Welcome

Advanced Inspector Training

NACT 355

Instructors/Facilitators

To Be Determined
For each
Course
Offering

Administrative

- Facilities
  - Rest Rooms, Emergency Exits
- Schedule/breaks
- Lunch
- Sign-In Sheet

Ground Rules

- Ask questions
- Participate
- Provide instructors with benefit of your experience
- Be on Time
- Feedback on Evaluations - Online

Required to Receive Certificate

- Sign in every day
- Take the pretest
- Take the post test
- Must fill out evaluation
- We must be able to read your name

This Course

- Lecture/seminar/facilitated discussion
- Participation is critical - this is your class
- To develop/expand existing skills/ knowledge
- New materials and enhanced refresher training
- Does not focus on any one program or set of regulations - provides fundamentals for all programs

Course Agenda

- Introduction/Purpose of Course
- Inspector Issues
- Digital World
- Practical Exercise
- Note Taking and Report Writing
- Interviewing Skills
- How To Be An Effective Witness
- Alternative Compliance Methods
- Inspector Discussion Groups
- Description of Criminal Program
- Field Technology and DOCS
- Wrap-Up and Evaluation

Policies, Procedures, and Practices

- Course presents “best” practices
- Inspectors must adhere to their AGENCY’s policies and practices
- Consistency is crucial to creditability of witness and admissibility of evidence

Audience Introductions

- Your name
- Your agency and program
- Years of experience (with agency & other)
- Number of inspections you have done
- Any issues you would like to discuss?

Pre - Test

Be sure we can read your name

Inspector Issues

Senior Inspector/Investigator

- Unique characteristics
- Educate
- Regulate – Compliance & Enforcement
- Investigate
- Communicate
- Follow Inspection Process from beginning to end

Role of the Inspector

- Official representative
- Fact-finder
- Enforcement case developer
- Provider of enforcement presence
- Compliance Assistance

All stages and aspects of Compliance and Enforcement Program ?

Compliance Assistance

- Sharing standardized information and references
- Anything else?
- What are your SOPs?

Reasons for Inspection

- Targeted inspection scheme
- For cause
- Permit renewal
- Citizen complaint
- Follow-up
- National/Regional/State/Local Initiatives
- Because they complained about you? NO

EPA National Enforcement Initiatives

- Air Pollution from the Largest Sources (PSD/NSR)
- Hazardous Air Pollutants
- Energy extraction activities
- Accidental Releases at Industrial and Chemical Facilities
- Raw Sewage and Contaminated Stormwater
- Animal Waste in Surface and Ground Water
- Industrial Pollutants in Surface and Ground Water
- Keeping Industrial Pollutants Out of the Nation's Waters (New initiative for FY17-19)

- https://www.epa.gov/enforcement/national-enforcement-initiatives

Constitutional Issues and Inspections

Search and seizure and the 4th Amendment

U.S. Constitution: 4th Amendment

"The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no warrants shall issue, but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized."

What This Means for You

Your work

- inspections
- complaint response
- emergency response
- sampling, monitoring, field work

involves searches and seizures which must meet constitutional requirements of reasonableness.

How Do You Know What is "Reasonable"?

- Is it defined in the permit? No
- Is it defined statutes/regulations? No

- Constitutional issues are decided by courts

- No case has decided whether the CAA entry statute is "reasonable"

“Reasonable” searches as decided by the courts

- Entry into public areas
- Entry with consent
- Observation without entry
- Entry into open fields
- Search of abandoned things
- Entry in emergencies
- Entry with a warrant

**Your inspection must fit into one of these categories

Houses are Different

A search of a house or the area immediately around it without a warrant is presumed to be unreasonable

- Includes the “curtilage’ the area immediately surrounding a home that is used in the daily activities of domestic life

- Important you have a reasonable basis, such as consent.

Open Fields

- There no reasonable expectation of privacy
- Even if… fenced, closed or locked gates, "No Trespassing" signs and/or an objecting owner, its still an “open field” .
- Check your state laws, usually an inspector going onto private property is <u>not</u> trespassing even if signs are posted.

Abandoned Property

- No reasonable expectation of privacy for property that has been abandoned or discarded, e.g., garbage dumped along a road.

