

NACT 350
Basic Inspector Training
Course
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Instructors

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Welcome

- Materials
- Agenda
- Notebooks
- Attendance
- Misc. Information



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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

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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

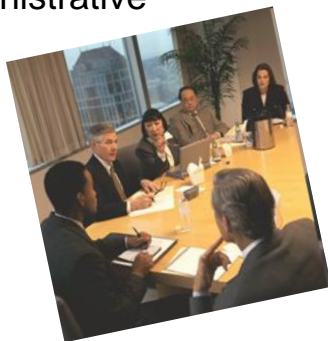
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Administrative

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Administrative

- Facilities



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Administrative

- **Facilities**
 - **Rest Rooms**



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Administrative

- Facilities
 - Rest Rooms
- Schedule/breaks

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Administrative

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



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Administrative

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

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Rules of Engagement

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

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Inspector Training

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

Audience Profile



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Audience Profile

1. Agency
2. No. of Years/Months/Days
3. Work unit (permitting, enforcement)
4. No. of Inspections Yearly

Introduction to Environmental Compliance Programs

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EPA Order 3500.1

- Issued in 1988
- Last revised/updated 2021
- 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

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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

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Inspector Issues

Role of the inspector

Confidential business information

Ethical considerations

Techniques for handling the press and the public



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Role of the Inspector

All stages and aspects of Compliance and Enforcement Program



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Role of the Inspector

- **Official Representative**



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Role of the Inspector

- Official representative
- **Fact-finder**



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Role of the Inspector

- Official representative
- Fact-finder
- **Enforcement case developer**



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Role of the Inspector

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



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Role of the Inspector

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



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Role of Inspector in Providing Compliance Assistance (CA) During Inspections

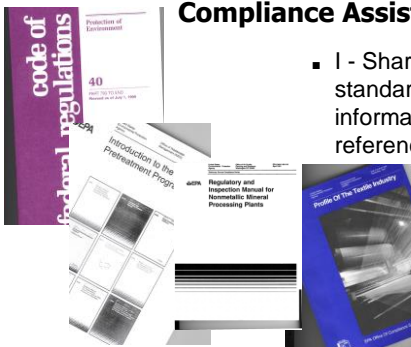
- **Main purpose of inspections** -- Determine compliance
- 13-page Policy describes the inspection process, definitions, appropriate/inappropriate assistance, specific examples, documentation & reporting
- **Not CA:** ISE and compliance status review
- Inspectors are encouraged to provide CA with limitations

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Role of the Inspector

Compliance Assistance

- I - Sharing standardized information and references



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Role of the Inspector

Compliance Assistance

- II - More technically complex and site-specific
- Detailed technical information/discussion of individual facility



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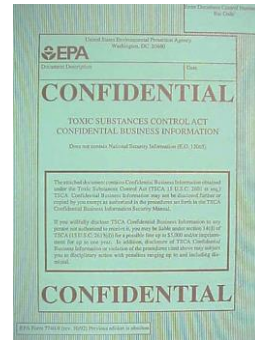
Role of the Inspector



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

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CONFIDENTIAL BUSINESS INFORMATION



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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

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Confidential Business Information

- WHAT IS IT?
- Anything the company claims as CBI
- Receipts should be provided for CBI material

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Confidential Business Information

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



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Confidential Business Information

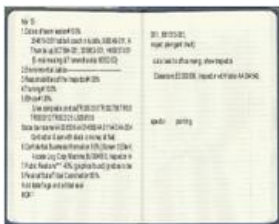
- Only authorized personnel can see the data



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Confidential Business Information

- Access log is maintained



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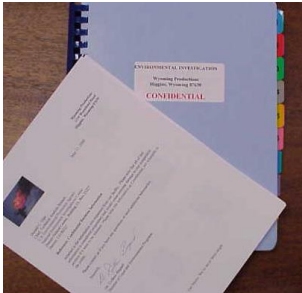
Confidential Business Information

- Limits are imposed on copies made



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Confidential Business Information



- Any report generated from CBI also is CBI

Targeting

- Neutral Inspection Scheme
- Initiatives (State and National)
- For Cause

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ETHICS When in Doubt, Don't!



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ETHICS When in Doubt, Don't!

