



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

WASHINGTON, D.C. 20460

AUG 2 2006

OFFICE OF
ENFORCEMENT AND
COMPLIANCE ASSURANCE

MEMORANDUM

SUBJECT: Implementation Guide: Post Inspection Construction Storm Water Pilot Project

FROM: Michael Stahl, Director
Office of Compliance

A handwritten signature in black ink, appearing to read "Michael Stahl", written over the "FROM:" line.

TO: Regional Enforcement Division Directors
Regional Water Division Directors, Regions 1-10
Regional NPDES Enforcement Branch Chiefs, Regions 1-10

The purpose of this memorandum is to provide the regions with information describing the Post Inspection Construction Storm Water Pilot Project and provide guidance on its implementation.

Background

The Post Inspection Construction Storm Water Pilot Project is modeled after EPA New England's Post Inspection Letter Project. That project received OECA's Best Practices Award in 2004. Following this award, former Deputy Assistant Administrator, Phyllis Harris, working with the OECA Change Board, decided to expand this project as a pilot in all ten regions. At that time, it was determined that one of the OECA national priorities was most suitable for piloting this approach since these were agreed-upon OECA investment areas. The Storm Water national performance-based priority was selected. Following the implementation of this Storm Water pilot, other national priorities may be selected for post-inspection projects in future years.

The Post Inspection Construction Storm Water Project will pilot the use of a Fact Sheet to be distributed after EPA conducts stormwater inspections at construction sites. The Fact Sheet will direct inspected sites to a web site providing essential stormwater compliance assistance and Best Management Practices (BMP) materials. The goal of the Post Inspection Fact Sheet is to take advantage of the "teachable moment" and help recently inspected entities return to compliance as soon as possible or to go beyond compliance whether or not deficiencies were observed during the inspection. The objective of the Post Inspection Pilot is to determine whether this approach can be

successfully adopted across the Regions, and to capture the potential resource implications on regional implementation.

Purpose and Use of the Fact Sheet

- The Post Inspection Construction Storm Water Pilot Project is an EPA compliance assistance effort intended to provide owners and/or operators of construction sites with publicly-available information regarding compliance with the stormwater regulations. It is designed to encourage them to return to, and go beyond compliance.
- The Fact Sheet contains an overview and a web link to a dedicated construction storm water website designed for this Pilot to provide easy access to compliance assistance resources, and regional contact information. A Spanish language version of the Fact Sheet will be sent to the regions after it has been finalized.
- Distribution of the Fact Sheet offers the opportunity to maximize beneficial environmental impact of the Agency's compliance inspections at stormwater sites. It promotes OECA's "Smart Enforcement" approach, which envisions greater environmental benefit from more strategic and effective inspections, and a combined use of assistance and monitoring tools.
- The Fact Sheet would be provided to a responsible official (e.g., owner, developer, and contractor) of the construction site either: 1) at the end of the compliance inspection, usually during the closing conference, or 2) at a later date from the EPA regional office. This would only occur if the EPA inspector cannot identify a responsible official.
- For sites receiving an Expedited Settlement offer, the follow-up letter and Fact Sheet should be sent no later than 21 days after the completion of the storm water inspection.
- The Fact Sheet attached to this Guide includes language dealing with potential follow-up enforcement.
- The Regions that currently send post-inspection letters to inspected facilities can continue to do so instead of using the fact sheet. The letter, however, should be modified based on instruction provided in the "Current Regional Post-Inspection Effort" section on page 3 of this memo.
- OECA will conduct a follow-up phone survey of construction sites that have received the Fact Sheet or post-inspection letter. It is critical that the regions provide Emily Chow of OECA with the phone number and the name of the responsible official who received the Fact Sheet or letter within 30 days after it was distributed.
- The information sent by the regions will be used by OECA to conduct the follow-up phone survey to measure the success of the Pilot. Regions are allowed to screen facilities, on a case-by-case basis, from being included in the follow-up phone survey, using the following criteria to maximize consistency across the regions: potential criminal violations; serious environmental events that have

occurred at the facility (e.g., large storm water sediment release); situations involving imminent and substantial endangerment to human health or the environment; or observed egregious violations. Generally, we expect that few construction sites would be screened from the follow-up phone survey due to potential enforcement using the criteria above.

FY 2006/2007 Inspection Universe

In the FY 2006 Annual Commitment System (ACS), the regions committed to conduct 352 construction storm water inspections. **Beginning two weeks from the date on this memorandum**, it is expected the regions will provide the Fact Sheet or the post-inspection letter to each construction site inspected by EPA employees, EPA contractors, or EPA Senior Environmental Employees (SEEs) during the remainder of FY 2006. This pilot will continue for any construction storm water inspections conducted through the end of FY 2007. The universe of construction sites for the FY2007 inspections and related regional commitment have not been determined at this time.

