NACT 350
Basic Inspector Training Course
Instructors

To Be Determined
For each Course Offering
Welcome

- Materials
- Agenda
- Notebooks
- Attendance
- Misc Information
Why This Course?

- Inspectors play a crucial role in ensuring that the nation's environmental laws are implemented.
- Inspector's work is very complex, involving:
  - Legal aspects
  - Technical aspects
  - Administration
  - Communications
  - Plus Health and Safety
- Course to provide foundation
This training will address BEST Practices!!

- Each inspection is unique
- Not all inspections will follow all of the steps and procedures addressed here.
- Resources (e.g., time, money, personnel) are always factored in
Administrative
Administrative

- Facilities
Administrative

- Facilities
  - Rest Rooms
Administrative

- Facilities
  - Rest Rooms
- Schedule/breaks
Administrative

- Facilities
  - Rest Rooms
- Schedule/breaks
- Telephones/Cell Phones
Administrative

- Facilities
  - Rest Rooms
- Schedule/breaks
- Telephones/Cell Phones
- Lunch
- Sign-In Sheet
Rules of Engagement

- Ask questions
- Participate
- Provide instructors with benefit of your experience
- Be on Time
- Feedback on Evaluations
- Foot stompers!!
Inspector Training

- Purpose of training to introduce you to basics of inspections
- Inspector Attributes
Audience Profile

1. Agency
2. No. of Years/Months/Days
3. Work unit (permitting, enforcement)
4. No. of Inspections Yearly
PRE TEST
Introduction to Environmental Compliance Program
EPA Order 3500.1

- Issued in 1988
- Last revised/updated 2018
- Incorporates three main requirements
  1. Health and Safety
  2. Basic Inspector Training (this course)
  3. Media-Specific Training
- Need to satisfy the training requirements to be eligible for Federal EPA credentials
Federal EPA Credentials

- Issued every 3 years
- Must safeguard to prevent copying/theft
- Issued only to EPA and state/local/tribal personnel that actually conduct inspections/evaluations/investigations
- EPA Order 3510 establishes the procedures for issuing the credentials
Inspector Issues

Role of the inspector

Confidential business information

Ethical considerations

Techniques for handling the press and the public
Role of the Inspector

All stages and Aspects of Compliance and Enforcement Program
Role of the Inspector

- Official Representative
Role of the Inspector

- Official representative
- Fact-finder
Role of the Inspector

- Official representative
- Fact-finder
- Enforcement case developer
Role of the Inspector

- Official representative
- Fact-finder
- Enforcement case developer
- Provider of enforcement presence
Role of the Inspector

- Official representative
- Fact-finder
- Enforcement case developer
- Provider of enforcement presence
- Compliance Assistance
Role of Inspector in Providing Compliance Assistance (CA) During Inspections

- Main purpose of inspections -- Determine compliance

- 13-page Policy describes the inspection process, definitions, appropriate/inappropriate assistance, specific examples, documentation & reporting

- Not CA: ISE and compliance status review

- Inspectors are encouraged to provide CA with limitations
Role of the Inspector

Compliance Assistance

- I - Sharing standardized information and references
Role of the Inspector

Compliance Assistance

- II - More technically complex and site-specific

- Detailed technical information/discussion of individual facility
Role of the Inspector

Compliance Assistance

- III - Most technically complex and site-specific
  - Assisting owner/operator in operating facility or in making design/operation changes
  - Consulting services to facility
Confidential Business Information

- WHAT IS IT?
- Proprietary data
  - Chemical formulations
  - Special process operations-special techniques
  - Financial information-lists of customers
  - Anything that might give another company a competitive advantage
Confidential Business Information

- WHAT IS IT - continued
- Anything the company claims as CBI
- Receipts should be provided for CBI material
Confidential Business Information

- CBI has very stringent handling requirements
- All CBI must be properly secured
Confidential Business Information

- Only authorized personnel can see the data
Confidential Business Information

- Access log is maintained
Confidential Business Information

- Limits are imposed on copies made
Confidential Business Information

- Any report generated from CBI also is CBI
Targeting

- Neutral Inspection Scheme
- Initiatives (State and National)
- For Cause
ETHICS
When in Doubt, Don't!
ETHICS
When in Doubt, Don't!

- Integrity and impartiality
- Conflict of interest
- Standards of conduct

Consult with your ethics official first
Dealing with the Press and the Public

Emphasize The Positive!!
The Reporter's Viewpoint

- **Goal:** A usable story

- **Differences among:**
  - Newspaper
  - Television
  - Radio
Talking with the Press

- Know what you want to say
- Use the interview as an opportunity to say it
- Be professional
- Don’t say too much
- Don’t speculate
Environmental Compliance
Objectives

- Positive environmental results
- Environmental laws, rules, and requirements are followed
- Use limited resources in the most effective way
- Can we improve the way we do business?
To Be More Effective:
We Need to Recognize “Enforcement and Compliance Monitoring” as a “System”
Generally, Inspectors & Managers Are Responsible for 3 of the 5 System Links.
Link 1

Inspection Targeting

- Target selection starts the entire enforcement system in motion and commits the resources.
- Inspections are expensive!
- Good targets are essential, you play a key role in making sure an inspection is worth doing.
- Tips, complaints, strategies
Link 2
Auditing Skills – Our Focus!!!

- The procedures, methods, and techniques used to obtain factual and objective information from people and their activities.
- They are independent of the media requirement:
  - Tax audits, nursing home inspections, aviation inspections, criminal investigations, etc.
Link 3
Regulatory Knowledge

- How well you know the statutory, regulatory, or permit requirements.
- **Key requirements must be memorized!!!**
  - This is critical to recognizing and identifying violations.
  - It takes effort
  - Checklists help but do not substitute for memorization.
Link 4
Communication Skills

- Done through the inspection report
  - Communicates all areas of non-compliance.
  - Communicates each element of proof needed to support the alleged non-compliance.
  - Minimizes or eliminates the need for follow-up questions or additional information requests.
  - If additional info requests are needed – you likely missed something!!!
  - Answers: who, what, when, where, and how?
Link 5
Enforcement

- Taking the non-compliance you have identified and making a case.

- Does your inspection product exceed the Program’s enforcement needs?

- Are you and your inspection report ready for trial?

- Remember, opposing counsel will focus on destroying the credibility of your inspectors
Compliance and Enforcement Program

- Laws and regulations
- Compliance and enforcement strategies
- Compliance monitoring
- Enforcement response
- Follow-up to enforcement actions
Laws and Regulations

- Should be written clearly to indicate:
  - Who is subject to them
  - What is or is not a violation
  - No vague or ambiguous requirements
Compliance and Enforcement Strategies

- Compliance monitoring plans
- Enforcement response policies
- Other policy and guidance documents
- Affected by court decisions
Compliance Monitoring

- Source self-monitoring and reports
- Inspections/Evaluations
  - EPA can conduct inspections in all state and Federal territories
- Enforcement if violations are found
  - Informal (phone call, warning letter, NOV)
  - Formal (Administrative, Civil, Criminal)
Inspector’s Role in an Enforcement Action

- Violation(s) found and documented
- Decision made on level and type of enforcement response
- Enforcement documents drafted and filed
- Settlement negotiations entered
- Hearing or trial conducted
Follow-Up To Enforcement Actions

- Reports and certifications of compliance by source
- Follow-up inspections/evaluations
- More severe enforcement response if facility remains in violation
Introduction to Practical Exercise (PE)

- Describe PE
- Explain Instructions and Ground Rules
- Show P3 Postponed Video
- Divide into Groups
INSPECTION PLANNING

