Chapter Overview

• Introduction to Pollution Prevention
  – And Waste Minimization

• Legislative History

• Pollution Prevention/Waste Minimization Strategies

Legislative History


• Pollution Prevention Act (1990)
What is Pollution Prevention? What is Waste Minimization?

- **Source Reduction** and/or environmentally sound **Recycling** methods prior to energy recovery, treatment, or disposal of wastes.
- Treatment is not part of P2 or Waste Min

P2/Waste Minimization

- Does not include waste treatment, i.e., any process designed to change the physical, chemical, or biological composition of wastestreams.
- For example, compacting, neutralizing, diluting, and incineration are not typically considered waste minimization practices.

Strategy

- Determine what wastes are generated
- Characterize each waste stream
- Identify waste prevention measures
- Identify potential production changes that would improve efficiency
- Investigate opportunities for new products or ingredients
- Set priorities and goals
Pollution Prevention Strategies: Source Reduction

- Materials Substitution
- Source Control

Pollution Prevention Strategies: Recycling

- Recycling can be thought of as the collection and reprocessing of a resource so it can be used again, though not necessarily for its original purpose

Pollution Prevention Strategies: Recycling

- Examples Include?
Pollution Prevention Information Clearinghouse

http://www.epa.gov/oppt/library/ppicdist.htm

Chapter Summary

• Introduction to Pollution Prevention
• Legislative History
• Pollution Prevention Strategies

Questions?
Chapter Overview

- Common Law
- Statutory Law
- Administrative Law
- Constitutional Law
- Sources of Federal Statutes
- Sources of Federal Regulations

Roots of Our Legal System

- Common Law:
The original 13 colonies adopted a legal system similar to that in England.
Common Law
- Introduction to Common Law
- Nuisance
- Trespass

Common Law: Nuisance
- Definition of Nuisance
- Historical Application
- Contemporary Application

Common Law: Trespass
- Definition of Trespass
- Historical Application
- Contemporary Application
FREE AND OPEN FIELDS
ACCESS

Sources of Law
- Constitution: Bill of Rights
- Statutes: Law
- Admin. Agency: Rules
- Judicial Decisions: Precedent, Stare Decisis

Types of Law
- Federal: U.S. Constitution, Federal Statutes
- States: State Constitution, State Statutes
- Local: County, City & District
Source of Power

- Federal: U.S. Constitution enumerated power
- States: Anything else
  - State Police Power:
    - Health, Safety, & Welfare
- Local: From the state

Conflict of Law

- SUPREMACY CLAUSE

  Feb 20, 1809: Supreme Court ruled in US vs Peters that power of the Federal government is greater than that of any individual state
Statutory Law

- Introduction to Statutory Law
- Police Power

Administrative Law

- Introduction to Administrative Law
- Advantages of Administrative Law

Classification of Law

- Civil Law: Dealing with enforcement or protection of private rights
- Criminal Law: Dealing 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
Constitutional Law

- Introduction to Constitutional Law
- Right of Entry: The Fourth Amendment
- Prohibition Against Self-Incrimination: The Fifth Amendment
- Due Process: The Fourteenth Amendment
- Equal Protection: The Fourteenth Amendment

Constitutional Law: Right of Entry: The Fourth Amendment

Citizens (including corporations) will be free from unreasonable search and seizure.

Constitutional Law: Prohibition Against Self-Incrimination: The Fifth Amendment

Persons cannot be required to give testimony against themselves.
Constitutional Law: Due Process: The Fourteenth Amendment

Due process of law and equal protection are guaranteed for all citizens.

Governmental action shall not deprive a person of life, liberty, and property without due process.

Constitutional Law: Equal Protection: The Fourteenth Amendment

The enactment of laws that establish arbitrary systems of classification or that permits discrimination between persons of the same classification is prohibited.

Sources of Federal Statutes

- Slip Laws
- Statutes At Large
- United States Code (U.S.C.)
• Statutes vs Laws vs Regulations

Sources of Federal Regulations
• Federal Register
• Code of Federal Regulations (C.F.R.)

