

Chapter 3

Department of the Environment and Local Government Environmental Inspections

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Department of the Environment and Local Government - Environmental Inspections

Background

3.1 The protection of our environment has a significant impact on whether we have a healthy and safe place to live. The Legislative Assembly recognizes this significance and has passed several Acts and regulations to protect our environment. The Department of the Environment and Local Government is responsible for the administration of much of this legislation.

3.2 Our Office has an interest in the preservation of the environment. For the past three years, we have done audit projects relating to the environment in either the Department of Natural Resources and Energy or the Department of the Environment and Local Government (the Department). Interested in determining how the Department monitors compliance with environmental legislation, we conducted a preliminary review and learned the following.

- The Department is responsible for a large amount of legislation. At the time of our review, there were eight Acts and twenty-one sets of regulations relating to the environment alone. Examples of this legislation include: the *Clean Air Act*, the *Clean Water Act*, the *Clean Environment Act*, and the *Pesticides Control Act*.
- One of the roles of the Department is to ensure that environmental laws are applied fairly, firmly and consistently across the Province. The Environmental Management Division, in its own words, “serves as a major regulatory arm of the Department;... this Division closely monitors compliance and initiates enforcement when necessary.” This division is comprised of four branches: Approvals, Enforcement, Stewardship and Remediation. The Local Government and Regional Services Division also plays a key role in monitoring compliance and enforcement because the Regional Environmental Inspectors are part of the Regional Services Branch

within this division. And, the Sciences and Planning Division provides air quality and water quality monitoring in support of departmental programs. There are staff in both the central office and the six regional offices who are assigned inspection responsibilities.

- Simply stated, any activity having a discharge to the environment (air, water or ground) above the regulated threshold requires a permit. Examples of activities requiring approval include: industrial operations (fish plants, pulp and paper mills, food processors); commercial businesses (petroleum products, pesticides, hazardous wastes or composting); and common activities performed by the public (burning brush or building near water). Some approvals have an annual fee of up to \$42,000 and some permits are free.
- The *Clean Environment Act* provides for severe financial penalties against convicted offenders of the legislation. Fines range from a minimum of \$500 to a maximum of \$1 million for each day of violation.

Scope

3.3 The objective for this audit was:

to determine if the Department of the Environment and Local Government has an adequate inspection process, with appropriate policies and practices, to monitor and report compliance with environmental legislation in the Province.

3.4 For the purpose of the audit, we interpreted an inspection to be a predetermined sequence of activities done to assess compliance with environmental legislation. We established that visiting the site was a requirement for performing an inspection.

3.5 The Sciences and Planning Division does inspection work (regarding water legislation and environmental impact assessments) and aids the other divisions by obtaining and analyzing samples. However, the audit testing was limited to the inspection work performed by the Environmental Management Division and the Local Government and Regional Services Division since these are the divisions having the greatest inspection responsibilities.

3.6 The Department states, “Compliance is comprised of a series of activities including auditing, monitoring, inspection, operating policies, education, consultation, standards, legislation, contingency plans and enforcement.” The audit did not include all of these compliance activities, as the audit scope was limited to inspections.

3.7 To provide further focus to our audit efforts, we developed five audit criteria to use as the basis or standards for our audit. These were discussed with the Department and it was agreed that they were reasonable. The criteria addressed the qualifications of environmental inspectors, the planning and conducting of inspections, the use of

inspection results, and the reporting on the inspection function. We compared the audit evidence against the audit criteria in order to develop the findings, conclusions and recommendations that are presented in this chapter.

Results in brief

3.8 A fundamental role of the Department of the Environment and Local Government is to protect the environment. Environmental laws apply to both businesses and citizens in our Province to protect our environment. Inspection of operations and activities of businesses and citizens for the purpose of monitoring compliance with the environmental laws is a critical component of enforcing these laws and protecting the environment.

3.9 We believe the inspection function has suffered from the lack of organizational stability and operational planning at the departmental level. Some divisions and branches within the Department did not have operating plans and many employees did not have up-to-date work plans. Also, documented policies and procedures were lacking. We believe it is difficult to develop operating plans and procedures when the organizational structure is volatile and we recognize that the Department has undergone several reorganizations within the past few years. We are pleased that the Department recognizes the need for operational plans and although they are behind schedule in their implementation, we were informed that they were being developed.

3.10 We believe the organizational structure presents a challenge to the inspection function. Although encouraging compliance is a responsibility shared by the entire Department, it is the Environmental Management Division that has this as their primary responsibility. Yet, the bulk of the human resources for performing inspections (the Regional Environmental Inspectors) rests within a different division – the Local Government and Regional Services Division. While we believe the Department recognized this challenge by mandating an internal compliance committee and a compliance co-ordinating function, neither the compliance committee nor the co-ordinating function have been established.

3.11 There is no consistent approach for identifying inspection needs. The Department does not have a standard process for identifying what needs to be inspected and there is no documentation that identifies the inspections that need to be done.

3.12 The Department does not have a process for tracking inspections. Without a consistent method for documenting inspections, it is difficult to locate and use this information.

3.13 Not all cases of non-compliance are followed-up or forwarded to the Enforcement Branch.

3.14 The large amount of legislation for which the Department is responsible for administering creates challenges for the inspection function. We feel the Department could benefit from a review of their own legislation in order to determine whether the legislation is achieving its intended purposes.

3.15 There is great potential for improvement using the experience, expertise and innovative ideas within this Department. This is evident in some of the internally prepared documents that we reviewed. They contain useful ideas that have not been implemented. Some of the Regional Environmental Inspectors and central office staff have over twenty years of experience working for the Department. This is something for the Department to benefit from and we see this experience as a true asset to the protection of our environment.

3.16 We made twenty-one recommendations that we think will help the Department improve in weak areas and further develop the areas that are working well.

3.17 While the Department recognizes the importance of enforcement and does have some effective inspection practices, it is our opinion that the inspection process is not adequately monitoring and reporting compliance with environmental legislation in the Province.

Environmental inspectors

3.18 Our first criterion was:

Inspections should be performed by qualified staff.

3.19 To determine whether this criterion was met, we gathered information to address the following questions.

- Do inspectors possess authority to inspect and enforce the Act and regulations?
- Are there positions that are assigned inspection responsibilities?
- Are only qualified people designated as inspectors?
- Are inspectors adequately trained for their work?

