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Guide To Effective Inspection Reports For Air Pollution Violations

Prepared By:
Barbara Burton
Entropy Environmentalists, Inc.
Research Triangle Park, North Carolina 27709

Under Subcontract To:
JACA Corporation
550 Pinewood Road
Fort Washington, PA 19034

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EPA Project Manager: John Busik
EPA Work Assignment Manager: Kirk Foster

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INTENDED PURPOSE

This document is issued by the Stationary Source Compliance Division, Office of Air Quality Planning and Standards, U.S. EPA. It is intended for use in technical workshops on compliance inspection procedures presented by agency staff.

This is not an official policy and standards document. The opinions, findings and conclusions are those of the author and not necessarily those of the U.S. Environmental Protection Agency. Every attempt has been made to represent the current state-of-the-art in the subject area, but it is anticipated that changes will be made to the document as information on new or revised inspection procedures become available.

Copies of this guideline are available through the Library Service Office (MD-35), U.S. Environmental Protection Agency, Research Triangle Park, N.C. 27711; or from the Stationary Source Compliance Division Workshop Coordinator (MD-7), at the same address.

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INTRODUCTION

The goal of all air pollution control agencies is to maintain clean air in our communities. A major means of accomplishing this is through the enforcement of existing air pollution control laws and regulations. Inspectors, through carefully documented violation reports and well thought out follow-up actions, are the key to any effective enforcement program.

Air pollution control enforcement programs all have the same goal - to discourage sources from violating regulations, and to return violators to operating in compliance as quickly as possible and with as little expense of time and resources by the agency as possible.

A well written inspection report is the single most important element of any case that ends up in court. It is crucial to an agency's winning court cases. But, more importantly, properly documented violations can prevent most cases from going to court. When the company receives the notice of violation and sees the well-documented violation, it is much less likely to challenge the agency in court than if it appears the agency has a weak case. Having a source understand that a violation has occurred, and that the agency can prove it, is the important first step in moving them towards continuous compliance without the expense and delay involved in contested violations.

If a violation should have to go to court or be appealed administratively, a well-written inspection report is of considerable value to the agency's case. Often, such cases may not be heard until years after the violation occurred. Without complete documentation, no inspector could be expected to accurately reconstruct what happened several years after the violation. The complete inspection report also will help agencies avoid prosecuting (and losing) weak cases. A complete inspection report will prevent some defenses by the violator, such as a later claim of unavoidable process upset or equipment malfunction when the inspector documented another cause of the violation. Finally, while an incomplete inspection report can often be fleshed out by the agency attorney through formal information/data requests and through depositions and subpoenas of the company officials, it is much cheaper and quicker if the inspector gets this critical information during the inspection and documents it in the initial inspection report.

Inspection reports also are important in determining what enforcement action, if any, is appropriate for a given violation. Certainly, a deliberate shutting down of control equipment during an air pollution episode is likely to result in a more severe agency response than a true upset by a company located in a sparsely settled area. As the person on the spot, most closely interacting with the source and with the public, the inspector is in a unique position to evaluate violations and recommend appropriate enforcement actions. A clear,

well-written inspection report documenting the seriousness of the violation and efforts (past and present) of the source to comply will be extremely important in determining what agency action is taken.

Finally, a violation report provides a written record for future action. Some agencies may choose not to pursue a particular violation. Careful documentation in the inspection report is still necessary, however, in case more violations occur and the agency proceeds with enforcement action in the future. The earlier reports, if properly done, can be used to establish a pattern of violations. A well-written inspection report, then, will accomplish the following:

- Encourage timely compliance by convincing the source a violation has occurred and can be proven;
- Minimize agency cost by preventing enforcement actions being challenged by the source;
- Allow the choice of appropriate follow-up action;
- Provide a solid basis for court cases;
- Allow the inspector input into follow-up enforcement actions; and
- Provide a written record for use in future enforcement actions.

This guide was prepared primarily to assist State and local air pollution control agency inspectors. It is not intended to be a general guide to writing inspection reports, but rather focuses specifically on documenting violations found during inspections.

Some agencies may limit the role of the inspector in the enforcement process to on-site fact gatherers. This guide is aimed at the more common agency policy of giving the inspector a major role in determining whether or not a violation occurred, and for making recommendations as to follow-up actions.

REPORT CONTENT

An inspection report describes what actually happened during the inspection. There is no one format for a good report. However, there are certain types of information that must be included:

- Basic background information. This would include such information as the date and time of the inspection, and the name and location of the source.
- Documentation of the violation.
- Mitigating and aggravating factors. This would include such factors as the seriousness of the violation and the past history of the source in complying.
- Recommendation for follow-up action.

The report should be written so that it is clear, concise, but complete. The reader should be able to clearly understand what happened during the inspection. A narrative style is recommended, with complete sentences and paragraphs used. Presenting what happened in chronological order is one way of organizing the report in a logical manner.

The writer must clearly distinguish between what he/she personally observed or measured, what company officials said, and what the inspector concluded based on the information gathered. Personal observations or measurements are preferred and should be documented where possible to support or refute company official's statements.

When quoting or paraphrasing statements by others, the speaker should be identified. Avoid the use of pronouns when the person referred to is not clear.

The length of the violation inspection report will vary depending on the complexity of the violation and source. Two or three type-written pages, not counting attached documents, will be sufficient for many less complex non compliance situations.

In all cases, a professional tone should be used. The language should be reasonably jargon-free, as company officials and attorneys, who are not air pollution control experts, may well read the report. Under no circumstances should "cute", sarcastic, or derogatory language be used in the report. The credibility of the inspector rests largely on his/her professionalism and detachment. Any adversarial tone will greatly diminish the credibility of the inspector in court.

Edwin Dubiel, Assistant Attorney General for the State of California, has best described the goal of an air pollution inspector's report:

"The more thorough and intelligent the form of the report is, the more believable will be its substance. The goal of the inspector's report should be the same as the lawyer's court documents: written not so that persons reading in good faith will understand it, but so that persons reading in bad faith will not misunderstand it."

The content of a good report will be discussed in more detail in the following sections.

BASIC BACKGROUND INFORMATION

Each report should start out with some basic information about the inspection and the source inspected.

