

Chapter 16

Post-Inspection Activities

No matter how blatant a violation appears to be or how thorough an inspection has been done, a case cannot be supported without proper records and documentation. It is imperative, therefore, that each delegated program office set up and implement a system whereby supporting documentation is properly acquired, controlled, and maintained. Generated reports, checklists and sample analysis results must be clear and concise and accurately support the observations of the inspector. Finally, all records must be organized, properly maintained, and readily available for future access. The purpose of this section is to outline inspection follow-up procedures and to provide general guidance regarding document control, record maintenance and storage, and report preparation.

Inspection Follow-Up

Once an inspection is completed, a decision will be made regarding how many and how quickly samples should be analyzed. When there are serious violations, it may be necessary to have analysis completed within a day or less. Arrangements should be made ahead of time with an in-house laboratory or a commercial laboratory to facilitate such a request. Those samples which will provide the greatest proof of asbestos NESHAP violations should be analyzed; other samples taken need not be, but should be stored in a locked facility pending future enforcement action.

When violations are suspected, the inspector should brief his/her supervisor and/or attorney to initiate the decision-making process concerning the (1) need for re-inspection; (2) need for information request under Section 114 of the CAA; (3) enforcement options available, etc.

Documentation

Since checklists and reports generated by an inspector may be the basis for civil or criminal enforcement actions, they must be precise and legible. NESHAP inspections ultimately involve the actions of several people: one or more inspectors, laboratory personnel, and administrative, legal and clerical staff. Information must be collected and maintained within a system that allows for processing and expedient access. Additionally, this system must protect all records or potential evidence that may be required for enforcement actions. It is imperative that a comprehensive document control system be implemented during all phases of an investigation.

Document Control

The purpose of document control is to make certain that all project documents issued or generated during a NESHAP investigation are accounted for when the project is complete. A system which accounts for all investigation documents should include serialized document numbering, document inventory procedures, and an evidentiary filing system. Documents may include:

- inspection checklists;
- inspection reports;
- field data sheets;
- sample tags;
- chain-of-custody records and seals;
- laboratory notebook and reports;
- credentials;
- warrants;
- subpoenas;
- internal memoranda;
- phone memoranda;
- external written communications;
- photographs, drawings, maps; and
- quality assurance plans.

Under ideal circumstances each document is given a serialized number that is listed in a Document Inventory Logbook.

Corrections to Documentation

All documents generated during the course of an inspection are considered part of the permanent evidentiary file and should not be destroyed or thrown away, even if they become illegible or if inaccuracies are discovered. This is particularly important if serialized documents are used, for legal staff will note any gaps in the numbering system. Note any errors found in documents. Note which documents require replacement, or make corrections to the original document. Simply draw a line through the error, enter the correct information, and initial and date the correction.

If documents are lost or missing (e.g., sample tags, field notes), prepare a written statement that details the circumstances. Include all pertinent available information that may be used to support an observation or sample. This statement becomes part of the permanent case file.

Records Maintenance

Records need to be properly filed and maintained to allow for quick and easy access of all case documents. Records also need to be retained under storage conditions that minimize deterioration or loss of data files. With the widespread use of computers, data-management capabilities have improved handling, tracking, and manipulation of large quantities of information. These systems do not, however, replace physical evidence such as tags, forms, and checklists. They do alleviate tedious record searching and sorting tasks and can provide quick and easy retrieval of information and cross-referencing capability.

Regardless of whether computer-based data management systems or manual procedures are used, responsible individuals within a program office must be able to access and trace the destination of project files. The inspector must be familiar with and use all filing procedures. Files should be signed out in such a manner as to indicate to others that the file is in the possession of an inspector. When returning the file to storage, the inspector should take care to return it to its proper place.

Inspection Reports

The purpose of the inspection report is to present a factual record of an inspection, from preplanning stages through the analysis of samples and other data collected during the inspection. An inspection report must be complete and accurate because it is an important piece of evidence for potential enforcement actions. The length and format of inspection reports may vary based on program and individual office policy and practice.