Do inspectors possess authority to inspect and enforce the Act and regulations?

3.20 The answer to this question is clearly yes; designated inspectors have legislated authority to perform inspections. Legislation provides the Minister of the Environment and Local Government with the authority to designate inspectors and enforce the legislation. Legislation also provides inspectors with the authority to enter, inspect and take samples.

Are there positions that are assigned inspection responsibilities?

3.21 There are staff in the six regional offices and in the central office who are assigned inspection responsibilities. In the central office, several staff members have the responsibility of performing inspections in addition to the responsibility of issuing approvals. In the six regional offices, there are twenty-two Regional Environmental Inspectors. These inspectors also have other responsibilities, which include responding to public complaints and environmental emergencies.

3.22 The allocation of the Regional Environmental Inspectors to the six regions may not be appropriate because it is not based upon a planned approach to performing inspections. The allocation has just evolved. The regional offices had only one inspector each from 1973 – 1988. In 1987, the *Petroleum Product Storage and Handling Regulation - Clean Environment Act* (the petroleum regulation) was passed and a second inspector position was subsequently assigned to the regional offices. In 1989, the *Clean Water Act* was passed and a third inspector position was assigned to the regional offices.

3.23 We are unsure as to whether the Department has the appropriate number of Regional Environmental Inspector positions. When new legislation was created or assigned to the Department, new resources for enforcing the legislation were not always provided to the regional offices. For example, during the 1990s the Department became responsible for administering more than five sets of new regulations relating to the *Clean Water Act*, and, in the year 2000, topsoil and manure stewardship responsibilities came to the Department. Despite all these new responsibilities, no additional human resources were assigned to four of the six regional offices. They had been operating with only the three Regional Environmental Inspector positions since 1989. (Some additional human resources have recently been assigned to each of the six regional offices.)

Are only qualified people designated as inspectors?

3.24 The processes for designating inspectors and issuing identification cards to inspectors are not well controlled.

3.25 The process in place for designating inspectors is weak. There are no formal policies and procedures for designating staff as inspectors. And, there are no documented qualifications or requirements for inspectors.

3.26 During the period of our review, we made the following two observations concerning who was designated as an inspector.

- We identified three staff members who had been hired as inspectors and were doing inspections, but had not been legally designated as inspectors.
- There were several staff members who were designated as inspectors who were not doing inspections. They included: a support person to

a Municipal Service Representative, a former employee who had finished working for the Department in December 2001, and employees who perform other departmental work.

3.27 An identification card is important because it gives the inspector the right to enter and inspect. The process in place for issuing identification cards to designated inspectors is weak. Identification cards are neither numbered nor controlled and during the period of our review, some staff members doing inspections did not have proper identification.

3.28 The volume of legislation authorizing the Minister to designate inspectors makes it necessary to have an efficient system for designating inspectors and issuing identification cards.

3.29 We are pleased to report that the staff performing inspections are qualified based on our review of their education and experience. The staff performing inspections were professional engineers, engineering technicians, students of the engineering program or people with many years of experience. There are some staff members who have been performing inspections for the Department for over twenty years.

Are inspectors adequately trained for their work?

3.30 Training is important due to the massive amount of legislation for which inspectors are responsible. Training is also important for consistency in the enforcement of legislation, since inspectors work in different branches within the Department and in different regional offices throughout the Province.

3.31 The Department does not have a standard orientation program for new staff. There is no coordinated orientation for new inspectors and the orientation provided to a new inspector differs substantially from one branch to another. We reviewed a document that had been prepared by the Department of the Environment dated June 1994 with the title *A Guide to New Employee Orientation for Supervisors and Managers*. Although the guide is outdated as a result of the Department's reorganization, we believe it would be useful in the creation of a standard departmental orientation program.

3.32 There is no coordinated training for all inspectors. The training provided to inspectors differs from one branch to another. The Department does not have a training policy and the individual branches do not have documented training plans or schedules. A working committee developed a training plan for inspectors in 1998 but it has never been approved by management.

3.33 We congratulate the Regional Services Branch at the central office for their recent training efforts. In the year ended 31 March 2002, training was provided to both new inspectors and experienced inspectors. This branch developed an orientation program for new staff

in their division in the fall of 2001 and they plan to provide this program to all new inspectors working in the regional offices.

3.34 The Regional Services Branch was also in the process of developing a training program for all inspectors. A draft training manual has been prepared. We reviewed the manual and it appears to be informative and thorough. The Department plans to offer a one-week standardized training course to all inspectors in the fall of 2002.

Recommendation

3.35 The Department should re-examine the number of Regional Environmental Inspector positions needed and the basis for their allocation to the six regional offices. The Department should make changes as necessary to ensure that sufficient resources are effectively assigned to the regional offices.

Departmental response

3.36 *The department agrees ... that the number and allocation of Regional Environmental Inspector positions should be re-examined. The department will undertake an evaluation of the roles and responsibilities for regional inspectors in an effort to determine appropriate resources and allocation of resources.*

Recommendation

3.37 The Department should establish controlled processes for designating inspectors and issuing identification cards to inspectors.

Departmental response

3.38 *As part of the new policies and procedures manual, the department will outline a process for designating inspectors.*

Recommendations

3.39 The Department should establish a standard orientation program for new inspectors.

3.40 The Department should establish a training policy and standard training for inspectors.

3.41 The Department should proceed with the training of all inspectors in the fall of 2002 as planned.

Departmental response

3.42 *To address these issues, the department will develop a documented training policy, which will describe the process for training Environmental Inspectors. This process will include a standardized orientation program, which will be provided to all new departmental employees, as well as a standardized training program specific to inspectors.*

Conclusion

3.43 This criterion was partially met. While the staff performing inspections were qualified, the processes for designating inspectors, issuing identification cards to inspectors and training inspectors are not organized and controlled.

Planning and conducting inspections

How does the Department identify what needs to be inspected?

3.44 Our second criterion was:

All required inspection work should be identified and clearly assigned to staff.

3.45 To determine whether this criterion was met, we gathered information to address the following questions:

- How does the Department identify what needs to be inspected?
- Is inspection work prioritized using a risk management approach?
- Do inspectors have a work schedule that includes both planned routine inspections and non-routine inspections arising from public complaints and follow-up?

