s operating record.

Waste Identification Profiles

Inspectors are becoming more focused on waste identification recordkeeping. [40 CFR 262.40] This may include analyses of specific constituents (e.g., toxicity characteristic (TCLP) and/or total concentration) or waste properties (e.g., pH and/or flash point).

Generators who use analytical data may need to document when samples were taken, the chain of custody, and specific analytical methods and equipment used.

Generators who use process knowledge should provide enough detail to support their waste identification conclusions (i.e., hazardous waste or not hazardous waste). This may necessitate having a full description of the process, a list of chemicals used in the process as well as those expected to be present in the waste, and a description of the waste. Historical analytical data, published industry studies and scientific background information, Safety Data Sheets, and Internet searches for chemical or physical property information can also support your assertions.

In addition, if you determine that your material is excluded from the definition of solid waste due to certain recycling, you must document the proper use of a relief or exclusion. [40 CFR 261.2(f)] This requires documentation that demonstrates this recycling activity is legitimate and not just speculative accumulation. [40 CFR 261.1(c)(8)] To prove that the material can be recycled and has a feasible means of being recycled, you may need records that describe the recycling process (this might include a copy of the contract or letter of agreement if the recycling is taking place off site), along with records that demonstrate that enough of the material was recycled during the year.

While many reliefs and exclusions are “built into” the regulations and may not require prior permission or an application to use, you may have to keep accurate records to prove compliance. Even when records are not specifically required, documentation is a reasonable way to rebut the inspector’s presumptions that the material is subject to more stringent management requirements.
LDR Documentation

You must keep a copy of all notices, certifications, waste analysis data, and other documentation produced for at least three years from the date the waste that is subject to such documentation was last sent to on-site or off-site treatment, storage, or disposal facilities. [40 CFR 268.7(a)] If you treat your waste on site in order to meet LDR treatment standards, you are required to develop and follow a waste analysis plan. The waste analysis plan must be based on a detailed chemical and physical analysis of a representative sample of the prohibited waste(s) being treated and contain all information necessary to treat the waste(s) in accordance with the requirements of 40 CFR 268, including the selected testing frequency. [40 CFR 268.7(a)(5)]

If you use the alternative treatment standards for lab packs, you must sign a certification that says: “I certify under penalty of law that I personally have examined and am familiar with the waste and that the lab pack contains only wastes that have not been excluded under appendix IV to 40 CFR part 268 and that this lab pack will be sent to a combustion facility in compliance with the alternative treatment standards for lab packs at 40 CFR 268.42(c). I am aware that there are significant penalties for submitting a false certification, including the possibility of fine or imprisonment.” Keep the signed certification in your files. [40 CFR 268.7(a)(9)]

If you manage a prohibited waste that is excluded from the definition of hazardous or solid waste or is exempted from Subtitle C regulation under 40 CFR 261.2–261.6 subsequent to the point of generation, you must account for this waste. A “One-time Notice to File” is used to document information about the generation, subsequent exclusion from the definition of hazardous or solid waste or exemption from RCRA Subtitle C regulation, and the disposition of the waste. [40 CFR 268.7(a)(7)]

Emergency Preparedness

Both large and small quantity generators are required to be prepared for emergencies according to 40 CFR 265, Subpart C. [40 CFR 262.34(a)(4) and (d)(4)] In addition, large quantity generators following the 90-day rules must have a written contingency plan in accordance with 40 CFR 265, Subpart D. This plan should lay out the actions required by personnel in the event of an actual emergency. [40 CFR 262.34(a)(4)] The plan must also include a description of arrangements made with local police and fire departments, hospitals, ambulance services; the names, addresses, and phone numbers for emergency coordinators; and a list of emergency equipment such as fire extinguishers, fire suppressants, spill control equipment, and communication and alarm devices.

Other Records

If you claim you are a small quantity generator or a conditionally exempt small quantity generator, your inspector may also ask for proof of your generator status for each month. Although not specifically required, keeping written records of how you count your waste (including wastes generated at satellite areas) is a way to comply. [40 CFR 261.5]

If you recycle materials, you have to prove that you have avoided “speculative accumulation.” [40 CFR 261.1(c)(8)] First, you have to prove that the material can be recycled and that there is a feasible means for doing so. Then document what is in inventory on January 1 and prove that you have either recycled or sent off site for recycling 75% of that inventory by December 31 of the same year.