- Source identification. Full name of company or individual responsible for the violation and location of source.
- Time. Date and time of inspection.
- Reason for inspection. Routine patrol, response to a complaint, routine annual inspection.
- Proper entry procedures. Credentials presented to responsible company official, purpose of inspection explained.
- Responsible source official contacted. Full name and title.

The actual party or company responsible for the violation will usually be obvious. In some cases it may be difficult to sort out who the responsible party is, but it is important that the inspector get a clear picture of this while on-site if at all possible. For example, an open-burning violation may be caused by a sub-contractor working at a plant site. If the violation is issued to the plant owners, they may challenge this by claiming they were not responsible. Such challenges are common, and much time and expense can be saved by sorting out the responsibility or at least listing all possible responsible parties in the inspection report.

Documenting that proper entry procedures were followed is recommended. Under the Clean Air Act, and many state environmental laws, entry

onto premises for inspections is permitted if proper identification is shown and the purpose of the visit explained. Documenting that this occurred will prevent future disputes over whether the violation documentation was legally obtained.

Two examples of complete background reports are shown in Figure 1.

FIGURE 1

Examples Of Complete Background Information

Example A - Narrative form

"March 31, 1984, I was on routine patrol in the Eastgate area. At 9:35 a.m. I noticed a plume of dense black smoke. I traced it to the Roscoe Company located at 2342 Eastgate Highway in Springfield. At 9:40 a.m. I stopped at the office of Roscoe Company at the above address. I identified myself to the receptionist and requested to speak with the plant manager. The receptionist said he was not in the office, but that Joe Brown, the Environmental Engineer for Roscoe Company, was in. I then met briefly with Mr. Brown and identified myself as representing the Springfield APCD. I also explained that I was there to investigate the thick black plume I had seen. Mr. Brown expressed surprise that there was any smoke. I requested that we go together to see if we could find the cause of the smoke. He agreed, and we then went out into the plant."

Example B - Outline form

Source name: Roscoe Company
Location: 2342 Eastgate Highway, Springfield.
Date: March 31, 1984
Time: First saw plume at 9:35 a.m., entered plant at 9:40 a.m.,
left plant at 11:10 a.m.
Source contact: Joe Brown, Environmental Engineer
Reason for inspection: To investigate dense black plume seen
while on routine patrol in Eastgate
area.

Proper entry procedures followed?: Yes. Credentials presented to Joe Brown, entry permitted by Mr. Brown.

DOCUMENTATION OF VIOLATION

The actual documentation of the violation is the heart of the report. Each regulation that was violated should be listed by number and a full description included of why the inspector thinks the regulation was violated. As in all sections of the report, it is important to distinguish between what was personally observed or measured, what was told by plant personnel, and what was concluded based on other information.

In deciding what information is required in this section, carefully look at the regulation that has been violated. Each section of the regulation must be proved and that no exemptions to the regulation apply. This includes requirements for applicability of the regulation, such as date of installation, location of the source, and type of process equipment.

For example, assume a boiler stack exhaust was read at greater than 20% opacity for six minutes, which is in excess of the rule which only allows three minutes per hour above 20%. However, another section of the regulation allows 20 minutes of excess emissions for boiler start-up. By documenting that the inspector looked at the steam chart and that the steam output was normal and close to the rated capacity during the opacity reading and for one hour before the reading, that exemption was effectively eliminated as a possible defense.

The method used to measure excessive emissions must be fully documented in the report. In almost all cases, standard methods either formally specified by the agency, or using federally approved methods included in the New Source Performance Standards should have been used. Use the method as a checklist to make sure that each requirement of the method was used and documented. For opacity readings, this information is generally included on the opacity form. Figure 2 gives a checklist of required information for opacity readings under the federally approved Method 9. If you have deviated from the approved method in any way, you should document what the deviation is and why you did it. Figure 3 gives a section of an example report that clearly documents a violation.

FIGURE 2

Checklist For Opacity Readings Following Method 9

Required Information

- Name of plant.
- Emission location.
- Type facility.
- Observer's name and affiliation.
- Date and time of reading.
- Estimated distance to the emission location.
- Wind direction and estimated speed.
- Description of sky condition and plume background.
- Opacity observations at 15-second intervals.
- Sun position relative to the observer.
- Presence of steam in the plume, and where the plume was read.

FIGURE 3A

Example Of Complete Violation Documentation

"Attached is the opacity reading I took on the asphalt plant rotary dryer. I followed Method 9 specifications in taking the reading, which showed a six-minute average opacity of 42.7%. This is in excess of Regulation 42.035, which prohibits opacity from an asphalt plant located in Jefferson County and built after July 1, 1971, from exceeding 20% opacity. The plant is located in Jefferson County (3 miles east of Vernon) and was built in 1975 according to the company's permit application dated February 3, 1976."

FIGURE 3B **Visible Emissions Report Form**

VISIBLE EMISSION OBSERVATION FORM

No.

COMPANY NAME <i>Acme Asphalt</i>			OBSERVATION DATE <i>6/23/84</i>		START TIME <i>9:35 am</i>	END TIME <i>9:45 am</i>
STREET ADDRESS <i>1795 River Road</i>			COMMENTS			
CITY <i>near Vernon</i>						
STATE <i>OR</i>	ZIP <i>97000</i>					
PHONE (KEY CONTACT) <i>503-503-5000</i>		SOURCE ID NUMBER <i>13-1442</i>				
PROCESS EQUIPMENT <i>Rotary Dryer</i>		OPERATING MODE <i>70% capacity 250 #/hr</i>				
CONTROL EQUIPMENT <i>Wet Scrubber</i>		OPERATING MODE <i>8" press. drop</i>				
DESCRIBE EMISSION POINT <i>Gray metal stack</i>						
HEIGHT ABOVE GROUND LEVEL <i>30'</i>		HEIGHT RELATIVE TO OBSERVER Start <i>30'</i> End				
DISTANCE FROM OBSERVER Start <i>500'</i> End		DIRECTION FROM OBSERVER Start <i>NW</i> End				
DESCRIBE EMISSIONS Start <i>Whitish dust</i> End						
EMISSION COLOR Start <i>White</i> End		IF WATER DROPLET PLUME Attached <input checked="" type="checkbox"/> Detached <input type="checkbox"/>				
POINT IN THE PLUME AT WHICH OPACITY WAS DETERMINED Start <i>20' from stack exit</i> End						
DESCRIBE PLUME BACKGROUND Start <i>Green trees</i> End						
BACKGROUND COLOR Start <i>Green (plant)</i> End		SKY CONDITIONS Start <i>Clear</i> End				
WIND SPEED Start <i>3-5 mph</i> End		WIND DIRECTION Start <i>from SW</i> End				
AMBIENT TEMP Start <i>75°</i> End		WET BULB TEMP <i>55°</i>		RH, percent <i>26%</i>		
<div style="display: flex; align-items: flex-start;"> <div style="margin-right: 10px;"> Stack with Plume Sun Wind </div> <div> <p align="center">SOURCE LAYOUT SKETCH</p> <p align="right">Draw North Arrow </p> </div> </div>						
OBSERVER'S NAME (PRINT) <i>Joyce Green</i>						
OBSERVER'S SIGNATURE <i>Joyce Green</i>					DATE <i>6/23/84</i>	
ORGANIZATION <i>Salem APCD</i>						
CERTIFIED BY <i>State Agency</i>					DATE <i>4/2/84</i>	
CONTINUED ON VEO FORM NUMBER						