- Some states do protect abandoned property under state constitutions/laws
  - Washington and New Mexico

Suggested Approach to Entry

- Visit the facility at a reasonable hour
- Identify yourself and present your credentials to the manager/person in charge
- Explain the legal basis for your inspection (state law, permit)
- Explain the scope of your inspection
- Ask for consent and record the name and position of who gave it. Note any limitations.

What About…

- Sign in with the gate guard? Yes
- Take a facility 2 hour safety course? Maybe
- Sign a liability waiver? No

Basis for a civil/inspection/ administrative warrant

- Depends on your state laws, usually
  - denied entry, OR
  - reasonable cause to believe that a violation has occurred, is occurring or is about to occur at the facility
  - States of Washington and Louisiana do not have inspection warrants in state law

Basis for a Criminal Search Warrant

Probable cause to believe felony has been committed.

Facts, Documentation and Evidence

What did you do?

- Conducted a visual inspection
- Interviewed owner/operator
- Interviewed employees
- Reviewed permit
- Reviewed facility records
- Took photos
- Took samples

Evidence is . . . . . stuff

- Testimony
- Documents, other physical evidence
- Demonstrative

anything <u>offered to prove the existence or nonexistence of a relevant fact</u>.

When do you need evidence?

- In court
- In an administrative hearing
- In an office hearing
- To settle an enforcement action
- To write an NOV or NTC
- To check the box “non compliance” on an inspection report

How Much Evidence Do You Need?

- For administrative and civil
  - "a preponderance"
  - more likely than not that the violation occurred

- For a criminal case
  - "beyond a reasonable doubt"

- How much do you need to convince the facility owner? At a settlement conference or office hearing?

Typical Evidence

Testimony

- What the witness saw & heard
- Quotes from company personnel
- Expert opinions

Documents & other physical evidence

- Company Records
- Photographs, Samples, Piece of garbage? Piece of pipe?

Demonstrative

- Flow Charts

Evidence of Who Did It

- Who are these guys?
- Individual? Corporation?
- Documents
  - Evidence of ownership (permits, phone bills)
- Public Records (licenses, permits)
- Photo

So You Decided There Was A Violation

- How did you make that decision?
- You determined there were facts (evidence) for each elements of the violation

Elements and Evidence Together Prove the Violation
Example: Violation of a permit condition

Elements	**Evidence**
1. Facility/Person	1. Inspector observation
2. Had a permit	2. Records review
3. Permit condition	3. Permit
4. Condition violated	4. Inspector observation
5. Date	5. Inspector observation
6. Location	6. Inspector observation

Two Steps to Get Something Admitted as Evidence in Any Hearing or Court

1) Establish Relevancy of the evidence

2) Establish Authenticity of the evidence

Step 1: Establish Relevancy

- The evidence proves or disproves any element of the alleged violation/offense or

- The evidence is relevant to the credibility of a witness.

Step 2: Establish Authenticity

The evidence is what it says it is:

Example: Chain of custody that shows the sample in court is the same one taken at the defendant's facility.

Example: Witness stating that the photo accurately reflects the conditions at the facility on the day in question.

Example: Your initials and date on the back of a document you obtained at the facility.

Rules to Remember

- Have evidence for each element of the violation
- Don't forget evidence of who, what, where, when and how
- If you don't have all the evidence you need, don't stop! Another agency may have what you need.

- Think about evidence
  - When inspecting the overall site conditions
  - When interviewing company personnel
  - When taking photos and samples
  - When reviewing permits and facility records
  - When drafting search warrants

Online training

Tactical Communication (Verbal Judo)

- https://calcupa.org
  - Click on training
    - Video training library
      - Last of 7 pages from 2008 conference
    - Same site from 2011

    The Importance of Ethics in a Regulatory Environment

Inspector Issues

That's all I have. Any questions on what we have covered?

Our Digital World

What is digital media?

- Digital media is media that is recorded in codes rather than waves ie. interpreted into numbers rather than its original form.
- Examples of devices that use digital media include:
  - Mp3 players (eg. iPod)
  - 3G (broadband wireless internet data, all in a mobile environment)
  - Foxtel IQ (time shifting personal digital recorder)
  - digital cameras
  - mobile phones
  - DVD
  - digital tv
  - digital recorders, etc.