Have you installed a new hazardous waste storage tank? Owners or operators of new tank systems or components must insure the engineering integrity of the device and its acceptability for storing and treating hazardous waste. You’ll need a written assessment reviewed and certified by a qualified professional engineer. [40 CFR 265.192]

Are you storing volatile organics in containers under the 90-day rules? How have you complied with the Part 265, Subpart CC RCRA air standards [40 CFR 265.1087]? Do you have a Clean Water Act permitted wastewater treatment unit that discharges to a publicly owned treatment unit? Your inspector may want to see your permit to verify what is permissible to go down your drain.
The Walk-around Inspection: Maintain a Professional Demeanor

One of your goals should be to foster a genuinely cooperative interaction with your inspector; it serves no good purpose to be argumentative or confrontational. It is, however, perfectly reasonable and even expected that you will ask for clarification or regulatory citations.

Answer questions as asked (i.e., do not offer additional info). And while it goes without saying that you and your fellow employees should always answer truthfully, if you are uncertain how to answer you, may defer the question to a superior or legal counsel.

Have a Planned Route

Create and use a map indicating the 90-/180-day central storage area(s); satellite areas; used oil tank and container storage locations; universal waste accumulation areas; and the locations of your lamp crusher, aerosol can puncturing device, and rag compactor.

Take Detailed Notes

Don’t rely on your memory! Note any deficiencies the inspector points out. Does he agree with how you manage your satellite areas? What does he question or seem to take exception to? Take duplicate samples, photos, recordings, and measurements for your own records.

Post-inspection Consultation

Your inspector may have some final questions. This will be your opportunity to provide additional information when requested. You may want to bring in supervisors, legal counsel, or other interested parties to the meeting.

At this time, you’ll review the preliminary inspection results and discuss obvious violations. Often, the inspector will return to his office to discuss findings with his colleagues and review his notes before further comment.

You should anticipate a follow-up request for additional information via a phone call from the inspector, a follow-up visit, or an information request via e-mail or the US postal service. Respond to these requests in a thorough and timely manner.

After the Inspection: Understanding the Enforcement and Compliance Process

After the inspection, you may receive a notice of violation. The purpose of an enforcement response is to achieve a timely return to compliance, serve as a deterrent to future non-compliance, and eliminate any economic advantage received through the violation.

You have a right to clarifying information. Call, write, or request a meeting with your regulatory agency if you don’t understand its findings.

It is important to ensure that your corporate counsel is involved in all steps of the inspection process. They will likely be directing the specific follow-up steps to an inspection, especially ones involving notices of violation. DO NOT proceed without consulting with them.
The Inspector’s Report

Each report usually has three elements:

1. Narrative information,
2. Checklists, and
3. Documentary support.

The Agency will describe apparent violations and may include recommendations for follow-up actions. A formal enforcement response includes mandates for compliance and/or initiates a civil or administrative process. This is an enforceable agreement or order. The Agency may order an appropriate sanction such as monetary penalties to recover the economic benefit of non-compliance and any additional amount meant to reflect the gravity of the violation. It may also specify:

1. Community service requirements,
2. Permit modifications or revocation,
3. Facility shutdown,
4. Suspension and debarment proceedings, or
5. Supplemental environmental projects (SEPs).

You might receive a less grave sanction in the form of a warning letter. Even better… your facility might pass inspection with flying colors!

There is wisdom in the classic adage “an ounce of prevention is worth a pound of cure.” To minimize the possibility of costly fines and penalties, it’s critical that you are prepared for a RCRA inspection at all times. Understanding the regulations that apply to your facility, developing SOPs, and providing training will help your personnel comply with the RCRA requirements every day. Monitoring your progress and success, correcting deficiencies, and planning ahead for scrutiny will help you ensure success on inspection day.
Building Confident Compliance Teams

Effective training is the key to a confident and productive workforce. To help you and your team build a strong compliance program and understand the regulations that affect your business, Lion Technology designs training to empower as well as educate. Since 1977, two out of three Fortune 500 companies in manufacturing, chemical, and transportation—as well as Federal and State government agencies—have trusted Lion for expert training delivered by full-time instructors. At Lion’s nationwide, interactive workshops, industry professionals get the knowledge and tools to succeed, and keep their sites in compliance.

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If you’re responsible for compliance with RCRA hazardous waste rules; 49 CFR, IATA, or IMO hazmat shipping standards; US EPA air, water, and chemical regulations or OSHA workplace safety mandates, visit Lion.com now to see how effective, engaging training can simplify your responsibilities and make it easier to comply with the complex rules that affect your job.

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