WHY THE VIOLATION OCCURRED

Answering this one question is often the most difficult part of the inspection and report, as well as being one of the most important parts of the report. An accurate determination of the cause of the excess emissions will:

- Help determine whether or not enforcement action is taken, and if so, what type of action.
- Help in evaluating the reasonableness and timeliness of corrective action by the violator.
- Help ensure that corrective actions will prevent recurring, similar violations.

The causes of emission violations can range from a deliberate shutting off of control devices to a genuine, unavoidable mechanical breakdown. In all cases, a distinction must be made in the report between what the inspector was told by source personnel, what he/she observed, and what he/she concluded based on available information. Direct observations are the best evidence and should be documented in the report even if source officials admit to a specific cause for the upset.

Any and all relevant information regarding the possible cause of the violation should be included in the report. Such information could include: production rates (as seen in logs or on charts), unusual appearance of raw materials or final products, unusual plume appearance, air pollution control equipment operating gauge readings,

unusual appearance of the control or process equipment, maintenance records, purchase orders for repairs to be done, unusual sounds or vibrations in process or control equipment, and so on.

Of particular concern will be documentation regarding the possibility of an upset or other exempt activity. Most states will allow excessive emissions under certain limited conditions, including a truly unavoidable upset, during necessary control equipment repair, and sometimes during start-up or shut-down. Sources will often claim this exemption. The rules and definitions regarding such exemptions should be read carefully by the inspector, prior to writing the report, if they are not already known, and should be used as a guide in determining what is relevant to include. If excessive emissions are allowed only during truly unavoidable upsets, then include any information that will either prove or disprove a true upset.

Figure 4 is a section from an example report illustrating incomplete information, plus an analysis of why it is incomplete. Figure 5 shows an example of a more complete report section on the cause of the violation.

FIGURE 4

Example Of Incomplete Description Of The Cause Of Violation

Example

"After recording the attached opacity reading, I then spoke with the boiler operator. The cause of the excess emissions was an unavoidable upset."

Problems

The above description is obviously incomplete. Was the inspector's finding based on his/her own observations? A guess? A quote from the unidentified boiler operator? What was the "unavoidable upset" - a stuck damper, poor fuel quality, wide swings in steam demand? What did the inspector see, what specifically did the boiler operator say? Figure 5 gives a much better example of complete reporting.

FIGURE 5

Example of Complete Description Of The Cause Of Violation

"After recording the attached opacity reading, I then spoke with the boiler operator, Sam Jones. He said the cause of the heavy smoke was an upset. I asked him what caused the upset. He said the company had received a load of "off-spec" coal that contained too many fines. He also said the coal would be used up by the following week.

I then observed the outside coal pile. There were a lot of coal fines seen in the area around the pile, in some cases as deep as two inches. I saw about one inch of coal dust blown up against the boiler house, which is located about 50 feet from the nearest edge of the coal pile. This was much more coal dust than I have seen at this source before.

I then went back into the boiler house and asked Mr. Jones what the steaming rate had been for the last two hours. He pointed to a chart labeled "Steam Rate". I read the steam chart for the time period of 10:00 - 11:15 a.m. at 155,000 to 160,000 pounds/hour steam. This is well above the rated capacity of 140,000 pounds/hour that is in the operating permit for the boiler.

Regulation 27 provides an exemption for excess emissions for malfunctions, but only when "the malfunction could not reasonably

have been prevented". Regulation 27 also requires that the Department be notified within one hour of malfunctions resulting in excess emissions. No notification was received in the office. In my opinion, the excessive emissions were caused by the extra coal fines, or the higher than permitted steaming rate, or both.¹

¹In some agencies, there may be a policy limiting the role of the inspector from making conclusions as to violations and causes of violations. These conclusions are made by enforcement specialists, rather than the inspector. In such cases, all the above information except for the last sentence should be included in the report.

OTHER MITIGATING AND AGGRAVATING FACTORS

Once a violation is documented, there are a number of factors used by most agencies in deciding what, if any, enforcement action is taken. The inspection report should include information to assist in this decision.

Seriousness Of Violation

The seriousness of the violation will be important in deciding possible agency follow-up:

- How much was emitted? Could you see the plume two miles away? Was there an inch of fall-out on a neighbor's property? Were there in-stack monitors showing only a minimal violation?
- How long did the excess emissions last? Do complainants report seeing the black cloud for two weeks? Does the in-stack monitor chart show a violation for only two minutes in the last month? Does the production log show above average production for the last week? Did plant personnel say the scrubber has been down for repairs for the last two days? Did the excess visible emissions last for your entire inspection?
- Location? Is the plant located three miles from the nearest home? In the middle of a non-attainment area? A block from a hospital?
- Type of emissions? Were the emissions highly toxic, hazardous? Large particles causing fall-out nuisance? Odors causing a nuisance?
- Perceived public impact? Did the agency receive 20 complaints? No complaints? Did the local hospital notify you of numerous patients suffering from respiratory problems linked to the excess emissions?

Efforts To Correct The Violation

The inspection report should document the source's efforts to correct the violation, if known to the inspector, at the time of writing the report. Included should be any efforts taken by the source to correct the violation during the inspection. Were these efforts underway when the inspector arrived? Only after the agency car was seen? Did the efforts seem reasonable and appropriate? Did responsible company officials promise to correct the violation, and if so, when and how?