- Integrity and impartiality
- Conflict of interest
- Standards of conduct
- Consult with your ethics official first



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Dealing with the Press and the Public

**Emphasize
The
Positive!!**

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The Reporter's Viewpoint

- Goal: A usable story
- Differences among:
 - Newspaper
 - Television
 - Radio
 - Blogs



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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



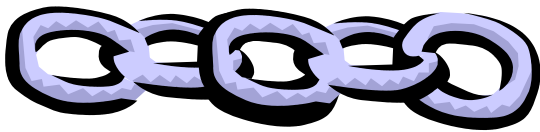
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Environmental Compliance Objectives

- 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?

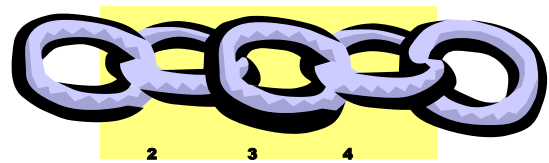
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To Be More Effective:
We Need to Recognize "Enforcement and Compliance
Monitoring" as a "System"



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**Generally, Inspectors & Managers Are
Responsible for 3 of the 5 System Links**



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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

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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.

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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.

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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?

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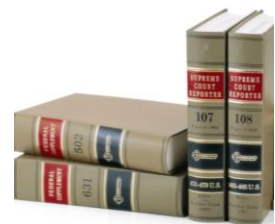
Link 5 Enforcement

- 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

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Compliance and Enforcement Program

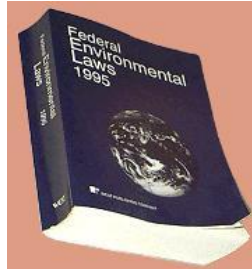
- Laws and regulations
- Compliance and enforcement strategies
- Compliance monitoring
- Enforcement response
- Follow-up to enforcement actions



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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



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Compliance and Enforcement Strategies

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

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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)

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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

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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

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Introduction to Practical Exercise (PE)

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

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Administrative Issues and Inspection Planning

KNOW YOUR OFFICE PROCEDURES

INSPECTION PLANNING



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Administrative Issues

- Planning
- Procurement
- Travel and reimbursement
- Pay administration
- Special cautions



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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

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Administrative Issues Procurement

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

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Administrative Issues (continued)

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



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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.

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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

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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



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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



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Identify Overall Project Objectives

- Know why facility was targeted
 - Neutral, For Cause, Annual, Bi-annual, required by regulations or by permit
 - Citizen Complaint

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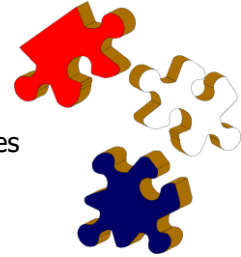
Identify Overall Project Objectives:

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

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Elements of a Project Plan

- Objectives
- Background
- Tasks
- Policies and procedures
- Safety
- Resources
- Schedules



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Gather Background Information:

- Background information is critical for development of a project plan



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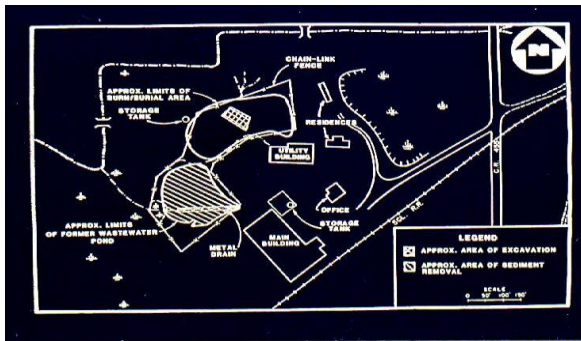
Review Facility Information

Become familiar with facility/process



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Facility Map



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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

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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 (www.epa.gov/echo)

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Identification of Tasks

- What activities "MUST" be accomplished to meet objectives of inspection?



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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

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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

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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

5-85

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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



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Safety! Be Prepared!



**Know what kind
of hazards you
are dealing
with!!**

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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



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QUESTIONS???

Resources

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

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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

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Development of an Inspection Schedule

- Importance
 - To client
 - To team
 - To facility and
 - To your Managers

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Pre-Inspection Team Meeting



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Sources of Information for Inspectors

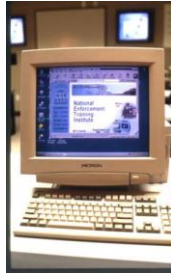


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Session Objectives

- Techniques for collecting and handling information
- Aware of systems, uses and benefits
- Sources of information
- Improve inspections and case development
 - efficiencies, effectiveness



What specific types of information should an inspector look for?

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General Info

- Statutes and regulations
- 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

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(Facility-specific) (cont'd)

- QA documentation
 - Prior sampling test results
 - Lab certification
- Enforcement documents
- Facility responses to enforcement actions
- Citizen complaints



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WHERE might
an inspector look for this
Information?

