PLANNING AND REPORTING OF INSPECTIONS

IMPEL NETWORK

European Union Network for the Implementation and Enforcement of Environmental Law

FOREWORD

The European Union network for the Implementation and Enforcement of Environmental Law is an informal Network of the environmental authorities of the Member States of the European Union. The European Commission is also a member of IMPEL and shares the chairmanship of management meetings.

The network is commonly known as the IMPEL Network

The expertise and experience of the participants within IMPEL make the network uniquely qualified to work on certain of the technical and regulatory aspects of EU environmental legislation. Its objective is to create the necessary impetus in the European Community to make progress on ensuring a more effective application of environmental legislation. The Network promotes the exchange of information and experience and the development of a greater consistency of approach in the implementation, application and enforcement of environmental legislation, with a special emphasis on Community environmental legislation. It provides a framework for policy makers, environmental inspectors and enforcement officers to exchange ideas, and encourages the development of enforcement structures and best practices.

Although its focus is on practical implementation issues, IMPEL has an interest at all stages in the 'regulatory chain'.

> The regulatory chain can be defined as the process through which legislation is designed, conceived, drafted, adopted, implemented and enforced until its efficiency is assessed.

Environmental inspections are a key activity in the implementation and enforcement of environmental law and essential to permit a high level of environmental protection to be secured. IMPEL attaches great importance to environmental inspections and a paper on Minimum Criteria for Inspections was presented to the Commission at the end of 1997, and published in June 1998, in response to the invitation contained in the Commission Communication on Implementing Community Environmental Law. IMPEL has progressed the work in this area by considering in more detail different aspects of inspections following the recommendations in the Minimum Criteria for Inspections Paper. Two additional reports have been published in February 1999 on "Frequency of Inspections" and "Operator Self-Monitoring". Planning and reporting of inspections are the subject of this paper.

Prior to publishing this paper presentations on the subject of planning and reporting were made at a seminar on Inspections held in Haarlem, the Netherlands on March 18 & 19 1999. Comments provided at the seminar and afterwards have been incorporated in this paper.

This report reflects the standpoint of the IMPEL Network but not necessarily the view of the national administrations nor the Commission. The report was adopted during the IMPEL Plenary meeting of 16-18 June 1999.

The contributors to this paper are listed on the final page of this document.

EUROPEAN NETWORK FOR THE IMPLEMENTATION AND ENFORCEMENT OF ENVIRONMENTAL LAW (IMPEL)

PLANNING AND REPORTING OF INSPECTIONS

1 INTRODUCTION

1.1 The IMPEL paper "Minimum Criteria for Inspections" was published in June 1998. It defines minimum criteria for various elements of inspections such as planning, enforcement, analysis and reporting and includes terms of reference for further tasks to be undertaken by IMPEL, including the subjects of planning and reporting of inspections. Following on from that, the "Inspections Cluster" of IMPEL has prepared this paper.

"It is a minimum criterion for inspections that there should be a plan for inspection covering a defined period (e.g. annual) for a defined area of an Inspecting Authority and with fixed terms of revision and specifying which types of installation are covered." A task following from the minimum criteria is to set to guidelines for this planning activity.

(Section 3.1 of minimum criteria for inspections paper).

"It is the responsibility of each Member State to demonstrate that the minimum criteria have been implemented. This may be achieved through regular (e.g. annual) evaluation and reporting of the inspection activities as a whole".

(Section 2.6 of minimum criteria for inspections paper).

"…Reports should describe and evaluate the work done and relate this to planned activities. Reports could include quantitative data about the financial and human resources of the inspecting body and adequate quantitative information on inspection activities". The task should be to set up guidelines for this reporting including guidelines for quantification.

(Section 3.3 of minimum criteria for inspections paper).

