

**NETI-WEST
BASIC INSPECTOR
TRAINING COURSE
INSTRUCTOR MANUAL
JULY 1997**

**U.S. Environmental Protection Agency
Office of Enforcement and Compliance Assurance
Office of Criminal Enforcement, Forensics, and Training
National Enforcement Training Institute
Lakewood, Colorado**



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SESSION 1

TOPIC: INTRODUCTION AND PURPOSE OF COURSE INSTRUCTOR'S OVERVIEW

Time: 15 minutes

PURPOSE	<ul style="list-style-type: none">· Provide course overview and logistics.· Explain why course was developed.· Conduct introductions and get-acquainted discussion.· Identify inspection-related problems inspectors have encountered and relate them to course content.												
KEY POINTS	<ul style="list-style-type: none">· Inspectors play a crucial role in ensuring that the nation's environmental laws are implemented.· The inspector's job is complex, requiring legal, technical, and communication skills.												
ADVANCE PREPARATION	<ul style="list-style-type: none">· Be familiar with background of trainees, such as program affiliation, discipline, length of experience as an inspector (for U.S. Environmental Protection Agency [EPA] and for other organizations), and frequency of involvement in inspections.												
EQUIPMENT	<ul style="list-style-type: none">· Overhead projector												
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LIST OF HANDOUTS	None												

INSTRUCTOR NOTES**SUGGESTED CONTENT**

LECTURE

WELCOME AND LOGISTICS

The purpose of this portion of the session is to welcome trainees, set ground rules for the course, and give a sense of the schedule and flow of the course. The notes in the Suggested Content column and some of the overheads are based on the suggested schedule; they should be modified if changes have been made in the course schedule.

Introduce yourself and tell a little about your background and EPA experience. Welcome trainees.

Explain ground rules for the course, such as:

Prompt starting time in morning and after breaks
Attendance requirements
Homework and quizzes

Discuss other logistics, such as where to eat, any special dinner plans, transportation, and other items.

LECTURE**INTRODUCTION TO COURSE**

**Overhead 1-1
Introduction**

In this first session, we are going to explain the background and purpose of the course and how the several days we will be together are organized. Then we want to learn a little about you and the experiences you already have had. We will end this session with a discussion of what makes a good quality inspection and why the quality of an inspection is important.

**Overhead 1-2
Why This Course?****Why This Course?**

- Inspections are the cornerstone of EPA's enforcement effort, which is essential to the credibility of EPA's programs.
- If an inspector does not find and properly document a violation, there can be no enforcement.
- Inspectors have an extremely complicated job that requires working knowledge of laws and regulations, as well as legal and technical procedures.
- Inspectors also must master the art of investigation -- the ability to ask the right questions, follow the paper trail, and check out an inconsistency.

INSTRUCTOR NOTES

SUGGESTED CONTENT

- To strengthen EPA's enforcement capacity, a new EPA order requires that all EPA inspectors complete both basic and program-specific inspector training.
- This course fulfills requirements for basic training in legal, technical, administrative, and communications aspects of inspections; inspectors also must take health and safety training.

The course does not focus on any one program or set of regulations. Instead, it is designed to provide fundamentals needed for performing inspections under any environmental program.

Overheads 1-3 and 1-4 Summary of Course Schedule

The overheads and the Suggested Content column are based on the suggested schedule for the course. If the schedule has been modified, make appropriate changes in the materials.

Summary of Course Schedule

Now, I would like to give you an overview of the course schedule. After the introductory session today, we will have a mock trial to acquaint you with one of the problems the inspector must be prepared for.

The next segment of the course covers the legal foundation of our inspections, including a summary of environmental laws and an overview of enforcement. We will finish today with a discussion of issues of importance to inspectors and the role of the leader of the inspection team.

The remaining sessions roughly track the chronology of an inspection.

· Tomorrow morning, we will begin with sessions on the elements of an inspection.

DISCUSSION

INTRODUCTIONS

Introductions

- Ask trainees to introduce themselves one by one and tell about their backgrounds (for example, years with EPA, technical or other discipline, other experience, and program(s) under which they conduct inspections).

INSTRUCTOR NOTES

SUGGESTED CONTENT

Overhead 1-5 Discussion Questions

Follow introductions with one or more of the discussion questions.

The discussion will help break the ice, as well as allow the instructor(s) to tailor the training further, if necessary, to cover topics of interest to the trainees.

Encourage all to participate, but do not force participation. It may be necessary to start the discussion with a story of your own.

Discussion Questions

The purpose of the discussion questions is to allow inspectors to identify problems they have encountered in performing inspection-related tasks and the consequences of those problems.

- What was the most difficult situation you ever encountered during an inspection? How did you handle it?
- Have you ever testified in an enforcement proceeding about something you did during an inspection? What was the most difficult aspect of testifying? In retrospect, was there anything that you might have done differently in performing or documenting the inspection that would have made your testimony easier?
- What do you think are the skills an inspector most needs? Why?

DISCUSSION

IMPORTANCE OF GOOD QUALITY INSPECTIONS

Overhead 1-6 Features of Good Quality Inspections

Use examples of how good inspection work led to prompt, effective resolution of a case.

EPA has had many successes over the years in bringing violators of environmental laws into compliance. That success would not have been possible without sound technical work and adherence to legal requirements by the EPA inspectors who performed the investigative work, as well as their solid support for case development.

At the same time, EPA has learned what factors can affect the quality of inspections and the consequences of those problems.

Discussed below are features of good quality inspections:

Adequate planning, for example, the inspector brought correct sampling equipment, facility's permit conditions were known to inspector, and good coordination was maintained between inspector and attorney.

Adherence to proper procedures, for example, the inspector complied with requirements for lawful entry and documented compliance.

INSTRUCTOR NOTES

SUGGESTED CONTENT

Use your own "war stories" to illustrate problems with regard to inspection quality that the Region or program has encountered.

Encourage trainees to participate.

The fullest perspective will be provided if both senior inspector and senior attorney instructors participate in this discussion.

Thorough documentation, for example, chain of custody record completed; capability to trace a specific sample (photograph, record) to a specific member of the inspection team, location, and identification number; and suspected violation adequately substantiated by evidence.

Correct sampling, for example, standard operating procedures (SOP) followed and representative cross-contamination samples collected.

Complete inspection file, for example, full inspection report, required notices and forms, and adequate substantiating evidence.

DISCUSSION

CONSEQUENCES OF POOR QUALITY INSPECTIONS

Overheads 1-7 and 1-8 Consequences of Poor Quality Inspections

Encourage trainees to talk about specific examples of these problems.

Problems in quality and completeness of inspections can:

- Cause EPA to draw the wrong conclusion about a facility's compliance status - for example, a facility might be judged to have no violations because the inspector did not inspect thoroughly
- Delay and add to the cost of pursuing an enforcement action - for example, a second inspection is needed to collect evidence that should have been collected during the first one
- Create unnecessary obstacles to successful prosecution of a case - for example, the defendant challenges EPA's evidence because the inspector did not follow SOPs
- Cause EPA to elect not to pursue an enforcement action against a violator - for example, poor quality of an inspection report and incompleteness of the file lead EPA to decide that bringing a case would be too risky
- Result in the loss of a case by EPA - for example, the judge rules that critical evidence cannot be admitted because it is not authenticated adequately

INSTRUCTOR NOTES**SUGGESTED CONTENT**

Recap of Purpose of Course

The course is designed to improve the inspector's ability to respond to problems and conduct high-quality inspections.

Introduction

- Why this course?
- Summary of course schedule
- Inspector profile
- Importance of inspection quality

Text: Chapter 5

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
- Communications

Course to provide foundation

Summary of Course Schedule

Day 1

- Introduction
- Enforcement process
- Legal foundation
- Issues important to inspectors

Day 2

- Elements of inspection
- Preinspection activities
- On-site activities

(continued)

Summary of Course Schedule

- Day 3
 - Postinspection activities
 - New initiatives
 - Postcourse assessment

Discussion Questions

What was the most difficult situation you ever encountered during an inspection? How did you handle it?

Have you ever testified in an enforcement proceeding? What was the most difficult aspect of testifying?

What do you think are the skills an inspector most needs? Why?

Features of Good Quality Inspections

- Adequate planning
- Adherence to proper procedures
- Thorough documentation
- Correct sampling
- Complete inspection file

Consequences of Poor Quality Inspections

Draw incorrect conclusions about compliance

Delay and add cost to the enforcement action

Cause unnecessary obstacles to successful
prosecution

(continued)

Consequences of Poor Quality Inspections

Result in decision not to prosecute

Result in the loss of the case by the
government

Notes

SESSION 2

TOPIC: MOCK TRIAL INSTRUCTOR'S OVERVIEW

Time: 30 minutes

Purpose

Introduce participant to the realities of what can result from their inspection.

Key Points

Inspectors must be accurate and thorough in their inspections and follow-up record keeping.

Advance Preparation

Be familiar with the mock trial.

A facilitator should act as the judge.

Select class participants to act as the witness.

Set up space in front of classroom for the mock trial.

Equipment

None

List of Visuals

None

List of Handouts

2-1 -- Scenario for Mock Trial (to be used by players only).

HANDOUT 2-1

SCENARIO FOR MOCK TRIAL

In the Matter of: ABC Asbestos Company

Judge Frazier: I will ask counsel for the complainant to present her first witness.

Ms. Hill: Thank you. The complainant calls _____

Judge Frazier: State your name and occupation for the record.

The Witness: My name is _____. I am an asbestos compliance inspector for the U.S. Environmental Protection Agency (EPA), Region II.

Judge Frazier: Proceed.

By Ms. Hill:

Q. I want to turn your attention to the date of June 4, 1991. Can you tell us what occurred on that date?

A. Well, I had left Boise the day before and done an inspection in Twin Falls on the way to Pocatello. I went to Big Town and I did an inspection at North High School in Big Town, Idaho.

Q. At the time that you were conducting the inspection at North High School on that day, were you accompanied by anyone else?

A. Yes.

Q. Who accompanied you?

A. I had a friend with me, _____. Because I had intended to go up to northern Idaho, and that area is fairly deserted, I thought it would be better to have someone with me in case of a breakdown of any type with the vehicle. No one from my office was available at that time and no one from the Occupational Safety and Health Administration (OSHA) was available to go.

Q. At this time, I would like to hand you what has been marked as Complainant's Exhibit No. 1. Can you identify it, please?

A. Yes, this is my inspection report for North High School in Big Town.

Q. And can you go through it and indicate what each of the parts of the document are?

A. The first document is the written report for the inspection. That is Exhibit No. 1. Exhibit 1A is the check list, field check list. 1B is the photo identification log, along with the photos. 1C is a sample plan submitted to EPA to obtain sample numbers. 1D is a notification form received by EPA from ABC Company. E is the chain-of-custody form that was included when I sent the

HANDOUT 2-1

samples to the lab. And F is the sample results received from the Manchester lab, EPA Manchester lab

Q. In this particular instance, do you recall when the inspection report was actually written?

A. Of this written report?

Q. Yes.

A. It would have been written on June 10, when I returned to the office.

Q. And this is contained in your inspection file in the business records of the EPA?

A. Yes.

Ms. Hill: I would like to move to enter into evidence Complainant's Exhibit No. 1, with the attachments.

Judge Frazier: I will admit it into evidence, all of Complainant's Exhibit No. 1.

By Ms. Hill:

Q. I would like to go into some detail concerning your inspection at North High School. Could you describe what time you arrived at the site?

A. It was approximately - let me check, it was just before 1:00 o'clock. I do need to look through here.

Q. You can look at that to refresh your recollection concerning the events that have occurred, so to the extent that you need to refer to that, please do so.

A. Okay. It was before 1:00 o'clock, so it was 12:45; it was about that.

Q. What did you do upon first arriving at the site?

A. Well, I pulled up behind the school and looked at the containment on the outside of the boiler room and checked for abatement workers. No one was there. So I walked through the school and when I got to the principal's office, the principal, Mr. Nelson, was there. I explained to him about the National Emissions Standards for Hazardous Air Pollutants (NESHAP) inspection. I asked permission to conduct the inspection, and he said yes.

Q. After the principal gave permission, where did you go?

A. I went back to the restroom to change into my bathing suit and Tyvek.

Q. After you dressed for the purpose of going into containment, what did you do?

HANDOUT 2-1

A. I went across the courtyard and entered the containment area. There was only a poly door going into the containment. The containment was not secured in any way.

Q. When you say not secured, what do you mean?

A. There was no door to be closed; there was nothing to keep anyone from entering the containment. There was no type of barrier to keep anyone out of the containment. There were young children playing on playground equipment approximately 50 feet away.

Q. And can you describe what happened then, as you entered containment?

A. When I entered containment I noticed--the first picture I took was 4A--I noticed a pile of pipe insulation commonly called air cell.

Q. How much material do you estimate was there in that pile?

A. It looks like approximately 70 cubic yards. I paced it off to determine how much was there, just as an estimation. I generally do not take tape measures into containment because they are extremely hard to decontaminate.

Q. At this point I am going to hand you what has been identified as Complainant's Exhibit No. 9A. Can you describe what this is a picture of?

A. This is an enlargement of picture 4A - of the pile of air cell pipe insulation that was inside the boiler room. The white areas are the dry sections and the very ends have been wetter; they show dark staining.

Ms. Hill: I would move to have Complainant's Exhibit No. 9A entered into evidence.

Judge Frazier: Ms. Matthews?

Ms. Matthews: Just a moment, Your Honor. Could I ask one question of the witness, Your Honor?

Judge Frazier: Yes, go ahead.

Ms. Matthews: Ms. _____, what kind of camera did you use to take this photograph?

The Witness: I used a Chinon waterproof camera.

Ms. Matthews: Is that government issued?

The Witness: Yes.

Ms. Matthews: Flash?

The Witness: Yes.

Ms. Matthews: Do you know the speed and number on your film?

The Witness: It was 200.

Ms. Matthews: 30 millimeter?

The Witness: Yes.

Judge Frazier: This looks like a good time for a break.

Ms. Matthews: I have no objection.

BREAK

Judge Frazier: The hearing will now reconvene and I would ask our witness to take the stand and remind you that you are still under oath.

Ms. Matthews: Thank you, Your Honor.

CROSS-EXAMINATION

By Ms. Matthews:

Q. Are you married, Ms. _____?

A. No.

Q. Am I correct in assuming that you have not actually ever been involved in the stripping or removal of asbestos?

A. I have never spent eight hours stripping a room of asbestos. I have tried my hand at it as a learning experience while working for an asbestos abatement company.

Q. Who else was present who would have observed you doing this type of work?

A. The people in the abatement company.

Q. Do you have names?

A. I have names but --

Ms. Hill: I object concerning the relevancy of the names of the people who were there when she worked for another employer.

Judge Frazier: Ms. Matthews?

HANDOUT 2-1

Ms. Matthews: Well, Your Honor, I simply want to have a means of verifying whether the witness is telling the truth or not. We may want to contact these people and verify that information.

Ms. Hill: I question whether it's relevant that she has actually done any stripping herself or not.

Ms. Matthews: It simply goes to her credibility, Your Honor, as far as I know, she is the only individual from the EPA who ever entered the containment area in this case, and I suspect that her testimony is going to win or lose this case.

Judge Frazier: I will instruct the witness to answer the question.

A. It was for Asbestos Environmental in Spokane -- Richard Beagle, Dave Burger.

Q. Did you have any contact or communication with Brad Brown during that project?

A. Yes.

Q. What do you recall the contact being?

A. I was on the site strictly doing contractor air monitoring for Brad Brown.

Q. For Brad Brown? He was the abatement worker at North High School, wasn't he?

A. Yes, to both questions.

Q. He hired you?

A. Yes - for the job in Spokane.

Q. Did you have any tension between the two of you during the job?

A. I don't believe so.

Q. None that you recall?

A. We worked some very long hours and --

Q. Do you recall him ever remarking to the effect that you weren't doing enough, that you ought to earn your money?

Ms. Hill: At this point I'll raise another objection as to relevancy. It is not relevant to the job that she did at North High School.

Judge Frazier: Ms. Matthews?

Ms. Matthews: Your Honor, I am simply trying to develop some bias and prejudice before she conducted

this inspection at a job site where Brad Brown was obviously one of the workers involved.

Judge Frazier: I will allow the question.

A. Would you repeat it?

By Ms. Matthews:

Q. Well, it has something to do with you recalling if Mr. Brown ever made comments to you about perhaps your not performing your functions and earning the money you were being paid on that project.

A I don't believe so.

Q. Ms _____, I assume that you make every effort to make sure that the forms you fill out are not deficient?

Ms. Hill: Objection. It's unclear, it's vague, if she is asking any form she ever fills out ever has any deficiencies in them or what she is referring to.

Judge Frazier: Could you explain the relevancy of this question? I am not sure I understand.

Ms. Matthews: I just want to know if she feels in her position that the forms she has to fill out for a field inspection should be done with the same degree of precision and accuracy she requires of abatement contractors on their notification forms.

Judge Frazier: I think she is asking a general question, like what standard do you establish for yourself when you do your work; it is a high standard or not such a high standard?

A. It's a high standard for myself.

By Ms. Matthews:

Q. Your field inspection check list specifies the information you are to provide in connection with the inspection, does it not?

A. That's true, yes.

Q. And you are trained to do that as accurately and as fully and as completely as you can, aren't you?

A. As completely as I can at that moment, yes, on that project, with the information provided.

Q. Now, looking at page 2 of the check list, there is a space provided for you to make a remote observation sketch, correct?

A. Yes.

HANDOUT 2-1

- Q. And the instructions on the front page indicate that you are to draw the building or other source of suspect asbestos-containing material, the location of debris, and you were to estimate and indicate dimensions and distances as accurately as possible on the drawing. Was all of this done?
- A. No.
- Q. You mentioned that you prepared field notes during this inspection.
- A. Yes.
- Q. And when did you prepare your field notes?
- A. That day.
- Q. Do you prepare them while you are in the containment?
- A. No.
- Q. So after you left the site?
- A. No. They were on the clipboard with the check list.
- Q. And it is from the field notes that you prepared the written report?
- A. Yes.
- Q. And you have destroyed your field notes?
- A. Yes.
- Q. Is there a reason for destroying your field notes?
- A. Yes, it reduces the amount of paperwork in my files.
- Q. Even though you have sent something off regarding a potential situation when someone may be facing substantial penalties, you intentionally eliminate your field notes?
- A. Yes. This typed inspection report takes the place of the field notes.
- Q. But someone cannot compare your typed written report with your field notes taken the day of your inspection, now, can they?
- A. No.
- Q. Now, you arrived at the job site in a government vehicle, is that right?

A Yes.

Q. And you had with you your _____ friend?

A. I had a friend with me.

Q. Is it inaccurate to say _____ is your _____ friend?

A. I had a friend --

Ms. Hill: I object to the relevancy of that particular question.

Ms. Matthews: Your Honor, I am simply trying to establish how closely this particular witness follows policy of the EPA and of the United States government regarding asbestos removal, regarding transportation of unauthorized people in government vehicles. I think it does go to her credibility as a witness.

Judge Frazier: I will allow the question.

By Ms. Matthews:

Q Was _____ your _____ friend?

Ms. Hill: The question of whether it is a _____ friend or not is also allowed?

Judge Frazier: Yes.

Ms. Hill: Thank you.

A. Yes, _____, is.

Q. Turning now to this EPA publication entitled Asbestos NESHAP Adequately Wet Guidance. Are you familiar with it?

A. Yes.

Q. Now, this EPA booklet describes techniques for adequately wetting various types of material; is that true?

A. Yes.

Q. Do those techniques conform with the way you think the asbestos-containing materials should be adequately wetted?

A. I can't answer yes or no.

Judge Frazier: All right, explain why.

A. It is not my job to evaluate the techniques; it's my job to evaluate whether or not the material is adequately wet.

Judge Frazier: If you are making an inspection to determine whether someone is using proper techniques, do you use those outlined here as guidance?

The Witness: I don't look for wetting techniques; I just look for adequately wet.

Judge Frazier: So you would not ask someone being inspected what techniques they used?

The Witness: No.

Judge Frazier: Why were you interested in the hoses in this situation?

The Witness: I looked for a source of wetting because a lot of the materials were dry and I looked to see if there was a source for them to wet the materials, and there was. The type of wetting doesn't make a difference; what makes a difference is whether or not it's wet.

Judge Frazier: Is using hoses a technique?

The Witness: Yes.

Judge Frazier: And you were or were not interested in whether that technique was being used in this project?

The Witness: No. It was something I looked for to see if it was on site.

Judge Frazier: You looked to see if they were using that technique?

The Witness: Yes.

Judge Frazier: That's all the questions I have. Go ahead.

By Ms. Hill:

Q. Turning again to the material you observed in the boiler room, I think that you already testified that, when you took up this magnesium block insulation in the boiler room, the outer surfaces were wet. You scraped some of it with a fingernail, but the inside, after you broke it, was dry and released emissions?

A. Yes.

Q. You testified to that, didn't you?

HANDOUT 2-1

A. Yes.

Q. Is it true that some types of thermal block insulation will absorb no more water and yet not be soaked throughout? Have you found that in your experience?

A. No.

Q. Let me ask you, did you take any tests on the thermal block insulation involved in this case, the magnesium block; did you run water on it until it was soaked completely through?

A. No. I did pick up a small piece that was in a puddle, though.

Q. That's not my question.

A. No, I did not.

Q. You have no idea how much water it may take to soak through completely the entire depth of the thermal block insulation?

A. No.

Q. Have you ever submerged a piece of magnesium block insulation in a bucket of water and held it there to determine whether it can be soaked throughout?

A. Yes.

Q. When did you do this?

A. July 8.

Q. On this material?

A. Magnesium block insulation.

Q. On the material you took from this job?

A. No.

Q. Your answer is no?

A. No.

Q. Can you tell me, Ms. _____, how, in the field, someone determines whether material has been totally saturated or soaked throughout?

A. Myself or the average person?

HANDOUT 2-1

Q. How is the worker in the field going to do that?

A. Mag block material? What type of material?

Q. Any type of material.

A. It varies depending on material. Mag block material becomes pasty and slimy to the touch.

Q. On the outside?

A. Throughout, when it's been soaked throughout, squeezing it, you can put your finger through it.

Q. What standard or measure do you apply in determining whether a piece of regulated asbestos-containing material is adequately wet during the stripping operation?

A. During the stripping operation?

Q. Yes.

A. The no visible emissions standard. If watching, I also pick up a piece and check it to see if it's adequately wet by handling it.

Q. Well, do you just know intuitively by handling it that it either is or is not wet?

A. If I handle it and it's dry and it releases visible emissions, it's not adequately wet. If the texture is dry and hard, if it crumbles easily by hand pressure, it's not adequately wet.

Judge Frazier: This looks like a good time for a break. Let's take a recess until 1:00 P.M.

Notes

SESSION 3

TOPIC: ENFORCEMENT PROCESS RESPONSIBILITIES INSTRUCTOR'S OVERVIEW

Time: 60 minutes

- | | |
|--------------------------------|---|
| PURPOSE | <ul style="list-style-type: none">· Describe what to expect when appearing as a witness.· Present tips for testifying at a deposition or trial.· Demonstrate questioning, examination, and cross-examination.· Discuss role of inspectors in settlement and other negotiations.· Provide tips for effective negotiations. |
| KEY POINTS | <ul style="list-style-type: none">· Prepare well in advance. Don't volunteer information.· Prepare carefully; know all the facts and options. Resolve differences internally, not in front of the other side.· Understand negotiation; most cases are settled through negotiation, not trials. |
| ADVANCE
PREPARATION | <ul style="list-style-type: none">· Select a trainee who already has performed some inspection work (in advance of the course, if possible). Prepare that person to give testimony about a recent inspection. Prepare for examination and cross-examination as a demonstration for the class.· Make sufficient copies of handouts, "The Case of the Unmanaged Negotiation" and "Crush and Destroy Negotiation."· Refresh your memory about negotiations you have been involved in and make notes to use in illustrating successes and pitfalls. |
| EQUIPMENT | <ul style="list-style-type: none">· Overhead projector |

SESSION 3

TOPIC: ENFORCEMENT PROCESS RESPONSIBILITIES INSTRUCTOR'S OVERVIEW

Time: 60 minutes

LIST OF VISUALS

- 3-1 Appearing as a Witness
- 3-2 P-R-A-S-S
- 3-3 Negotiations

LIST OF HANDOUTS

- 3-1 The Case of the Unmanaged Negotiation
- 3-2 Crush and Destroy Negotiation

INSTRUCTOR NOTES

SUGGESTED CONTENT

Introduction

Introduce yourself, mentioning your background and EPA experience and your role in the course.

Overhead 3-1 Appearing as a Witness

In this session, we will discuss what happens when you must appear as a witness, and we will suggest techniques that can help you be a more effective witness.

LECTURE

TESTIFYING AT A DEPOSITION, TRIAL, OR HEARING

The Federal Rules of Evidence (FRE) and Federal Rules of Civil Procedure (FRCP) govern the conduct of any federal civil proceeding. Key rules related to witnesses are summarized below.

A witness gives testimony at a trial, under oath or affirmation, from personal knowledge (FRE 602 and 603). There are four types of witnesses:

- **Consultant:** Can be protected from discovery if in a behind-the-scenes role (FRCP 26(b) (4)).
- **Expert witness:** Has scientific, technical, or other specialized knowledge that would help the judge or jury understand; can provide testimony on facts, provide opinions on facts not in evidence, and even offer an opinion on the ultimate issue of the case (FRE 702 and 704). An inspector might be an expert witness in an area of technical expertise.
- **Client or policy-maker:** In EPA, this interest generally is represented by the supervisor or manager of the inspector and others directly involved in the case. Their knowledge generally is protected from discovery under several privileges, such as the attorney-client relationship.
- **Fact witness:** Testifies about what he or she learned through the use of his or her five senses, the usual role of the inspector. Under the FRE, a "foundation" must be laid before the inspector can testify.

A principal tactic trial attorneys employ is to call into question the credibility of the witness for the opposing side. The purpose of "impeachment" is to reduce the likelihood that the judge or jury will believe the witness. Some bases for impeachment are:

- Biases or interest (family relationship, business tie, or other relationship).
- Lack of opportunity to perceive (distance too great to see).
- Inability to recollect (lack of detail that the witness cannot elaborate upon because notes are incomplete).
- False testimony (the witness testifies that standard procedures were followed, but records are produced that show otherwise).
- Corruption or likelihood of false testimony (acceptance of a bribe or subornation of perjury).
- Mental or physical incapacity not amounting to incompetency.

"Hearsay" is an out of court statement offered in court for the truth of the matter asserted. It is commonly thought that hearsay is inadmissible, but there are exceptions:

- A verbal statement made to the witness by the defendant, or by the defendant's representatives or employees, is generally admissible.
- Business records, written statements, and official reports made by entities other than the witness are technically "hearsay" but generally are admissible.

Depositions

Depositions are statements taken under oath and on the record. They are a common method used by the opposing side to obtain more information about the government's case.

Depositions are taken outside the courtroom, usually at the office of the opposing counsel. Attorneys for both sides and a court reporter are present.

If an inspector is subpoenaed for a deposition, the appropriate EPA attorney should be contacted immediately. Time will be short -- either to prepare the deposition or to quash the subpoena.

The inspector must answer questions honestly and completely, but need say nothing beyond such answers. The inspector should make the attorney work for it and should not volunteer information.

Preparation for the deposition is the key to good work:

- Review documents and, if required by the subpoena, compile the documents and produce them at the deposition.
- Plan how to respond to likely questions.
- Discuss with the attorney how to deal with the more difficult aspects of the testimony.

**Overhead 3-2
P-R-A-S-S**

Tips for giving depositions:

- Remember that everything that is said is on the record and may even substitute for live testimony.
- Speak as clearly as possible. The court reporter must be able to understand -- for example, the difference between PCV and PCB must be clear. Provide a glossary of technical terms to the reporter, if possible.
- Say nothing until instructed by your attorney to proceed -- such interruptions, as debates between the lawyers, are frequent.
- Beware the "eye of the record" for body language and other factors. The opposing attorney need only say, "The witness conferred with counsel before answering," and that fact will be on the record.
- Be as descriptive as possible in referring to exhibits or photographs -- for example, "In the upper right hand corner we see..." rather than "Here, we see..."

- During breaks, do not discuss the subject of the deposition with anyone (except your attorney in private surroundings). The opposing attorney can place off-hand remarks on the record merely by saying, "Isn't it a fact that, during the break, you said...."
- Always pause before answering a question so your attorney has time to object.
- Listen carefully to the question and ask to have it repeated, if necessary.

· Testifying in an Enforcement Proceeding

Preparing for testimony:

- Preparation begins the moment the inspector begins planning the inspection. From that moment, everything he or she hears, sees, reviews, samples, or records is potential evidence.
- The inspector and attorney must work together to:
 - Review inspector's evidence and prepare testimony within the theory of the case.
 - Become familiar with one another.
 - Prepare the inspector to testify.

Preparing and using exhibits and graphics can help the inspector remember what is to be said.

- The inspector should be rested and dressed appropriately on the day of testifying.

Tips for direct examination:

- Listen to the question.
- You need not remember everything that is to be covered. Just answer the questions. The attorney's job is to ask the right questions.
- Making eye contact with the judge or jury helps to persuade.

- Be sensitive to the rhythm. Short questions and short answers build a rhythm, and a story emerges. Try not to let opposing attorneys break the rhythm.
- Be objective and straightforward. Convey the image that you are "just doing my job."
- A good direct examination introduces a subject and then, through short questions, elicits the evidence in succinct answers in a logical order.
- Key words and signals that help the inspector give the testimony should be worked out in advance. For example, asking, "Is there anything else?" would be a signal to the inspector that something has been left out; the inspector should not immediately say "no." If the inspector still cannot recall, the attorney might even risk an objection by asking an improper question. Listen -- the "improper" question will include key words that signal what you forgot to cover.
- The first few questions will ask for name, occupation, length of employment, and other information, giving the inspector time to get used to testifying.
- In the second line of questioning, the foundation for the inspector's testimony is laid. Usually, the information is presented chronologically. As the testimony progresses, exhibits are entered and discussed.
- Stay within your limits of expertise and knowledge.
- Inform the attorney of any problem in the case as soon as possible; there should be no surprises at the trial. There are always weaknesses in the government's case that must be dealt with; the attorney can determine how to handle and compensate for the weakness.

Cross examination:

The purpose of cross-examination is to diminish the strengths and amplify the weaknesses of the opposing side.

A skilled cross-examiner can "go for the throat" (but fortunately, most attorneys have difficulty with cross-examination).

Stay cool and neutral; if you are being battered, such demeanor will bring you sympathy.

Leave the adversarial work to the attorneys.

Most cross-examination will focus on:

- Your past experiences, including occupation, associations, education, and training.
- Your observations, memory, and accuracy of recollection.
- Any active motive, bias, or prejudice you might have.

The litigation team will prepare you for cross-examination.

Questions during cross-examination try to force the witness into a "yes" or "no" answer. If you are cut off, your own attorney will get an opportunity to elicit your full answer during redirect examination.

Tips for dealing with cross-examination:

- Listen carefully to the question, pause, and answer succinctly. Ask for clarification if you do not understand.
- Don't volunteer any information that is not required by the question.
- Listen for inaccuracies and correct them before answering.
- Refresh your recollection through documents rather than responding with an inaccurate answer.
- Don't look at your attorney for help!

Redirect examination:

Redirect examination is limited to the issues raised during cross-examination. Its purpose is to give the witness's attorney an opportunity to counteract or diminish any damage done during cross-examination.

INSTRUCTOR NOTES

SUGGESTED CONTENT

Demeanor of the witness:

Your posture, speech, and appearance will enhance or detract from your credibility. Be professional.

LECTURE

INTRODUCTION TO NEGOTIATION

Overhead 3-3 Negotiations

Most EPA cases are settled through negotiation, not trial. A negotiated settlement is not an undesirable outcome. Generally, such a settlement is more favorable than that obtained in a trial, because it is:

- Quicker
- Less expensive
- Less risky

Such a settlement also produces more specific direction about what a violator must do.

EPA generally negotiates from a strong position and obtains the type of settlement it seeks. The inspector is the cornerstone of that strength, since violations are documented in the inspector's reports -- good inspection reports lead to good settlements.

An inspector needs negotiation skills because the inspector:

- May serve as a member of a team negotiating an enforcement case or settlement (or, at a minimum, will be involved in preparing and providing support for the negotiation team).
- May find it necessary to negotiate with facility officials to gain consensual entry and work out other logistical aspects of the inspection.
- Frequently will be involved in negotiations with program staff, attorneys, and technical staff on such issues as scope and objectives of an inspection, assignment of responsibilities to inspection team members, and determination of appropriate enforcement action.

INSTRUCTOR NOTES

SUGGESTED CONTENT

It is difficult to teach the art of effective negotiation, because it is a dynamic process that depends largely on personal style and is learned through experience; however, in this session we will try to pass on some pointers to aid inspectors in developing this skill.

To set the stage, here are some key points to remember:

- There are few hard and fast rules for successful negotiation.
- Because each negotiation takes on a life of its own, there is no "right" settlement.
- Negotiating is not selling out. EPA will enter a negotiation with some items negotiable and some non-negotiable. Neither side expects to achieve all its ends, however.
- Negotiation is not the antithesis of litigation. Most EPA cases are settled before (or during) litigation; however, the threat of litigation often helps bring about a settlement.
- Negotiation may provide the best solution. It may be quicker and require the commitment of fewer resources. EPA can use tools not available in court to gain advantage (for example, withholding a grant or not initiating debarment proceedings) and may be able to persuade the violator to do things the court would not impose.

CASE STUDY EXERCISE

THE UNMANAGED NEGOTIATION

The class should have already reviewed "The Case of the Unmanaged Negotiation" (Handout 3-1), which is based on real negotiations EPA has been involved in. Give them two to four minutes to refresh their memory.

Because of the press of time, personnel changes, or a host of other reasons, a negotiation may be unmanaged in one or more aspects. The "Case of the Unmanaged Negotiation" that you read last night is an amalgam of several situations described to the authors by participants in EPA training courses.

INSTRUCTOR NOTES

SUGGESTED CONTENT

After the group has finished reviewing the case, ask the group to discuss the major mistakes EPA made and consequences of those mistakes, solicit ideas from the group about how the problems encountered might have been avoided. Key points the instructor may wish to raise, if not brought out by the group, are shown in the Suggested Content column.

Listed below are some of the things that went wrong during the unmanaged negotiation:

- The EPA team did not have all the facts and did not review files or see inspector's notes; the team, therefore, did not know the true seriousness of the violations.
- No objectives or strategy was agreed upon.
- The team lacked internal discipline and rules (for example, they conducted open caucusing in front of opponents).
- A logistical mixup set the stage poorly for EPA.
- The team had no knowledge of the violator's desire to obtain an EPA permit, which would have been a good negotiating tool for EPA.

LECTURE

MANAGING NEGOTIATIONS

Preparation

Preparation is the most important key to successful negotiation.

The inspection team should have members who are suited to the negotiation and who can work together. At least one member of the team should be well versed in each major legal and technical area the negotiation will touch on; other support should be available.

The team should work out in advance with the "vertical hierarchy" (that is, the staff at EPA who must agree to the settlement) to provide needed support, agree on the objectives of the negotiation, and establish an ongoing line of communication.

The team should perform substantive research to determine what facts and laws are involved in the negotiation and what other information the team will need during negotiations.

The team should collect basic intelligence about the opposition. What are its likely issues? What advantages might EPA have in the negotiations?

During the Negotiation

The team must decide upon its course of action and resolve differences internally rather than in front of the other side. Caucusing is essential.

Caucuses also can be used to regroup after a surprise, to let tempers cool, to obtain information or opinions from experts not at the table, and to clarify negotiating authority with senior staff.

The vertical hierarchy also must be managed. This task is often quite difficult, yet essential because senior staff must approve the agreement. The task can be accomplished by.

Communicating

- Keeping senior staff informed of developments
- Obtaining advance concurrence in positions the team takes

There may be other parties at the table, such as state agency personnel acting as partners with EPA, whose roles must be managed. That task is more complex, but it is essential that the other side not be able to divide and conquer. The effort should be made to find the common ground.

There may be "phantom" entities who are not at the table, such as members of Congress, public interest groups, and the media. The principal task of the negotiating team is to ensure that those entities know they are not and will not be party to the negotiations, but they will be kept informed.

Negotiations are expedited by deadlines. EPA enforcement policy establishes time frames, but some judgment must be exercised, such as determining when the parties are approaching settlement. Events and deadlines that force action should be established throughout the negotiation, not only in the final phases.

Generally, EPA has the upper hand in an enforcement negotiation. EPA can impose sanctions; grant, deny, or delay permits; order studies and disclosure of information; conduct repeated inspections; make facilities ineligible for government contracts; and cause financially damaging publicity.

INSTRUCTOR NOTES

SUGGESTED CONTENT

The EPA negotiating team should project that power, and remember the advantages to setting the agenda and preparing the first draft of settlement papers. (There are times, however, when it may be prudent to let the opposition team prepare the first draft to give them a false sense of security or if they have an experienced individual who can prepare the draft.)

EXERCISE

CRUSH AND DESTROY NEGOTIATION

The purpose of this exercise is to provide practical experience in developing a negotiating strategy, since planning for the negotiation is the most important factor in successful negotiation.

Distribute Handout 3-2. Divide the trainees into groups of four or five people, and ask them to plan a negotiating strategy for EPA

After 15 minutes, reconvene the group, acknowledge that there was insufficient time to develop a complete strategy, and ask representatives from each group to explain their strategies.

Planning the strategy for a negotiation is the most important factor in conducting a successful negotiation.

I am distributing a hypothetical case involving an air asbestos violation. Read the case; then, in small groups, develop a strategy for EPA's conduct of the negotiation.

You are not likely to be familiar with the particular regulations and penalty policies involved, but you should be able to use negotiating principles to develop a strategy.

In the groups, you should discuss:

- EPA's negotiable and non-negotiable items
- Strengths and potential weaknesses in EPA's position
- Options for required remedial steps
- Options for penalty adjustments
- An overall strategy

THE CASE OF THE UNMANAGED NEGOTIATION

Sam Acosta has just become acting chief of the RCRA Enforcement Section. Previously, he was in the RCRA State Programs Section. He finds a short action memorandum on his desk from Bill Sanders, a RCRA inspector. The memorandum recommends that EPA issue an administrative order to a hazardous waste treatment facility called Treatment Supreme (TS) for violations of interim status requirements related to security of the site and manifests. Sanders wrote that during an inspection he observed that a 25-foot segment of fencing along a highway at the back of the TS facility was missing. He also noted that TS had failed to note discrepancies on manifests for 75 shipments of one waste stream, analysis of which performed by TS did not confirm that the waste was as represented by the generator. He attached a copy of the draft administrative order requiring restoration of the fence; prohibiting further receipt of the waste stream, and assessing a \$25,000 penalty. Sanders noted that copies of the manifests and laboratory reports were in the inspection file. Sanders has been detailed under an Intergovernmental Personnel Agreement (IPA) to the state for a year.

Acosta signs off on the action memorandum and sends it to his boss. It eventually is sent to the Regional Counsel's office for legal review and is assigned to Laura Smith. Smith's main job at EPA has been to handle the legal aspects of construction grants for sewerage treatment facilities. This is her first enforcement case. She is instructed that the program office is responsible for substantive determinations and her role is to ensure the order is legally sustainable, to assist the program office in any resultant negotiations, and to represent the program office in any subsequent appeals. She reviews the order and action memorandum and determines that the violations alleged are sufficient to support the remedies sought and are supported in the action memorandum. She compares the draft order with agency guidance and makes some changes to conform it to the guidance. She signs off on the order, and it is eventually issued.

Guy Larado, attorney for TS, calls Smith to request a conference on the order; he hopes to negotiate a mutually acceptable resolution. Smith indicates she must check Acosta's calendar; they arrange three possible times, depending on Acosta's availability. She calls Acosta, settles on a date three weeks hence, and makes arrangements to meet with Acosta that afternoon to review the case.

When Smith and Acosta meet, they review the action memorandum and order. Smith asks to see copies of Sander's inspection report and the manifests at issue. She asks whether they can talk to Sanders, but Sam says he has been detailed under an IPA to the state. They agree that the case seems open and shut and that, under EPA's penalty guidance, they can agree to mitigate the penalty only to \$18,000. They agree that Smith will be the spokesperson in the negotiations. They tell both of their superiors that they intend to settle for the substantive relief set forth in the order and a penalty of from \$18,000 to \$25,000. Their supervisors concur.

As the date of the meeting approaches, Smith attempts to meet again with Acosta, but, because they are both out of the office much of the time, they do not connect. The day before the meeting, Smith attempts to arrange for a conference room, but they already have been claimed. Instead, she arranges to meet in Acosta's office, which is larger than hers.

On the date of the meeting, Smith goes to Acosta's office five minutes before the meeting, telling the receptionist to ring her there when Larado and TS arrive. Larado, however, is familiar with the EPA

HANDOUT 3-1

office and proceeds directly to Smith's office, never coming near the receptionist. Smith's secretary is not there, and no one knows where she is. Both negotiating teams remain in splendid isolation until Smith's secretary returns, discovers the situation, and calls Smith. Smith returns to her office, meets the TS group -- the plant manager, chief chemist, staff attorney, consulting attorney, and customer's plant manager and attorney -- and escorts them to Acosta's office. There are only four chairs in Acosta's office. Acosta and Smith scurry around to find four more chairs. Acosta sits at the desk, Smith sits beside it, and the TS group crowds in front of the desk, filling all the space between it and the door. The room is not large enough to hold them all comfortably.

Smith opens the meeting by introducing herself and Acosta and inviting the TS group to do the same. She apologizes for the confusion and for the cramped quarters. She then outlines the violations alleged and the enforcement procedures. She emphasizes EPA's view of the importance and gravity of the violations and states that EPA would like to determine whether there is a basis for settling the matter. She indicates the substantive violations must be corrected expeditiously. Finally, she states that EPA "really would like to get a penalty of around \$18,000 to \$20,000."

Guy Larado, the consulting attorney for TS, opens his argument by stating that TS explained both situations to the EPA inspector when he was on site and that TS believes the complaint is a mistake. He asks whether the inspector is coming to the meeting. Acosta says the inspector has been detailed under an IPA to the state and is not available. Larado expresses dismay, since TS already has been through the issue with the inspector.

Larado then said there was indeed a 25-foot section of fence missing the day the inspector was there, as a result of an automobile accident on the highway. The fence was scheduled for repair within the week and, in fact, was repaired two days later. The fence, incidentally, was a 10-foot-high, electrified, chain-link fence, topped with concertina wire, a far more protective fence than was required or was customary in the trade. He produced pictures of the fence; a notarized affidavit from the repair company stating when it was repaired; and a copy of a letter to the inspector, with copies of the pictures and affidavit. Acosta stated he was satisfied that the violation had been corrected. Smith said that a penalty might be authorized legally, but that, equitably, it should be mitigated to zero, since the hole in the fence had been caused by a third party beyond the control of TS. TS had scheduled its repair before the inspection and had repaired the fence immediately after the inspection, and the fence was far better than required by EPA's regulations. Acosta then said, "Let's talk about the manifest violation."

Larado said TS also had discussed that issue with the inspector. The waste stream in question was being delisted when the inspection took place and subsequently was delisted, so it was not a hazardous waste at all. TS's customer produced a copy of the delisting document and the accompanying Federal Register notice. Larado said that TS had written the inspector, enclosing a copy of the delisting document and notice. Smith asked Acosta whether copies of TS's letters to the inspector were in his files, because there were none in hers. Acosta answered that he did not know, but looked through his file and found both letters.

Larado said that TS could argue that, since the waste stream had been delisted by EPA, EPA acknowledged that it was never really hazardous waste, and, therefore, TS never really violated the manifest requirements. He said TS would forgo that argument for the sake of settlement, if EPA would acknowledge that, because the waste stream was not hazardous, the violations were technical

HANDOUT 3-1

and there was no damage done to the environment or the regulatory scheme and a *de minimis* penalty, if any, was appropriate. He offered \$2,500. Acosta said that settlement was acceptable but that the violations found raised a question about the integrity of TS's system for handling manifests and its waste analysis plan. Larado answered that EPA's inspector had found no other problems, but TS would hire an auditor to review its system and would follow the auditor's recommendations if defects were found. Acosta asked whether TS would agree to put a requirement for that action in a consent order, and Larado agreed. Larado said that there appeared to be agreement: TS would settle for a \$2,500 penalty and an agreement to audit TS's manifest system and correct any deficiencies. At that point, Smith said she thought EPA's penalty policy would require more than \$2,500 for the admitted violations. Larado said Acosta already had agreed to the \$2,500 figure. Acosta said he had not agreed to the figure, and that he had agreed only that, because of the facts, a relatively low penalty seemed appropriate. Larado asked how much, and Acosta asked Smith whether she thought \$5,000 would be enough. She said she did not know. Larado said TS would write a check for \$4,000 and deliver it immediately to settle the matter. Acosta said he did not think a settlement could be reached so quickly, since it would require concurrence of senior staff. That process usually took at least two weeks, he said.

Larado, who, until this point, had been soft-spoken, polite, and charming, became red in the face and began speaking in a louder voice, touched with anger. He protested that he had spoken at length with the inspector about the importance of a quick resolution of the matter. TS was about to close major financing to construct three new state-of-the-art incinerators in another EPA region and was required to certify a clean regulatory bill of health to secure the financing. He said the inspector had assured him that, if EPA's negotiators could sign off on a settlement, the matter could be handled in a matter of days. Larado said he was dumbfounded that EPA would hold up so important a matter when it agreed the violations were trivial and of no consequence.

Acosta asked Smith whether she saw any reason not to agree to the settlement outlined. She said she had not seen enough of the problems to be sure. Acosta said that, as far as he was concerned, the violations, as explained, were technical; the solutions were adequate; and the penalty appropriate. Smith said he was the client and if he was satisfied, she was. Larado then drew up a letter of agreement, which both parties initialed, and Smith agreed to turn into a consent order that afternoon. That afternoon, Smith talked to Sanders, the inspector, by phone. He confirmed that he had indicated the possibility of quick action if agreement was reached, but said the agreement was inappropriate. The break in the fence indeed had been caused by an automobile accident and had been repaired immediately after the inspection. But the break had occurred four months earlier, and the repair was not ordered until after TS knew an inspection had been scheduled. The fence was indeed far better than those around most disposal facilities. But installation of the fence had been ordered by the state after previous fencing had proven inadequate to prevent repeated damage by vandals. TS was correct that the waste stream involved in the manifest violations had been delisted. But the real question was whether the shipments received really were of that waste stream, or whether TS had been accepting a nonpermitted waste. Indeed, Sanders wondered whether he had made a mistake in not recommending action against TS's customer for sending a waste to a disposal facility not permitted to take the waste. He was surprised that Smith was unaware of those facts, because most of the information was in the handwritten notes that he was sure were in the file somewhere.

At this point, EPA's negotiating team recognized that it was in an embarrassing situation.

CRUSH AND DESTROY NEGOTIATION

I. General Instructions

The facts presented below are based on actual EPA cases, but the information has been modified and supplemented to facilitate this exercise. Participants should use only the information provided in this fact sheet, along with their knowledge of the Clean Air Act and EPA regulations. While participants may have only limited specific knowledge of the requirements, they can use the general principles of negotiation to develop a strategy. Logical inferences may be made from the facts. The objective of this exercise is to reach agreement on a plan for conducting a negotiation with the defendant in the case described below. In developing the strategy, consider:

- What items are negotiable and nonnegotiable for EPA
- Strengths and potential weaknesses in EPA's position
- The role (if any) of the state
- Options for specific remedial steps to be required
- Factors that could be considered in adjusting the amount of the penalty

II. Facts

A. The Company

Crush and Destroy, Inc. (C&D) demolishes industrial and commercial structures. It has been in business about 20 years, operating in the state of Maryland. C&D is a closely held, family-operated business that employs 10 people. C&D's gross revenues are approximately \$400,000 per year, and its assets are slightly less than \$100,000. Two years ago, the company earned \$40,000. Last year, C&D lost \$20,000.

B. The Violations

Several months ago, C&D was demolishing sections of an apartment building. In doing so, it uncovered friable (crumbly) asbestos material. This fact became known to the tenants of the standing portions of the building who, concerned about the well-publicized effects of asbestos, contacted EPA. Several days later, EPA sent an inspector to the site. The inspector observed C&D's operation and noted several violations. First, C&D workers threw dry asbestos waste material onto the back of an open truck and transported it to a local landfill, where they dumped the material. These actions violated 40 CFR 61.147(e), which requires that asbestos waste material be kept wet until it is collected for disposal; and 40 CFR 61.152(b), which requires that asbestos waste material be properly contained, transported, and disposed of. Finally, in violation of 40 CFR 61.146, C&D failed to notify EPA in advance of its demolition work at the apartment building.