Digital World

- Any electronic device that has memory
- Data may be protected or unprotected.

Why Bother with Digital/Electronic Evidence?

- Electronic information is an integral part of most facilities.
- Most facility records are produced and stored on a computer or other device
- Many monitoring devices produce digital records
- Electronic equipment and devices related pollution control devices or permit conditions may need to be evaluated for compliance information

Possible Digital/Electronic Evidence

Emails, digital photographs, word processing documents, instant message histories, CEMs data, accounting programs, spreadsheets, internet browser histories, databases, computer/ tablet memory, computer backups, Global Positioning System tracks, logs from electronic door locks, digital video or audio files.

E-mail

- E-mail can often be valuable to an investigation but is often overlooked.
- Deleted e-mail can be recovered in the same manner as deleted files.
- Servers may store archives of all e-mail ever sent by its employees or the internet service provider (ISP) may maintain copies of clients' e-mail on their servers.

Can Electronic Evidence Be Tied to a Specific User/Suspect?

- May be difficult
- The data may be tied to a specific computer and a user's password, but
- More than one person may have access to the computer and/or the password

Issues with Digital Evidence

- Tends to be more voluminous
  - 1 Gigabyte = 64,782 pages of text
- More difficult to destroy
- Easily modified
- Easily duplicated

E Evidence

- You must maintain the integrity of the evidence.
- Follow established procedures to ensure the ability to defend against claims that the electronic evidence was changed or altered.

Social Media as an Investigative Tool

- Of people ages 18-50, 80% use social media
  - 65% have a photo of themselves online
  - 50% have their DOB online
- 70% of cell phones use geolocations in photos
- Many businesses have a Facebook page

- <u>Do not log in and use your personal accounts</u>

Some Suggestions

- Google’s reverse image search
- Facebook Graph Search
- Instagram for Chrome

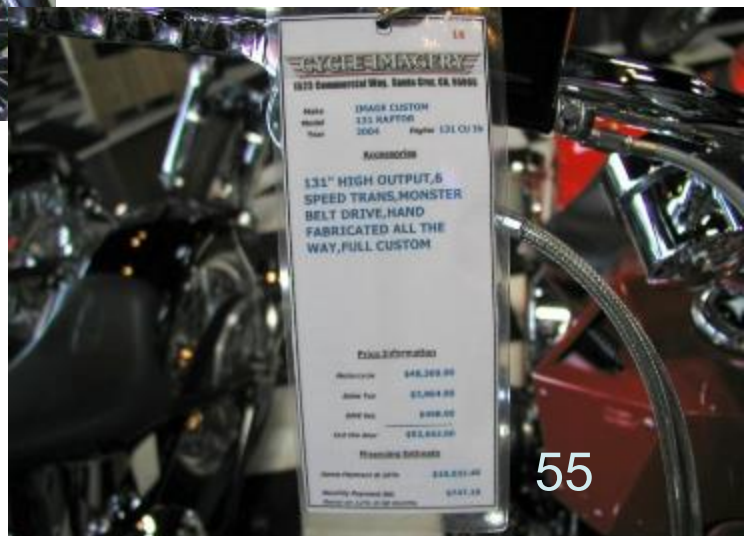
Photos--Before taking pictures

- Check that the date and time is correct
- Check to ensure camera is set to normal settings or make a note of any changes

Approach for Using Photos to Document Violations

- Your photo should tell a story, a systematic progression
  - Establishing shot
  - Subject shot
  - Detail shot

Establishing shot **Subject shot** **Detail shot**



US EPA Digital Camera Guidance

- epa.gov/compliance/guidance-digital-camera-guidance-epa-civil-inspections-and-investigations
- Photo evidence standard
  - Authenticity
  - Relevance

USEPA Digital Camera Guidance

- Capture
  - sufficient quantity, clarity and detail
- Handling on-site
  - Photos taken should never be deleted
  - Confidential Business Information (CBI)
- Logging – Field notes
  - Name, date, location, comments