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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



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Compliance Assistance

[EPA Compliance Assistance Centers](#)



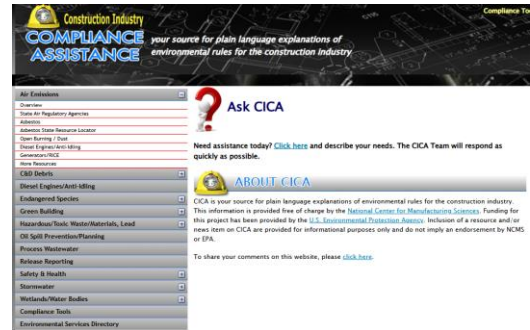
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EPA Compliance Assistance Centers

- Agriculture
- Automotive Recycling
- Automotive Service and Repair
- Beneficial Use of Industrial Byproducts
- Colleges and Universities
- Construction
- Federal Facilities
- Food Processing
- Healthcare
- Local Government
- Metal Finishing
- Oil and Natural Gas Extraction
- Paints and Coatings
- Ports
- Retail
- Transportation
- US Border & Import/Export Issues

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Compliance Assistance Center (One Example)



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EPA Sector Notebooks

National Service Center for Environmental Publications | US EPA



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US EPA: Media Program Databases

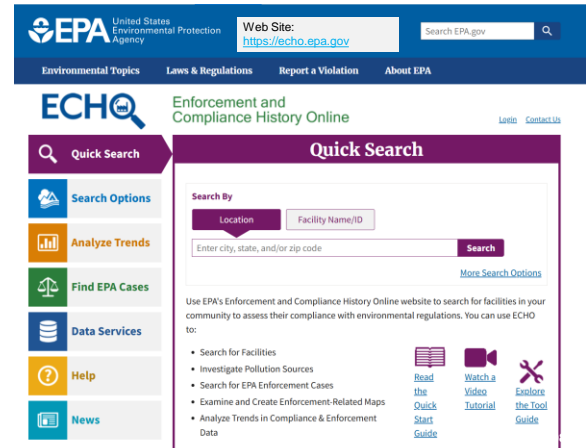
- AQS: Air Quality System
 - Ambient air pollution and meteorological data from federal, state and tribal agencies
 - [Air Quality System \(AQS\) | US EPA](#)
- RCRAInfo: Resource Conservation & Recovery Act Info
 - Information about waste handlers, transporters and storage
 - [RCRAInfo Sign In](#)

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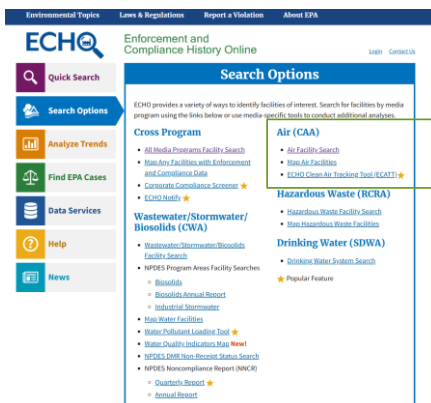
US EPA: Media Program Databases

- 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/toxics-release-inventory-tri-program
- CERCLIS: Comprehensive Environmental Response, Compensation and Liability Information System
 - Information on hazardous waste sites and remedial activities
 - [Search for Superfund Sites Where You Live | US EPA](#)
- ICIS (Integrated Compliance Information System)
 - Single database that integrates multiple enforcement databases
 - [ICIS-AIR Search | Envirofacts | US EPA](#)

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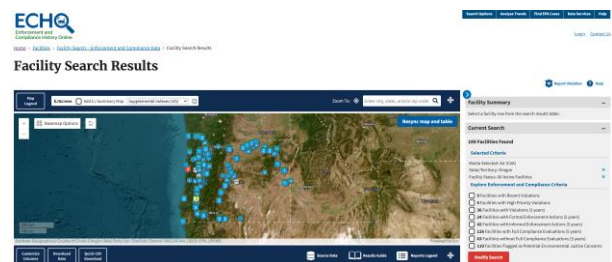


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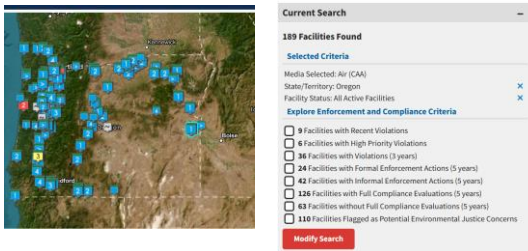
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Air Facility Search Example: All Air Sources in OR



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Air Facility Search Example: All Air Sources in OR



Detailed Facility Reports are available for each source.