Appearing as a Witness

- Testifying at a deposition, trial, or hearing
- Preparing for deposition

Text: Chapter 19A

P-R-A-S-S

Pause

Responsive

Accurate

Sincere

Succinct

Negotiations

- Purposes of negotiation
- Management of negotiations

Text: Chapter 19B

Notes

SESSION 4

TOPIC: INTRODUCTION TO ENVIRONMENTAL COMPLIANCE INSTRUCTOR'S OVERVIEW

Time: 90 minutes

- | | |
|--------------------------------|---|
| PURPOSE | <ul style="list-style-type: none">· Provide the context for the work of inspectors.· Explain the role of inspectors in each aspect of an enforcement case.· Provide an overview of civil litigation.· Briefly introduce inspectors to criminal enforcement (This subject will be discussed at length in a later session) |
| KEY POINTS | <ul style="list-style-type: none">· Knowledge of program compliance and enforcement strategies aids inspectors in making appropriate field decisions.· Inspectors are involved in every aspect of an enforcement case.· Inspectors should recognize potential criminal violations and refer them for investigation. |
| ADVANCE
PREPARATION | <ul style="list-style-type: none">· Present an example of a compliance monitoring strategy and an enforcement response policy (or other documents from an enforcement or compliance policy compendium).· Request assistance from EPA's local Office of Criminal Investigations to present a 45-minute overview of criminal enforcement.· Optional: Present a chronology of an actual administrative enforcement case to use in explaining the stages of litigation.· Optional: Prepare to describe an EPA criminal case in your Region that was prosecuted successfully. |
| EQUIPMENT | <ul style="list-style-type: none">· Overhead projector |

SESSION 4

TOPIC: INTRODUCTION TO ENVIRONMENTAL COMPLIANCE INSTRUCTOR'S OVERVIEW

Time: 90 minutes

LIST OF VISUALS	4-1	Overview of Enforcement
	4-2	Compliance and Enforcement Program
	4-3	Laws and Regulations
	4-4	Compliance and Enforcement Strategies
	4-5	Compliance Monitoring
	4-6	Enforcement Response
	4-7	Follow-Up to Enforcement Actions
	4-8	Steps in an Enforcement Action
	4-9	What Can We Get From an Enforcement Action?
	4-10	Types of Legal Cases
	4-11	Principal Elements of Civil Litigation
	4-12	Stages of Civil Litigation
	4-13	Principal Differences Between Civil and Criminal Enforcement
LIST OF HANDOUTS	None	

INSTRUCTOR NOTES

SUGGESTED CONTENT

Introduction

Introduce yourself, mentioning your background and EPA experience and your role in the course.

LECTURE

OVERVIEW OF A COMPLIANCE PROGRAM

This session is intended to give inspectors a sense of their role in the entire compliance and enforcement process. As you discuss the various points, be sure to emphasize the ways in which inspectors are involved.

In this session, we are going to focus on enforcement actions, and the ways that inspectors are involved in those actions.

First, we will explain what makes up a compliance and enforcement program. In that context, we will examine how we decide when and where to conduct an inspection and the options EPA has in responding to violations.

Overhead 4-1 Overview of Enforcement

Then, we will discuss civil litigation, which forms the bulk of our cases. Finally, we will discuss criminal enforcement at EPA.

Overhead 4-2 Compliance and Enforcement Program

Compliance and enforcement are more than simply the random discovery of a violation and the institution of an enforcement action to force the violator to comply or pay a penalty. A compliance and enforcement program includes:

Overhead 4-3 Laws and Regulations

- *Laws and regulations:* When laws and regulations (and permit conditions) are well written, it is easy to determine who is subject to them and what is or is not a violation.

Overhead 4-4 Compliance and Enforcement Strategies

- *Compliance and enforcement strategies:* Usually comprising a series of documents, such as compliance monitoring plans and enforcement response policies, the strategy sets out EPA's plans for deploying its resources to achieve compliance. Those plans ensure that we have a national program. Strategies usually direct the most intensive efforts to those segments of the regulated community that are most likely to be in noncompliance or whose compliance is most important (for example, those that pose high risk of potential exposures).

Overhead 4-5 Compliance Monitoring

- *Compliance monitoring:* This aspect of the program includes all means used to determine the compliance status of a facility or site, including in-office screening of data and on-site inspections.

INSTRUCTOR NOTES

SUGGESTED CONTENT

Overhead 4-6 Enforcement Response

Enforcement response: EPA policy is to respond in a timely and appropriate manner to violations. There is a range of possible responses within different time frames, representing various degrees of seriousness and effort. Responses include:

- *Informal administrative response*, such as a notice of noncompliance
- *Formal administrative response*, such as an administrative order assessing a penalty
- *Civil judicial response*, such as a lawsuit seeking a penalty and court order to compel compliance
- *Criminal judicial response*, such as criminal prosecution against a knowing and willful violator

Overhead 4-7 Follow-Up to Enforcement Actions

Follow-up to enforcement action: Follow-up is needed after an enforcement action has been taken to ensure that the violating facility meets applicable requirements and comes into compliance. EPA ordinarily will step up the level of enforcement action when a facility fails to comply with an earlier action.

LECTURE

ROLE OF AN INSPECTOR IN ENFORCEMENT ACTIONS

An inspector should be aware that any inspection can lead to an enforcement action. The attorney-client relationship between the inspector and the case development staff and enforcement attorneys begins as soon as a facility has been selected for inspection. Inspectors are involved at virtually every stage of an enforcement case. Following are the basic steps in an enforcement action, with the potential role of the inspector highlighted:

Overhead 4-8 Steps in an Enforcement Action

The inspection: The inspector identifies and documents the facts pertaining to potential violations, writes the inspection report, and prepares a file containing all pertinent documents. (The inspector makes no independent decision that a facility or site is in violation.)

INSTRUCTOR NOTES

SUGGESTED CONTENT

- *Enforcement response decision:* The inspector may make formal recommendations to enforcement personnel about enforcement response; at a minimum, an inspector is likely to be consulted. The quality of the inspector's work in conducting an inspection and documenting violations may affect decisions about the level of action.
 - *Drafting of enforcement documents:* The inspector may be responsible for drafting all or a portion of a notice of noncompliance or a formal complaint or compliance order.
 - *Settlement negotiations:* The inspector may serve as a member of the team negotiating a settlement agreement with the violator; at a minimum, the inspector is likely to be consulted.
 - *Hearing or trial:* If the case is litigated, the inspector is likely to be involved in developing the case, may find his or her notes and other documents subject to discovery, and ultimately may be called upon to serve as a government witness.
-

DISCUSSION

PARTICIPATION OF INSPECTORS IN ENFORCEMENT CASES

Suggested questions to stimulate discussion are shown in the column to the right.

- Are there obstacles to closer and more frequent coordination between inspectors and enforcement attorneys?
- How would enforcement efforts be improved if those obstacles were removed?

LECTURE

CIVIL LITIGATION

EPA has the authority to pursue administrative relief and bring civil litigation. We will discuss criminal cases later in this session.

Overhead 4-9
What Can We Get From an Enforcement Action?

- Under most statutes, EPA, through civil litigation, can require a violator to (1) take steps to cease violations, to correct the violation, and to remedy any damages or (2) pay a civil penalty. It is EPA's policy that the penalty amount we seek should remove any economic benefit that the violator accrued as a result of the violating condition, as well as an amount determined by the gravity of the violation.

Overhead 4-10
Types of Legal Cases

- The principal difference between administrative action and judicial litigation is the setting in which they occur. Administrative cases are heard by EPA's administrative law judges, while judicial cases are tried in the United States court system. The Department of Justice (DOJ) represents EPA in judicial actions, but EPA is involved heavily in such actions.
- The bulk of EPA's enforcement cases are administrative; such actions are generally less resource-intensive for EPA and result in swifter action than judicial cases. Judicial litigation is generally reserved for more serious violations, such as cases in which other enforcement actions have stalled or have failed to bring a violator into compliance.

Overhead 4-11
Principal Elements of Civil Litigation

Following are the principal elements of civil litigation:

- Theory of the case:* This element has three aspects: (1) facts of the violation, (2) the law or legal duty, and (3) some breach of duty resulting in harm to a person or thing. Ideally, the theory of the case can be stated in 25 words or less.
- Burden of proof:* This element concerns which side is required to persuade or prove something. The nature of the issue determines which side bears the burden of proof.

Use an actual case to illustrate these stages.

Overhead 4-12
Stages of Civil Litigation

- *Standards of proof:* This element concerns how well each side must meet its burden on any given issue. In order of increasing difficulty, the four basic standards of proof are: (1) credible evidence; (2) preponderance of evidence; (3) clear, cogent, and convincing evidence; and (4) evidence beyond a reasonable doubt.

Described below are the stages of civil litigation:

- *Conception and preparation:* This stage begins when the planning for the inspection begins; legal and factual investigation and research merge and the theory of the case begins to form.
- *Pleadings:* "Letters to the judge," the first legal documents, include such items as the parties involved and the allegations and claims. In a civil case, the government's first pleading is the "complaint." Inspectors sometimes are involved in drafting the complaint.
- *Discovery:* During this phase, both sides work to gain more facts and to learn the other side's theory of the case. The information is obtained through: (1) interrogatories, written questions to which written answers must be provided; (2) requests for production of documents and samples; and (3) depositions, live testimony taken under oath. Notes and other documents prepared by inspectors are generally subject to discovery; inspectors also often give depositions.
- *Motion practice:* Motions are attempts by both sides to narrow the case to the real issue(s); motions also are used to attempt to force settlement. Motions range from attempts to exclude certain evidence to deciding whole issues of law or fact.

The inspector, who plays an important role during motion practice, may be required to provide a number of affidavits.

- *Trial:* The two sides present the facts (as they see them) to the trier-of-fact.

Most litigation work is performed before trial, and most cases are settled before trial is reached. The inspector's work makes it possible to bring the other side to settlement.

INSTRUCTOR NOTES

SUGGESTED CONTENT

- *Post trial and appeal:* All sides have post trial and appeal rights. The facts have been decided; only matters of law are at issue.

LECTURE

CRIMINAL ENFORCEMENT IN EPA

Explain that Criminal Enforcement will be discussed at length in a later session - these same topics will be covered in much more detail

Overview of Criminal Enforcement

Criminal investigations always are led by EPA's criminal investigative staff. The Office of Criminal Enforcement, Forensics, and Training (OCEFT), Criminal Investigation Division (CID) has special agents in each Regional office and Headquarters.

Regular EPA inspectors (and other staff, such as scientists) who are involved in criminal investigations are given special training at the Federal Law Enforcement Training Center (FLETC) in Glynnco, Georgia.

OCEFT-CID in Headquarters and the Offices of Regional Criminal Counsel work with the criminal investigators and DOJ in actual prosecution of criminal cases.

Because of the special legal issues associated with criminal investigations and the rights of the accused, inspectors who become involved in criminal investigations always should follow the direction of the special agent in charge (SAIC) or the resident agent in charge (RAIC).

Overhead 4-13 Principal Differences Between Civil and Criminal Enforcement

The principal differences between civil and criminal enforcement are that, in criminal cases:

- Searches of property can occur only with consent or with a warrant based on sworn testimony that there is "probable cause" to believe a crime has been committed
- The defendant has other constitutional guarantees
- Discovery of government-held information is limited, except for information that would tend to show the innocence of the accused
- The burden of proof is more strict than that for civil cases: "beyond a reasonable doubt"

- The penalties are more severe: imprisonment or a fine, or both (Some statutes allow felony sanctions, under which corporations and their individual officers are potential defendants.)

How EPA Conducts a Criminal Investigation

All initial leads to potential criminal activity are referred to the SAIC or RAIC.

Depending on the reliability of the lead, a preliminary inquiry may be conducted or assessment made to determine whether a complete investigation is warranted.

The SAIC or RAIC notifies OCEFT and the Office of Regional Counsel (ORC) and brings in technical staff from the program office(s), as needed.

The special agent who manages the investigations:

- Determines the basic investigative approach
- Leads the conduct of interviews and the assembling and review of records
- Plans and executes surveillances
- Coordinates actions with the U.S. attorney's office and other federal, state, and local law enforcement agencies
- Contacts other witnesses
- Completes investigative reports

Inspectors assigned to assist in an investigation work under the direction of the special agent.

EPA policy is to neither confirm nor deny the existence of a criminal investigation. Any requests for information must be referred to the special agent.

EPA must comply with the requirements of the Jencks Act, which is designed to allow the defendant to have all relevant information provided by a government witness so that the defendant can attempt to impeach.

- If the defendant's ability to cross-examine is hindered because the government lost information -- whether purposely or inadvertently -- the court may refuse to allow the witness to testify at all or to strike the entire testimony of the witness.
- It is EPA policy to turn over all relevant notes, records, and reports to the defense, if so requested through the court -- after direct examination.
- Because of the requirements of the Jencks Act, it is vital that inspectors keep accurate and complete notes, records, and reports that are factual and contain no opinions or biases. In addition, inspectors should throw nothing away, not even scraps of paper.

All material associated with a criminal investigation must be kept according to security procedures.

Overview of Enforcement

Components of a compliance program

Role of inspector in enforcement actions

Civil litigation

Criminal enforcement in EPA

Text: Chapters 3 and 6

Compliance and Enforcement Program

Laws and regulations

Compliance and enforcement strategies

Compliance monitoring

Enforcement response

Follow-up to enforcement actions

Laws and Regulations

Should be written clearly to indicate:

- Who is subject to them
- What is and is not a violation

Compliance and Enforcement Strategies

Compliance monitoring plans

Enforcement response policies

Other policy and guidance documents

Compliance Monitoring

Source self-monitoring and reports

Inspections

Enforcement Response

Graduates with severity of violation

- Informal administrative response
- Formal administrative response
- Civil judicial response
- Criminal judicial response

Follow-Up to Enforcement Actions

Reports and certifications of compliance by
source

Follow-up inspections

More severe enforcement response if facility
remains in violation

Steps in an Enforcement Action

Violation found and documented

Decision made on level and type of
enforcement response

Enforcement documents drafted and filed

Settlement negotiations entered

Hearing or trial conducted

What Can We Get From an Enforcement Action?

Depending on law, violation, and circumstances:

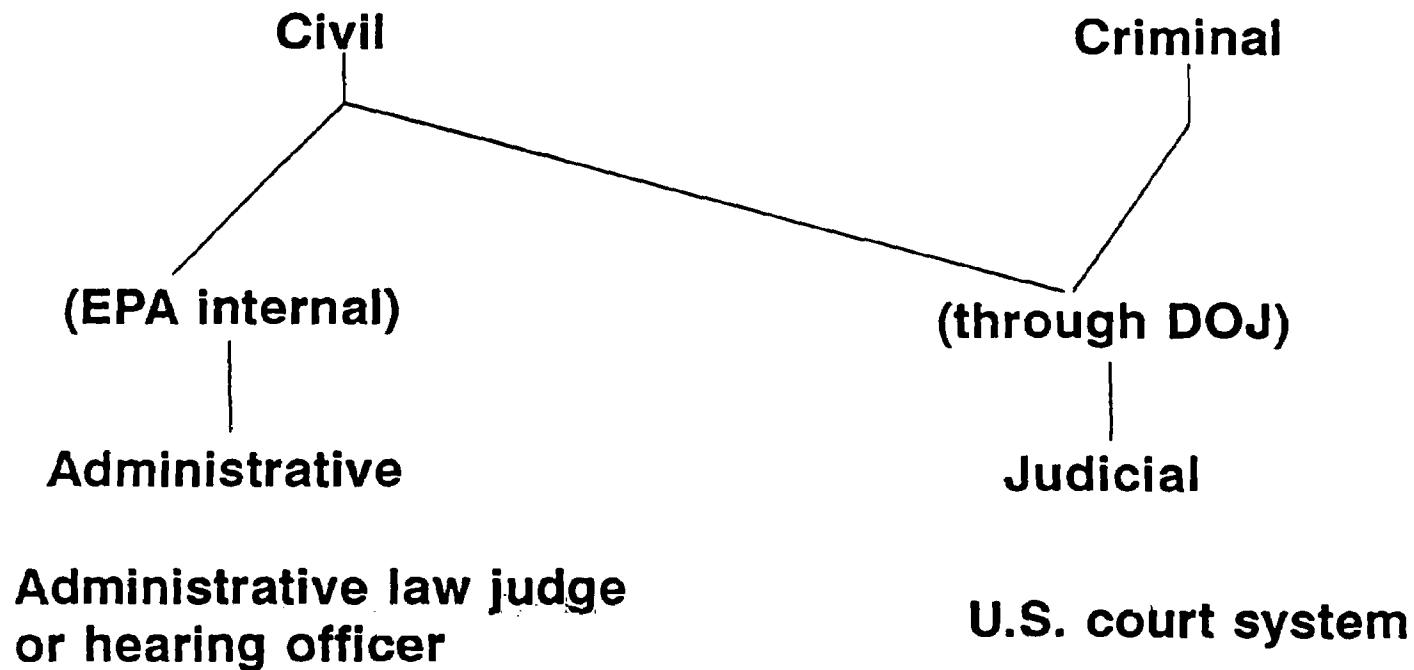
Civil

- Compliance with requirement
- Monetary penalty
- Cleanup of contamination

Criminal

- Monetary fine
- Prison sentence

Types of Legal Cases



Principal Elements of Civil Litigation

- Theory of the case
- Burden of proof
- Standards of proof

Stages of Civil Litigation

- Conception and preparation
- Pleadings
- Discovery
- Motion practice
- Trial
- Posttrial and appeal

Principal Differences Between Civil and Criminal Enforcement

Warrants based on "probable cause"

Other constitutional guarantees

Burden of proof: "beyond a reasonable doubt"

More severe penalties: imprisonment or fine

Notes

SESSION 5

TOPIC: SUMMARY OF ENVIRONMENTAL STATUTES INSTRUCTOR'S OVERVIEW

Time: 60 minutes

PURPOSE	<ul style="list-style-type: none">· Provide an overview of the major statutes under which EPA has authority.· Discuss typical inspection activities under each statute.
KEY POINTS	<ul style="list-style-type: none">· While each statute is different, they have many features in common.· Inspectors should be able to recognize major violations of other EPA programs and refer them, as appropriate.
ADVANCE PREPARATION	<ul style="list-style-type: none">· Identify a recent case or two to use as illustrations to explain the types of enforcement cases that are brought under the various laws.
EQUIPMENT	<ul style="list-style-type: none">· Overhead projector
LIST OF VISUALS	5-1 Summary of Major Statutes That Affect EPA 5-2 and 5-3 Selected Program Provisions of 40 CFR
LIST OF HANDOUTS	5-1 Summary of Authorities

INSTRUCTOR NOTES

SUGGESTED CONTENT

Introduction

Introduce yourself, mentioning your background and EPA experience and your role in the course.

LECTURE

INTRODUCTION TO LAWS AFFECTING EPA

This session is a brief overview of laws affecting EPA, covering much information in a short amount of time.

A one-page summary of key authorities granted under the laws discussed in this session is provided as Handout 5-1.

EPA administers many different laws, and each is complex. The regulatory programs that have grown out of these laws also are complex.

Each law is covered in great detail in Chapter 2 of your text, and, of course, learning the laws and regulations governing your particular program is a major part of your training.

In the brief period that we have here today, I want to highlight some of the common features of our environmental laws and discuss their major provisions. This overview should help you understand the scope of EPA's responsibilities and how the program you work for fits into that scope.

We also hope that you will learn some key ways in which other statutes can be violated so you can recognize violations in the field and refer them to the appropriate office for investigation.

Historical Perspective

Overhead 5-1 Summary of Major Statutes That Affect EPA

There is no single comprehensive environmental law. Rather, we have a series of laws that were enacted to address particular environmental issues.

Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) -- 1946

Clean Air Act (CAA), Clean Water Act (CWA) -- 1960s

Safe Drinking Water Act (SDWA), Toxic Substances Control Act (TSCA), Resource Conservation and Recovery Act (RCRA) -- 1970s

Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) -- 1980

CAA Amendments -- 1990

EPA was formed by Presidential order in 1970. Before that time, environmental responsibilities were scattered among many agencies. The U.S. Army Corps of Engineers (USACE), the departments of Interior and Agriculture, and some other federal agencies still retain some environmental responsibilities, but they cooperate with EPA under a variety of agreements. For example, EPA and USACE jointly administer the CWA Section 404 program.

Common Features of Laws Affecting EPA

While each law is somewhat different, they all have several features in common:

- They provide national standards governing the handling, emission, discharge, and disposal of harmful substances.
- Standards are applied through general EPA or state rules, through permits, or through both mechanisms.
- EPA is given authority to enter and inspect and has other authority to request or demand submittal of information, monitoring, testing, and reporting.
- EPA generally is given authority to issue notices of violation and administrative compliance orders.
- EPA generally is given authority to seek injunctive relief through civil courts or to impose such relief administratively.
- EPA usually can seek administrative penalties and civil or criminal remedies. This authority generally allows EPA to eliminate, through assessment of penalties, any economic advantage gained by a noncomplying source as a result of its noncompliance.
- EPA usually has authority to address emergency situations.
- EPA may give states authority to administer and enforce programs; however, EPA retains independent enforcement authority.

INSTRUCTOR NOTES

SUGGESTED CONTENT

Overheads 5-2 and 5-3
Selected Program Provisions
of 40 CFR

- Federal facilities generally are required to comply with substantive provisions of statutes under which EPA has authority.
- EPA implements these laws through regulations, assembled in 40 Code of Federal Regulations (CFR) parts 1-799.

LECTURE/DISCUSSION

LAWS AFFECTING EPA IN A NUTSHELL

Avoid lengthy lecture and detail on statutes. The major objective of this session is to improve inspectors' ability to recognize potential violations in areas outside their fields of specialization.

After you have summarized each statute, ask the trainees for ideas about what the inspector looks for during an inspection under that program. Because of the limited time, this exercise should be in the style of "rapid-fire brainstorming." The Suggested Content column lists a few ideas for each program.

In the remaining portion of this session, I hope to convey to you a general understanding of each of the major laws EPA administers, and give you an idea of the ways these laws can be violated so you know what to look for while on site. Your manual provides more detail about each statute.

Each of you conducts or will conduct inspections for one or more programs. When we talk about a program you are familiar with, please help me by providing examples of things you look for during inspections.

Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA)

All pesticides must be registered with EPA.

Many toxicity and environmental fate tests are required. If the product's risks do not outweigh its benefits, it can be registered.

If the product is registered, the label states how it must be used — in essence, the label serves as the "regulation" governing use of the pesticide.

The principal components of the enforcement program are:

- Ensuring that manufacturers and producers of pesticides comply with requirements for registration, testing, and labeling.
- Ensuring that pesticide users are using the pesticides in accordance with label directions

INSTRUCTOR NOTES

SUGGESTED CONTENTS

At this point, ask the group to list what a pesticide inspector looks for. The Suggested Content column presents a few suggestions.

What might an inspector do during a pesticides inspection?

- Determine whether the EPA registration number and correct label are on pesticide packages (at the manufacturer and in the marketplace)
- Audit the laboratory to determine whether it is using good laboratory practices and following established test protocols
- Investigate a farm worker's complaint that he was sprayed while working in a field
- Observe the mixing and loading practices of a commercial aerial applicator

Clean Air Act (CAA)

The CAA addresses air pollution from stationary sources (factories and utilities) and mobile sources (cars and trucks). It was amended in 1990; those amendments greatly expanded the scope of the act. The amendments also spelled out in detail actions that must be taken by EPA, the states, and the regulated industries.

EPA sets national air quality standards for various pollutants. Each state has a plan for meeting those standards, called state implementation plans (SIP). Because many industrialized and urban areas have not attained the standards, the amendments establish deadlines and requirements for nonattainment areas. Control requirements for individual facilities generally are more stringent in areas that do not meet air quality standards, but significant deterioration of air quality in areas that meet the standards is not allowed.

The amendments also list hazardous air pollutants that must be addressed by new regulations. EPA is required to promulgate technology-based standards to control such pollutants.

The amendments add controls on electric utilities that are intended to reduce emissions that cause deposition of acids. Utilities are required to reduce emissions of sulfur dioxide and nitrogen oxides over the next decade. There also are new prohibitions on chlorofluorocarbons (CFC) and other substances that damage the stratospheric ozone layer. The controls will be phased in

INSTRUCTOR NOTES

SUGGESTED CONTENT

Open the discussion to ideas about air inspections. Use suggestions, if necessary.

Of particular interest to inspectors will be the new program for operating permits created by the amendments

The mobile source program regulates emissions from motor vehicles. EPA tests new classes and models of vehicles to make sure they are designed to meet emissions standards. EPA also can regulate fuel and fuel additives if emissions from their use would contribute to air quality problems.

What might a stationary source inspector do during an inspection?

- "Read" visible emissions from smokestacks to determine whether they are within acceptable boundaries

Check whether required equipment has been installed

- Check the operation and maintenance of control equipment

What might a mobile source inspector do?

- Audit vehicles during production to determine whether they meet emissions standards
- Investigate tampering (removal of catalytic converters) and fuel switching incidents

Clean Water Act (CWA)

EPA establishes national water quality goals under the CWA.

Water pollution from industrial and municipal facilities is controlled primarily through permits that limit discharges.

Permit limits are based on effluent guidelines for specific pollutants, performance requirements for new sources, or water quality limits. Permits also set forth schedules and time tables for construction and installation of needed equipment.

Sources that discharge indirectly to a municipal wastewater treatment plant are subject to pretreatment standards

Other key provisions of the CWA require permits for discharge of dredge-and-fill materials into waters (including wetlands) and requirements for reporting and cleaning up spills of oil or hazardous material.

INSTRUCTOR NOTES

SUGGESTED CONTENT

What are some of the things a water inspector might do during an inspection?

Nonpoint sources of water pollution, such as runoff from agricultural fields, are addressed through programs designed to implement best management practices. Ask for ideas about water inspections, using suggestions as needed to stimulate the group.

- Make sure that a source that discharges to water has obtained the required permit
- Check self-monitoring reports of discharges against data in the source's files and logs
- Interview operators to determine how equipment is maintained
- Sample effluent to determine whether it exceeds limits set forth in the pertinent permit.

Safe Drinking Water Act (SDWA)

EPA sets standards for the quality of water that public water systems can serve, known as maximum contaminant levels (MCL).

Public systems must sample their water periodically and report findings to the state or EPA. They must notify consumers if they do not meet the standards or if they have failed to monitor or report.

EPA has a schedule established by statute for promulgating a large number of new MCLs.

Underground injection of materials is regulated under another provision of the SDWA, which prohibits the movement of fluids from injection wells into an underground source of drinking water. Technical requirements are placed on well operators through regulations and requirements set forth in operating permits.

Use suggestions for drinking water program inspections as needed

What might public water system and underground injection control (UIC) inspectors do during compliance inspections?

- Verify the public water system's records of monitoring and reports of exceeding MCLs

Interview water system personnel to identify potential operations and maintenance problems

- Observe mechanical integrity testing at UIC wells
- Check to make sure that only the wastes and quantities specified by permit are being injected into the wells.

Toxic Substances Control Act (TSCA)

Under TSCA, EPA can regulate the manufacture, distribution in commerce, and use of toxic substances.

Makers of new chemicals must notify EPA in advance of their manufacture

For both new and existing chemicals, EPA can require testing and additional information. Drawing on risk-benefit analysis, EPA can prohibit or limit the chemical's manufacture and use.

Chemical control rules are in place for polychlorinated biphenyls (PCB), asbestos, and CFCs

Ask the group for ideas about what a TSCA inspector does
The Suggested Content column presents some ideas.

What might a TSCA inspector do?

- Check for leaks or drips from a PCB transformer or capacitor. Make sure they are marked with a PCB label
- Visit a school at which asbestos abatement is taking place to make sure the work is being done properly
- Check a chemical company's records to make sure it has not begun to manufacture a product for which EPA has denied or delayed approving under the premanufacture notification (PMN) program
- Audit a laboratory conducting toxicity testing under TSCA test rules

Resource Conservation and Recovery Act (RCRA)

RCRA provides "cradle-to-grave" management of hazardous waste, management of solid wastes, and regulation of underground storage tanks that contain chemical and petroleum products

INSTRUCTOR NOTES

SUGGESTED CONTENT

Under RCRA subtitle C, wastes listed as hazardous waste are subject to controls governing their generation, transportation, storage, and disposal. A manifest system tracks shipment of hazardous waste from the generator until its ultimate disposal.

The control program is implemented through regulations and permits for various types of facilities that handle hazardous waste.

Treatment, storage, and disposal facilities (TSDF) for hazardous waste are subject to technical requirements for design and operation. They are required to take corrective action if releases occur and must show financial ability to conduct cleanups, if needed.

Nonhazardous solid wastes are addressed under RCRA subtitle D. EPA develops guidelines and criteria for managing solid waste and provides financial assistance to state and local governments to develop solid waste plans.

Underground storage tanks are subject to regulation under RCRA subtitle I. Regulations require phasing out of tanks that do not meet the technical standards, as well as installation of leak detection systems. Tank owners must take corrective action if leaks occur.

Ask for ideas and use suggestions as needed to stimulate discussion.

What are some of the things an inspector might look for during a hazardous waste inspection at a TSDF?

- Visually inspect facility grounds for evidence of leaks or spills (for example, stained ground, dead vegetation, or a discolored waterway)
- Inspect stored drums and containers for condition, leaks, and the presence of labels
- Check manifests to determine whether the facility is receiving only wastes it is allowed to receive
- Review the facility's groundwater monitoring data

What might the inspector do during an underground storage tank inspection?

- Check whether a leak detection system is in place and operating (or pressure test has been performed)
- Check for certification of proper installation of new tanks

Superfund (CERCLA)

The Superfund law authorizes EPA to clean up hazardous substances at closed and abandoned waste sites and to recover the cost of cleanup and associated damages from the responsible parties. EPA also can take enforcement action against responsible parties to compel them to clean up sites.

Other provisions of CERCLA require the reporting of releases in quantities above specified amounts ("reportable quantities") of hazardous substances.

Since CERCLA is primarily an after-the-fact cleanup program, it requires no compliance monitoring inspections, as do other programs. Sites are visited and environmental and other data are gathered for evaluation and assessment, as well as to identify potential responsible parties (PRP).

This information ultimately may be used in enforcement actions to recover the costs of cleanup or to compel cleanup by responsible parties.

Ask the group for ideas about signs of an abandoned toxic dump site or other problem subject to action under Superfund legislation.

While they are in the field, inspectors in all EPA programs should be alert to signs of potential abandoned dump sites or other situations subject to action under Superfund. Among those signs are:

- Rusting drums and containers, evidence of spills, discolored vegetation, discolored water, and foul-smelling lagoons
- Statements by facility personnel about how they handled wastes

Emergency Planning and Community Right-to-Know

Title III of the Superfund Amendments and Reauthorization Act (SARA) of 1986 was enacted to help increase the public's knowledge of and access to information about the presence of hazardous chemicals in their communities and releases of those chemicals into the environment. It also is designed to aid state and local governments in preparing for response to chemical release emergencies.

Under section 313, facilities that make routine releases of toxic chemicals to the environment must report them for inclusion on an inventory to be published by EPA. This requirement includes releases to air and water, for example, that are allowed under permits issued by EPA or the state.

Because the section 313 program is new, trainees are not likely to have experience in it. However, because Title III has implications for all EPA programs, some compliance activities in the future may involve aspects of the program.

EPA inspections associated with section 313 might include:

- Making sure that all who should report have reported
- Verifying the accuracy of the information submitted
- Cross-checking permit discharges against reported information

This session has been a whirlwind tour of laws under which EPA holds authority and of the types of violations inspectors look for. We hope it has given you a sense of the enormity and complexity of EPA's mission and the role of your program(s) in that mission.

A more detailed discussion of the laws is currently being developed on a CD Rom which can be made available to you.

**Authorities Granted Under Federal Environmental Laws and Regulations
for Administrative and Civil Investigations**

	Air	Water	Superfund	Pesticides	Solid Waste	Drinking Water	Toxics
Inspection Authority	CAA 114 40 CFR 80 4, 86*	CWA 308, 402 40 CFR 122.41	CERCLA 104	FIFRA 8, 9 40 CFR 160 15, 169 3	RCRA 3007, 9005 40 CFR 270 30(i)	SDWA 1445 40 CFR 144.51(i), 142.34	TSCA 11 40 CFR 717 17, 792 15
Recordkeeping Authority	CAA 114, 208, 311 40 CFR 51, 60, 79**	CWA 308, 402 40 CFR 122.41(j), 122 48, 233.11	CERCLA 103	FIFRA 4, 8 40 CFR 160 63, 160 185-195, 169 2, 171 11(c)(7)	RCRA 3001, 3002 3003, 3004, 9003 40 CFR 262 40, 263.22; 264.74, 264.279, 264.309, 265 74, 265.94, 265.279, 265.309, 270 30(j), 270.31	SDWA 1445 40 CFR 144.51(j), 144 54, 141 31-33	TSCA 8 40 CFR 704, 710, 717 15, 720 78, 761 180, 762 60, 792 185-195
Confidential Information (40 CFR 2 201-2.215)	CAA 208, 307 40 CFR 2 301, 53, 57, 80	CWA 308 40 CFR 2 302, 122 7, 233.3	CERCLA 104	FIFRA 7, 10 40 CFR 2 307	RCRA 3007, 9005 40 CFR 2.305, 260.2, 270 12	SDWA 1445 40 CFR 2 304, 144 5	TSCA 14 40 CFR 2 306, 704 7, 707 75, 710.7, 712 15, 717 19, 720 85-95, 750.16, 750 36, 762 60, 763 74
Emergency Authority	CAA 303	CWA 504	CERCLA 104, 106	FIFRA 27 40 CFR 164 123, 166 3(d)	RCRA 7003	SDWA 1431 40 CFR 144 34	TSCA 7
Employee Protection	CAA 322	CWA 507	CERCLA 110		RCRA 7001	SDWA 1450	TSCA 23
Penalties	CAA 113	CWA 309	CERCLA 103, 112 EPC 325	FIFRA 12, 14	RCRA 3008, 9006	SDWA 1423, 1424, 1431, 1432, 1441	TSCA 15, 16

86 078-7, 86 441-78, 86 606-84, 86.1006 84

* 51 320-327, 57 105, 57 305, 57 404, 58, 60.7, 61.10, 61.24, 61 69-71, 79 5, 85.407, 85.1086,
85 1906, 86 084-40, 86 144-78, 86 542-78 and 90, 86 609-84 through 98, 86.1009-84

Summary of Major Statutes That Affect EPA

Environmental Problem	Statute	Original Enactment
Pesticides	FIFRA	1946
Air Pollution	CAA	1960s
Water Pollution	CWA	1960s
Drinking Water	SDWA	1970s
Toxic Chemicals	TSCA	1970s
Solid and Hazardous Waste	RCRA	1970s
Abandoned Toxic Dumps	CERCLA	1980s



Selected Program Provisions of 40 CFR

Part	Topic
1	General information about and organization of EPA
2	Freedom of Information Act requests; confidential business information; testimony by employees and production of documents in civil legal proceedings in which the United States is not a party
3	Employee ethical standards
22	Rules of practice of administrative assessment of civil penalties and the revocation or suspension of permits
30	General regulations for assistance programs
32	Debarment and suspension under EPA assistance programs

(continued)



Selected Program Provisions of 40 CFR

Part	Topic
33	Procurement under assistance programs
50-87	Air programs (including mobile sources)
100-140	NPDES program
141-147	Drinking-water program
152-180	Pesticides program
220-233	Ocean dumping
240-272	Solid and hazardous wastes
280	Underground storage tanks
300-355	Superfund
400-471	Effluent guidelines and standards for CWA
702-799	Toxic substances

Notes

SESSION 6

TOPIC: INSPECTOR ISSUES INSTRUCTOR'S OVERVIEW

Time: 60 minutes

PURPOSE

- Provide an overview of the roles and functions performed by inspectors that will be covered in more depth during the course.
- Provide information about issues related to confidential business information and ethics that are of concern to inspectors.

Present techniques for handling press and other public inquiries related to an inspection.

- Provide awareness of the inspector's liability for false statements.

KEY POINTS

Inspectors are involved in virtually every aspect of the compliance and enforcement program.

Inspectors have access to confidential data and must handle such data as its confidentiality requires.

- When the inspector is faced with a question of ethics, the rule of thumb is, when in doubt, don't!
- The inspector should emphasize the positive!

ADVANCE PREPARATION

- Review lecture notes on the federal-state relationship and tailor the ideas to the circumstances in your Region.
- Prepare a handout (three-hole punched for insertion into the text) that explains requirements established by the Region for obtaining certification and associated training to qualify for access to confidential business information.
- Prepare a handout (three-hole punched) that provides the name and telephone number of the ethics official(s) inspectors should contact if they need advice on questions of ethics.

SESSION 6

TOPIC: INSPECTOR ISSUES INSTRUCTOR'S OVERVIEW

Time: 60 minutes

EQUIPMENT

Overhead projector
Flip chart

LIST OF VISUALS

6-1	Role of the Inspector
6-2 and 6-3	Role of the Inspector
6-4	Enforcement Agreements Between EPA and the State
6-5	Confidential Business Information
6-6	When in Doubt, Don't!
6-7	Dealing With the Press and the Public
6-8	The Reporter's Viewpoint
6-9	Talking With the Press
6-10 and 6-11	Specific Techniques
6-12	The Inspector's Positive Story

LIST OF HANDOUTS

6-1 Inspector's Liability

INSTRUCTOR NOTES

SUGGESTED CONTENT

Introduction

Introduce yourself, mentioning your background and EPA experience and your role in the course.

Overhead 6-1

Role of the Inspector

In this session, we are going to discuss the many roles inspectors play in EPA, talk about the relationship between federal and state authorities in administering environmental programs, and talk a little about confidential business information (CBI) and ethics as those issues affect inspectors.

LECTURE

ROLE OF THE INSPECTOR

Use the suggested content to provide a brief overview of the role of the inspector as a lead-in to the discussion questions for this session.

Inspectors are the keystone of EPA's compliance and enforcement program. Without inspectors, there would be no enforcement cases, for it is the inspectors who collect the information upon which such cases are based.

To ensure the ultimate success of an enforcement action, the inspector's work must meet the highest standards

An inspector's failure to substantiate adequately what he or she saw may mean that EPA cannot take the case to court and win a large penalty, settling instead for a lesser action with little effect on EPA's enforcement goals.

Overheads 6-2 and 6-3

Role of the Inspector

Inspectors generally are involved in virtually every aspect of the compliance and enforcement program.

- Selecting specific facilities to inspect
- Determining the scope and objectives of the inspection
- Coordinating activities with appropriate legal, technical, and program staff
- Evaluating the need for a warrant and developing the information required to support an application, if needed

Assessing whether a violation might exist and collecting substantiating evidence

- Compiling the information collected and writing the report that will be the basis for EPA's decision about an enforcement action
- Collecting additional evidence, if needed, to support an enforcement case
- Participating in (or supporting) settlement negotiations
- Serving as a government witness in enforcement hearings or trials
- Checking to ensure that a facility has taken the steps required by the enforcement action to return to compliance

During this course, we will be discussing these and many other functions performed by inspectors.

The inspector's role goes beyond those functions, however.

The basic responsibilities of inspectors can be grouped into the following general categories:

- *Official representative* The inspector represents EPA and may be the only EPA official ever seen by a plant manager. This role requires tact, a professional attitude, and diplomacy.
- *Fact-finder*: The inspector assesses whether the facility is in compliance with laws and regulations. This task requires extensive knowledge of the requirements and skill in obtaining information and following up leads to identify less obvious violations.
- *Enforcement case developer*: The inspector collects and preserves evidence of noncompliance. Since the inspection is usually the primary basis of the government's case, good documentation is essential. The inspector is often a key witness.
- *Provider of enforcement presence*: The inspector "shows the flag," creating a visible presence of government interest in the environmental status of the facility; the potential of an inspection creates an incentive for compliance.

INSTRUCTOR NOTES

SUGGESTED CONTENT

Go through the list and ask for a show of hands. Encourage discussion of what makes trainees comfortable or uncomfortable in the various roles. Stress that this course is designed to enhance their skills in each of the areas.

Technical educator: The inspector serves as a source of regulatory information and may provide technical assistance to facility managers by directing them to sources of technical information.

Technical authority: Inspectors may be called upon to help EPA interpret regulatory requirements, assess the adequacy of control measures, interpret technical data, and assess environmental effects.

Discussion Questions:

- Are there any functions described above that you do not perform? Why?
- Which of these roles are you most comfortable in performing? In which areas do you feel least prepared?

LECTURE

THE RELATIONSHIP BETWEEN FEDERAL AND STATE AUTHORITIES

Include relevant information on relations between EPA and states in your Region. Provide details and examples, when available.

Almost all the programs developed under EPA's authority can be delegated to approved states for implementation, including such aspects as permit writing and conducting compliance monitoring and enforcement. States now conduct from 80 to 90 percent of all environmental compliance inspections.

The relationship between federal and state authorities in enforcement is particularly sensitive. While the states have primary responsibility for enforcement, EPA retains the ability to file cases in the states and must conduct oversight of the state's performance.

EPA inspectors play an important role in the relationship. Effective communication promotes cooperation and technology transfer and improves the overall enforcement effort at both federal and state levels.

INSTRUCTOR NOTES

SUGGESTED CONTENT

Overhead 6-4 Enforcement Agreements Between EPA and the State

EPA and the states have developed enforcement agreements that

- Reflect the criteria and standards EPA will use in oversight of state programs
- Reflect the criteria to be applied in cases in which EPA directly enforces regulations in a state to which authority has been delegated

Specify the data states will report to EPA

Ordinarily, EPA does not conduct routine inspections in states that have delegated authority. However, EPA may join with the state on an inspection at the state's request or to perform oversight. On occasion, EPA might perform an independent inspection in a state -- for example, to support a direct EPA enforcement action or as a follow-up to ensure compliance with a consent decree

EPA conducts oversight inspections to evaluate the quality of state inspection activities, identifying both strengths and weaknesses and identifying steps that EPA and the state can take together to improve any weaknesses on the part of the inspector and the entire program.

The success of oversight inspections depends greatly on communications related to them. It is important to establish in advance clear expectations on the part of both EPA and the state about the criteria for selecting specific candidates for oversight inspections.

Before an oversight inspection, the roles and responsibilities of EPA and the state inspector also should be set forth clearly, on such matters as who has the lead role, who writes the report, and who will followup with an enforcement response. Finally, there should be agreement about how deficiencies will be identified and how follow-up action to correct problems will be undertaken.

INSTRUCTOR NOTES

SUGGESTED CONTENT

Ask the group for problems or other experiences they have had with regard to oversight inspections or the relationship between federal and state authorities.

Discussion Question:

Oversight is one of the trickier aspects of EPA's relationship with the states. Would anyone like to share their experiences with oversight inspections?

LECTURE

CONFIDENTIAL BUSINESS INFORMATION

Inspectors gain access to and collect information that companies ordinarily would not make available to outsiders

While the specific provisions vary, EPA is required under laws that govern its actions to protect trade secrets and CBI of the regulated community, if a member of that community so requests

Regulations governing how EPA must handle such information are in 40 CFR part 2.

CBI is information such as process, formulation, sales, and production data that could hurt a company's competitive position if it became known publicly.

Because of the additional security measures and the potential risk of accidental disclosure, EPA policy is to avoid collecting confidential information that is not necessary to carrying out its functions.

By law and regulation, EPA must inform companies of their right to claim that information requested by EPA is confidential. This right extends to information collected during an inspection. Each program has forms or other procedures that have been developed for such claims.

Inspectors cannot refuse a CBI claim. If an inspector does not believe specific information is legitimately CBI, ORC should be consulted.

INSTRUCTOR NOTES

SUGGESTED CONTENT

Overhead 6-5 Confidential Business Information

Generally, procedures for handling CBI include:

- Only authorized persons can see the data.
- An access log is maintained that identifies everyone who has had access to the data

There may be limits on making copies of the data

It is important to remember that any reports, case files, laboratory reports, or other documents, that are generated from confidential data also are confidential data and must be handled accordingly.

Give trainees handout on the Region's requirements and training for CBI certification, if available.

Inspectors must have special training and certification to handle CBI, usually including training in procedures used in the office and on the road for handling CBI. Contact the following for details:

Insert CBI contact names here.

LECTURE

ETHICAL CONSIDERATIONS FOR INSPECTORS

Give Handout 6-1 to trainees.

Integrity and professional impartiality are crucial. The inspector must be impartial and appear to be impartial.

Enforcement actions based on the inspector's work may represent a major commitment of EPA funds and time. Success before an administrative law judge or U.S. court may hinge on the inspector's freedom from bias or even apparent bias.

It is crucial that inspectors be familiar with and comply with laws and regulations about conflict of interest and ethics.

There is a designated ethics official in the Office of General Counsel in Headquarters (Don Nantkes). The ethics official(s) for this office is (are):

Insert ethics contact names here.

Conflict of Interest

It is against the law (18 U S C Section 208(a)) to participate in any proceeding in which the employee (or the employee's spouse or minor child) has a financial interest, regardless of amount

Examples of prohibitions are certain roles in nonprofit organizations, relationships with potential employers, and ownership of stock.

Penalties of up to a \$10,000 fine and two years in prison can be imposed

Ask the group for examples of each point, and discuss both actual misconduct and the appearance of misconduct.

Many of these examples need to be tempered with good judgement.

Standards of Conduct

Under regulations in 40 CFR part 3, EPA employees must avoid any action that might result in or create the appearance of:

- Using public office for private gain (for example, recommending a contractor that employs an inspector's son)
- Giving preferential treatment to anyone (for example, agreeing for the facility's convenience and without a compelling reason to return the following day)
- Impeding the efficiency or economy of the government (for example, staying in a fancy hotel, even at the government rate that is too far from the facility to arrive on time each day)
- Losing independence or impartiality (for example, becoming social friends with facility officials)
- Making a government decision outside official channels (for example, telling a facility about a violation during inspection - but the facility should be informed if a problem or method is doing immediate harm)

Adversely affecting public confidence in EPA or the government (for example, being convicted of an unrelated crime)

Questions and Answers

Solicit questions about ethics from the trainees. The points below may help in responding to them, you may wish to review these points if no specific questions come up.

Gifts, favors, and luncheons

- Avoid accepting such items under circumstances that might be construed as influencing the performance of official duties. Eat before you arrive at the facility, if possible.
- There is an exemption for inspectors in accepting food and refreshments of nominal value in the ordinary course of a luncheon or dinner meeting or other meeting. Always offer to pay for the meal
- Use this exemption only when absolutely essential, such as in remote locations where there are no public eating places.

Use of information

- All data collected on an inspection is for official use only.
- Don't speak in a derogatory manner of any product, manufacturer, or person.

Information that has not been made available to the general public cannot be used to further a private interest.

Vehicles:

Avoid renting vehicles that appear flashy or expensive.

- Motor vehicles owned, rented, or leased by the government cannot be used for nonofficial purposes

Financial interests:

- If you have stock in a company or a member of your family works there, recuse yourself from the inspection.

INSTRUCTOR NOTES

SUGGESTED CONTENT

Overhead 6-6
When in Doubt, Don't!

A good rule of thumb is: When in doubt, don't!

LECTURE

DEALING WITH THE PRESS AND THE PUBLIC

Ask the trainees "When would an inspector deal with the news media?" List the answers on a flip chart. Then ask: "When would an inspector deal with the public?" List answers on a flip chart.

Overhead 6-7
Dealing With the Press and the Public

In any inspection, nobody is guilty until proven so through an enforcement action. Therefore, when we are conducting an inspection, we can say nothing that implies a judgment. In criminal cases, the legal restrictions are more stringent. EPA's press policies, which outline what can and cannot be said, are summarized in the text in Chapter 20.

In dealing with the press, the key rule is Emphasize the positive! There are two ways to handle an interview. You can be passive, just answering the questions and trying to skirt disaster when the reporter wants you to speculate or reveal information prematurely. Or you can be positive, using the questions as opportunities to tell EPA's story. This session will show you how to stress the positive and make reporters happy.

Overhead 6-8
The Reporter's Viewpoint

Where Reporters Are Coming From

Every reporter is under pressure from his or her boss to produce a usable story. Conflict and politics make better stories than scientific facts. The reporter hopes the EPA inspector can provide part of that story. Reporters' needs are different:

- A newspaper reporter wants facts and quotes that can be used in print, and the deadline usually is approximately 7:00 p.m. for the morning papers.
- A television reporter wants a story with entertainment value, with a pictorial element that will look dramatic on the TV screen. Words are not enough, because the reporter has to show the story.