For Inspectors
Administrative Issues and Inspection Planning

KNOW YOUR OFFICE PROCEDURES
Administrative Issues

- Planning
- Procurement
- Travel and reimbursement
- Pay administration
- Special cautions
Administrative Issues (continued)

- Anticipate administrative needs
- Obtain proper forms, authorizations, and signatures
- Advance planning a must, but
  - Change in travel plans may be necessary
  - Unanticipated purchases may be necessary
Administrative Issues
Procurement

- Supplies (ice, sampling equipment, etc.)
- Document copies, photographs
- Lab support
- Shipping
- You may be held liable for unauthorized purchases!!!
Administrative Issues (continued)

- Cash advance
- Reservations
  - Airlines
  - Hotel
  - Car
- Use of cash
  - Complete travel vouchers promptly
- Receipts
- Know your procedures
Anticipate administrative needs

Obtain proper forms, authorizations, and signatures

Advance planning a must, but

- Change in travel plans may be necessary
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Administrative Issues

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- Supplies (ice, sampling equipment, etc.)
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- Cash advance
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  - Hotel
  - Car
- Use of cash
  - Complete travel vouchers promptly
- Receipts
- Know your procedures
Administrative Issues (continued)

- Comp time while on travel
- Use of government equipment and services:
  - Cars, rentals, contractors
  - Telephones, computers, fax machines, copiers, etc.
- Airline/airport Homeland security issues with equipment
Planning

From Alice in Wonderland:

- “Would you tell me, please, which way I ought to go from here?”
- “That depends a good deal on where you want to go to,” said cat.
- “I don’t much care where,” said Alice.
- “Then it doesn’t matter which way you go,” said cat.
Goal of Inspection Planning

Identify all activities necessary to gather information to assess whether a facility is in compliance and to use as evidence in possible enforcement action.

HOW TO ACCOMPLISH GOAL?
BE PREPARED!
Skills, Qualifications and Teams

- Knowledge of policies and procedures
- Familiarity with a range of media
- Knowledge and expertise of technical issues
- Investigatory skills
- Working with an inspection team
- Communication skills
- Experience
Define the Inspection

- Identify type of inspection
  - Compliance evaluation Inspection (CEI)
  - State Oversight, State Lead
  - Compliance Monitoring (CME)
  - Case development
  - Sampling inspection

- Decide scope, focus and intent of the inspection
Planning Inspection

- Importance of planning
- Key planning activities
- Project plan
  - Defining scope and objectives
  - Use of an Inspection Checklist
  - Review facility files - Fed., State, Local
Identify Overall Project Objectives:

- Know why facility was targeted
  - Neutral, For Cause, Annual, Bi-annual, required by regulations or by permit
  - Citizen Compliant
Elements of a Project Plan

- Objectives
- Background
- Tasks
- Policies and procedures
- Safety
- Resources
- Schedules
Identify Overall Project Objectives:

- Determine desired outcome/define objectives
- Decide scope, focus and intent of inspection
- Know why a facility was selected for inspection!!
Gather Background Information:

- Background information is critical for development of a project plan
Review Facility Information

Become familiar with facility/process
Reviewing EPA and State Records

- Discover inadequacies in information
  - Develop new information on facility/process

- Minimize inconvenience to facility personnel

- Clarify technical and legal issues before entry
  - Talk with your litigation team and your technical team
Gather Background Information:

- Review old inspection reports
- Talk with inspectors that previously inspected the facility
- Talk with local authorities
- Search Internet
- Know facility ownership (parents/Subsidiary)
- Search EPA’s ECHO database
Identification of Tasks

- What activities “MUST” be accomplished to meet objectives of inspection
Policies and Procedures

- Know Agency’s Inspection Standard Operating Procedures (SOPs)
- Special procedures applicable to this inspection
- Policies and Procedures of other organizations
- Notification of local regulatory officials
Notification to Facility

- Procedures (announced or unannounced)
- Necessity of a letter of notification
- Information requested in a notification letter
- Notification of state regulatory officials
- Notification to laboratory about incoming samples
- Time factors
Safety Plan

- Requirements of specific organization or other Regulatory entity State OSHA, MSHA, DOT

- Safety equipment required
  - Personal Protective Equipment (PPE)
  - Direct reading instruments
  - Decontamination materials

- Special safety considerations
  - Mining
  - Air emissions stack safety
  - Boating
  - Public
Safety

- Write a Health and Safety Plan (HASP)
- Include facility specific safety concerns
- All team members **MUST** read and sign HASP
- Include special safety considerations
  - Distance to local ER
  - ER Capabilities
  - Emergency Notifications
Safety!
Be Prepared!

Know what kind of hazards you are dealing with!!
Be Safe and Efficient in Field

- Define and assign task per HASP to all members of the Inspection Team
  - Site security
  - Equipment management
  - Decontamination officer
  - Training - 8 hour, First Aid/CPR
QUESTIONS???
DATA RESOURCES
Resources

- Team members for onsite inspection
  - Number of inspectors
  - Expertise needed
  - Sampling team
- Laboratory support
- Administrative support/Management support
- Funding (???)
Milestones in Schedule Development

■ Schedule

- Date for pre-inspection planning meeting
- Date of inspection (on site)
  - Opening conference
  - Closing conference
- Inspection report due dates - Why?
  - Draft report
  - Final report
Development of an Inspection Schedule

Importance

- To client
- To team
- To facility and
- To your Managers
Sources of Information for Inspectors
Session Objectives

- Techniques for collecting and handling
- Aware of systems, uses, and benefits
- Sources of information
- Improve inspections and case development
  - efficiencies, effectiveness
What specific Type of Information should an inspector look for?
General Info

- Statute and regulation publications
- Policies, data, and guidance from all government levels (and cross-agency)
- Case histories
- Division libraries and central filings
- Trade associations
- EPA/State Technical Documents
Facility-specific Info
(Federal, State, and Local Files)

- Permits, applications, exemptions, waivers
- Process diagrams, waste stream flow charts, and facility maps
- Self-monitoring data, records, and reports
  - Including annual and per-incident reports, manifests
- Prior inspection reports
  - Including cross-media issues
(Facility-specific) (cont’d)

- QA documentation
  - Prior sampling test results
  - Lab certification
- Enforcement documents
- Facility responses to enforcement actions
- Citizen complaints
WHERE might an inspector look for this Information?
Reconnaissance Visit

- Done to increase on-site inspection efficiency
  - Especially if facility is very complex; or
  - There is not enough information in files
- Inspector may meet with owner/operator for logistical planning
- May not be needed with an unannounced inspection
Compliance Assistance

Compliance Assistance Clearinghouse
www.epa.gov/clearinghouse

or

Compliance Assistance Centers
www.assistancecenters.net
Compliance Assistance is a tool EPA uses to improve a regulated community’s compliance with environmental regulations. EPA partners with compliance assistance providers to develop and deliver compliance assistance resources such as Web sites, compliance guides, fact sheets and training materials. These Web pages describe compliance assistance materials for industry sectors and by statute.

Compliance Assistance works in conjunction with Compliance Incentives and Auditing, Compliance Monitoring and Enforcement, More...

Topics

**Industry and Government Sectors**
Specific compliance issues for industry and government sectors
- Agricultural | Automotive | Chemical | More...

**Statute-specific assistance**
Assistance tools for specific statutes or regulations
- Clean Air Act | Clean Water Act | Federal Insecticide, Fungicide and Rodenticide Act | More...

**Compliance Assistance Centers**
Sector-specific information

**Measurement and Results**
Tools to evaluate the outcome of assistance activities

**Compliance Assistance Networking**
Industry and Government Sectors

EPA often provides compliance assistance on a sector-by-sector basis in order to efficiently reach facilities with similar operations, processes, or practices.