For any company communication after the inspection, a separate memo may be desirable. The inspector may wish to reference such information in the initial inspection report.

Ease Of Complying

The ease of complying obviously is tied into the cause of the violation. Most agencies and judges will be much more sympathetic with a source having made a good faith effort to comply with a tough standard with new technology that failed, than with a source that tried to save money by turning down the power to an ESP. The major factors here would be:

- Availability of technology
- Cost of complying
- Disruption of production
- Time required to correct the violation

Past Violations

For many agencies, deterring future violations is at least as important as correcting current ones. The past history of a violator is important in deciding what type of enforcement action is most appropriate in gaining future compliance.

- How many violations have been documented?
- What were the violations? Were they similar to the one documented in the inspection report?
- What was the probable cause of the violations? Negligence, lack of maintenance, genuine upset?
- What corrective actions were taken for past violations?

Figure 6 is an example of a complete (but brief) discussion of relevant mitigating and aggravating factors.

FIGURE 6

Example Report Segment On Mitigating And Aggravating Factors

"I saw the smoke plume from approximately two miles away. The excess emissions were observed for the entire time period I was within sight of the stack (9:35 a.m. to 11:40 a.m. on October 23, 1984). The production log that I looked at on October 23 showed production rates in excess of the 43,000 #/hour allowed in their permit starting at 8:00 a.m. on October 19, 1984 and continuing on to the last entry at 10:00 a.m. on October 23. These hourly production rates varied from 44,000 #/hour at 8:00 a.m. on October 19 to 57,000 #/hour at 10:00 a.m. on October 23.

"The plant is located in a remote area, with the nearest residence over a mile from the plant. No complaints have been received by this office.

"This is the third violation recorded this year for opacity violations from the kiln. On all three occasions, the cause of the excess emissions appeared to be production rates above the permitted values. The company has reduced production rates when notified of violations but have returned to the higher production rates.

CONCLUSIONS AND RECOMMENDATIONS

Some agencies, including EPA, may have a policy of limiting the role of the inspector to strictly an information gatherer. Conclusions as to whether or not a violation occurred and the cause of the violation may be made by specialists in the enforcement section of the agency, rather than by the inspector. In such cases, the inspector will still be required to gather the necessary information to help others draw conclusions and make recommendations as to follow-up actions. For inspectors working in these agencies, the section on conclusions and recommendations should be deleted.

Most agencies, however, assign the inspector a much broader role in the enforcement process. The conclusions as to whether or not a violation occurred, the cause, and evaluating other mitigating or aggravating factors, all are part of the inspector's report. Recommendations by the inspector as to follow-up action are also important, although the actual follow-up action may finally be decided by senior agency officials in conformance with overall agency goals and agency responses to other violations. As in all portions of the report, the inspector should take care to maintain an impartial, professional tone in making the recommendations for agency follow-up.

PHOTOGRAPHS

Photographs are desirable and can be very convincing, particularly if the violation is taken to court. In any adversary procedures, the violator's attorney will attempt to discredit the inspector's testimony as being inaccurate, false, or exaggerated. A picture of a black plume reaching into the sky is hard for defense counsel to explain away, however.

There are two major requirements for photographs presented in court - they must be relevant, and they must be representative of what the inspector or other observers saw. Photos taken at unusual angles or with special lenses or filters that distort the perspective should not be used.

Each photo should be identified as to picture content, date and time shot, angle shot from, and anything of special interest to the viewer. If a visible plume is shown and is of particular interest, the approximate sun angle should be given.

Film should be processed with each roll kept separate, and preferably be returned from the processor uncut. This will ensure that the inspector will be able to match each picture with the inspector's notes or photography log prepared at the time each picture was taken. When the photos are cut, each should be labeled on the back with date, time, and picture content.

A sketch of the plant site with major features identified can be useful in describing the location of the photographer in relation to the objects pictured, as well as helping to eliminate any confusion over exactly which equipment is involved in the violation. Plot diagrams are also very useful in future inspections to track changes in plant operations and equipment.

CONFIDENTIAL BUSINESS INFORMATION OR TRADE SECRETS

Some information gathered by the inspector may be sensitive in nature and the source may request it be kept confidential and not be made available to the public. Such information could include secret industrial processes, production rates, and annual sales figures.

There are two conflicting rights involved - the right of the company to withhold certain business secrets from the public, and the right of the public to know certain information that directly relates to the emissions from a facility. For data gathered by EPA personnel, the criteria for use in deciding whether or not a claim of confidential business information is valid is included in Figure 7. Information that cannot be withheld from the public under federal law includes any information dealing with "emission data", and a general description of the location and nature of the source of emissions. "Emission data" would include process rates and a description of the process, both of which are used in estimating emissions.

Many states also have laws regarding confidential business information. Such laws will generally include a definition of information that is to be considered confidential, a procedure for claiming and determining confidentiality, and penalties for state employees who improperly disclose confidential business information.

The inspector has the obligation to ensure that confidential information be kept securely, until the information is turned over to the agency records section. The information should either be in the possession of the inspector or locked up at all times.

It is recommended that information claimed to be confidential be excluded from the inspector's report if possible. If the information is important, the best procedure is to refer to it in the main inspection report, but keep the confidential information separate. The entire inspection report will be labeled "confidential" if any portion of it is confidential. All materials, including inspection reports, that contain any confidential information must be securely stored, generally in separate locked filing cabinets.

In general, the inspection report should not include sensitive data unless necessary and relevant to the violation. Agency Counsel should be consulted if the source is claiming confidentiality.

FIGURE 7

Confidential Business Information Federal Requirements

Criteria For Use In Confidentiality Determinations: ¹

1. Claim for confidentiality properly filed by company; and
2. Company shows it has taken "reasonable measures" to protect the confidentiality of the information, and will continue to do so; and
3. The information is not reasonably obtainable by use of legitimate means, except by other governmental agencies or by court action; and
4. No statute specifically requires disclosure; and

Either

1. Company has shown that the disclosure will cause substantial harm to the company's competitive position; or
2. Information was voluntarily submitted and disclosure would likely impair the government's ability to obtain future information.