- A radio reporter is trying to capture a story quickly and get it on the air during the next news break, less than an hour away. Sound is the reporter's medium, so a short, dramatic quote taped on the site may make a story fly.

All reporters cover viewpoints, not truths. While they tend to avoid the extremes, they look for definite opinions on an issue, not the absolute middle-of-the-road.

The inspector can help reporters by meeting their needs, even when their specific questions cannot be answered. The reporter can use the inspector's explanation of what the inspection is accomplishing, why it is being done, and what will be done with the results, especially if, in telling the story, the inspector meets the different needs of the newspaper, television, and radio reporter

Overhead 6-9 Talking With the Press

Techniques for Talking With the Press

When you talk to the press, the most important point is Know what you want to say, and use the interview to say it in a form the reporter can use

Overheads 6-10 and 6-11 Specific Techniques

1. *Don't speculate.* Reporters speculate as a matter of course, and they will ask the inspector to speculate, too: "If you find trichloroethylene, are you going to recommend closing the drinking-water supply?" Instead of joining in the speculation, the inspector should step back to the solid ground of what is known. You might say: "We don't know what we'll find here. But we're going to analyze it and take any action necessary to protect public health and the environment."
2. *Avoid jargon.* The acronyms used so commonly in environmental agencies mean nothing to the public. (Most reporters are not scientists, and technical explanations or jargon will mean little to them.) Don't hesitate to use the full term, even if it comes up several times. Speak as though you were explaining your work to someone you just met at a party.
3. *Reject false premises.* Reporters sometimes ask questions that involve a false premise, such as: "Ralph Nader has said that Superfund is a failure. So isn't this inspection just a meaningless gesture?" Respond by refuting the

premise if you can and emphasizing the positive -- for example, "I haven't seen Ralph Nader's statement, but it's clear that none of the Superfund sites in this region is an imminent threat to human health, and all of them are moving toward cleanup. It's a long-term process."

4. *Speak on the record.* EPA's business is public business. If it can be told, it should be on the record. Publication of off-the-record conversations can frighten the public unnecessarily before the whole story is in; they also put EPA at a disadvantage in moving forward with effective responses to violations and other environmental problems.
5. *Know what you want to say.* Even if the reporters have questions that you can't answer yet, you should have a message you want to get across, with two or three themes. Keep returning to those themes when you answer the reporter's questions. One theme could be the careful conduct of the inspection: through sampling, clean containers, chain of custody, careful laboratory analysis, and consideration of the results.
6. *Know when to stop.* When you have finished your point, stop talking. If the reporter does not immediately ask another question, do not feel that you must fill the silence, even if the microphone and camera stay on. A reporter may use this gimmick, hoping you will babble on and say something "interesting".
7. *Acknowledge differences of opinion.* Get out in front of the story by telling the reporter if there is uncertainty or if different points of view exist. You do not want the reporter to learn about a controversy from somebody else and conclude: "That EPA inspector did a snow job on me." Emphasize that EPA is considering all points of view and acknowledge relevant uncertainties that affect the issue.
8. *Make a "no comment" sound like something more.* You create suspicion by saying "I can't comment." Instead, spin your answer out -- for example. "We don't know what we're going to find, but we're making an inspection here about water quality, and we're looking at 100 possible contaminants. We're taking samples here, and the samples will go to our lab in Smithville for analysis .." With that

approach, you give the reporter some usable information, without disclosing facts that are not ready for release.

9. *What if the reporter goofs?* If the story comes out wrong, or if you're misquoted, don't leap to the attack with demands for retraction or angry complaints to the editor. Reporters have a low tolerance for criticism. Getting on a reporter's bad side could adversely affect your Agency's future coverage. But the reporter is interested in getting the story right. Call on your press officer and discuss how to handle the situation. A method that often makes the best of a bad situation is to call the reporter and take part of the blame, such as: "I guess I didn't make myself clear. Did I really say that EPA was thinking of shutting down the water supply?"

Overhead 6-12
The Inspector's Positive
Story

Overall, the inspector's response to reporters can project a positive story about EPA's efforts to protect public health and the environment. It is not necessary to give out information prematurely or to speculate about the future, because reporters will use the information inspectors can give them. What we are doing at a site and what our methods are. That is an interesting story to tell, and nobody but an inspector can tell it first hand.

INSPECTOR'S LIABILITY

Inspectors must make sure they are honest, forthright, and live up to the Boy Scout law in all their dealings with the regulated community. One senior inspector conducted an inspection at a facility and found major repeat violations. The inspector wrote the report and was responsible for either negotiating a settlement or preparing for trial. During discovery, the inspector provided information about education, work experience, and other facts, as requested by the defense attorney. The inspector's credentials were extensive and impressive; however, because of comments made during a deposition, the inspector's educational background was checked. The inspector had stated that he had a doctoral degree when, in fact, he had only taken courses toward such a degree. As a result of that dishonesty, the inspector was removed from the case, was placed under house arrest (was allowed only to go to work and return home), and ultimately was fired.

In another case, two inspectors were picked up at the airport by a courtesy shuttle. One of the inspectors claimed taxi fare, while the other did not. When questioned about the claimed taxi fare, the inspector admitted falsely claiming the fare and resigned.

During a major cleanup activity, an on-scene coordinator aided a contractor in obtaining a contract, accepted special favors, and falsified information on travel vouchers. Acting on a tip, the OIG and OCI initiated an investigation, documented the illegal activity, and had the individual arraigned in federal court. The case is still pending.

During a criminal investigation at a federal facility, evidence showed that three senior civilian employees knowingly and willingly had disposed of hazardous waste. Since it was a government facility and the government brought charges against the employees, they had to hire their own attorneys for the trial. The employees were found guilty, given suspended sentences, and fined. After being found guilty of a felony, they lost their government pensions, in addition to expending most or all of their life savings on legal fees.

Since inspectors are gathering evidence to collect fines or put people in jail, all inspectors must ensure that they are honest and above reproach; otherwise, they are subject to fines, dismissal, or imprisonment.

Role of the Inspector

Relationship between federal and state authorities

Confidential business information

Ethical considerations

Techniques for handling the press and the public

Text: Chapters 4B, 5, and 20

Role of the Inspector

All stages and aspects of compliance and enforcement program

Official representative

Fact-finder

Enforcement case developer

(continued)



Role of the Inspector

Provider of enforcement presence

Technical educator

Technical authority

Enforcement Agreements Between EPA and the State

Establish criteria and standards for EPA oversight

Establish criteria for direct EPA enforcement

Specify data states will report to EPA



Confidential Business Information

Only authorized personnel can see the data

Access log is maintained

Limits are imposed on copies made

Any report generated from CBI also is CBI

When in Doubt, Don't!

Consult with your ethics official first



Dealing With the Press and the Public

EMPHASIZE THE POSITIVE!



The Reporter's Viewpoint

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

Talking With the Press

Know what you want to say

Use the interview as an opportunity to say it

Specific Techniques

1. Don't speculate
2. Avoid jargon
3. Reject false premises
4. Speak on the record

(continued)

Specific Techniques

5. Know what you want to say
6. Know when to stop
7. Acknowledge differences of opinion
8. Make a "no comment" sound like something more
9. What if the reporter goofs?

The Inspector's Positive Story

- WHY we're at this site
- WHAT we're doing here
- HOW we're doing it

Notes

SESSION 7

TOPIC: ROLE OF THE TEAM LEADER INSTRUCTOR'S OVERVIEW

Time: 45 minutes

PURPOSE	Present information on the role of the lead person for field inspections. Stress the importance of the team leaders's responsibilities.	
KEY POINTS	<ul style="list-style-type: none">· The team leader has certain responsibilities and authorities and is expected to fulfill those responsibilities and exercise authority to plan, coordinate, conduct, and complete a successful field inspection.	
ADVANCE PREPARATION	<ul style="list-style-type: none">· Be fully familiar with the roles, responsibilities, and authorities of the team or inspection leader.	
EQUIPMENT	<ul style="list-style-type: none">· Overhead projector· Flip chart	
LIST OF VISUALS	7-1 and 7-2	Responsibilities of the Team Leader
	7-3 and 7-4	Retrieval and Review of Background Information
	7-5 and 7-6	Project Plan
	7-7 and 7-8	On-Site Inspection
	7-9 and 7-10	Evaluation of Information and Preparation of the Report
	7-11 and 7-12	Project Follow-Up
	7-13 and 7-14	Authorities of the Team Leader
LIST OF HANDOUTS	None	

INSTRUCTOR NOTES

SUGGESTED CONTENT

Introduction

Introduce yourself, mentioning your background and experience in inspection and as a team leader, and your role in the course. Explain how the session is organized

DISCUSSION

ROLE OF THE TEAM LEADER

Using a flip chart, ask participants to list their opinions about the responsibilities of the team leader.

The purpose of this discussion is to assist the new inspector in understanding the role of his or her team leader so they can better support that person

The team leader is the lead person for a given project. The team leader for each project is selected by the branch chief, based on factors such as needs of the project, employee development opportunities, and availability of personnel. In general, the team leader is a work group leader, the central focal point for a particular project, responsible for ensuring that project objectives are met in a timely manner. The team leader is given certain responsibilities and authorities, as outlined below, and is expected to fulfill the responsibilities and exercise authority to plan, coordinate, conduct, and complete the project successfully.

The extent of involvement by the supervisor in helping the team leader meet those responsibilities depends on the team leader's grade and experience. GS-12 and GS-13 team leaders should be able to perform most, if not all, required tasks. Team leaders of lower grades will require more assistance from a supervisor or mentor.

Responsibilities and authorities of the team leader may vary somewhat with the unique requirements of each project. However, general responsibilities and authorities for conducting a complete and timely project are common to most projects. The following discussion of the responsibilities of the team leader is presented in two sections—responsibilities and authorities. The discussion of responsibilities is presented by project phases (most projects will involve some form of each project phase). The discussion of authorities follows. Because the team leader has similar authorities for most project phases, the authorities are not discussed in terms of project phases.

LECTURE

RESPONSIBILITIES OF THE TEAM LEADER

Phase 1 - Project Request and Project Objectives

As stated previously, the team leader is the focal point for a given project, responsible for ensuring that project objectives are met in a professional and timely fashion. The team leader uses the medium-specific and multimedia investigation manuals as guidance for conducting environmental compliance inspections. Discussion of general project phases and associated responsibilities of the team leader follows

Phase 1 of any project begins with a request for assistance. Depending on the specifics of the request, work is required to develop that request into a project plan that addresses the requestor's needs.

**Overheads 7-1 and 7-2
Responsibilities of the Team
Leader**

The team leader, in conjunction with the supervisor, the individual requesting the projects; and, often, members of the project team, is responsible for:

- Defining objectives of the project
- Defining specific tasks required to fulfill those objectives
- Identifying resource needs (both equipment and personnel)
- Identifying potential on-the-job training (OJT) opportunities associated with the various project phases and, in conjunction with supervisors (and, in some cases, staff), developing OJT objectives for other personnel
- Scheduling project tasks
- Consulting with supervisors to ensure the availability of project members for project tasks
- Developing and assigning tasks to team members (including identification of any OJT opportunities)

Ensuring that a comprehensive project plan is prepared (this task may be a separate project phase -- project phase 3 -- depending on the extent of information available during the project request)

- Maintaining communication with the individual who requested the project and appropriate personnel (team members, supervisors of team members, counterparts in other agencies, and other interested parties)

Ensuring that all technical issues and arrangements for inspection have been completed and all equipment is available, has been checked to ensure its operational readiness, and will be available on site at the time of the inspection; ensuring that all administrative arrangements have been completed, including travel and overtime requests and the arrangements for lodging, vehicles on site, and personal protective equipment; and ensuring that all inspectors have had necessary safety training and physical examinations, and have the required credentials.

Phase 2 - Retrieval and Review of Background Information

Overheads 7-3 and 7-4 Retrieval and Review of Background Information

This phase of the project involves identifying, collecting, and reviewing background information applicable to a specific project. The team leader, often in conjunction with team members, is responsible for:

- Identifying necessary background information (including applicable laws and regulations, description of the facility, its past compliance status, safety considerations, and other information)
- Arranging to obtain access to background information
- Arranging for receipt of background information (such as file review and document retrieval, telephone requests, telephone conversations, and other efforts)
- Ensuring that background information is properly organized and filed

Ensuring that background information is provided to appropriate project personnel

Conducting a reconnaissance inspection, if appropriate

Providing guidance to project members and ensuring that any associated OJT objectives are met

Maintaining lines of communication with appropriate personnel of NEIC (team members, supervisors of team members, and others)

Phase 3 - Project Plan

Overheads 7-5 and 7-6 Project Plan

The project plan is a written document that, for most projects, is completed before the field work. The plan identifies work to be conducted to address project objectives and includes a site safety plan. The team leader is responsible for:

Overall completion of a final project plan (including a site safety plan, if site work is required)

- Ensuring that the project plan is peer-reviewed

Obtaining concurrence from the project requestor

Providing all project team members with copies of the project plan

- Ensuring that all project members are familiar with the contents of the plan, including individual project responsibilities, project schedules, and safety requirements
- Ensuring that the project requestor receives the final project plan before any on-site work begins
- Providing guidance to project members and ensuring that any associated OJT objectives are met

**Overheads 7-7 and 7-8
On-Site Inspection****Phase 4 - On-Site Inspection**

This phase of the project involves the on-site field work and necessary logistics and personnel actions to ensure that the field inspection is carried out in a complete, efficient, and timely manner. During this project phase, the team leader is responsible for:

- Ensuring that all personnel actions (overtime [OT] and compensatory time [CT], changes in work schedules, and other actions) are addressed
- Ensuring that logistical issues are addressed (transportation of personnel and equipment to the site, lodging arrangements, and more)
- Developing and maintaining a good working relationship among all parties involved (including the target of the inspection and contractors)
- Coordinating all on-site activities, including scheduling

Ensuring that all objectives of the project are addressed during the on-site inspection

- Ensuring that the site safety plan is followed (or more stringent facility requirements, if appropriate)
- Maintaining communication with appropriate personnel (team members, supervisors of team members, and others) and with other appropriate personnel (such as the project requestor, contractors, and representatives of DOJ)
- Providing guidance to team members and ensuring that any associated OJT objectives are met
- Ensuring that contaminated equipment is disposed of or cleaned properly
- Directing public inquiries to proper authorities

**Overheads 7-9 and 7-10
Evaluation of Information
and Preparation of the
Report****Phase 5 - Evaluation of Information and Preparation of the Report**

A report describing activities under the project, evaluating information gathered, and presenting findings is prepared for most projects. The project report is usually the major vehicle for presenting findings to the project requestor. In general, the coordinator is responsible for ensuring that the project report addresses all the objectives of the project, is accurate, and is reviewed and completed in a timely fashion.

- Preparing an outline of the report (or otherwise identifying the report structure and contents of the report to project members)
- Identifying and assigning preparation of sections of the project report to individual team members
- Identifying and communicating to project members the schedule for the preparation of the report
- Consulting with supervisors to ensure availability of project members for preparation of the report
- Maintaining communication with the project requestor and appropriate personnel (team members, supervisors of team members, and others)
- Providing guidance to project members and ensuring that all associated OJT objectives are met
- Coordinating all aspects of preparation of the report with other groups (graphics, report services, and others)
- Assembling draft reports

Ensuring that the report is reviewed properly and revised (including transmittal of drafts for external review, tracking of copies, and return of draft copies)

- Assembling and transmitting the final report

**Overheads 7-11 and 7-12
Project Follow-Up****Phase 6 - Project Follow-up**

Project follow-up includes project activities that are conducted after transmittal of the final report. Such activities usually include cooperation in legal action such as case preparation, court testimony, settlement negotiations, and depositions. During project follow-up, the team leader is responsible for:

- Maintaining contact with the project requestor or other designated project contact to remain informed of legal or other activities
- Coordinating any requests for additional assistance
- Advising supervisors and appropriate staff of the need or potential need for additional project support
- Preparing project file to be submitted to central files
- Providing the supervisor of each project member a critique of the project member's activities, including a discussion of the OJT objectives, as identified by the project coordinator and the project member's supervisor during the project request phase
- Providing each team member with an individual, verbal critique of performance

**Overheads 7-13 and 7-14
Authorities of the Team
Leader****Authorities of the Team Leader**

As the focal point and leader of a team of employees, the team leader has some "first-line" supervisory authorities for most project phases. Once project members have been selected and the general responsibilities of each member have been agreed upon (agreement between the team leader and the project member's supervisor and often the project member), the team leader has the authority to:

- Set or modify project schedules
- Identify and modify, as necessary, the specific tasks of project staff (including activities in all phases of the project, such as preparation of the project plan, field work, and preparation of the report)
- Direct field operations

- Enforce the requirements of the project safety plan (including barring personnel who do not have the proper equipment or training from the identified "hot" zone)
- Set working hours for team members during field work
- Approve and verify OT and CT hours worked
- Negotiate terms of inspection with the entity undergoing the inspection (for example, taking photographs, requesting and copying documents, providing advance notification of areas to be inspected and personnel to be interviewed, handling of CBI materials, and other issues) so long as no statutory or regulatory authorizations are compromised
- Arrange for inspection of off-site facilities related to the objective of the project (for example, the laboratory of an off-site contractor, a waste transfer station, or other facilities)
- Request and arrange for assistance from other groups (for example, laboratory services, Office of Research and Development [ORD], or Environmental Photographic Interpretation Center [EPIC])
- Procure equipment and services necessary to carry out the project
- Require project team members to follow established protocols for conduct, inspection, preparation of reports, and participation in follow-up actions, and enforce ground rules identified for specific inspections
- Ensure the security of project files, reports, and findings of inspections

Responsibilities of the Team Leader

Define project objectives

Define tasks

Identify resource needs (both equipment and personnel)

Identify potential on-the-job training opportunities

Schedule project tasks

(continued)

Responsibilities of the Team Leader

Consult with supervisors

Develop and assign tasks

Prepare a comprehensive project plan

Maintain communications

Ensure completion of all technical and administrative arrangements for inspection

Retrieval and Review of Background Information

Identify necessary background information

Arrange for access to information

Arrange for receipt of information

Organize and file information

(continued)

Retrieval and Review of Background Information

Provide information to project personnel

Conduct reconnaissance inspection

Provide guidance to project members

Maintain communications

Project Plan

Complete the project plan

Arrange for peer review of the project plan

Obtain concurrence of project requestor

Provide project plan to team members

(continued)

Project Plan

Ensure familiarity with the project plan

Provide final project plan to project requestor

Provide guidance to project members

On-Site Inspection

Address personnel actions

Address logistical issues

Develop and maintain working relationships

Coordinate on-site activities

Ensure that project objectives are met

(continued)

On-Site Inspection

Ensure that safety plan is followed

Maintain communications

Provide guidance to team members

Ensure that contaminated equipment is cleaned or disposed of

Direct public inquiries to proper authorities

Evaluation of Information and Preparation of the Report

Prepare outline

Assign sections to project members

Establish writing schedules

Consult with supervisors

Maintain communications

(continued)

Evaluation of Information and Preparation of the Report

Provide guidance to project members

Coordinate preparation of the report

Assemble the draft report

Arrange for review of the report

Assemble and transmit the final report

Project Follow-Up

Maintain contact with requestor

Coordinate any request for additional assistance

Advise supervisors and staff of need for additional project support

(continued)

Project Follow-Up

Prepare project file

Critique project members' activities

Authorities of the Team Leader

Set or modify project schedules

Identify and modify tasks

Direct field operations

Enforce safety plan

Set working hours

Approve and verify overtime

(continued)

Authorities of the Team Leader

Negotiate terms of inspection with entity to be inspected

Arrange for inspection of off-site facilities

Request and arrange for assistance from other groups

Procure necessary equipment and services

Require that established protocols be followed

Ensure security of project files

Notes

SESSION 8

TOPIC: ELEMENTS OF AN INSPECTION INSTRUCTOR'S OVERVIEW

Time: 60 minutes

PURPOSE	<ul style="list-style-type: none">· Summarize all aspects of the actual inspection. Focus on opening and closing conferences and overview of data collection.· Explain how field logbook serves as core documentation.
KEY POINTS	<ul style="list-style-type: none">· An inspection includes all activities associated with the inspection before, during, and after an on-site visit· Record reviews, physical sampling, interviews, and observations are types of data collection.· Documentation of the inspection is crucial, and the field logbook is an excellent tool for maintaining accurate, contemporaneous notes and observations.
ADVANCE PREPARATION	<ul style="list-style-type: none">· Provide an example of a field logbook.
EQUIPMENT	<ul style="list-style-type: none">· Overhead projector
LIST OF VISUALS	<ul style="list-style-type: none">8-1 Elements of an Inspection8-2 Preinspection Activities8-3 On-Site Activities8-4 Postinspection Activities8-5 Field Logbook
LIST OF HANDOUTS	None

INSTRUCTOR NOTES

SUGGESTED CONTENT

Introduction

Introduce yourself, mentioning your background and EPA experience and your role in the course.

The purpose of this session is to introduce the elements of an inspection. Many of the elements will be discussed at length in later sessions. The session also will cover key issues and procedures related to the inspection process.

LECTURE

ELEMENTS OF AN INSPECTION

Overhead 8-1 Elements of an Inspection

On the first day of training, we tried to provide you with an overall understanding of:

- The importance of inspections and inspectors to EPA's mission
- How inspections and inspectors fit into the compliance and enforcement process

The legal underpinnings of our inspection authorities and the procedures we use to ensure that our inspections result in lawfully obtained, readily admissible evidence.

Now, we will begin to focus in depth on the inspection itself. In this session, we will give you an overview of the elements of an inspection and a rough chronology of likely events in planning for, conducting, and following up an inspection. We also will cover some concepts, principles, and procedures that govern all inspections.

This session will set the stage for the rest of the training course, in which we will be covering in detail some specific activities and techniques involved in conducting inspections.

It is important to realize that an inspection involves more than just the actual time spent at a facility, which we call "on-site activities." An inspection also includes everything that is done in advance to prepare for the inspection -- "preinspection activities" -- and all the steps taken after the inspection until the file on that inspection is closed -- "post inspection activities "

INSTRUCTOR NOTES

The notes next to each bullet item in the Suggested Content column list activities associated with each activity category. This section of the session should be very brief; use only a few of these examples (or your own), since these topics will be covered in detail later.

Give examples as to why a site might be inspected

Overhead 8-2 Preinspection Activities

Overhead 8-3 On-Site Activities

SUGGESTED CONTENT

Preinspection Activities

Careful advance preparation is needed to ensure that an inspection is executed efficiently and effectively. While not necessarily an exhaustive list, this slide shows some of the key components of preinspection activities.

- *Selection of Inspection Site* -- Which specific facility is to be inspected; how will it be or was it selected for inspection and why
- *Review of Agency Records* -- What do we already know about this facility (for example, permit or regulatory requirements that apply, types of processes and operations, self-monitoring data, and compliance history)
- *Preparation of Inspection Plan* -- Specific objectives of the inspection, the questions that the inspection should answer, the inspection techniques that will be used to answer them, the protocols or SOPs to be followed; quality assurance project plan if sample collection is involved, safety plan, etc.
- *Coordination* -- As needed among program office, field inspectors, counsel, and states; also within inspection team. Includes meetings, logistical discussion, etc.
- *Administrative Planning* -- Planning and paperwork for travel, pay administration, and procurement aspects of the inspection such as petty cash, purchase of special sampling equipment, packing supplies, etc.

On-Site Activities

- *Entry and Opening Conference* -- Entering the facility and opening meeting with facility managers to determine "lay of the land"

**Overhead 8-4
Postinspection Activities**

- *Data Collection* -- The heart of the inspection, collecting the data that will answer the compliance questions that have been posed. There are four basic data collection techniques:
 - *Records review*
 - *Physical sampling*
 - *Observations and illustrations (photographs)*
 - *Interviews*
- *Closing Conference* -- What can and cannot be said to facility managers, receipts

Post Inspection Activities

- *Inspection Report* -- The government's record of what happened during the inspection; reports the facts and is the basis for the government's action
- *Official Files* -- All pertinent documents, forms, photographs, receipts, custody records, and other items
- *Laboratory Analysis* -- If samples were collected, laboratory analysis is part of the inspection; results of analysis are often crucial substantiating evidence
- *Enforcement Action* -- Based on inspection report, recommendations of the inspector, EPA policy, a decision is made whether and what type of enforcement action should be taken and, if so, what type
- *Settlement Negotiations* -- 98 percent of cases are settled; inspector has important role in government's side of negotiations
- *Hearing or Trial* -- If the case is not settled, it goes to trial; inspector is key witness

INSTRUCTOR NOTES**SUGGESTED CONTENT**

LECTURE**FIELD NOTES AND LOGBOOK AS CORE DOCUMENTATION**

**Overhead 8-5
Field Logbook**

The logbook should contain accurate and inclusive documentation of all inspection activities. It is the basis for preparing the report and for refreshing an inspector's memory about sample collection and other procedures, if testimony is required. This material is covered in Chapter 15A of the text.

All samples, documents, and other evidence collected should be documented fully in the logbook, so that they can be traced to a particular date, location, purpose, and inspector.

Document and photo logs. each document collected should be assigned a unique number, and each photo should be documented in the log book (preferably on a separate photo log page(s)) with the date and time noted, a brief description of the photo subject, and the photographer noted.

Language in the logbook should be objective, factual, and free of personal opinions and conclusions of law. It is subject to discovery and can be seen by the opposing side.

The logbook should be bound, and have pages numbered in sequence to demonstrate that no pages have been removed.

The following information should be entered in the logbook:

- General information about the facility
- Notes on entry activities
- Identification numbers for samples, photographs, and records
- Sampling procedures
- Interview notes
- Observations of general conditions and practices
- Discussion of unusual conditions or problems

- Other observations
- Descriptions of general procedures and any changes in SOPs, along with the reasons for changes
- Administrative data

Inspectors should avoid entering confidential information, particularly TSCA CBI, in the logbook. Confidential data should be entered on separate, loose pages. There are procedures for excising confidential data from field logbooks, but they are cumbersome.

Experienced inspectors offer the following tips about the field logbook:

- Use a new logbook for each inspection. It can be placed in the file for that inspection, and there is never a danger that information about another inspection would be revealed inadvertently under discovery related to the inspection of concern
- Use a logbook that will fit in your pocket. There is a government-issued, small notebook that meets the requirement that the logbook be bound, with pages numbered in sequence.
- Make sure the ink used for entries in the logbook is waterproof. Not all inks that are described as waterproof really are.
- Tape any business cards you receive -- at an opening or closing conference, for example -- into the front of your logbook. Later, when writing the inspection report, you will have all the necessary names, titles, addresses, and telephone numbers in one place.
- If two or more inspectors are present during an interview, there may be apparent "contradictions" in notes taken by different people. Those contradictions must be clarified/resolved as soon as possible. The notes are subject to discovery, and unresolved differences might damage the government's credibility.

Elements of an Inspection

- Preinspection activities
- On-site activities
- Postinspection activities

Text: Chapters 11, 15A, and 16

Preinspection Activities

- Selection of inspection site
- Review of agency records
- Preparation of inspection plan
- Coordination
- Administrative planning

On-Site Activities

- Entry and opening conference
- Data collection
 - Records review
 - Physical sampling
 - Observations and illustrations
 - Interviews
- Closing conference

Postinspection Activities

- Inspection report
- Official files
- Laboratory analysis
- Enforcement action
- Settlement negotiations
- Hearing or trial

Field Logbook

- Full record of the inspection
- Factual; no opinions
- In ink

Notes

SESSION 9

TOPIC: INSPECTION PLANNING INSTRUCTOR'S OVERVIEW

Time: 60 minutes

PURPOSE	<ul style="list-style-type: none">· Stress the importance of planning and advance preparation. <p>Present information about key planning activities.</p>
KEY POINTS	Plan in advance what to look for, how to look, and what documentation to collect; saves time and money and ensures a thorough inspection
ADVANCE PREPARATION	Identify one or two examples of failure to adequately prepare for an inspection, including consequences and steps taken to solve the problem. <ul style="list-style-type: none">· Photocopy sufficient copies of handouts, three-hole punched for insertion in text.
EQUIPMENT	Overhead projector <ul style="list-style-type: none">· Flip chart
LIST OF VISUALS	<ul style="list-style-type: none">9-1 Planning the Inspection9-2 Goal of Inspection Planning9-3 Know What To Look For9-4 Know How To Find It9-5 Know How To Collect, Document, and Preserve Evidence9-6 Be Safe and Efficient in the Field9-7 Define Scope and Objectives9-8 Reviewing EPA Records
LIST OF HANDOUTS	<ul style="list-style-type: none">9-1 Generic Inspection Check List

INSTRUCTOR NOTES

SUGGESTED CONTENT

Introduction

Introduce yourself, mentioning your background and EPA experience and your role in the course. Explain how the session is organized.

Overhead 9-1

Planning the Inspection

DISCUSSION

WHEN PLANS WENT AWRY

From your own experience or the anecdotes described in the Suggested Content column, tell the group some horror stories about the results of inadequate planning. Then ask the group to discuss examples of cases in which they were unprepared and the results, including how they handled the situations.

Remember that "Murphy's Law" applies to inspections as well as everything else:

"If anything can go wrong, it will."

Horror stories about lack of planning:

- A PCB inspector entered a facility to conduct a "routine" inspection. Once inside, he came upon some smashed capacitors, sitting in a puddle on the ground. The inspector had his sampling equipment with him, but had left his camera in his car. He went out to get the camera to document the spill, but when he reentered the facility, the capacitors had been swept up, and the puddle was gone.
- An National Pollutant Discharge Elimination System (NPDES) inspector failed to put his container away on a windy day and it blew down the open access into the sewer system. When he tried to retake the sample, the inspector discovered that he had not brought any extra containers with him.
- The new inspector was going into the field with his supervisor for the first time. Eager to impress his boss, he had done his homework and knew everything about the facility, its compliance history, and the regulations it was subject to. During the inspection, the supervisor noticed a potential violation and told the new inspector to record it. He took out his inspection check list and reached into his pocket, only to discover he had forgotten to bring a pen.
- An inspector was denied entry to a facility because he did not have a hard hat.

INSTRUCTOR NOTES

SUGGESTED CONTENT

Ask the group for additional examples of plans that went awry.

- An NPDES inspector set up an automatic sampler only to discover the battery was dead. He looked in the case and discovered he didn't have any extra batteries with him

These situations may seem funny (when they happen to someone else), but such mistakes are embarrassing (when they happen to you) and can prevent you from conducting a successful inspection

We still may have to contend with Murphy's Law, but we can try to minimize problems through careful preinspection planning.

LECTURE

IMPORTANCE OF PLANNING AND PREPARATION

Overhead 9-2
Goal of Inspection Planning

Planning and preparation are important to:

Focus the inspection on key issues

- Make the most efficient and effective use of the time spent on site
- Ensure that equipment, transportation, and other needs will be available

Ensure that proper procedures are followed

DISCUSSION

KEY PLANNING ACTIVITIES

Ask the group to suggest important planning or preparation activities that should be conducted before going to a site for an inspection and to discuss briefly the importance of each activity. List them on a flip chart. At the conclusion of the discussion, the list should

What are the most important planning activities?

- Understand the objectives of the inspection and know what the specific areas are to be inspected
- Arrange logistics, including travel to and from the site, any special travel needs, and hotel accommodations

Identify any special monitoring or analytical equipment needed and arrange to procure it

INSTRUCTOR NOTES

SUGGESTED CONTENT

include at least the points shown in the Suggested Content column.

Overheads 9-3 through 9-6

Use overheads to summarize key planning activities

Review available records to become familiar with the facility

Assemble materials and equipment

Prepare QA/QC plan and safety plan

Coordinate activities with supervisors, attorneys, state agencies, and others, as appropriate

LECTURE

DEFINING SCOPE AND OBJECTIVES

Overhead 9-7 Define Scope and Objectives

A first step in planning is understanding why the inspection is to be performed:

- *Reason:* routine, for cause, case development support, follow-up

Scope: specific regulations

Depth: walk-through, records review, sampling, observation

- *Topics:* specific control and treatment systems, records, self-monitoring, contingency plans and emergency plans, employee training

While not always necessary, it may be useful to consult with the appropriate attorney to ensure complete understanding and an effective plan of action.

INSTRUCTOR NOTES**SUGGESTED CONTENT**

DISCUSSION**GENERIC INSPECTION CHECK LIST**

Distribute Handout 9-1, the Generic Inspection Check List.

This generic inspection check list asks the kinds of questions that should be considered before any inspection. It helps organize the planning process to ensure that no steps are omitted.

LECTURE**REVIEWING EPA RECORDS**

Overhead 9-8
Reviewing EPA Records

The inspector should review EPA records to:

Become familiar with the type, size, and operations of the facility

- Discover inadequacies, inconsistencies, or voids in the information, thus determining the need to request additional information from the facility
- Minimize inconvenience to personnel of the facility or unnecessary use of their time by not requesting information that EPA already has
- Clarify technical and legal issues before entry
- Develop an appropriate inspection plan that documents this information and applies it to shaping a methodology for the most efficient use of inspection time and manpower resources

The inspector should look for:

Facility information

- Facility information, diagrams, and photographs
- Special entry requirements
- Process operations and production levels

INSTRUCTOR NOTES

SUGGESTED CONTENT

- Control equipment
- Recordkeeping systems
- Safety requirements
- Permits, permit applications, and special exemptions
- Prior inspection reports and reports on enforcement actions
- Self-monitoring reports

Laws and regulations

Technical reports relevant to processes and contracts

This information can be found in:

- Facility files in the appropriate EPA office

Computer data systems

GENERIC INSPECTION CHECK LIST

OBJECTIVES

- What is the purpose of the inspection?

TASKS

- What records, files, permits, and regulations will be checked?
- What coordination with laboratories, other programs, attorneys, and state or local governments is necessary?
- What information must be collected?

PROCEDURES

- What specific processes of the facility will be inspected?
- What procedures will be used?
- Will the inspection require special procedures?
- Has a QA/QC plan been developed, and is it understood?
- Has a safety plan been developed, and is it understood?
- What are the responsibilities of each member of the inspection team?

RESOURCES

- What personnel will be required?
- What equipment will be required?

SCHEDULE

- What will be the time requirements?
- What will be the order of inspection activities?
- What will be the milestones (What must be done, compared with what is optional)?

Planning the Inspection

- When plans went awry
- Importance of planning
- Key planning activities
- Defining scope and objectives
- Check lists
- Reviewing EPA records

Text: Chapter 9

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!

Know What To Look For

- Identify TYPE of inspection
 - Compliance evaluation
 - Routine
 - For cause
 - Oversight
- Define OBJECTIVE of inspection
- Decide FOCUS of inspection

Know How To Find It

Review records and permits

Know compliance history

Talk with attorneys and other inspectors

Contact state and local officials

Know How To Collect, Document, and Preserve Evidence

Know what nontechnical evidence is needed

Identify the kind and quantity of physical samples needed

Identify necessary equipment and check condition

Prepare QA/QC plan for documentation, chain of custody, transportation

Be Safe and Efficient in the Field

Develop safety plan

Use personal protective equipment

Define tasks of all members of inspection team

Arrange logistics in advance

- Travel
- Pay
- Transportation
- Lodging
- Special equipment

Define Scope and Objectives

- Reason
- Scope
- Depth
- Topics

Reviewing EPA Records

Become familiar with the facility

Discover inadequacies in the information

Minimize inconvenience to facility personnel

Clarify technical and legal issues before entry

Develop inspection plan

Notes

SESSION 10

TOPIC: SOURCES OF INFORMATION INSTRUCTOR'S OVERVIEW

Time: 45 minutes

PURPOSE	<ul style="list-style-type: none">· Acquaint the participants with the wide range of information that is available to the inspector before the inspection
KEY POINTS	<ul style="list-style-type: none">· Prior planning, including extensive review of all sources of information, is crucial to the successful and professional accomplishment of an inspection
ADVANCE PREPARATION	Review handouts and be prepared to answer questions about databases, paying particular attention to the Integrated Data for Enforcement Analysis (IDEA) database.
EQUIPMENT	Overhead projector
LIST OF VISUALS	10-1, 10-2, and 10-3 Review of Federal, State, and Local Files 10-4 and 10-5 Databases
LIST OF HANDOUTS	10-1 Sources of Information

INSTRUCTOR NOTES

SUGGESTED CONTENT

Introduction

Introduce yourself, mentioning your background and inspection experience and your role in this course.

In this session, we will cover the need for review of background information and provide ~~information on~~ *an intro to* sources of information.

LECTURE

REVIEW OF BACKGROUND INFORMATION AND SOURCES OF INFORMATION

The inspector must collect and analyze background information to better plan and perform the inspection. The objective of the review is to allow you to (1) become familiar with the facility, (2) clarify technical and legal issues before the inspection, (3) use resources wisely, and (4) develop a list of questions to be answered and documents to be obtained during the on-site inspection. For example, the inspector should understand the facility's process(es) as much as possible and know what problems have occurred in the past, as determined by reviews of files or data. Much of the total time spent on an inspection should be spent on planning and preparing for the inspection. Good planning will prevent such classic oversights as being on the road and not knowing where the facility is, or failing to examine the operation that received a notice of violation after five previous inspections. The inspector should check with the program staff (federal, state, and local) to gain as much knowledge as possible about the site.

Overheads 10-1, 10-2, and 10-3

Review of Federal, State, and Local Files

Explain where info in Overhead 10-1 can be located

Review of Federal, State, and Local Files 10-1

Reviewers of federal, state, and local files should pay particular attention to the following:

- · Permits and permit applications
- · Process and wastewater flow charts
- · Prior inspection reports
- · Enforcement documents, including administrative orders, complaints, consent decrees and agreements, notices of noncompliance (NON), deficiency notices, compliance schedules, cease and desist orders, closeout documents, and notices of violations
- · Facility responses to all of the above

- · Records, reports, and self-monitoring data maintained by the facility
- · Quality assurance (QA) documentation
- · Exemptions and waivers
- · Maps showing layout of the facility and waste management and discharge sites
- · Records of citizen complaints
- · Consultant's reports
- · Documentation of potential cross-program issues
- · Annual reports and hazardous waste manifests
- · Spill reports

Reconnaissance

A reconnaissance visit of the facility may be conducted in conjunction with the gathering of background information from state and local files. Administrative details and logistics usually are discussed during a reconnaissance visit that will increase the efficiency of the on-site inspection. A reconnaissance visit is particularly important if the facility being inspected is complex or if the inspector has never before inspected the facility. At least the inspector should participate in the reconnaissance visit. No reconnaissance visit is conducted if the inspection will be unannounced, or if the inspector has extensive knowledge of the facility.

Overheads of 10-4 and 10-5 Databases

Distribute Handout 10-1.

Reviews of EPA Databases

Additional background material about the facility should be obtained from EPA databases. (Acronyms are defined in handout). At a minimum, the inspector should review the following:

- TRIS (beginning in 1987, provides data by facility on past releases of toxic or hazardous substances to the environment, as required by Section 311 of EPCRA -- Title III of SARA)
- *and Bradstreet Reports*
DUNS Market Identifiers (commercial system that tracks the owners and financial information for publicly- and privately-owned companies in the U.S.)
- PCS (provides information about CWA and NPDES permits, discharge monitoring report (DMR) data, receiving stream data, some enforcement information, and inspection history for "major" wastewater discharges)

INSTRUCTOR NOTES

SUGGESTED CONTENT

RCRIS (provides information required under RCRA, such as location, hazardous waste handled, inspection history, nature of past violations, and results of enforcement actions)

FTTS (provides information required under TSCA, such as inspection history and case development information, including violations and types and results of enforcement actions)

Facility Index System

FINDS (EPA database identifies regulations applicable to the facility, including some related to compliance and enforcement actions)

CERCLIS (Superfund's national database system provides information on CERCLA sites)

AFS and AIRS (the Air Compliance Program's national database system provides air compliance information about major sources)

Integrated Data for Enforcement Analysis

IDEA (a computer system which integrates compliance and enforcement data from EPA's program office data management systems)

*Air
Water
Hazardous Waste*

A more extensive list of sources of information, both computer databases and other sources, is included as handout 10-1.

SOURCES OF INFORMATION

I General References

- A. RCRA Orientation Manual, 1990 Edition. USEPA, Office of Solid Waste/Permits and State Programs Division and the Association of State and territorial Solid Waste Management Officials GPO 1990-261-069/2413H
- C. Standard Operating Safety Guides. USEPA, Office of Emergency and Remedial Response, Emergency Response Division. July 1988 GPO 1988-548-158/87012.
- D. EPA Publications Bibliography. Quarterly listing of all EPA publications distributed through the National Technical Information Service (NTIS), indexed alphabetically, numerically, and by key word. NTIS, U.S. Department of Commerce, Springfield, VA 22161 (703) 487-4650.
- E. Access EPA Libraries and Information Services. NTIS, U S Department of Commerce, Springfield, VA 22161 (703) 487-4650
- F. Computer Data Systems. A description of the automated data systems accessed by NEIC. Indexes 41 sources accessing more than 1,000 databases.

II. Technical References

- A. Kirk-Othmer Encyclopedia of Chemical Technology. Wiley; 3rd ed., 1981; 4th ed in publication process.
- B. Merck Index: Encyclopedia of chemicals, drugs, and biological compounds. Good source for chemical properties and safety plan details.
- C. Directory of Chemical Producers. Lists major chemical producers and the products they make. SRI International, Menlo Park, California Annual.

III. Legal and Regulatory References

- A. Statutes at Large: The official publication of public and private laws and resolutions enacted during a session of Congress.
- B. United States Code: A codification of the general and permanent laws of the United States. New editions appear approximately every six years with cumulative annual supplements.

- C. Regulations
 - 1 Federal Register Daily publication of proposed and final rules.
 - 2 Code of Federal Regulations: Annual compilation of regulations.
 - 3. LSA (Lists of CFR Sections Affected) Monthly updates of CFR by section
- IV Computer Data Systems A description of some of the automated data systems accessed by EPA follows.

EPA INTERNAL INFORMATION SYSTEMS CURRENTLY ACCESSIBLE THROUGH NEIC

Aerometric Information Retrieval System (AIRS)
AIRS Facility Subsystem (AFS)
Chemicals in Commerce Information System (CICIS)
Comprehensive Environmental Response, Compensation, and Liability
Information System (CERCLIS)
Docket System
DUNS Market Identifiers (DMI)
Emergency Response Notification System (ERNS)
~~Enforcement Document Retrieval System (EDRS)~~
Facility and Company Tracking System (FACTS)
Facility Index System (FINDS)
Federal Reporting Data System (FRDS)
NPDES Industrial Permit Ranking System
Permit Compliance System (PCS)
Pollution Prevention Information Exchange System (PIES)
Potentially Responsible Parties System
Records of Decision System (RODS)
Resource Conservation and Recovery Information System (RCRIS)
Site Enforcement Tracking System (SETS)
STORET
Superfund Financial Assessment System (SFFAS)
Toxic Release Inventory System (TRIS)

**PUBLICLY AVAILABLE EXTERNAL INFORMATION SYSTEMS CURRENTLY
ACCESSIBLE THROUGH NEIC**

Chemical Information System (CIS)
Colorado Alliance of Research Libraries (CARL)
DataTimes
DIALOG Information Services, Inc.
Dun and Bradstreet
Groundwater On-Line (GWOL)
NEXIS/LEXIS
National Library of Medicine (NLM)
Scientific and Technical Information Network (STN)
WESTLAW

**EPA INTERNAL INFORMATION SYSTEMS
CURRENTLY ACCESSIBLE THROUGH NEIC**

HANDOUT 10-1

System	Description	Application
Aerometric Information Retrieval System (AIRS)	A national system in ADABAS maintained by the National Air Data Branch, which incorporates information from many of the Agency's air databases. Emissions data (formerly in NEDS) is now available in AIRS.	Data currently available from AIRS consists of the ambient air quality data collected by states, utilized for trends analysis and pollution control strategies and emissions and compliance data collected by EPA and state agencies.
Chemicals in Commerce Information System (CICIS) <i>replaced by TRIS 1970's</i>	A national system containing the results of the 1977 TSCA inventory and later cumulative supplement of approximately 60,000 unique chemical substances (7,000 claim confidentiality) used commercially in the United States.	NEIC can access the system by company name and geographical area and generate listings by company name, CAS registry number, or geographical area.
AIRS Facility Subsystem (AFS)	A national system containing compliance information including compliance status, agency actions (e.g., inspections), and other information for major sources of the five primary air pollutants. Recently converted from the Compliance Data System (CDS), AFS is one of five AIRS subsystems.	NEIC can acquire the Significant Violators list and compliance event data for individual sources, entire facilities, sources within a certain geographical area and sources of a specific industrial classification.
Comprehensive Environmental Response, Compensation, and Liability Information System (CERCLIS)	A national system containing names and locations of uncontrolled hazardous waste sites in the U.S., summary response event status information, aliases, and site characteristic data. Recent modifications include provisions for tracking enforcement activities, and technical and chemical information at CERCLA sites. Superfund Comprehensive Accomplish Plan (SCAP) data are also available through CERCLIS.	NEIC can generate site inventory listings for geographical area, the National Priorities List, technical event status reports, and enforcement history for any uncontrolled hazardous waste site and cleanup expenditure reports.

JULY 1997

**EPA INTERNAL INFORMATION SYSTEMS
CURRENTLY ACCESSIBLE THROUGH NEIC**

HANDOUT 10-1

System	Description	Application
Consent Decree Tracking System	A national system containing a computerized inventory of consent decrees to which EPA is a party and computerized summaries of the contents of decrees by facility. NEIC maintains a hardcopy library of all consent decrees in the system. This repository has been converted to a full-text database on <u>ILIRIS</u> .	NEIC can produce hard copies of all decrees in the inventory and produce computer reports of the inventory, the entire contents of decrees, the milestones to be met under specific decrees or for decrees in a Region, and the contents of all decrees for a specific issue (e.g., groundwater monitoring).
Docket System	A national system containing all pertinent information regarding a civil or administrative enforcement action taken by EPA or designated states against violators of all federal environmental statutes.	NEIC can access the entire system to produce reports of enforcement actions in a geographical area, for a specific statute or media, or for a specific source classification.
DUNS Market Identifiers (DMI)	Leased by the Agency from Dun and Bradstreet, DMI contains basic business information for privately and publicly owned companies in the United States.	NEIC can generate reports with business information, such as number of employees, amount of sales, telephone number, title of principal officer, and line of business.
Emergency Response Notification System (ERNS)	A national system containing information on reported releases of oil and hazardous substances and responses by EPA, the U.S. Coast Guard, and others to the reported releases.	Reports can be generated to identify specific releases and to aggregate data on the number and types of releases throughout the country and in specific states and regions.
Enforcement Document Retrieval System (EDRS)	EDRS is a full-text national database of EPA enforcement documents, including the General Enforcement Policy Compendium and the Policy Compendiums for FIFRA, TSCA, RCRA, CERCLA/SARA, and CWA/FWPCA.	EDRS can be used to retrieve all enforcement documents containing a particular word, such as "landfill," or those relevant to an issue, law, or regulation.

JULY 1997

**EPA INTERNAL INFORMATION SYSTEMS
CURRENTLY ACCESSIBLE THROUGH NEIC**

HANDOUT 10-1

System	Description	Application
Facility and Company Tracking System (FACTS) <i>replaced by FINDS</i>	A national database that provides basic business information for privately and publicly owned companies in the United States, and facility information for EPA-regulated facilities. FACTS comprises the DMI and FINDS subsystems.	NEIC can generate facility listings for any geographical area, type of business, or corporation. DMI locates business information, such as number of employees, amount of sales, telephone number, and principal officer. FINDS provides facility information for EPA-regulated databases.
Facility Index System (FINDS)	A national database that serves as a cross-reference index on a facility basis to point to media-specific EPA databases to acquire additional data. This is the link with other EPA data systems.	NEIC can generate facility listings for any geographical area, as well as tabulated listings indicating whether other databases contain information about that facility.
Federal Reporting Data System (FRDS)	A national system containing an inventory of public water supplies in support of the Safe Drinking Water Act. It contains identification and statistical summary information for each public water supply, including type of data collected or monitored and analytical procedures.	NEIC can acquire source information and location, service areas, geographic areas, and historical information. Information on noncompliance and enforcement actions can also be obtained.
NPDES Industrial Permit Ranking System <i>part of PCS</i>	An NEIC-operated and maintained system that contains criteria, ranking factors, and calculation mechanisms to rate (1) a facility's effluent discharge pollution potential, including toxics; (2) health impact potential; and (3) water quality impact potential, which is then used in PCS for differentiation of major and minor status.	NEIC can access the specific data for any of 12 criteria, ranking factors, and resultant ratings for each of the 12, as well as the total ranking for any or all of the three potentials. NEIC can access the data by Effluent Guideline subcategory, as well as by Standard Industrial Classification Code.
Permit Compliance System (PCS)	A national computerized management information system containing an inventory of NPDES permits, milestone forecasts, inspection events, effluent measurement data, effluent and compliance violations, and enforcement actions.	NEIC can acquire limit and measurement data for individual discharges or entire facilities, facilities within a geographic area, or sources in a specific industrial classification and the Quarterly Noncompliance Report (QNCR) by region by state. Information on effluent and compliance schedule violations and enforcement actions and tracking can be obtained.