USEPA Digital Camera Guidance

- Closing conference
  - Sharing photos with the facility
  - Reviewing photos for CBI claims
- Preservation
  - Save the “originals” as soon as practical on share drive or other storage
  - Do not delete any photos
- Only edit copies

for training

File Edit View Favorites Tools Help

Back Search Folders

Picture Tasks

- Get pictures from camera or scanner
- View as a slide show
- Order prints online
- Print pictures
- Copy all items to CD

File and Folder Tasks

- Make a new folder
- Publish this folder to the Web
- Share this folder

Other Places

- Picasa Pics
- My Pictures
- My Computer
- My Network Places

Details

Name	Size	Type	Date Modified	Date Picture Taken	Dimensions
IMG_7315	4,237 KB	JPEG Image	8/12/2008 12:20 PM	5/17/2008 3:06 PM	2592 x 3888
IMG_7316	1,611 KB	JPEG Image	8/12/2008 12:20 PM	5/17/2008 3:06 PM	2298 x 2208
IMG_7317	3,570 KB	JPEG Image	5/17/2008 3:06 PM	5/17/2008 3:06 PM	3888 x 2592
IMG_7318	4,418 KB	JPEG Image	8/12/2008 12:20 PM	5/17/2008 3:06 PM	2592 x 3888
IMG_7319	1,293 KB	JPEG Image	8/12/2008 12:20 PM	5/17/2008 3:07 PM	1380 x 2050
IMG_7320	2,851 KB	JPEG Image	8/12/2008 12:20 PM	5/17/2008 3:07 PM	1855 x 2875
IMG_7321	1,750 KB	JPEG Image	8/12/2008 12:20 PM	5/17/2008 3:11 PM	1760 x 2144
IMG_7325	4,816 KB	JPEG Image	5/17/2008 3:20 PM	5/17/2008 3:20 PM	3888 x 2592
IMG_7326	4,775 KB	JPEG Image	5/17/2008 3:20 PM	5/17/2008 3:20 PM	3888 x 2592
IMG_7327	4,664 KB	JPEG Image	5/17/2008 3:20 PM	5/17/2008 3:20 PM	3888 x 2592
IMG_[illegible]	4,792 KB	JPEG Image	5/17/2008 3:21 PM	5/17/2008 3:21 PM	3888 x 2592
IMG_[illegible]	4,643 KB	JPEG Image	5/17/2008 3:21 PM	5/17/2008 3:21 PM	3888 x 2592
IMG_7330	4,666 KB	JPEG Image	5/17/2008 3:22 PM	5/17/2008 3:22 PM	3888 x 2592

.JPEG_7317
.JPEG_7318
.JPEG_7319
.JPEG_7320
.JPEG_7321
.JPEG_7325
.JPEG_7326

start | Arbor Mountain Tree ... | 110-Sampling-no video | for training

Video Recording

- Remember the audio!
- May be useful in hearings/court
- Good way to document specific observations, particularly large areas or things that move (like a plume, off site emissions, water flow etc.)
- Get consent from facility before video recording

Photographs and Video

- What should you photograph or video?

- What should you NOT photograph or video?

Custody
Samples

JUNK YARD
BIOASSAY WASTE

JUNK YARD
BIOASSAY WASTE

97140323
I-CHEM
Al's Junk Yard
Shop Drain
4/14/97
97140322
1400
ORGANICS
AH
97140322
I-CHEM
Al's Junk Yard
Shop Drain
4/14/97
97140323
1410
METALS
AH

Things to Remember About Photos

- Notify facility personnel of intent to take photos
- Provide copies to facility if requested
  - Give them your camera? NO
- Document location and subject of each photo
- Prepare photo log including all photos

Digital and Document Management

- Preserve FIRST
- Hardcopy or Digital
- Digital image management

- **Which Directories and Databases do you use? Why?**

Is Deleted Data Really Gone?

- Most likely not.
- Upon deletion, Windows merely transfers the information telling the operating system where to find the file to the recycle bin.
- The file has not actually been deleted and is easily recovered as long as it is in the recycle bin.

I Emptied the Recycle Bin, Now Its Gone Right?