1.2 These criteria apply to the planning and reporting of environmental inspections performed by an Inspecting Authority. It is assumed that an Inspecting Authority completes inspections systematically, i.e. performed according to a predetermined schedule, in order to meet the objectives of the authority at the time. It is intended that these criteria provide a general background against which Inspecting Authorities can set out their own planning and reporting of inspections taking into account the unique set of circumstances that exist in their respective areas of jurisdiction.

1.3 This paper aims to promote common principles for planning and reporting programmes of inspection of industrial installations arising from the obligations on industry to comply with environmental legislation and to protect the environment.

2 DEFINITIONS

Inspections: The definition for inspection is as follows:

1. Checking and promoting the compliance of industrial installations within requirements stated in laws, regulations, ordinances, directives, prohibitions and/or permits etc.
2. Monitoring the general impacts of specific industrial installations on the environment that might lead to enforcement action or further inspection.

Planning: Inspection Planning may be defined as a formulated scheme to check and promote the environmental compliance of specified industrial installations which covers a defined period, legislative regime, area or Inspecting Authority and with fixed terms of revision. The plan should express the goals of the Inspecting Authority and take into account the resources of the Inspecting Authority in completing the plan.

Reporting: Reports should describe and evaluate the inspection work completed and the outcome. Reports should also include adequate quantitative and qualitative information on inspection activities and include recommendations for future inspections.

3 SCOPE

3.1 This paper covers the following types of inspections[1]:

- Routine inspections.
- Reactive inspections.
- Specific inspection campaigns.

Further discussion on the types of inspection is included in sections 4.9 and 4.10 of this paper and Section 4.1 of the "Frequency of Inspections" paper.

3.2 The proposals in this paper cover, as a minimum, inspections of installations covered by the following legislation:

- Integrated Pollution Prevention and Control Council Directive 96/61/EC.
- Control of Major Accident Hazards Council Directive 96/82/EC[1].

3.3 Member States may widen the scope of inspections covered by this paper at their own discretion to include for example:

- Installations covered by other relevant EC Directives.

[1] In some countries labour safety and environmental aspects of the Control of Major Accident Hazards Directive are inspected by separate bodies. In such circumstances the scope of this paper may not necessarily apply to the planning and reporting of inspections undertaken by the body responsible for labour safety.

- Relevant installations in addition to IPPC installations where pollution may occur due to:

  - the potential impact or pollution (e.g. environmental risk) of substances used or emitted;

  - the potential danger (toxic, explosive) of substances used or emitted;

  - the mass flow of substances emitted;

  - the complexity of an installation; or

  - the age of an installation.

- Where past experiences have raised concern over the operation (for example previous environmental performance of the operator or where there has been a large number of complaints).

- Where mismanagement of the installation has resulted in pollution incidents.

- Installations in or close to particular areas, for example:

  - residential areas, recreational areas, hospitals, sanatoriums etc;

  - protections areas such as water protection areas, nature reserves and nature conservation areas, and protected biotopes etc;

  - polluted areas where there is residual pollution from past activities for example the redevelopment of a former mining area;

  - areas where there is a high density of installations and/or emissions.

4 PLANNING OF INSPECTIONS

4.1 GOALS

The plan of inspections should incorporate the goals and objectives determined by the Inspecting Authority. The goals of the Inspecting Authority will vary depending on the unique set of circumstances that exist in the area of jurisdiction. Examples of the goals determined may include the improvement of the environment, a reduction in the number of pollution incidents, fish kills or complaints in addition to increased compliance within a given industrial sector.

4.2 KEY ELEMENTS

The key elements of planning and prioritisation of inspections by an Inspecting Authority are:

- Industries to be inspected

- Data Management

- Resources available
- Time available for inspections
- Guidelines
- Frequency of inspections
- Estimating resources to complete inspections
- Reactive inspections
- Prioritisation
- Evaluation and Reporting
- Revision of the Plan

4.3 INDUSTRIES TO BE INSPECTED

An Inspecting Authority will have to establish a definitive listing of all the installations in its functional area that meet the criteria identified in Section 3 of this paper. This can be achieved by contacting local authorities in each of the functional areas, other government bodies dealing with industrial safety, industrial development, transport and agriculture in addition to employer and employee federations. From the information received a definitive list can be prepared and the industries can be classified as appropriate. The criteria in Section 3 may assist with this classification. The list should then be checked through initial contact with the installations listed, for example by phone or site visits.