**EPA INTERNAL INFORMATION SYSTEMS
CURRENTLY ACCESSIBLE THROUGH NEIC**

HANDOUT 10-1

System	Description	Application
Pollution Prevention Information Exchange System (PIES) <i>gone</i>	A national computerized information network providing access to technical, programmatic, and legislative pollution prevention information. Includes a calendar of events, case studies, directory of contacts, an interactive message center, and document ordering capability.	NEIC can use the system to stay abreast of policy and program activities at Headquarters and in the regions as well as industry specific technical information. Case studies of enforcement settlements incorporating pollution prevention projects can be obtained.
Potentially Responsible Parties System <i>ask N for details (bankruptcy) 3 months</i> <i>refresh SETS & CERCLA</i> Records of Decision System (RODS)	An NEIC-automated system that links PRPs from SETS, SFFAS, and TECHLAW files. A full-text national database of more than 2,000 Superfund records of decision.	This system is used as an inventory of specific generators or parent corporations identified at and among hazardous waste sites. NEIC can retrieve a specific ROD by searching on-site name or ID number or can identify all RODS covering selected media, contaminants, or remedies.
Resource Conservation and Recovery Information System (RCRIS) <i>ask N for details</i>	Conversion to RCRIS from HWDMS is currently underway. RCRIS is scheduled to be operating as the official automated source of information on RCRA program activities by January 1992.	NEIC is planning to use the RCRIS National Oversight Database, which is derived from the 10 regional RCRIS databases. Information available will include handler identification, information on permitting, closure, and post-closure care, compliance monitoring and enforcement, and corrective action and program management.
Site Enforcement Tracking System (SETS)	A centralized national database tracking notice letters which have been sent to potentially responsible parties.	NEIC uses this database to supplement currently available responsible party information.
STORET	A national database containing water quality data for some 1,800 unique parameters from more than 200,000 collection points including lakes, streams, wells, and other waterways. New STORET software provides an interface between STORET and PCS data.	NEIC can access and produce reports on water quality, including groundwater quality, for specific geographical areas, for specific parameters (e.g., organics), and for a specific station.

**EPA INTERNAL INFORMATION SYSTEMS
CURRENTLY ACCESSIBLE THROUGH NEIC**

HANDOUT 10-1

System	Description	Application
Superfund Financial Assessment System (SFFAS)	Nationally available computer application designed to calculate the remedial costs a responsible party theoretically can afford to pay for cleanup of a site. Three common financial ratios are used to make this determination: (1) cash flow to total debt, (2) total debt to equity, and (3) the interest coverage ratio.	NEIC has used the SFFAS to provide financial assessments for potentially responsible parties in response to HQ/Regional requests for several sites including the following. Seymour Recycling (several hundred responsible parties), Re-Solve (more than 200 responsible parties), and MIDCO I and II (approximately 100 responsible parties).
TRIS	A national database containing information directly related to the Toxic Chemical Release Inventory Report Form R. Two types of submissions will be present: Partial (facility and chemical information) and Complete (off-site transfers, emission and releases, waste treatment, waste minimization, activities and uses, and maximum amount stored on site).	NEIC can generate reports for facilities, geographic areas, and chemical compounds, listing facility and chemical information with emissions, releases, activities, and other information for complete submissions.

JULY 1997

**PUBLICLY AVAILABLE EXTERNAL INFORMATION SYSTEMS
CURRENTLY ACCESSIBLE BY NEIC**

HANDOUT 10-1

System	Description	Application
Chemical Information System (CIS)	The CIS is a collection of scientific and regulatory databases containing numeric, textual, and some bibliographic information in the areas of toxicology, environment, regulations, spectroscopy, and chemical and physical properties.	NEIC uses the CIS to locate mass spectral information; environmental fate information; formulation ingredients for commercially available products, such as pesticides; and waste disposal methods for hazardous substances.
Colorado Alliance of Research Libraries (CARL)	The CARL system includes the catalogs of the member libraries, an index of more than 10,000 periodicals, a full-text encyclopedia, Choice book reviews, and a bibliography of GPO publications.	CARL is searched by NEIC staff for general reference, to locate books, and to identify articles and documents.
DataTimes	DataTimes provides on-line access to numerous full-text databases, including newspapers, wire services, and Dow Jones News/Retrieval.	DataTimes is a source of national environmental news. Newspaper databases from all regions are updated daily.
Knight-Rider Information Services, Inc.	The DIALOG system contains more than 330 databases covering a variety of disciplines: science, technology, engineering, social sciences, business, and economics. The databases contain more than 120,000,000 records and are regularly updated to provide the most recent information.	NEIC uses the DIALOG databases to obtain: (1) expert witness information, including biographies, publications, and congressional testimony; (2) up-to-date pollution control technology for hazardous waste, air, and water; and (3) business information such as corporate officers, subsidiaries, and line of business.
Dun and Bradstreet	Dun and Bradstreet, a credit-reporting firm, provides business information reports for privately and publicly owned companies and government activity reports that list federal contracts, grants, fines, and debarments for specific companies.	NEIC uses the Dun and Bradstreet system to locate corporate information, such as business done by the company, company history, financial condition, subsidiaries, and corporate officers for privately held companies.
Groundwater On-Line (GWOL)	The National Groundwater Information Center database is a bibliographic database containing references to materials on hydrogeology and water well technology, with emphasis on reports or projects sponsored by EPA.	NEIC accesses GWOL to locate publications on groundwater topics and to verify or locate groundwater experts.

JULY 1997

**PUBLICLY AVAILABLE EXTERNAL INFORMATION SYSTEMS
CURRENTLY ACCESSIBLE BY NEIC**

HANDOUT 10-1

System	Description	Application
NEXIS/LEXIS	NEXIS/LEXIS contains the full text of more than 600 business and general news files, including the <i>Washington Post</i> and <i>New York Times</i> . Statutory and case law are provided for computer-aided legal research.	NEIC uses NEXIS/LEXIS to keep informed of the latest EPA and environmental news stories and to track the corporate and financial status of U.S. businesses involved in environmental litigation.
National Library of Medicine (NLM)	The National Library of Medicine system contains more than 5 million references to journal articles and books in the health sciences published since 1965.	NEIC uses the NLM system to obtain: (1) information about toxicity and environmental health effects for individual chemicals or groups of chemicals, (2) physical and chemical properties of specific compounds, (3) analytical methodology references, and (4) carcinogenic bioassay information from the National Cancer Institute.
Scientific and Technical Information Network (STN)	The STN system contains databases covering chemistry, science, and engineering that are regularly updated to provide the most recent information. STN has strong coverage of European and Japanese scientific databases.	NEIC uses the STN databases to obtain: (1) chemical structures and synonyms for a chemical compound, (2) analytical methods and techniques, and (3) toxicity of a chemical compound.
WESTLAW	The WESTLAW system contains legal information, including the full text of cases from the Supreme Court, U.S. courts of appeals, U.S. district courts, and state courts. It contains Shepard's Citations, regulatory information from the Code of Federal Regulations, Federal Register, and U.S. Code and expert witness information from the Forensic Services Directory.	NEIC can acquire source information and location, service areas, geographic areas, and historical information. Information on noncompliance and enforcement actions also can be obtained. NEIC uses WESTLAW to identify precedent cases, to locate all cases decided by a certain judge or all cases represented by a certain attorney, and to locate possible expert witnesses.

PUBLICLY AVAILABLE EXTERNAL INFORMATION SYSTEMS
CURRENTLY ACCESSIBLE BY NEIC

HANDOUT 10-1

System	Description	Application
Scientific and Technical Information Network (STN)	The STN system contains databases covering chemistry, science, and engineering that are regularly updated to provide the most recent information. STN has strong coverage of European and Japanese scientific databases.	NEIC uses the STN databases to obtain: (1) chemical structures and synonyms for a chemical compound, (2) analytical methods and techniques, and (3) toxicity of a chemical compound. NEIC can acquire source information and location, service areas, geographic areas, and historical information. Information on noncompliance and enforcement actions also can be obtained.
VU/TEXT	VU/TEXT contains the full text of 30 daily newspapers, including nationally recognized papers such as the <i>Boston Globe</i> , <i>Chicago Tribune</i> , <i>Detroit Free Press</i> , and <i>Philadelphia Inquirer</i> , and regional papers such as the <i>Orlando Sentinel</i> , the <i>Sacramento Bee</i> and the <i>San Jose Mercury News</i> .	NEIC uses VU/TEXT to keep informed of the latest EPA and environmental news stories and to track the corporate and financial status of U.S. businesses involved in environmental litigation
WESTLAW	The WESTLAW system contains legal information, including the full text of cases from the Supreme Court, U.S. courts of appeals, U.S. district courts, and state courts. It contains Shepard's Citations, regulatory information from the Code of Federal Regulations, Federal Register, and U.S. Code and expert witness information from the Forensic Services Directory.	NEIC uses WESTLAW to identify precedent cases, to locate all cases decided by a certain judge or all cases represented by a certain attorney, and to locate possible expert witnesses.

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Review of Federal, State, and Local Files

Permits and applications

Processes and wastewater flow charts

Prior inspection reports

Enforcement documents

Facility responses to enforcement actions

(continued)

Review of Federal, State, and Local Files

Records, reports, and self-monitoring data
of the facility

QA documentation

- *Environmental Monitoring Systems / Self Audits*
Exemptions and waivers

Facility maps

(continued)

Review of Federal, State, and Local Files

Citizen complaints

- *Wocket*
- *Regional files / newspapers*

Documentation of potential cross-program issues *Multi-media*

Annual reports and hazardous waste manifests *RCRA large quantity generators - year behind*

Spill reports

✓ TRIS

ERNS < DOI includes Nat'l Regional Center (Coast Guard)

Databases

- **TRIS** *Topic Release Inventory System*
year behind 1987 → all industries in certain SIC codes, 10+ employees
- **DUNS Market Identifiers** *(mainframes) D&B Business Report*
location, business info, corporate officers, corp structure
privately, publicly owned companies
- **PCS** *Permit Compliance System*
Inventory of NPDES permits, DMR data, inspection history
receiving stream data
- **RCRIS and HWDMS**
- **FTTS** *no longer exists*

(continued)

Databases

RCRAIS
PC'S
DOCKET
TRIS
DML

- ✓ • **FINDS** Facility Index System
cross reference index points to specific media
EPA databases - the link to EPA data systems
- ✓ • **CERCLIS** Comprehensive Environmental Response
Compensation & Liability IS - names & locations of
uncontrolled Haz Waste sites - gives status & characterization data
- ✓ • **AFS and AIRS** Aerometric Info System
compliance info on major sources of 5 primary air
pollutants.
- ✓ • **IDEA** - snapshot extracts fields imp to
ERNS & OSHA (inspections & violations enforcement)
violation occurred but doesn't always say why
doesn't pull everything
refresh once a month

[illegible]

SESSION 11

TOPIC: ENTRY, OPENING CONFERENCE, AND SITE TOUR INSTRUCTOR'S OVERVIEW

Time: 60 minutes

PURPOSE

Explain the extent and limits of EPA's authority to enter and inspect facilities

- Explain EPA policy and practice governing consensual entry
- Explain procedures for proper, lawful entry.

Provide guidance for handling sensitive situations regarding entry

- Discuss the role of the inspector in securing a warrant and conducting an inspection under a warrant.
- Discuss the issues to be covered during an opening conference
- Discuss the initial tour of the site.

Note In this session, the role play is crucial in illustrating the key points that have been made.

KEY POINTS

- It is EPA policy to obtain a warrant when the owner has denied consent to entry
- The opening conference is held to advise personnel of the facility of the objectives of the inspection and to discuss and arrange for logistics and scheduling of inspection activities
- The general site tour provides inspection team members an orientation and identifies and verifies activities that require further evaluation.

ADVANCE PREPARATION

- Review handouts 11-2 and 11-3 and prepare for the role-play. Ask two or three experienced inspectors to play the roles. Give them handouts in advance to allow preparation time. If possible, ask others to play roles so you can observe them carefully.

Locate a file on an inspection that was conducted under a warrant
Make transparencies of the warrant documents or sufficient copies for handouts

SESSION 11

TOPIC: ENTRY, OPENING CONFERENCE, AND SITE TOUR INSTRUCTOR'S OVERVIEW

Time: 60 minutes

EQUIPMENT	Overhead projector
LIST OF VISUALS	11-1 Summary of Federal Environmental Acts 11-2 Entry 11-3 Basis for Entry
LIST OF HANDOUTS	11-1 Summary of Federal Environmental Acts 11-2 Entry Scenario (inspector) 11-3 Entry Scenario (plant official)

INSTRUCTOR NOTES

SUGGESTED CONTENT

Introduction

Introduce yourself, mentioning your background and experience and your role in the course. In this session, we will cover the legal basis of EPA's inspection authority, have a role-play exercise on consensual entry, and discuss warrants and other tools for gathering information. We also will discuss the opening conference and the initial site tour.

LECTURE

EPA'S ENTRY AUTHORITY, POLICY, AND PRACTICE

Overhead 11-1 Summary of Federal Environmental Acts

Distribute handout 11-1.
Use the handout to fill in gaps.

Legal Bases for Entry

EPA, through provisions of the various statutes the Agency administers, has the legal authority to enter and inspect private facilities.

There are variations in the inspection provisions among the EPA statutes, such as who may enter, at what time such individuals may enter, the scope of inspection activities, and required presentation of a notice of inspection.

Provisions of the Constitution reinforce EPA's authority to enter, provided by Congress in the individual environmental statutes.

- Article 3 empowers the courts to issue orders confirming entry powers granted by the legislature. This is the source of power under which the courts issue warrants.
- The 4th Amendment does not prohibit searches; it prohibits unreasonable searches.

Over the years, there have been many court cases concerning authorized entry and the protection of individual constitutional rights.

A case that has affected EPA's policy and practice directly, with regard to entry, is *Marshall versus Barlow* (1978).

- In the case, an Occupational Safety and Health Administration (OSHA) inspector was not given consent to enter the workplace. The company challenged the constitutionality of the law giving OSHA the authority to enter.

The Supreme Court ruled that OSHA's entry authority is constitutional, but held that an OSHA inspector is *not entitled to enter the nonpublic portions of a worksite without either the owner's consent or a warrant.*

The court established two bases for issuing a civil administrative warrant. (1) *reasonable cause* to believe that a violation had occurred or was occurring at the facility or (2) selection of the facility for inspection because of a *preexisting administrative plan for entries*. The plan itself need not be neutral or random, but the basis of the plan must be neutral.

Essentially, the Court's message was that the government cannot "pick on" people (through its field agents or otherwise) with subtle harassing techniques or through exercise of rights or powers of entry, search, inspection, investigation, information gathering, or correction.

EPA's entry authorities under the various statutes are somewhat different from OSHA's and have not been challenged successfully on constitutional grounds. Consequently, it is uncertain whether EPA is required to follow the rules announced in the Barlow case. Rather than risk the necessity to litigate the issue under each EPA law, EPA practice and policy is to conduct its affairs as if Barlow applies.

EPA policy is to obtain a warrant when the owner has denied consent to enter.

When consent is lacking, EPA obtains a warrant to "validate," "confirm," or "credentialize" its statutory right to enter.

The Agency's "right to a warrant" was upheld in *Bunker Hill Co. v. EPA* (9th Cir., 1981). The court held that EPA's statutorily expressed right of entry was sufficient basis for EPA using, and a magistrate issuing, an administrative warrant.

Despite the Barlow decision, there are some areas in which a *right of warrantless entry* still exists:

- Emergency situations, such as potential imminent hazard situations or circumstances in which there is a potential for the destruction or disappearance of evidence.

As a practical matter, if entry is refused during an emergency, EPA would need the assistance of a U S marshal to gain entry. During this time, a warrant probably could be obtained, and doing so would be prudent.

- Heavily regulated industries that have been subject to a longstanding and pervasive history of government regulation.
- "Open fields" and "in plain view" situations in which the inspector can observe things in plain view of anyone in a lawful position or place to see them, such as an inspector who makes observations from a public area of a facility.

Overheads 11-2 and 11-3 Entry

Proper Entry Procedures

Inspectors should follow proper procedures when entering a facility so that no questions or challenges can be raised about the legality of the inspection

Arrive at the facility or site during normal working hours (to meet statutory requirements regarding entry at a "reasonable time"). Note your arrival time in the field logbook.

- Enter the facility or site through the main gate, unless the facility has specified use of another entry.
- Locate the owner or agent in charge as soon as you arrive. Ask who is in charge; do not rely on individuals' titles.
- Government credentials must be presented whether or not identification is requested. Even when presentation of credentials is not required by statute, EPA policy requires that they be presented to authenticate that the inspector is a federal official who has authority to conduct inspections.
 - A note in the field logbook that credentials were presented and to whom such presentation was made may prove useful later.
 - Keep your credentials in your sight at all times. Do not allow facility staff to take them from your presence. Business cards can provide an introduction

- If inspecting under the authority of FIFRA, SDWA, or TSCA, present a written notice of inspection, as required by law
 - The notice should be dated and the time of inspection entered as proof that entry was requested at a reasonable hour
 - Make a note in the field logbook about presentation of the notice and keep a copy as part of the inspection file.
 - At certain federal facilities, a security clearance may be required before entry is allowed

Consensual Entry

It is EPA policy to obtain access to a facility or site by consent.

What does consent mean? Consent is the intentional forgoing of the right to privacy that has not resulted from fear, ignorance, or trickery

Express consent is not necessary, absence of express denial constitutes consent.

If entry is denied, the inspector should take the following steps:

- Make certain that the arrival and attempt to enter were conducted according to proper procedures
- Tactfully discuss the reason for denial; try to obtain consent by reason and logic
- Carefully record observations in your field logbook.
- Avoid threatening or inflammatory statements. Never say that you will "get" a warrant. You may say that you will "seek" a warrant.
- Leave the premises and contact your supervisor
- Follow the directions of your supervisor or the Regional Counsel about next steps

INSTRUCTOR NOTES

SUGGESTED CONTENT

Later in this session, we will discuss how to obtain a warrant and inspect under a warrant

ROLE PLAY

CONSENSUAL ENTRY

Distribute handouts 11-2 and 11-3 and introduce the scenario to the entire group.

Conduct the role-play. End the role-play when the action begins to fail or becomes far-fetched.

Open discussion of the exercise. During the discussion, be sure to ask for positive as well as negative feedback.

The inspector, Ms. A Greer, is inspecting a small business that only recently has become subject to EPA authority because of new regulations. This is the first inspection this facility has had. When the inspector arrives, the secretary greets her

Questions that can be used to stimulate a critique and discussion of what happened (or didn't happen) during the role play:

Would it have been acceptable to conduct the inspection if the plant owner had not arrived? How do you know whether an employee of the facility has the authority to give consent?

- Was the inspector prepared adequately to deal with the plant owner's concerns?
- What techniques used by the inspector seemed to be most effective in convincing the plant owner to give consent?

What other techniques might the inspector have used?

- Did the inspector overstep any boundaries in the effort to gain consent (for example, use any threatening language)?
- Should the inspector have left the premises?
- Did the inspector enter into any inappropriate agreements about the scope or content of the inspection?

INSTRUCTOR NOTES**SUGGESTED CONTENT**

QUESTION-AND-ANSWER SESSION**ENTRY**

Invite trainees to ask any questions they have about entry.

This question-and-answer period is intended to provide an opportunity for inspectors to obtain advice from the instructor(s) and each other about how to handle a variety of entry situations.

Answers to frequently asked questions include:

Any effort on the part of officials of the facility to restrict the inspector's activities is considered a denial of consent and should be handled as such. Such efforts include.

- Demanding that inspectors sign confidentiality agreements
 - Limiting picture-taking or copying of documents
 - Prohibiting use of tape recorders or other recording devices
 - Requiring the inspector to sign passes, logs that contain restrictive language, waivers, indemnity agreements, or releases.
 - The inspector can begin the inspection even if consent to take photographs has been denied. Frequently, the issue can be discussed during the inspection with the individual in charge and consent can be obtained.
- If entry is made with consent, but, during the inspection, facility personnel attempt to place restrictions, such acts should be considered a revocation of consent and handled accordingly. In such cases, keep all samples taken before revocation.
- It is acceptable that the inspector agree to reasonable requests, such as the wearing of an identification badge or hardhat.

INSTRUCTOR NOTES

SUGGESTED CONTENT

EPA inspectors are encouraged to use the same safety gear that is used by employees of the facility. However, EPA employees are not required to go through the facility's safety training program. Any requirement that they do so should be considered a denial of consent. You may submit to a short briefing on safety equipment and procedures at the facility.

- Inspectors should never use threatening language or behave in any manner that might suggest coercion.

Inspectors should not state that EPA will obtain a warrant, nor suggest that there are any penalties for failing to allow entry.

LECTURE

WARRANTS

A warrant is a judicial authorization for an appropriate official (that is, an EPA inspector) to enter a specifically described location and perform specifically described inspection functions.

EPA can obtain an administrative warrant in any of three circumstances:

- In advance of an inspection
- When officials of the facility have denied entry
- If consent is withdrawn during an inspection.

The decision to seek a warrant is made by the Regional Program Office, in conjunction with Regional enforcement attorneys and Headquarters.

Inspectors and attorneys must work together as a team in drafting warrant documents.

The inspector plays several important roles in the process of obtaining a warrant. The inspector's knowledge of the circumstances and experience with personnel of the facility are crucial to the drafting of warrant documents. The inspector is responsible for

INSTRUCTOR NOTES

SUGGESTED CONTENT

- Obtaining the information that will permit very specific descriptions of the premises to be inspected
- Providing specific information about the items to be searched or seized

Helping to determine what laws, regulations, and requirements apply or may have been violated

Providing information amounting to "reasonable" cause or, as an alternative, supplying the predetermined inspection schedule

To obtain a warrant in the field, inspectors can call ORC or consult the nearest U.S. attorney's office.

Once a warrant has been issued, the inspector may proceed to the facility to begin or continue the inspection. The warrant should be executed promptly and within the stated number of days.

If there is a probability that entry still will be refused or there is risk of violence, the inspector should follow the direction of the marshal. Local marshals can be contacted at the courthouse, through the U.S. attorney, or through referral by a police officer

The inspection must be conducted in strict accordance with the warrant.

Follow all procedures carefully, including presentation of receipts for samples. Carefully observe any statutory requirements governing provision of split samples, establishment of chain of custody, and similar procedures.

- Provide receipts for all samples and documents that are removed from the premises.

Copies of model warrant documents are included in the manual.

INSTRUCTOR NOTES

SUGGESTED CONTENT

LECTURE

OTHER TOOLS FOR GATHERING INFORMATION

In addition to inspection authorities, EPA has other investigative tools that can be used to obtain information about compliance. They include administrative investigative subpoenas (AIS), warrants, orders, and requests

An AIS can be used to compel the production of tangible information (that is, records or documents) or the appearance of a person for the purpose of obtaining information through questioning

Warrants can be used to obtain tangible objects, records, and documents, and are most useful when there is concern that records might be destroyed

- Information-gathering orders issued under some EPA statutes can be used to require the production of information, including requiring that monitoring and sampling be undertaken and reported.

A request authorized by statute is comparable to an AIS.

LECTURE

OPENING CONFERENCE

The opening conference is held to advise personnel of the facility of the objectives of the inspection and to discuss the logistics and scheduling of inspection activities. An important aspect of this meeting is to set the "proper tone" with personnel of the facility (that is, to encourage cooperation). A typical conference agenda includes

- Introduction of inspectors and presentation of credentials (be prepared to cite inspection authorities - Appendix J)
- Description of the objective of the inspection

The objectives of the inspection generally have been identified in the project plan; however, the project plan should not be shown to the facility. As noted earlier, this

is an internal document that is not to be released by the field inspector to the facility. In addition, during the discussion of the objectives, the inspector should be careful not to limit the inspection if, as a result of the findings, a new objective becomes apparent.

The purpose of identifying the objectives of the inspection to the officials of the facility is to enable the facility to identify what people and what documents are necessary to assist in the inspection.

- Description of procedures and personnel needed (development of a schedule of events)

Let the management know approximately how long the inspection will take so they can assist with the least interruption of their regular schedules. The inspection often lasts as long as it takes to obtain the information requested from the facility.

While the government has a right to inspect at any time during normal working hours, it is appropriate to give some consideration to the needs of the facility. For example, perhaps giving facility personnel one-half hour in the morning to tend to their business would be beneficial and would win good will for the inspector.

- Escorts - determine where escorts are needed and make sure that right people are available to answer questions

Presentation of inspection notices and forms

- Discussion of prospective sampling and whether split samples will be made available to the facility
- Discussion of safety issues, including the facility's safety requirements (Appendix F)

The government inspector may not be subject to the same constraints as facility personnel. However, it is prudent to determine what safety requirements the personnel of the facility are required to follow and to follow those, if they are more stringent than government requirements. Of particular importance is identification of emergency signals and escape routes, in case of an emergency. Commonly, the inspector may attend a short safety briefing and be

asked to sign a statement that the inspector attended that briefing. It is appropriate to sign an acknowledgement that a safety briefing was attended, it is not appropriate to agree to anything else or to relinquish any rights. **CHECK WITH EPA'S ATTORNEYS IF YOU HAVE ANY QUESTIONS**

- Discussion about photographs

Photographs are used to prepare a thorough and accurate inspection report, as evidence in enforcement proceedings, and to explain conditions found at the plant.

Representatives of the facility, however, may object to the use of cameras in their facility and on their property. If a mutually acceptable solution cannot be reached and photographs are considered essential to the inspection, the inspector should contact EPA supervisory and legal staff for advice.

Personnel of the facility also may request that photographs taken during the visit be considered confidential; EPA is obliged to comply, pending further legal determination. Self-developing film, although often of less satisfactory quality, is useful in such situations. A facility may refuse permission to take photographs unless its staff can see the finished prints. Duplicate photographs (one for the inspector and the other for the facility) should satisfy this need. When photographs are taken that are considered CBI under TSCA, self-developing film eliminates processing problems; otherwise, the film processor also must have TSCA CBI clearance. Note, however, that some self-developing film may have disposable negatives that also must be handled in accordance with requirements under TSCA governing CBI. Giving the facility the option of developing the film may resolve problems related to national security in cases in which self-developing film is not satisfactory.

Photographs must be documented fully, according to procedures for handling evidentiary materials (Appendix K).

- Arrangements for availability and copying of documents

The federal statutes provide broad authorities for review and copying of documents. If the inspector decides that

INSTRUCTOR NOTES

SUGGESTED CONTENT

documents must be copied, then the inspector should attempt to use the facility's copier, paying a fee if necessary, or come equipped with a portable copier (Note renting a portable copier from a local business store often requires advance reservation) A facility's refusal to provide documents or refusal to allow copying can be considered similar to denial of entry (note that the facility is NOT required to copy documents for the government without a court order, refusal to copy, even with payment, is not the same as refusal to provide the documents). The inspector should note the refusal in the logbooks (including names, titles, and times) and continue with the inspection. At the earliest possible time, the inspector should consult supervisors and federal attorneys.

- Overview of facility operations provided by the facility

The overview provides the inspector an opportunity to learn process operations and to make initial identification of waste sources.

LECTURE

SITE TOUR

At the conclusion of the opening conference, information gathering activities begin in earnest. As discussed in the preceding section on inspection strategy, the next steps may include:

- A general "windshield" tour of the facility
- Inspections according to media and process and waste management responsibilities
- Inspections of processes and laboratories
- Review of records and documents
- Follow-up interviews

The purpose of the general tour of the facility is to provide the inspector an "on-the-ground" orientation and to identify and verify activities that require further evaluation. The inspector should compile a list of "must-see" items, based on review of the background information and information obtained during the overview of facility operations during the opening conference. Such items could include key processes and operations, waste management areas, and areas where

violations are suspected. The facility tour should include those items, whether facility personnel are provided the specific list depends on whether the facility could hide or correct violations. It may be prudent to present the list of specific items as general areas of the facility to be toured.

The facility tour must be structured properly and knowledgeable personnel of the facility must accompany the inspector. The route taken may be dictated by the layout of the facility, but material flow should be followed to the extent possible. The tour should include, at a minimum, raw material storage facilities, manufacturing areas, and waste management units. The inspector should be constantly alert for operations, processes, materials, and waste management activities not previously identified. If a potentially significant operation, unit, or activity (for example, a waste spill) is observed, "stop the car" and take a closer look. Any regulatory violations should be documented properly at that time.

The general site tour also provides a good opportunity to document conditions with photographs.

**SUMMARY OF FEDERAL ENVIRONMENTAL ACTS REGARDING
RIGHT OF ENTRY, INSPECTIONS, SAMPLING, TESTING, ETC.**

Act/Section	Designated Representative	Presentation of Credentials	Notice of Inspection	Sampling Permitted	Inspection of Records	Sample Split	Receipt for Agents & Samples	Return of Analytical Results
Clean Water Act/308(a)	Yes, authorized by Administrator	Required	Not required	Yes (effluents that the owner is required to sample)	Yes	Not required	Not required	Not required
FIFRA/8(b) (books & records)	Yes, designated by Administrator	Required	Written notice required, with reason and suspected violation noted	No	Yes	N/A	N/A	N/A
9(a) (inspections of establishments)	Yes, designated by Administrator	Required	Written notice required, with reasons for inspection	Yes	See 8	Required, if requested	Required	Required promptly
Clean Air Act/114(a)	Yes, authorized by Administrator	Required	Not required, except notification of the state for SIP sources	Yes	Yes	Not required	Not required	Not required
RCRA/3007(a) 9005(a)	Yes, designated by Administrator	Not required	Not required	Yes	Yes	Required, if requested	Required	Required promptly
SDWA/1445(b)	Yes, designated by Administrator	Required	Written notice required; also must notify state, with reasons for entry, if state has primary enforcement responsibility	Yes	Yes	Not Required	Not required	Not required
TSCA/11(a,b)	Yes, designated by Administrator	Required	Written notice required	(The act does not mention samples or sampling in this section, but it does state that an inspection shall extend to all things within the premises of conveyance)	Yes	N/A	N/A	N/A
CERCLA/104	Yes, designated by President	Not required	Not required	Yes	Yes	Required, if request	Required	Required promptly

**ENTRY SCENARIO
(Inspector)**

Instructions for inspector:

Before you go to the facility to conduct the inspection, you learn that you will be inspecting a small business that only recently has become subject to EPA authority because of new regulations

Your role-play should last approximately 10 minutes The instructor will be the timekeeper

**ENTRY SCENARIO
(Plant Owner)**

(Secretary and plant owner can be played by the same person or different people)

Instructions for secretary:

The facility is a small business that has never before been inspected by EPA.

As secretary, you are wary of the inspector. The owner is out of the office and cannot be reached by telephone, but the plant foreman is in the building. You attempt to take the inspector's credentials to give to the plant foreman. Before you return, the plant owner arrives.

Instructions for plant owner:

As plant owner, you are unsure whether the inspector has the right to enter, and you are generally resentful of government regulation. You have the perception that no one from the government can enter private property without a warrant. You are aware that you are subject to some new EPA requirements, but have had difficulty understanding them and are not quite sure whether you are in compliance. You fear that if EPA learns that you are in violation, you could be put out of business. During the scenario, you should:

At first refuse somewhat strongly to let the inspector into the plant.

- Call your lawyer, and ask the inspector to talk to your lawyer (you then take on the role of the lawyer, too).
- Say you need more information about the new regulations.
- Ask if there are any penalties for refusing to let the inspector in.
- Ask about penalties for violating the law.

If the inspector does a credible job of convincing you, you reluctantly give consent. However, you try to establish conditions on where the inspector can go and what the inspector can look at, you also tell the inspector that you do not want any photographs taken in the facility because there are some trade secrets in your plant.

Your role play should last approximately 10 minutes. The instructor will be the timekeeper.

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

Entry

Legal bases for entry

Consensual entry

Warrants

Other information-gathering tools

Text: Chapter 7

Basis for Entry

- Consent
- Warrant
- Emergency
- In plain view

[illegible]

SESSION 12

TOPIC: INTERVIEWING INSTRUCTOR'S OVERVIEW

Time: 60 minutes

PURPOSE	<p>Present basics of planning, conducting, and documenting interviews.</p> <p>Demonstrate interview techniques through role-play (note this role-play is crucial to the session).</p> <p>Improve trainees' interviewing skills through discussion of techniques and practice</p>
KEY POINTS	<p>The person you are interviewing knows more than he or she thinks.</p>
ADVANCE PREPARATION	<p>Select experienced inspectors to play the roles in the scenario. Give them handouts 12-1 and 12-2 and allow them time to prepare for the presentation.</p>
EQUIPMENT	<p>Overhead projector</p>
LIST OF VISUALS	<p>12-1 Interviewing</p> <p>12-2 and 12-3 What Is Wrong With These Questions?</p>
LIST OF HANDOUTS	<p>12-1 Interview Scenario Instructions (Ms. Functionary)</p> <p>12-2 Interview Scenario Instructions (Ms. Candoo)</p>

INSTRUCTOR NOTES

SUGGESTED CONTENT

Introduction

Introduce yourself, mentioning your background and experience and your role in the course.

Overhead 12-1 Interviewing

After discussing the steps in planning and conducting an interview and tips for improving interview skills, we will have a demonstration to show what you can learn from an interview

DISCUSSION

CONDUCTING INTERVIEWS

Try to encourage participation throughout this session. Demonstrate techniques for eliciting information through your questioning of the group.

Purpose and Products of Interviews

Interviews can provide valuable information for developing leads, providing evidence, or assisting in cross-examination. Both oral and written statements are generally admissible in court

An interview can result in an affidavit, a verbatim record, an unsworn statement, or informal notes.

The most productive interviews are those in which the interviewee feels comfortable and respected. The atmosphere should not be adversarial. Some tips for improving the "climate" for the interview are:

- *Attitude:* Be courteous and open-minded; avoid comments that could be taken as threatening.
- *Setting* Conduct the interview in a setting in which the interviewee feels comfortable and make sure that the setting is sufficiently private.
- *Nonverbal cues:* Shake hands, maintain eye contact, and keep an adequate distance.

Pace Give the interviewee time to think about his or her responses, do not be afraid of short silences.

Questioning. Avoid asking leading questions or using gestures or words that indicate positive or negative response to statements by the interviewee.

Ask the group to suggest specific techniques for obtaining the most positive results from an interviewee. Try to encourage the group to suggest responses to these questions

Planning, Conducting, and Documenting the Interview

What are key steps in planning an interview?

Identify interviewees by examining their responsibilities

Schedule interviews at times convenient for interviewees

Set objectives for each interview, and identify information sought from each interviewee.

What are key steps in conducting an interview?

Establish a positive climate and rapport with the interviewee.

Ask the interviewee to describe his or her responsibilities, particularly in reference to the topics being reviewed in the inspection.

Gather detailed information about specific topics.

Verify information with the interviewee

What are key steps in documenting an interview?

- Prepare a formal affidavit or written statement.
- Make written notes.
- Tape record the interview (although this approach is less desirable than others).

Techniques for Improving Interviewing Skills

What are key types of questions to be asked?

- *What* happened?

When did it happen?

Where did it happen?

- *Why* did it happen?

How did it happen?

Who was involved?

What are key elements in formulating questions?

Be precise

- Be clear and as simple as possible.
- Encourage a narrative answer, not a yes or no.

Avoid leading questions

Avoid double negatives and other complex phrases.

Limit the question to one subject

Ask the group to comment on the following hypothetical questions

Overheads 12-2 and 12-3
What Is Wrong With These Questions?

What is wrong with these questions?

- Didn't you see the unmarked drums on the loading dock? (Leading; elicits yes or no response)

What did you do when you discovered the unmarked drums on the loading dock? (Leading)

- Why were you on the loading dock, and what did you do when you left? (Too many points in a single question)

Are most drums around the facility generally marked correctly? (Imprecise, does not yield useful information)

What are key elements in sequencing questions?

- Work from the general to the specific.
- Work backward in time (and what did you do before that?)
- Work from the known to the unknown (Q1: What means of transportation did you use? A1: A car. Q2: Who drove? A2: I did)

Useful tools in helping the interviewee to estimate quantities more accurately include.

Use simple reference points (one-half mile downstream from City Hall)

INSTRUCTOR NOTES**SUGGESTED CONTENT**

Relate your question to commonly observed quantities (a truckload or a given number of barrels)

Compare quantities in question with similar items (further than from here to that wall or more than that group of drums over there)

Effective questioning methods include

Free narrative, an account given by the interviewee with little or no prompting or questioning.

Systematic questioning, designed to elicit information in a particular sequence

ROLE-PLAY EXERCISE**INTERVIEW SCENARIO**

Select experienced inspectors to play roles and allow them time to prepare

Give all trainees a copy of handouts 12-1 and 12-2.

Conduct the scenario.

DISCUSSION**ROLE-PLAY DISCUSSION**

Role-Play Discussion

After the role-play, discuss the strengths and weaknesses of the interview. Some questions you might wish to pose are listed in the column to the right

- Overall, what part of the interview went well? What did not?

How well did the inspector open the interview? Did the inspector try to make the employee feel more comfortable? What worked and what did not?

- What techniques did the inspector use to probe for answers?

INSTRUCTOR NOTES**SUGGESTED CONTENT**

Did the inspector overuse or underuse any particular type of question?

- Was the inspector's note-taking obtrusive?

**INTERVIEW SCENARIO
(Ms. Functionary)**

Instructions for Ms. Functionary:

You work at a hazardous waste facility that is allowed to accept only certain types of wastes. You are a low-level employee. It is your responsibility to stop trucks when they arrive, make certain that their manifest paperwork is in order, and log in the shipments. After they have completed your routine, you send the trucks on to Mr. Zyleen, who works in a different building. You do not know what happens after that

You have never been interviewed by a government official before, and you are afraid that you might have done something wrong. Further, you are afraid you will be fired if you say something that causes the company trouble.

You should let important pieces of information slip out "unintentionally," such as the fact that your post is unattended if you go to the restroom or to get a snack.

Allow the interviewer to demonstrate to the group that important information can be obtained by a good interviewer who listens carefully.

**INTERVIEW SCENARIO
(Ms. Candoo)**

Instructions for Ms. Candoo:

This is a small, commercial hazardous waste facility that has a permit to dispose of only certain types of wastes. The facility has a history of record-keeping violations, and EPA has reason to suspect that unpermitted wastes are being disposed of there. You are going to interview Ms. Functionary, having been told that she is the first employee to have contact with waste trucks when they arrive and that she "keeps the records."

You are looking for clues about where the facility's system might be breaking down. You want to know, for example,

Whether it is possible for a truck to get past Ms. Functionary without stopping. (What happens when she takes a break to go to the restroom?)

- How the facility's logging system works, where the facility's copy of the manifest goes, and who (if anyone) reviews the logging and filing system.

Who is responsible for making sure that the facility is allowed to accept the wastes listed on the manifest.

- What kind of training Ms. Functionary has had.
- Where the trucks go after they are passed by Ms. Functionary.

As the inspector, you will take notes during the interview so that you can reconstruct it later.

Interviewing

The planning and conduct of an interview

Techniques for improving interview skills

Interview scenario

Text: Chapter 14

What Is Wrong With These Questions?

Didn't you see the unmarked drums on the loading dock?

What did you do when you discovered the unmarked drums on the loading dock?

(continued)

What Is Wrong With These Questions?

Why were you on the loading dock, and what did you do when you left?

Are most drums around the facility generally marked correctly?

Notes

SESSION 13
TOPIC: EVIDENCE
INSTRUCTOR'S OVERVIEW

Time: 60 minutes

PURPOSE	<p>Introduce the rules of evidence and their relevance to the activities of the inspector</p> <ul style="list-style-type: none">· Provide guidance on documenting evidence to help ensure its admissibility in a court proceeding. <p>Present procedures for recording and documenting observations.</p> <p>Present tips for improving techniques.</p>
KEY POINTS	<ul style="list-style-type: none">· Many of the procedures being taught in this course are based on considerations related to evidence; they are designed to ensure the admissibility of information collected during an inspection and to enable the inspector to provide credible testimony in a court proceeding. <p>Photographs are excellent evidence ·</p>
ADVANCE PREPARATION	<ul style="list-style-type: none">· From your experience, develop examples of problems or successes in obtaining evidence that is admitted; use the examples to illustrate concepts related to evidence.· While a set of photographic slides and drawings is provided, experience has shown that this session works best if the instructor is personally familiar with the illustrations and what they represent. For that reason, it is recommended that the instructor prepare his or her own visuals to augment or substitute for those provided. Ideally, the instructor's visuals should include photographs and other visuals that were admitted as evidence and those that illustrate a particular problem in technique· The instructor should be prepared to answer questions about cameras typically used during inspections in the Region.
EQUIPMENT	<p>Overhead projector Slide projector</p>

SESSION 13
TOPIC: EVIDENCE
INSTRUCTOR'S OVERVIEW

Time: 60 minutes

LIST OF VISUALS

- 13-1 Evidence
- 13-2 FRE 901: Authentication and Identification
- 13-3 FRE 401: Definition of "Relevant Evidence"
- 13-4 FRE 602: Lack of Personal Knowledge
- 13-5 "Who Cares If . . ."
- 13-6 Collection Conditions and Surroundings
- 13-7 General Identity and Sameness
- 13-8 Precautions To Ensure Identity
- 13-9 Present Conditions That Vary
- 13-10 Representativeness of Item
- 13-11 Connecting the Chain of Custody
- 13-12 FRE 612: Writing Used To Refresh Memory
- 13-13 FRE 803 (5): Recorded Recollection
- 13-14 FRE 803 (6): Records of Regularly Conducted Activity
- 13-15 Evidence Is in "Custody" If . . .
- 13-16 Basic Chain-of-Custody Procedures
- 13-17 FRE 406: Habit, Routine Practice
- 13-18 Observations and Photographs
- 13-19 through 13-24 Overheads of drawings and illustrations

LIST OF HANDOUTS

None

INSTRUCTOR NOTES

SUGGESTED CONTENT

Introduction

Introduce yourself, mentioning your background and EPA experience and your role in the course

Overhead 13-1 Evidence

In this session, we will discuss evidence - what it is, what criteria it must meet to be admissible, and how it should be documented.

LECTURE

INTRODUCTION TO EVIDENCE

Collecting and documenting evidence is a core activity during an inspection; that supports case development and helps an inspector prepare for testimony.

Understanding the rules of admissibility of evidence and the kinds of testimony an inspector might be required to provide helps explain the need to adhere routinely to proper procedures for collecting and handling evidence

What Is Evidence?

Evidence is the facts, items, and documentation we use to prove our case. It is any information or proof that helps establish the truth of a point.

Not all evidence is admissible, but evidence that is not admissible still can be useful to EPA. Remember, most cases are settled before trial, and all evidence may be helpful during negotiations.

Types of Evidence

- *Testimonial*: Inspector's testimony to what he or she saw, smelled, heard, or felt
- *Real*: Objects, such as contaminated dirt
- *Documentary*: Reports, logs, accounting ledgers, and computer printouts
- *Demonstrative*: Something prepared to illustrate or clarify a point, such as photographs, maps, and schematics

Judicially noticed. Scientifically accepted testing devices or geographic location

Federal Rules of Evidence

Used in federal civil and criminal judicial proceedings, FRE are quality assurance and quality control (QA/QC) "procedures for truth."

The principal tests for the admissibility of evidence are:

Overhead 13-2
FRE 901: Authentication and Identification

- *Authenticity and identification:* It must be demonstrated that evidence is what it is claimed to be.

Overhead 13-3
FRE 401: Definition of "Relevant Evidence"

Relevance Evidence must pertain to the fact in question and tend to make that fact more or less probable; the inspector should record everything and should not make judgments in the field about relevance.

Overhead 13-4
FRE 602: Lack of Personal Knowledge

Foundation Preliminary evidence has been presented to demonstrate that the additional evidence is what the proponent says it is.

Also important concerning admissibility are:

- *Competence* The person presenting evidence is capable of speaking authoritatively, as an expert or based upon that person's observation and experience.
- *Credibility* The person presenting evidence is reliable.

Hearsay Evidence

Hearsay is any out-of-court statement (verbal, written, or gesture) that is offered to prove the truth; it is not based on the first-hand knowledge of the witness

Hearsay statements usually are not admissible. However, there are exceptions, many of which are valuable to EPA in establishing the admissibility of information as evidence. We will discuss a few of those exceptions as we go along.

INSTRUCTOR NOTES

SUGGESTED CONTENT

DISCUSSION

ILLUSTRATION OF CONCEPTS OF EVIDENCE

Ask the group to provide suggestions about how EPA, through testimony of the inspector and others, would go about answering the question (See the more detailed explanation in Chapter 8.)

"Who cares if what you are holding is contaminated "gunk" unless you can show that particular "gunk" came from the particular site involved in this case and not from somewhere else?"

In this hypothetical situation, what points must EPA be able to make to have this "gunk" and the results of analysis of samples of it entered into evidence?

Overhead 13-5 "Who Cares If ..."

(The group makes suggestions about how the evidence can be authenticated.)

After about five minutes of discussion, use an illustration to describe authentication. Overheads should be shown after each bullet point is covered.

Overhead 13-6 Collection Conditions and Surroundings

Collection conditions and surroundings

The inspector testifies that the sample was collected on a relevant date at the site of concern, 50 paces southwest of the office door; the inspector has a photograph taken at the time. The inspector says the "gunk" was oozing from a transformer he also has a photograph of.

Overhead 13-7 General Identity and Sameness

General identity and sameness

The inspector testifies that the initials on the sample bottle are his and that he entered the date on the bottle; color and consistency of the material in the bottle are as he remembers. He states that there is less "gunk" in the bottle than he put in it.

Overhead 13-8 Precautions To Ensure Identity

Precautions to ensure identity

The inspector testifies that he initiated chain-of-custody records, carried and protected the sample until he delivered it to laboratory personnel later that day, and did not see the sample again until just before the hearing.

INSTRUCTOR NOTES

SUGGESTED CONTENT

Overhead 13-9 Present Conditions That Vary

Present conditions or features that vary

The inspector testifies that the exhibit seems to be the container in which he had placed the sample of concern, but there currently is less "gunk" in the container than he put in it.

Overhead 13-10 Representativeness of Item

- Representativeness of item

The inspector testifies that there were 88 other transformers at the same site on the date in question that also were oozing "gunk" of the same color, viscosity, and odor. He said he took the same amount of "gunk" from each, using the same identifying and marking procedures.

Overhead 13-11 Connecting the Chain of Custody

- Connecting the chain of custody

The laboratory personnel testifies that she received the sample from the inspector and used EPA-approved and other authoritative techniques to analyze the "gunk." She describes how she took raw data notes and printouts from the various machines used, all initialed, and locked them in her safe, along with the container of "gunk." Only she has a key to the safe.

Because the connection of the "gunk" with the site already has been established, her testimony and documents about the test results are relevant and admissible.

LECTURE

DOCUMENTATION OF EVIDENCE

FRE treats all evidence (except for "real" evidence - that is, the "gunk") as statements.

- *Verbal:* Testimony of the inspector

Written: Documents, reports, sample tags, and other materials

As noted earlier, hearsay statements are not admissible, unless one of the exceptions applies. The exceptions help the inspector tell his or her story through testimony and documented evidence.

Inspector's Written Documentation

To ensure its admissibility, documentation must be created routinely and contemporaneously with the events being described.

- **Field Logbook**

The logbook is core documentation, preferably in a bound notebook. The logbook should contain notes on every aspect of the inspection, correlated to all evidence collected, such as physical samples, interviews, photographs, and copies of documents.

Notes can be concise, but should be sufficiently detailed to refresh the inspector's memory for writing a narrative to prepare for testimony. Notes should contain facts only, with no conclusions expressed. Notes are subject to discovery.

- **Inspection Report**

The narrative report expands on notes in the logbook and adds other relevant and important details the inspector remembers. The report should be written as soon as possible after the inspection and should be as thorough as possible.

The report should be accurate, objective, and relevant and should cover all major items of concern. Other documents related to the inspection (for example, photographs, chain-of-custody forms, notices, and receipts) should be included by reference.

The information in the report should be first-hand or the source of the information should be identified.

Overhead 13-12
FRE 612: Writing Used To
Refresh Memory

The logbook and inspection report are subject to disclosure to the opposing side because the inspector will review them to refresh memory in preparation for testimony.