- Not really.
- It can still be recovered.
- Most government agencies have data on back up servers

What Is Metadata?

- Data about data.
- Information included in the electronic version of a document which is used for a variety of purposes, including:
  - Enhanced editing (redo/undo).
  - Documentation/tracking.
  - Retrieval and viewing of the document by other programs.

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Metadata in Documents

- Identification information identifies the author and access or editing by other users.
- Summary information including the creation date and time.
- Document revisions and/or previous versions.
- Ask for documents from a facility in “native format” so you get the metadata

Types of Metadata Cont.

- Comments and hidden text.
- Time and location the document was saved or printed.
- Statistical information including the amount of time spent editing the document.
- Beware of sending documents in native format such as Word, the receiver may be able to review your edits and revisions.

Government's E Data

How "open" does government want to be with data?

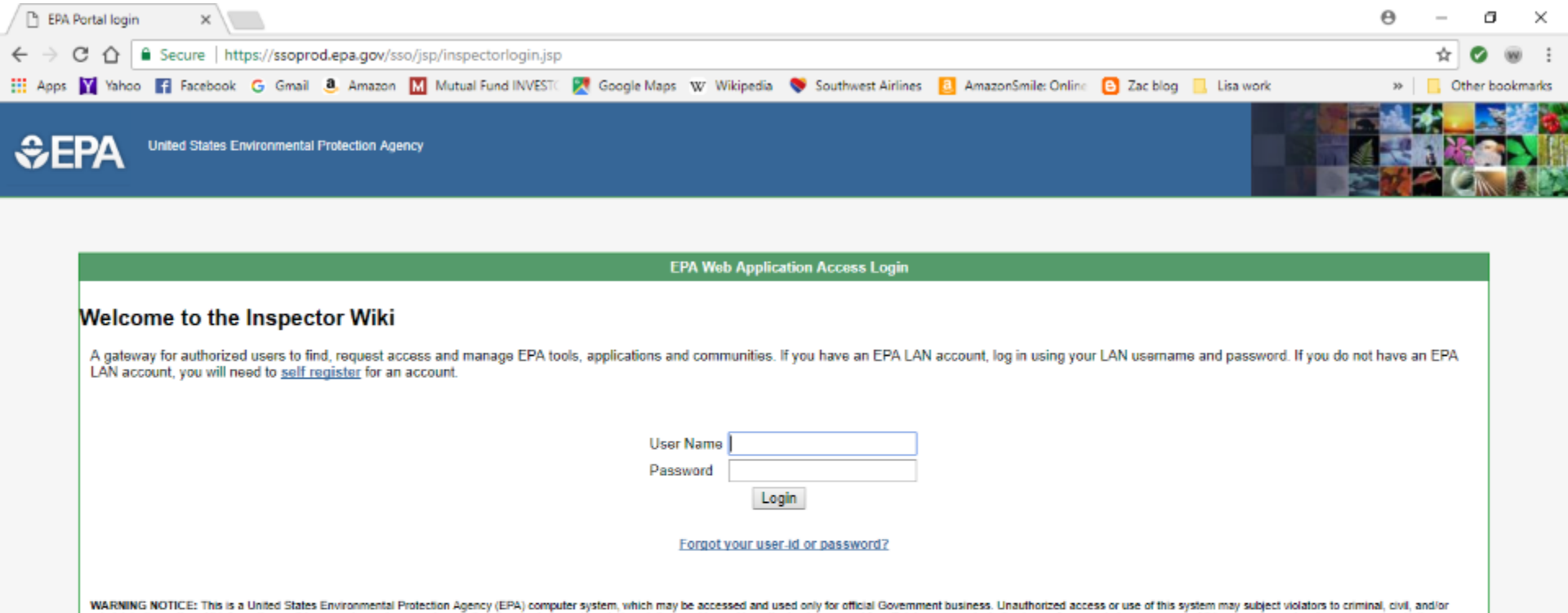
Who gets to see the data and when?

What format will the data be provided?

With all the instantaneous communications can government keep up with demand?