National Website

The Fact Sheet provides the web address of the Post Inspection Construction Storm Water Compliance Assistance Web Site developed by the Office of Compliance (Compliance Assistance and Sector Programs Division). This web site provides links to regional stormwater information. The website includes:

- Resources that can help the construction sites return to compliance.
- Best Management Practices information to help the sites go beyond compliance.
- EPA regional stormwater resources.
- Other regulatory requirements affecting the construction industry.
- Additional compliance assistance resources (e.g., the Construction Compliance Assistance Center).
- Links to State and local stormwater resources.
- Description of the general enforcement process.
- An on-line survey to provide EPA feedback on the website and the post inspection fact sheet/letter.

The national website will be housed by the OECA server to measure success of the Storm Water Post Inspection Pilot Project. The URL for the website is <http://epa.gov/compliance/assistance/postinspection-construction/>

Current Regional Post-Inspection Efforts

At least two regions (New England and X) currently send post-inspection letters to all EPA inspected facilities. In addition, some regions send post-inspection letters to facilities inspected in certain media programs (e.g., FIFRA and Oil Pollution Act). It is not the intention of this Pilot or the Implementation Guide to significantly modify the current practices used by these regions. Instead, regions currently sending post-inspection letters to inspected facilities only need to modify their letter to include

information contained in the Headquarters-developed Fact Sheet (at a minimum, the URL of the Post Inspection Construction Storm Water Compliance Assistance Web Site).

Measuring Success

An important aspect of this Pilot will be measuring the effectiveness of distributing the Fact Sheet or the letter, subsequent use of the web site, and whether real environmental improvement or pollutant reductions were achieved (e.g., person(s) receiving the Fact Sheet or the letter filed for a permit, modified or developed a Storm Water Pollution Prevention Plan, or modified how Best Management Practices were implemented at the site). It is important to track the types of compliance resources that inspected facilities accessed through the Post Inspection web site. Here are the specific activities that need to be performed to measure success:

- Each region provides a single regional point of contact (e.g., Compliance Assistance Coordinator, Enforcement Branch Chief) responsible for overseeing the implementation of this pilot in the region to Emily Chow of OECA.
- Each region sends the following information to Emily Chow of OECA via either e-mail or regular mail. The name, address and phone number of the person who received the Fact Sheet/letter during the inspection or at a later date, or a spreadsheet with the contact information. Emily's e-mail address is chow.emily@epa.gov. A hard copy of the spread sheet can be also mailed to Emily Chow, U.S.E.P.A, Office of Enforcement and Compliance Assurance, Office of Compliance, Mail code is 2224-A, 1200 Pennsylvania Avenue, Washington, D.C. 20460.
- OECA will develop/maintain a list of all stormwater construction sites receiving the Fact Sheet/letter during the inspection or at a later date (except for construction sites screened out based on the above criteria.)
- OECA evaluates the effectiveness of the national Post Inspection Construction Storm Water Web Site by monitoring and analyzing user statistics (e.g., Web Trends data).
- OECA conducts a follow-up phone survey of the construction sites that received the Fact Sheet/letter during the inspection or at a later date (except for sites screened out by the regions) to assess increased knowledge, behavior change, pollutant reduction, and cost savings attributable to the Stormwater Post Inspection Pilot project (OECA has developed an Information Collection Request to collect the information). The phone survey questions are focused on determining the value and usefulness of the Storm Water Construction Post-Inspection Website and are attached to this memorandum. NOTE: Regions are allowed to screen facilities, on a case-by-case basis, from being included in the follow-up phone survey, using the following criteria to maximize consistency across the regions: potential criminal violations; serious environmental events that have occurred at the facility (e.g., large storm water sediment release); situations involving imminent and substantial endangerment to human health or the environment; or observed egregious violations. Generally, we expect that few

construction sites would be screened from the follow-up phone survey due to potential enforcement using the criteria above.

- OECA prepares a report that summarizes the results of the Pilot.