Chapter Summary
• Common Law
• Statutory Law
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• Constitutional Law
• Sources of Federal Statutes
• Sources of Federal Regulations
Chapter Overview

• Enforcement Systems
• Penalty Assessment Criteria

Enforcement Systems

• Permits to Construct and Operate
• Compliance Monitoring
• Compliance Plan Enforcement
• Surveillance and Complaint Response
• Initiation of an Enforcement Action
Permits to Construct and Operate

• Purpose

• Goal

Permits to Construct

• Purpose

Permits to Construct

• Benefits to Applicant
Permits to Operate

- Purpose
- Uniform Permit Program

Permits to Operate

- Aids to Enforcement

Compliance Monitoring and Inspections

- Introduction to Compliance Monitoring
- Compliance Monitoring Strategy
- Compliance Monitoring Categories
- Compliance Plan Enforcement
Compliance Monitoring: Introduction

- Continuous, Self-Monitoring
- Compliance Inspections

Compliance Monitoring: Inspections

- Objectives
- Conducting an Inspection

Compliance Monitoring

- Compliance Incentives
- Innovations
- Auditing
- Environmental Management Systems
- Pollution Prevention
- Small Business
- Small Community
Inspections: Objectives

• Observe and Identify Problems
• Provide Facts About Compliance Status
• Collect and Preserve Evidence
• Act as Deterrent

Enforcement and Compliance History Online (ECHO)

• http://echo.epa.gov

Inspections: Conducting an Inspection

• Review Rules and Source Records
• Prepare an Inspection Plan
• Enter the Facility and Hold Opening Conference
• Conduct Inspection, Obtain Samples, and Hold Closing Conference
• Prepare Report
General Inspection Pattern

- File Review
- Entry and Entrance Interview
- Inspection
- Exit Interview
- Report

Practical Exercise

- A role play exercise designed to acquaint you with issues and techniques involved in entering a regulated facility.
- This exercise takes place during the entry and entrance interview.
- The facility to be inspected is regulated and has had some problems in the past.
- The facility has some history with causing inspectors difficulty.

Practical Exercise

Instruction and Roles

- The class will be broken up into groups and each group will have an identical makeup and problem to solve
- Groups will consist of:
  - 2 Inspectors
  - Senior Facility Manager
  - Junior Facility Manager
  - Observers
Practical Exercise

Instructions
• Each of you will be given specific information relative to your own role
  – All inspectors have the same information
  – All observers have the same information
• DO NOT share your information with others outside your own roles!

Practical Exercise

Instructions - Continued
• Inspectors: Conduct an entry interview and reach agreement on conducting the inspection
• Facility Personnel: Based on your role, meet and talk with the inspectors
• Observers: Observe and evaluate how the inspectors accomplish their objectives – AND report your observations back to the entire class

Entry

• Free and Open Fields Access
• Scheduling An Inspection
• Proper Entry Procedures
• Denied Access Procedures
• Signing Entry Forms
Entry

- Legal basis for entry

Entry

- Consensual entry
  - Absence of express denial = consent

Entry

- Warrant less entry
  - Emergencies
  - “Open fields” and “in plain view”
Entry

• Denial of entry
  – policy is TYPICALLY to obtain a warrant

Entry

• If denied entry
  – Be tactful
  – Use reason and logic
  – Record observations
  – DO NOT THREATEN
  – Contact supervisor

Entry

• Warrants
  – When facility has denied access
  – If full consent is withdrawn during inspection
  – May be done in advance of inspection
  – Inspector & attorneys work as team
Entry

• Proper site entry procedures
  – Drive-by and off-site observations
    □ Look for obvious concerns
    □ Familiarize yourself with layout
  – Normal working hours

Entry

Use main gate or entry
Contact person in charge
  • Plant manager, environmental manager, owner, etc.
Identify yourself with your credentials
Identify company representatives

Opening Conference

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

Explain:
- Documentation methods
  - Notes
  - Procedures recommended
- Copies
- Photographs
- Audio recordings
- Samples, etc.

Opening Conference

- Discuss Confidential Business Information (CBI)
  - Their right to claim CBI
    - Use good presentation technique
  - Provide paperwork
- Identify special safety concerns
  - May be denied access W/O proper PPE
  - PPE (hard hat, safety glasses etc)
  - DO NOT SIGN LIABILITY WAIVER

Proper Attire

- Wear what’s appropriate
  - Industrial site?
  - Office visit?
- Wear what’s safe
  - Proper PPE
PERSONAL PROTECTIVE EQUIPMENT

• Hard Hat
• Foot Protection (more than one pair)
• Vision and Hearing Protection
• Respirators
• First Aid Kit
• Protective Clothing
• Gloves

Opening Conference

Explain:
• Inspection process
  – Facility processes
  – Records review
  – Site tour

Opening Conference

Develop “Must See” list
• Key process operations
• Waste management areas
• Areas with past violations
• Areas with suspected violations
Obligation to Report

- Document violations
- Document compliance
- Coordinate with other agencies

Professionalism

- Don’t Pretend Knowledge
- Don’t Recommend Solutions
- Don’t Act As An Attorney
- Be Respectful