The objective of an inspection report is to organize and coordinate all evidence gathered in an inspection in a comprehensive, usable manner. To meet this objective, information in an inspection report must be:

- **Accurate.** All information must be factual and based on sound inspection practices. Observations should be the verifiable result of first-hand knowledge. Enforcement personnel must be able to depend on the accuracy of all information.
- **Relevant.** Information in an inspection report should be pertinent to the subject of the report. Irrelevant facts and data will clutter a report and may reduce its clarity and usefulness.
- **Comprehensive.** The subject of the report (i.e., any suspected violations) should be substantiated by as much factual, relevant information as is feasible. The more comprehensive the evidence, the better and easier the prosecution task.
- **Coordinated.** All information pertinent to the subject should be organized into a complete package. Documentary support (photographs, statements, sample documentation, etc.) accompanying the report should be clearly referenced so that anyone reading the report will get a complete, clear overview of the subject.
- **Objective.** Information should be objective and factual; the report should not draw conclusions.

- **Clear.** The information in the report should be presented in a clear, well-organized manner.
- **Neat and Legible.** Adequate time should be taken to allow the preparation of a neat, legible report.

Note: Reports should be completed soon after the inspection. If there is too long a time interval between the inspection and completion of the report, the report may not be admissible as evidence or used to refresh the memory of the inspector. Reports must be prepared routinely and contemporaneously with the inspection.

Elements of an Inspection Report

No single standard EPA asbestos NESHAP inspection report format exists. While the format and exact contents of an inspection report may vary, the report should always allow the reader to determine:

- the specific reason for the inspection;
- who participated in the inspection;
- that all notice, receipt, and other legal requirements were met;
- what actions were taken during the inspection, including the chronology of these actions;
- what statements, records, physical samples and other evidence were obtained during the inspection;
- what observations were made during the inspection; and
- the results of sample analyses related to the inspection.

Although the specific information requirements in a given inspection report will depend on the type of inspection and what was found, most reports will contain the same basic elements:

- Inspection Report Forms
- Narrative Report
- Documentary Support

Inspection Report Forms

Inspection report forms function as guides to ensure that all basic data are being collected and are generally completed as the inspection progresses. Inspection report forms are only one

aspect of a complete report. They must not be considered sufficient documentation of the inspection. Since individual items on these forms often need clarification and elaboration, inspectors normally use the field logbook for this purpose.

Asbestos NESHAP field inspection checklists are provided as appendices in this manual. Agencies may use these forms, alter them to suit their needs, or develop their own checklists.

Post-Inspection Activities

Narrative Report

The narrative portion of an inspection report should be a concise, factual summary of observations and activities, organized in a logical manner, supported by specific references to accompanying evidence (documentary support), and legibly written. Basic steps involved in writing the narrative report include:

- reviewing the information;
- organizing the material;
- referencing accompanying material; and
- writing the narrative.

Reviewing the Information. The first step in preparing the narrative is to collect all information gathered during the inspection. The inspector's field logbook and all inspection report forms should be reviewed in detail. All evidence should be reviewed for relevancy and completeness. Gaps may need to be filled by a phone call or, in unusual circumstances, a follow-up visit.

Organizing the Material. The narrative should be organized so that the reader will understand it easily.

Referencing Accompanying Material. All evidence (e.g., copies of records, analytical results, photographs) that accompanies a narrative report should be clearly referenced so that the reader will be able to locate items easily. All support documents should be checked for clarity prior to writing the report.

Writing the Narrative Report. Once the material has been reviewed, organized, and referenced, the narrative can be written. The purpose of the narrative report is to record factually the procedures used in, and findings resulting from, the evidence-gathering process. In this report the inspector should refer to routine procedures and practices used during the inspection, but should describe in detail facts relating to potential violations and discrepancies. The field logbook is a guide for preparing the narrative report.

Inspectors should:

- Use a single writing style; avoid stilted language.
- Use an active, rather than passive approach (e.g., "He said that ..." rather than "It was said that...").
- Keep paragraphs brief and to the point.
- Avoid repetition.
- Proofread the narrative carefully.

Important Considerations

Standard Operating Procedures

When the inspector has followed standard operating procedures (SOPs) precisely in gaining entry, taking samples, etc., this can be easily noted in the report (e.g., "following standard procedures, Joe Smith gained entry to..."). If there were any unusual circumstances or deviations, however, these should be included in the report in more detail.

Note: Some attorneys suggest that the inspector, in the inspection report, specifically state that the site representative granted him/her right of entry to the site.

Confidentiality Considerations and Procedures

All documents and other materials that have been declared confidential business information by facility officials must be handled according to the security measures that have been established for such materials. Confidential information includes not only the materials themselves, but also any report, such as an inspection report, generated on the basis of confidential information. Generally, this will involve limiting access to the report to the fewest number of people possible.

