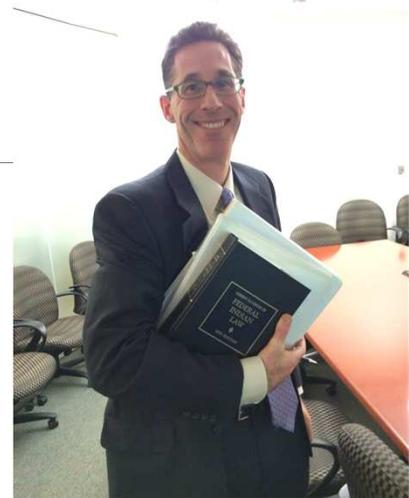


EPA's Compliance Monitoring in Indian Country & EPA Authorized Tribal Inspectors

ANDREW BACA

MAY 17, 2018

TRIBAL FORUM ON AIR QUALITY



Goals of Compliance Monitoring

- Compliance monitoring is a key component of all environmental compliance and enforcement programs. It encompasses all of the means used to make a compliance determination.
- The primary goals of compliance monitoring include:
 - Assessing and documenting compliance with permits and regulations
 - Supporting the enforcement process through evidence collection
 - Monitoring compliance with enforcement orders and decrees
 - Creating deterrence, and
 - Providing feedback on implementation challenges to permit and rule writers

Tribes Conducting Compliance Monitoring in Indian Country

- Maintain inherent authority to conduct inspections in Indian country and initiate enforcement under their own laws
- May collaborate and coordinate with EPA and states on inspection targeting and cross-jurisdictional and transboundary inspection issues
- Under certain federal laws, may inspect facilities *after* obtaining EPA approval to receive “Treatment in the Same Manner As a State” (TAS) status to implement a particular federal program which includes compliance and enforcement authority

EPA Conducting Compliance Monitoring in Indian Country

- Direct Implementation: EPA is generally responsible for implementing federal environmental statutes in Indian country in the absence of a federally approved tribal program
- Oversight of Tribes Implementing Federal Programs: EPA conducts “oversight” inspections in Indian country where a tribe is implementing an EPA-approved compliance monitoring program after receiving “treatment in a similar manner as a state” (TAS)

Announced & Unannounced Inspections

Announced inspections:

- EPA generally contacts the tribal government – but not the facility – in advance to discuss a planned compliance monitoring activity
- EPA generally offers a post-inspection (“exit”) meeting with the tribe after visiting a tribally owned or operated facility
 - Exit conferences are generally not offered after visiting a non-tribally owned or operated facilities

• Unannounced inspections:

- There are certain situations where prior EPA notification is not appropriate or cannot be provided (*e.g.*, emergency situations)
- EPA would provide notice to the tribe as soon as practicable after the inspection

Guidance on Authorization of Tribal (and State) Inspectors

- EPA guidance establishes uniform criteria on why, when, and how to exercise its discretion to authorize tribal (state) inspectors to conduct inspections on the Agency's behalf
 - Why: Need to increase EPA field presence and EPA resources are available to support the work
 - Why: Tribal interest
 - When: Appropriate number of potential inspection targets
 - When: Identified environmental problems and history of facilities' noncompliance
 - Why & When: National and/or regional priority
 - How: Through an written agreement to ensure clear understanding of terms, conditions, and limits

Inspections & EPA-Authorized Tribal Inspectors

- EPA and tribes can enter into written agreements to enable highly-trained tribal employees to conduct inspections on EPA's behalf
 - Agreements with intertribal consortia are also possible
- Each tribal inspector must take EPA-approved training and act consistent with applicable federal laws and policies
- Each inspection report is provided to EPA for review
- EPA makes all decisions on compliance status and violations
- EPA makes all enforcement response decisions

Federally Credentialed Inspector Training

All inspectors with federal credentials must complete:

- EPA's Basic Inspector Training Course
- Media-specific training and regular refresher training
- On-the-Job training
- EPA's Health and Safety Training, including annual refresher training

All inspectors with federal credential must:

- Be properly trained to use (and use) appropriate personal protective equipment (based on a supervisor's need determination)

EPA's NETI eLearning Center provides Live & On-Demand inspector training webinars

EPA's Inspector Wiki provides access to inspector guidance, training and points of contact

Terms, Conditions, and Limitations

Tribal inspectors use federal authority and a federal credential to inspect facilities:

- Must act based on either an EPA request or an agreed upon written work plan
- Are generally authorized to inspect facilities only within the boundaries of the tribe's Indian country
- Should contact EPA if denied entry to facility
- Should not conduct an inspection using both tribal and federal authorities simultaneously
- Should not handle confidential business information

Cross-Jurisdictional Inspections

- Tribal and state inspectors with an EPA credential can conduct cross-jurisdictional inspections if their employers (tribe(s) and state(s)) have a written agreement in place and on file with EPA (which authorizes inspections in other locations) and advance notice is provided to the tribe/state where the inspection is to be performed
- Tribal and state inspectors with an EPA credential can conduct cross-jurisdictional inspections if their employers (tribe(s) and state(s)) do not have a written agreement in place and EPA makes a request

Remember: Tribal and state inspectors with an EPA credential are generally authorized to act (conduct inspections) on EPA's behalf only within their respective boundaries

Next Steps & Questions?

Interested in Obtaining a Credential?

- Find EPA's compliance monitoring policies at <https://www.epa.gov/compliance/clean-air-act-caa-compliance-monitoring>
 - includes [the State/Tribal Credentialing Guidance](#) (2004)
- Discuss with tribal government officials whether an agreement is appropriate?
- Contact your EPA Regional Office Compliance Assistance point of contact
- Contact EPA's Office of Enforcement and Compliance Assurance point of contact:

Jonathan Binder, binder.jonathan@epa.gov, (202) 564-2516