Inspector Wiki

- EPA Inspector Wiki pages https://inspector.epa.gov
- Need EPA staff email to sign up, use Tracy Back (Back.tracy@epa.gov)



Inspector Wiki

Secure | https://wiki.epa.gov/inspector/index.php/Wiki_Home

Apps Yahoo Facebook Gmail Amazon Mutual Fund INVEST Google Maps Wikipedia Southwest Airlines AmazonSmile: Online Zac blog Lisa work » Other bookmarks

Xlbro01 Talk Preferences Watchlist Contributions Log out

Main page Discussion Read View source View history Search

Wiki Home

- Wiki Home
- About the Inspector Wiki
- Comment Policy

Popular Categories

- Training - Credentials
- Orders, Policies, Guidance & Forms
- Credential & Training Contacts
- Program-Specific Resources
- Conducting an Inspection (Beta Version)
- Compliance Assistance Resources
- QA Field Activities Procedures

Community

- Calendar

Tools

- What links here
- Related changes
- Special pages
- Printable version
- Permanent link
- Page information

The Inspector Wiki is your source for important information regarding inspector credentials, training, policies, inspector guidelines and field experiences.

- **Suggestions for the Wiki?**
  Email your thoughts to back.tracy@epa.gov
- **Do your peers need help accessing the Wiki?** Click here (PDF) for guidance
- **New to the Wiki?**
  Check out the **" About Inspector Wiki" page**

The Inspector Wiki's primary navigation is managed through the Popular Categories on the left menu bar.

PDF Disclaimer

You will need Adobe Acrobat Reader to view PDF files. See EPA's PDF page for more information about getting and using the free Acrobat Reader

Latest Additions/Updates

- Tips for Inspectors for Avoiding Hostile Situations (PDF)(1pp, 231K) (September 2017)
- Health & Safety Resources on Personal Protective Equipment (PPE) for EPA RCRA Inspectors (PDF)(1pp, 361K) (August 15, 2017)
- 2017 Digital Image Guidance Webinar (recording) The webinar was presented on July 27, 2017. Use your Adobe Connect username and password to view the webinar. From the Webinar welcome page, select the webinar recording link in he "Web Links 5" box, then select "Browse To" below.
- Inspection Report Writing - New Inspector Skills Training
- Digital Image Guidance for EPA Civil Inspections and Field Investigations (June 2017)
  - Example Digital Image Logs
- RCRA Corrective Action Inspection Training - Designed for Federal and state RCRA compliance, enforcement and permitting personnel who may be asked to inspect corrective action activities.
- How to Conduct a Sanitary Survey of Drinking Water Systems; A Learner's Guide (PDF) (292pp ,8MB) (November 2016)
- Clean Air Act (CAA) 101 Inspector Training

Questions?????

Practical Exercise

Acme Chemical Company

The Practical Exercise Scenario

- Acme Chemical Company (ACC) produces pesticides
- ACC has all required permits from the Commission on Environmental Protection (CEP)

The Practical Exercise

- The CEP receives an anonymous tip reporting that asbestos demolition had been occurring.
- CEP decides to conduct an unannounced inspection of the ACC plant
- Closely review the Facility Background sheet to learn what happened during the inspection

Today’s activities

- The class will be divided into inspection teams that will each independently investigate the anonymous tip.

- Each team will investigate a disposal site, take pictures and samples, interview the plant manager and gate guard, take notes, and prepare an inspection report.

Each group needs

- Laptop with thumb drive
- Camera or phone to upload photos to the laptop
- Sampling kit: procedures, sampling spoon and containers, labels, gloves, tape, scissors)
- Tyvek suit
- Duct tape
- Evidence locker

Prepare for the exercise

- Determine team roles
- Review background materials, sample procedures, asbestos description & regulations
- Prepare for
  - interview of Gate Guard
  - interview of Plant Manager
  - taking samples (PPE provided)

Each Groups Needs

- Team Leader
- Interviewers (at least two). All team members must be present.
- Sampler
- Photographer
- Note Taker
- Entire team will develop the inspection report

By the end of today

- Complete two interviews
- Complete sampling
- Prepare and complete inspection report

Tomorrow

- The class will review and critique the interviews and sampling activity
- Each inspection report will be presented and discussed with the class