3.46 There is no consistent approach for identifying inspection needs. The Department does not have a standard process for identifying what needs to be inspected and there is no documentation that identifies the inspections that need to be done. Legislation regulates certain activities, gives the inspectors the authority to enter and inspect and gives the Minister the authority to enforce the legislation. However, legislation does not state what must receive an inspection. The Department has a Compliance and Enforcement Policy and “the primary purpose of this document is to outline the process followed by the Department in administering its regulatory responsibility.” However, it does not specifically identify what needs to be inspected either. It states, “Enforcement officials will examine every suspected violation of which they have knowledge and undertake appropriate action consistent with this policy.” Operating plans that identify inspection needs have not been developed by the various branches or at the departmental level.

3.47 Without a process for identifying what needs to be inspected, there is the possibility that an area of inspection may get overlooked. We identified the following areas where no inspections were done during the year ended 31 March 2001: site approvals for petroleum storage systems, petroleum spill prevention upgrades, salvage yards, land application of biosolids, and soil recycling facilities. While we are not concluding that inspections should have been performed in each of these areas, we are stating that there should be a process in place to determine what should be inspected.

3.48 Without a departmental approach for identifying inspection needs, branches have independently developed their own practices. As a result some branches are doing more inspections than others. Inspections are being performed in some program areas and not in others.

3.49 At present, the Regional Environmental Inspectors spend most of their time responding to phone calls from the public which involve complaints and information requests or from industries reporting

environmental incidents. These are documented using a standard form called an Occurrence Report. Public comments of alleged violations are a valuable source for identifying possible subjects for inspection, but it is only one of many methods and it should be recognized as such. Inspection needs identified through Occurrence Reports should be prioritized among the other inspection needs.

3.50 The Department commented that they realize that the inspection approach used by the Regional Environmental Inspectors is reactive (responding to complaints) and that probably only twenty percent of their time is spent doing inspections. The Department indicated that they would like the inspection approach to be proactive with approximately eighty percent of the Regional Environmental Inspectors' time spent performing inspections. Following a reorganization in September 2000, the Regional Enhancement Committee was formed. One of its objectives was to help achieve the goal of performing more inspections. We are pleased to report that this Committee is active, gathering and developing useful information to identify areas where the regions could be more active in performing inspections.

3.51 The Approvals Branch is responsible for issuing an Approval to Operate, allowing a business to operate under specified conditions that control its discharges of gases, liquids and solids into the environment. The Department informed us that they use several activities to measure compliance with the conditions stated in the Approval to Operate. These activities include: monitoring, sampling, reviewing external audit reports, and performing inspections. We were told that in most cases, an inspection was performed as part of the approval renewal process.

3.52 There is no documentation indicating that there are regular planned inspections of these businesses by either the Approvals Branch or the regional offices. The responsibility for inspecting for compliance with the conditions specified in the approval has not been clearly assigned to either the central office or the regional offices.

3.53 We examined a sample of six business entities having class 1 approvals to determine when they had last been inspected. (Class 1 approvals are those allowing discharges in the greatest volume and are seen as having the greatest environmental risk.) We requested both the Approvals Branch and the regional offices to provide documentation of the last inspection performed on these businesses.

3.54 The documentation indicated that the inspection work performed by the Approvals Branch was very limited. For three of the six, there was no documentation of an inspection. For two of the six, there was documentation that the site had been visited in the fall of 2001. The visits were prompted by a complaint or suspected violation, and the inspections were limited to the item of concern. For one of the six, there was documentation that the site had been inspected in the fall of 1998,

over four years ago. The inspection took place during the period when the approval was being renewed. The documentation that we examined was in the form of logbook notes, an engineering assessment, and sampling data and did not constitute documentation of a full inspection, indicating whether or not the business was complying with the conditions in their approval.

3.55 The documentation provided by the regional offices indicated that a full inspection, measuring compliance with the conditions in the approval, was not done for any of the six businesses tested. Although there was evidence that the Regional Environmental Inspectors had visited the site several times within the past three years for five of the six cases, these site visits were in response to isolated occurrences and none were a full inspection of the conditions in the approval.

3.56 Recognizing that inspection is only one means of monitoring compliance with the conditions in the approval, we see the lack of inspection in this area as a risk to the environment. There are over 680 active approvals that have been issued to business entities in the Province. We recognize the Department's monitoring, sampling and testing procedures as important means of assessing compliance for some discharges, but they are not a replacement for an inspection at the site.

Is inspection work prioritized using a risk management approach?

3.57 While we acknowledge that the Department is aware of risk management and uses this approach in some areas of work, such as the process of remediation for contaminated sites and the issuance of industrial approvals, the Department does not use a risk management approach to determine which inspections are required.

3.58 There is no standard method of prioritizing inspection work. Since different branches manage many programs, it is important that the method of prioritizing the inspection work be a departmental approach.

3.59 The areas receiving the greatest inspection efforts may or may not be the areas of greatest risk to the environment. As we indicated earlier, the documentation indicates there are very few complete inspections being performed on businesses that have been issued an Approval to Operate. We also indicated that sites were not inspected prior to issuing the approval to install a petroleum storage system. In contrast to these inspection areas, the Department told us they are pleased with the inspection program developed for unsightly premises and they reported doing 971 inspections in the year ended 31 March 2001.

3.60 In regards to identifying and managing risks, the Department should consider the financial risk to the Province. There are several regulated activities that are performed by the government itself and in some cases the government owns the related property. Since the Province is self-insured, there is no financial protection should an

environmental cleanup be required. At the time of our review, there were government activities not complying with legislation. For example, the petroleum regulation requires that all petroleum storage systems having a capacity greater than 2000 litres be licensed for use. At the time of our review, there were eighteen unlicensed petroleum storage systems owned by municipalities and the provincial government.

Do inspectors have a work schedule that includes both planned routine inspections and non-routine inspections arising from public complaints and follow-up?

3.61 The inspectors do not use inspection schedules to guide their work. However, some short-term scheduling is done; for example, an inspector from the central office may make plans to go to an area for one or two days to inspect all the sites in that area.