If you have questions regarding this guidance, contact Emily Chow at 202-564-7071 at chow.emily@epa.gov or Ken Gigliello at gigliello.kenneth@epa.gov. Thank you for your attention to this memo.

cc: Regional Enforcement Coordinators, Regional Compliance Assistance Coordinators

Attachments: Fact Sheet

Follow-up Phone Survey Questions



Fact Sheet on Post-Inspection Construction Storm water Compliance Assistance Web Site

The U.S. Environmental Protection Agency developed the Post-Inspection Construction Storm Water Compliance Assistance Web page to provide compliance assistance information to recently inspected construction companies on storm water regulations to enable you to examine how your organization could improve overall environmental performance. You are receiving this fact sheet as a follow-up to a recent storm water inspection at one of your construction sites. The Web page is designed to provide information EPA encourages you to review and use to improve or enhance your operations.

Post-Inspection Construction Storm Water Compliance Assistance Web page:
<http://epa.gov/compliance/assistance/postinspection-construction/>

1) The following information can help you determine how to respond to deficiencies that are commonly found at construction sites. The information provided below can also help you maintain good operating practices and compliance.

- How to get a storm water permit
- What your state requirements are
- How to develop a Storm Water Pollution Prevention Plan (SWPPP)
- How to avoid future violations at your site
- What Best Management Practices are applicable to your operations

2) What information does your EPA regional office or state have that may help you?

- The Web page lists EPA regional and state storm water Web links that may provide additional information relevant to your construction site location.

3) Other than storm water requirements, what other environmental responsibilities do you have?

- You can find information on other environmental responsibilities you have such as waste generation and handling, dredge and fill, asbestos and the Endangered Species Act on this Web page.

4) Do you have questions on what comes next after the inspection?

- The Web page summarizes EPA's general enforcement process to be followed if EPA determines that there are storm water violations at your construction site.

5) Do you want to give EPA feedback on what you think of the Web page and this outreach effort?

- Complete an on-line survey to help EPA improve this Web page and better assist you in the future. EPA may also contact you to conduct a phone survey to determine how the Web page has helped you improve environmental performance at your construction site.

NOTE: This Fact Sheet is unrelated to any potential follow-up enforcement action, and the inspector is providing it without knowing whether any follow-up enforcement will occur. The Fact Sheet is being provided to all construction sites EPA inspects for compliance with the storm water regulations.

Survey Questions

1. Please choose the category that best describes you:

- Corporate Environmental Manager
- Owner of a construction site
- Developer
- Contractor
- Sub-contractor
- Construction Foreman

2. How did you hear about the Post-Inspection Storm Water Construction Web Site?

- I received the Post-Inspection Fact Sheet during the inspection
- I received the Post-Inspection Fact Sheet/Letter a few weeks after the inspection
- I heard from a colleague who received the Fact Sheet/Letter
- I heard from my trade association
- Other _____ (Please specify)

3. The Post-Inspection Fact Sheet is a good way for EPA to follow up on the inspection.

- Strongly Agree
- Agree
- Neutral
- Disagree
- Strongly Disagree

4. If the answer to question #3 is "disagree" or "strongly disagree," please specify what is the best way to provide compliance assistance to you?

5. Providing all relevant storm water construction information on one web site is helpful.

- Strongly Agree
- Agree
- Neutral
- Disagree
- Strongly Disagree

6. Which part of the Post-Inspection Storm Water Web Site is most helpful to you and why?
Please specify.

7. The Post-Inspection Storm Water Web Site helps me understand the environmental regulations that apply to my industry.

- Strongly Agree
- Agree
- Neutral
- Disagree
- Strongly Disagree
- Have never used the Post-Inspection Storm Water Web Site for this purpose?

8. What action(s) have you taken to improve environmental practices, in whole or in part, due to information you have found through the Post-Inspection Storm Water Web Site: (Select all that apply)

Attachment B

- contacted a vendor
- changed the handling of waste or emission
- performed a self audit
- contacted a regulatory agency
- changed a process or practice
- obtained a permit or certification
- took an action other than listed above to comply with a regulatory requirement
- Identified a pollution prevention opportunity
- other:
- I have never taken an action to improve an environmental practice as a result of using the Post-Inspection Storm Water Web Site

9 Please identify whether you reduced, treated, or eliminated pollution as a result of using the Post-Inspection Storm Water Web Site: (select all that apply)

- Prevented, reduced or eliminated storm water discharges to receiving waters
The next 3 options will apply if you have gone beyond storm water compliance
- Prevented, reduced or eliminated waste (solid/hazardous)
- Prevented, reduced or eliminated air emissions (air, fugitive)
- other, specify
- none
- don't know

If possible, please provide the amount of pollution you prevented, reduced or eliminated.

10 Has using the Post-Inspection Storm Water Web Site, or the actions taken above, resulted in cost savings to you? (Cost includes time as well as dollars)

- Yes No Don't know

If yes, please provide details

11. What would you suggest to improve the Post-Inspection Storm Water Web Site?

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