4.4 DATA MANAGEMENT

Once the list has been developed a data management system should be employed to record and update the information and where necessary add new information. Software applications are a useful tool in this regard. The information required on a database may include the following:

- Characteristics of industries in order to group them according to predetermined criteria.
- Administration of the permitting and inspection system.
- Location of installations by region or area.
- Contact information and permit number.
- Details of the installation and process.
- Permit types, conditions and other relevant data including expiry dates.

- Inspection dates and details.
- Non-compliances, enforcement actions and complaints relating to the installation.
- Reporting performed by installations for example operator self-monitoring.
- Environmental Impact on media (air, water soil).
- EMAS (or equivalent) audit information.
- Reporting of other data, for example consultant reports or relevant reports from other authorities.

4.5 RESOURCES AVAILABLE

Each Inspecting Authority will have different resources at their disposal. The number of personnel, expert agencies or consultancies available for inspection will vary widely from authority to authority and there may be short-term and long-term arrangements for the sharing or secondment of employees. Each authority will also have differing arrangements regarding hours worked by inspectors per day (including nights and weekends), vacation and sick leave allowances and leave of absence, all of which will have to be taken into account.

From such information the total number of person hours or days that are available to the Inspecting Authority can be calculated.

4.6 TIME AVAILABLE FOR INSPECTIONS

The duties of an inspector vary from Member State to Member State and as such an analysis of the time available to the inspector for inspections should be completed. The typical duties of an inspector, in addition to inspection, may include permitting, administration, time involved in advising other inspectors in an area of expertise, training, responding to general queries, presenting or attending seminars, research, report writing, attending meetings on behalf of the Inspecting Authority, and enforcement actions including prosecutions. All of these duties will take from the time available for inspections.

On the basis of this analysis an estimation of the time available to the Inspecting Authority in terms of human resources as discussed above and the individual inspector time will emerge. The completion of this work may also afford the opportunity to evaluate the efficiency and effectiveness of the enforcement duties carried out by the inspector to determine the best use of the inspector's time.

4.7 GUIDELINES

4.7.1. *International Commitments*

The Inspecting Authority will have to give priority to commitments given to international agreements and EU Directives and their corresponding Member State legislation specifying the

number of inspections required, the types of inspection required and the sites to be inspected. These commitments need to be determined for the installations defined in the scope of this document.

An example of these commitments is Council Directive 96/82/EC (SEVESO II) on the Control of major-accident hazards involving dangerous substances. The Directive requires that a programme of inspections take into consideration the national laws that implement the requirements of the Directive and local or national priorities following an assessment of major issues concerning major hazard establishments. The inspection programme can entail an inspection once a year at defined establishments or a systematic appraisal of major accident hazards at establishments to determine an appropriate frequency of inspection. The Joint Research Committee of the European Commission has produced a note entitled "Guidance on Inspections as Required by Article 18 of the Council Directive 96/82/EC (SEVESO II)".

There may be additional requirements that derive from international reports on the environment from the European Environment Agency or United Nations. These requirements will utilise a portion of the inspector time available.

4.7.2 *National / Regional Commitments*

Based on environmental legislation or reports on the quality of environmental media such as a State of the Environment report or air quality in a specific region or water quality in a specific catchment area a programme of inspections may be developed. The programme may include a campaign of inspections in a particular location or of a particular sector of industry or an industry that utilises a particular type of equipment. A commitment may be made to:

- Prioritise certain installations with the objective of effecting an improved environmental performance a reduction in emissions through enhanced compliance with permit conditions or

- Focusing on inspections with a view to revising or issuing new permits at particular installations.