In preparing the inspection report, it may be possible to reference confidential material in a non-confidential way, such as by providing a general description of the information and a reference number to the confidential documents. An alternative is to include the information in the inspection report but treat the entire report as a confidential document.

Conclusions Regarding Compliance

Inspection reports should contain only the facts about the inspection. Clearly, however, the inspector's conclusions and opinions about the compliance of the facility are the critical factors (and often, the only factors) in the Agency's decision as to whether a violation did or did not

exist. It is essential, however, that the inspection report not include the inspector's conclusions regarding compliance.

In writing the inspection report, inspectors should avoid using the word "violation," since this means a conclusion of law has been drawn. It is acceptable to state facts, such as "The suspect ACM which had been scraped off the ceiling was dry.", rather than "A violation of §61.145(c)(3) of the asbestos NESHAP occurred."

If necessary, conclusions should be contained in a separate cover memorandum or other format that is clearly separate from the inspection report and passed up the management chain along with the factual inspection report. The principal reason for this is that if an enforcement case is pursued, the entire inspection report is subject to discovery by the opposing side. If conclusions of law and opinions are in the report, the opposing side might be able to weaken the inspector's credibility by suggesting bias. In addition, the inspector may have been wrong about one or more counts and the Agency did not pursue them; this would be revealed through discovery, again weakening the inspector's credibility. A separate "findings" or "conclusions" memorandum will usually be protected from discovery based on attorney-client privilege or another "exception" rule.

In some agencies, it may be the inspector who determines whether a violation occurred and if an enforcement action is warranted. In these situations, the inspector is no longer performing an inspector function; he or she has actually changed hats" into a different job - that of a case development officer. The line between the two jobs should be clearly drawn, with the person staying in a fact-finder role while carrying out inspector functions - including inspection report writing.

Use of "Cut and Paste" Language

If previous reports are used as a template, one must ensure that the base report is sanitized of all items from previously reported activities and that only current, site-specific issues are reported. Report writers who use a "cut and paste" approach of report writing often import information that has little to do with the current issue. Inspectors must verify that all names, dates, and references to sampling results reflect only current information. Internal review can reveal "cut and paste" errors and help avoid significant negative scrutiny during enforcement actions.

Tips for Writing an Effective Inspection Report

In general, three rules apply to preparation of good inspection reports.

- *Write to express*, not to impress. Just relate the facts and evidence that are relevant to the compliance situation.
- *Keep it simple*. Organize complicated matters and state them in simple, direct terms.
- *Keep the reader in mind*. Relate your writing to the reader's experience and use words that are likely to be familiar.

The following sections provide a summary of the essential elements of good reports and organizing the writing process.

Essentials of Good Reports

Fairness, accuracy, completeness, conciseness, clarity, and organization are all essential characteristics of well-written and effective inspection reports.

- **Fairness.** Inspection reports must be entirely objective, unbiased, and unemotional.
- **Accuracy.** Be exact. Say precisely and accurately what you mean to say in plain language. Precision depends on diction, phrasing, and sentence structure. Avoid exaggerations. The report should present facts so clearly that there is no need for conclusions or interpretations.

Avoid superlatives. Any attempt to strengthen a report in this way actually weakens it, as reviewers tend to doubt its objectivity.

Accuracy means truthfulness. The accuracy of all findings must be verified before the final report is submitted. A typographical error in date or time may cast doubt on other facts in a report.

- **Completeness.** Include all information that is relevant and material. Completeness implies that all the known facts and details have been reported, either in the text of the report or in an exhibit, so that no further explanation is needed and the reviewer will be convinced that the inspection was thorough and comprehensive.
- **Conciseness.** Conciseness does not mean omission. It is the avoidance of all that is elaborate or not essential. Conciseness is not what you say, but how you say it. Conciseness means omitting unnecessary words; it does not mean omitting facts, detail and necessary explanation. It is not the same as brevity. If clarity and completeness require a detailed explanation, do not hesitate to use it.
- **Clarity.** Inspection reports must be written clearly to avoid misinterpretations. Clear writing leads to clear thinking and vice versa. Order your thoughts; select those most useful to the reader, arrange them logically; and select the words that will best convey your thoughts to the reader.