Entry

- Free and Open Fields Access
- Scheduling An Inspection
- Proper Entry Procedures
- Denied Access Procedures
- Signing Entry Forms
Confidential Information

- Handling Confidential Data
  - Store in Locked Files
  - Destroy or Return when Not Needed
- Public Requests
- Improper Disclosure
  - Fines
  - Imprisonment
  - Dismissal

Closing Conference

- Format varies
- Preliminary (tentative) discussion of findings
- Resolve outstanding issues
- Complete paperwork –
- Follow your agency’s policy in regard to providing notice of violations

Inspector Liability

- Being – and parking – at appropriate locations
Inspector Liability

• Being – and parking – at appropriate locations
• Doing your assigned job

Inspector Liability

• Being – and parking – at appropriate locations
• Doing your assigned job
• Following your SOP’s

Summary

• General Inspection Pattern
• Attire & Attitude
• Neutrality
• Entry Procedures
• Confidentiality
• Reporting
A bad inspection is a great defense!

Inspections: Conducting an Inspection
- Review Rules and Source Records
- Prepare an Inspection Plan
- Enter the Facility and Hold Opening Conference
- Conduct Inspection, Obtain Samples, and Hold Closing Conference
- Prepare Report

Compliance Monitoring Strategy
- Covered yesterday
### Compliance Monitoring Strategy

- 2010 the strategy was again modified
  - Time frame in policy based on Federal fiscal year, not calendar year
  - Includes an overview of the OECA Clean Air Act National Initiatives
  - State Review Framework added
  - AFS updated
  - Internet link to CMRs

### Compliance Monitoring Strategy: Major Changes

- Emphasis on Title V Sources
- Minimum Frequencies Determined
- Variety of Tools Available
- Categories of Compliance Monitoring
- Frequency of CMS Plans

### Compliance Monitoring Strategy: Implementation Process

- CMS Plan Submission
- Regional Response to the OECA MOA
- Maintenance and Recording of Compliance Monitoring Activities
- Review of Compliance Monitoring Activities
- Evaluations
Compliance Monitoring Categories: Full Compliance Evaluations

- Scope
- Components
- Frequency
Compliance Monitoring Categories: Partial Compliance Evaluations

- Scope
- Components
- Frequency

Compliance Monitoring Categories: Investigations

- Scope
- Components
- Frequency

Compliance Plan Enforcement

- Objectives
- Benefits to Enforcement Efforts
- Components
Compliance Plan Enforcement

- Objectives
- Benefits to Enforcement Efforts
- Components

Surveillance and Complaint Response

- Surveillance
- Complaint Response

Common types of complaints

- Odors
- Dust
- Point sources
- An air pollution episode
- General air quality, “bad air”
**Complaint Priority**

- APC Officers and their inspectors are not emergency response personnel, but
- Complaints are an inspector’s 2nd highest priority.
- Complaints are usually received by support staff
  - Dispatched to field staff
  - Usually respond within 24 hours

**Initiation of an Enforcement Action**

- Goals
- Alternative Enforcement Procedures
- Steps in an Enforcement Action

**Enforcement Action: Goals**

- Correct Violation
- Deter Future Violations
- Maintain Consistency and Fairness
- Seek Criminal Sanctions
- Make Effective Use of Enforcement Resources
Enforcement Action: Alternative Enforcement Procedures

- Notice of Violation
- Informal
- Formal Abatement Order/Consent Degree
- Citations
- Administrative Fine
- Civil or Criminal Punishment
- Court-Ordered Injunction
- Revocation of Operating Permit

Enforcement Action: Steps in an Enforcement Action

- Violation is Found and Documented
- Level and Type of Enforcement Action is Decided
- Enforcement Documents Drafted and Filed
- Settlement Negotiations Entered
- Hearing or Trial Conducted

Penalty Assessment Criteria

- Penalty Factors
- Enforcement Responsibility
Penalty Assessment Criteria: Penalty Factors
• Size of Business
• Economic Effect of Penalty
• Company Compliance History
• Duration of Violation
• Previous Penalties for Same Offense
• Economic Benefit for Noncompliance
• Seriousness of Violation

Penalty Assessment Criteria: Enforcement Responsibility
• Federal
• State
• Local

Compliance Certification Program
• Enhanced Monitoring
• Compliance Assurance Monitoring
Any Credible Evidence Rule
• Change from Previous Standard
• Impact on Enforcement

Compliance Audits
• Purpose
• Audit Privilege [laws] policies/rules

Chapter Summary
• Enforcement Systems
• Penalty Assessment Criteria
Questions?

POST – TEST