Work programmes may be established to meet the objectives set which will require inspector time to implement.

4.7.3 *Inspecting Authority commitments*

Based on a review of studies or reports on the quality of the environment, the compliance of installations reported on in a previous period or the establishment of objectives within the Inspecting Authority a programme of inspections may be developed. As detailed above the programme may include a campaign of inspections in a particular location or of a particular sector of industry or industry that utilises a particular type of equipment. Existing guidelines developed by countries are used to determine frequency of inspections as discussed below.

4.7.4 *Co-ordination of other Inspecting Authority*

Where responsibility for inspection is shared between different Inspecting Authorities the plan should take account of the coordination and interaction of the Inspecting Authorities. In addition

inspection programmes of other authorities should be reviewed to avoid any overlap and good communication should be maintained between authorities in drawing up inspection plans.

4.8 FREQUENCY OF INSPECTIONS

In preparing the plan, a baseline inspection frequency for different sectors of industry or classification should be determined. This can be decided by reference to the IMPEL paper "Frequency of Inspections". An overall review of the baseline inspections frequencies should be conducted to determine if there are any wide disparities between particular installations within industrial sectors or classifications. When the baseline frequency has been established, it should be possible to determine an overall estimate of total inspection numbers by industrial category, type or methodologies. In preparing the plan the experience of the individual inspector in dealing with the installation should be taken into account.

4.9 ESTIMATING RESOURCES TO COMPLETE INSPECTIONS

Finally in order to plan the number of inspections it is essential that an estimate be made of the time allotted to each type of inspection. There are different types of inspection that may or may not involve site visits. Different types of inspections will require varying amounts of time. This will depend on the travelling distance to the facility, the type of inspection, the number of inspectors involved in the inspection and the follow-up time for the inspection. Distinct types of inspection include:

- a subject specific inspection
- an investigative inspection
- a broad scope inspection
- an environmental management audit
- checking of compliance data
- a monitoring inspection (e.g. sampling, measurement or analysis)
- assessing self-monitoring data
- assessing data prepared by consultant or other Inspecting Authorities.

A range of time required for each type of inspection should be determined in order to estimate the number of inspections that can be carried out with the resources available.

After a site inspection an inspection report is written and filed. Before completing the report supplementary information or surveys may be required. The complexity and time required for this exercise can vary widely. The degree of enforcement required following a site inspection might also vary greatly. In these cases a review of time spent on inspections in other member states/organisations/authorities may be required.

4.10 REACTIVE INSPECTIONS

All Inspecting Authorities perform reactive inspections that are a reaction to complaints, accidents, fires and pollution incidents as defined in the IMPEL paper "Frequency of Inspections". It is difficult to estimate the time associated with these events though it is possible to review the time spent by inspectors on them in the past. Based on this estimate a proportion of time can be set aside for unplanned events in the future. However it is important to note that it may be advisable to limit the overall amount of time spent on site inspections following unplanned events to avoid a fire-fighting approach and wasting inspector time. This may be achieved by categorising incidents by significance and matching the response of inspectors accordingly. The plan for inspections should take into account any guidelines prepared by the Inspecting Authority on the completion of reactive inspections.

4.11 PRIORITISATION

Previous sections of this paper discussed the amount of time available to the Inspecting Authority to complete inspections and the amount of time required to complete the inspections planned for. A review of all this information will assist the Inspecting Authority in determining whether there are adequate resources dedicated to inspection and provide a basis for a reorganisation of resources within the Inspecting Authority to devote more or less time to inspections or to make a case to higher authorities for more resources if inadequate resources are available.

4.12 REVISION OF THE PLAN

Progress against the plan should be reviewed regularly. Where there are significant changes in circumstances or resources the plan should be flexible enough to accommodate the changes. In any case the plan should be reviewed following the production of the report on the plan. The successes and failures reported in meeting the plan and the goals and objectives of the Inspecting Authority should be noted and incorporated into the preparation of the next plan of inspections.