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Commercial Information Sources

- Dun & Bradstreet
 - > Company credit histories, revenues, etc.
 - > www.dnb.com/us/
- LEXIS/NEXIS
 - > Premier searchable news service
 - > www.lexis.com/

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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

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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.



115

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



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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.

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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.

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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.

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Types of Evidence

- Testimonial (e.g., statements)
- Real (e.g., samples, objects)
- Demonstrative (e.g., photos, flow charts, maps)
- Documentary (e.g., records, reports)

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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?

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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.

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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



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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



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From elements to report

Date:

Location:

Finding:

No.	ELEMENT	EVIDENCE	INFERENCE
1.			
2.			
3.			
4.			
5.			
6.			

125

From elements to report

Date:

Location:

Finding:

No.	ELEMENT	EVIDENCE	INFERENCE
1.	Container		
2.			
3.			
4.			
5.			
6.			

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From elements to report

Date:

Location:

Finding:

No	ELEMENT	EVIDENCE	INFERENCE
1.	Container		
2.	holding		
3.			
4.			
5.			
6.			

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From elements to report

Date:

Location:

Finding:

No	ELEMENT	EVIDENCE	INFERENCE
1.	Container		
2.	holding		
3.	hazardous		
4.	waste		
5.			
6.			

128

From elements to report

Date:

Location:

Finding:

No	ELEMENT	EVIDENCE	INFERENCE
1.	Container		
2.	holding		
3.	hazardous		
4.	waste		
5.	Closed during transfer & storage		
6.			

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From elements to report

Date:

Location:

Finding:

No	ELEMENT	EVIDENCE	INFERENCE
1.	Container		
2.	holding		
3.	hazardous		
4.	waste		
5.	Closed during transfer & storage		
6.	Necessary to add or remove waste		

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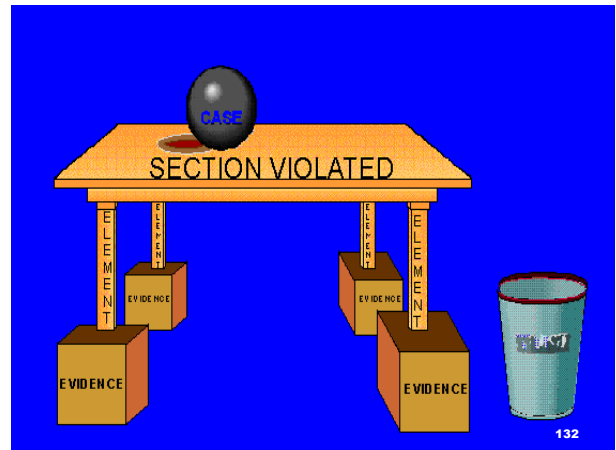
Inspector's Findings

- 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



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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

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Recap

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

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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

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Recap

- How many words is too many?
- How to remove excess words
 - Read aloud
 - 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

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Site Entry and Opening Conference

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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.



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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.

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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

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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.



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Entry, Opening Conference, and Site Inspection

Summary of Federal Environmental Acts

Act	Designated Representative	Credentials Required	Notice of Inspection	Sampling Permitted	Records Inspection	Sample Splits	Receipt for Samples	Return of Sample Results
CWA	X	X		X	X			
FIFRA	X	X	X		X			
CAA	X	X		X	X			
RCRA	X			X	X	X	X	X
SDWA	X	X	X	X	X			
TSCA	X	X	X			X		
CERCLA	X			X	X	X	X	X

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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.



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Entry

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

145

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.

146

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.



147

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?

148

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

149

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



150

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

151

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.

152

Opening Conference

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

153

Opening Conference

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



154

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

155

Select Level of Personal Protection



Level D

“Modified” Level D

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

**** If Required**

156

Do you need a respirator?



Cartridge
Type

157

Opening Conference

Explain:

- Documentation methods
 - Notes
 - Copies
 - Photographs
 - Samples, etc.
- Caution re: audio recordings, obtain permission.



158

Opening Conference - Explain

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



159

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

160

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.

161

Opening Conference

- Establish rapport.
- Collect and document general facility information.

162

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

163

Inspection Activities at Facility

- 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.