The careless use of personal pronouns is a frequent cause of ambiguity. If the use of a pronoun may result in ambiguity, use a noun. Avoid the use of the pronoun "It" and the word "There" as substitutes for precise word selection. For example, say "We should do ...", rather than "It should be done ...", and "Changes have been made ...", rather than "There have been changes."

Punctuate to make the meaning easy to understand. For example, consider the different meanings of the following three sentences:

- The employee said the foreman is a blockhead.
- The employee said, "The foreman is a blockhead."
- "The employee," said the foreman, "is a blockhead."

In presenting a series of thoughts or actions, parallel construction helps clarify meaning. For example, write "collecting, depositing, and reporting revenue", instead of "collection, depositing, and the reporting of revenue."

- **Organization.** An inspection report should be structured to allow a logical order and coherence in the presentation of facts. This means that the relation of each event to the main idea and to the events immediately preceding it in the report must be unmistakable. Otherwise, it is quite likely that the reader will not understand the significance of the event.

Narrative Report Outline

Inspectors should provide detailed narration for any of the following components not sufficiently described in the field inspection checklist.

Introduction

The introduction should briefly present all relevant background information about the conduct of the inspection and summarize the findings of the inspection.

- *General Information*
 - State the purpose of the inspection and how the facility came to be inspected (i.e., neutral scheme, follow-up, for cause).
 - State the facts of the inspection (i.e., date, time, location, name of the agent-in-charge, etc.).
 - Participants in the inspection.
- *Summary of Findings* -Give a brief, factual summary of the inspection findings.
- *History of Facility*
 - List the status of the facility (i.e., corporation, proprietorship, partnership, State agency, non-profit organization, etc., and where incorporated).
 - Give the size of the organization based on inspector observations or agency records.
 - List any related firms, subsidiaries, branches, etc.
 - List the type of operations performed at the facility under inspection.
 - List names and titles of facility officials interviewed. List the name(s) of official(s) responsible for day-to-day operations at the facility.

Inspection Activities

The body of the report should present the chronology of the inspection in the same order that the inspection was conducted. Be certain to insert all observations when appropriate and to cover the following topics when appropriate.

- Entry/Opening Conference
 - Describe the procedures used at arrival, including presentation of credentials and to whom they were presented.
 - Describe any special problems or observations if there was reluctance on the part of facility officials to give consent, or if consent was withdrawn or denied.
 - If special procedures were necessary, such as obtaining a warrant, describe the procedures.
 - Summarize the topics discussed during the opening conference.
 - Note if duplicate samples were requested.

- Records
 - List the type of records reviewed, noting the reasons for their review, and referencing documents that were borrowed or copied.
 - Describe any inadequacies in recordkeeping procedures, or if any required information was unavailable or incomplete.
 - Note if recordkeeping requirements were being met.

- Evidence Collection
 - Note and reference any statements taken during the inspection.
 - Describe and reference photographs taken during the inspection if they were relevant.
 - Reference any drawings, maps, charts, or other documents made or taken during the inspection.

- Physical Samples
 - Describe the purpose for which samples were obtained.
 - Describe the exact location from which they were obtained (west wall of room 12, 3' from corner, etc.).
 - Describe sampling techniques used. They may be referred to as standard operating procedures (SOPs) if SOPs were followed exactly. If there were deviations from SOPs, explain why and what was done.
Describe the physical aspects of the sample (color, texture, viscosity, etc.).
 - Describe chain-of-custody procedures used in sample handling; from the project site to the laboratory.
 - Summarize results of laboratory analyses (include actual data as an attachment).

- Closing Conference
 - Note and reference receipts for samples and documents given to facility officials.
 - Note procedures taken to confirm claims of confidentiality and issuance of receipts for Confidential Business Information.
 - Note any recommendations, referrals, etc., made to facility officials.

Attachments

Supporting information should be attached to the report to ensure that reviewers have all of the data needed to fully evaluate the compliance situation. All of these attachments should be fully referenced in the body of the report.

- List of Attachments
 - Prepare a list of all documents, analytical results, photographs, and other supporting information attached to the report. A general index list, rather than detailed descriptions, will aid case-development personnel in locating specific documents.
- Documents
 - Attach copies of all documents and other evidence collected during the inspection. All documents should be clearly identified.
 - In cases where documentary support items cannot be included easily with the report, it may be possible to substitute descriptive information.
- Analytical Results
 - Attach sample data and quality assurance data. These may be presented as tables, with pertinent information summarized in the body of the report.