5 REPORTING OF INSPECTIONS

5.1 GOALS

Reporting by Inspecting Authorities, on a national, regional or local scale, can have several goals and should be useful for different target groups such as the following:

5.1.1 *Reporting to the Public.*

The first objective of reporting on inspection and enforcement activities is to inform the public how the competent authorities are protecting the quality of the environment by ensuring compliance with environmental rules. Reports should also inform the public about enforcement activities and the actions taken in a case of non-compliance, in particular the enforcement actions taken by the competent authority to ensure compliance in future.

5.1.2 *Reporting as a Managerial Instrument*

The second objective of reporting is to evaluate the inspection work done by the Inspecting Authority and the way financial and human resources were used in relation to the inspection plan.

Furthermore the report should outline whether the inspecting policy, as laid down in the inspection plan, has been put to practice. The report, and in particular the evaluation and conclusions, should form part of the information to set future goals and plan resources.

5.1.3 *Reporting as a Feedback to Legislation*

The third objective of reporting is to provide feed back to the authority with responsibility for legislation or permitting on the effectiveness of legislation in protecting the environment and whether the rules are adequately formulated so that compliance can be enforced.

5.1.4 *Reporting as a Feedback to Central Level*

A fourth objective of reporting is to evaluate inspection activities nationally and provide the government or the central level feedback on how the Inspecting Authorities have managed to fulfil their responsibilities. Such reporting is not a subject of this paper.

5.1.5 *Reporting of Member States to EC*

A fifth objective of reporting is to fulfil reporting obligations by member states, for example by EC regulations like EMAS, SEVESO-II and IPPC. Such reporting is not a subject of this paper.

5.2 KEY ELEMENTS

The key elements for reporting on inspecting and enforcement activities are:

- Description of the role of the Inspecting Authority.
- Quantitative data about the financial and human resources of the Inspecting Authority.
- Details of the overall plan.
- The number of inspections carried out.
- The level of compliance with permit or legislative requirements and actions as a result of non-compliance.
- Co-operation between Inspecting Authorities with complementary competencies.
- Analysis of the effectiveness of legislation, permits etc.
- A description and evaluation of the success or failure of the plan, relating this to the recommendations for future planned activities.
- Frequency of reporting

- Accessibility of the report for the public

5.3 DESCRIPTION OF THE ROLE OF THE INSPECTING AUTHORITY

Reports should describe in short the role and tasks of the Inspecting Authority in terms of relevant legislation on inspection and compliance, as well as the working area of the Inspecting Authority.

5.4 QUANTITATIVE DATA ABOUT THE FINANCIAL AND HUMAN RESOURCES OF THE INSPECTING AUTHORITY

Details of financial and human resources of the Inspecting Authority spent on inspection activities.

5.5 DETAILS OF THE OVERALL PLAN

A description of the main elements of the inspection plan is needed to evaluate inspection frequencies, special campaigns, goals and priorities of inspection policy achieved in the plan period.

5.6 THE NUMBER OF INSPECTIONS CARRIED OUT

- The number of on-site-visit-inspections carried out - Numbers of inspections per category of installations in relation to the planning. If planning comprises different types the numbers can be shown per type.

- The number of inspections not carried out on-site.

- Description of the inspection activities carried out to scrutinise self-monitoring data or carried out by the use of EMAS information (including information on methods to verify these data).

- The number of inspections not planned for, in particular attention should be given to inspection activities which as such were not foreseen in detail in the planning, caused by:

    - complaints - General description of the pattern of complaints from the public in relation to categories of installations or industrialised areas. An Inspecting Authority may wish to specify installations that received a lot of complaints.

    - unplanned activities - General description of unplanned activities as a result of accidents, fires and pollution accidents. For incidents with significant effects for the environment a description should be given of measures taken to diminish these effects.