164



INTERVIEWING

165

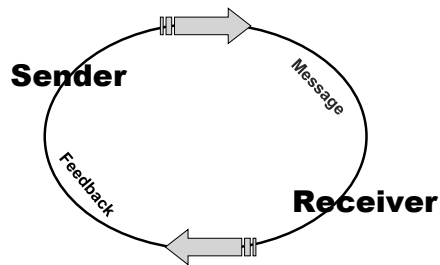
IIINTRODUCTION

- **Interviewing is critical to the inspection process**
- **It is a basic fact-finding and communication tool**



166

Four Ingredients to Effective Communication



167

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."

168

NONVERBAL COMMUNICATION

Nonverbal Communication

- Inspectors need to be aware of the four forms of nonverbal communication
- Body Movement
- Eye Movement
- Space and Distance
- Touch

169

THE FIVE PHASES OF A COMPREHENSIVE INTERVIEW

171

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

172

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.

173

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.
- A good interview involves asking the . . . Who, What, When, Where, Why and How (much).

174

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)

175

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



176

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.

177

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

THE END

QUESTIONS?



178

179

Interviewing

- Practical Exercise

180

On-Site Inspection Process

185

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



186

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.

187

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

188

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.



189

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 Monitoring: Flow Measurement, Sampling, On-site monitoring, Flares, etc.



190

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

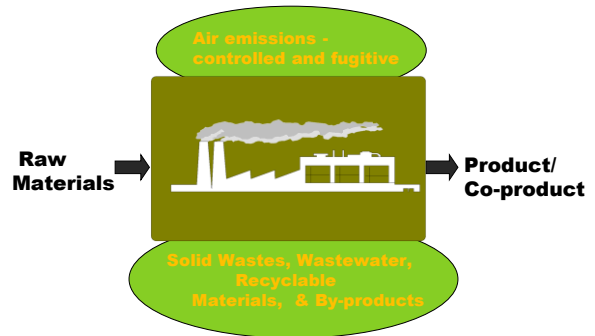
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Process-Based Inspection *Tools*

- 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

192

PROCESS-BASED INSPECTION



193

Site Inspection – How to Uncover Potential Violations

- Have an in-depth discussion of specific processes with facility engineers using flow diagrams or blueprints, 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

194

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, but it is often required to confirm findings and potential non-compliance and violations.

195

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

196

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.

197

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

198

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!

199

British note taking video

Note Taking

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

200

201

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)

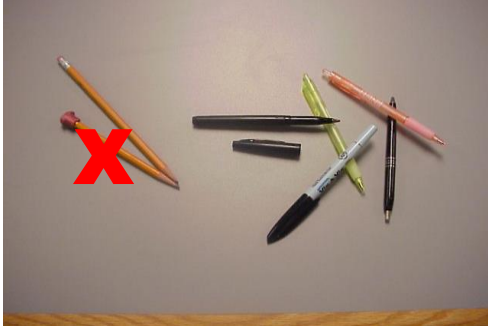
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Note Taking Techniques

- Follow style you are most comfortable with
 - Outline
 - Bullets
 - Subheadings
 - Shorthand
- Focus on key points
- Complete sentences not necessary
- Use key/buzz words to jog memory
- WRITE LEGIBLY.

203

Note Taking



204

Methods/Options the old standby's



Bound, Paginated,
Waterproof,
Portable, Cheap

205

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)??

206

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
- 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.

207

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

208

Note Taking- What Goes Into Logbook

- Clearly document the authority of any escort in your logbook. 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

209

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's
- Discussion of unusual conditions

210

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

211

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)

212

Note Taking

- Report prepared from Notes
 - Report may/will not contain all material
 - Report may/will reorder information in notes into logical sequence
 - Interview may/will jump around;
 - Notes may not document actions in sequence they occurred
- In Court: BE AWARE the Inspection Report may be compared to your notes

213

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.
 - Answer: Who? What? When? Where? How? And Why?

And ask how do I know I know?
- If more than one inspector review findings as a team – ask for a space to do so.

214

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 Agency compliance officer will determine if violations exist (**follow Agency policy**)
- Manage regulated entity's expectations (e.g., will receive report and when, the investigation is on-going, etc.)
- Provide a summary of potential enforcement outcomes and the process associated with each.

215

Sampling Records, Environmental Media and Photography

216

Records Overview

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

217

Records to Review

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

218

Record Review Checklist

- Review 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

219

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.

220

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

221

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

222

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!