The inspector can be cross-examined about the contents of such documents without necessarily being shown the documents beforehand. Keep this in mind when preparing such documents.

INSTRUCTOR NOTES

SUGGESTED CONTENT

Overhead 13-13 FRE 803 (5): Recorded Recollection

If the inspector is expected to make recommendations or draw conclusions about compliance status, that expectation should be set forth on a separate page and addressed to ORC or the inspector's supervisor; the attorney-client or deliberative process privilege then can be invoked

Overhead 13-14 FRE 803 (6): Records of Regularly Conducted Activity

The logbook and report can be admitted in evidence in lieu of the inspector's testimony, if a proper foundation for doing so is laid.

The logbook and report may be admitted as a record of regularly conducted activity. They must have been created contemporaneously and must be kept in the regular course of EPA's activity; it must be regular practice to keep such records.

Chain of Custody

The purpose of chain-of-custody records is to trace possession of evidence from the time it was obtained until the time it was introduced as evidence.

Documentation of chain of custody requires an accurate written record.

Overhead 13-15 Evidence Is in "Custody" If...

Evidence is in "custody" if it is

- In the actual possession, control, and presence of the inspector
- In the inspector's view
- In a storage place to which only the inspector has access
- In a storage place to which only the inspector and identified others have access

Overhead 13-16 Basic Chain-of-Custody Procedures

The basic procedures for establishing chain of custody are:

- *Establish custody:* Seal the evidence with a seal that readily shows any damage; sign and date seal
- *Prepare documentation of the evidence:* Prepare written information describing the collection, shipment, and storage of the evidence. Documentation can include entries in the logbook, description of the seal, chain-of-

custody record, field sample data forms, and shipping records

- *Ensure custody during transit* The chain-of-custody record should indicate each person who has custody of the sample and where the sample is stored, any special care in storage (for example, refrigeration), and any deviation from the custodian's usual practice
- *Note if the seal is found broken* or an irregularity in documentation is discovered Make notes on the form and contact prior custodians to remedy the problem or determine whether a new sample is needed.

For shipping, the chain-of-custody record must accompany the evidence; the inspector keeps a copy of the record. The inspector should obtain the bill of lading and include all receipts and shipping documents with the chain-of-custody record

Applicable FRE are essentially the same for sample tags and custody forms as for logbooks and reports.

Other tips on chain-of-custody include

- Take only as many samples as needed.
- If the inspection is a team effort, ensure that the identification of the particular inspector who is responsible for the evidence is noted on the record for that evidence.
- If any errors have been made in completing forms, make a single-line crossout, then initial and date the correction
- Obtain the signature of the next person in the chain of custody before relinquishing custody.

When receiving custody, check the integrity of the seal and cross-check documents.

- Minimize the number of people in the chain of custody.

Overhead 13-17
FRE 406: Habit; Routine Practice

Another FRE, Habit, Routine Practice, also is particularly applicable

Under FRE 406: Habit; Routine Practice, the inspector can testify about habits or the routine practice of the organization to prove that the inspector or the organization was conforming to habit. No eyewitness to the inspection is required under this rule

The rule is a major reason it is so important to perform functions and create documents routinely. Even after many intervening months, inspections, and samples collected, the inspector can testify that even though he or she cannot remember actions specifically, he or she followed standard procedures or there would be a note in the record about any deviation

Photographs and Other Demonstrative Evidence

Chain-of-custody procedures do not apply (although they must be followed if the camera was triggered automatically and no one was present to view the scene actually being photographed)

It is required only that the inspector verify that the photograph "fairly and accurately" represents the scene on the day in question

To ensure this is possible, the inspector should enter the following information in the field logbook:

- Identifying number
- Date and time
What is seen
- Specific location on premises (schematic is helpful)
Other descriptive information

Maps and diagrams also are admissible on the same terms "Does this fairly and accurately reflect what you saw at the facility?"

Statements of Individuals as Evidence

Statements of individuals carry as much weight and are as persuasive (or more so) than samples and documents gathered during an inspection

The FRE define admissions by opposing parties as not hearsay this means almost anything said by anyone associated with the facility being inspected is admissible evidence against the facility or individual.

Even if they are not used as evidence, oral statements are extremely useful in developing leads and making cases. In sum, ask questions!

Documenting Facility Records

Records include documents, reports, receipts, messages, notes, telephone logs, printed manuals, accounting ledgers, computer printouts, tape recordings, photographs, and other materials. All records are considered "statements" and are admissible as such

As statements, they are admissible under the same FRE as the statements of individuals. They also may be admissible under the business record exemption (FRE 803 (6)).

The absence of records -- frequently the most important records -- is admissible under FRE 803 (7).

To authenticate records, the inspector must be able to show, at a minimum, that they were gathered during the particular inspection and demonstrate their authorship, location, and distribution. Ideally, the inspector also will be able to show that the records were safeguarded between the time of collection and the time of the enforcement proceeding.

Documentation procedures include:

- Note in the field logbook the exact source and location of the records
- Assign an identifying number to each record
- Date and initial the logbook entry

Exercising Judgment in the Field

Constraints on time and resources, as well as logistical considerations, make it impossible to inspect for and document every potential violation; the inspection plan and application of judgment in the field determine what actually happens

INSTRUCTOR NOTES

SUGGESTED CONTENT

Inspectors may find more potential violations than it is possible to document fully on one visit. In such situations, inspectors should use their knowledge of program priorities and the hierarchy of violations, fully documenting the most serious violations. As a second priority, other violations should be documented to the extent possible.

The more thoroughly an inspector understands environmental statutes and regulations, the better judgments he or she will make in the field.

DISCUSSION

ISSUES RELATED TO EVIDENCE

The topic of evidence is perhaps the most complex and misunderstood of all subjects pertinent to the inspector's duties. At this point, allow 10 minutes at the end of the session to provide an opportunity for questions and answers.

(Take questions from the trainees.)

This material is covered more thoroughly in Chapter 8 of the text.

LECTURE

OBSERVATIONS AND PHOTOGRAPHS

Overhead 13-18 Observation and Photographs

As we discussed yesterday, the notes you take in your field logbook are the core documentation of every inspection. You should write down what you see, hear, feel, or touch.

In addition to notes in the field logbook, there are several other ways to record your visual observations during the inspection.

- Photographs
- Drawings
- Maps
- Schematics

INSTRUCTOR NOTES

SUGGESTED CONTENT

- Diagrams

Of course, when you use these techniques, make notes in the field logbook that properly identify such documents

In this session, we will discuss the importance of this type of documentation and will present some tips for improving your skill in using them.

Why are techniques of recording visual observations, especially photographs, important?

- They show what was there to a person who was not at the site (such as your supervisor, the attorney on the case, or the judge).

They support other evidence and enhance credibility

- They can be evidence in and of themselves

They can help jog the inspector's memory

Take as many photographs as you can -- you can never have too many!

LECTURE

TIPS ON PHOTOGRAPHS

Photographs are excellent physical evidence. To be admissible, they must "fairly and accurately represent" what the inspector saw on-site. The inspector need not have taken the photographs personally.

Inspectors have a right to photograph anything. If the facility restricts the inspector's ability to photograph, such action is considered a denial of consent.

There may be sensitivity about inclusion in a photograph of CBI that is not relevant to the inspection. Although you have the right to take the photograph, you may want to shield CBI before you do so.

The inspector should be comfortable with the camera and should not attempt to use a camera that is beyond his or her

capabilities. Single lens reflex and instant cameras are generally the simplest. In general, the best film for inspections is high-speed color print film

Documentation

Photographs should be documented in the field logbook. Some inspectors use a separate photograph log to record the information. If an instant camera is used, some documentation can be written on the back of the photograph itself.

At a minimum, documentation should indicate:

- The location where the picture was taken (name of the facility and exact location at the site where the picture was taken)
- Date and time the photograph was taken
- An identifying number or other means of matching the photograph with the particular inspection and the particular location and activity at the site

If relevant or necessary to explain the picture, notes also can include:

- Lighting and weather conditions
- A brief description of the scene
- The number(s) of any related physical samples
- Any special filters or lenses that were used

If the inspector is not using a standard camera and film, it can be useful to record a description of the film used, the type of camera and attachments, the focal length of the lens, the F-stop, and the shutter speed.

(Additional documentation may be necessary under the requirements of some programs, such as stationary air. Consult program-specific guidance.)

Each inspector should develop a quick and easy system for recording the necessary information. Do not allow a

INSTRUCTOR NOTES

SUGGESTED CONTENT

cumbersome system to discourage you from taking photographs

Tips on taking photographs for documentation include:

- Place a common item next to the item of interest to indicate size and scale.
- Photograph all sides of an object, if necessary to document the violation.
- If lighting conditions are poor, take several photographs of an item, using different settings for shutter speed and depth of field.

Videotape equipment is not readily available to inspectors but may become more widely used. Similar instructions would apply.

DISCUSSION OF SLIDES

WHAT'S WRONG WITH THIS PICTURE?

Use the nine slides of photos from EPA inspection reports, or select from among them. The purpose is to offer tips on taking good photographs. You are encouraged to use your own slides in addition to or in place of the slides that are provided and discussed here.

Slides 1-5 are photographs from a RCRA inspection at the facility of a hazardous waste generator.

Depicted in the photograph are:

- 1) Collection of waste paint and paint thinner
- 2) Hazardous waste storage area

I am going to show you photographs from EPA RCRA and NPDES inspection reports.

I am going to offer tips on taking good photographs under some of the conditions you are likely to encounter in the field.

Comments on photographs:

Use of flash with strong backlighting resulted in labels showing clearly.

Strong natural light from left can affect exposure, but proper exposure shows drums in shadows at far right

INSTRUCTOR NOTES**SUGGESTED CONTENT**

- 3) Drum labeled waste rubber tile

Label is overexposed

- 4) Hazardous waste label

Label is too far away, and too small to read.

- 5) Hazardous waste label

Label is a good combination of size and exposure.

Slides 6-9 are photographs from a NPDES diagnostic inspection at a publicly owned treatment works (POTW) facility

- 6) Influent and bypass channel with weir submerged (evidence of overflows)

In this good photograph, a very bright day highlights shadow and light. Don't shoot into the sun.

- 7) Close-up of influent and bypass channel

This photograph shows water going over the weir into the bypass channel.

- 8) Aerobic digester

This photograph provides a better vantage point on the digester from above, rather than at ground level.

- 9) POTW facility

The view from above may be more advantageous.

LECTURE**OTHER EVIDENCE**

Drawings, sketches, and maps, which can provide useful clarification, might include:

- Schematic drawings of equipment
- Simplified diagrams or schematics to clarify items photographed
- General map of the facility
- Map showing locations at which photographs and samples were taken
- Map showing locations at which potentially noncomplying situations were observed

INSTRUCTOR NOTES

SUGGESTED CONTENT

Map showing the layout of a particular part of the facility

In some situations, very detailed maps are needed. Such maps must be prepared by technical experts.

Some tips on drawings, diagrams, schematics, and maps include:

Keep illustrations as simple as possible.

If possible, draw to scale and note lengths, heights, distances, and other pertinent information on the illustration.

Note colors or textures, if they are relevant

The following illustrations are taken from EPA inspection reports; some are computer-generated, and others are handmade. You may use other material in addition to or in place of these illustrations

Overhead 13-19
Mark-Up of an Architectural Drawing

Diagram showing water sampling locations and sample numbers for a NPDES compliance monitoring inspection at a municipal wastewater treatment plant

Overhead 13-20
Drawing of a River Segment Showing the Mile Post

Map of a stream segment showing the sampling sites for a study of the levels and fate of pollutants discharged from a municipal wastewater treatment plant to a river; water and sediment sampling occurred at sites above and below the plant

Overhead 13-21
General Schematic

Illustration of testing locations for a stack test observation at a boiler house

Overhead 13-22
Specific Schematic

Illustration of the sampling location for a stack test observation at a boiler house

Overhead 13-23
Map Showing Size of Inspector to the Stack and Boiler House

Sketch of the site for visible emissions observations at a boiler house

Overhead 13-24
Drawing of a Landfill

Sketch of locations for RCRA waste sampling of a dust and slurry mixture at a company landfill.

Evidence

- Identifying evidence
- Documenting evidence
- Ensuring admissibility

Text: Chapter 8

FRE 901: Authentication and Identification

"... a condition precedent to admissibility is satisfied by evidence sufficient to support a finding that the matter in question is what its proponent claims."

FRE 401: Definition of "Relevant Evidence"

"... evidence having any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence."

FRE 602: Lack of Personal Knowledge

"A witness may not testify to a matter unless evidence is introduced sufficient to support a finding that the witness has personal knowledge of the matter. Evidence to prove personal knowledge may, but need not, consist of the witness's own testimony..."

"Who Cares If..."

Who cares if what you are holding is contaminated "gunk" unless you can show that particular "gunk" came from the particular site involved in this case, not from somewhere else?

Collection Conditions and Surroundings

What activities were performed at the site

Why the sample was taken

How the item was discovered

What physical items were identified in the immediate vicinity

Aids: Notations in field logbook

Photographs of area and exact location of sample

General Identity and Sameness

Item has the same characteristics as the item collected by the inspector

Aids: Routine documentation procedures

Sample tags with signature of the inspector and date

Notations in logbook about color, consistency, and other sensory perceptions

Precautions To Ensure Identity

Other precautions taken to ensure later identification

Aids: Assignment of sample number

Initiation of chain-of-custody procedures

Present Conditions That Vary

Any features or conditions about the item being offered in evidence that vary from what was collected

Aids: Full description in logbook

Representativeness of Item

Establishes the relationship to other items of the item offered as evidence

Aids: Notations in logbook on sampling strategy used to select the particular sample plan

Sampling plan

Connecting the Chain of Custody

The meticulous process of showing the succession of persons who handled or had access to the evidence

Aids: Chain-of-custody forms

Testimony regarding adherence to routine sampling security measures

FRE 612: Writing Used To Refresh Memory

"... if a witness uses a writing to refresh memory for the purpose of testifying, either --

- (1) while testifying, or
- (2) before testifying...

an adverse party is entitled to have the writing produced at the hearing, to inspect it, to cross-examine the witness thereon, and to introduce in evidence those portions which relate to the testimony of the witness..."

FRE 803: Hearsay Expectations 803(5) Recorded Recollection

"A memorandum or record concerning a matter about which a witness once had knowledge but now has insufficient recollection to enable the witness to testify fully and accurately, shown to have been made or adopted by the witness when the matter was fresh in the witness's memory and to reflect that knowledge correctly..."

FRE 803: Hearsay Exceptions 803(6) Records of Regularly Conducted Activity

"A memorandum, report, record or data compilation, in any form, of acts, events, conditions, opinions, or diagnoses, made at or near the time by, or from information transmitted by, a person with knowledge, if kept in the course of regularly conducted business activity, and it was the regular practice of that business activity to make the memorandum, report, record, or data compilation..."

Evidence Is in "Custody" If...

It is in the actual possession, control, and presence of the inspector

It is in the inspector's view

It is in a storage place to which only the inspector has access

It is in a storage place to which only the inspector and identified others have access

Basic Chain-of-Custody Procedures

Establish custody

Prepare documentation of the evidence

Ensure custody during transit

Note if the seal is found broken

FRE 406: Habit; Routine Practice

"Evidence of the habit of a person or of the routine practice of an organization, whether corroborated or not and regardless of the presence of eyewitnesses, is relevant to prove that the conduct of the person or organization on a particular occasion was in conformity with the habit or routine practice."

Observations and Photographs

- Photographs
- Other techniques

Text: Chapter 15

100

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[illegible]

SESSION 14

TOPIC: SAMPLING AND LABORATORY ISSUES INSTRUCTOR'S OVERVIEW

Time: 60 minutes

NOTE: Whenever possible, it is highly recommended that trainees be given a tour of the Regional laboratory as part of the course. It is helpful for the trainees to meet the people who receive and analyze their samples and to see how some of the analysis is conducted. Such a tour would be substituted for a portion of this classroom session.

PURPOSE

Explain the importance of physical samples as evidence

- Present considerations involved in ensuring that samples meet quality requirements
- Provide an overview of the sampling process from planning through disposal of contaminated equipment
- Provide a basic understanding of the functions of a laboratory and the relationship between the laboratory and the inspector

Note: This session is not intended to teach inspectors how to sample.

KEY POINTS

- Physical samples are collected to establish the presence and concentration of regulated substances and the extent of contamination.
- Sampling data help determine whether a violation exists (for example, exceeding a standard) and, if so, the gravity of that violation (for use in determining penalties).
- Before the inspection is conducted, sampling objectives and data quality requirements and the methods by which they will be met should be established in a quality assurance plan.
- Standard collection should be followed or deviations noted in field notes/log book
- Chain-of-custody procedures **MUST** be followed
- Inspectors should be aware of capabilities and limitations of laboratory.

Laboratory personnel can be a valuable source of technical expertise
- Advance planning for laboratory work helps ensure prompt analysis

**ADVANCE
PREPARATION**

If possible, bring some typical sampling equipment to the session. Otherwise, select several slides of sampling equipment from among those provided to use in explaining how samples usually are collected. See Attachment 14-1 for a list of slides

Hand out copies of the Region's format for a quality assurance project plan, if one exists.

Bring examples, or make overheads, of sample tags and seals and chain-of-custody forms used in your Region.

If possible, bring packaging materials and shipping containers and labels to use in a demonstration of how samples are packed for shipment.

Prepare a brief, nontechnical presentation on the capabilities of the EPA laboratory in your Region, including key equipment it has available and analyses it can perform.

Prepare a handout that shows formats of analytical reports from your laboratory and be prepared to explain how to read the reports.

EQUIPMENT

Overhead projector
Slide projector
Calculator
Sampling equipment
Packing and shipping supplies

LIST OF VISUALS

14-1 Physical Sampling
14-2 General Guidelines for Sampling
14-3 Representative Sampling Factors
14-4 and 14-5 Common Sampling Errors
14-6 Quality Assurance and Quality Control Samples
14-7 Quality Assurance Project Plan (QAPP)
14-8 Changes in the QAPP
14-9 Evidence Is in "Custody" If..
14-10 Chain of Custody Procedures
14-11 Field Logbook Entry: Sampling
14-12 Example of the Sample Tag
14-13 Example of the Sample Seal
14-14 Sample Holding Time
14-15 Packing and Shipping of Samples
14-16 Laboratory Analysis
Slides of Sampling Equipment (Attachment 14-1)

LIST OF HANDOUTS
Analytical reports

prepared by the Regional laboratory

Purpose of Session

This session is not designed to teach you how to sample. Rather, the intent of this session is to provide you with a basic understanding of the principles and procedures involved in sampling for the development of evidence.

Such an understanding will be a direct aid to those of you who do take physical samples as part of your inspection work. You will, of course, receive more specialized training in sampling techniques during your program-specific classroom and on-the-job training.

Those of you who do not expect to take samples personally, but who may ask for sampling support from others, such as the Environmental Services Division or a contractor, will find that knowledge of what goes into planning for and conducting a quality sampling effort will help you:

- Communicate sampling needs effectively, particularly with regard to establishing sampling objectives and data quality requirements
- Make realistic projections of the costs and time required for carrying out sampling and obtaining results

During the rest of this session, we will cover these topics:

Later in this session, we will discuss laboratory analysis.

**Overhead 14-1
Physical Sampling**

- Policy considerations in sampling
- Technical considerations in sampling
- Common sampling errors
- QA/QC
- Documentation of samples and chain of custody
- Management of samples in the field

Later in this session, we will discuss laboratory analysis.

LECTURE

POLICY CONSIDERATIONS IN SAMPLING

Samples as Evidence

The physical samples taken during a compliance inspection are often the key evidence that substantiates a violation (or demonstrates that a facility is in compliance)

Depending on the regulation involved, samples may be needed to show:

- That a particular regulation applied to the site or facility (for example, that a drum contained PCBs and therefore should have been labeled)

That a permit standard has been exceeded (for example, that a waste stream has a higher concentration of pollutants than is allowed under the facility's permit)

The extent of a contamination problem (for example, that contamination has seeped from the soil under a leaking tank to the groundwater)

If samples are to be accepted readily as evidence in court, they must be of known quality, must have been collected according to sound technical procedures, and must be representative of materials and/or population being sampled.

Further, EPA must be able to show that a sample offered in evidence was in custody from the time of its collection until the time of the trial -- that is, that only authorized persons had access to the sample. Each individual who had access must be identifiable.

Determining When to Sample

In planning and carrying out sampling and field measurement activities, many factors must be considered. During this part of the session, we will discuss key aspects of the sampling process.

Guidance specific to each regulatory program provides basic direction on when to sample at a facility or site.

Such guidance usually includes SOPs for the collection of samples, covering such topics as equipment to use, size of samples, locations from which the samples should be drawn, methods to ensure representativeness, and other technical factors. Deviations from SOPs should be avoided, if possible. If such deviations are necessary, they must be thoroughly documented in the field logbook.

Program guidance serves as the starting point for establishing and meeting the sampling objectives for a particular inspection.

While each program has its own specific requirements, the general principles set forth below should guide sampling efforts:

- Take a sample whenever one is needed to prove a violation. For example:
 - To demonstrate that a release should have been reported to EPA under CERCLA, there must be proof that a substance subject to regulation under CERCLA was involved.
 - To show that a transformer should have borne a PCB label, there must be proof that it actually contains PCBs at a concentration that is subject to regulation.
 - To show that an industrial discharger is exceeding the limit established in its permit for a parameter, there must be proof that the discharge actually contains that constituent in a concentration above the limit.
- Sample only when there is reason to suspect a substance is present. Your time and your ability to transport samples is limited, and analysis is costly. For example, unless there is reason to believe that drums contain hazardous waste, they usually would not be sampled.

**Overhead 14-2
General Guidelines for
Sampling**

INSTRUCTOR NOTES

SUGGESTED CONTENT

Attempt to verify the presence of a substance by a means in addition to (or other than, in some situations) a sample
For example

- A company's self-monitoring reports show levels in excess of the limit established in its permit for a given constituent or constituents
- A nameplate on a transformer states that it is a PCB transformer
- A facility employee states that waste oil is placed in certain drums.

Ideally, every potential violation observed by the inspector should be documented fully, including collection of physical samples, when appropriate. In reality, constraints on time and logistical considerations may make it impossible to do so, particularly if many potential violations are observed

As a guideline for such situations, violations that pose the greatest threat to human health and the environment should receive the highest priority. Familiarity with annual program operating guidance and guidance documents that indicate the seriousness of various types of violations, such as the enforcement response policy, will aid the inspector in making such decisions.

DEMONSTRATION

SAMPLING EQUIPMENT

The purpose of this section is to give inspectors an understanding of how sampling is performed by showing and describing the use of typical sampling equipment.

If you have brought actual sampling equipment with you, briefly describe what each is used for.

If sampling equipment cannot be brought to the classroom, use the slides you have selected from among those

Briefly describe the use of various types of sampling equipment.

INSTRUCTOR NOTES

SUGGESTED CONTENT

provided to support a discussion of various types of sampling equipment. See the list of slides in Attachment 14-1

LECTURE

TECHNICAL CONSIDERATIONS IN SAMPLING

Assuring Data Quality

EPA Order 5360.1 requires that all data EPA generates or uses must be of known, defensible, and verifiable quality. Quality assurance is an integral part of all sampling activities.

Frequently, the procedure that yields the highest precision and accuracy also is the most expensive and time-consuming. You must weigh the objectives of the inspection against those factors to select a sampling plan that will provide data of required quality within the allocation of resources specified for a given inspection.

As we will discuss in more detail later, a principal method through which EPA implements this order is the requirement that a quality assurance project plan (QAPP) be prepared for every field sampling activity.

The technical considerations involved in sampling that we will discuss now are included in planning for the sampling effort and ultimately in developing and carrying out the QAPP.

Standard Operating Procedures

Over the years, most programs have developed a series of SOPs that cover sampling in a variety of environmental media, some SOPs are set forth in regulations.

SOPs should be followed carefully. Deviation from a SOP not only weakens EPA's case, it also can undermine the integrity of the SOP itself.

SOPs are, of course, tailored to meet the specific needs of a particular situation.

If deviation from a SOP is unavoidable, it is essential to document fully what was done and why. Failure to follow a SOP is not fatal to a potential enforcement action, but it is essential that enforcement officials know about any flaws that might affect the case.

Representative Sampling Points

A "representative" sample is equivalent to the total population in composition and in physical and chemical properties.

Selecting a sample that is truly representative of the media or material being sampled provides the strongest foundation for demonstrating compliance or evidence that a violation exists

For many types of samples and locations, there are SOPs that prescribe in detail how sampling sites should be selected. These SOPs are the first line of guidance on representative sampling

The sampling objectives should determine how and from where samples should be collected. Representative sampling plans are designed to reflect specific conditions, the word representative does not necessarily mean "random." Sampling plans can be designed to reflect likely violations, normal operating conditions, maximum normal operating conditions, or average conditions at a site or facility.

The key consideration is that the design of the representative sampling plan be clearly documented.

What factors are used to define a representative sample?

Differences in operating conditions (such as seasonal or off-peak conditions); normal operating conditions would be those maintained over time with little variation

Differences in waste type and contaminants (materials in drums, soils, or lagoons)

Differences in statistical conditions that affect concentrations of contaminants (such as changes in manufacturing schedule; differences between peak and off-peak production rates; and differences in wastes generated at different times, depending on manufacturing cycle)

Differences that might result in variability over time, including:

-- Process changes

Overhead 14-3 Representative Sampling Factors

Solicit class discussion about the kinds of variations that must be accommodated in developing a representative sample. Mention the items in the Suggested Content column, if they are not brought up during the discussion.

- Schedule changes
- Manufacturing changes
- Changes in raw materials
- Changes in management practice
- System aberrations
- Seasonal changes

Spatial variability (in both vertical and horizontal directions, such as uneven dispersion from a discharge point, settling of particles on obstructions, or different "weights" of the waste constituents moving at different speeds)

Determining the Number of Samples

Solicit class discussion about how trainees determine the number of samples to be drawn.

A variety of factors are considered when deciding how many samples should be collected. Those factors include:

The variability of the waste and the degree of certainty desired to identify the contaminants in the waste

- Practical limitations on time and how many samples can be collected, stored, packaged, and shipped safely, given the resources available
- Legal considerations, such as the nature of the regulatory requirement and the degree to which challenges to evidence based on sampling is anticipated
- Considerations of representativeness, such as differences in operating or temporal conditions or the need to balance 7-day, 30-day, or one-year limitations against what it is practical to do
- Cost considerations, both in time and resources

Sample Volume

The size of the sample should be sufficient to do all necessary analysis, plus an additional amount to allow for performance of quality control steps.

Volume should be kept to a minimum, particularly if hazardous or toxic material is being sampled. Remember that disposal of any "leftovers" is governed by RCRA or other statutes.

Program-specific guidance usually specifies the volume of sample needed

Consult with laboratory personnel for additional guidance; they also should inform you if specific types of quality control samples are needed as a check on laboratory procedures.

Preventing Cross-Contamination

Sampling procedures generally are designed to prevent cross-contamination.

However, since some contaminants now can be detected at the trace parts-per-billion or even parts-per-trillion level, minuscule amounts in a sample caused by cross-contamination can ruin the validity of samples

Extra steps that can be taken to help prevent cross-contamination include:

- Proceed from the least contaminated area progressively to the most contaminated area
- Wear a new pair of disposable gloves at each new sampling location
- Place samples suspected of being highly contaminated in separate plastic bags
- Use different teams to collect ambient samples and source samples, if possible
- Have one person do all the sample collection and the other take all the notes, fill out tags, and complete other records

Special Considerations Affecting Split Samples

Split samples are samples that have been divided into two portions for analysis by separate laboratories.

In some cases, officials of the facility will request splits of all samples that are collected during an inspection. They have the right to such samples under some EPA statutes.

Address this issue during the opening conference. Reach agreement about the logistics necessary to collect split samples, especially about who will supply the additional collection equipment and containers

INSTRUCTOR NOTES

SUGGESTED CONTENT

Decontamination of Equipment and Waste Disposal

Decontamination of equipment and sampling devices in the field may produce a rinsate that is subject to regulations under RCRA. Contaminated sampling devices and protective clothing also may be subject to regulations governing their disposal.

Generally, EPA inspectors should package contaminated equipment and clothing properly and take it back to the EPA Regional office (or laboratory) for disposal as required by regulations.

Some laboratories now request that EPA inspectors arrange with the facility, before sampling, to return excess samples to the site for disposal. Sometimes a laboratory will refuse to do an analysis because it cannot dispose of the material.

DISCUSSION

COMMON SAMPLING ERRORS

Ask the class to suggest sampling errors that could affect the validity or integrity of samples or their value as evidence. As suggestions are made, ask trainees to describe what they think the effect of an error would be.

Use the list of common sampling errors, presented in the Suggested Content column, to point out items that are not mentioned by the class.

Overheads 14-4 and 14-5 Common Sampling Errors

The most common errors related to sampling are:

- Failing to calibrate instruments (such as the pH meter, DO meter, and other instruments)
- Failing to maintain equipment properly
- Forgetting equipment or supplies
- Misreading instruments
- Making miscalculations
- Mislabeling
- Transposing of data in the field logbook
- Recording poor field notes
- Allowing loss or leaking of samples during shipping and transport
- Shipping sample with high pollutant concentration in same container as samples with low pollutant concentration

LECTURE

QUALITY ASSURANCE AND QUALITY CONTROL

Planning for quality assurance and quality control is one method of integrating the many policy and technical factors involved in a quality sampling effort.

QA/QC is part of every field sampling and laboratory analysis activity. While we will focus on the inspector's role in QA/QC, it should be understood that QA/QC also depends on laboratory procedures.

- Quality Control (QC)

Quality control is a series of methods built into the sampling process to ensure that the data collected are the data desired

It includes all the technical controls used, such as sampling and analytical methods, use of blanks and replicate samples; inclusion of performance or standard samples; and use of standard curves and statistics

- Quality Assurance (QA)

Quality assurance refers to the procedures used by management to ensure that quality control plans meet requirements and that the plans are being followed

QA is essentially an overview and monitoring function. It includes establishing data quality objectives, instituting procedures for approving planning documents before field data are collected, and using audits to identify quality control problems

- Quality Control Samples

As part of the Region's quality assurance program, inspectors may be asked to take an additional volume of a sample or to perform special steps with regard to a sample as a check on the sampling itself or on the laboratory.

Overhead 14-6
Quality Assurance and
Quality Control Samples

Types of samples used for QA/QC include:

Replicate Samples: These separate samples are taken from the same source at the same time

Split Samples This sample has been placed in two containers for analysis by separate laboratories

Spiked Samples A known quantity of some substance has been added to the sample

- **Preservative Blanks** A known quantity of a preservative has been added to the sample of distilled water.

What do QA and QC seek to control? They seek to control data quality. What are the basic elements of data quality that QA and QC are seeking?

Precision. The reproductibility of the data

- **Accuracy:** The closeness of a measured value to the true value
- **Representativeness:** The extent to which the data characterize the population being sampled
- **Comparability:** The equivalency of the data sets

Completeness: The measurement of the confidence with which the data resulting from a collection activity meet the sampling objectives

Quality Assurance Project Plan (QAPP)

Agency policy mandates a quality assurance project plan for every inspection involving sampling

Throughout the session, use the term for the QAPP that is common in your Region.

Generally, the QAPP is prepared before the inspection. However, if a decision to sample is made while the inspector is in the field, the inspector should record in the field logbook, the information that would be in a QAPP.

The QAPP is prepared to ensure that the sampling plan reflects a careful thinking through of sampling objectives and what must be done to ensure that those objectives are met.

Overhead 14-7 Quality Assurance Project Plan (QAPP)

In many cases, the QAPP will be rather short and will include by reference the appropriate SOPs for the inspection. Such routine QAPPs usually will require some modification in light of the particular situation to which the SOPs are being applied

For nonroutine situations, a more complex and lengthy operating procedure may be necessary

Elements of a Quality Assurance Project Plan

Modify the list of elements to include the elements of your Region's QAPP or equivalent.

While the name and format of a quality assurance plan varies by Region and office, the content generally will be roughly the same. Of course, the SOPs already may have addressed some of the content; if so, they can be incorporated by reference into the QAPP. Some of the information may be set forth in a document other than a QAPP but nonetheless is part of the planning for sampling.

Make a handout that lists the elements or distribute your Region's QAPP format, if one exists.

We will go through some of the key items here briefly to give you a sense of the necessary aspects of quality assurance planning.

Project description and site location: This is a "what, where, and why" section that includes the history of the site and the justification for sampling, describes the physical aspects that define project area, and discusses environmental concerns.

Project measurement objectives: This section sets forth the information requirements of the project, defined by regulation or the specific needs of the inspection.

- Sample rationale and network design: This section describes the process used to select specific sampling points, getting forth a rationale that is site-specific and that makes use of applied statistics, regulatory requirements, enforcement needs, and common sense.

- Analyses rationale: This section initiates the paper trail of physical accountability for the project.

- Data quality objectives: This subsection lists the elements, compounds, classes of compounds, or physical data needed; methods selected to obtain the data, and usually the detection limit; it helps to define precision and accuracy for the project or for specific analyses

- Sample procedures to be used

- Custody and documentation of samples: This subsection provides the core of the paper trail and should be sufficiently detailed to allow the sampler to testify years later

- Calibration procedures and frequency: This subsection

sets forth procedures for physical measurements in the field and laboratory, usually addressed through SOPs that define standard calibration procedures

- Preventive maintenance: This subsection generally is concerned with instruments, and sets forth procedures that usually are established by SOPs that list manufacturer's operational and maintenance recommendations.
- Laboratory data reduction and QA review: The planner can designate here the degree of QA effort a project needs.
- System and performance audits: This subsection may be a request for an audit by the project planner or under the office's overall quality assurance program.
- QA report to management. If there was an audit, what were the results. If corrective action were needed, what steps would be taken to solve the problem.
- Corrective action. This subsection indicates that, drawing on professional judgment, the sampler may make changes in the plan while in the field, as long as those changes are justifiable; it also states that all changes must be documented
- Sample alterations: This subsection states that, if changes in the actual measuring or analyzing protocols occur in the field or laboratory, they must be justifiable and documented.
- Safety plan: This subsection incorporates the safety plan, which technically is a part of the QA plan, but usually is a plan that has been approved previously. Deviations from the plan must be approved by a safety officer or team leader

Overhead 14-8 Changes in the QAPP

Modifying a Quality Assurance Plan

When faced with an unexpected or unanticipated situation, the inspector may find it necessary to modify the QAPP in the field.

However, the plan cannot be modified to an extent that compromises the original sampling objectives. Questions to ask in making a decision to modify the QAPP are.

INSTRUCTOR NOTES

SUGGESTED CONTENT

- Can the original objectives still be met?
- Can the sampling be done satisfactorily with the existing equipment?
- Is it safe to sample?

All changes must be documented and the rationale for such changes stated.

LECTURE

DOCUMENTATION OF SAMPLES AND CHAIN OF CUSTODY

If the results of sampling are to be admissible in court as evidence, EPA must be able to demonstrate that the samples were collected and analyzed in a technically sound manner, explain the precision, accuracy, and representativeness of the sample; and show that the sample was in custody from the time of collection until the time of trial, so that it was impossible to tamper with the samples

Documentation of Precision and Accuracy

· Field Measurement and Sampling Process

Procedures used for collecting and handling samples should be described in the field logbook.

The procedures should be described in sufficient detail to make it possible to determine from the description:

- Exact location from which the samples were collected
- Types of sample containers used
- Manner in which the sample containers were prepared
- Sample collection process
- Methods of preservation and handling of samples
- Methods of calibration and maintenance of equipment

For the actual collection procedures, a citation of the appropriate SOP that was followed generally is adequate. Any deviation from the SOP, however, must be explained fully and documented.

· Analytical Methods in the Laboratory

Similarly, the laboratory methods used to analyze the

sample must be documented. The methods would include such items as analytic methods employed in analyzing the data; procedures for receiving and handling samples, reduction and reporting procedures, and procedures for calibration of equipment and instruments, all records pertaining to the sample, including conclusions derived and determination of the reliability of the data, also must be made available.

Documentation of the Chain of Custody

If the results of analysis of a sample are to be accepted as evidence, EPA must be able to show that the sample is what EPA says it is: that it came from a particular location at a particular time. The sample's unique identifying number, along with the other information recorded in field notes, are the principal means of establishing those facts.

EPA also must be able to show that the sample has not been tampered with or contaminated during collection, transport, storage, or analysis. To do so, we show, through written "chain of custody" records, that access to the sample was controlled and that everyone who had handled the sample can be identified (and, if necessary, can testify).

An accurate record must be maintained to trace each sample from the moment of collection through its introduction into evidence. Because of the importance of this subject, I want to briefly review what you were provided during the previous hour on chain-of-custody procedures.

Elements of Custody

A sample is in "custody" if:

- It is in one's physical possession.
- It is in one's view
- It was in one's possession and it was secured so it could not be tampered with
- It is kept in a secured area, with access restricted to authorized personnel only.

Overhead 14-9
Evidence Is in "Custody" If...

Overhead 14-10
Chain-of-Custody Procedures

Custody requires the maintenance of several procedures, including:

Establishing custody -- for example, by sealing the sample

with a custody seal.

- Preparing documentation that describes the collection, shipment, and storage of the sample.

Coordinating the sample and documentation to ensure that the sample number and date and inspector's initials appear on all forms.

Ensuring continuity of custody during transit through proper documentation.

Chain-of-Custody Record

The forms and procedures used to establish and record the chain of custody vary somewhat, depending on the office and program under which the sampling is conducted.

The custody record includes information in field logbooks, sample tags, field data sheets, and chain-of-custody records. Some offices and programs have developed forms and tags that combine information about conditions under which the samples were collected and analytic requirements with the custody record.

The examples we will show you today actually are in use. While the specific procedures may be a bit different in your office, their intent will be the same.

There are several important points to keep in mind about the results chain-of-custody records must accomplish. They must be able to:

- Link each specific sample to a specific location, date, time, and sample taker.
- Explain the conditions surrounding the collection of the sample.

Show what procedures were used to collect the sample.

Show that the sample was in custody at all times and identify all people who had access to the sample.

Entry in the Field Logbook

The inspector's entry in the field logbook is the principal reference for the sample. Each entry should record:

Overhead 14-11
Field Logbook Entry:
Sampling

INSTRUCTOR NOTES

SUGGESTED CONTENT

Using the overheads or handouts of the Region's sample tags, seals, and chain-of-custody records, briefly explain the Region's chain-of-custody procedures

Overhead 14-12
Example of the Sample Tag

Overhead 14-13
Example of the Custody Seal

- Identification number of the sample
- Unique identifying remarks (if any)
- Date and time of collection
- Specific location of collection
- Method of collection
- Rationale for sampling
- Description of any deviations from standard protocols
- Indication of split samples, or other types of samples, if applicable

In Chapter 13D, your textbook provides examples of sample tags, seals, and chain-of-custody records. I am now distributing (going to show you) some of the forms we use in our Region for recording chain-of-custody.

LECTURE AND DEMONSTRATION

MANAGEMENT OF SAMPLES IN THE FIELD

Overhead 14-14
Sample Holding Time

Samples always should be handled in accordance with safety procedures appropriate for specific substances. Two other considerations are:

- Preservation of samples: Most analyses require that a chemical preservative be added to the sample immediately upon its collection. Consult program- and media-specific guidance for requirements for preservation of samples, or ask laboratory personnel
- Holding time of samples: Prompt analysis is the best way to ensure that no error occurs because of deterioration of

INSTRUCTOR NOTES

SUGGESTED CONTENT

The purpose of this portion of the session is to explain the general shipping requirements established by DOT for hazardous samples and to demonstrate how to pack a hazardous sample properly for shipment.

Overhead 14-15 Packing and Shipping Samples

the sample. Again, holding times are specified in program- and media-specific guidance

Arranging for analytical support in advance of the inspection helps avoid delays that could affect the quality of the analysis

Packing and Shipping Samples

Because of the potential hazards (and time delays) associated with shipping samples, the best method of transport is personal delivering by the inspector. When this is not feasible, samples are shipped by common carrier.

Department of Transportation Hazard Classification

It is the inspector's responsibility to pack and ship samples in accordance with the Department of Transportation (DOT) requirements for the particular DOT hazard class of concern. The inspector can be held liable if proper procedures were not followed and a sample leaks.

The inspector determines the appropriate hazard classification, using professional judgment.

Cautionary note: DOT's rules are very complex and are based on the type of sample, its size, and its contents.

The general rules governing shipment of samples that contain hazardous materials are set forth in 49 CFR 172.702, which states in part:

Everyone "who performs any function subject to the requirements of this subchapter may not perform that function unless trained in accordance with the requirements of this subpart..."

Each person who packs hazardous materials or offers such materials for shipment must be trained and recertified every two years.

The penalties for violation of this requirement are a minimum of \$250 per day; they can run into the thousands. DOT takes action against the individual, not against EPA or the state.

If the inspector has not had the required DOT training and is preparing to ship sample materials, regardless of the sample materials, before any sample is shipped, a person certified in DOT procedures must be consulted to determine whether the inspector can in fact ship those materials or whether a certified

individual must pack and ship

One real life example of an EPA employee who did not follow the proper procedures follows:

During the early 1980's, a regional ESD inspector was actively involved in conducting numerous NPDES compliance sampling inspections throughout the region. However, an employee (a supervisor) of the Regional Office had a desire also to conduct compliance sampling inspections independent of the ESD inspector. In this particular incident, the ESD inspector received a telephone call from the individual, stating that he was going to collect approximately 20-25 samples of acid mine drainage or discharges for nutrient analysis. He requested that the ESD inspector provide him with the containers and a sufficient amount of HNO_3 for sample preservation. After several days of agonizing over the request, the ESD inspector finally decided to respond favorably to the request and provided the sample containers, an Igloo cooler, and a container of HNO_3 . Unknown to the ESD inspector, the person had not had sufficient training in order to know what was acceptable and what was not acceptable. Consequently, he put about 2 mls of the HNO_3 in each sample container and placed the sample containers in the Igloo cooler. Then the excitement began. He proceeded to the airport and boarded an Eastern Airline flight to the sampling location. However, the Igloo cooler and its contents were checked as baggage on the flight. Somewhere over Tennessee, a major problem occurred. The contents of at least one of the sample containers leaked in the baggage compartment. The HNO_3 went through the Igloo cooler into the surrounding baggage and created smoke which was immediately picked up by the smoke detectors. The Eastern Airline plane ended up making an emergency landing in Chattanooga, Tennessee and another airplane was deployed to Chattanooga to pick up the passengers to complete the flight. Who was responsible for the problems? Obviously, the person placing the restricted dangerous goods on the airplane was responsible. For many months, it appeared that the employee would have to pay (out of his own resources) a major fine. However, due to the diligent negotiations of EPA attorneys, the appropriate regulatory authority decided not to prosecute. In the end, the EPA employee transferred to Washington, D C for a promotion.

Each EPA office has designated an individual who is responsible for compliance with DOT regulations. Inspectors

INSTRUCTOR NOTES

SUGGESTED CONTENT

can consult with this person if they are not sure what to do with a given sample

In this Region, the person who can be consulted about DOT regulations governing transportation of samples is:

Insert name of Regional contact here.

As a general rule, when the hazard class is unknown and the concentration of contaminant in the sample is likely to be high, the sample should be shipped as hazardous

"Ambient" samples ordinarily would not be subject to requirements governing shipment of hazardous materials because the concentrations of contaminants in such samples are low.

Generally, samples of unknown hazard are shipped as "flammable liquid "

Advance Planning

Shipping needs should be identified and planned for during the inspection planning process. Be sure to obtain any needed shipping containers, completed and signed forms, and hazard labels.

Packing a Hazardous Sample

Explain packaging steps as they are being performed.

Using the appropriate containers, packing materials, and hazard labels, demonstrate how hazardous samples are packed for shipment by common carrier.

Explain, as appropriate, how different procedures would be required for a different hazard class. Refer trainees to the text for specific information on hazard classes

Ask the class to remember their sampling planning exercise. How many thought

INSTRUCTOR NOTES

SUGGESTED CONTENT

ahead to bring shipping materials and labels?

LECTURE

LABORATORY OPERATIONS

The purpose of this session is to give a brief overview of the laboratory and how it functions, and in particular, to explain why the inspector should consult with laboratory personnel on technical matters.

Overhead 14-16 Laboratory Analysis

An inspection is not complete until the samples that were taken have been analyzed and the results have been reported and interpreted. Often, it cannot be determined whether a suspected violation actually occurred until the results of analysis have been reported

In this session, we are going to give you a brief overview of what happens in the laboratory and some of the factors involved in analyzing samples. We then will discuss what to consider when interpreting the results you receive from the laboratory

In the short time we have today, I can provide you only with some highlights of how laboratories function. I know that some of you may not take samples, but it is important that you understand sample analysis because almost everyone at one time or another at least will review results of analysis or will request others to perform sample analysis.

I hope that, when I am through, you will have an appreciation for what the laboratory does and why it is important to consult with the laboratory on technical questions related to sampling and analysis.

Laboratories carry out many functions related to all environmental monitoring projects, including compliance monitoring. Analysis of samples involves several activities:

- Preparing the samples
- Conducting specific analyses
- Calculating and verifying the data
- Preparing reports

The amount of time required for and the complexity of a single analysis generally depend on the number of answers that can be gleaned from that analysis.

Other functions that the laboratory performs include:

- Maintaining quality assurance and quality control

Maintaining effective chain of custody

Storing samples

Disposing of samples and waste

- Meeting maintenance requirements for equipment and supplies

Advance Scheduling

The laboratory has limited time, personnel, and equipment, so advance scheduling is essential to ensure prompt analysis of samples.

Relationship With Laboratory Personnel

Laboratory personnel are technical experts. They can assist inspectors in such matters as:

- Developing sample plans
- Determining the types of samples that will provide the most useful data
- Interpreting analytical data

Time and Costs Involved in Analysis of Samples

When planning an inspection, inspectors should factor in both the costs of analyzing samples and the time it will take to obtain results.

Cost estimates will help establish the budget for the inspection and may result in changes in the number of samples collected or the scope of the inspection.

Understanding how long it will take to get results from the laboratory will help the inspector make more realistic schedule projections.

Exhibit 18-1 in your text (pages 18-10 through 18-11) show average times and fees for analyzing typical samples. These averages can help you make projections when no other information is available.

Explain the procedures for scheduling analytical work, noting in particular the lead time usually required. Explain what can be done if there is an emergency need for analysis.

INSTRUCTOR NOTES**SUGGESTED CONTENT**

Data Quality Objectives

The laboratory is responsible for providing data at the level of quality specified in the data quality objectives of the QAPP.

The program office, in conjunction with the laboratory, will select the analytical methods, instruments, parameter detection limits, and other analytic requirements that are capable of producing data of the quality required by the data quality objectives.

Chain of Custody in the Laboratory

Each laboratory has procedures to ensure that the chain of custody that was established in the field continues in the laboratory. Generally, the procedures require a new (or continued) sample numbering system for samples in the laboratory and controlled access to the samples, including maintenance of logbooks that show who has had custody of the samples.

**LECTURE AND
DISCUSSION****LABORATORY CAPABILITIES**

In this portion of the session, present a brief, nontechnical discussion of some of the key analyses that can be performed by the laboratory and the kinds of equipment used.

Explain some of the key equipment available in the laboratory and analyses that it can perform.

Solicit questions from the group.

Provide about five minutes at the end of the discussion for trainees to ask specific questions about the laboratory or laboratory procedures.

DISCUSSION**INTERPRETING ANALYTICAL RESULTS**

Inspectors should be able to read and interpret results of analysis and to incorporate them meaningfully into an inspection report.

INSTRUCTOR NOTES

SUGGESTED CONTENT

more formats for reporting results of analysis. Explain how to read such reports.

laboratory

Evaluation of Data

The data from analysis of samples must be evaluated before any conclusions can be drawn. This process usually is accomplished through statistical analysis.

Several statistical methods can be used, but inspectors are cautioned that different methods will produce different, and sometimes contradictory, results.

Use the example on pages 18-14 and 18-15 of the text to illustrate how the application of different methods results in different conclusions. Give the trainees five minutes to read the text, and then go through the example, answering questions as needed

On pages 18-14 and 18-15, your text presents a good illustration of what happens under different types of statistical analysis. Read it for a few minutes, and then we'll look through it

Go through the example, answering questions as needed. Remember, the limits or standards to be applied should be determined before the data are evaluated.