Information That Is Exempt From Confidentiality ²

1. Emission data - any information that is necessary to determine the identity, amount, frequency, concentration, or other characteristics of the emissions (including a description of the manner or rate of operation of the source); and
2. General description of the location and/or nature of the emission source.

¹ 40 CFR § 2.208

² 40 CFR § 2.301

CHECKLIST FOR A COMPLETE REPORT

A complete report must contain, at a minimum, basic identifying information (name of source, date, etc.) plus the documentation of the violation, and should contain other information on the mitigating or aggravating factors involved and the inspector's recommendations. Figure 8 lists in outline form the information necessary for a complete violation report.

While this outline might indicate a lengthy report, in fact most violation reports will not need to be over two or three pages. Figure 9 contains an example of a complete report. Appendix A includes an example of an incomplete report, a discussion of why it is incomplete, and a revised complete report.

FIGURE 8

Checklist For A Complete Violation Report

- I. Basic Background Information**
 - A. Name and location of source.
 - B. Name and title of responsible official contacted.
 - C. Date and time of inspection.
 - D. Why the inspection occurred (response to complaint, routine annual inspection).
 - E. Document that proper entry procedures were followed.
- II. Documentation of Violation**
 - A. Cite regulation violated.
 - B. Document all information that proves the violation occurred, using the elements of the rule as a guide.
 - C. Document method of determining violation occurred, including any deviations from the standard method.
 - D. Document all information that proves the cited regulation applies to the source.
 - E. Document that possible exemptions do not apply.
- III. Cause of Violation**
 - A. Document all information regarding the possible cause of the violation.
 - 1. Direct observations - control device guage readings, production logs, physical appearance of materials, physical appearance of process and/or control equipment.
 - 2. Statement by source personnel.
 - B. Document supporting information confirming/disproving possible claim of upset or other exempt activity.
- IV. Other Mitigating and Aggravating Factors**
 - A. Seriousness of violation - amount of emissions, length of time of excess emissions, nature of emissions, location of source, perceived public impact.
 - B. Efforts to correct the violation - during the inspection and immediately after.
 - C. Ease of complying - availability of technology, cost of complying, time required to correct the violation.
 - D. Past violations - number, type, efforts to correct violations.
- V. Recommendations and Conclusions**

FIGURE 9

Example Report

June 25, 1984

MEMO

TO: Marilyn Seymour, Supervisor of Compliance Division
FROM: John Brown, Environmental Specialist
SUBJECT: Inspection of ABC Pulp Mill on June 24, 1984

On June 24, 1984 I observed what appeared to be excessive emissions from hogged fuel boiler #1 at the above facility (located at 2342 Evergreen Blvd., Evergreen) at approximately 11:30 a.m. as I was on routine patrol in the area. I stopped and took the attached opacity reading. This reading was taken off the facility premises, across Evergreen Boulevard, starting at 11:35 a.m.

The plume was read after the steam dissipated, approximately fifty feet from the stack exit. There were no interfering plumes during the reading. All requirements of State Method 3 for opacity were met.

After completing the reading, I stopped by the mill office and spoke with Ron Grey, the company's chief environmental engineer. I presented my credentials and showed him the reading and said that the values I recorded were in excess of the 40% opacity allowed under Regulation 42. He said he was not aware that the boiler was smoking but that he would attempt to find out what the problem was.

The two of us then proceeded to boiler house, where we spoke with George Smith, the boiler operator on duty. Mr. Smith said that the company had received several loads of wet fuel the week before, and that he expected it would take several more days before all the wet fuel was used up. I observed the fuel. There appeared to be more wet sawdust in it than I have seen before. It was wet to the touch when I picked up a handful.

I then examined the opacity meter and steam meter. The opacity meter was reading "zero". Mr. Smith said he did not know how long it had been out of operation. The steam meter showed 152,000 pounds per hour of steam at 12:10 p.m. This is in excess of the 140,000 pounds per hour steam allowed in the facility's operating permit.

I told Mr. Grey that the facility's operating permit only allowed operation at or below 140,000 pounds per hour. Mr. Grey said that the mill was operating at full capacity and needed the extra steam. I said that he would have to apply for a permit modification, but that in all likelihood we would not approve it unless the company could demonstrate compliance with opacity and mass emission limits while operating at the higher steaming rate. I also told Mr. Grey that the company was responsible for operating within the emission

regulations at all times. Mr. Grey said he would have to check with his supervisor in Seattle as to what the company would do next. He said he could not make the decision to reduce the steaming rate or stop using the wet fuel.

I also informed Mr. Grey that his company is required to operate and maintain the opacity meter at all times under the operating permit. He said he would get it fixed as soon as possible. I left the plant site at 1:35 p.m.

There was no report of upset or malfunction recorded in our office from the company as of the time of writing this report (3:30 p.m., June 24, 1984).

This facility is located about 1/4 mile from a small sub-division. We have received several complaints over the last year but received none on June 24. The wind was blowing away from the sub-division at the time of the inspection.

Recommendations and Conclusions

The excess emissions were in violation of Regulation 42. The steaming rate observed was in violation of permit condition 3. The opacity

Memo
John Brown
Page 4

meter not working was in violation to permit condition 6a. Both permit violations were in violation of Regulation 15, which requires that permit holders comply with all conditions of their permits at all times.

In my opinion, the cause of the excess emissions was the wet fuel, the high steaming rate, or both. This is the third time this year that ABC Pulp Mill has been in violation of emission limits and permit conditions. I recommend that a \$500.00 fine be issued and that we schedule an office conference to get a commitment from the company to operate within the permit limits and discuss any problems they may have in achieving continuous compliance.

Attachment
JB/br

FIGURE 9 **Visible Emissions Report Form**

VISIBLE EMISSION OBSERVATION FORM

No.