3.62 Normally inspections are more effective when notification is not given prior to inspection. The element of surprise is important when performing inspections in order to obtain a true representation of operations. Inspectors informed us of situations where they believe it is necessary to inform the entity in advance and schedule an inspection time. We agree that in many situations it may appear to be more time efficient to arrange the inspection with the regulated entity; however, it may not be necessary and it may inhibit an inspection of the true operations.

Recommendations

3.63 We recommended the Department clearly assign the responsibility for performing regular planned inspections of the entities having an Approval to Operate.

3.64 To aid in the enforcement of their legislation, the Department should use a risk management approach and develop an inspection strategy and an inspection plan. The inspection plan should identify the required inspection work, both the areas for inspection and the frequency of inspection.

3.65 The Department should use inspection schedules to assign work to the inspectors. The inspection schedule should include both routine and non-routine inspections. (Routine inspections should be done to control risks in accordance with a predetermined coverage plan. Non-routine inspections should also be done when appropriate, to address complaints received from the public and to determine if identified deficiencies have been corrected.)

3.66 The Department should make use of the work of the Regional Enhancement Committee to increase the inspection work performed by the Regional Environmental Inspectors.

Departmental response

3.67 *The department will be reviewing the inspection needs relating to approvals, permits, and certificates and develop sector-specific inspection procedures. Based on these inspection needs, standards and schedules will be identified relating to "Approvals to Operate" and other permits. This process is expected to take two years and will result in*

documented sector specific inspection procedures and scheduling timeframes.

3.68 *The scheduling of routine and non-routine inspections, and the apportionment of resources between these two inspection components, will be reflected through the use of individual work plans. By 2005, the department intends to integrate the scheduling of routine and non-routine inspections. The process for developing inspection schedules, to be documented in the policies and procedures manual, will be revised to reflect this integration.*

3.69 *The Regional Enhancement Committee is a standing committee of the department and will continue to work toward enhancing the inspection function.*

Conclusion

3.70 This criterion was not met. The planning of inspections is lacking because the areas requiring inspection are not clearly identified and inspection work is neither prioritized nor scheduled.

3.71 Our third criterion was:

Inspections should be performed in an efficient and consistent manner.

3.72 To determine whether this criterion was met, we gathered information to address the following questions.

- Are there documented policies and procedures for inspections?
- How are inspections documented?
- Do inspections measure compliance with the legislation?

Are there documented policies and procedures for inspections?

3.73 While the Department does not have a policies and procedures manual, the Department does have a Compliance and Enforcement Policy. The policy is logical and well documented. However, it needs revision because it was created in 1994 and there have been no changes to it since its creation. The Department recognizes the need to update this policy.

3.74 Inspectors are not guided by documented procedures. Standard procedures provide an organized approach for doing work and they contribute towards consistency in performance. Without departmental policies and procedures, each region and each branch is left to do its best. This is likely to lead to inconsistency, and perhaps inequities, in the performance of inspections.

3.75 While the Department has recognized the need for standard procedures for inspections for at least ten years, the procedures have never been developed. We reviewed a work plan for a manager dated

30 June 1992, that stated the following goal, “To develop a general Operations Procedures Manual for the Investigations & Enforcement Branch.” Approximately five years later in 1998, an Operations Manual was started for the Regional Services and Enforcement Branch. Labelled binders with plastic dividers were purchased and a Table of Contents was created, but the contents were not finished. At the time of our review, the Department still recognized the need for standard procedures and their plan is to develop “protocols” for operations. A draft Compliance and Enforcement Protocol was prepared in December 2001; as of May 2002, no further work had been done.

3.76 Policies and procedures are also needed for processing public complaints. We believe procedures in this area would benefit the inspection function. Completing an Occurrence Report is the standard method used by the regional offices to document all public complaints, information requests, and reports of environment-related incidents. As a method of documenting public complaints and information requests, they are a valuable tool for the Department. However, working on public complaints can both consume inspection time and dominate how the Regional Environmental Inspectors use their time.

3.77 Often, the pursuit of a public complaint takes the Regional Environmental Inspector to the site to explore the alleged violation of legislation; however, it is rare that the follow-up of a public complaint results in a full inspection. This work must be controlled so the Regional Environmental Inspectors can work efficiently and effectively conducting planned inspections. Procedures are needed to filter incidents reported through the Occurrence Reports so that incidents requiring an inspector’s attention can be prioritized and addressed efficiently.

3.78 We are confident with the Department’s ability to develop standard procedures. We reviewed several departmental documents that we think are very useful resources. For example, the guideline and guidance manual for contaminated sites and the draft Designated Inspector’s Training Manual both contain some useful standard processes and procedures.

How are inspections documented?

3.79 The Department does not have a standard method for documenting inspections. There are over forty staff members who perform inspections. They work out of the regional offices and different branches within the central office. We found very little consistency in how inspections are documented and where the documentation is kept. New employees in the regional offices and the Approvals Branch reported that they received no training on how to document their work.

3.80 The following is a brief description of the different methods being used to document inspections.

- The Occurrence Report is used by the regional offices. Some incidents reported by the public result in a Regional Environmental Inspector doing an inspection, hence the Occurrence Report becomes the inspection report. We reviewed a sample of thirty-two Occurrence Reports, fifteen of which resulted in inspections. In each of these fifteen cases, we found the Occurrence Report to be a log of activities performed by the inspector with their observations; sometimes there were notes on non-compliance. These inspections were actually a confirmation of a reported non-compliance. There was no evidence that a complete inspection measuring compliance with legislation had been done.
- The Department has developed some checklists that are being used effectively for some areas of inspection. Five of the fifteen inspections that we reviewed involved a furnace oil spill and in each case, the Department's checklist for furnace oil storage tank leaks was completed and included with the Occurrence Report. This suggests that the inspectors consider the checklist to be a useful tool when performing their inspections. We saw other inspection checklists that were also being used. When properly completed, inspection checklists can be an efficient and effective tool for performing and documenting inspections. We were pleased to see that the Department is using some checklists and we encourage the Department to develop more.
- Logbooks are also used for documenting inspection information. Logbooks are like a journal where dates and activities are documented. They contain notes on phone conversations, meetings, etc. in addition to inspection notes. Engineers in the Approvals Branch and Regional Environmental Inspectors reported that they use logbooks for documenting site visits. The Department does not have policies and procedures relating to the use of logbooks. When an employee leaves the Department, these notes can be lost.
- An Engineering Assessment is a document that is sometimes prepared to support the assumptions and calculations used in the approval. Staff in the Approvals Branch sometimes do a tour while on a site, gathering information for preparing an approval. This may get recorded at the end of their Engineering Assessment if one is prepared. The Department does not have policies and procedures relating to the use of Engineering Assessments.