A sector is a distinct part of the economy that shares

- Similar operations, processes or practices
- Similar environmental problems and impacts
- Similar compliance issues, and either distributes goods or performs services More...

Additional information that may affect your sector can be found in compliance assistance by statute.

Sector-Based Compliance Assistance Tools:

- Compliance Assistance Centers provide comprehensive, easy to understand compliance information targeted to specific industry and government sectors.
- Sector Notebooks are plain language booklets that describe environmental problems associated with major US industries.
- Compliance Assistance and Inspection Publications are also available including guides, manuals, fact sheets and brochures that pertain to an individual sector or a specific regulation.
- National Compliance Assistance Clearinghouse links to public and private compliance assistance materials. Users may post documents and interact with assistance providers, both within and outside of EPA. The Clearinghouse allows users to search for relevant material on new and existing...
US EPA: Media Program Databases

- **AQS: Air Quality System**
  - Ambient air pollution and meteorological data from federal, state and tribal agencies
  - [http://www.epa.gov/ttn/airs/airsaqs/sysoverview.htm](http://www.epa.gov/ttn/airs/airsaqs/sysoverview.htm)

- **RCRAInfo: Resource Conservation & Recovery Act Info**
  - Information about waste handlers, transporters and storage
US EPA: Media Program Databases

- **TRIS: Toxic Release Inventory**
  - Contains a ZIP code-based search engine allowing you to find information on toxic releases and other waste management issues
  - [www.epa.gov/tri/index.htm](http://www.epa.gov/tri/index.htm)

- **CERCLIS: Comprehensive Environmental Response, Compensation and Liability Information System**
  - Information on hazardous waste sites and remedial activities
  - [www.epa.gov/superfund/sites/cursites/index.htm](http://www.epa.gov/superfund/sites/cursites/index.htm)

- **NPDES ICIS:**
  - Information on companies permitted to discharge waste water
Provides access to industry/business compliance history

Has a searchable database by ZIP Code
Commercial Information Sources

- Dun & Bradstreet
  - Company credit histories, revenues, etc.
  - www.dnb.com/us/

- LEXIS/NEXIS
  - Premier searchable news service
  - www.lexis.com/
Search Engines

- What type of info is available?
  - the invisible web
Evidence and Documentation

What is it and what do you need?

Need to answer:
How do you know what you know?
What is Evidence?

Facts, items, documentation to prove case

DIRECT

CIRCUMSTANTIAL
Evidence is.... ”Stuff”

- Testimony
- Writings
- Materials
- Objects or
- Other things presented to the senses that are offered to prove the existence or nonexistence of a fact.
When Do You Need Evidence?

- In court
- In an administrative hearing
- To write an NOV
- To check the box “non compliance” or “compliance” on an inspection report
What Kind of Evidence?

- No evidence is admissible except relevant evidence.

- Relevant evidence includes evidence having any tendency in reason to prove or disprove any disputed fact or is relevant to the credibility of a witness.
Establish Relevancy

- Relevant evidence includes evidence having any tendency in reason to
  
  - prove or disprove any element of the alleged offense (disputed fact) or
  
  - is relevant to the credibility of a witness.
Establish Authenticity

Your evidence is what you say it is.

Example: Showing that the sample in court is the same one taken at the defendant’s facility.

Example: Stating that the photo accurately reflects the conditions at the facility on the day in question.
Types of Evidence

- Testimonial (e.g., statements)
- Real (e.g., samples, objects)
- Demonstrative (e.g., photos, flow charts, maps)
- Documentary (e.g., records, reports)
Thinking Like A Lawyer- and Proving a Violation

- It’s all about the Elements
- Evidence
- Burden of Proof/Persuasion/Production
  - What evidence do we have to establish each of the elements necessary to prove the potential violation?
Thinking Like a Lawyer, cont’d

- As the plaintiff (or complainant) in a civil enforcement action, the government has the burden to prove, by the *preponderance of evidence*, that each element of liability is met.

- To have a penalty assessed, the government must also introduce evidence on each of the applicable statutory penalty factors.

- The government may also have to refute certain “affirmative defenses” raised by the violator.

- A well-drafted inspection report often serves as the primary source of evidence to discharge each of these burdens.
Proving A Violation

- Select a law, regulation or rule
- Break it into its elements (components)
- Provide a piece of evidence to support each element
- Decide whether or not a violation occurred
Elements Of § 66265.173a)

- A container
- Holding
- Hazardous
- Waste
- Shall always be closed
- During transfer
- And storage
- Except when it is necessary to add or remove waste
From elements to report

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Date:
Location:
Finding:
Inspector’s Findings

- A finding
  - is a list of relevant facts that show a violation did or did not occur
  - on a certain date
  - a specific person or business was
  - responsible
Recap

- Only a small percentage of violations ever come to court – the better the report is written, the better the chance that the case can be settled without going to court.
Recap

- Prior to any court action, inspector’s supervisors and/or organization attorneys must make a decision as to what action must be taken.
- YOUR report is critical in making that decision.
Recap

- Simplify Simplify Simplify

- Who is doing what to whom, or what and how and when

- Too many words between subject/verb/object forces reader to revise the sentence
Recap

- **How many words is too many?**
- **How to remove excess words**
  - Read out loud
  - Determine number of words between subject and verb; between verb and object; before subject of sentence; at end of sentence
  - Identify main subject and verb
  - Determine main idea you are trying to communicate
- **Decide what to do**
Site Entry and Opening Conference
Off-Site Surveillance

“Observations made from public Right-Of-Way”

- Orients you to facility
- What do you see?
- Be alert to any personal safety issues.
Off-Site Surveillance

- Prior to an inspection, drive by the facility.
- Determine main entrance of facility.
- Confirm correct address.
- Determine “North” with respect to facility and provide a brief sketch.
Observations from Public Right of Way

- Record observations (if relevant) made from the public right of way. Doctrine of “in plain view”.

- Examples of observations:
  - Containers
  - Leaking Tanks
  - Loading areas
  - Unloading areas
  - Open Drums
  - Stressed Vegetation
  - Unusual odors
  - Discharges
  - Safety concerns
  - Visible emissions
Site Entry

- Legal basis or authority.
- Inspect during reasonable business hours (exceptions).
- Enter at main entrance.
- Identify yourself and show credentials.
- Request to meet with owner/operator.
## Entry, Opening Conference, and Site Inspection

### Summary of Federal Environmental Acts

<table>
<thead>
<tr>
<th>Act</th>
<th>Designated Representative</th>
<th>Credentials Required</th>
<th>Notice of Inspection</th>
<th>Sampling Permitted</th>
<th>Records Inspection</th>
<th>Sample Splits</th>
<th>Receipt for Samples</th>
<th>Return of Sample Results</th>
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Entry

- Legal basis for entry
- Inspection must start and stop at reasonable times, within reasonable limits, and in a reasonable manner.
Entry

- Identify yourself and show your credentials.
- Ask to speak to owner/operator/person in charge (plant manager, environmental manager).
- Be positive and professional.
Entry – Owner/Operator

- Tell them your name, Agency, Office, and explain why you are there (statute under which you will conduct the inspection, purpose, and scope).
- Show your credential. Do not relinquish it or allow them to photocopy it.
- Present a written Notice of Inspection if required. Obtain their signature on it.
- Record what is communicated and to whom.
- Request an opening conference.
Entry

- Consensual entry
  - Consent from owner or operator.
  - If inspector is allowed to enter and is not expressly told to leave the premises, entry is consensual.
  - Absence of an expressed denial constitutes consent.
Entry

- **Warrant less entry**
  - Consensual
  - Emergencies
  - “Open fields” and “in plain view”.