COMPANY NAME ABC Pulp Mill			OBSERVATION DATE 6/24/83		START TIME 11:35 am	END TIME 11:50 am
STREET ADDRESS Evergreen Boulevard			COMMENTS			
CITY Evergreen STATE WA ZIP 99000						
PHONE (KEY CONTACT) 509-468-5000		SOURCE ID NUMBER _____				
PROCESS EQUIPMENT Hogged fuel blr #1		OPERATING MODE Burning wet sawdust				
CONTROL EQUIPMENT Multiclone		OPERATING MODE _____				
DESCRIBE EMISSION POINT Black Metal Stack						
HEIGHT ABOVE GROUND LEVEL 75'		HEIGHT RELATIVE TO OBSERVER Start 75' End _____				
DISTANCE FROM OBSERVER Start 1000' End Same		DIRECTION FROM OBSERVER Start N End Same				
DESCRIBE EMISSIONS Start White wood smoke End _____						
EMISSION COLOR Start White End _____		IF WATER DROPLET PLUME Attached <input checked="" type="checkbox"/> Detached <input type="checkbox"/>				
POINT IN THE PLUME AT WHICH OPACITY WAS DETERMINED Start 50' from stack exit End _____						
DESCRIBE PLUME BACKGROUND Start Green Hills End Same						
BACKGROUND COLOR Start meson End Same		SKY CONDITIONS Start 0% clouds End Same				
WIND SPEED Start 3-5 mph End Same		WIND DIRECTION Start from W End Same				
AMBIENT TEMP Start 75°F End _____		WET BULB TEMP 55°F		RH, percent 26%		
<div style="display: flex; align-items: flex-start;"> <div style="margin-right: 10px;"> Sketch with Plume Sun Wind </div> <div> <p align="center">SOURCE LAYOUT SKETCH</p> <p>The sketch shows an emission point at the top, with a plume extending to the right. A vertical line indicates the distance from the emission point to the observer's position, labeled '1000''. The observer's position is marked with a dot. A horizontal line represents 'Evergreen Blvd'. A dashed line from the observer's position indicates the 'Sun Location Line' at a 140° angle. A north arrow is shown in the top right corner.</p> </div> </div>						
OBSERVER'S NAME (PRINT) Jane Brown						
OBSERVER'S SIGNATURE <i>Jane Brown</i>					DATE 6/29/83	
ORGANIZATION Evergreen Air Pollution Control Agency						
CERTIFIED BY Washington State Agency					DATE 3/28/83	
CONTINUED ON VEO FORM NUMBER _____						

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APPENDIX A

APPENDIX A

A DISCUSSION OF REPORT WRITING TECHNIQUES

Prepared by

WILLIAM A. O'MALLEY
District Attorney

and

ROBERT D. BLASIER, JR.
Deputy District Attorney
Contra Costa County

Prepared for

The Bay Area Air Pollution Control District

July 3, 1974

INTRODUCTION

This memo discusses the writing of reports by an inspector upon completion of the investigation of a reported violation of district regulations. There is always the possibility that a particular violation will be the subject of a court hearing at some later time. For this reason it is vitally important that the report be thorough, complete and detailed in its description of the violation. As will be discussed below, having an adequate report is also extremely helpful in processing violations that don't go through the court process.

This package of materials contains the following:

1. a sample notice of violation;
2. a critique of that notice discussing what information should have been included;
3. a rewritten notice;
4. a discussion of the reasons why a report should contain the information discussed;
5. legal principles that an inspector should be aware of; and
6. a check list of information which should be contained in every report.

SAMPLE NOTICE OF VIOLATION

Date of Violation: July 4, 1974 at 0100 hours

Location of Violation: The Ace Auto Wreckers Yard,
222 First Street, Richmond, California

Nature of Violation: Open fire in violation of Regulation 1
consisting of gasoline and gasoline tank

Issued to: George Peterson, Owner

Issuing Inspector: Jane Robinson

INSPECTOR'S REPORT

- I. Introduction: While on routine patrol on July 4, 1974, R/I noted dense smoke coming from the Ace Auto Wreckers Yark on First Street in Richmond, California
- II. Observations: R/I proceeded to the above location and observed an open fire in a gasoline tank of an auto which was being wrecked. R/I contacted the owner, Mr. George Peterson for an explanation of the cause of ignition.
- III. Statements: Mr. Peterson stated that an employee was removing a gasoline tank from an auto while another employee was cutting on the front of the same vehicle with a cutting torch. A spark from the cutting torch ignited the contents of the gas tank. The fire suppression equipment was inadequate, consisting of a one-inch water hose too short to reach the burning auto.
- IV. Recommendations, Opinion, Conclusions: In R/I's opinion Mr. Peterson was negligent in that the gas tank was not removed from the auto before torch cutting began. Additionally, fire suppression equipment was inadequate. R/I recommends a Health and Safety Code 24361 complaint by the local district attorney.

CRITIQUE OF SAMPLE NOTICE

Anyone reading the sample notice would have a good general idea of what occurred at the Ace Auto Wrecking Yard on July 4, 1974 at 1:00 PM. However, a great deal of very important information does not appear in the report.

The following is a list of criticisms and recommendations for additional information which should have been included within the report. Some of the information may not be important at the time the notice is issued but could assume a great deal of importance at a later date.

1. The report states that Inspector Robinson, on routine patrol, became aware of the fire when he observed dense black smoke. The report fails to state the specific time and location of Inspector Robinson when this first observation was made. Whether Inspector Robinson was one block away from the fire when she first observed it or several miles would help in determining the size and intensity of the fire. Her time of first observation relative to the time he arrived at the scene would also give some indication of the duration of the fire.
2. The report should contain some statement regarding the density and color of the smoke, and the size of the plume when it was first observed. These same parameters should also be noted at the time the inspector arrives upon the scene. This would help to determine whether or not efforts had been made to put out the fire prior to the inspector's arrival, or if the arrival of the inspector prompted the fire prevention steps.
3. We are told in the report that upon arrival Inspector Robinson observed a fire in a gasoline tank of an auto which was being wrecked. A more specific description of the fire at this point would be helpful. Were actual flames observed or was only smoke observed? What is the physical layout of the lot and at what location did the fire start? Were there other vehicles in the vicinity? Was there a possibility of the fire spreading?
4. There is nothing in the report stating what efforts were made to put out the fire by anyone on the scene. For instance, at the time of the inspector's arrival, was the fire burning freely or were the employees attempting to put the fire out? Was the fire department called?
5. It might be helpful at a later time to know what kind of vehicle was on fire and what condition the vehicle was in. For instance, was it on its side, upside down, or right side

up? Were the upholstery and other flammable items still in the vehicle or had they been removed? If the fire was burning freely and the upholstery and other flammable items were still in the vehicle it might be argued that the owner was intentionally burning the vehicle as a short cut to the wrecking procedure. This information might also help to negate a claim by the owner at a later date that he always removes flammable items and gas tanks from the vehicles except in this one instance where an employee forgot to remove the gas tank from the vehicle.