3.81 We recognize that documenting inspections is a challenge for the Department. Since the Department is responsible for a great deal of legislation and the very nature of performing inspections involves examining for detail, one standard form is not likely to be suitable.

3.82 We were pleased to see that the draft Designated Inspectors' Training Manual provides some guidance on documenting inspections.

We reviewed this information and feel that if these practices are implemented, they will likely resolve many of the current problems relating to documenting inspections.

3.83 The Department does not have a process for tracking inspections. Without a consistent method for documenting inspections, it is difficult to locate and use this information. This was demonstrated when we requested information for the audit. The system was unable to provide some of the information we requested. For example, the Department was unable to provide an accurate figure for the number of inspections performed in the year ended 31 March 2001.

3.84 Relating to inspection documentation, we noted that the Department is not complying with paragraphs 25(3) and 27(6) of the *Petroleum Product Storage and Handling Regulation - Clean Environment Act*. Paragraph 25(3) states, "The inspector shall file with the Minister a report setting out an assessment of the sensitivity of the area." And paragraph 27(6) states, "Within six weeks after the filing of an application for a site approval, the Minister shall serve a copy of the inspector's report referred to in subsection 25(3) on the applicant." We talked with the staff involved with processing applications for site approvals and we reviewed three site approval applications. An inspector's report is not being prepared. Only a standard letter is sent to the applicant, stating that the site approval application was received and approved. This is not in compliance with legislation.

3.85 A second observation made, while reviewing the three applications for approvals for petroleum tank installations, was that in one case, the tank was installed several days before the approval was issued. The Regulation requires that an approval be obtained before tanks are installed. According to the documentation, the tank was installed on 5 March 2001, several days before the approval was issued on 16 March. This issue should have been pursued with possible ramifications to both the site owner and the installer. We could find no evidence that the Department observed this issue and we note that the installer was re-licensed for the following year.

Do inspections measure compliance with the legislation?

3.86 Inspections should measure compliance with the legislation. Where there is detailed legislation with specific standards or where approvals, permits or licenses have conditions, an inspection should determine whether or not the standards and conditions are met.

3.87 We identified over thirty regulated activities that could be inspected by the Department. Each activity can have numerous inspectable standards or conditions. We did not review inspections performed in each of these areas. We selected a few activities managed by different branches and then reviewed the inspection work done in the selected area. The following observations were made during this limited review.

- The Remediation Branch is responsible for the petroleum legislation. We examined inspections done on petroleum storage system removals. Our review of the legislation and the Tank Removal Notice Form indicated that tank removals should be inspected. Inspection of tank removals is important to ensure it is done properly according to standards in the regulation and to determine if contamination is present so it can be properly handled. The branch confirmed that all tank removals should be inspected and discussions with staff indicate that inspection coverage is good. While the Regional Environmental Inspector signs the Tank Removal Notice Form indicating the process was inspected, there is no evidence that the standards stated in the petroleum regulation with respect to tank removals have been met.

Due to the lack of documentation for the inspections performed, we are unable to conclude as to whether the inspections of petroleum tank removals are effective.

- Salvage yards are subject to inspection under the *Unsanitary Premises Act*, which is the responsibility of the Enforcement Branch. A checklist has been prepared to facilitate these inspections. We reviewed the checklist and compared it to the legislation. The checklist appeared complete. It would be an effective and efficient way of documenting this type of inspection. However, the Department is no longer performing these inspections; they have not done them for over two years. There appears to be a problem with coordination between the Department of Public Safety, who is responsible for the licensing of the salvage dealers, and the Department of the Environment and Local Government who is responsible for inspecting for compliance with the *Unsanitary Premises Act*. As of June 2002, there were 88 licensed salvage dealers.
- The Stewardship Branch manages the pesticide program. During the year ended 31 March 2001, inspections were performed to determine if vendors selling pesticides were licensed and if operators applying pesticides had permits and were certified. These inspections were performed using a checklist indicating the requirements of the legislation. While the inspection coverage was limited (less than ten percent of the vendors and less than fifteen percent of the permit holders were inspected), we consider the inspections performed to be effective. They were well documented with the standard checklist completed and then signed by both the inspector and the operator. A conclusion of pass or fail was made as a result of the inspection. And, a decision was made as to whether or not re-inspection was required.
- The Regional Services Branch is responsible for the work conducted by the inspectors in the regional offices. These inspectors are

responsible for all environmental legislation and as we mentioned, they document their inspections using Occurrence Reports. We reviewed a sample of fifteen inspections performed by the Regional Environmental Inspectors. In each case, the inspection was a response to a reported incident and it was not a full inspection. For example, we reviewed one Occurrence Report where the Regional Environmental Inspector responded to a public complaint that a fish plant was giving away fish heads. Under the Approval to Operate, there are conditions concerning the proper disposal of fish wastes. The Regional Environmental Inspector visited the fish plant and got the manager's agreement to cease the practice. We believe that this issue was not handled properly. Since the Regional Environmental Inspector decided that this issue was worthy of follow-up, and a visit to the fish plant, we believe the inspector should have performed an inspection verifying compliance with all the conditions in the approval.

3.88 With the exception of the inspection checklists, most of the inspection reports we examined used exception reporting, where only issues of non-compliance are documented, rather than full reporting where both compliance and non-compliance are indicated. Full reporting is more effective; by documenting all of the attributes where compliance was measured, it provides better evidence that a thorough inspection was performed.

3.89 These observations, relating to the amount of inspection coverage and the completeness of the inspection reports, suggest that inspections measuring compliance with the legislation are being effectively performed in some areas and not effectively performed in other areas.