- **Safety First!**
  - What if no one is there?
  - Can I climb the fence?
If Entry Is Denied At Any Time

- Denial of entry
  - EPA policy is to leave and obtain a warrant.
  - Barlow’s Decision.
  - Full vs. Partial Denial
If Entry Is Denied

- If denied entry
  - Be tactful
  - Use reason and logic
  - Record observations
  - Record who denied entry
  - DO NOT THREATEN
  - Contact your supervisor
And legal office
Entry

- **Warrant may be appropriate**
  - When facility has denied access
  - If full consent is withdrawn during inspection
  - In advance of inspection (in some cases)

- Inspector and attorneys work as a team
Entry

- **Warrants**
  - Need to identify specific information needs.
  - Limits inspection to specifics in warrant.
  - Law enforcement officer (Sheriff) accompanies the inspector.

- **Other tools for gathering information.**
Opening Conference

- After initial site entry, inspectors provide introduction and credentials
- Identify Facility Representatives
Opening Conference

- Explain:
  - Authority
  - Purpose
  - Establish Inspection Objectives
  - Scope of inspection
  - Establish Inspection Order
  - Estimated time to complete
Opening Conference

- Discuss Confidential Business Information (CBI)
  - Their right to claim CBI
  - Provide paperwork

- Identify special safety concerns
  - May be denied access w/o proper Personal Protective Equipment (PPE)
  - PPE (hard hat, safety glasses, etc.)
  - DO NOT SIGN LIABILITY WAIVER
Select Level of Personal Protection

- Long or Short Sleeve Shirt.
- Long Pants.
- Steel Toe Boots.
- Hard Hat**
- Safety Glasses**
- Hearing Protection**

“Modified” Level D

Level D

** If Required
Do you need a respirator?

- Quarter Mask
- Half Mask
- Full Facepiece
- Mouthpiece/Nose Clamp (no fit test required)
Opening Conference

Explain:

- **Documentation methods**
  - Notes
  - Copies
  - Photographs
  - Samples, etc.

- Caution re: audio recordings – obtain permission.
Opening Conference - Explain

- Inspection process
  - Facility operations
  - Records review
  - Site tour and walk through
- Closing conference
  - Provide a summary of observations
Opening Conference

- Develop “Must See” list based on statute/purpose and scope of inspection
- Inspect where statute allows you to inspect.
- Identify records as well as regulated activities/equipment that will be inspected.
- Activities related to past violations
- Activities/areas with suspected violations
Opening Conference

- Convey information on what you will review or observe.
- Receive information on who will accompany you on which part of the inspection or who will provide access to records.
- Determine the facility’s safety requirements – may require you to sit through training film.
- Record what occurs at the opening conference.
Opening Conference

- Establish rapport.
- Collect and document general facility information.
General Facility Information

- Confirm correct address
- Information regarding facility official (e.g., position, length of time in position)
- General operations conducted at facility
- General history of company
- History of the site
- Ownership of business
- Ownership of property
- Corporate structure
- Whether company is a subsidiary
Activities at Facility Regarding The Inspection

- Discuss specific activities conducted at facility related to the inspection.
- Refer to media specific inspection manual.
- If meetings with facility personnel are needed, schedule during the opening conference.
- Request access to all areas potentially involved in the inspection. Request that a facility official accompany you during the inspection.
- Advise regarding photographs and determine if there are any concerns, e.g., CBI.
Interviewing is a Communicator
Interviewing

- Practical Exercise
Interviewing is critical to the inspection process.

It is a basic fact-finding and communication tool.
Four Ingredients to Effective Communication

Sender → Message → Receiver

Feedback
THE ACTIVE LISTENER

To Be an Active Listener:

- Remain neutral
- Ask questions as needed for clarity
- Concentrate on the response
- Clear your mind of other matters
- Barriers: THE PHONE!

“God in his great wisdom gave us two ears and one mouth so we might hear twice as much as we say.”
Nonverbal Communication

- Inspectors need to be aware of the four forms of nonverbal communication
  - Body Movement
  - Eye Movement
  - Space and Distance
  - Touch
1) BODY MOVEMENT (KINESICS)

- Facial Expressions
- Body Movements / Posture
- Grooming Gestures
- Perspiration
THE FIVE PHASES OF A COMPREHENSIVE INTERVIEW
THE FIVE PHASES

- Introduction – ID, Purpose, First Impression
- Rapport – Respecting Another Person’s Perspective Obtaining Respect & Trust
- Questioning – Next set of slides
- Summary – Clarify/Review
- Closing – Continue Rapport/Future Contacts
THE QUESTIONING PHASE

- This is the heart of the interview process and one of the most challenging.
- This is where we “conduct the interview.”
- There are a variety of techniques and types of questions to use.
THE QUESTIONING PHASE

- Start by collecting background information from the individual.

- Stay on the subject matter. Try not to deviate from the areas of concern.

- Separate fact from opinion. Accept and rely on facts – don’t be gullible.

THE QUESTIONING PHASE

Types of Questions to Use:

- For initial interviews -- questions are best if sequenced from general to specific

- Open-ended questions (narrative-response type questions)

- Close-ended questions (specific or direct)
THE QUESTIONING PHASE

Types of Questions to Use:

• Backward Reaching Questions
  ➢ Circle back to specific info later in the interview.

• Empathy or sympathy questions

• Opinion questions
THE QUESTIONING PHASE – TIPS & STRATEGIES

Use Active Listening

- Active listening will encourage the interviewee to open up.
- Concentrate on the response – be prepared to adjust the plan.
- Listen for threads of information that may lead the inspection in a different direction.
- Paraphrase the response and repeat back to the interviewee for clarity.
THE GOOD INTERVIEWER

- Honesty & Integrity – seek only the truth
- Ability to establish Rapport quickly
- Ability to listen and evaluate responses
- Keep an open mind – do not pre-judge
- Ability to maintain self-control & be flexible
- Practice / Practice / Practice
THE END

QUESTIONS?
On-Site Inspection Process
Site Inspection

- Detailed “on-the-ground” inspection—directed by you
- Follow process flow
- Evaluate compliance with media-specific regulations
- Evaluate “Must See” items
- Be on the look out for newly regulated units
Site Inspection

- Directly before the inspection, observe the facility:
  - Observe from public right-of-way; note obvious concerns.
  - Observe facility layout and note which direction is north – inspector should already have an understanding using internet, GPS, or other locational services.
Site Inspection

- Walk in with an understanding of the type of facility to be inspected (e.g., air, water, waste streams common to this kind of operation)

- Inspect with a compliance mind set and then keep use your five senses to potential non-compliance and/or obvious violations
Site Inspection

- Review records and facility documents
- Identify follow-up activities
  - Interviews – use a style that works for you
  - Identify sampling locations
  - Additional inspection needs
- Document observations and findings
  - Names, notes, photos, samples, statements, etc.
Plant Walk-Through: Industrial Facilities

- Review Production Processes
- Identify Sources of Air/Waste/wastewater/etc.
- Inspect Treatment Processes
- Inspect Stacks Emissions, Fugitive Dust, Other Sources
- Review Controls/ Monitoring: Flow Measurement, Sampling, On-site monitoring, Flares, etc.
Process-Based Inspection

- Inspector should obtain a comprehensive understanding of facility processes
- Identify way to track raw material through manufacturing process
- Identify products, co-products and by-products produced or generated at facility
- Identify facility waste management/treatment activities
Process-Based Inspection **Tools**

- Use facility material balance sheets to complete a process based mass balance
- Review Toxics Release Inventory (TRI) reporting data
- Observe on-site process operations as a confirmation step
PROCESS-BASED INSPECTION