223



**Can the evidence
you collect stand up
in a court of law?**



224

Quality Control & Samples

Replicate

Split

Spiked

Preservative

Field Blank

Rinseate Blank

225



226



227



228



229



230



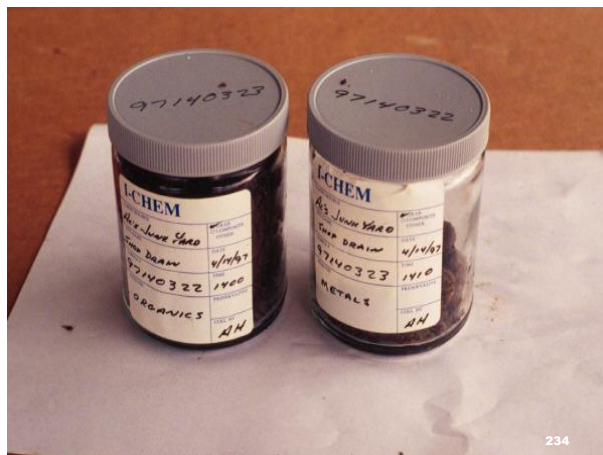
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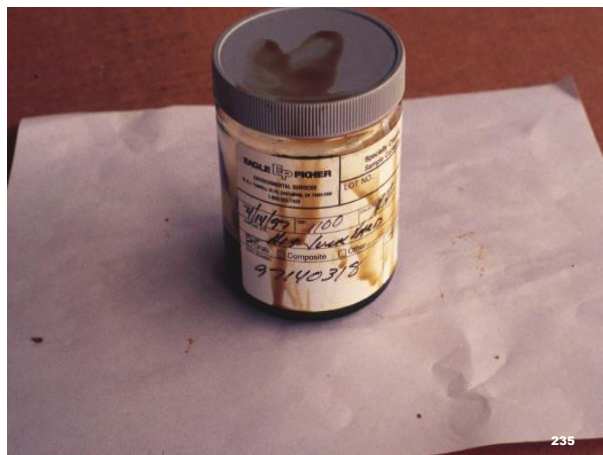
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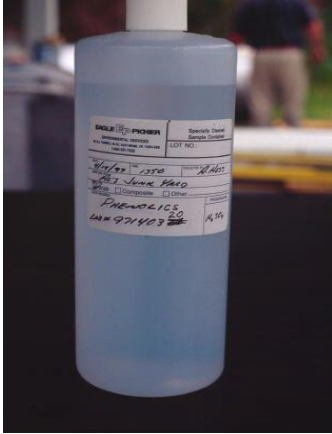
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235



236

Sampling Considerations

- Example sample bottles – check with the laboratory first



237

Sampling Considerations

- Automatic Sampling Devices or Manual Sampling



238

Common Sampling Errors

- Equipment not maintained
- Forgotten equipment
- Misreading monitoring equipment
- Miscalculations
- Mislabeling
- Failure to properly calibrate equipment

239

Project Code: BP040 Station No: 002 Month/Day/Year: 11/10/98 Time: 10:40A Designate: [blank] Comp: [blank] Grab: [checked]

Station Location: Wreck Site on Ship

Analyses: BOD, Aromatics, Solids, TSS, TDS, PCBs, DDT, and others.

Preservative: Yes ☐ No ☒

Signature: G. J. Simpson

240

Project Code: BP040 Station No: 002 Month/Day/Year: 11/10/98 Time: 10:40A Designate: [blank] Comp: [blank] Grab: [checked]

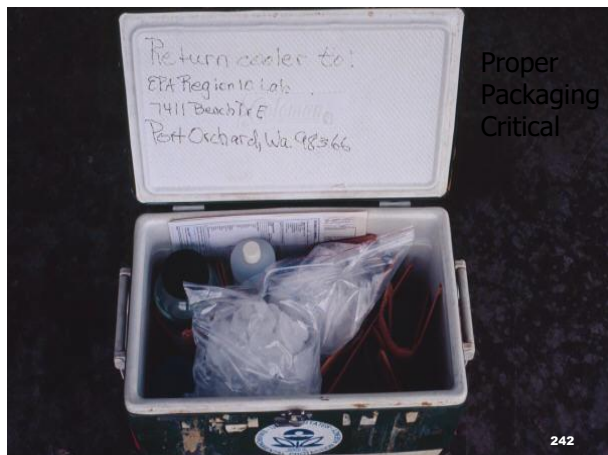
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Preservative: Yes ☐ No ☒