3.90 The audit findings discussed under the last two criteria relate to the planning and conducting of inspections. We believe that the Department was aware that this is an area where improvements can be made. As part of the Department's new organizational structure effective September 2000, a Committee on Compliance was to be formed in the fall of 2000. We were disappointed to learn that this departmental committee was not formed. We believe the departmental Committee on Compliance could greatly help the Department fulfil its mandate to "ensure effective enforcement of, and compliance with, environmental legislation and regulations."

Recommendation

3.91 **The Department should update its Compliance and Enforcement Policy.**

Departmental response

3.92 *The department will review and revise the existing Compliance and Enforcement Policy.*

Recommendation **3.93** The Department should establish standard procedures for performing and documenting inspections. The approved procedures should be distributed to all inspectors.

Departmental response **3.94** *The department supports this concept, and will continue to develop and implement the use of protocols and checklists as one form of documenting inspections. Some action has already been taken in this regard. The Designated Inspectors' Training Manual contains a section that provides guidance to inspectors on documenting inspections.*

Recommendation **3.95** The Department should prepare the inspector's report required by paragraph 25(3) of the *Petroleum Product Storage and Handling Regulation - Clean Environment Act* and issue a copy of the inspector's report to the applicant, as required by paragraph 27(6) of the regulation.

Departmental response **3.96** *The department has studied this issue and has concluded that a report prepared by a qualified engineer from a private sector company, which sets out an assessment of the sensitivity of the area, and then reviewed by the inspector would be an acceptable alternative to the existing requirement. This in turn, would permit more effective use of the inspectors' time. The department will consider proposing to amend the Petroleum Storage and Handling Regulation – Clean Environment Act to enable this change in practice.*

Recommendation **3.97** The Department should consider the inspection of salvage yards when performing a risk assessment and developing an inspection strategy and an inspection plan.

Departmental response **3.98** *... the department has been working with the Department of Public Safety to propose amendments to the Unsightly Premises Act, which would enable the department to administer a salvage dealers permitting scheme. This may entail amendments to the Act to improve enforcement.*

Recommendation **3.99** The Department should establish its Committee on Compliance in accordance with its plan of September 2000.

Departmental response **3.100** *This Committee was to review compliance issues, timing, and explore other enforcement options where appropriate. It was also intended to serve as a means of ensuring the enforcement areas are aware of the status of all non-compliance issues. This Committee was not established. The department will review the concept of a Committee on Compliance and the role of a Compliance Coordinator.*

Conclusion **3.101** This criterion was partially met. While the Department does have a useful Compliance and Enforcement Policy, it does not have standard procedures for performing and documenting inspections. The Department's inconsistency in documenting inspections impairs the

usefulness of both the information obtained and the work performed. Our testing indicated that inspections are being efficiently and consistently performed in some areas and not in other areas.

Using the results of inspections

3.102 Our fourth criterion was:

Inspection results should be used to measure compliance with legislation and contribute to enforcement actions.

3.103 To determine whether this criterion was met, we gathered information to address the following questions.

- Do the processes for issuing licenses, permits, approvals, etc. incorporate the results of inspections?
- What are the ramifications for non-compliance?
- Where compliance cannot be achieved, is complete and accurate information provided to the Enforcement Branch for action?

Do the processes for issuing licenses, permits, approvals, etc. incorporate the results of inspections?

3.104 Within some programs, the process for issuing a license or an approval does not incorporate the results of inspections. For example, the licensing of petroleum storage systems is an administrative task that is independent of inspection. The licensing process does not require an inspection prior to issuing the first license and an inspection is not required for the annual renewal of a license. If the Regional Environmental Inspector did inspect a petroleum storage system, there is no reporting system in place to notify the person responsible for licensing. A second example is the issuance of approvals by the Approvals Branch. Although the process for renewing approvals involves soliciting comments from the regional offices, it is surprising that the renewal of an approval is not dependent on having first passed an inspection.

3.105 The current information management systems do not support the integration of the licensing and inspection functions. While some of the processes for issuing approvals and licenses use automated information systems, all inspections are performed and documented manually. Also, the automated information systems that do exist are stand-alone systems for each program, such as pesticides, petroleum products storage and handling, approvals and enforcement. And, there are some programs within the Stewardship Branch that use manual record keeping. If information is not easily shared between the licensing and inspection functions, then integration is difficult.

3.106 The current inconsistency in documenting inspections does not support the integration of inspection with the issuance of licenses and approvals. We believe these functions should be integrated. There are several times during the licensing and approval processes when inspection would be appropriate. For example, an inspection could take

place before the approval or license is issued for the first time, to determine the likelihood of compliance. An inspection could take place during the approval or license period to monitor compliance. And, an inspection could take place soon after an approval or license expired to ensure operations have ceased. We are not suggesting that inspections should be performed at all of these times, but these times are considered as potential inspection points.

What are the ramifications for non-compliance?

3.107 A process for enforcement of the legislation has been established and documented in the Department's Compliance and Enforcement Policy. The policy provides several actions that can be used to promote compliance. It states, "If the inspector finds that the alleged violator did not take all reasonable steps to prevent damage to the environment, the inspector can initiate one or more of the following to produce compliance: warnings; schedules of compliance; ministerial orders; and injunctions." There is no flexibility in certain situations and enforcement actions are immediate, otherwise it is the Department's philosophy to work with the regulated party to obtain compliance whenever possible.

3.108 Legislation authorizes the Minister to enforce the legislation, and even states some ramifications for offences including the right to:

- revoke, cancel, and suspend a licence, permit or approval;
- issue administrative penalties; and
- take legal action with fines ranging from \$500 a day to \$1 million a day.

3.109 The Enforcement Branch administers these ramifications.

3.110 The last reorganization gave the Enforcement Branch its own identity. This branch is responsible for investigating environmental offences and pursuing prosecution when appropriate. A process has been established so that when inspectors identify regulated parties who will not comply with legislation, the case can be referred to the Enforcement Branch.

Where compliance cannot be achieved, is complete and accurate information provided to the Enforcement Branch for action?

3.111 We were pleased that the Department has a process for enforcing the legislation, with ramifications for non-compliance; however, the enforcement process is not always used when it should be. Where compliance is not achieved, information is not always provided to the Enforcement Branch for action.

3.112 Our observations indicate that sometimes the process was followed; and at other times, known incidents of non-compliance were not pursued. We examined files where information was provided to the Enforcement Branch for action, including one from our sample of fifteen inspections. However, the following observations indicate that known incidents of non-compliance were not always pursued.