EQUIPMENT SLIDES

SLIDE NUMBER	DESCRIPTION OF SLIDE
1	Level A protective clothing
2	Level B protective clothing
3	Level C protective clothing
4	Level D protective clothing
5	Miscellaneous equipment (boots, rope, cold weather gear, gloves, and other items)
6	Cooler for carrying and shipping samples
7	Cooler with bottles and sample tags
8	Cooler with custody tag and official seal
9	Labels, official seal, and chain-of-custody tag
10	Sample containers
11	Oxygen meter for DO and conductivity bridge
12	pH meter
13	Automatic sampler for water samples
14	Sediment sampling equipment
15	Van Dorn sampler and water sampling tubes
16	EPA van
17	EPA trailer
18	EPA boat
19	Automatic sampler in insulated box
20	Flow meters
21	Sample preservatives
22	Teflon bailer
23	Miscellaneous field equipment (map, compass, notebook, camera, film, flashlight, and other items)
24	Flame-retardant protective clothing
25	Records
26	Vacuum filter
27	Sample container with packing material
28	Water sampling equipment

Physical Sampling

Policy considerations in sampling

Technical considerations in sampling

Common sampling errors

Quality assurance and quality control

Documentation of samples and chain of custody

Management of samples in the field

Text: Chapter 13

General Guidelines for Sampling

Take a sample when one is needed to prove a violation

Sample only when there is reason to suspect the substance is present

Always attempt to verify the presence of the substance by a means in addition to sampling

Representative Sampling Factors

- Operating conditions
- Types of waste
- Statistical considerations
- Temporal considerations
- Spatial considerations

Common Sampling Errors

- Calibration
- Maintenance
- Forgotten equipment
- Misreading
- Miscalculations

(continued)

Common Sampling Errors

- Mislabeling
- Transposing of data
- Poor field notes
- Loss of samples

Quality Assurance and Quality Control Samples

- Replicate
- Split
- Spiked
- Preservative blanks

Quality Assurance Project Plan (QAPP)

Must be prepared for every sampling inspection

Two types

- Routine
- Nonroutine

Changes in the QAPP

Can the original objectives still be met?

Can the sampling still be done with the existing equipment?

Is it safe to sample?

Evidence Is in "Custody" If...

It is in one's physical possession

It is in one's view

It was in one's possession and it was secured so it could not be tampered with

It is kept in a secured area with access restricted to authorized personnel only

Chain-of-Custody Procedures

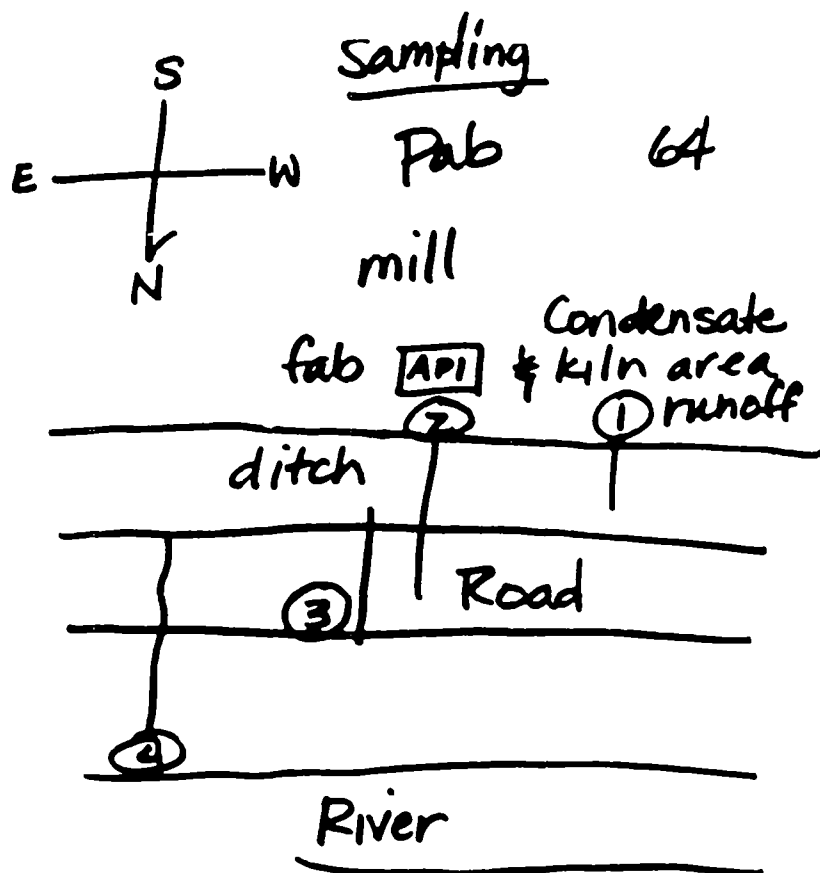
Establishing custody

Preparing documentation

Coordinating the sample and documentation

Ensuring continuity of custody during transit

Field Logbook Entry: Sampling




See field data sheet for sample info.

	①	②	③	④	⑤
Temp	84°F	60°F	64°F	58°F	Trans Blank
pH	10.7	7.2	9.3	7.3	←
flow	23 gpm	0.25	22.5	22.5	
t	1:00	1:15	1:25	1:45	1:30
	88244640	14974285	27974289	38244643	76747288

Example of the Sample Tag

<div style="text-align: center;">O</div>		Preservative:	
		Yes <input type="checkbox"/>	No <input type="checkbox"/>
<div style="writing-mode: vertical-rl; transform: rotate(180deg);"> Date Collected Time Collected Location Name of Person Name of Site Name of Project </div>		ANALYSES	
		BOD Arions	
		Solids (TSS) (TDS) (SS)	
		COD, TOC, Nutrients	
		Phenolics	
		Mercury	
		Metals	
		Cyanide	
		Oil and Grease	
		Organics GC/MS	
		Priority Pollutants	
		Volatile Organics	
		Pesticides	
		Mutagenicity	
		Bacteriology	
Remarks:		Tag No.	
		5-68569	
		Lab Sample No.	

FRONT

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY	
REGION 4	
Environmental Services Division	
College Station Road	
Athens, GA 30613	
	<div style="font-size: 2em; font-weight: bold;">EPA</div>
O	

BACK

Example of the Sample Seal

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY INSPECTOR'S SEAL _____ 3	Sample No 1	Date 2	6 6
	Signature 4		
	Print Name and Title 5		

- (1) Insert sample number
- (2) Insert date sealed
- (3) Print location of collector's station
- (4) Signature of persons sealing the sample
- (5) Print name (same as signature) and title of sealer
- (6) When a seal is broken for any purpose, initial here and enter the date-broken. Submit broken seal with sample records

Sample Holding Time

Prompt analysis is the most positive assurance against error from sample deterioration

Packing and Shipping Samples

49 CFR 172.702 states in part:

Everyone "who performs any function subject to the requirements of this subchapter may not perform that function unless trained in accordance with the requirements of this subpart ..."

Each person who packs hazardous materials or offers such materials for shipment must be trained and recertified every two years

Laboratory Analysis

- Laboratory operations
- Laboratory capabilities
- Interpretation of analytical results

Text: Chapter 18

Notes

SESSION 15

TOPIC: RECORDS REVIEW INSTRUCTOR'S OVERVIEW

Time: 60 minutes

PURPOSE	Present key elements of reviewing records.
KEY POINTS	<ul style="list-style-type: none">· Ability to follow the paper trail is a key skill of the inspector.
ADVANCE PREPARATION	<ul style="list-style-type: none">· Prepare problems as handouts if to be discussed by small groups.
EQUIPMENT	<ul style="list-style-type: none">· Overhead projector
LIST OF VISUALS	15-1 Records Inspection 15-2 and 15-3 Problem A 15-4 and 15-5 Problem B 15-6 Problem C 15-7 Problem D 15-8 and 15-9 Overview of Steps in Sampling Records 15-10 Sampling Techniques
LIST OF HANDOUTS	15-1 Sample Manifests 15-2 Problems in Sampling Strategies

INSTRUCTOR NOTES

SUGGESTED CONTENT

Introduction

Introduce yourself, mentioning your background and experience and your role in this course

Overhead 15-1 Records Inspection

This session will cover records review -- its purposes and some techniques

LECTURE

CONDUCT OF RECORDS REVIEWS

Purpose of Record Reviews

Inspecting records for compliance purposes is an art; the necessary investigative skills are developed largely through experience

The purposes of records reviews are:

- To determine whether a facility is maintaining records required by statute or regulation
- To verify compliance or noncompliance

Plan what types of records you will review before you go on site. Records that might be reviewed include:

- Annual reports
- Production records
- Shipping records and manifests
- Inventory records
- Sales records (invoices, receiving records, and similar material)
- Process records
- Quality control records
- Disposal records
- Labels and literature

INSTRUCTOR NOTES

SUGGESTED CONTENT

- Permits: state, local, and federal

- Correspondence

Exemptions

Personnel records

- Self-monitoring records
- Operation and maintenance records
- Real property records

During a records review, the inspector should

Compare current reports with past reports to identify possible discrepancies or false reports

Check required records and reports for completeness and accuracy

- Ascertain compliance with requirements for retention of records
- Compare information in the records with first-hand observations; compare information in computer files or printouts with that in other written documents.

Distribute manifests (Handout 15-1). Let the group review the manifests until someone identifies the problem.

What do these records show?

If no one is able to spot the problem right away, note that RCRA allows waste haulers to hold shipments for no longer than 10 days. Dates on the manifests indicate that material was held too long.

Manifest No.	Date Shipped	Date Delivered
MIO649382	01/07/87	01/29/87
MIO649386	02/11/87	03/03/87
MIO649387	02/27/87	03/12/87

It is crucial that the inspector know what records the facility is required to keep.

INSTRUCTOR NOTES

SUGGESTED CONTENT

Documentation of Records Copied

Ability to positively identify the particular records copied or taken is essential, each inspector should use a system that enables him or her to verify the validity of the records easily

Each copy of a record should be identified with:

- Inspector's initials or code and date
- Unique document identification number

Records of copies of documents obtained during the inspection then should be entered in the field logbook by a logging or coding system based on the two elements listed above. The logbook entry also should include

- Reason for obtaining the document
- Source of the document
- Physical location of the original document

EXERCISE AND DISCUSSION

Ask the group to discuss how they would approach these problems.

Overheads 15-2 and 15-3 Problem A

PROBLEMS ENCOUNTERED IN REVIEWING RECORDS

Deciding what records to review and how to review them is an art. There are no right or wrong approaches.

Following are some typical compliance questions an inspector might attempt to answer, at least in part through records review.

Problem A

- A company has not submitted any reports of exceeding the limits set forth in its discharge permit. Your inspection of the facility indicates poor operation and maintenance of pollution control equipment, leading you to suspect that the equipment may have failed. You want to determine whether there were any excursions that should have been reported to EPA. What records would you look at? What

INSTRUCTOR NOTES

SUGGESTED CONTENT

would you be looking for? What evidence would you attempt to collect?

Overheads 15-4 and 15-5 Problem B

Problem B

- EPA has a tip that a company has begun manufacturing and distributing a new chemical (di-benzo-horrible) before completing the required premanufacture review process (as required under TSCA or FIFRA). What kinds of records and documents would you look for? What other evidence might there be? How would you approach an inspection to determine whether a company was making a new product if EPA had no tip?

Overhead 15-6 Problem C

Problem C

- A company's records of storage of hazardous waste are sloppy and incomplete. You easily can document the violation of recordkeeping requirements, but you suspect they are storing wastes for much longer than the period allowed. What records might help to confirm or refute that suspicion -- by their presence or absence? What evidence could you collect?

Overhead 15-7 Problem D

Problem D

- A citizen has notified EPA that a dredging company allegedly has disposed of dredged material into wetlands owned by the town of Clarksville. What records might help to confirm this allegation? What evidence would you attempt to collect?

LECTURE

RECORDS SAMPLING TECHNIQUES

When there are too many items (records, documents, individual data entries, and pieces of equipment) to be reviewed, sampling techniques are used to select a portion of them that will support reasonable conclusions about the facility's compliance. Our focus here is on statistical methods as an auditing technique, not as a method for ensuring statistical reliability.

Overheads 15-8 and 15-9
Overview of Steps in
Sampling Records

The advantages of sampling, compared with complete coverage, are: (1) sampling saves money, (2) sampling saves labor, and (3) sampling saves time

Our focus in this session will be on records review, although the principles and methods set forth can apply to selecting samples from a population of any kind.

Overview of Steps in Sampling Records

The basic steps in drawing a sample of records are

Determine the objective of the records review

Identify the total population - all relevant records

Select the sampling method

- Determine the sample size

Conduct the sampling

Document the methodology used in sampling

Each of the basic steps is discussed in more detail below

- *Determine the objective* for the particular review -- for example, compliance with required hazardous waste training for employees.

Identify the total population subject to review -- that is, all relevant records, people, equipment (for example, all employees who should have received hazardous waste training) Identify whether there are groups within the population that are of particular interest (for example, new hires, temporary employees, or employees who have changed shifts).

Select the sampling method. The key point in selecting a sampling method is to think systematically:

- If the inspector suspects a problem, the records review should focus on documenting that problem. Records should be selected that are most likely to illustrate the problem or contain the information needed to document the problem Sampling is directed to the segments of the

population in which problems or deficiencies are likely to exist. For example, the inspector may have learned during the opening conference that, during the previous three months, there had been a turnover of personnel responsible for maintaining air pollution control and monitoring equipment. Because of that information, the inspector might decide to focus sampling activities on those three months. This sampling method is based on the inspector's judgment and hunches.

- If no problem is suspected or the nature of the problem is unknown, the inspector's judgment is not helpful in selecting records for review. In such a case, the inspector should choose a method of selecting records that is most likely to detect any problems that exist. Therefore, he or she should look at records that represent all (or a majority) of the materials that cannot be reviewed.

Overhead 15-10 Sampling Techniques

Sampling techniques include the following:

- *Random sampling:* Each item in the population has an equal chance of being included in the sample, items are selected without bias.

The basic type of random sampling, simple random sampling, is conducted through a process similar to putting everyone's name on a slip of paper, and, while blindfolded, drawing only a specified number of slips (names) from the hat.

One of the principle advantages of the simple random sample is that you may stop at any point in the selection of the sample with the assurance that the sample is as representative as possible for a sample of that size. A small sample may be drawn and, if it proves to be too small to obtain the level of accuracy needed, it may be enlarged one item at a time until the desired level of accuracy is reached. In other types of sampling, it is necessary to decide in advance the exact size of sample that is needed; during the process of selection, the sample does not become truly representative until all sample elements have been drawn.

- *Systematic or interval sampling.* This variation of simple random sampling does not require use of a table

of random numbers. Every fifth, tenth, or fiftieth item is selected, beginning from a randomly selected starting point.

To generate a systematic or interval sample, the inspector must first decide the sample size. Divide the desired sample size (for example, 50) into the total number of items (for example, 500) to determine the sampling interval (for example, $50/500 = 1/10$); therefore, the interval will be every tenth item.

- *Stratified sampling* This method involves breaking the population down into subgroups or categories based on relevant characteristics. The random or interval techniques then are applied to the subgroups. More records can be sampled from subgroups believed to be potential problems.
- *Block sampling* This approach is used to select groups of records. For example, instead of examining all waste sample analysis reports, select only reports produced on a given day of the week (for example, all analyses performed on Wednesdays) over a period of time.
- *Judgmental sampling* This approach is used frequently when the inspector has reason to suspect that a violation or violations have occurred. The inspector focuses review of records on the suspected problem.
- *Determine the sample size.* Base the decision upon the judgment, as well as constraints on time and resources. A suggested approach for determining minimum sample size is presented in Chapter 12 of the manual.
- *Conduct sampling* Apply the selected approach and determined sample size.
- *Document the sampling methodology.* Document the methodology used in the field logbook, including:
 - The population, subject, or topic under review, and why that population was selected
 - The sampling method employed and why that sampling method was used

INSTRUCTOR NOTES

SUGGESTED CONTENT

- Any potential bias in the sample selected
- The sample size and reasons for selecting that sample size
- How the sample actually was selected
- The results of the sampling (unless physical samples that require laboratory analysis are the subject)

EXERCISE

PROBLEMS IN SAMPLING STRATEGIES

This exercise is designed to stimulate discussion of various ways a large population of items can be approached, in light of the amount of time available and the purpose of the review

Distribute handout 15-2 You may assign problems to small groups of trainees or discuss each problem as a whole group. If small-group problem-solving is chosen, reconvene the class after 10 minutes and ask someone from each group to explain the logic of the group's approach.

If the full class is to discuss each problem, allow approximately three minutes for the trainees to read the problem before discussing it.

Some points you may wish to make if they are not brought out by the group are listed in the Suggested Content column

Inspectors often are confronted with more items than they can actually review or inspect in the time available.

The problems I am distributing to you simulate inspections in which the use of sampling methods as an auditing approach might be useful.

We are not seeking statistical reliability here; rather, we want to identify a sampling strategy that will give us a reasonable conclusion about compliance.

Points to raise if they are not brought out in the discussion include:

1 Dumpstump, Inc.

Are all employees in the files (that is, part-time, new hires, and day and night shift)?

Are there some groups that more likely have not been trained (new hires, old employees, night shift, or part-time employees)?

No sampling method is most ideal:

- Interval sampling is useful as a random method; block sampling is not so useful, but, for example, all files under a letter of the alphabet could be selected
- Judgmental sampling based on length of employment, shift, or other factors could focus on

INSTRUCTOR NOTES

SUGGESTED CONTENT

Note. During the discussion, trainees might suggest methods other than or in addition to records inspection to investigate. This is a desired outcome, it indicates that they are thinking like inspectors.

more likely violations (categories selected should be identifiable without examining individual files or the purpose is defeated -- for example, length of employment should appear on a separate company roster)

2. The Spewforth Company

An extensive amount of log entries:

3 samples twice a week = 6 per week
6 x 104 weeks = 624 entries

Possible sampling strategies:

Block method -- check all entries in a sample of weeks or sample of months.

Interval method -- review every nth entry.

Combine block with interval -- check every nth entry in a sample of months or weeks (for example, all entries in second week of the month).

Judgmental -- attempt to learn more about neighbors' complaints (for example, did they occur in a particular time of year) and focus there, or determine when production output is highest.

Sample Manifest 1

TEXAS WATER COMMISSION
P.O. Box 13087, Capitol Station
Austin, Texas 78711-3087



Please print or type. (Form designed for use on elite (12-pitch) typewriter.)

Form approved. OMB No. 2050-0039, expires 09-30-91

UNIFORM HAZARDOUS WASTE MANIFEST		1. Generator's US EPA ID No.	Manifest Document No.	2. Page 1 of	Information in the shaded areas is not required by Federal law.	
3. Generator's Name and Mailing Address				A. State Manifest Document Number No. 00358803		
4. Generator's Phone ()				B. State Generator's ID		
5. Transporter 1 Company Name		6. US EPA ID Number		C. State Transporter's ID		
7. Transporter 2 Company Name		8. US EPA ID Number		D. Transporter's Phone		
9. Designated Facility Name and Site Address		10. US EPA ID Number		E. State Transporter's ID		
				F. Transporter's Phone		
				G. State Facility's ID		
				H. Facility's Phone		
11A HM	11. US DOT Description (including Proper Shipping Name, Hazard Class, and ID Number)		12. Containers No.	13. Total Quantity	14. Unit Wt/Vol	15. Waste No.
	a.					
	b.					
	c.					
	d.					
J. Additional Descriptions for Materials Listed Above			K. Handling Codes for Wastes Listed Above			
15. Special Handling Instructions and Additional Information						
16. GENERATOR'S CERTIFICATION: I hereby declare that the contents of this consignment are fully and accurately described above by proper shipping name and are classified, packed, marked, and labeled, and are in all respects in proper condition for transport by highway according to applicable international and national government regulations, including applicable state regulations. If I am a large quantity generator, I certify that I have a program in place to reduce the volume and toxicity of waste generated to the degree I have determined to be economically practicable and that I have selected the practicable method of treatment, storage, or disposal currently available to me which minimizes the present and future threat to human health and the environment; OR, if I am a small quantity generator, I have made a good faith effort to minimize my waste generation and select the best waste management method that is available to me and that I can afford.						
Printed/Typed Name			Signature		Month Day Year	
17. Transporter 1 Acknowledgement of Receipt of Materials						
Printed/Typed Name			Signature		Date Month Day Year	
18. Transporter 2 Acknowledgement of Receipt of Materials						
Printed/Typed Name			Signature		Date Month Day Year	
19. Discrepancy Indication Space						
20. Facility Owner or Operator: Certification of receipt of hazardous materials covered by this manifest except as noted in Item 19.						
Printed/Typed Name			Signature		Date Month Day Year	

Sample Manifest 2

DNR
MICHIGAN DEPARTMENT
OF NATURAL RESOURCES

UNIFORM HAZARDOUS WASTE MANIFEST

DO NOT WRITE IN THIS SPACE
ATT ☐ DIS ☐ REJ ☐

5149

Please print or type (Form designed for use in Michigan - print/typewriter)

Generator's USEPA ID No. **ABCDEFGHIJK** Manifest Document No. **2** Page **1** of **3**

Generator's Name and Mailing Address
SMITH METAL WORKS
ANYWHERE, USA

A. State Manifest Document Number
MI 0649388

Generator's Phone
5149

Transporter 1 Company Name
Environmental Movers

Transporter 1 Company Address
ANYWHERE, USA

Transporter 1 Company Phone
5149

Transporter 2 Company Name
Environmental Movers

Transporter 2 Company Address
ANYWHERE, USA

Transporter 2 Company Phone
5149

Designated Facility Name and Site Address
WASTE HOLDING INC
EVERYWHERE, USA

Designated Facility Phone
5149

US DOT Description (including Proper Shipping Name, Hazard Class, and ID NUMBER)
X Hazardous Waste Solid

Containers
1 Type **CM** Total Quantity **1210** Unit **YDS** Waste No. **0000**

Additional Descriptions for Materials Listed Above
74

K Handling Codes for Wastes Listed Above
0000

Special Handling Instructions and Additional Information
Contain solid and remove to transport vehicle, transport to disposal site.

16. GENERATOR'S CERTIFICATION I hereby declare that the contents of this consignment are fully and accurately described above by proper shipping name and are classified, packed, marked, and labeled, and are in all respects in proper condition for transport by highway according to applicable international and national governmental regulations including applicable state regulations.

Printed/Typed Name **Terry Wright** Signature **Terry Wright** Date **1/1/11**

17. Transporter 1 Acknowledgment of Receipt of Materials
Printed/Typed Name **Jim Brownwell** Signature **Jim Brownwell** Date **02/11/11**

18. Transporter 2 Acknowledgment of Receipt of Materials
Printed/Typed Name **Jim Brownwell** Signature **Jim Brownwell** Date **02/11/11**

19. Discrepancy Indication Space
5128

20. Facility Owner or Operator Certification of receipt of hazardous materials covered by this manifest except as noted in Item 19
Printed/Typed Name **Rees** Signature **Rees** Date **02/11/11**

ALL MANIFESTS MUST BE REPORTED TO THE MICHIGAN DEPARTMENT OF NATURAL RESOURCES BY DATE

Sample Manifest 3

STATE OF LOUISIANA
DEPARTMENT OF ENVIRONMENTAL QUALITY
HAZARDOUS WASTE DIVISION
P.O. BOX 82178
BATON ROUGE, LOUISIANA 70884-2178

PLEASE PRINT OR TYPE (Form designed for use on elite (12-pitch) typewriter)

Form Approved OMB No 2050-0039 Expires 9-30-94

UNIFORM HAZARDOUS WASTE MANIFEST		1 Generator's US EPA ID No	Manifest Document No	2 Page 1 of 1	Information in the shaded areas is not required by Federal law.
3. Generator's Name and Mailing Address U.S. E.P.A., N.E.I.C. BUILDING 53, BOX 25227, DENVER FEDERAL CENTER DENVER, CO 80225		In Emergency see box # 15			
4. Generator's Phone () 303-226-5111 ATTN: STEVE FLETCHER		5. Transporter 1 Company Name ROLLINS CHEMCO, INC.		6. US EPA ID Number 1010918256194	
7. Transporter 2 Company Name MATLACK, INC.		8. US EPA ID Number 1010918111016		9. Designated Facility Name and Site Address ROLLINS ENVIRONMENTAL SERVICE (LA), INC. 13351 SCENIC HIGHWAY BATON ROUGE, LA 70807	
10. US EPA ID Number 1010918111016		11. US DOT Description (Including Proper Shipping Name, Hazard Class, and ID Number)		12. Containers No. Type	13. Total Quantity
a. Waste Flammable liquids, n.o.s., 3, UN1993, PG II				14. Unit Wt/Vol	15. Waste No.
b. Waste Corrosive liquids, n.o.s., 8, UN1764, PG II					
c. Hazardous waste, liquid, n.o.s., 9, NA3082, PG III					
d. Hazardous waste, solid, n.o.s., 9, NA3077, PG III					
15. Special Handling Instructions and Additional Information In case of emergency contact CHEMTREC at (800)424-9300 and mention 'Labpack.' If undeliverable return to generator. If spilled in Louisiana contact the Department of Public Safety at (504)925-6575. Avoid ingestion, inhalation and skin contact. D.O.T. Emergency Response #'s 11a. 27 11b. 60 11c. 31 11d. 31					
16. GENERATOR'S CERTIFICATION: I hereby declare that the contents of this consignment are fully and accurately described above by proper shipping name and are classified, packed, handled, and labeled, and are in all respects in proper condition for transport by highway according to applicable international and national government regulations. If I am a large quantity generator, I certify that I have a program in place to reduce the volume and toxicity waste generated to the degree I have determined to be economically practicable and that I have selected the practicable method of treatment, storage, or disposal currently available to me which minimizes the present and future threat to human health and the environment OR if I am a small quantity generator, I have made a good faith effort to minimize my waste generation and select the best waste management method that is available to me and that I can afford.					
Printed/Typed Name Al...		Signature <i>[Signature]</i>		Month Day Year 10/11/95	
17. Transporter 1 Acknowledgement of Receipt of Materials Printed/Typed Name K...		Signature <i>[Signature]</i>		Month Day Year 10/11/95	
18. Transporter 2 Acknowledgement of Receipt of Materials Printed/Typed Name R...		Signature <i>[Signature]</i>		Month Day Year 10/11/95	
19. Discrepancy Indication Space 01 mail 05 mail					
20. Facility Owner or Operator: Certification of receipt of hazardous materials covered by this manifest except as noted in item 10.11 Printed/Typed Name R...		Signature <i>[Signature]</i>		Month Day Year 10/11/95	

IF SPILLED IN LOUISIANA CALL THE LOUISIANA HAZMAT UNIT AT 504/925-6595 (DAY OR NIGHT)

COPY 6

PROBLEMS IN SAMPLING STRATEGIES

- 1 Regulations require that all employees of Dumpstump, Inc , complete a training course -- within two months of being hired -- on how to handle hazardous material safely Your task is to determine whether the company has complied with these regulations EPA records indicate that the company employs 525 people You plan to review records and then conduct follow-up interviews with several employees to verify those records You have approximately one hour to complete the records review portion of this task

Dumpstump officials tell you that each employee's personnel file includes a record that shows that the required training has been completed Company officials show you a file cabinet that they say contains all of the personnel files, organized in alphabetical order by name of the employee There are 389 files

What factors would be important to support a reasonable conclusion about compliance at the firm? What are the potential biases in the files? How might the discrepancies between the number of personnel files and EPA's records of the number of employees be explained? Is there a particular category(ies) of employee that you want to focus on? Is there any category of employee that you want to exclude? Which sampling method or methods could you use to select specific records for review? How would you select the individuals to be interviewed?

- 2 The Spewforth Company is required to submit a written report to EPA if it has had a minor discharge exceeding the limit established in its permit, the reports must be submitted within five working days of the end of the month Reports of major discharges must be filed within five days of their occurrence Spewforth's permit requires the company to take and analyze samples of discharge from three locations twice a week and to maintain records of the sampling and results of analysis for review by EPA upon request

For the past 24 months, EPA has received only one monthly report about a minor exceedance, no major discharge has been reported The last inspection of the facility took place more than two years ago Although EPA has no direct knowledge that discharge exceedances have occurred, neighbors have complained that orange-colored, smelly liquid comes out of the pipe occasionally -- but no dates have been reported

The company keeps logs of its sampling activities and analytic results Your period of interest is the previous two years Since three samples are (supposed to be) taken each week, the logs are far too extensive to allow for review of all entries How would you go about selecting log entries for review?

Records Inspection

- Conduct of records reviews
- Records sampling techniques

Text: Chapter 12



Problem A

A company has not submitted any reports of exceeding the discharge limits imposed in its permit. Your inspection of the facility indicates poor operation and maintenance of pollution control equipment, leading you to suspect that the equipment may have failed. You want to determine whether there were any excursions that should have been reported to EPA.

(continued)



Problem A

What records would you look at?

What would you be looking for?

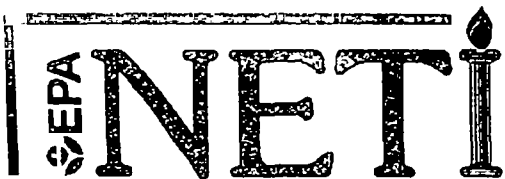
What evidence would you attempt to collect?



Problem B

EPA has a tip that a company has begun manufacturing and distributing a new chemical (di-benzo-horrible) before completing the premanufacture review process required under TSCA or FIFRA.

(continued)

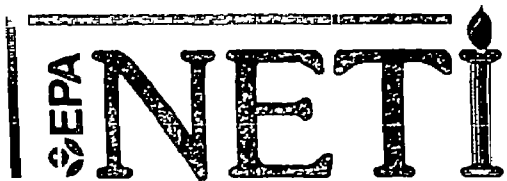


Problem B

What kinds of records and documents would you look for?

What other evidence might there be?

How would you approach an inspection to determine whether a company was making a new product if EPA had no tip?



Problem C

A company's records of storage of hazardous waste are sloppy and incomplete. You easily can document the violation of recordkeeping requirements, but you suspect the company is storing waste for much longer than the period allowed.

What records might help to confirm or refute this suspicion -- by their presence or absence?

What evidence could you collect?

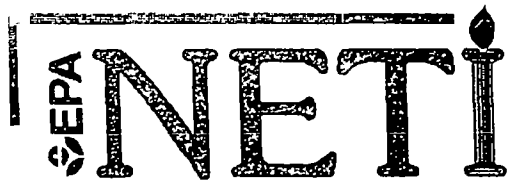


Problem D

A citizen has notified EPA that a dredging company allegedly has disposed of dredged material into wetlands owned by the town of Clarksville.

What records might help to confirm this allegation?

What evidence would you attempt to collect?



Overview of Steps in Records Sampling

Determine the objectives of the records review

Identify the total population

Select the sampling method

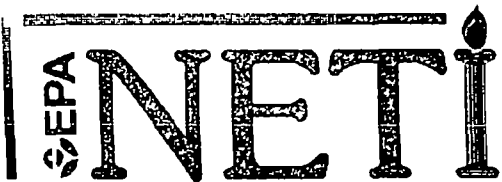
(continued)

Overview of Steps in Records Sampling

Determine the sample size

Conduct the sampling

Document the sampling methodology



Sampling Techniques

- Random sampling
- Systematic or interval sampling
- Stratified sampling
- Block sampling
- Judgmental sampling

[illegible]

SESSION 16

**TOPIC: CLOSING CONFERENCE
INSTRUCTOR'S OVERVIEW**

Time: 30 minutes

PURPOSE	· Explain the purpose, scope, and limitations of a closing conference	
KEY POINTS	· Provides an opportunity for inspectors to discuss preliminary findings	
	· Resolves any outstanding questions or issues and verifies information	
	· Provides an opportunity to complete final paperwork (for example, TSCA CBI forms).	
EQUIPMENT	· Overhead projector	
LIST OF VISUALS	16-1	Never Say ...
LIST OF HANDOUTS	None	

INSTRUCTOR NOTES

SUGGESTED CONTENT

Introduction

Introduce yourself, mentioning your background and experience and your role in this course

LECTURE

CLOSING CONFERENCE

The purpose of a final meeting with officials of the facility is to provide receipts, answer questions, and fill any remaining information gaps.

The primary purpose of the closing conference is to provide an opportunity for the inspectors to discuss preliminary findings with representatives of the facility, including any potential violations or problems that were uncovered during the inspection. Judgment must be exercised in deciding what findings are presented and how they are represented to personnel of the facility. Almost any finding can be discussed if it is presented in the right context. However, the less certain the inspector is about a specific violation or issue, the more reason there is not to discuss that subject at the closing conference. In any case, the inspector must state clearly that information provided during the closing conference is preliminary and may change as a result of additional review. Pollution prevention strategies also can be discussed.

Another important purpose of the closing conference is to resolve any outstanding questions or issues and verify information. Questions or outstanding information requests that cannot be resolved in the closing conference should be compiled in a written document agreed upon by both parties. That document is provided to representatives of the facility before the inspector leaves the facility, if possible. In the document, each question or information request should be numbered. Responses provided subsequently should refer to the number of the item they address.

It may be necessary to complete some additional paperwork during the closing conference. Signing appropriate inspection forms, such as a receipt for samples or documents received, and declaration of TSCA CBI or the issuance of field citations are examples. The inspector must be cleared for CBI before he or she can accept any company information that is considered CBI under TSCA.

Finally, the inspector should be prepared to discuss with personnel of the facility how and when a copy of the final inspection report can be obtained (for example, through a FOIA request)

Did You Find Any Violations?

Needless to say, officials of the facility are interested in what the inspector has found. Handling questions at the end of the inspection is one of the delicate and difficult aspects of the job

Different offices and inspectors have somewhat different opinions about what can be said

However, under no circumstances should the inspector say anything that could compromise the government's ability to determine later whether a violation occurred and whether to pursue an enforcement action, and, if so, what type of action

**Overhead 16-A
Never Say . . .**

- An inspector never should say "everything checks" or "there are no violations."
- An inspector never should say what equipment a facility should put in place or indicate other actions a facility should take to come into compliance.
- The inspector can say that there are some items the facility might want to recheck for compliance. An example would be: "You might want to check regulation x governing label requirements."
- The inspector can say that he or she thinks he or she did not discover matters that he or she personally felt were violations of law or regulations, except certain items about which an "institutional" decision has not yet been made by EPA.

Some programs now have inspectors issue citations for certain violations. This practice may seem counter to the admonition against telling the facility its status immediately; however, such citations are carefully worded so that future action by EPA never is precluded or compromised.

There are several reasons, for the protection of both the inspector and any potential government case, for EPA's policy of not telling facility managers immediately whether violations were or were not found

- If the inspector tells facility officials that there were no violations and later the government decides that a violation did exist, the company will use the inspector's statement against the government.
- If an inspector tells a company that there is a violation, the company might spend money on new equipment to try to attain compliance. The company might attempt to hold the inspector liable for the costs if it becomes evident later that there was no violation
- The inspector has not had time to reflect on everything that was observed.
- Results of laboratory analysis of the samples collected during the inspection will not be available for some time
- The intricacies of the laws and regulations EPA enforces do not lend themselves to "off-the-cuff" answers.
- Findings of the inspection may represent only one portion of an enforcement case.

Can I See (or Copy) Your Notes?

Officials of the facility know that you have been taking notes. Sometimes they will ask to see or copy them.

EPA policy is that representatives of facilities are not to see notes in the absence of a FOIA request. (The request often is complied with, but EPA has a 10-day period to decide and to respond.) Do not let facility staff see notes on site.

Receipts

Some statutes require that EPA issue receipts for samples, documents and other evidence also may be listed on the receipt. The receipt should include

- Descriptions of all physical samples taken

Descriptions of all records, photographs, or other property taken

The receipt is especially important when the inspection is carried out under a warrant. The detailed receipt protects EPA by showing that officials of the facility know exactly what was taken; it also facilitates confidentiality claims.

When the statute provides for confidentiality claims, the closing conference -- and the receipts -- provide an opportunity for officials of the facility to make such a claim.

Use these questions to stimulate discussion.

Discussion Questions:

- Are there any circumstances under which an inspector should tell a company that it definitely is in violation?
- Do any of the offices or programs in your Region issue "deficiency notices" while on site? Immediately upon return to the office? What are the advantages and disadvantages of doing so?

Never Say...

- "Everything checks"
- or
- "There are no violations"



SESSION 17

TOPIC: INSPECTION REPORT INSTRUCTOR'S OVERVIEW

Time: 90 minutes

PURPOSE	Explain the importance of the inspection report. Discuss the elements of a good inspection report. <ul style="list-style-type: none">· Provide practical experience in report writing style.· Evaluate inspection reports																												
KEY POINTS	<ul style="list-style-type: none">· The inspection report should be factual, free of opinions and conclusions of law· The report should explain in detail what happened during the inspection and substantiate in full any potential violations.																												
ADVANCE PREPARATION	Several options are given for this portion of the session Three actual inspection reports are provided in these materials, but you may wish to substitute inspection reports from your Region for one or more of the examples. Another approach would have each inspector bring a recent inspection report of his or her own for evaluation; if you select that option, remember to notify trainees in advance.																												
EQUIPMENT	<ul style="list-style-type: none">· Overhead projector· Flip chart																												
LIST OF VISUALS	<table><tr><td>17-1</td><td>Inspection Report</td></tr><tr><td>17-2</td><td>Write To Express - Not To Impress</td></tr><tr><td>17-3</td><td>Keep it Simple</td></tr><tr><td>17-4</td><td>Keep the Reader in Mind</td></tr><tr><td>17-5</td><td>Who?</td></tr><tr><td>17-6</td><td>What?</td></tr><tr><td>17-7</td><td>When?</td></tr><tr><td>17-8</td><td>Where?</td></tr><tr><td>17-9</td><td>Why?</td></tr><tr><td>17-10</td><td>How?</td></tr><tr><td>17-11</td><td>Avoid the "It" Habit</td></tr><tr><td>17-12</td><td>Avoid Vague Reference</td></tr><tr><td>17-13</td><td>Be Concise</td></tr><tr><td>17-14</td><td>Use Active Voice</td></tr></table>	17-1	Inspection Report	17-2	Write To Express - Not To Impress	17-3	Keep it Simple	17-4	Keep the Reader in Mind	17-5	Who?	17-6	What?	17-7	When?	17-8	Where?	17-9	Why?	17-10	How?	17-11	Avoid the "It" Habit	17-12	Avoid Vague Reference	17-13	Be Concise	17-14	Use Active Voice
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17-13	Be Concise																												
17-14	Use Active Voice																												

SESSION 17

**TOPIC: INSPECTION REPORT
INSTRUCTOR'S OVERVIEW**

Time: 90 minutes

	17-15	Use Action Verbs
	17-16	Be Concise
	17-17	Be Coherent
	17-18	Answer to Request for Information
	17-19	Beginning a Report
	17-20	Reporting Interview Results
	17-21	Reason for Inspection
LIST OF HANDOUTS	17-1	Inspection Report Evaluation Guide
	17-2	Sample Inspection Reports

INSTRUCTOR NOTES

SUGGESTED CONTENT

Introduction

In this summary, it is assumed that trainees were given the inspection reports before the session. If they were not, allow time for thorough reading of the reports, rather than the review called for here.

Overview 17-1 Inspection Report

Introduce yourself, mentioning your background and experience and your role in this course.

Today, we have a long session about perhaps the most important aspect of being an inspector -- writing the inspection report

We will begin with a discussion of what goes into the official file for an inspection. Then we will discuss the features of a good inspection report and give you some tips on how to write reports clearly. Finally, we will evaluate the inspection reports that you read last night.

LECTURE AND DISCUSSION

OFFICIAL FILES

The official files related to an inspection comprise EPA's legal documentation of its activities, and should be treated as potentially admissible evidence in a legal proceeding.

Components of the Official Files

Historical records usually are found in the official files for the facility or site being inspected. Such records include permit applications, previous inspection plans and reports, site maps, plans, drawings, and descriptions.

The inspection file usually contains all the records associated with an inspection; the inspector is responsible for creating the file and ensuring its completeness and accuracy. Case development personnel must have a complete file to review when deciding whether enforcement responses are appropriate, and, if so, what kind. All material in official files should be factual; such material should not contain opinion or other extraneous comments.

Ask the group to list the items that should go into the official file for the inspection record. Record the list on the flip chart. Be sure to include any items in the Suggested Content column that are not listed by the group.

The types of records that should be kept in the inspection file include:

- Inspection requests (if issued)
- Communications such as official correspondence and records of telephone and personal conversations

Notices of inspection, if the statute requires that a written notice be presented

INSTRUCTOR NOTES

SUGGESTED CONTENT

Verification of credentials, if the statute requires presentation of credentials to the owner or operator

- Inspection confidentiality notice for all inspections conducted under TSCA
- Declaration of confidential business information, if the facility has claimed that materials are confidential

Confidentiality clearance references, as required under TSCA

- Receipts for samples and documents

Inspection report form

- Narrative inspection form

Other evidence

- Custody records
- Laboratory analyses, if applicable

Subpoena, if issued

- Warrant, if issued
- Field logbook

LECTURE AND DISCUSSION

THE EFFECTIVE INSPECTION REPORT

Proper documentation of an inspection is a key aspect of an inspector's job. It is the vehicle through which the inspector communicates his or her findings from the inspection. If your report does not communicate your findings well -- clearly, accurately, and convincingly -- you have wasted your time, and the environment will suffer. If you discover evidence that indicates serious violations, but your report fails to include the information that allows that case to be made, the facility probably will be able to continue its violation. If, on the other hand, you prepare a highly effective report, EPA probably will be able to take strong action and obtain a favorable settlement or court decree.

INSTRUCTOR NOTES

SUGGESTED CONTENT

In other words, nothing else you do is more important than your inspection report. Government officials and attorneys who review the report must have all the facts to make appropriate and effective decisions.

The purpose of the inspection report is to present a factual record of an inspection, from the time when the need for the inspection is perceived through the time when analysis of samples and other data collected during the inspection has been completed. An inspection report must be complete and accurate, because it will provide the basis for potential enforcement actions and might become an important piece of evidence in litigation.

The objective of an inspection report is to organize all evidence gathered in an inspection in a comprehensive, usable manner. The central purpose is to communicate information to the reader.

- Strive to eliminate any possibility of erroneous conclusions, inferences, or interpretations
- Focus on the facts. An effectively prepared report saves time for the inspector and the reviewers by assisting those who must make the final decision and take action on the report.

Ask the group to identify the reasons why the inspection report is important. Record answers on the flip chart. Be sure the points in the Suggested Content column are listed if the group does not identify them.

A report must be complete and provide a basis for action.

- If the report is not complete and factual, time will be wasted in attempting to remedy the situation by making a supplemental inspection or report, or the opportunity to verify violation may be lost altogether because of inability to reconstruct the evidentiary foundation for an enforcement action.
- A report is a written record of the results of the inspection and provides the permanent record that may be used later as evidence itself or to refresh the inspector's recollection.
- The report serves as a starting point for the next inspection. It should identify processes, problems, and areas of particular concern. It also must inform fully other inspectors who may become responsible for subsequent inspections.

The report should identify the processes or areas of the facility that were not examined, if any. That information will provide assistance for future inspections; it also will make clear the extent of the evidentiary foundation for any enforcement action that might be based on the report

- The report should discuss pertinent conditions. For example, the inspector should include facts about the background of a witness if those facts reflect on the credibility of the witness. Small details that the inspector ordinarily would not recall six months to a year after the inspection also should be included.
- Finally, as one long-time EPA manager said: "The quality of your inspection reports can make or break your career."

Essentials of Good Reports

- *Factual:* The report should contain only facts. No opinions, particularly about potential violations, should appear.
- *Fair:* Inspection reports must be entirely objective, unbiased, and unemotional
- *Accurate:* Be exact. Avoid exaggerations. Omit opinions, conclusions, and inferences. For example: If you saw someone loading bags marked "toxic chemicals," do not write that you saw a person loading toxic chemicals. You saw someone loading bags marked "toxic chemicals." Avoid the use of superlatives.
- *Complete:* Completeness implies that all the known facts and details have been reported, either in the text of the report or in an exhibit, so that no further explanation is needed. The report should answer the questions who, what, how, when, where, and why about the compliance situation. Tips to help you ensure the completeness of a report include:
 - Each individual should be identified completely by first name, middle initial, and last name, the first time they are mentioned in a report.
 - The chronology of occurrences should be stated clearly
 - The location of the occurrences should be identified specifically

INSTRUCTOR NOTES

SUGGESTED CONTENT

- The reason a situation occurred is particularly significant with respect to violations for which intent is an element of the offense and should be stated specifically in the report

Source. Always report the source of evidence

Exhibits: The report should be complete in that it is one single document.

Concise: Conciseness means omitting unnecessary words; it does not mean omitting facts, detail, and necessary explanation.

- *Clear.* Everything in the report must be relevant and essential to the main purpose of the report. Use specific and concrete expressions rather than general or abstract statements.

LECTURE

CHECK LISTS OR NARRATIVE REPORTS

Some EPA offices use check lists in lieu of narrative reports for routine inspection reports. There are arguments both for and against the use of check lists.

Proponents of checklists favor them for routine inspections because

- They remind inspectors of items to look for, SOPs to use, and other factors.
- They provide a bare-bones record of what happened.
- Their use reduces paperwork.
- The effort involved in preparing a narrative report for a "squeaky clean" inspection exceeds its value, since it may never be used.

Proponents of routine preparation of narrative reports (or check lists plus narrative reports) find them valuable management tools and legally the safest approach.

As management tools, narrative reports serve the following purposes:

Ensure the inspector knows how to inspect and how to report and regularly does so correctly

Provide a baseline for tracking the long-term conduct of a particular entity

Provide the inspector with experience in writing narrative reports, increasing the inspector's personal proficiency

- Preparation of the report forces the discipline of writing down notes on activities and observations
- The notes are analyzed and reflected on several times during the preparation of a report (first on occurrence, second when writing them down, and third when typing them).
- The mental reflection involved in preparing a report reinforces an inspection attitude in the inspector.

A check list provides very sketchy information; if the inspector should leave EPA, the agency will have only a limited record of what was learned.

Legal considerations are crucial, affecting whether an inspection report can be admitted as stand-alone hearsay evidence.

A check list has little weight or credibility. It is difficult to authenticate because check marks cannot be identified as handwriting can.

A check list does not contain enough information to stand on its own.

In short, "He who uses a check list can expect to be cross-examined."

Unless the inspector has really good notes in the field logbook, the inspector's testimony is not likely to be credible.

Since inspections are the backbone of the enforcement effort -- the litmus test of a good or desirable inspection report is

What will happen in court?

- Case law affecting check lists as a bare-bones record indicates problems related to admissibility on such bases as:
 - Scarce or incomplete information
 - Lack of proof of how the record was made
 - Failure to identify the observations the record was based on

Conversely, case law affecting narrative reports indicates that such reports can be admitted as stand-alone hearsay evidence (that is, without the testimony of the inspector).

Several FREs governing exceptions to the hearsay rule apply if it is routine practice to make narrative reports.

Use of a check list alone is very risky

- Hindsight can never cure an inspection report that has less in it than prudence would counsel
- The inspector may forget important observations, statements, or corroborating details.

The inspector may have left EPA by the time a case comes to trial; in such circumstances, a check list is of almost no value.

- The inspector may have little independent recollection of the inspection, but the check list will not be admitted by the court because it contains little or no information recorded in the inspector's own hand.

It should be routine practice to develop narrative reports, failure to prepare a narrative report should be an exception specifically directed by the supervisor

A check list that provides adequate space for inclusion of handwritten details is preferable to a check list that does not provide such space, but a narrative report is still better

INSTRUCTOR NOTES

SUGGESTED CONTENT

An acceptable alternative to writing down notes during the inspection is to dictate the details of the inspection into a tape recorder.

DISCUSSION

Distribute the Inspection Report Evaluation Guide (Handout 17-1) Using the guide, explain the various elements of an inspection report and why they are necessary. Allow time for questions and discussion.

EVALUATION OF INSPECTION REPORTS

There are many different ways to organize an inspection report. Sometimes events are best organized in chronological order; other situations might be more easily understood if organized in some other way - for example, by grouping data about a particular suspected violation.

No matter what organization structure is used, the inspection report should contain sufficient information to answer the questions in the evaluation guide I am distributing

LECTURE

Use the overheads to illustrate the principles of good writing.

Overhead 17-2
Write to Express

Overhead 17-3
Keep it Simple

Overhead 17-4
Keep the Reader in Mind

Overhead 17-5
Who?

TIPS FOR WRITING AN INSPECTION REPORT

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

- Write to express, not to impress.

- Keep it simple.

Keep the reader in mind.

The "who" in reports:

- All individuals mentioned in a report should be completely identified the first time the name is mentioned; including the individual's first name, middle initial, and last name, if possible.
- The individual should be identified by a brief descriptive phrase identifying who that person is (for example, plant manager, neighbor, or employee)

A complete description of the person should be given if the name or other identifying information is not available

INSTRUCTOR NOTES

SUGGESTED CONTENT

Overhead 17-6 What?