Signature: G. J. Simpson

241



242



Digital Photography

- [EPA Digital Image 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

243

How to Take Representative Photos

1. Take an Establishing Shot
2. Take a Subject Shot
3. Take a Detail Shot

244



245



246



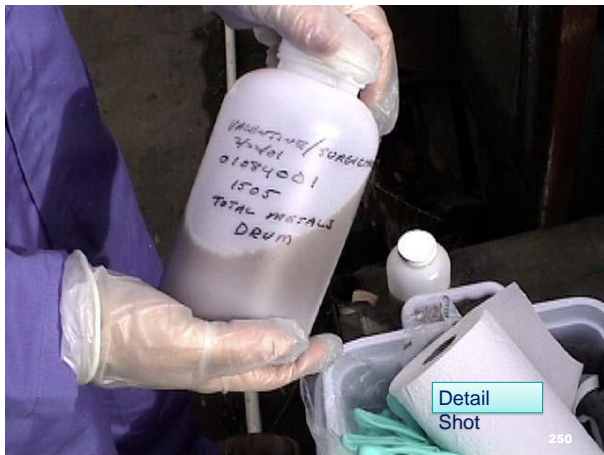
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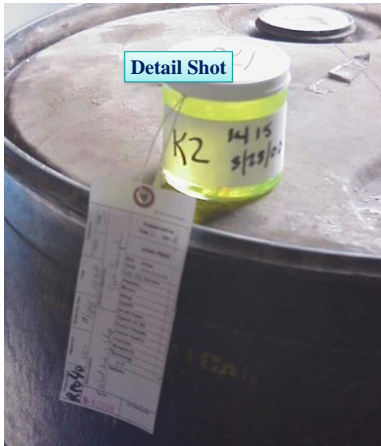
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250



251



252

Videotaping

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

253

Questions?

Need any clarification?

254

CLOSING CONFERENCE

255

Closing Conference

- A closing conference is an integral part of an inspection.
- EPA inspection manuals usually address how to conduct closing conference as do compliance monitoring policies
- Inspectors should end on-site inspections with a closing conference with the owner/operator or designated representatives. But you cannot compel attendance. **(follow State policy)**

256

Closing Conference Preparation

- **Prepare:** review field notes, observations, findings, data and other potential evidence.
- Identify information that the facility agreed to provide but hasn't yet.
- Review to determine if additional information is needed to finalize the field notes so you can prepare inspection report.

257

Closing Conference Preparation

- Ensure you have adequate information to prepare the inspection report.
- Answer Who? What? When? Where? How? and Why?
- Identify any additional data to be requested or questions that need to be addressed.

258

Closing Conference Preparation

- Verify whether all required forms such as Confidential Business Information(CBI), receipts for samples/records, e.g., have been provided to the facility.
- Establish the time and place for the closing conference with the facility and people that should attend.

259

Closing Conference

- Introductions
- Explain purpose: 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.

260

Closing Conference

- Be professional and be polite.
- Begin with identifying need for documents, information, 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.

261

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. **(follow State policy)**

262

Closing Conference

- Share factual observations without any legal conclusions about whether or not there were potential violations. **(follow State policy)**
- If there were no observable deficiencies, the inspector should offer positive **factual** observations "The waste containers that I observed were clearly labeled."

263

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.

264

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 **unless State policy allows**; and
- The appropriate office will review the inspection report and other information to determine if a violation has occurred and the appropriate response.

265

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 make new policy or provide applicability determinations in the field. This probably exceeds your knowledge and authority.

266

Closing Conference

- Provide any additional compliance assistance information, e.g., 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.
- Refer to National Policy on Role of Inspector.

267

Closing Conference

- **IMPORTANT:** 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.

268

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.

269

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.
- Generally you should communicate preliminary inspection observations.

270

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.

271

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.

272

Report Writing



273

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



274

What Should We Improve?

Example: Facility with 10 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?**

275

Understanding 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."

276

Understanding Elements of Proof

- Proving liability in 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.***

277

Understanding Elements of Proof

- Violations lead to penalties
- Penalties are based on many factors

278

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.

279

Enforcement Actions Come Down to the Inspection Report: Choke Point

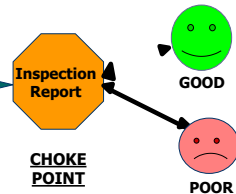
YOUR EFFORTS

- Targeting
- Hotel
- State/EPA Coord.
- Inspection Plan
- File Review
- Car
- Equipment
- Sample Plan

HIGH COST OF INSPECTIONS

- Reg. Review
- Driving Risk
- Documentation
- People Problems- Meetings
- Training
- Site Visit
- Photos

THE RESULTS



280

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, Envirofacts, ECHO, etc.