6. The report does not indicate that any pictures of the fire were taken. Pictures substantiating the inspector's observations are vitally important in this type of case. It is much more difficult for an owner or defendant to convince someone (a jury for example) that a picture is incorrect as opposed to convincing someone that the inspector's observations were incorrect or his memory is hazy or he is not telling the truth. Pictures taken with a simple Instamatic camera would be adequate. Pictures should have been taken when the fire was first observed by the inspector as well as when the inspector arrived on the scene. It would be helpful to have pictures showing the lack of adequate fire fighting equipment if that is possible.
7. Inspector Robinson states that the owner, Mr. Peterson was "contacted". He does not state where Mr. Peterson was contacted. Was he in a building on the other side of the lot or was he standing next to the fire? Did he drive into the lot after the inspector? It is vitally important in determining whether or not the owner was aware of the fire or whether or not he intentionally started the fire to determine exactly where he was at all times during the course of the fire. Any information showing what knowledge the owner had of the fire prior to being contacted by the inspector is important.
8. The report states that Mr. Peterson is the "owner" of the lot. The report does not state how the inspector knows this. It does not state whether Mr. Peterson is the sole owner of the lot, whether or not it is a corporation, who other partners might be, etc. This information is helpful in determining who should eventually be held responsible for the fire.
9. Inspector Robinson tells us the owner stated that two employees had been working on the vehicle. The report fails to identify those two employees. If their names and addresses had been listed in the report it would be much easier to contact them at a later date to obtain their version of the incident, if necessary.

10. The report gives only a conclusion as to how the fire started, namely by a spark from the torch. It doesn't describe the circumstances of ignition. For instance, who had the torch when the fire started? Where was the torch in relation to the gas tank? Where was the second employee when the fire started, where was the owner when the fire started? It is important that specific facts and specific descriptions be included as to the fire itself.
11. One of the most important considerations in determining how the violation should be processed is what fire fighting and fire prevention facilities were available to the lot owner. Additionally, what steps were taken to put out the specific fire in question. The only reference in the report to this aspect of the case is that there was a one-inch hose that did not reach the area of the fire. It would be helpful to know how long that hose was and how far away from the fire it was. Also, the inspector might have turned on the hose to determine whether or not there was any water pressure in the hose. The owner might claim at a later time that there was another available nearby that could have been used. If the inspector had determined that there was no water pressure in that outlet, the owner's explanation would be somewhat discredited.
12. The report does not indicate whether the inspector checked the area for other fire fighting equipment. There should be a specific statement that the inspector looked around and did not observe any fire extinguishers or water or other fire fighting equipment within the area.
13. The report should recite in detail what steps were taken to put out the fire. It would make quite a difference if, upon the inspector's arrival, the fire was vigorously being fought by the fire department as opposed to burning freely with little or no effort to extinguish until the inspector requested that the fire be put out.
14. Although Inspector Peterson gives the owner's explanation for the fire, she does not state specifically what the owner said. The report should contain, to the greatest extent practical, the exact statements made by the people at the scene. This may help to overcome a later claim by the owner that the inspector misunderstood him. The circumstances under which statements were made are also important. As will be discussed shortly, it could make a great deal of difference whether the statement about the origin of the fire was made by the owner in response to a general question from the inspector upon arrival at the scene or if the response was made after the inspector had been at the scene awhile and specifically sought out the owner and questioned him directly.

It is very important that the inspector make notes of his observations as soon after the events as practical. The notes should be made in a form so that the inspector can refer back to them at a later time and reconstruct what occurred. The inspector may be called upon at a much later time and asked to state specifically what occurred during a particular violation. For instance, the violation at the Ace Yard might be the first fire ever occurring at that location. However, three years from now, after the 20th fire, formal action might be initiated. At this later time it might be necessary for the inspectors involved in the first 20 fires to be able to describe those fires in order to show a pattern of conduct on the part of the lot owner. Thus, what may seem like a minor incident at the time could assume greater importance at a later date.

Following is a revised sample notice describing the same incident at the Ace Auto Wrecking Yard. The revised notice incorporates much of the information discussed above, enabling the officials who must determine what, if any, further action should be taken to make a much more well informed and considered decision.

REVISED SAMPLE NOTICE

Date of Violation: July 4, 1974, at 0100 hours

Location of Violation: The Ace Auto Wrecking Yard,
222 First Street, Richmond, California

Nature of Violation: Open fire in violation of Regulation
I consisting of gasoline and gasoline tank

Issued to: George Peterson sole owner of the wrecking
yard

Issuing Inspector: Jane Robinson

INSPECTOR'S REPORT

- I. Introduction: At 12:35 PM on July 4, 1974 while on routine patrol at 23d and Macdonald in Richmond, R/I noted a dense smoke coming from the north Richmond wrecking yard area. A narrow plume of dense, black smoke appeared to extend several hundred feet into the air.
- II. Observations: R/I proceeded in the direction of the smoke and traced source to the "Ace Auto Wrecking Yard" at 222 First Street, Richmond California. R/I arrived at that location at 0100 hours and observed that the plume of smoke continued to extend several hundred feet into the air and had not appeared to diminish in density or height. As R/I approached the wrecking yard two male adults were observed near the burning vehicle. One of the males had a cutting torch and was working on the front left portion of the vehicle. Upon pulling into the driveway of the lot in R/I's blue State vehicle (with the State seal on each door), the male with the the cutting torch was observed to extinguish the torch and both men walked away from the area of the fire in the opposite direction from R/I.

When R/I first arrived at the scene, the entire vehicle appeared to be giving off dense black smoke. Some flames (approximately one foot high) were observed in the area of the gas tank.

R/I approached the male who had been operating the cutting torch (later identified as Frank Fitzgerald and asked him "how did the fire get started?" Mr. Fitzgerald stated "you'd better ask the boss, he was here but walked into the office when you drove up." R/I went to the office, which was located approximately 50 feet north of the burning vehicle and located a Mr. George Peterson in the office. R/I asked Mr. Peterson

how the fire got started. Mr. Peterson stated "Frank (Frank Fitzgerald) was cutting up the car and Tom (later identified as Thomas Brown) was pulling the gas tank and the fire just somehow started. Nothing unusual, it happens all the time."