5.7 THE LEVEL OF COMPLIANCE WITH PERMIT OR LEGISLATIVE REQUIREMENTS AND ACTIONS TAKEN AS A RESULT OF NON-COMPLIANCE

The report should include a general description of the results of inspections (particularly where non-compliance was detected and where enforcement actions obtained compliance) by category of installation as indicated in the plan. If necessary, subdivisions in the categories of installations can be used: it is advisable that these categories and subdivisions be standardised to make results comparable within a Member State. Particular attention should be given to actions taken to enforce compliance including administrative actions and penalty procedures.

Information should also be given on installation or activities, which are not covered by permits; and eventually the numbers of temporary exemption orders issued.

5.8 REPORTING ON CO-OPERATION BETWEEN INSPECTING AUTHORITIES WITH COMPLEMENTARY COMPETENCIES

In some member states several authorities are responsible for inspection and enforcement of environmental legislation, each of which is competent in its respective area.

Where multiple authorities have competency for the same categories of installations it is important to describe in what way co-operation was attained by these authorities in their inspection and enforcement activities, e.g. joint inspections, referrals, compliance meetings. In particular co-operation is needed to avoid an accumulation of environmental damage and to avoid simply moving problems from one part of the environment to another.

5.9 ANALYSIS OF THE EFFECTIVENESS OF LEGISLATION, PERMITS ETC..

The report should include an analysis of the effectiveness of a permit or a legislative rule in protecting the environment and in dealing with environmental impacts in an appropriate way. It is very important to make such cases clear in a report in order to give feedback to authorities dealing with permitting or legislation

5.10 A DESCRIPTION AND EVALUATION THE SUCCESS OR FAILURE OF THE PLAN, RELATING THIS TO THE RECOMMENDATIONS FOR FUTURE PLANNED ACTIVITIES

This part of the report gives a general evaluation of the activities in the planning period. In particular an evaluation can include:

- evaluation of the success/failure to meet the goals and priorities of the plan.
- conclusions on the adequacy, quantitative as well as qualitative, of resources to carry out the planned inspection policy to ensure compliance by industrial installations.
- conclusions on the level of compliance by installations with the regulations and a comparison with previous reporting periods in addition to the effects of actions taken to enforce compliance

- identification of specific legal requirements not complied with and evaluation of possible methods to ensure greater compliance e.g. promotion, special campaigns, change of rules, practising other enforcement measures.

- recommendations for future planning.

5.11 FREQUENCY OF REPORTING.

The period of reporting should be in accordance with the period of planning for inspection and should be at a regular basis, preferably annually. A report should be published as soon as possible, but at least within a year of the end of the reporting period.

5.12 ACCESSIBILITY OF THE REPORT FOR THE PUBLIC

It is good practice to make reports as accessible as possible to the public. It is advised that a summary be provided in simple and understandable language for the public to read. This can be done by issuing a press release or holding a press conference. The reports should be obtainable at a low price or, if possible, free. Use of the report should be allowed without copyright requirements: the Internet should also be investigated as an appropriate way of publishing.

6.0 CONCLUSIONS

6.1 Various types of inspections are carried out by member states that arise from the obligations on industry to comply with environmental law and to protect the environment. This paper presents proposals for planning and reporting such inspection programmes so as to promote common principles across member states.

6.2 This paper proposes that Inspecting Authorities in member states should prepare plans for inspection programmes which incorporate relevant goals of the particular authority, and which take account of several key elements such as industries to be inspected, resources to be expended, and frequencies of inspections.

6.3 This paper proposes that Inspecting Authorities in member states should prepare reports on inspection programmes for one or more of several target groups. Several objectives of such reports are provided which will vary depending on the target. Key elements of reports are proposed such as the number of inspections carried out, level of compliance, and level of success in meeting the requirements of the plan.

6.4 This paper emphasises that it is good practice to make plans and reports available to the public. Proposals are made regarding the accessibility and dissemination of plans and reports.

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