- In the year ended 31 March 2001 there were 387 (representing 14%) unlicensed petroleum storage systems. We believe a list of these should have been forwarded to the Enforcement Branch; none were.
- We examined an inspection performed by the Approvals Branch in August 2000 that stated, “they are in violation of their approval as they still wash trucks with petroleum ...”. There was no documentation of follow-up of this issue and the case was not forwarded to the Enforcement Branch. The Approvals Branch confirmed that this situation had not been properly handled.

3.113 Since 1991, the number of cases processed annually by the Enforcement Branch has ranged from 66 to 122. These figures appeared low to us and the branch confirmed that they probably do not receive all the cases that should be forwarded.

3.114 The inspection population is enormous. We identified over thirty regulated activities, each having numerous inspectable standards or conditions and each having many regulated parties subject to inspection. For example, there are over 680 businesses that have been issued an Approval to Operate. Each approval contains several specific conditions; a violation of one condition could result in enforcement actions. A second example is that there are over 2,400 licensed petroleum storage sites that must comply with the numerous standards specified in the regulation. A third example is that there are over 90 licensed redemption centres for beverage containers that must comply with the regulations.

3.115 In the year ended 31 March 2000, the Department evaluated its own performance to determine if the Compliance and Enforcement Policy was being followed. The conclusion of the report states, “By and large the policy appears sound and is well supported by staff. There are some program areas where the practices could be considered to be fully consistent with the stated policy. There are far more areas where the practices are not consistent.”

3.116 While the Enforcement Branch may not receive all the cases that they should, the cases that inspectors do forward to the Enforcement Branch are valid situations of non-compliance. The Enforcement Branch’s Manager of Investigations told us that where compliance cannot be achieved, complete and accurate information is provided to the Enforcement Branch for action. He estimated that ninety percent of the referrals resulted in enforcement actions.

3.117 The Enforcement Branch may more effectively handle the work regarding unlicensed petroleum storage sites, which is currently given to the Regional Environmental Inspectors for follow-up. During our review of the petroleum regulation and the work done by the Remediation Branch, we made the following observations regarding unlicensed petroleum storage systems.

3.118 The petroleum regulation requires the following.

- All petroleum storage systems having a capacity greater than 2000 litres are to be registered with the Department.
- All petroleum storage systems are to be licensed for use. Licenses are for one year.
- Storage systems that are not operating are to be decommissioned.

3.119 According to the regulation, there should not be any unlicensed storage systems. Storage systems that are not operating are supposed to be decommissioned or removed. If storage systems are operating without a license, then the site owner is breaking the law. If a supplier is filling an unlicensed tank, then the supplier is breaking the law. One unlicensed operating storage system could result in enforcement actions with two parties – the owner and the supplier. The following table shows the number of licensed petroleum storage systems and the licensing percentage for each of the past five years. It indicates that there have been between 207 and 407 unlicensed storage systems over the five-year period 1997-2001. During this period, there were no cases referred to the Enforcement Branch for investigation that related to unlicensed petroleum storage systems.

*Exhibit 3.1
Petroleum Storage Sites - Trend
Analysis*

Fiscal Year	Not Licensed	Licensed	Percentage Licensed
2000 - 2001	387	2,457	86%
1999 - 2000	407	2,500	86%
1998 - 1999	364	2,589	88%
1997 - 1998	327	2,659	89%
1996 - 1997	207	2,783	93%

Source: Annual Reports

Notes: Not Licensed: registered sites that cannot be used for petroleum storage

Licensed: registered sites that hold a valid petroleum storage license

3.120 We made the following observations relating to the table.

- 14% of the registered sites were unlicensed in 2001. This suggests that the licensing requirement was not being enforced.
- From 1997 to 2000, the “Percentage Licensed” figure steadily declined (for three years) with the figure being relatively the same for the past two years. This slippage may indicate a lack of enforcement activity.

- Of the 407 unlicensed sites in 2000, the groups classified as having the greatest risk (commercial, retail and bulk) accounted for 61%.
- There are municipality owned sites and government owned sites within the “Not Licensed” group. This suggests that the Department is not complying with its own legislation.

Recommendation

3.121 To aid in the enforcement of the legislation, the Department should integrate the inspection function with the processes for issuing licenses, permits, approvals, etc.

Departmental response

3.122 The department is exploring the possibility of developing a larger, comprehensive department-wide information system which will serve to integrate occurrences, compliance and enforcement within the department.

Recommendation

3.123 The Department should establish a reporting system for inspection results so problems and common issues are identified and appropriate corrective action is taken on a timely basis.

Departmental response

3.124 The department acknowledges that such a system is necessary. The department will first conduct a business analysis of the overall function of reporting within the department, to establish the business process needed, including standards, forms, checklists, reports, etc. Based on the findings of this analysis, the department will identify possible options and next steps.

Recommendation

3.125 Inspections should contribute more towards the enforcement of legislation. The Department should consistently practice the compliance and enforcement activities set out in the policy.

Departmental response

3.126 The department will develop procedures for non-compliance as a component of the proposed policies and procedures manual. A clearly articulated process for performing and documenting inspections with an integrated full reporting mechanism, should address many of the issues highlighted by the Office of the Auditor General.

Recommendation

3.127 The Department should determine why there are over 350 registered petroleum storage systems that are not licensed and address this issue. A process should be established to achieve and maintain 100% licensing.

Departmental response

3.128 The department has researched this issue of unlicensed petroleum storage systems and a recommendation has been developed. The department has concluded that the most effective approach to address this non-compliance is through the licensing of those individuals/companies selling and delivering petroleum products.

Conclusion

3.129 This criterion was partially met. While we were pleased to find that the Department has established and documented a process for enforcing the legislation which involves inspection, we were disappointed to find that this process is not consistently followed and that not all cases of non-compliance are followed-up or forwarded to the Enforcement Branch.

**Being accountable -
monitoring and
reporting on the
inspection function**

3.130 Our fifth criterion was:

The Department should have procedures to measure and report on the effectiveness of their inspection function.