Air emissions - controlled and fugitive

Raw Materials

Solid Wastes, Wastewater, Recyclable Materials, & By-products

Product/Co-product
Site Inspection – How to Uncover Potential Violations

- Have a in-depth discussion of specific processes with facility engineers using flow diagrams or blue prints, then:
  - Confirm information with the people that actually do the work
    - may have to vary your approach depending on the person – use the appropriate style for the context
  - Ask several people the same question
  - Ask ‘what if’ scenarios
Site Inspection – How to Uncover Potential Violations

- Fine tune your facility knowledge through follow up document review, visual observations, and discussions.
- Confirm with purchase orders, bills of lading, manifests, contract language, facility maps, flow charts, control panel outputs, facility self-monitoring data
- Follow where the paper leads, and don’t rely on facility operator’s understanding alone.
- Don’t be afraid to go back to a facility or record already reviewed – it may be tedious and exhausting, but is often required to confirm findings and potential non-compliance and violations.
Site Inspection – How to Uncover Potential Violations

- Conduct your process inspection based on facility explanation of processes and look for equipment/processes not previously identified – those are likely candidates for non-compliance and/or violations

- Be aware of commonly overlooked waste streams – cleaning and maintenance, recyclable materials, subcontractors work, long term storage areas, construction or demolition
Field Notes - EPA National Policy

Office of Compliance (February 26, 2009).

- Inspection notes must be maintained in accordance with specific Records Schedules.
- Applies to EPA Inspectors, Senior Environmental Employee (SEE) Inspectors, State and Tribal Inspectors and Contractors conducting inspections on behalf of EPA.
Field Notes - EPA National Policy

- Inspection notes must be maintained in accordance with specific Records Schedules (211 and 207)
- Records Schedule 211 - No Enforcement Action
  - Minimum of 5 years after case is closed
  - See Field Notes Decision Tree/Flow Chart
- Records Schedule 207 - Enforcement Action
  - Administrative Case File - 10 years after case is closed
  - Judicial File - 20 years after file is closed
Note Taking

- Notetaking is a fundamental part of your job. It is critical that you develop procedures and a routine for taking your notes and, correction of your notes.

- TAKE YOUR TIME!
Note Taking

Establish routine for note-taking and do not vary from it!
Note Taking Format

- Format does not matter – common elements include
  - Date and time of entry
  - Location
  - Persons Present
  - Notetaker
  - Body of facts
    - Who
    - What
    - When
    - Where
    - How
    - Why (not always useful to ask)
Note Taking Techniques

- Follow style you are most comfortable with
  - Outline
  - Bullets
  - Sub headings
  - Short hand

- Focus on key points

- Complete sentences not necessary

- Use key/buzz words to jog memory

- WRITE LEGIBLY..
Note Taking
Methods/Options
the old standby’s

Bound, Paginated, Water Proof
Portable, Cheap
Note Taking

- Always keep notes in a single notebook
  - One notebook, one inspection, or
  - One notebook, one facility, but
  - NOT One notebook, two or more facilities

- Dual Notes (2 or more inspectors)??
Note Taking

- Procedures
  - Write entries on only one side
  - Add details/new information on opposite side when it becomes available
  - Make corrections on opposite side

- With corrections/one line through initial, date, make correction with logic/reason, initial date

- Major/complex correction of field notes
  - Major or complex corrections or conflicting field notes should be followed up by memo to the file explaining any changes.
Note Taking -
What Goes into Logbook

- Any information relative to site or event
- Site entry procedures, events, contacts
  - especially if there are any problems
- Owners generally provide entry consent &
  sometimes include a caveat that a company representative must be present at all times. Question any caveats and record thoroughly in logbook
Note Taking -
What Goes Into Logbook

- Clearly document the authority of any escort in your log book. The scope of this authority can be a key issue.

- Inspections sometime extend thru the lunch hour. Company representatives often leave during lunch hour while inspectors may continue to work. Get permission to stay and DOCUMENT.
Note Taking-
What Goes Into Logbook

- Names, titles, PHONE NUMBERS
  - Hint: Clip or tape business cards in logbook
- Times of specific events
- Deviations from established SOP
- Discussion of unusual conditions
Note Taking
What Goes Into Logbook

- All sampling information
- Photograph/video log
- Items or materials taken or given
  - Who gave?
  - Who received?
- Reminder notes
- Recording of non-violations
Note Taking

- Just the facts
  - Entries should be
    - Objective/not subjective
    - Factual (Avoid writing potentially embarrassing notes)
    - Professional opinions (e.g., engineering) and personal reminders (related to inspection/investigation)
Note Taking

- Report prepared from Notes
  - Report may/will not contain all material
  - Report may/will reorder info in notes into logical sequence
    - Interviewed may/will jump around;
    - notes may not document actions in sequence occurred

- In Court: BE AWARE the Inspection Report may be compared to your notes
Before You Leave

- Take time to review all observations, findings, evidence, and data before closing conference – it is best to identify needs at this point and have facility provide needed information on the spot.

- Ensure you have adequate information to prepare inspection report.

- If more than one inspector review findings as a team – ask for a space to do so.
Before You Leave

- Review where you were and what you saw
- May be appropriate to communicate preliminary findings to facility representative depending on program/policies. Use professional judgment.
- Inform facility the compliance officer will determine if violations exist.
- Manage regulated entity’s expectations (e.g., will receive letter by such and such a time, the investigation is on-going, etc.)
- Provide a summary of potential enforcement outcomes and the process associated with each.
Sampling Records, Environmental Media and Photography
Records Overview

- All Federal statutes include provisions requiring facilities to maintain records of various kinds.
- Also, facility files may contain other types of records that may be useful.
- Objective is to determine if required records are being adequately maintained by the facility, and as a means of substantiating compliance or noncompliance.
Records to Review

- Hardcopy filed records
- Known/required records
- Records kept offsite
- Computer records
- Records from other records (originals and derived)
- Omissions or falsification
Record Review Checklist

- Reviewed last inspection report for follow-ups
- Violations & enforcement actions
- Permit current/effective/expiration date; correct names, mailing address and physical location
- Production/waste streams; equipment changes
- Equipment calibration and specified parameters
- Consistency and conformity of calculation methods, measurement units, frequencies
- Laboratory records & chain of custody sheets
Example Questions (general and specific)

- Have all results been reported?
- Is the data reliable and accurate?
- Does lab data agree with self-monitoring records?
- Has each parameter been monitored and reported as specified in the permit?
- Air Pollution Monitoring: pollutants measured, flow and emission rates, etc.
Steps in Records Sampling

- Determine objectives for records review
- Identify the total population set
- Select the sampling method
- Determine the sample size
- Conduct the sampling
- Document the sampling methodology
General Guidelines for Sampling

- Take sample when needed to prove violation
- Sample when there is a reason to suspect a pollutant is present
- Always attempt to verify presence of pollutant by other means besides sampling
When To Sample

- No data
- Insufficient data
- Data in doubt
- Data for specific event
- Required by permit

*Remember:* Sample collection, transportation and analysis is NOT cheap!
Can the evidence you collect stand up in a court of law?
Quality Control & Samples

Replicate
Split
Spiked
Preservative
Field Blank
Rinseate Blank
Sampling Considerations

- Example sample bottles – check with the laboratory first
Sampling Considerations

- Automatic Sampling Devices or Manual Sampling
Common Sampling Errors

- Don’t maintain equipment
- Forgotten equipment
- Misreading monitoring equipment
- Miscalculations
- Mislabling
- Failure to properly calibrate equipment
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<th>REMARKS</th>
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**Chain of Custody Record**

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**RECEIPT FOR SAMPLES**

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<th>NO.</th>
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<th>NAME OF FACILITY</th>
<th>SAMPLER (Signature)</th>
<th>FACILITY LOCATION</th>
<th>SAMPLE OFFERED</th>
<th>ACCEPTED/DECLINED</th>
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**National Enforcement Investigations Center**

Building 63, Box 22227, Denver Federal Center
Denver, Colorado 80225
Proper Packaging Critical
Digital Photography

- EPA Digital Camera Guidance (6/13/2017)
- Provides four (4) recommended procedures and detailed appendix (use and technical information)

1. Preserve integrity of digital images
2. Capture/store/print/handle images properly
3. Maintain an archival copy of all images
4. Maintain a photo log of all images in notes
How to Take Representative Photos

1. Take an Establishing Shot
2. Take a Subject Shot
3. Take a Detail Shot
Establishing Shot
Subject Shot
Valuation/Surcharge
01-08-00/92
1505
Total Metals
DRUM
Videotaping

- Remember the audio!
- May or may not be useful in court
- Good way to document entire site
- Consult the customer before videotaping
Questions?