The "what" in reports:

- What happened? The report does not present what could have happened or might have happened. It presents what, to the inspector's knowledge, actually happened

Overhead 17-7 When?

The "when" in reports.

- The when is the date and time of the observation, or an approximation if the exact time is unknown. Time usually is not of great importance, except in reporting an observed event (for example, a process upset or a sampling procedure)

Overhead 17-8 Where?

The "where" in reports:

- A definitive place, to the exclusion of all other places, should be identified clearly so that there is no confusion or misinterpretation

Overhead 17-9 Why?

The "why" in reports:

This factor is the most significant with respect to violations for which intent is an element of the offense (potential criminal violation). In such cases, the report writer's objective is to set forth the facts that demonstrate intent with such clarity that there is no need for the inclusion of the inspector's conclusions or opinions to be in the report. If an individual states why he performed an act, the report would be factual in stating: "Jones said that he dumped the material because...."

Overhead 17-10 How?

The "how" in reports:

- Explanation of industrial processes and waste handling procedures is important for completeness.

Conjecture about "how" things might have occurred should be avoided. (But possible violations should be noted.)

Writing Tips

Overhead 17-11 Avoid the "It" Habit

Avoid the "it" problem. Careless use of indefinite pronouns causes ambiguity, statements beginning with "it is" or "there are" should not be substituted for precise wording

Overhead 17-12 Avoid Vague Reference

Use active voice and avoid vague reference, which also causes ambiguity.

INSTRUCTOR NOTES**SUGGESTED CONTENT**

Overhead 17-13**Be Concise**

- Be concise. Conciseness is not omission of necessary information; it is avoidance of all that is not essential.

Overhead 17-14**Use Active Voice**

- Avoid passive voice

Overhead 17-15**Use Action Verbs**

Use action verbs.

Overhead 17-16**Be Concise**

- Avoid wordiness Use short, simple sentences

Overheads 17-17**Be Coherent**

- Be sure your meaning is clear

Overheads 17-18 through 17-21

- Be clear and to the point Note the improvements in these examples.
 - Avoid the use of jargon and explain abbreviations and technical terms.
-

EXERCISE**CRITIQUE OF INSPECTION REPORTS**

The purpose of this exercise is to give inspectors experience in evaluating inspection reports, using the Inspection Report Evaluation Guide (Handout 17-1)

The instructor materials contain three actual inspection reports as a handout (Handout 17-2). Critical comments from supervisors about these reports are included in the Suggested Comment column. (You may wish to substitute one or more reports from your own Region or ask each trainee to bring a recent report of his or her own)

Give the instructions for the exercise and make group or partner assignments before

Explain how this exercise will be conducted, including the time that individual reading time (or group discussion, as appropriate) will end

INSTRUCTOR NOTES

SUGGESTED CONTENT

breaking for lunch. Those who have not read the reports then will have some extra time to do so. In addition, discussions can begin over lunch among those who have already read the reports.

There are several ways to conduct this exercise. In any approach, be sure to leave enough time for discussion of what was learned.

Option A Distribute the three inspection reports the night before this session is presented so that trainees can read them before class. Doing so will limit the amount of class time needed for reading and will allow for each trainee to become involved in evaluating all three reports.

Report A: Castings Manufacturing, Inc.

What problems did you identify in this report?

- Author not identified
- Titles of Sleuth, Tweed, and Heard not provided
- Location of landfill unclear
- Sample collection locations not always noted
- Sampling methods not always noted
- No documentation of proper entry -- they may have been trespassing
- No observations reported about conditions inside facility
- Mr. Apple and Mr. Banana not well identified (title)
- Mr. Donut not well identified (title)
- Reason for discarding one jar not specified

Inconsistencies between text and table

- Poor sketch (no scale and name of road)

Date of analysis not provided

If you were this inspector's supervisor, what would you tell him or her?

INSTRUCTOR NOTES

SUGGESTED CONTENT

Option B Separate the trainees into three groups, and have each group focus on only one report during the class. Meet with each group to provide comment. Then conduct a wrap-up discussion during which highlights of each group's evaluation are presented. This approach allows time for more in-depth analysis, but sharing of views among groups is limited.

Option C Ask each trainee to bring in a recent inspection report he or she wrote. Each trainee would be paired with another to evaluate and then comment on the reports. The advantage of this approach is the personal interaction. The disadvantages are that some trainees may not yet have prepared an inspection report

Report B: Gritty Wrecking

What are the good aspects of this report?

- Thoroughness
 - Day-by-day sequence
 - Complete attachments
 - Description of neighborhood included
- Many photographs included
 - Relevant authorities consulted
 - Chain of custody established

What problems did you identify in this report?

- The narrative reports some sample locations imprecisely; the table is clearer.
- The report contains opinion and conjecture. No diagram of facility is provided.
- The inspector did not sample some dry material that was being removed
- The report does not identify Mr. Lip clearly
- The report does not describe proper entry or presentation of credentials.

If you were this inspector's supervisor, what would you tell him or her?

Report C: Vigil Corporation

(No supervisor comments available)

What are the good aspects of this report?

What are the weaknesses in this report?

INSTRUCTOR NOTES

SUGGESTED CONTENT

and others may find the approach threatening. This option also requires notice to trainees before the course

Option D. Briefly evaluate the inspection reports provided and then use the approach described in Option C

Option E Use a combination of features from the various approaches

The Suggested Content column contains comments from supervisors of inspectors about two of the three inspection reports that were provided as handouts. The comments can be used to help stimulate group discussion and to determine whether trainees identified the same problems with the reports or focused on different aspects.

If Option C or D is used, provide time for trainees to discuss what they learned about their own (not their partner's) inspection report.

Trainees Own Reports

What did you learn about your own reports? Discuss strengths and weaknesses

INSPECTION REPORT EVALUATION GUIDE

The organization and format of an inspection report can vary, according to the practice of the office or program under which the inspection is conducted, the particular circumstances of the inspection, and the individual writing style of the report writer. No matter what form the report takes, however, the report and its attachments should answer the following questions:

Basic Inspection Information

Who prepared the inspection report?

Who signed the inspection report, and on what date?

Who performed the inspection (all participants)?

What is the name and location of the facility or site?

What is the mailing address and telephone number of the facility or site?

What is the name and title of the responsible official who was contacted?

What was the reason for the inspection (for example, routine, response to a complaint, or for cause)?

What are the names and titles of all of the government personnel who participated in the inspection?

Entry and Opening Conference

What are the facts about the entry (date, time, entry location, and agent in charge)?

Is there documentation that proper entry procedures were followed?

Were all required notices and credentials presented?

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 (for example, reluctance, attempts to limit the scope of the inspection, or attempts to place special requirements on inspectors)? How were such circumstances handled?

Who was present at the opening conference? What topics were discussed?

Background of the Facility or Site

What is the type of the facility or site?

What types of activities and operations take place at the facility or site?

Who owns the facility or site (for example, a corporation, an individual, a partnership, a federal or state agency, or a nonprofit organization)?

How many years has the facility been in existence?

How many employees work at the site?

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

At what level of capacity is the facility operating? For how many shifts does it operate, and how many hours per day and days per week? What relationship does this information have to the inspection that was performed?

Which operations, processes, and activities at the facility were examined during the inspection?

Which operations, processes, and activities at the facility were not examined?

Inspection Activities

Records Inspection

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

What was the purpose of reviewing records?

What records of the facility were reviewed?

How were the specific records selected for review (was an auditing technique used or were all records reviewed)?

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

Were any suspected violations found? (Each should be fully documented, making sure that all the information required for the section set forth below on suspected violations is included.)

Physical Sampling

What was the inspector's sampling plan for the facility or site?

What physical samples were collected at the site?

HANDOUT 17-1

Are the sampling techniques used explained adequately?

Are all samples clearly linked to an identification number, location, and purpose?

Are sampling conditions and other physical aspects of the sample (for example, color, texture, and viscosity) described?

Were any deviations from the sampling plan or SOPs explained and documented adequately?

Are chain-of-custody procedures documented?

Are the results of laboratory analysis presented clearly?

How do the results of analysis of samples compare with limits set forth in the facility's permit?

Illustrations and Photographs

Are photographs taken during the inspection included and properly documented?

Is there some information about the inspection that could be made easier to understand through the inclusion of a diagram or sketch?

If sketches, diagrams, or maps are used, is the scale or other relationship shown clearly?

Interviews

What are the names and titles of officials of the facility and other personnel who were interviewed?

Are their statements summarized clearly?

What are the names and addresses of any other individuals who were interviewed or who were witnesses?

Closing Conference

Does the report include documentation that required receipts for samples and documents was provided?

Does the report include documentation that officials of the facility were given an opportunity to make confidentiality claims?

Does the report note statements the inspector made to officials of the facility about compliance status, recommending actions to take, or other matters?

Documentation of Suspected Violations

The heart of the inspection report is really the documentation and substantiation of suspected violations, which allows EPA to determine whether a violation occurred, how and why it occurred, and

its seriousness This substantiating information includes all the evidence of various kinds that has been collected In an actual inspection report, some of the questions on the preceding pages might be answered in the portion of the report that discusses the evidence collected and other particulars of each suspected violation.

Documentation of Suspected Violation

For each suspected violation, the inspection report should answer the following questions:

What regulation does the inspector suspect has been violated?

What information proves that the cited regulation applies to the facility or site?

According to the elements of the regulation, what information proves that the suspected violation occurred?

What sampling methods (if appropriate) were used to determine that the violation occurred? Are any deviations from sampling methods adequately explained?

What information shows that possible exemptions to the rule do not apply?

Cause of Violation

Note: Not all programs require this information, but it may be useful, even when it is not required, for such purposes as negotiating an appropriate remedy and penalty and planning future inspections Causal information must be stated carefully so that it does not provide the violator with an excuse for the violation

What information documents the possible cause of the violation (for example, direct observations of gauge readings, production logs, physical appearance of materials, or statements by facility personnel)?

Is there any supporting information that confirms or disproves a possible claim of an upset or other exempt activity?

Other Mitigating and Aggravating Factors

The level of enforcement response is based on the seriousness of the violation. Amounts of civil penalties are based on the gravity and circumstances of the violation, which is usually a calculation of the extent of the violation (amount of material involved) and the extent of the actual or potential harm that was or could be caused by the violation. The base penalty can be adjusted upward or downward because of such factors as past compliance history or efforts made by the facility to correct the violation.

The inspection report should contain information that will support the appropriate determination of the seriousness and extent of the violation, as well as other information that might be useful in calculating a penalty

What is the seriousness of the violation (for example, amount of emissions, length of time of excess emissions, nature of emissions, location of source, and perceived effect on the public)?

HANDOUT 17-1

What harm resulted or could result from the violation?

What efforts did the facility make to correct the violation?

How difficult will it be to comply (considering such factors as availability of technology, cost of complying, and time required to correct the violation)?

What is the facility's past compliance history?

SAMPLE INSPECTION REPORTS

This handout contains samples of actual inspection reports, only the names have been changed. Each report is of acceptable quality, although each has both strong and weak points.

Using the Inspection Report Evaluation Guide, evaluate the sample reports.

How well does each of these reports meet the criteria in the evaluation guide?

- What are the strengths of each report? What problems can you identify?

Which report provides the strongest support for case development? The weakest? Why?

- If you were the supervisor of report writer A, what comments would you make on the report? To writer B?

INSPECTION REPORT A: CASTINGS MANUFACTURING, INC.

RCRA SAMPLING INSPECTION

This company manufactures steel castings for the railroad industry. The manufacturing facility occupies forty acres on the northeast side of Bigcity. The 12-1/2 acre landfill owned by the company is located in Rural County near Bubbatown to the southeast of the intersection of 4th and Main.

The purpose of this sampling inspection was to determine if waste generated and disposed of by this facility at its Bubbatown landfill is RCRA hazardous waste. The main wastestream in question is a mixture of electric arc furnace (EAF) dust and sand wash slurry. This dust/slurry mixture is claimed to be nonhazardous by the facility. Other wastestreams of interest are from the five other dust collectors at the facility.

On August 6, 1986, Jim Sleuth, Sam Tweed, and Mike Heard of the USEPA Regional Office and Jean Parker of the USEPA Regional Waste Management Division, conducted an unannounced sampling inspection at the above-mentioned company. We arrived at the company landfill on 8/6/86 at 0915 to wait for a truck to arrive from the company's manufacturing facility in Bigcity. A truck did arrive at 0925 but it was not hauling the type of waste desired to sample during the dump. It was later determined that this load contained dust collector fines. At 0945 another truck arrived at the landfill but it also was not hauling the dust/slurry mixture desired to sample. At this time, Mr. Apple and Mr. Banana of the company arrived at the landfill to inquire about the purpose of our inspection. We informed them that we wished to sample the dust/slurry mixture as it was being dumped into the landfill. Mr. Banana did not know if any of this mixture would be disposed of that day and he asked us to return with him to the Bigcity facility where he could determine when disposal of that material would occur. Before leaving for the landfill, samples 86EF10S01 and S02 (see Table 1) were collected of the two loads that were dumped that morning. These samples were split with the facility.

At 1115 a meeting was held with Mr. Cake, assistant works manager and Mr. Donut at the Bigcity facility. It was determined that the sand wash system was not generating any slurry that day and that we could not sample the EAF dust/sand slurry mixture until the following day. We then proceeded to collect samples S03-S06.

On August 7, 1986, Mr. Sleuth, Ms. Parker, and Mr. Heard returned to the facility in Bigcity and collected samples S07-S10 (see Table 1). It was observed that a tanker truck of sand wash slurry was mixed with a load of EAF dust at the facility. This truck was followed to the landfill, where it was sampled while it was dumped. Before being dumped a core of the top ten to twelve inches of the load was taken in a 2" diameter plastic tube; eight to ten inches of this material all appeared to be dry EAF dust. The bottom two inches was damp EAF dust (mixed with slurry). The contents of this core was used for sample S14. As the truck was dumping, five jars (one quart in size) were collected of the material coming out of the truck. The first two (chronologically) were composited and split as sample S13, the third jar was discarded and the last two jars were composited and split as sample S12. At the very end of the dump a quantity of dry EAF dust was observed to float out on top of the discharge. A sample of this dry material (S11) was collected from the top of the dumped material after it was on the ground. All samples collected except D09, S14, and S15 were split with the facility. The sampling results can be found in Attachment 1. Samples D09, S11, and S14 were all found to exceed the EPA toxicity limit of 1 ppm for cadmium and 5 ppm for lead.

Figure 1 - Landfill

August 687, 1986

NO SCALE

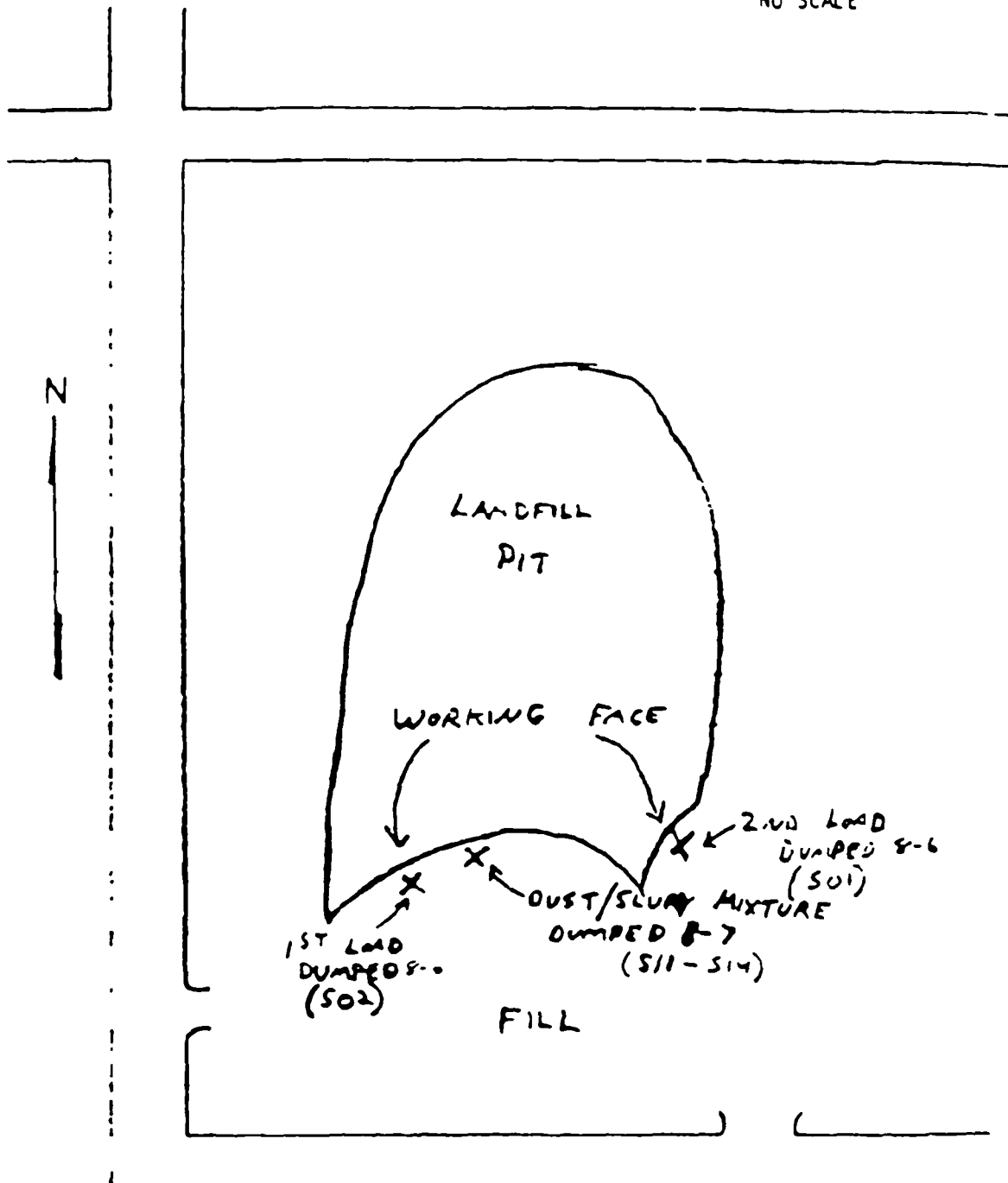


TABLE I

Sample Locations
August 6 & 7, 1986

<u>STA. NO.</u>	<u>DATE 1986</u>	<u>TIME</u>	<u>COMPOSITE</u>	<u>GRAB</u>	<u>STATION LOCATION</u>
S01	8-6	1006	X		Waste pile from load #2
S02	8-6	1030	X		Waste pile from load #1
S03	8-6	1327		X	Carrier blast dust collector
S04	8-6	1338		X	Knockout dust collector
S05	8-6	1415		X	Cabinet blast dust collector
S06	8-6	1425		X	Tumblast dust collector
S07	8-7	1045		X	South End sand system
S08	8-7	1100		X	Sand wash and wet scrubber slurry
S09	8-7	1100		X	EAF dust (duplicate)
S10	8-7	1300		X	EAF dust
S11	8-7	1420		X	After dump (dust/slurry mixture)
S12	8-7	1418	X		Last half of dump "
S13	8-7	1414	X		First half of dump "
S14	8-7	1410		X	Core of load "
S15	8-7	1700			Blank

ANALYTICAL RESULTS OF AUGUST 6 AND 7, 1986, SAMPLING
(all results are in ppm)

Sample Number	<u>Ag</u>	<u>Ba</u>	<u>Cd</u>	<u>Cr</u>	<u>Pb</u>	<u>As</u>	<u>Se</u>	<u>Hg</u>	<u>Fluoride</u>	<u>Phenol</u>	<u>Cyanide</u>
Maximum Contaminant Level for EP Toxicity:	5.0	100.0	1.0	5.0	5.0	5.0	1.0	0.2			
<u>86ER10</u>											
S01	<0.006	0.047	<0.01	<0.008	<0.07	<0.002	<0.02	<0.0001	0.04	2.7	<1.0
S02	<0.006	0.058	<0.01	<0.008	<0.07	<0.002	<0.02	<0.0001	0.07	6.8	<1.0
S03	<0.006	0.078	<0.01	<0.008	<0.07	<0.002	<0.02	<0.0001	0.1	4.6	<1.0
S04	<0.006	0.150	<0.01	<0.008	<0.07	<0.002	<0.02	<0.0001	0.1	37.8	2.0
S05	<0.006	0.049	<0.01	<0.008	<0.07	<0.002	<0.02	<0.0001	0.2	15.2	<1.0
S06	<0.006	0.114	<0.1	0.08	<0.7	<0.002	<0.002	<0.0001	0.1	7.3	<1.0
S07	<0.006	0.118	<0.01	0.00892	<0.7	0.006	<0.002	<0.0001	0.2	68.2	2.0
S08	<0.006	0.114	<0.01	<0.008	<0.07	<0.002	<0.002	<0.0001	0.2	15.6	<3.0
S09	<0.006	0.950	4.32*	<0.08	14.1*	<0.002	0.012	0.0005	2.0	3.2	<1.0
S10	<0.06	0.796	4.3*	<0.08	14.5*	<0.002	0.04	0.0004	1.5	3.3	<1.0
S11	<0.06	0.329	1.01*	<0.08	24.4*	<0.002	0.007	0.0004	1.0	10	<3.0
S12	<0.006	0.130	0.0269	0.009	0.229	<0.002	<0.002	<0.0001	0.28	16.5	<4.0
S13	<0.006	0.836	<0.01	<0.008	<0.7	<0.002	<0.002	<0.0001	0.2	30.7	<3.0
S14	<0.006	0.715	3.13*	<0.08	11.3*	<0.002	0.025	0.0036	2.0	2.2	2.0
S15						<0.002	<0.002				

*Concentration over maximum contaminant level.

Attachment 1 - Analytical Results of Sampling

HANDOUT 17-2

INSPECTION REPORT B: GRITTY WRECKING

December 2, 1987

NESHAP Asbestos Demolition Inspection -- Gritty Wrecking,
Urban, Michigan (A24535:00)

K Eagle, Environmental Engineer
THRU J Medium

Engineering Section 5AC
ATTB: S. Boss

This is the first in a series of inspection reports intended to provide a complete discussion of a NESHAP inspection (asbestos removal) at the former Consolation Company ("the facility") located at 1521 East First St., in Smallerville, MI. The inspection was conducted on October 22, 23, 26-30, and November 2, 1987. An initial inspection of demolition occurring at the facility was conducted on October 22 and 23, 1987. On October 26-27, additional visits were made to the site to obtain measurements of the amount of suspected friable asbestos containing material (FACM) still in the facility and to obtain correct information as to which buildings were involved in the demolition project. Mr. Linus Lip of the EDO was on site October 29, 30 and November 2, 1987, to oversee the entire asbestos abatement and to observe deposition of the ACM waste after removal.

Background information about the facility, notification, amount of asbestos present, work practices, worker safety and equipment, and waste handling at the facility are discussed in this report. Actual ACM removal by an asbestos abatement contractor occurred October 29, 30, and November 2, 1987, and all discussion of work practices, worker safety and equipment, amount of asbestos removed, waste handling at the facility and waste transport and disposal by the abatement contractor will be forwarded in a second report by Mr. Lip. Information about samples taken, sample analyses, and pictures of the site is provided in the attachments (Attachment 4 - Summary of Samples Taken; Attachment 5 - Sample Analyses from Laboratory; Attachment 6 - Pictures of Site).

Background

It is estimated that the facility was constructed in the early 1900s. The entire complex includes approximately 35 buildings and encompasses 365 acres. The portion of the facility inspected included buildings 2 through 8 at the west end of the complex, located at the corner of East First and East Front Streets (Attachment 1 - Diagram of Complex). East of the facility is an industrial area and approximately one quarter mile to the west begins a residential neighborhood. Downtown Smallerville is located approximately one mile west of the facility. The city of Smallerville owns the complex and was contracting out groups of buildings for demolition.

HANDOUT 17-2

On the morning of October 22, 1987, a call was made to the EDO from a contractor who had bid on this particular job but did not win the contract. The contractor stated that he had bid \$90,000 to do the project, which would have included the asbestos removal necessary. He continued that Gritty Wrecking of Urban, MI, has won the contract with the city with a bid of only \$24,000. He said the buildings were "full of asbestos" and that the project could not possibly be completed properly at that low a cost. I left that afternoon to inspect the site in Smallerville for possible noncompliance with NESHAP regulations regarding asbestos removal prior to demolition.

Notification

Attached is the building permit (Attachment 2) obtained from Michael Edifice, Director of Building and Zoning for the city of Smallerville, stating the buildings to be demolished by Gritty Wrecking per the contract between Gritty Wrecking and the city of Smallerville (Attachment 3), and including the terms for the handling of asbestos in the subject buildings.

No notification of demolition or intent to remove asbestos was submitted to any appropriate Michigan agency or the federal government by Gritty Wrecking prior to beginning work.

Amount of Asbestos Present

Upon my initial inspection on October 22, 1987, I observed approximately 45-50 linear feet of pipe lagged with dry, suspected FACM in Building 2. In addition, I observed large amounts of dry, suspected FACM lagging and debris in the rubble below pipes in the same building. On October 23, 1987, I returned to the site and entered Building 2 with P. Gradey, Superintendent for Gritty Wrecking, to observe one of Gritty's employees removing asbestos. Inside I observed approximately 25 linear feet of suspected ACM in the immediate area. Mr. Lip and I returned on October 26, 1987, and entered what was left of buildings 2 through 7. Within these buildings we measured an additional 230 linear feet of suspected FACM lagging. There also was an open labeled asbestos waste bag filled with dry pipe lagging in Building 3, and dry, suspected FACM lagging and debris on the floors, walls, and fixtures in the buildings. We also observed seven bags of pipe lagging and three bags of a dry, suspected FACM sheet material outside against a fence on the site. The asbestos abatement contractor (Scrub Abatement) later estimated that there was at least 100 linear feet of lagging in those bags. When we entered the building again on October 28, 1987, we found an additional 8 feet of pipe lagged with suspected FACM in Building 8.

Scrub Abatement had later been contracted by Gritty Wrecking to properly remove all of the asbestos in the buildings involved in the demolition project. Their notice of intent to remove asbestos stated that 397 linear feet had been found which did not include the material in Building 2 noted previously since most of that building had been demolished prior to Scrub's assessment.

Inspection

Thursday, October 22, 1987

As stated previously, a call was made to the EDO on the morning of October 22, 1987, regarding the possibility that violations of the NESHAP, specifically asbestos removal, might have been occurring.

Acting on the information obtained, I went to Smallerville, Michigan, to inspect the facility in question. I arrived at the site at 1615 EDT on October 22, 1987, and found no demolition occurring although there was a front-end loader there. I immediately observed pipes with dry, suspected FACM

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lagging in the partially demolished Building 2. As I walked closer to Building 2, I observed large amounts of white, friable, suspected ACM in the rubble. I estimated that 45-50 feet of pipe contained suspected FACM lagging in part of the Building 2 that was visible from the outside.

Five samples were taken from the material in the rubble and still on pipes (88EH01S01-S05), and four were analyzed as positive for asbestos (Attachment 5). Several pictures were taken of the building and the suspected FACM (Attachments 4, 5, and 6).

Friday, October 23, 1987

On October 23, 1987, at approximately 0915 EDT, I returned to the site to see if there was, in fact, demolition in progress. I observed a man operating a front-end loader, knocking down Building 2. I also observed a second man using a torch to cut pipes in the same building. As the front-end loader was knocking down Building 2, I observed visible emissions. Sample 88EH01S06 was taken here later. Shortly after, the loader operator left Building 2 and proceeded to begin demolition on Building 4A.

I entered the site at 1140 EDT and spoke with the loader operator. He informed me that there was a man inside the building at that time removing asbestos from the pipes, but there was no foreman on the site at that time and he did not know when he'd return. I looked into the open end of Building 2 and saw a man using a torch but I did not enter at that time. I inspected the area of Building 2 where I had seen the loader working and found much more pipe lagging in the rubble there than on October 22, but no more lagging on the pipes above, which I had observed on those pipes the previous afternoon. I concluded it had been knocked down during demolition.

A short time later, the man that had been inside emerged from Building 2 wearing brown coveralls. There was no sign of a respirator. He introduced himself as Ernie McDoogle and produced his certification paper for asbestos handling in Michigan. He informed me that he was not removing asbestos but rather cutting down the pipes containing suspected ACM, which were to be disposed of in sections, pipe and lagging all together. He stripped off his coveralls, coated with white dust, hung them over the back of his truck, and prepared for lunch.

I sampled the material (88EH01S06) where I had previously seen the visible emissions; it was later found by the Central Regional Laboratory to contain 25%-35% amosite (Attachment 5). No foreman returned to the site and I left at 1300 EDT.

I returned to the site at approximately 1430 EDT, and spoke with Paul Gradey, Superintendent from Gritty Wrecking. He informed me that Ernie McDoogle was inside removing asbestos. I asked him what would be done about all of the pipe lagging laying in and around the rubble of Building 2 and he said he did not know about that. I asked him where the bags of asbestos that were in the back of his pickup truck were going and he said "in the river." Then he said they would be taken to Gritty's shop in Urban until they had a full load to transport to Payne Disposal in Oldville, MI. He asked me if I wanted to see the removal in progress inside and I followed him into Building 2. Inside I observed Mr. McDoogle removing suspected asbestos from piles (contrary to what he'd told me) wearing his brown coveralls, gloves, and dust mask. He had the pipes laying on the floor. He sliced open the dry lagging with a knife, peeled the two halves off of the pipe, and stuffed them into a labeled asbestos waste bag. He was not wetting the material and when I asked why, he said it was "wet enough." I observed visible emissions when he removed the lagging from the pipe, but I did not sample the material. In that immediate area, I observed approximately 25 feet of suspected ACM on pipes. I asked Mr. McDoogle if he had learned about wetting the ACM, the glove bag technique, and

HANDOUT 17-2

protective equipment worn during asbestos handling in his training course and he said yes. I left Building 2. I spoke more with Mr. Gradey outside and a short time later I left the site.

The five samples I obtained on Thursday, October 22 and the sample obtained on October 23, from where visible emissions were observed during demolition, were express mailed to the Central Regional laboratory in Chicago at approximately 1630 EDT on Friday, October 23, 1987. As indicated previously, analytical results are included in Attachment 5.

Monday, October 26, 1987

On October 26, 1987, at 1320 EST, Linus Lip of the EDO and I returned to the site. It was apparent that a considerable amount of demolition work had occurred between Friday (October 23) evening and Monday (October 26) morning despite Mr. Edifice's order to stop, because a large portion of Building 2 had been leveled. No one was on site but a claw was present beside the front-end loader which was at the site on Friday.

Mr. Lip and I proceeded to enter the facility. We entered through Building 2 and there we observed a 102-foot pipe that appeared to have recently had the suspected ACM removed. There were thread-like pieces of white material hanging from the pipe and pieces of dry, suspected ACM hanging on the wall and laying on the floor below the pipe. A sample was taken (88EH01S07) and confirmed to be 25%-35% amosite and 1%-5% tremolite-actinolite (Attachment 5). We soon found another 13 foot piece of pipe that matched the cut of the 102 foot pipe. We found four feet of pipe, with lagging, laying on the floor in a small room marked "Bathroom," but could not discern the area from which it had fallen.

We continued into the facility, into Building 3. In Building 3, we found what appeared to be a type of printing unit with suspected ACM-lagged pipes running from it and around it. There also were two vessels in that area wrapped with asbestos insulation (sample 88EH01S08). An open marked bag, containing dry, friable asbestos lagging (sample 88EH01S10A) sat near the printer. On a catwalk that ran along the east wall of Building 3, there was an asbestos sludge (sample 88EH01S09) that apparently had dumped off of the pipes above. Mr. Lip and I measured 197 linear feet of pipe lagging in Building 3. We exited the building and observed many more areas where suspected ACM lay in the rubble. Against the fence on the west end of the site, we observed ten marked clear, asbestos bags, two of them were open and they were accessible to the public. Seven of the bags contained pipe lagging and three contained chunks of dry sheet (sample 88EH01S11) about one-quarter inch thick. We did not find any more of the sheet material inside the building, and left the site.

At 1620 Mr. Lip and I returned to the site to obtain samples of the materials described above (Attachment 4 - Summary). We left the site at 1730 EST.

Wednesday, October 28, 1987

On October 28, 1987, at approximately 0800 EST, Linus Lip, Joe Lawstruck of the Office of Regional Counsel, and I returned to the site on the corner of East First and East Front Streets. We entered the facility through Building 2 to re-measure the amount of suspected FACM contained in all of the buildings (2-8) that Gritty Wrecking was contracted to demolish. Including the 197 feet Mr. Lip and I previously observed, we measured 286 linear feet of suspected ACM pipe lagging.

At 1030, Mr. Lip and I met with Mr. Lawstruck and Caroline Bernoose of the Air Compliance Branch, Kenneth Chalk, Vice President of Operations for Gritty Wrecking and his lawyer Frank

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Gradey; Mr. Edifice, Building Director for the city of Smallerville; the city of Smallerville's lawyer, Oliver Twist; and the Assistant U.S. Attorney, Harry Marvel, at the U.S. Attorney's office in Urban.

At the meeting, all parties discussed potential violation of the NESHAP that occurred at the demolition site and recommendations for the immediate correction of and compliance with NESHAP regulations governing asbestos removal as it applied to this demolition.

Mr. Chalk agreed to contact Scrub Abatement, an asbestos abatement contractor, to begin removal the following morning (October 29, 1987) of all ACM in the buildings concerned. Mr. Lawstruck, Mr. Lip, and I agreed under the condition that Mr. Lip or I were present throughout the ACM removal and disposal.

At 1530 EST, Larry Lip spoke with Mr. Chalk and confirmed that Scrub Abatement would arrive on site at 0730 on October 29 to assess the abatement job and begin removal of the ACM. Mr. Lip agreed to be present on site for the entire ACM removal period which occurred on October 29, 30 and November 2, 1987. The waste was transported to a landfill at 1530 EST on November 2, 1987.

A subsequent report will follow from Mr. Lip describing the actual amount of asbestos removed, work practices, worker safety and equipment, waste handling at the facility, waste pickup, and waste transport and disposal at the landfill. Also, analyses of samples taken during ACM removal, and the field data collection checklists, will follow in Mr. Lip's report.

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Summary of Samples Taken

<u>SAMPLE NUMBER</u>	<u>TIME</u>	<u>SAMPLE DESCRIPTION</u>	<u>SAMPLE ANALYSIS RESULTS</u>
<u>OCTOBER 22, 1987</u>			
88EH01S01	1647 EDT	On red bricks	33%-40% Amosite
S02	1655 EDT	On pipe	32%-35% Amosite; 8%-12% Tremolite-Actinolite
S03	1705 EDT	On boards in rubble	20%-25% Amosite; 5%-10% Tremolite-Actinolite
S04	1730 EDT	In rubble	35%-40% Amosite
S05	1736 EDT	Brown fluffy	Negative
<u>OCTOBER 23, 1987</u>			
88EH01S06	1210 EDT	Where visible emissions observed during demolition	25%-35% Amosite
<u>OCTOBER 26, 1987</u>			
88EH01S07	1330 EST	Hanging on wall and on floor in building 2	25%-35% Amosite; 1%- 5% Tremolite-Actinolite
S08	1343 EST	Large vessel	5%-10% Amosite; 10%-15% Chrysotile
S09	1630 EST	Slumped on catwalk in building 3	25%-30% Amosite
S10A	1640 EST	Open bag in building 3	15%-25% Amosite
S10B	1640 EST	Open bag in building 3	Not Analyzed-Dry
S11	1710 EST	Open bag outside - sheet material	15%-20% Amosite; 1%- 5% Chrysotile

Summary of Pictures Taken

October 22, 1987:

EDT

Picture 1	1647	On bricks, outside Building 2, Sample S01.
Picture 2	1647	Outside Building 2, in rubble.
Picture 3	1655	Pipe lagging in Building 2, Sample S02.
Picture 4	1705	On boards, in rubble, in Building 2, Sample S03
Picture 5.	1710	In rubble, in Building 2.
Picture 6 & 7	1712	On ground in Building 2.
Picture 8	1715	Pipe lagging in Building 2.
Picture 9 & 10	1720	Building 2.
Picture 11	1730	On ground in Building 2, Sample S04.
Picture 12 & 13	1732	Pipes in Building 2.
Picture 14 - 21	1735-1815	Rubble in and around Building 2.
Picture 22	1820	View of demolition site from street.

October 23, 1987:

EDT

Picture 23 & 24	1210	Building 2, where visible emissions were observed during demolition, Sample S06.
Picture 25	1515	Truck driven by Paul Garvaglia, asbestos bags in back.

October 26, 1987:

EST

Picture 26 - 31	1320	Appearance of Building 2 after the weekend.
Picture 32 & 33	1330	Inside Building 2, Sample S07.
Picture 34	1335	Inside Building 3.
Picture 35	1343	Large vessel inside Building 3, Sample S08.
Picture 36 & 37	1345	Pipes in Building 3.
Picture 38	1400	Rubble outside Building 2.
Picture 39 & 40	1405	Outside Building 5A.
Picture 41 - 45	1410	Bags outside, against fence, Sample S11.
Picture 46	1630	ACM slumped on catwalk in Building 3, Sample S09.
Picture 47 & 48	1640	Open bag of dry FACM in Building 3, Sample S10.
Picture 49	1655	Pallets in Building 5.

Inspection Report

- Official files
- Effective inspection reports
- Check lists or narrative reports
- Tips for writing inspection reports

Text: Chapter 17



Write To Express – Not To Impress

WRONG

Next I went to the warehouse, where I discovered several drums on a forklift headed for the warehouse.

RIGHT

I observed drums being transported to the warehouse.



Keep it Simple

WRONG

Several of these drums were placed on a forklift by the workers who were on duty at the time and taken to the warehouse that I have already described.

RIGHT

I observed drums being transported to the warehouse.



Keep the Reader in Mind

PROBLEM:

The A14 tank contained material more than 90 days after the "D" line shut down.

BETTER:

The out-of-service degreaser was storing hazardous wastes more than 90 days after use of the unit for manufacturing had ceased.



Who?

PROBLEM:

The degreaser mechanic

BETTER:

Elvis Ferguson, the degreaser mechanic



What?

WRONG

If there had been a fire, no firefighter equipment could have been carried down the narrow aisle.

RIGHT

The aisle space between the drums was 16 inches.



When?

WRONG

Mr. Ferguson called me and told me the hose had ruptured at 10:30. When I arrived, it was overflowing.

RIGHT

Mr. Ferguson called me at 10:45 a.m. He told me that the hose had ruptured at 10:30 a.m. When I arrived at 11:00 a.m., the secondary containment was overflowing.



Where?

WRONG

The tank behind the warehouse

RIGHT

The 1,000-gallon tank used to store
chloride catalyst before it is recycled



Why?

WRONG

They ship drums to the warehouse because the storage area is so small.

RIGHT

Mr. Ferguson stated that drums are taken to the warehouse because storage area B is too small. Measurements indicate that storage area B is large enough to contain 6 drums. Plant records indicate that 8 drums per day are generated by the #2 production line.



How?

WRONG

Appropriate drums are used to avoid corrosion.

RIGHT

The facility neutralizes hydrochloric acid on detergent line #1 in plastic "poly" drums.



Avoid the "It" Habit

WRONG

I inspected tank A, still B, and lagoon C. It was overflowing and its secondary containment was inadequate.

RIGHT

I inspected tank A, still B, and lagoon C. Lagoon C was overflowing. The secondary containment around lagoon C was not capturing all the overflow.



Avoid Vague Reference

WRONG

Mr. Ferguson and Mr. Johnson walked to the warehouse with me. He said they transported drums across a road.

RIGHT

Mr. Ferguson and Mr. Johnson walked to the warehouse with me. Mr. Johnson said the company transported drums across Scioto River Road.



Be Concise

WRONG

Write your sentences as short as you possibly can and avoid complicated terminology.

RIGHT

Use short sentences and avoid unnecessarily complicated terms.



Use Active Voice

PROBLEM:

It is recommended ...

BETTER:

I recommend ...



Use Action Verbs

PROBLEM:

Distribution of pay checks is accomplished by the Treasurer's office.

BETTER:

The Treasurer's office distributes paychecks.



Be Concise

PROBLEM:

It is not considered that a detailed examination is necessary.

BETTER:

Detailed examination is not necessary.



Be Coherent

PROBLEM:

Dead fish were found several days after the discharge on July 16.

BETTER:

Dead fish were found on July 16, several days after the discharge.



Answer to Request For Information

PROBLEM:

Receipt is acknowledged of your letter of June 18, 1968, relating to an investigation of Paul Smith in which letter you requested that John Jones be interviewed to determine whether he sold toxic chemicals to Smith in December 1967. You also requested that, if he had made such sale, an affidavit be obtained covering that matter. Enclosed you will find such affidavit.

BETTER:

Enclosed, in answer to your letter of June 18, 1968, is the affidavit of John Jones concerning his sale of toxic chemicals to Paul Smith.



Beginning a Report

PROBLEM:

As the result of a difficult inspection, which was assigned to me and is now complete, I have prepared this report to present the facts and evidence that were discovered with reference to an alleged violation of Section 301, Title III, of the Clean Water Act, relative to the unlawful discharge of a pollutant. This discharge, which occurred at a municipal waste water treatment plant, December 5, 1968, was in Greenville, Illinois.

BETTER:

This report concerns an alleged violation of Section 301, Title III, of the Clean Water Act, by the municipal wastewater treatment plant in Greenville, Illinois. The plant exceeded the limits of its NPDES discharge permit on December 5, 1968.



Reporting Interview Results

PROBLEM:

The plant manager was interviewed by the undersigned on December 17, 1968. When he was asked to elaborate by same, he could not give any reasonable explanation for the discharge.

BETTER:

I questioned the plant manager on December 17, 1968. He explained the discharge as follows: ____.



Reason for Inspection

PROBLEM:

It was reported by the Regional Office on November 30, 1968, that a letter was received bearing no signature containing the following information, "Mr. Administrator, something from that Greenville treatment plant smells bad, tastes worse, and is killing fish downstream." The letter, which had been prepared on a typewriter, apparently had been mailed in an envelope which was marked with a postmark of November 29, 1968. The letter and the envelope, which were addressed to the Administrator, are attached hereto and numbered as Exhibits 1 and 2.

BETTER:

On November 30, 1968, the Regional Office reported that it had received an unsigned, typewritten letter (Exhibit 1) in an envelope (Exhibit 2) addressed to the Administrator and postmarked November 29, 1968. The letter stated: "Mr. Administrator, something from the Greenville treatment plant smells bad, tastes worse, and is killing fish downstream."



SESSION 18

TOPIC: ADMINISTRATIVE PROCEDURES INSTRUCTOR'S OVERVIEW

Time: 60 minutes

PURPOSE

- Respond to questions concerning administrative procedures.

Note: This session is not long enough to cover all administrative issues -- it is essential that trainees read Chapter 10 in the manual before the session. Further, this session concentrates on federal administrative issues; state employees should check with their individual administrative officers to determine their specific requirements. Nevertheless, this session is generic enough to apply in most cases to both federal and state inspectors

KEY POINTS

- Anticipate administrative needs in advance and obtain the proper forms, authorizations, and signatures, and meet other requirements
- An inspector can be held financially liable for unauthorized purchases.

ADVANCE PREPARATION

- Refer to specific text reference, Chapter 10.
- Review your office's administrative procedures.
- Prepare a handout (three-hole punched for insertion into the text notebook) that provides names, telephone numbers, and addresses of people and organizations that inspectors should contact for information or approvals of administrative matters.
- Prepare handouts as needed on administrative procedures of the Region or of particular offices.
- Review the case study and discussion questions.
- Make sufficient copies of the case study handouts for the entire group.
- Have trainees read Chapter 10 in manual before the session.

ADVANCE PREPARATION

EQUIPMENT

- Overhead projector
- Flip chart

LIST OF VISUALS

18-1 Case Study Questions

LIST OF HANDOUTS

18-1 Administration Case Study

INSTRUCTOR NOTES

SUGGESTED CONTENT

Introduction

Introduce yourself, mentioning your background and experience and your role in this course.

If state inspectors are present, the appropriate changes and additions should be made.

This session primarily addresses federal administrative issues.

QUESTION-AND-ANSWER SESSION

OVERVIEW OF ADMINISTRATIVE ISSUES

Inspectors must deal with a wide range of administrative procedures, such as procurement; shipping; travel; and, in some situations, special pay. Since inspectors must make decisions in the field about such issues, it is important that they be familiar with correct administrative procedures, as well as technical and legal procedures. As most of you know, failure to comply may result in denial of reimbursement.

The importance of preinspection planning cannot be emphasized too strongly. It is far easier to comply with administrative requirements if needs for tickets, equipment, shipping of samples, boat rentals, and other items, are anticipated. With advance planning, the necessary forms can be obtained, filled out, and signed. Any questions you may have can be answered. Chances of errors are reduced greatly.

Even with good advance planning, unanticipated purchases may be necessary while you are on the road. It is important that you know what to do in such a case, because you may have difficulty getting reimbursed for unauthorized purchases. You also must be familiar with procedures for changing travel plans.

Some employees on an inspection might be entitled to overtime pay, hazardous duty pay, or other special compensation. Familiarity with pay administration can help you in planning and budgeting.

Once you arrive back at the office, it is essential that you promptly complete travel vouchers and any other unfinished administrative paperwork associated with the trip. If you fail to submit travel vouchers within the time required, you might be prohibited from receiving travel advances in the future.

INSTRUCTOR NOTES**SUGGESTED CONTENT**

Ask the group for questions.
Proceed through the list topic
by topic.

Each inspection will present unique travel and procurement needs. A skilled inspector is able to anticipate those needs, as well as adapt to changes in the field, and knows how to perform the administrative steps to ensure efficient processing of the required paperwork.

Discuss any questions about:

- Travel
 - Authorizations
 - Cash
 - Airline tickets
 - Hotels
 - Vehicles
 - Reimbursement vouchers
- Pay administration
- Procurement

Distribute handout(s) of
Regional contacts and Regional
procedures.

EXERCISE**ADMINISTRATION CASE STUDY**

Overhead 18-1
Case Study Questions

Many of you already are familiar with administrative procedures in your office. To give you some practice in thinking about administrative matters, we have developed a case study that requires quite a bit of administrative planning, as well as mid-course adjustments.

As you work through the case study:

- Identify all items that require an administrative action and describe what kind of action is needed. Be prepared to discuss some of the trickier procedures.
- Determine what steps might have been taken as soon as the problem was discovered that could have reduced the confusion, rather than waiting for a final decision about how to proceed

INSTRUCTOR NOTES

Hand out the case study.
Remain in the room to answer any questions.

Acknowledge that 15 minutes was not enough time to complete the exercise. Ask the group to discuss Question 1, listing the administrative items required for the trip; the Suggested Content column lists items that should be included if they are not identified by the group. Record items on the flip chart.

SUGGESTED CONTENT

You will have about 15 minutes to work on the case. You may not be able to work through the entire case in detail, but try to spend a little time on each of the questions. I will notify you when you have only five minutes remain. Are there any questions?

1. Identify all items that require administrative action.

Items listed should include:

- Fly to Pocatello
 - Prepare travel authorizations
 - Order tickets
 - Make hotel reservations
 - Make vehicle reservations
 - Obtain travel advance
- Make shipping arrangements
 - Ship equipment, bottles, and supplies
 - Ship special analyzer
 - Ship samples to laboratory
 - Ship equipment back to office
- Prepare procurement requests
 - Lease of fluorometer
 - Purchase of special dye
 - Services of consultant
 - Lease of boat
 - Lease of helicopter
 - Safety equipment for crew
- Consider pay status
 - Overtime
 - Compensatory time
 - Hazardous duty pay
- Plan for purchases in the field
 - Shovels
 - Ice
 - Replace instrument
 - Repair of boat propeller

INSTRUCTOR NOTES

SUGGESTED CONTENT

- Arrange for change in travel plans
 - Purchase new tickets
 - Make airline, car, and hotel or motel reservations
- Submit documents, file vouchers, and seek reimbursement
 - Travel vouchers
 - Government Travel Request (GTR)
 - Reporting of purchases in the field
- Identify travel options
- Assess equipment needs (include helicopter or boat)
- Identify potential suppliers
- Locate analyzer and investigate transportation options
- Identify consultant

Complete the discussion by asking the group how some of the last-minute planning might have been avoided (Question 2).

ADMINISTRATION CASE STUDY

The Problem

On May 1st, the Regional and Idaho Operations Office learned of a potential illegal hazardous water discharge or dumping. The alleged incident was affecting water quality in a lake in a remote area of eastern Idaho. Little specific information about the incident was immediately available. No action was taken until more information could be obtained and upper management could decide whether to (1) conduct an inspection, (2) ask industry XYZ to examine its own problem, or (3) agree upon a joint study with the state agency.

