



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

WASHINGTON, D.C. 20460

May 27, 2021

MEMORANDUM

SUBJECT: Response to Office of Inspector General Final Report 21-P-0114
“EPA Does Not Consistently Monitor Hazardous Waste Units Closed with Waste in Place or Track and Report on Facilities That Fall Under the Two Responsible Programs” dated March 29, 2021

FROM: Barry N. Breen, Acting Assistant Administrator **BARRY**
Office of Land and Emergency Management **BREEN**

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Lawrence E. Starfield, Acting Assistant Administrator
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TO: Sean W. O'Donnell
Inspector General

Thank you for the opportunity to respond to the issues and recommendations in the subject audit report. Following is a summary of the agency's overall position, along with its position on each of the outstanding report recommendations.

AGENCY'S OVERALL POSITION

We appreciate the Office of Inspector General's (OIG) attention to EPA's oversight of hazardous waste units closed with waste in place. Effective oversight of these units is essential for ensuring that environmental obligations are met, and that human health and the environment are protected.

We wish to raise several points of emphasis. As the OIG notes in its report, the Resource Conservation and Recovery Act (RCRA) and the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) programs often work together to address cleanup of contaminated sites. At any one facility/site, each program may have different roles, for different areas, and roles and areas may change over time. Thus, what appear as potential inconsistencies in the respective data systems may in fact be valid and meaningful differences in cleanup status for different areas managed by the respective program. Nevertheless, the Office of Land and Emergency Management (OLEM) recognizes communication regarding these differences, particularly with the public, could be improved.

The Office of Enforcement and Compliance Assurance (OECA) agrees that the fundamental issue that the OIG is addressing here is important: protecting the public and the environment from improper handling of hazardous waste. Based on our comments to the draft report, we appreciate the OIG revising the report as necessary to clearly distinguish the difference between statutorily mandated inspections and inspections recommended through guidance. We agree that

operating Treatment, Storage and Disposal Facilities (TSDFs) are required by statute to be inspected every two years. Overall, the EPA had a high inspection rate of 96 percent (107 out of a universe of 112 operating TSDFs reviewed). For discretionary inspections, the Agency focuses its resources on the TSDFs that pose the greatest risk.

With respect to the nonoperating TSDFs, OECA's analysis indicates a potential inspection rate of more than 80%. The OIG final report reviewed RCRAInfo data at the facility unit level and determined 58 percent (334 of 575) of nonoperating TSDFs that manage RCRA units closed with waste in place had not received a groundwater evaluation or an operation and maintenance inspection within three years. The OIG concluded that roughly 50 percent (339 of 687) of nonoperating TSDFs that have RCRA units closed with waste in place were not inspected at the frequency set by policy. The Compliance Evaluation Inspection (CEI) is the primary mechanism for monitoring compliance with Subtitle C requirements. A CEI is intended to be a comprehensive evaluation of the compliance status of a facility under all applicable RCRA regulations and permits. A CEI can only be reported to the RCRAInfo database at the facility level and not at the unit level. We believe the OIG's analysis may have undercounted the number of units that were inspected. As an example, we found in the OIG's analysis a facility in Alaska listed as having two units not inspected in the last three years. However, OECA's review of the comprehensive facility-wide data shows this same facility was inspected in 2020, 2019, and 2018 (CEI) in addition to 2015, 2014, 2013 twice, 2012 and 2010.

Additionally, while the CMS suggests certain inspection types may be more appropriate than others depending on the circumstances, a variety of compliance monitoring tools can be utilized to assess nonoperating TSDFs. The OIG did not include in their analysis CEIs, corrective action compliance evaluations or case development inspections. Failure to account for other inspection types may have also resulted in undercounting the number of units inspected. As we discussed with the OIG, the Agency believes the inspection rate for facilities with units closed with waste in place may be more than 80%.

Finally with respect to the TSDF inspection rate, we understand that the OIG recommendation #2 in the report, as revised, is as follows: "Establish mechanisms to improve oversight of regional and state monitoring at operating TSDFs and non-operating TSDFs that include units with waste closed in place consistent with the RCRA statute and *Compliance Monitoring Strategy*." In order to address that recommendation, OECA and OLEM agree to take the following joint action: OLEM/ORCR, in collaboration with OECA, will develop in RCRAInfo and distribute to the EPA Regions a report that helps track regional and state inspections of TSDF units closed with waste in place as called for by statute and in the Office of Enforcement and Compliance Assurance's *Compliance Monitoring Strategy*. Based on discussions with your Office, it is our understanding that this action resolves the OIG recommendation #2. We will work to improve our oversight of regions and states with respect to these issues.

OLEM and OECA believe that the OIG's report has highlighted the need for improved program monitoring and use and understanding of the data in this area. To this end, we accept the OIG's recommendations in the final report as revised below and agree that actions undertaken in response to these recommendations will support ongoing efforts and strengthen overall program management.

AGENCY’S RESPONSE TO REPORT RECOMMENDATIONS

Agreements

| No. | Recommendation | High-Level Intended Corrective Action(s) | Estimated Completion by Quarter and FY |
|-----|---|--|--|
| 2 | Establish mechanisms to improve oversight of regional and state monitoring at operating TSDFs and non-operating TSDFs that include units with waste closed in place consistent with the RCRA statute and <i>Compliance Monitoring Strategy</i> .” | OLEM/ORCR, in collaboration with OECA, will develop in RCRAInfo and distribute to the EPA Regions a report that helps track regional and state inspections of TSDF units closed with waste in place as called for by statute or by the Office of Enforcement and Compliance Assurance’s <i>Compliance Monitoring Strategy</i> , as applicable. | 4 th Quarter FY2022 |
| 5 | Develop and maintain a crosswalk of Superfund Enterprise Management System and corresponding RCRAInfo identification numbers. | OLEM will work with the EPA’s Facility Registry Service (FRS) team in OMS-EI to create and maintain a solution which allows users to obtain the crosswalk of SEMS and RCRAInfo identification numbers. | 1 st Quarter FY2023 |
| 6 | Implement controls to identify and prevent overlap of environmental indicators between Resource Conservation and Recovery Act Corrective Action and Superfund programs and include this information in public queries such as <i>Cleanups in My Community</i> . | 6.1 OLEM will standardize communications on the <i>Cleanups in My Community</i> webpage regarding the intersection of RCRA Corrective Action and Superfund cleanup programs, including environmental indicator designations at sites. | 3rd Quarter FY2022 |
| | | 6.2 OLEM will implement controls to check between programs when environmental indicators are established in the future to prevent double-counting and inconsistencies. | 2nd Quarter FY2023 |

CONTACT INFORMATION

If you have any questions regarding this response, please contact Kecia Thornton (OLEM) at thornton.kecia@epa.gov or 202-566-1913 or Gwendolyn Spriggs (OECA) at spriggs.gwendolyn@epa.gov or 202-564-2439.

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