Anything confusing or requiring more information?
CLOSING CONFERENCE
Closing Conference

- A closing conference is an integral part of an inspection.
- Inspection manuals usually address the issue of communications with regard to a closing conference as do compliance monitoring policies.
- Inspectors should end all on-site inspections with a closing conference with the owner/operator or designated representatives. But you cannot compel attendance.
Closing Conference Preparation

- Prepare for the conference by reviewing field notes, observations, findings, data and other potential evidence.
- Identify information that the facility agreed to provide but hasn’t yet.
- Review notes to see if additional information is needed to complete the field notes and inspection report.
Closing Conference Preparation

- Ensure you have adequate information to prepare the inspection report.
- Identify any additional data to be requested or questions that need to be addressed.
Closing Conference Preparation

- Verify whether all required forms such as Confidential Business Information (CBI) forms or written receipts for samples have been provided to the facility.
- Establish the time and place for the closing conference with the facility and people that should attend.
Closing Conference

- Introductions
- Explain purpose – to resolve any outstanding issues, gather additional information if needed, ensure all necessary paperwork is completed, answer questions, and to communicate inspector’s observations.
- Document who attends and what occurs during the closing conference.
Closing Conference

- Be professional and be polite.
- Begin with identifying any loose ends such as documents/information that you still need, e.g., documents/materials the facility agreed to give you but hasn’t yet, or information you need based on your review of your field notes.
Closing Conference

- Complete any outstanding paperwork such as receipts for CBI, samples, etc. that needs to be provided to the facility.
- Discuss your observations in relation to the regulations or permit. Avoid terms such as “violations” as you describe problems that need their immediate attention.
Closing Conference

- Share factual observations without any legal conclusions about whether or not there were potential violations.
- If there were no observable deficiencies by the inspector, the inspector should offer positive factual observations “The waste containers that I observed were clearly labeled.”
Closing Conference

- Do not say “no violations were found” even if you think this is accurate.
- Do not communicate “the facility is in violation” even if you think this is accurate.
- Explain that compliance determinations are made after reviewing all the information.
- Exception – Delegated field citation authority.
Communicating Preliminary Inspection Observations

The inspector should explain the following:

- The information is preliminary and is based on observations made during the inspection;
- The information should not be construed as a determination of compliance or non-compliance;
- Final findings may differ from preliminary observations following a complete review of the inspection report and other relevant information;
- Inspectors are not authorized to make determination regarding whether inspection observations constitute violations; and
- The appropriate office will review the inspection report and other information to determine if a violation has occurred and the appropriate response.
Closing Conference

- Respond to questions about the statute/regulations/permit and refer any questions that exceed your knowledge or authority to other State official personnel.

- Generally do not state new policy or provide applicability determinations in the field. This probably exceeds your knowledge and authority.
Closing Conference

- Provide any additional compliance assistance information such as Agency brochures, websites, etc. if appropriate.
- Provide copy of SBREFA Fact Sheet if a non-governmental facility.
- Inspectors are encouraged to provide compliance assistance when there is relevant material available.
- See National Policy on Role of Inspector.
Closing Conference

- Do not tell the facility how to comply or what equipment they need to install.
- Do not compare the facility to other facilities you have inspected.
Closing Conference

- If owner/operator or designated representative of the facility or regulated entity is not available to participate in a closing conference, the inspector is not required to conduct a closing conference but should leave their contact information.
Closing Conference

- Do not collect information beyond the scope of the inspection.
- Do not leave anything in writing on your observations unless you do so in accordance with a State policy for that inspection program.
- You should communicate preliminary inspection observations.
Closing Conference

Respond to requests for:

- copies of photographs;
- field notes;
- inspection report, etc.
- checklists

*Policies vary across states; discuss with your supervisor and attorneys.*
Closing Conference and Inspection Report

- Document in the inspection report whether a closing conference was conducted and if so, with whom.
- If no closing conference was conducted, state the reason in your inspection report.
Report Writing Exercise
The Basics – You are the Eyes and Ears of the Agency!

- **Purpose of Inspection Report**
  - To document your findings and observations

- **Objective**
  - To demonstrate with evidence that a potential violation exist

- **Prepare for customers**
  - Compliance Officers
  - Managers
  - Attorneys/legal
What Should We Improve?

Example: Facility with ten known violations:

10 potential violations
- 1 Lost, poor note taking
- 1 Lost, illegible field notes
- 1 Lost, missing “elements of proof” for potential violations
- 1 Poor regulatory. knowledge - violation not recognized
- 1 Lost, violation not clear in poorly written report

5 potential violations are left to enforce

Do we want to waste 50% of our effort?
Or the more important question, did we miss a potential environmental release or threat?
Understanding The Elements of Proof

- Must have evidence.

- Requirement: Containers of hazardous waste must be closed in storage.

- You must be able to prove that:
  - The vessel is a “container”, not a tank, sump, etc.
  - The material in the container is “hazardous waste,” not water or other non-hazardous waste.
  - The container is “closed” per DOT requirements.
  - The container is “in storage.”
Understanding
The Elements of Proof

- Proof of liability in an CAA enforcement case
- Must provide evidence to prove that:
  - (1) an emission occurred; (2) of a pollutant; (3) from a source; (4) to the air; (5) by a person; and (6) without a CAA permit authorization.

  - *Failure to prove any of these six elements is fatal to an CAA enforcement case.*
Understanding
The Elements of Proof

- Violations lead to penalties

- Penalties are based on many factors
Question: How Do I Know What I Know?

- The single most important question each inspector must be able to answer.

- It must be answered for each piece of information presented in the inspection report.
Enforcement Actions Come Down to the Inspection Report: Choke Point

YOUR EFFORTS
- Targeting
- Hotel
- State/EPA Coord.
- Inspection Plan

HIGH COST OF INSPECTIONS
- Reg. Review
- Driving Risk
- Documentation
- People Problems- Meetings

THE RESULTS
- File Review
- Car
- Equipment
- Sample Plan

GOOD

CHOKE POINT

POOR
Enforcement Actions – What happens after I finalize my inspection report?

- Compliance analysis completed by delegated enforcement officer
  - Some programs have field citation authority, then the inspector is the enforcement officer making compliance determination
- Date entry into multiple data bases – ICIS via ICDS, Envirofacts, etc.
Inspection Report

- Official files
- May be “Enforcement Confidential”
- Remember:
  - Be prepared for court!
- Format – (program specific)
  - Summary?
  - Narrative?
  - Checklists, attachments?
Basic Inspection Information

- Who prepared the inspection report and who were the participants?