3.131 To determine whether this criterion was met, we gathered information to address the following questions.

- Are there performance indicators with monitoring procedures for the inspectors and the inspection process?
- Does the Department have relevant and accurate reporting on the effectiveness of inspections?

***Are there performance
indicators with monitoring
procedures for the inspectors
and the inspection process?***

3.132 The Department informed us that they do not have departmental goals or performance indicators with monitoring procedures for either the inspectors or the inspection process.

3.133 Our findings also indicated that the Department was not complying with government policy which states, “Public Service Employees are to receive performance appraisals in keeping with the following guidelines.” The guideline states, “Public Servants should receive a formal written evaluation of their job performance, on a consistent periodic basis.”

3.134 Interviewing staff members and reviewing personnel files indicated that employee performance evaluations are currently not being done annually for many staff. We examined the personnel files for nine Regional Environmental Inspectors to determine if a performance evaluation had been done within the past year. Four of the nine files tested contained a recent evaluation; four did not, and one was not applicable. We examined the same personnel files to determine if current work plans were present. Although several files had work plans, many were old, and only two of the nine files had work plans dated 1999 or later. We also tested the files of three inspectors working in the Stewardship Branch. We were pleased to see that staff within the Stewardship Branch did have current work plans and that annual performance reviews were being done.

3.135 We were pleased to learn that the Department is in the process of implementing an employee performance review system. The branch directors told us that they have been informed that employees should have work plans and performance reviews on an annual basis. We

reviewed the Department's new Work Planning and Performance Review Handbook dated April 2001. We think this document will serve as a useful handbook for all staff.

3.136 Another observation regarding the monitoring of inspections is that the Department does not have any means of tracking the number of inspections performed or the time spent doing inspections, although some individual inspectors may keep records. A time tracking system may be useful because it would hold the inspectors accountable for their time and it would measure the amount of time spent performing inspections.

3.137 We also found that many inspection results were not reviewed. The review of inspection reports is important. It monitors the consistency of the work done by different inspectors and it serves as an overall quality control procedure. Inspections performed by the Approvals Branch and by the Stewardship Branch are not reviewed. The Regional Directors review inspections done by the Regional Environmental Inspectors, however this review may be several months or even one year later.

3.138 The Department has done some monitoring of performance. In the year ended 31 March 2000, the Department did its own review of its Compliance and Enforcement Policy. The purpose of the work was to examine their actual practices and to provide an assessment of the consistency between their practices and the documented policy. The following statements from the report reveal some of the inconsistencies and problems identified by their study, which we believe, may still be relevant.

- *In practice there are many times we settle for less than compliance and many times we do not 'undertake action consistent with this policy'.*
- *There were several cases noted where we are not consistent in our application of laws in relation to similar or identical offences.*
- *The impression is given that inspections are routinely used to verify compliance. However, the general feeling was that routine inspections of permitted activities have decreased over recent years due basically to workloads.*
- *There are numerous examples of repeated violations, ignored warnings and unsatisfactory records of compliance which have not resulted in laying charges.*
- *Most sections do not have a defined procedure for when to move to the enforcement phase.*

3.139 The report ends with thirty-two observations and recommendations made by staff during the review which could be useful in making improvements.

3.140 While we were pleased to see such a thorough internal study, we were disappointed that the Department has not responded to the findings by developing an action plan to address the identified deficiencies. We understand that part of the delay was the result of the amalgamation in April 2000 and the reorganization of September 2000.

Does the Department have relevant and accurate reporting on the effectiveness of inspections?

3.141 The Department does not have relevant and accurate reporting on the effectiveness of inspections and there is no system in place to generate this information.

3.142 There is no internal reporting for the inspection function and there is insufficient information retained which allows an analysis of the inspection results. For example, there was no reporting on the number of inspections done, the number of violations observed, the number of warnings issued or the number of cases forwarded to the Enforcement Branch.

3.143 The only reporting relating to inspections was external, the Department's annual report. The information in the report was limited, stating only the number of inspections performed in some programs. The inspection information was difficult to find because it was dispersed throughout the annual report and presented with the other work done by the branches. The Province's Annual Report Policy provides guidance on the type of information that should be presented.

3.144 "Reporting to the public on compliance performance," is described as part of the Department's mandate to "ensure effective enforcement of, and compliance with, environmental legislation and regulations," in the Organizational Structure document dated September 2000. This reporting was not being done. Without standardized documentation for inspections, any tracking, reporting and monitoring would be very difficult.

Recommendation

3.145 In pursuit of compliance with government policy, the Department should continue its implementation of the employee performance review system.

Departmental response

3.146 *A review of the 2001 Employee Performance Review System indicated that 82% of the department's employees have had a recent employee evaluation. The department will continue its utilization of the Employee Performance Review System, integrated with the work planning process, to monitor and evaluate the work of inspectors.*

Recommendation

3.147 The Department should review its report titled "Review of Compliance and Enforcement Policy and Practices" to determine if

the findings and recommendations are still relevant, decide what action is to be taken and establish an implementation plan.

Departmental response

3.148 *The findings from this report will be reviewed as the department evaluates the policy in general.*

Recommendation

3.149 **The Department should establish performance indicators and monitoring procedures for evaluating and reporting on compliance with legislation.**

Departmental response

3.150 *The department agrees with this recommendation and will establish a process to evaluate and report on compliance with legislation, and the inspection function in particular. Performance indicators will be developed as components of this evaluation strategy.*

Conclusion

3.151 This criterion was not met. The Department does not have procedures to measure and report on the effectiveness of their inspection function.

Departmental response

3.152 In addition to responding to individual recommendations, the Department provided the following general comments:

The Audit Report on Environmental Inspections, prepared by the Office of the Auditor General focused on inspections, one of a number of activities utilized to assess compliance with environmental legislation. In reviewing the recommendations of the Report of the Auditor General, two important issues became clear:

- The inspection function is integrated with numerous other activities to achieve compliance. In order to address the concerns of the Office of the Auditor General, it is necessary to develop a revised policy on compliance and enforcement. This would provide a basis for ensuring departmental consistency and effective coordination of all activities, including inspection, by all units of the department; and*
- Following the development of a revised policy, the department will prepare a clearly written set of procedures and operating practices, consistent with that policy, which will address the commitments made to the Office of the Auditor General in a comprehensive and integrated fashion.*