Upon R/I's request, Mr. Peterson ordered Mr. Brown and Mr. Fitzgerald to put out the fire with buckets of water obtained from a faucet on a wash basin in the back of the office. The car was extinguished at approximately 1:30 PM after numerous buckets of water had been thrown on the fire for a period of about 15 minutes. The fire department was not called as there was little chance the fire would spread. The area within 50 feet of the burning vehicle was clear.

R/I asked Mr. Peterson why no effort had been taken to put out the fire until R/I requested it. Peterson stated "we usually just let the cars burn out unless you guys come around. It's much quicker than stripping the vehicle by hand".

After the fire was extinguished R/I observed that the vehicle that had been burning was a 1955 Edsel which had been turned on its right side with the bottom of the vehicle facing the driveway entrance to the yard. The seats and upholstery and other flammable materials had been removed from the vehicle.

R/I examined the yard for fire fighting equipment and observed one one-inch hose approximately 20 feet in length connected to a faucet approximately 100 feet from the scene of the fire. R/I checked the water in the faucet and determined that the water pressure in the hose was extremely low. There were no fire extinguishers or any other fire fighting equipment in evidence on the lot.

- III. Witnesses: 1) Inspector Jane Robinson
939 Ellis Street
San Francisco, California
771-6000
- George Peterson
222 First Street
Richmond, California
233-7060
- Thomas Brown
#4 Sutton Place
Lafayette, California 784-3332

III. Witnesses (continued)

- 4) Frank Fitzgerwald
Room 38, Hotel Don
Richmond, California
233-8410

IV. Additional Evidence: R/I took the following Instamatic photographs:

- 1) photograph of plume from 23D and Macdonald when smoke first observed;
- 2) photograph of fire taken upon arrival at the yard; and
- 3) photograph taken while employees were extinguishing fire with buckets of water.

An overhead sketch of the yard showing the location of the fire is attached to R/I's report. The photographs will be processed upon request.

- V. Conclusions and Recommendations: Based on R/I's observations and statements made by the employees and the owner, Mr. Peterson, it is R/I's opinion that the fire was most likely intentionally set in order to expedite the stripping of the vehicle and that no effort was made to put out the fire until R/I arrived on the scene. Further, there was inadequate fire fighting equipment at the location to handle any possible fires. R/I recommends that the case be referred to the district attorney's office for further action.

COMMENTARY ON REVISED REPORT

The revised report is obviously longer than the original report and would take more time and care to compose. However, there are a great number of reasons why this extra care should be taken if at all possible.

Although only a small percentage of violations ever come to court, there are numerous reasons other than court preparation for having clear, complete and detailed reports. Actually, the better the report is written the better the chance that the case can be disposed of to the district's satisfaction without a court proceeding.

For instance, when the responsible party is given a copy of the citation and report and asked to respond, in many cases he will present that report to a private attorney and request advice. If the report is thoroughly prepared and complete and shows that a violation clearly occurred, the attorney is much more likely to recommend that the party cooperate with the district and accept the recommendations that might be made. If it looks from the report that a court case would be weak at best or difficult to prove because the information is sketchy and incomplete then the attorney is more likely to recommend that the responsible party contest the citation.

Prior to any court action, the report inspector's superiors must make a decision as to what to do as a result of the particular violation. The only information they have about what occurred may be the inspector's report. If that report is complete and clear, your superior is in a much better position to make a correct assessment of what should be done in the way of processing the citation.

One of the best reasons for taking the extra time to compose a complete report is to preserve the information so that it can be reconstructed by the inspector at some later date. Although a particular violation may not be serious enough to warrant action when it occurs, continued violations in the future at the same location may increase the importance of the original violation. If the inspector is able to clearly recall what occurred at the earlier date, use of that earlier incident will be very helpful in enabling the district to achieve its objectives.

Consider now those cases where the district recommends that a criminal complaint be filed. The quality of the inspector's report is vital in determining the success of any proposed criminal case. The district attorney must decide whether or not there is sufficient evidence to justify the filing of a criminal complaint. He must decide, on the basis of the inspector's report, whether or not he will be able to convince twelve people beyond a reasonable doubt and to a moral certainty that a crime occurred and that the defendant committed that

crime. Once the district attorney determines that there is sufficient evidence to make a conviction possible then the inspector's report becomes additionally important. From reading the report, the district attorney can obtain additional leads and conduct any further investigation that might be necessary, such as interviewing witnesses listed on the report, having the pictures that were taken processed, etc. Having a clear, detailed report helps to prevent surprises in court which can often sabotage the best of cases. Rest assured that the defense attorney will have available all of the information that the inspector has left out of his report and will use that information to his best advantage.

A complete report can help to negate possible defenses the defendant might consider raising. For instance, in our example, Peterson might claim that he ordinarily strips cars before cutting and had ordered his employees to remove the gas tank. The gas tank had not been removed due to negligence on the part of an employee who he has since been fired. However, looking at the revised report it is clear that: (1) the statement is incorrect in that the defendant stated that he does this all the time and (2) whether or not the employee was at fault and was since fired can be verified since the employee's name and address are readily available.

Assume now that the district attorney was able to convince 12 people that the lot owner should be found guilty of a crime, the case then goes to the judge and the probation department for their consideration. At the time of sentencing, which may be several months after the trial, the judge reviewing the case may not remember the testimony given at the trial. Therefore, the only information he will have is what is contained in the report. If the report is detailed and complete, he will be in a better position to order the best alternative or the best sentence for the purpose of solving the problem. The same holds true for the probation department (who would not be present at the trial in the first place). The only information they have is what you have included in your report and any other information you may be able to remember.

There is one other consideration which should be kept in mind. Suppose a criminal complaint is filed on the basis of a general report such as in our example. The defendant, knowing that he is guilty, may decide to go into court and plead guilty and accept the punishment. In that case the judge would hear no testimony at all. His only information would come from your report and directly from the defendant. Unless your report refutes statements made by the defendant, the judge is likely to accept the defendant's information as correct. In our example, given the first notice, Mr. Peterson could state to the court without contradiction that: (1) he was not aware of the fire until the inspector arrived, (2) fires rarely occur on his lot, (3) his practice is to strip vehicles before cutting, (4) and that he had an adequate fire hose behind the office which the inspector didn't see and plenty of water pressure to fight fires.