- What is the name and location of the facility or site and facility contacts and responsible person for facility?

- What was the reason for the inspection (e.g., neutral, response to a complaint, or follow-up)?
Facility Background

- What does the facility or site do (including history and other data)?

- Have any major modifications been made at the facility? Are any modifications or expansions planned?

- At what level of capacity is the facility operating and how does this relate to the inspection?

- Which operations, processes, and activities at the facility were examined /not examined during the inspection?
Entry and Opening Conference

- What are the facts about the entry (date, time, entry location, and agent in charge who were credentials presented to)?

- Is there documentation that facility officials were informed of their right to claim that information is confidential?

- Were there any unusual circumstances concerning gaining consent to enter? How were such circumstances handled?

- Who was present at the opening conference? What topics were discussed?
Inspection Activities – Records Inspection

- Is there a general description of how records are maintained at the facility?

- Are photocopied records or data manually copied from records adequately identified and documented?

- Were any potential violations observed?
Inspection Activities – Physical Sampling

- What was the inspector's sampling plan for the facility or site?
- What physical samples were collected at the site?
- Are all samples clearly identified as to number, location, and purpose?
- Were there any deviations from the sampling plan or SOPs?
- Are chain-of-custody procedures documented?
- Are the results of laboratory analysis presented clearly?
- How do the results compare to permits or established standards?
Inspection Activities – Illustrations and Photographs

- Were photographs taken during the inspection included and properly documented?
- If sketches, diagrams, or maps are used, is the scale or other relationship shown clearly?
Inspection Activities – Interviews

- What are the names and titles of officials of the facility and other personnel who were interviewed?
- Are their statements clearly summarized?
- What are the names and addresses of any other individuals who were interviewed or who were potential witnesses?
Inspection Activities – Closing Conference

- Documentation officials of the facility were provided an opportunity to make business confidentiality claims?
- Does the report provide statements the inspector made to officials of the facility about compliance status, recommending actions to take, or other matters?
EPA Region 10
RCRA Compliance Inspection Report
Section A

Inspection Information
Handler Name: Burlington Environmental, LLC Tacoma Facility
Handler ID Number: WAD02025715
Inspection Date: December 14, 2009
Inspection Type: Compliance Evaluation Inspection (CEI)
Inspectors: Jack Boller, RCRA Enforcement Officer
           Adam Baron, RCRA Enforcement Officer
           Kristin McNeill, Multi-Media Inspector

Site Contact Information
Site Contact Name/Title: Nick DeLeon, Plant Manager
           Kyle Satterthwaite, Facility Supervisor
           Ron Perry, Environmental Health and Safety
Site Location Address: 1701 E. Alexander Ave
                      Tacoma, WA 98421
Site Mailing Address: Same
Site Phone Number: (253) 627-7568
Site Fax Number: (253) 627-5607

Report Information
Report Date: 1/11/10
Report Author Name: Adam Baron
Report Author Signature:
Inspector Report Examples

- UST Inspection Check List

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**KTA REGION 10**

**UNDERGROUND STORAGE TANK**

**INJECTION FORM**

**Significant Compliance:**

Y N Y N

---

**Facility#:**

**Inspection Date:**

**Time:**

**GPS Reading:**

**Lead Inspector:**

**Others:**

**Facility Reps:**

---

**Visual Documentation of Inspection:**

- [ ] 35mm pictures
- [ ] Video
- [ ] Digital
- [ ] Other

**Waste Fluid Questionnaire:**

- [ ] Completed
- [ ] Not Completed
- [ ] Not Applicable

**Enforcement Actions Taken Onsite:**

**FNCC #:**

**FC #:**

**For:**

**Verbal Warning for 40 CFR 280.**

**SBA Info Sheet Given?**

Y N

**Enforcement Action Delayed for (Reason):**

---

**Facility Information**

**Location Name:**

**Owner:**

**Operator:**

---

**Address (Loc/Owner/Op):**

City:

State:

Zip:

Phone:

City:

State:

Zip:

Phone:

---

**Tank #:**

<table>
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**FINANCIAL RESPONSIBILITY**

- [ ] Meets FR requirements?

- [ ] All tanks covered (check which tanks are covered)

**Type:**

- [ ] Ins
- [ ] Self
- [ ] PSTF
- [ ] Lit Credit
- [ ] Stbty
- [ ] Trust
- [ ] LG Bond Rating Test
- [ ] LG Fin Test
- [ ] Other

**Issuing Entity:**

**Date Coverage:**

**In EPA Format?**

Y N
Inspection Report Writing Style

Structure

■ Use short, clear, direct sentences. Use active voice.
■ Use first person when referring to self.
■ Identify who said what by name and relationship to facility.
■ Don’t take an action word and turn it into a noun.

Mr. Smith made an argument.
Mr. Smith argued.

The Judge provided an explanation of the Order.
The Judge explained.
Things to Avoid

- Do not use passive voice/inconsistent tense (was vs. is).
- Do not use negative inferences (the only ones were...).
- Do not use vague or absolute terms (some, always).
- Do not use unverified information from past reports.
Inspection Report Writing Style

Paragraphs should be presented in some logical order.

- Sequentially
- Chronologically
- In order of topic importance
A Good Report Is...

- Timely, written “near in time” to the inspection.
- Organized, Clear, Concise And Thorough
- Factual, Technically Correct, Referenced
  - Answers, who, what, when, where, why, and how?
Elements of a Good Report - Example

Potential Violation #4 - Failure To Close Hazardous Waste Satellite Accumulation Container:

On Monday morning, in the northwest corner of the paint booth (see map attachment 3), I observed one, open, 55-gallon satellite accumulation container (photo 1). I asked Mr. Helpful, the painter, what he used the drum for. He said he cleaned his painting equipment at the end of his shift and put the spent solvent in the drum. He said he stored the solvent in the drum until it was full then moved it to the hazardous waste storage area. I asked him what solvent he used. He said he used Mecos lacquer thinner (MSDS- attachment 9). I asked if the spent solvent was a hazardous waste. He said yes, that he managed it as F003/F005 hazardous waste. I looked inside the drum and verified it was 75% full.

A container holding hazardous waste must always be closed during storage, except when it is necessary to add or remove waste, per 40 CFR 262.34(a)(1(i), ref. 40 CFR 265. 173(a).”

Who, What, When, Where, Why, and How?
The Enforcement Process

Informal, Administrative, Civil and Criminal Actions
Why Enforcement?

- Deterrence
- Detect and correct
- Level the playing field through sanctions
Enforcement Actions

CRIMINAL

ADMINISTRATIVE

INFORMAL ENFORCEMENT

CIVIL JUDICIAL
What do all the enforcement options have in common?

- Due Process!!

- What process is due will depend on the enforcement action:
  - Federal Rules of Civil Procedure
  - Federal Rules of Evidence
  - Consolidated Rules of Practice (40 CFR Part 22)
  - Federal Rules of Criminal Procedure
ENVIROMENTAL VIOLATIONS - CATEGORIES

- Accidents (Administrative, Civil)
- Negligence (Administrative, Civil, Criminal)
- Knowing Behavior (Criminal)
Determining the Appropriate Response

- What is appropriate?
  - Laws, Agency response policies
  - Past Practices

- Specific facts of case
  - Deviating from policies and practice
  - Documenting differences and why the response should deviate
Case specific factors

- Deviation from requirement and length of violation
- Complexity of violation or remedial action necessary
- Length of time necessary to return to compliance
- Economic benefit of non-compliance and other penalty considerations
- Compliance history
Other considerations

- Multi-jurisdictions

- Multi-facility

- Has the past type of enforcement response changed behavior?
Types of Enforcement Actions

- Laws and policies allow a full range of enforcement options.
- Allows the government to balance resource needs versus what will do the job versus what is appropriate for the specific situation.
Informal Enforcement

- **What is informal enforcement?**
  - Actions that encourage a return to compliance but do not provide the potential violator with a “right” to challenge the action

- **Types of informal actions**
Administrative Enforcement

What is administrative enforcement?