281

Inspection Report

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



282

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)?
- Follow Agency policies on violation determinations

283

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?

284

Entry and Opening Conference

- 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?

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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?

286

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?

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Inspection Activities – Illustrations and Photographs

- Were photographs taken during the inspection included and properly documented?
- If sketches, diagrams, or maps were used, are they included and do they show the scale or other relationship clearly?

288

Inspection Activities – Interviews

- Are the names and titles of officials of the facility and other personnel who were interviewed included?
- Are their statements clearly summarized?
- Are the names and addresses of any other individuals who were interviewed or who were potential witnesses included?

289

Inspection Activities – Closing Conference

- Is there documentation that facility officials 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?

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Inspection Report Examples - RCRA Inspection Report

EPA Region 10 RCRA Compliance Inspection Report Section A	
Inspection Information	
Facility Name:	Redington Environmental, LLC Tacoma Facility
Facility ID Number:	W42000760
Inspection Date:	December 14, 2009
Inspection Type:	Compliance Evaluation Inspection (CEI)
Inspector:	Jack Boller, RCRA Enforcement Officer Adam Baran, RCRA Enforcement Officer Katie McNabb, Health Studies Inspector
Site Contact Information	
Site Contact Name/Title:	Neil Delaney, Plant Manager EPA Northwest-Pacific Facility Supervisor Risk Policy, Environmental Health and Safety
Site Location Address:	2701 E. Alexander Ave Tacoma, WA 98403
Site Mailing Address:	None
Site Phone Number:	(253) 457-7086
Site Fax Number:	(253) 457-5807
Report Information	
Report Date:	1/13/10
Report Author Name:	Adam Baran
Report Author Signature:	

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Inspection Report Examples - UST Inspection Check List

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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.

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Inspection Report Writing Style

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.

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Inspection Report Writing Style

Paragraphs should be presented in some logical order.

- Sequentially
- Chronologically
- In order of topic importance

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A Good Report Is...

- Timely, written "near in time" to the inspection (generally within 45 days)
- Organized, Clear, Concise and Thorough
- Factual, Technically Correct, Referenced
 - Answers, who, what, when, where, how and why?
 - **Answers how do I know what I know?**

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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?

297

The Enforcement Process

Informal, Administrative, Civil and Criminal Actions

298

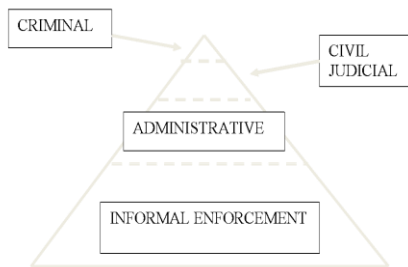
Why Enforcement?

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

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Enforcement Actions

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300

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

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ENVIRONMENTAL VIOLATIONS-CATEGORIES

- Accidents (Administrative, Civil)
- Negligence (Administrative, Civil, Criminal)
- Knowing Behavior (Criminal)

302

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

303

Case specific factors

- Deviation from requirement and length of the 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

304

Other considerations

- Multi-jurisdictions
- Multi-facility
- Has the past type of enforcement response changed behavior?

305

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

306

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

307

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

308

Administrative Enforcement

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

309

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

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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

311

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.

312

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

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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.

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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

315

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

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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.

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Evidence:

- Evidence is the MOST critical component of any enforcement action.
- It is not evidence until the judge says it is evidence.
- If it's relevant, material and competent it will be presented.
- Federal Rules of Evidence versus Consolidated Rules of Practice.
 - "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)

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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.

319

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.

320

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.

321

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"

322

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!

323

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.

324

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/Jury
- Use plain English not jargon
- Present the facts

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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.

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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

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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 . . ."

328

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.

329

Practical Exercise

- Interview Medical Waste Incinerator operator
- Review all the records
- Write an inspection report (1-2 pages)
- Place report on thumb drive

330

Criminal Enforcement

What You Should Know

331

What Makes a Case Criminal?

LYING CHEATING
STEALING

332

Classification of Law

- Civil Law:
Deals with enforcement or protection of private rights
- Criminal Law:
Deals with offenses against society



333

Burden of Proof

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

Honorable Judge Smith

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Liability vs. Guilt

- Civil Law: Liable
- Criminal Law: Guilt

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Culpability

- Civil Law:
 - Intentional Gross Negligence
 - Negligence Strict Liability
- Criminal Law:
 - Justification Mitigating Circumstances Excuse



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The End

- Any Questions About Anything we have said over the past three days?
- Any comments to improve the course

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