- Agency decision under Administrative Procedure Act
- Provides respondent with certain “rights” including appeals
- Agency has complete control of action and final decision-maker is usually within the agency
Administrative Enforcement

- Types of administrative enforcement
  - Formal notification of violations
  - Field Citations
  - Unilateral orders
  - Consent agreement
Administrative Appeals

- Time periods and procedures for appeals established by law
- Appeal will be decided by a special agency official or special state-wide official
- Agency establishes a prima facie case which the respondent can challenge with additional evidence
- Follows procedure similar to a civil court action
- Final decision can be appealed to the courts by respondent
Civil Judicial Action

When to consider a civil court action:

- An administrative order is being violated
- It is likely an administrative order will not resolve the violation
- Case warrants a significant penalty beyond what can be achieved in an administrative action
- Issues are of a precedential nature or complex
- Multi-jurisdictional or desire to combined action with other agencies
Stages of a Litigation:

- Should an enforcement action be taken?
  - Role of the team.
  - Analyze the available evidence.
  - Look at the statutory and permitting authorities and choose an enforcement option.
Stages of an Administrative Litigation:

- Complaint is filed with Regional Hearing Clerk

- A complaint MUST:
  - Comply with the governing procedural rule
  - Provide the who, what, when, where, how and why
  - Set forth each element of violation with a reference to the evidence in support (called a prima facie case in legalese)
  - Request relief
Stages of an Administrative Litigation:

- An Answer to the Complaint is filed by the Respondent.
  - Case forwarded to the Office of Administrative Law Judges for the assignment of an ALJ.
  - The Answer must admit/deny/explain each material factual allegation in the complaint.
  - The Answer must raise any defenses.
  - The Answer must request a hearing.
  - Update your Element Checklist to reflect Answer.
Stages of an Administrative Litigation:

- The Parties conduct Pre-Hearing Exchange:
  - Called “discovery” in the judicial forum.
  - It’s not evidence yet!
  - The importance of exchanging information now
  - Update the elements of proof checklist to reflect new or changed information.
  - Typically exchanged:
    - Inspection report
    - Witness lists
    - Anything either party may want admitted as evidence at hearing
Stages of an Administrative Litigation:

- **Motions:**
  - A Motion is a request of the Court.
  - Motions can refine issues in dispute.
  - Update your Elements Checklist to reflect Orders on Motions.
  - Typical motions include:
    - Motion to Dismiss
    - Motion for Default
    - Motion for Accelerated Decision (Summary Judgment)
    - Motion to Strike
    - Motion in Limine
Stages of an Administrative Litigation:

- **The HEARING:**
  - The purpose of an administrative hearing is to admit evidence into the record.
  - The ALJ will base a decision only on the evidence in the record.
  - Hearings are held in federal courthouses.
  - Testimony is under oath and transcribed.
  - Opening and closing statements.
  - Direct and Cross examination.
Evidence:

Evidence is the MOST critical component of any enforcement action.

It’s not evidence until the judge says it’s evidence.

If it’s relevant, material and competent it will be presented.


“The Presiding Officer shall admit all evidence which is not irrelevant, immaterial, unduly repetitious, unreliable or of little probative value . . .” 40 CFR 22.22(a)
Post-Hearing Briefs:

- Filed AFTER an oral, evidentiary hearing.
- Legal arguments are made in the briefs.
- Can base legal arguments ONLY on the evidence that made it into the record.
Decisions:

- The Administrative Law Judge issues an initial decision after the post-hearing briefs are filed.

- The respondent can appeal the initial decision to the appropriate authority. The government cannot! If the respondent does not appeal, the initial decision becomes the final order.

- The respondent can appeal the final order of the government to the appropriate judicial forum.
A Word about Settlement:

- A case can settle at any time during the enforcement process.

- As part of the enforcement team, the inspector should be part of any settlement conference or decision.
The Role of the Inspector in the Enforcement Process:

- The Inspector is:
  - A vital member of the enforcement team
  - An advisor
  - A potential fact and/or expert witness
  - The author of “The Inspection Report”
Serving as a Witness for a Deposition:

- The purpose of a deposition is to:
  - Discover new and confirm known information
  - Demonstrate strengths and uncover weakness
  - Evaluate witnesses
  - Obtain admissions
  - Preserve testimony

- Witness is represented by an attorney
- Depositions are transcribed
- Witness is under oath
- Setting can be deceptively informal – don’t be fooled!
Serving as a Witness for a Hearing:

- The purpose of a hearing is to present evidence.
- Competency must be shown before a witness may testify.
- Inspector is usually a “fact” witness – what did you see, hear, feel, smell, do, say.
  - Laying a foundation for real and documentary evidence to be admitted.
- An inspector may be used as an “expert” but must qualify. As an “expert” the inspector may provide an opinion.
Witness Tips:

- Prepare.
- Relax and stay calm – demeanor is important.
- When asked a question – listen, pause, answer if possible.
- Speak clearly and to the Judge.
- Use plain English not jargon
- Present the facts
More witness tips:

- Do not volunteer testimony.
- Do not answer compound, convoluted or ambiguous questions.
- Don’t speculate – “I don’t know” is an acceptable answer.
- Use words, not gestures.
- Use of visual aids – to refresh recollection or to aid testimony.
Direct versus Cross:

- **Direct examination**
  - Conducted by “your” attorney
  - Expect competency questions
  - Fact witness – What did you see, hear, smell, do, say
  - Expert witness – What facts did you use; what analysis did you use; what is your opinion?
  - Plan out the questions

- **Cross examination**
  - Conducted by opposing counsel
  - You can plan for cross examination
  - Counsel will try to:
    - Impeach/discredit
    - Expose weakness and inconsistencies
    - Limit effect of direct testimony
Tricks on Cross Examination to watch for:

- Opposing Counsel’s demeanor:
  - The Meany
  - The BFF
  - Dr. Jekyll and Mr. Hyde

- Questions to watch for:
  - “Is there anything else? or, Is that all?”
  - “Did you talk with your attorney before testifying today?”
  - “Have you ever made a mistake?”
  - “Isn’t it possible that . . .”
In Parting...

- **Common misconceptions:**
  - “This case will never go to trial.”
  - “If I get into trouble, my lawyer will protect me.”
  - “I did the inspection, I don’t need to prepare.”

- **Facts:**
  - Nothing is as easy as it looks.
  - Everything takes longer than you think.
  - Anything that can go wrong, will.
Criminal Enforcement

What You Should Know
What Makes a Case Criminal?

Lying
Cheating
Stealing
Classification of Law

- Civil Law:
  Deals with enforcement or protection of private rights

- Criminal Law:
  Deals with offenses against society
Burden of Proof

- Civil Law: Preponderance of the evidence (over 50%)
- Criminal Law: Beyond a reasonable doubt (100%)
Liability vs. Guilt

- Civil Law: Liable
- Criminal Law: Guilt
Legal Consequence

- Civil Law:
  - Fines ($) and/or injunction (TRO, Temporary and Permanent)

- Criminal Law:
  - Fines and/or Imprisonment
Culpability

- Civil Law:
  - Intentional Gross Negligence
  - Negligence Strict Liability

- Criminal Law:
  - Justification Mitigating Circumstances Excuse
The End

- Any Questions
- Post Test
- Explain Evaluations Process