On May 15th, a local environment group contacted its legislative representative, who in turn notified the Regional Administrator of the urgency of the pollution problem. The Regional Administrator requested that a study of the source and receiving water be conducted within the next three days to determine the extent and nature of the problem.

Preinspection Activities

Immediately, the staff of the Regional and Operations Office frantically began to develop a plan of study, work out logistical problems, assemble equipment, and coordinate activities with state and local agencies. Two Fair Labor Standards Act (FLSA) exempt and one nonexempt employee worked one day on the weekend and two hours extra for two regular days to prepare for the study. The plan they developed included the following activities:

- Field staff would fly to Pocatello, rent vehicles, and drive to the site.
- Equipment, bottles, and supplies would be shipped to the airport and transported to the site by the field staff.
- Because not all necessary equipment and supplies were available in the Region, some items would be borrowed from other agencies or Regions or leased commercially. Specifically, the Region must lease a fluorometer and purchase a special type of dye, since a dye study may be required. In addition, a special analyzer must be borrowed from another Region, but the Regional and Idaho Operations Office must pay freight costs. A consultant must be hired, at an estimated \$1,000.00, to operate the analyzer during the study.
- Because of the remoteness of the site, a boat must be leased to conduct a study of receiving water. Because the sample holding time would be short, a helicopter would be needed to transport samples to Pocatello airport to be flown daily to the Manchester Laboratory.
- Staff were concerned about potential exposure to hazardous substances, either in the discharge or along the banks of the lake. Diving or possible use of a self-contained breathing apparatus, might prove necessary, if samples must be taken in the dump area.

On-Site Inspection Activities

During the inspection, the following activities occurred:

- Four days of sampling took place.
 - The total cost of shipping the first day's samples from Pocatello to Sea/Tac Airport was \$50.00.
 - The cost of remaining three days' shipments varied from \$90.00 to \$300.00 per shipment.
- While in the field, the inspector found it necessary to purchase two shovels, purchase ice (\$60.00), replace a \$50.00 instrument, and repair a boat propeller.
- No diving was needed; however, three employees did wear respirators to collect several soil samples in a potentially contaminated area.
- All employees worked 10 hours per day for four days and 11 hours on the day they traveled to the site, from the time they left Seattle to the end of the work day.
- When the inspection had been completed, all equipment and supplies were shipped to Sea/Tac, and all employees returned to Seattle by air. Two employees changed their flights to travel to different approved locations than originally had been scheduled.
- All results of analysis of samples from the dump-area were reported negative one month after completion of the study.

INSTRUCTIONS

Your task is to:

1. Identify all items that require an administrative action, and the kind of action required. Be prepared to discuss the trickier administrative procedures and considerations involved.
2. Determine whether steps could have been taken before a final decision was made that would have avoided some of the frantic last-minute planning.

Case Study Questions

1. Which items require an administrative action? What kind of action? What are the most difficult administrative tasks involved?
2. Could some of the last-minute planning have been avoided? How?

SESSION 19

TOPIC: EPA INITIATIVES INSTRUCTOR'S OVERVIEW

Time: 90 minutes

PURPOSE	<ul style="list-style-type: none">· Introduce the participant to EPA initiatives																																
KEY POINTS	<p>Introduce the concept of multimedia inspections, including the definition of the various levels of multimedia inspections</p> <p>Explain pollution prevention and waste minimization.</p> <ul style="list-style-type: none">· Explain supplemental environmental projects. <p>Introduce the concept of environmental justice and the relationships of pollution prevention, waste minimization, and supplemental environmental projects to environmental justice.</p>																																
ADVANCE PREPARATION	<ul style="list-style-type: none">· The instructor should be familiar with the most current EPA information on these initiatives																																
EQUIPMENT	<ul style="list-style-type: none">· Overhead projector· Flip chart																																
LIST OF VISUALS	<table><tr><td>19-1</td><td>Overview: Multimedia Inspections and Enforcement</td></tr><tr><td>19-2</td><td>Definition of the Term Multimedia</td></tr><tr><td>19-3</td><td>Multimedia Compliance Inspections</td></tr><tr><td>19-4</td><td>Definition of a Holistic Approach</td></tr><tr><td>19-5</td><td>Advantages of the Team Approach to Compliance Inspections</td></tr><tr><td>19-6</td><td>Disadvantages of the Team Approach to Compliance Inspections</td></tr><tr><td>19-7 and 19-8</td><td>Advantages of Multimedia Inspections</td></tr><tr><td>19-9</td><td>Industry Comments</td></tr><tr><td>19-10</td><td>Other Issues</td></tr><tr><td>19-11</td><td>Disadvantages of Multimedia Enforcement Cases</td></tr><tr><td>19-12</td><td>Four Types of Multimedia Inspections</td></tr><tr><td>19-13</td><td>Team Skills Required for Type A Inspections</td></tr><tr><td>19-14</td><td>Team Skills Required for Type B Inspections</td></tr><tr><td>19-15</td><td>Team Skills Required for Type C Inspections</td></tr><tr><td>19-16</td><td>Team Skills Required for Type D Inspections</td></tr><tr><td>19-17</td><td>Four Types of Multimedia Inspections</td></tr></table>	19-1	Overview: Multimedia Inspections and Enforcement	19-2	Definition of the Term Multimedia	19-3	Multimedia Compliance Inspections	19-4	Definition of a Holistic Approach	19-5	Advantages of the Team Approach to Compliance Inspections	19-6	Disadvantages of the Team Approach to Compliance Inspections	19-7 and 19-8	Advantages of Multimedia Inspections	19-9	Industry Comments	19-10	Other Issues	19-11	Disadvantages of Multimedia Enforcement Cases	19-12	Four Types of Multimedia Inspections	19-13	Team Skills Required for Type A Inspections	19-14	Team Skills Required for Type B Inspections	19-15	Team Skills Required for Type C Inspections	19-16	Team Skills Required for Type D Inspections	19-17	Four Types of Multimedia Inspections
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19-13	Team Skills Required for Type A Inspections																																
19-14	Team Skills Required for Type B Inspections																																
19-15	Team Skills Required for Type C Inspections																																
19-16	Team Skills Required for Type D Inspections																																
19-17	Four Types of Multimedia Inspections																																

SESSION 19

TOPIC: EPA INITIATIVES INSTRUCTOR'S OVERVIEW

Time: 90 minutes

19-18	Overview of Pollution Prevention and Waste Minimization
19-19	Waste Minimization
19-20	Source Reduction
19-21	Source Reduction
19-22	Source Reduction Goals
19-23	Source Reduction Techniques
19-24 and 19-25	Improvements in Process Efficiency
19-26	"Green" Purchasing
19-27	Substitution of Materials
19-28	Improvements of Supply System
19-29	Good Housekeeping
19-30	Preventive Maintenance
19-31	Recycling
19-32	What Can You Recycle?
19-33	The Environmental Management Hierarchy
19-34	Basic Waste Minimization Requirements of HSWA
19-35	Minimum Requirements for Inspectors for Waste Minimization
19-36	Checking the Manifest
19-37	Checking the Biennial Report and Operating Record
19-38	Other Waste Minimization Language
19-39	Outreach
19-40	Further Actions To Promote Waste Minimization
19-41	Overview of Environmental Justice
19-42	Environmental Justice Defined
19-43	The Need for the Environmental Justice Program
19-44	Environmental Justice Program: Federal Response
19-45	Environmental Justice Program: EPA Initiatives
19-46	Environmental Justice Discussion Questions
19-47	Environmental Justice in Our Work
19-48	Supplemental Environmental Projects
19-49	Penalties
19-50	Factors Governing Penalties
19-51	Supplemental Environmental Projects
19-52	Evaluation of SEP Projects
19-53	Characteristics of SEPs
19-54	NEXUS and Legal Guidelines
19-55	Categories of SEPs

SESSION 19

**TOPIC: EPA INITIATIVES
INSTRUCTOR'S OVERVIEW**

Time: 90 minutes

19-56	Public Health SEPs
19-57	Pollution Prevention SEPs
19-58	Pollution Reduction SEPs
19-59	Environmental Restoration and Protection SEPs
19-60	Assessment and Audit SEPs
19-61	SEPs That Promote Environmental Compliance
19-62	SEPs for Emergency Planning and Preparedness
19-63	Unallowable SEPs

LIST OF HANDOUTS None

INSTRUCTOR NOTES

SUGGESTED CONTENT

Introduction

Overhead 19-1

Overview: Multimedia Inspections and Enforcement

This module is intended to provide an overview of the multimedia inspection and enforcement process. After this session, participants should be able to define the term multimedia; explain what the holistic approach is; and demonstrate a basic understanding of the team approach to compliance inspections, enforcement uses, inspection categories, targeting, resources, and the basic team skill requirements needed at each level.

LECTURE

INTRODUCTION TO MULTIMEDIA INSPECTIONS AND ENFORCEMENT

Overhead 19-2

Definition of the Term Multimedia

Multimedia refers to all of the environmental programs (for example, air, water, hazardous waste, and pesticides) and all the laws, regulations, or permits related to those programs.

Overhead 19-3

Multimedia Compliance Inspections -

Encourage participants to share their experiences -- the number of inspections (standard or multimedia) that they have participated in, length of experience, types of inspections (single or multimedia), team participation in inspections, and other aspects of their experience.

Overhead 19-4

Definition of a Holistic Approach

Before showing the overhead, ask participants to create a definition.

Lead the participants in developing a definition of a holistic approach to performing compliance inspections. The definition you should aim for should be similar to the one presented here.

**Overhead 19-5
Advantages of the Team
Approach to Compliance
Inspections**

Lead a discussion during which the trainees identify the advantages of a team approach to compliance inspections. It is suggested that trainees develop a list before the overhead is displayed.

Use the short activity or narrative provided to illustrate the advantages of a team approach to completion of tasks over an individual approach.

**Overhead 19-6
Disadvantages of the Team
Approach to Compliance
Inspections**

Lead a discussion during which the trainees identify the disadvantages of a team approach to compliance inspections. After the trainees developed a list, display the overhead.

The best way to complete complex tasks is to form a team composed of individuals who have the necessary expertise.

A holistic approach to compliance inspections is a complex task that is best achieved through teamwork

**Overhead 19-7 and 19-8
Advantages of Multimedia
Inspections**

Display the overhead that lists the advantages of a multimedia enforcement case. Ask the trainees to add to the list.

**Overhead 19-9
Industry Comments**

Display the overhead that lists the industry comments on a multimedia enforcement case. Ask trainees to suggest other likely comments from industry.

**Overhead 19-10
Other Issues**

Display the overhead that lists other issues related to a multimedia enforcement case. Ask the trainees to add to the list.

**Overhead 19-11
Disadvantages of Multimedia
Enforcement Cases**

Display the overhead that lists the disadvantages of a multimedia enforcement case. Ask the trainees to add to the list.

INSTRUCTOR NOTES

SUGGESTED CONTENT

Overhead 19-12 Four Types of Multimedia Inspections

Use the next four overheads in a discussion of the importance of teamwork and team skills for each of the four types of inspection. The references to John Wayne are based on the old adages about not being a cowboy and doing things unilaterally -- feel free to play up the reference as much as you wish

All inspections can be grouped into four categories that display increasing complexity, moving from Category A (a program-specific compliance inspection) to Category D (a complex multimedia inspection), depending upon the complexity of the facility and the objectives of the inspection. Factors in categorizing the inspection include the complexity of pollution sources, size of the facility, process operations, pollution controls, and the personnel and time resources required to conduct the compliance inspection.

Different team skills are required for each of the four types.

Overhead 19-13 Team Skills Required for Type A Inspections

Category A: These program-specific compliance inspections are conducted by one or more inspectors. The objective is to determine a facility's compliance status with regard to regulations under a specific program.

Overhead 19-14 Team Skills Required for Type B Inspections

Category B: These program-specific compliance inspections (compliance with hazardous waste regulations) are conducted by one or more inspectors. The inspector(s) should screen for and report obvious, key indicators of possible noncompliance in other environmental program areas.

- Category B multimedia inspections have limited, focused objectives.
- These inspections are most appropriate for smaller, less complex facilities that are subject to only a few environmental laws
- The objective of the Category B inspection is to determine compliance with regulations under a specific program and to refer information from screening inspections to other programs.

INSTRUCTOR NOTES

SUGGESTED CONTENT

Overhead 19-15 Team Skills Required for Type C Inspections

Category C Several concurrent and coordinated program-specific compliance inspections are conducted by a team of inspectors who represent two or more program offices. The team, headed by a team leader, conducts a detailed compliance inspection for each of the target programs.

- Category C multimedia inspections address more compliance issues than Category B inspections. They are more appropriate for intermediate to large facilities that are subject to a variety of environmental laws.
- The objective of the Category C inspection is to determine compliance in several targeted areas under specific programs.
- Obvious, key indicators of possible noncompliance in other environmental program areas should be reported to the appropriate program.

Overhead 19-16 Team Skills Required for Type D Inspections

The responsibilities of team members are summarized in Appendix C of the Multi-Media Investigation Manual.

Category D: These comprehensive facility inspections address not only compliance with targeted program-specific regulations, but also attempt to identify environmental problems that otherwise might be overlooked. Category D inspections also look at facility management systems to see if the management system in place is sufficient to detect and prevent environmental problems. The initial focus is normally on facility processes to identify activities (such as manufacturing of new chemicals) and byproducts or waste streams potentially subject to regulation. The byproducts or waste streams are traced to final disposition (on-site or off-site treatment, storage, or disposal).

- When regulated activities or waste streams are identified, a compliance inspection is made with respect to applicable requirements. The inspection team, headed by a team leader, comprises staff thoroughly trained in different program areas. For example, a large industrial facility that has a number of process operations may be regulated under numerous environmental statutes, such as the CWA, CAA, RCRA, TSCA, CERCLA, and FIFRA.

INSTRUCTOR NOTES

SUGGESTED CONTENT

- The on-site inspection is conducted during one or more time periods, during which intensive concurrent program-specific compliance inspections are made often by cross-trained personnel
- Category D multimedia inspections are thorough and resource-intensive
- These inspections are appropriate for complex facilities of intermediate to large size that are subject to a variety of environmental laws. Determinations of compliance are made for several targeted areas under specific programs
- Possible noncompliance in other program areas is reported to the appropriate program.

Overhead 19-17 Four Types of Multimedia Inspections

The four categories of inspections are described in Appendix B of the Multi-Media Investigation Manual.

Generally, all inspections are conducted under essentially the same protocols, including preinspection planning, use of a project plan, sampling, inspection procedures, and final report. The major difference between category D and the others is that category D inspections address more regulations, look for more environmental problems, addresses process information, and addresses facility environmental management systems.

LECTURE

INTRODUCTION TO POLLUTION PREVENTION AND WASTE MINIMIZATION

Overhead 19-18 Overview of Pollution Prevention and Waste Minimization

Ask trainees to find some distinctions between pollution prevention and waste minimization

Pollution Prevention and Waste Minimization

Pollution prevention and waste minimization are believed to be the most effective and efficient methods of reducing risk to human health and the environment. Industry has many opportunities both to reduce the amount of waste produced and to use fewer or alternative raw materials to reduce the volume or toxicity of waste generated. Both source reduction and recycling can save money, but more important, fewer or less toxic wastes are produced, decreasing the risk of harm to the environment. Therefore, EPA and the regulated community must begin to look beyond traditional end-of-pipe management schemes

Hazardous and Solid Waste Amendments of 1984

The Hazardous and Solid Waste Amendments of 1984 (HSWA or RCRA) require that EPA protect the environment by "minimizing the generation of hazardous waste and the land disposal of hazardous waste by encouraging process substitution, materials recovery, properly conducted recycling and reuse, and treatment".

Pollution Prevention Act of 1990

In the Pollution Prevention Act of 1990, Congress declared the promotion of pollution prevention a national policy of the United States. Then EPA Administrator William Reilly made pollution prevention a priority for the entire agency with the "EPA Pollution Prevention Strategy ". Congress and the EPA Administrator have set general guidelines and objectives designed to stimulate each program office to explore ways to incorporate pollution prevention into its program.

**Overhead 19-19
Waste Minimization****Definition of Waste Minimization**

Waste minimization is any source reduction or recycling activity that results in either: (1) reduction of total volume of hazardous wastes, (2) reduction of toxicity of hazardous wastes, or (3) both, as long as that reduction is consistent with the general goal of minimizing present and future threats to human health and the environment.

Source Reduction and Recycling

Waste minimization includes both multimedia source reduction as defined in the Pollution Prevention Act of 1990, and recycling except for recycling that involves combustion (that is, recycling for energy recovery).

**Overheads 19-20
through 19-30****Source Reduction**

Pollution prevention is understood to mean multimedia source reduction, as defined in the Pollution Prevention Act of 1990. Source reduction is any practice that reduces the amount of any hazardous substance, pollutant, or contaminant entering any waste stream or otherwise being released into the environment (including fugitive emissions) before recycling

INSTRUCTOR NOTES

SUGGESTED CONTENT

Overheads 19-31 and 19-32

Recycling, Energy Recovery, Treatment, and Disposal

Under the Pollution Prevention Act, recycling, energy recovery, treatment, and disposal are not included in the definition of pollution prevention, although some processes commonly described as "in-process recycling" may qualify as pollution prevention.

Pollution prevention is a multimedia environmental management technique that emphasizes the reduction of wastes at the source.

Overhead 19-33 The Environmental Management Hierarchy

First Priority in Environmental Management Hierarchy

Pollution prevention, as described under the act, is the first priority in an environmental management hierarchy that includes 1) prevention, 2) recycling, 3) treatment, and 4) disposal. When considering pollution prevention activities, this hierarchy should be kept in mind and a set of preferences developed, rather than drawing an absolute line between prevention and recycling, for example.

Overhead 19-34 Basic Waste Minimization Requirements of HSWA

HSWA sets forth three basic waste minimization requirements for generators and TSDFs. They are

- Hazardous waste generators must submit waste minimization information as part of their biennial reports.
- Generators must certify on the manifest that they have a waste reduction program in effect
- As a permit requirement, all TSDFs must certify at least annually that they have a waste reduction system in place.

Overhead 19-35 Minimum Requirements for Inspectors for Waste Minimization

This overhead identifies four areas of concern for inspectors that constitute the minimum requirements facilities must meet for waste minimization. Each item is discussed separately.

Overhead 19-36 Checking the Manifest

Checking the Manifest

As stated previously, generators that ship wastes off site must certify on the manifest that they have a waste minimization program in place. An example of the exact wording from the manifest reads as follows

"If I am a large quantity generator, I certify that I have a program in place to reduce the volume and toxicity of waste generated to the degree I have determined to be economically practicable and that I have selected the practicable method of treatment, storage, or disposal currently available to me which minimizes the present and future threat to human health and the environment; OR, if I am a small quantity generator, I have made a good faith effort to minimize my waste generation and select the best waste management method that is available to me and that I can afford "

(40 CFR part 262, Appendix)

All inspectors should determine whether the certification was signed manually by the generator or an authorized representative of the generator. In addition, if the printed certification statement was not authorized by a known authorized representative, the inspector should determine, if possible, that the authorization is valid. The certification is mandated by statute and must be a part of any inspection

A waste minimization plan is one of the best forms of evidence of a waste minimization program; therefore, the inspector should ask to see a written waste minimization plan. However, there may be other forms of evidence the facility can use to demonstrate the existence of its waste minimization program.

EPA and authorized states have the authority through HSWA §3007 to "have access to, and to copy all records relating to such waste." The facility may choose to keep its waste minimization plans confidential. If it does so, the inspector should follow procedures for CBI and should not release the plan to the public. If the owner or operator (O/O) still denies access to the plan, the denial should be noted in the inspection report, and the inspection should continue. The written report may be requested later in a postinspection request for additional information. If the O/O claims there is no written plan or does not want to show it, ask for a verbal description of the plan, and take notes

If the O/O does not show a written plan, cannot describe a plan verbally, or cannot demonstrate other evidence of the existence of a waste minimization program, that circumstance should be noted as a violation for failure to comply with the

certification on the manifest. Evidence of the existence of a waste minimization program may be checked at the opening conference with the O/O or at the most appropriate time during the inspection, depending on its purpose and schedule

The inspector can and should check visually for evidence of a "program in place" -- on-site confirmation that the generator is conducting some type of waste minimization program.

Although the EPA has limited authority to take enforcement actions based on the content or adequacy of waste minimization programs, the inspector can determine whether a program exists and is being implemented. For possible enforcement action, the inspector should note in the inspection report any discrepancies between the written or oral plan, or the description of the waste minimization program, and what is observed on site. Discussing the importance of the plan with the O/O will stress EPA's commitment to waste minimization, as well as identify for the O/O the benefits, both environmental and economic, the facility may realize from a waste minimization program.

Overhead 19-37
Checking the Biennial Report
and Operating Record

Checking the Biennial Report and Operating Record

Any generator that ships hazardous waste to an off-site TSDF in the United States, and any generator who treats, stores, or disposes of hazardous wastes on site, must submit during even-numbered years a biennial report (exporters must submit a similar report every year) that includes:

- A description of the efforts undertaken during the year to reduce the volume and toxicity of waste generated
- A description of the changes in volume and toxicity of waste actually achieved during the year in comparison with previous years, to the extent such information is available for years before 1984
- The certification signed by the generator or authorized representative

40 CFR 262.41(a), 264.75(h)&(j), 265.75(h)&(j), and 262.56(5) (i)&(ii) for exporters

In addition, the operating record of permitted facilities should contain:

- A certification by the permittee, no less often than annually, that the permittee has a program in place to reduce the volume and toxicity of hazardous waste that he generates to the degree determined by the permittee to be economically practicable and the proposed method of treatment, storage, or disposal is that practicable method currently available to the permittee that minimizes the present and future threat to human health and the environment.

40 CFR 264 73(b)(9)

The inspector should verify the existence of the reports and certifications and examine them during preinspection preparation, on site, or during a postinspection review of documents. To ensure that the waste minimization program is actually in place, the inspector should confirm that the "description of the efforts undertaken" in the biennial or annual report corresponds with what is observed at the facility. Once again, if contradictions exist between the plan and what is observed on site, the contradictions should be noted in the inspection report because they point to potential violations. Failure to certify the existence of a program in place also is a potential violation. Copies of the reports should be obtained from state or EPA files or from the generator to help document the contradictions.

If omissions, falsifications, or misrepresentations on any report or certification are suspected, criminal penalties may apply, and the case should be referred for criminal investigation.

Overhead 19-38
Other Waste Minimization
Language

Other Waste Minimization Language

The inspector should check any waste minimization language included in the facility's permits and any enforcement orders or settlement agreements. Those documents should be examined during the preinspection preparations. Although only a few existing permits include specific requirements for waste minimization, most new permits will contain such language. The permit writer can include language that gives EPA or the state the authority to evaluate the waste minimization plan or the program in place if the permit writer

lists evaluation criteria as permit requirements. All such permit requirements are enforceable, and compliance with them should be verified on site.

Requirements for waste minimization also may be included in settlement agreements, in accordance with the policy of the Office of Enforcement and Compliance Assurance (OECA) on including conditions related to pollution prevention and recycling in enforcement settlements. The inspector should examine the language and seek evidence on site of compliance with any such requirements. The inspector should note discrepancies in the inspection report for possible follow-up enforcement.

Overhead 19-39
Outreach

Outreach

All inspectors should be familiar with, recommend, and distribute literature about waste minimization. Much literature is available, ranging from engineering manuals to one-page pamphlets. Several Regions and states have developed short, introductory pamphlets on pollution prevention and waste minimization in general that list some available sources of information and outline the basic goals of pollution prevention. All inspectors should obtain available pamphlets and distribute them to facilities, along with pamphlets from the Office of Pollution Prevention's (OPP) Pollution Prevention Information Clearinghouse (PPIC). Other guidance, such as EPA's guidance on the components of a waste minimization program (when final), should be made available to the regulated community.

- Inspectors also should familiarize themselves with other documents that may be of use to specific industries, such as fact sheets put out by OPP and some Regions and states; the technical manuals published by the Office of Research and Development (ORD); and the *Waste Minimization Opportunity Assessment Manual*, also published by ORD. The inspector should make representatives of the facility aware that the manuals exist, tell them how to obtain the manuals, and supply the manuals to the facilities when the inspector thinks the information will be used. The manuals can be obtained from the Regional pollution prevention contacts listed in this document or from OPP or ORD.

For more specific or technical information, the inspector should refer the facility to the appropriate technical assistance program. These programs may operate through local universities, state or community programs, programs sponsored by the Region, or trade organizations. The inspector, who often is the only on site representative of the EPA or the state program, is in an advantageous position to promote such nonregulatory assistance programs.

- Because of the nature of RCRA compliance inspections, inspectors should **not** serve as on-site consultants. Constraints on time and resources, lack of knowledge in specific industries, and the potential for undermining an enforcement action by offering recommendations about industrial processes make such a role inappropriate for the inspector. For advice on technically advanced issues or issues that involve potentially high capital investment, the O/O should be referred to the technical assistance programs identified above.

However, in many cases, the inspector may see opportunities to implement effective waste minimization techniques easily. OECA encourages the inspector to give limited, basic advice to representatives of the facility in obvious ways to minimize waste, as outlined in the following examples. This advice should be issued in an informal manner, with the caveat that it is not binding in any way and is not related to compliance with regulations. If there were problems later, either with compliance or with the equipment, the facility may attempt to use the advice given by the inspector as a defense, drawing out the litigation process. In cases in which such an eventuality seems likely, the facility should be referred to the technical assistance program.

Discussed below are some examples of good and bad advice to give.

- **Wood Preserving Industry** (good example): "You might want to try either sweeping or blowing the sawdust and residues off the wood before treating it so you can lower the trash that gets into the holding tank. That might lower the amount of waste sludge you have to worry about."
- **Metal Plating** (good example) "If you let the workpiece hang a little longer over the tank, more of the solution will drain back into it, and you'll probably have less drag-out "

Parts Cleaning (good example): "I saw one company that had switched to aqueous cleaners, instead of using solvents. It seemed to work really well and it really cut down their waste stream. I don't know the details, but our technical assistance people can help. Their number is...."

The following example shows advice that is too technical, requires capital-intensive modification, endorses a specific product, and is given in a way that could lead the facility to understand that the changes should be made to come into compliance.

- **Printing** (bad example): "Company X put in a Wamco Mark IV ink-recycling unit to reuse waste inks. You should do the same. It might take care of some of your regulatory problems, and it will save you a whole lot of money."

Overhead 19-40
Further Actions To Promote
Waste Minimization

Further Actions To Promote Waste Minimization

OECA is currently exploring the addition of a module to the RCRA Inspector Training Institute held in conjunction with NEIC in Denver to address waste minimization. The training will help define pollution prevention with regard to the RCRA inspector, define the role of the inspector, and outline the recommended activities the inspector should do, as well as provide basic technical information on waste minimization techniques. OECA also recommends that all RCRA inspectors attend any pertinent training held by the Regions and other organizations, such as OPP, to better familiarize themselves with the subject.

As an incentive program for all RCRA enforcement personnel, OECA is adding participation in pollution prevention activities to the list of qualification criteria for the RCRA Enforcement Award. Doing so will recognize and reward outstanding and innovative approaches to the inclusion of pollution prevention in the RCRA enforcement program. OECA encourages all Regions and states to develop their own incentive programs to encourage further activities.

LECTURE

ENVIRONMENTAL JUSTICE

Overhead 19-41**Overview of Environmental Justice**

Ask trainees how they would define environmental justice, according to what they know or think environmental justice means

Note on a flip chart the definitions provided by the trainees.

The objectives of this section are to

- Define environmental justice for Superfund technical staff so they will understand issues that affect low-income and minority communities and how EPA can address those issues
- Describe the origins of the federal government's environmental justice concerns and the program developed in response to those concerns so EPA staff will understand the multiagency approach taken by the federal government to solving such issues and EPA's role in that approach
- Develop communication and other community involvement skills to achieve environmental justice objectives, including recognizing situations that may include issues related to environmental justice, addressing those issues, and communicating effectively with the affected communities that the concerns have been addressed

Overhead 19-42**Environmental Justice Defined**

Compare the definition(s) of environmental justice offered by the trainees with this definition.

Refer to the definitions on the flip chart when defining environmental justice. Ask the trainees whether they agree with the definition or whether it should be modified

Fair Treatment

Environmental justice is the fair treatment of all people under environmental laws, without discrimination based on race, ethnicity, culture, or economic status. Fair treatment means that no racial, ethnic, or socioeconomic group should bear a disproportionate share of the negative environmental consequences resulting from the operation of industrial, municipal, and commercial enterprises and from the execution of environmental laws and policies.

Equal Share of Negative Consequences

Note that this definition extends beyond equality in the execution of environmental laws. It also extends to equitable distribution of negative environmental effects so that no particular group is burdened by a disproportionate share of such effects.

INSTRUCTOR NOTES

SUGGESTED CONTENT

Overhead 19-43 The Need for the Environmental Justice Program

The following factors led to the creation of the Environmental Justice Program.

Low-Income and Minority Populations

Low-income and minority populations are exposed to higher levels of environmental pollutants than the general public.

Numerous studies document that race and socioeconomic status correlate with an unequal exposure to air pollution, pesticide exposure, lead poisoning in children, consumption of contaminated fish, and, possibly, toxins and other hazardous materials on the job.

Racial Discrimination

The 1971 annual report to the President of the Council on Environmental Quality included an acknowledgement that racial discrimination has affected the ability of the urban poor to elevate the quality of their environment

Location of Hazardous Waste Sites

The 1987 study by the United Church of Christ of the location of hazardous waste sites across the United States found that race was the most significant factor correlated with residence near a hazardous waste site

Environmental Leadership Summit of 1991

The Environmental Leadership Summit of 1991, attended by more than 650 members of grassroots and community activist organizations, adopted a platform calling for an end to environmental inequities that affect low-income communities and people of color around the world.

Environmental Equity Workgroup

A study prepared by the Environmental Equity Workgroup produced three significant findings

Clear differences exist among racial groups in rates of disease and death; however, data are lacking on environmental health effects by race and income, with the exception of lead poisoning -- a significantly higher percentage of African American children than children of other ethnic backgrounds have high levels of lead in their blood.

- Low-income and minority populations experience higher-than-average exposures to some air pollutants, hazardous waste facilities, contaminated fish, and pesticides in the workplace.

Native Americans are a unique ethnic group that has a special relationship with the federal government and that faces distinct environmental problems. Tribes generally lack the physical infrastructure, institutions, trained personnel, and resources necessary to protect their members.

Overhead 19-44
Environmental Justice
Program: Federal Response

Environmental Justice Program: Federal Response

Executive Order 12898 (February 11, 1994) committed the federal government to the principles of environmental justice and directs agencies to incorporate environmental justice into their mission by developing procedures and timetables for identifying and resolving disproportionately high and adverse human health or environmental effects of federal programs, policies, and activities on low-income and minority communities.

Environmental Justice Interagency Working Group

The government established the Environmental Justice Interagency Working Group to.

Provide guidance to the agencies on identifying problems
Work with the agencies to develop strategies
Coordinate health research, data collection, and analysis
Develop interagency model projects
Hold public meetings

INSTRUCTOR NOTES

SUGGESTED CONTENT

Overhead 19-45 Environmental Justice Program: EPA Initiatives

The Office of Solid Waste and Emergency Response (OSWER) plans to establish Regional interagency environmental justice task forces

Environmental Justice Program: EPA Initiatives

In 1992, EPA created the Office of Environmental Equity, since renamed the Office of Environmental Justice, to address adverse environmental effects on low-income and minority communities. The Office of Environmental Justice has many functions:

- Coordinating with other federal agencies activities related to issues of environmental justice
- Providing communication, outreach, education, and training for the public

Providing technical and financial assistance to outside groups

- Serving as a central repository of information about environmental justice

Activities of the Office of Environmental Justice include:

- Administering the Environmental Justice Grants Program to provide financial assistance to community groups
- Operating the environmental justice hotline (1-800-962-6215)

The National Environmental Justice Advisory Council was established to advise the EPA Administrator on issues related to environmental justice.

In 1993, OSWER's Environmental Justice Task Force was established to analyze environmental justice issues specific to waste programs and to develop recommendations. In 1994, the Environmental Justice Task Force issued a report detailing OSWER's strategy for achieving EPA's environmental justice goals. The task force made the following recommendations specific to the CERCLA program:

- The creation of community advisory groups (CAG) to enhance public involvement in the Superfund process in low-income and minority communities. CAGs are designed to provide early, direct, and meaningful public involvement in the process, as well as respond to the growing awareness that minority and low-income populations may have been overlooked in past efforts to encourage public participation

Development of proactive site assessment procedures that allow early identification of sites in areas in which environmental justice is an issue of concern.

The Office of Emergency and Remedial Response (OERR) and the Regions will evaluate the remedy selection process to determine its effect on environmental justice issues, focusing on ways to identify areas of concern early in the process before issues become problems.

The task force also made the following recommendations specific to the RCRA program

- Technical assistance guidance should be developed for state and local governments
- The Office of Solid Waste (OSW) should develop methods for factoring environmental justice into public health considerations and expanding public involvement in siting and permitting issues. OSW also should examine whether its methods of setting priorities for the corrective action program adequately address concerns related to environmental justice.

Overhead 19-46 Environmental Justice Discussion Questions

The facilitated discussion is meant to allow the group to exchange ideas about the implementation of an effective environmental justice strategy, while directing their attention toward a few key issues. Allow the trainees to carry the discussion, while making sure

Environmental Justice Discussion Questions

How have EPA's actions and policies contributed to the sense of injustice in low-income and minority communities over the years?

- Failed to recognize special concerns in these communities
- Failed to recognize relative political powerlessness in these communities, mistaking a lack of initiative for a lack of interest
- Failed to address local concerns in decision making
- Failed to communicate effectively with local community

INSTRUCTOR NOTES

SUGGESTED CONTENT

they consider the questions
Note responses on the flip
chart.

Other factors that contributed to the sense of injustice include

Factors beyond EPA's control that have contributed to that
same sense of injustice
State and local issues (zoning and permits)
Actions by other federal agencies (siting and abandonment)
Poverty and racial prejudice

What can EPA staff do to overcome the barriers of poverty
and racism?

What specific activities can be undertaken in such communities
to build public trust?

Establish a CAG or community working group (CWG) to
promote community involvement.

Translate site documents and fact sheets, if necessary.

- Hold frequent availability sessions.
- Work with informal community leaders, such as ministers
and teachers.
- Be honest.
- Followup on issues of special concern.
- Work with other agencies to provide needed services to the
community.

Overhead 19-47 Environmental Justice in Our Work

Ask the trainees to share
personal experiences they have
had with environmental justice
issues

Environmental Justice in Our Work

Environmental justice should be incorporated into our daily
lives and our approach to our work. We can achieve that goal
by empathizing with communities that have environmental
justice concerns and considering their needs in our daily
decisions. Specific actions EPA staff can take include:

- Learning about the community in which they are working
- Understanding cultural diversity
- Understanding the limits that poverty imposes on options
and opportunities

Overhead 19-48 Supplemental Environmental Projects

In settlements of environmental enforcement cases, EPA will
require that the alleged violators achieve and maintain
compliance with federal environmental laws and regulations.
In certain cases, to further EPA's goals to protect and enhance
public health and the environment, environmentally beneficial
projects, or supplemental environmental projects (SEP), may be
included in settlements. EPA policy identifies the types of
projects that qualify as SEPs, the penalty reduction appropriate

INSTRUCTOR NOTES

SUGGESTED CONTENT

Overhead 19-49 Penalties

for a particular SEP, and the terms and conditions under which SEPs may become part of a settlement. The primary purpose of the policy is to obtain protection of and improvement in environmental and public health that may not have occurred without such settlement incentives.

In settling enforcement actions, EPA requires that alleged violators promptly remedy the violations and remediate any harm caused by the violations. EPA also seeks substantial monetary penalties to deter noncompliance. Penalties promote environmental compliance and help protect public health by deterring future violations by the same violator and deterring violations by other members of the regulated community. Penalties help ensure a level playing field by ensuring that violators do not obtain an unfair economic advantage over their competitors that made the necessary expenditures to comply on time. The existence of penalties also encourages companies to adopt pollution prevention and recycling techniques, so that they minimize their discharges of pollutants and reduce their potential liabilities. In fact, a company that eliminates its discharges of a toxic chemical also eliminates any potential liability (for both penalties and cleanups) associated with such discharges.

Overhead 19-50 Factors Governing Penalties

Statutes administered by EPA generally contain provisions for the assessment of penalties that set forth factors that a court or administrative judge must consider in determining an appropriate penalty at trial or a hearing. In pursuing settlements, EPA generally follows these criteria in exercising its authority to establish an appropriate penalty. In doing so, EPA generally considers such factors as the economic benefit associated with the violations, the gravity or seriousness of the violations, and the entity's prior history of violations. Evidence of a violator's commitment and ability to perform a SEP is also a relevant factor that EPA considers in establishing an appropriate settlement penalty. All else being equal, the final settlement penalty will be lower for a violator that agrees to perform an acceptable SEP, compared with that levied against a violator that does not agree to perform a SEP.

EPA encourages the use of SEPs. While penalties play an important role in environmental protection by deterring violations and creating a level playing field, SEPs can play an additional role in securing significant protection of and improvement in environmental or public health. SEPs may not be appropriate in the settlement of all cases, but they are an

**Overhead 19-51
Supplemental Environmental
Projects**

important part of EPA's enforcement program. SEPs may be particularly appropriate in furthering the objectives of the statutes EPA administers and in achieving other policy goals, including the promotion of pollution prevention and environmental justice

The Pollution Prevention Act of 1990 (42 U.S.C. 13101 *et seq* , November 5, 1990) identifies an environmental management hierarchy in which pollution "should be prevented or reduced whenever feasible; pollution that cannot be prevented should be recycled in an environmentally safe manner, whenever feasible, pollution that cannot be prevented or recycled should be treated in an environmentally safe manner whenever feasible, and disposal or other release into the environment should be employed only as a last resort.. " (42 U.S.C. 13103). In short, preventing pollution before it is created is preferable to trying to manage, treat, or dispose of it after it is created.

Selection and evaluation of proposed SEPs should be carried out in accordance with this hierarchy of environmental management -- that is, SEPs involving pollution prevention techniques are preferred over other types of reduction or control strategies; that fact can be reflected in the degree of consideration accorded to a defendant or respondent before calculation of a monetary penalty. Since pollution prevention is easily definable as a technique or process, it is a separate category of SEP.

Further, there is an acknowledged concern, expressed in Executive Order 12898 on environmental justice, that certain segments of the nation's population are burdened disproportionately by exposure to pollutants. Emphasizing environmental justice in the performance of a SEP helps ensure that persons who spend significant portions of their time in areas or depend on food or water sources located near areas where violations occur would be protected. Because environmental justice is not a specific technique or process but an overarching goal, it is not listed as a category of SEP, but is a consideration that should encourage negotiation of SEPs in communities in which environmental justice may be an issue.

INSTRUCTOR NOTES

SUGGESTED CONTENT

Overhead 19-52 Evaluation of SEP Projects

In evaluating a potential project to determine whether it qualifies as a SEP and then determining how much mitigation of penalty is appropriate, EPA enforcement and compliance personnel are advised to apply the following five-step process

- (1) Ensure that the project meets the basic definition of a SEP.
- (2) Ensure that all legal guidelines are met
- (3) Ensure that the project fits within one (or more) of the designated categories of SEPs.
- (4) Calculate the net present after-tax cost of the project and determine the appropriate mitigation of the penalty.
- (5) Ensure that the project satisfies all implementation and other criteria.

Overhead 19-53 Characteristics of SEPs

This discussion should include any particular experiences with environmental justice issues the trainees have had.

SEPs are defined as **environmentally beneficial projects** that a violator agrees to undertake **in settlement of an enforcement action**, but which the violator is **not otherwise legally required to perform**. The three key parts of this definition are discussed further below.

Environmentally Beneficial

The term "environmentally beneficial" means the primary beneficiary of the SEP must be the public, public health, or the environment at large. While, in some cases, a SEP may provide the alleged violator with certain benefits, there must be no doubt that the project primarily benefits the public.

Settlement of an Enforcement Action

The phrase "in settlement of an enforcement action" means that (1) EPA has the opportunity to help shape the scope of the project before it is implemented and (2) the project is not begun until EPA has identified a violation or initiated an enforcement action (inspection, notice of violation, administrative order, or complaint).

Not Otherwise Legally Required to Perform

The phrase "not otherwise legally required to perform" means the SEP may not be required by any federal, state, or local law or regulation. Further, SEPs cannot include actions that the violator may be required to perform as injunctive relief in the instant case or in another case or otherwise is required to perform for compliance with state or local requirements.

No Reduction of Requirements of Federal Environmental Statutes and Regulations

The performance of a SEP reduces neither the stringency nor the timeliness requirements of federal environmental statutes and regulations. Of course, performance of a SEP does not alter a defendant's or respondent's obligation to remedy a violation expeditiously and return to compliance.

**Overhead 19-54
NEXUS and Legal Guidelines****EPA Has Broad Discretion**

EPA has broad discretion to settle cases, including the discretion to include SEPs as an appropriate part of the settlement. The legal evaluation of whether a proposed SEP is within EPA's authority and consistent with all statutory and constitutional requirements may be a complex task. Accordingly, EPA policy recognizes and establishes a "nexus" requirement and four other legal guidelines to ensure that inclusion of SEPs is within EPA's and a federal court's authority and does not run afoul of any constitutional or statutory requirements.

NEXUS

NEXUS is the requirement that there be a relationship between the violation and the proposed project. There is sufficient nexus if the project remediates or reduces the probable overall effects of the violation on environmental or public health or the risks to which the violation at issue contributes, or if the project is designed to reduce the likelihood that similar violations will occur in the future. If the violation adds incrementally to the total environmental risk, SEPs within the immediate geographic area or ecosystem may have sufficient nexus, even if the SEP addresses a different pollutant in a different media.

Legal Guidelines

In addition to having sufficient nexus, SEPs must satisfy four legal guidelines.

- (1) A project must advance at least one of the declared objectives of the environmental statutes that are the basis of the enforcement action. Further, a project cannot be inconsistent with any provision of the underlying statutes.
- (2) Projects that require a defendant or respondent to pay a set amount of money to a third party or to establish a fund should be limited to cases in which a strong nexus with the violation exists and the activities on which the money will be spent are specified fully in the signed settlement agreement -- the "what, where, and when" of a project must be determined by the settlement agreement. Neither EPA nor any other federal government official can play any role in managing or controlling the funds. EPA may provide oversight to ensure that a project is implemented pursuant to the provisions of the settlement and have legal recourse if the SEP is not performed adequately
- (3) The type and scope of each project are set forth in the signed settlement agreement. For example, settlements in which the defendant or respondent agrees to spend a certain sum of money on a project(s) to be identified later (after EPA or DOJ signs the settlement agreement) generally are not allowed
- (4) A project cannot be something that EPA itself is required under statute to do. In addition, a project must not provide EPA with additional resources to perform an activity for which Congress has appropriated specific funds. For example, if EPA has developed a brochure to help a segment of the regulated community comply with environmental requirements, a SEP may not provide additional resources directly or indirectly for revising, copying or distributing the brochure.

Exceptions

There may be some cases in which projects that do not clearly satisfy the requirement nexus and other legal guidelines nevertheless are still acceptable. Such projects require the advance review and approval of Headquarters

Penalties in Settlement of Violations

In addition, EPA's policy on SEPs may be applied in determining the appropriate amount of stipulated penalties that EPA may accept in settlement of violations of a consent decree or other settlement document. Depending on the language of the settlement agreement providing for the stipulated penalties and the circumstances of the violation, the use of a SEP to mitigate stipulated penalties may raise legal concerns under the Miscellaneous Receipts Act, 31 U.S.C. 3302(B). Because of the complexity of such issues, the litigation team must receive advance approval from Headquarters before agreeing to acceptance of a SEP to mitigate a stipulated penalty.

**Overhead 19-55
Categories of SEPs**

EPA has identified seven categories of projects that can qualify as SEPs. To be accepted as a SEP, a proposed project must satisfy the requirements of at least one category, plus all other requirements established in EPA's policy. The seven categories of SEPs are:

**Overhead 19-56
Public Health SEPs****Public Health**

A public health project is defined as one that provides diagnostic, preventive, or remedial components of human health care that are related to the actual or potential damage to human health caused by the violation. Such projects may include collection and analysis of epidemiological data; medical examinations of potentially affected persons; collection and analysis of blood, fluid, or tissue samples; medical treatment, and rehabilitation therapy.

Public health SEPs are acceptable only when the primary beneficiary of the project is the population that was harmed or put at risk by the violations

Overhead 19-57
Pollution Prevention SEPs**Pollution Prevention**

A pollution prevention project is one that reduces the generation of pollution through "source reduction," that is, any practice that reduces the amount of any hazardous substance, pollutant, or contaminant entering any waste stream or otherwise being released into the environment before recycling, treatment, or disposal. (After the pollutant or waste stream has been generated, pollution prevention is no longer possible, and the waste must be handled by appropriate recycling, treatment, containment, or disposal methods.)

Source reduction may include modifications of equipment, technology process, or procedure; reformulation or redesign of products, substitution of raw materials; and improvements in housekeeping, maintenance, training, inventory control, or other operation and maintenance procedures. Pollution prevention also includes any project that protects natural resources through conservation in increased efficiency in the use of energy, water, or other materials. "In-process recycling," wherein waste materials produced during a manufacturing process are returned directly to production as raw materials on site, is considered a pollution prevention project

In all cases, to meet the definition of pollution prevention, a project must bring about an overall decrease in the amount or toxicity of pollutants released to the environment, not merely a transfer of pollution from one medium to another. This decrease can be achieved directly or through increased efficiency (conservation) in the use of energy, water, or other materials. This requirement is consistent with requirements of Pollution Prevention Act of 1990 and the Administrator's "Pollution Prevention Policy Statement: New Directions for Environmental Protection," dated June 15, 1993.

Pollution prevention SEPs are acceptable when the primary effect of the project takes place at the site where the alleged violation occurred, at a different site in the same ecosystem or within the immediate geographic area, or at another site or facility owned by the defendant or respondent

**Overhead 19-58
Pollution Reduction SEPs****Pollution Reduction**

If the pollutant or waste stream already has been generated or released, a pollution reduction approach -- which employs recycling, treatment, containment, or disposal techniques -- may be appropriate. A pollution reduction project is one that results in a decrease in the amount or toxicity of any hazardous substance, pollutant, or contaminant entering any waste stream or otherwise being released into the environment by an operating business or facility by a means that does not qualify as "pollution prevention." Such projects may include the installation of more effective end-of-process control or treatment technology. They also include "out-of-process recycling," wherein industrial waste collected after the manufacturing process or consumer waste materials are used as raw materials for production off site, reducing the need for treatment or disposal or consumption of energy or natural resources

Pollution reduction may include "an accelerated compliance project," wherein a defendant or respondent agrees to meet a forthcoming requirement for emissions reduction substantially (two years or more) before the regulatory or statutory deadline, resulting in significant reduction of pollution. Such a project, however, is not allowable if the regulation or statute provides a benefit (for example, a higher emissions limit) to the defendant or respondent for early compliance or results in the replacement of a pollutant with one of similar toxicity, without a significant reduction in quantity.

**Overhead 19-59
Environmental Restoration
and Protection SEPs****Environmental Restoration and Protection**

An environmental restoration and protection project is defined as one that goes beyond repairing the damage caused by the violation to enhance the condition of the ecosystem or immediate geographic area adversely affected. Such projects may be those that restore or protect natural environments (such as ecosystems) or artificial environments, such as facilities and buildings. Also included is any project that protects the ecosystem from actual or potential damage resulting from the violation or improves the overall condition of the ecosystem. Examples of such projects include: reductions in discharges of pollutants that are not the subject of the violation to an affected air basin or watershed; restoration of a wetland along the same avian flyway in which the facility is located, or purchase and management of a

watershed area by the defendant or respondent to protect a drinking-water supply when the violation (for example, a reporting violation) did not damage the watershed directly but could lead to damage caused by unreported discharges. This category also includes projects that provide for the protection of endangered species (for example, developing conservation programs or protecting habitat critical to the well-being of a species endangered by the violation)

With regard to artificial environments, projects may involve the remediation of facilities and buildings, provided such activities are not required otherwise under law. Such projects include the removal or mitigation of contaminated materials, such as soils, asbestos, and leaded paint, that are a continuing source of releases or threats to individuals.

Environmental restoration and protection SEPs are acceptable when the primary effect of the project takes place at the site where the alleged violation occurred, at a different site in the same ecosystem or within the immediate geographic area, or at another facility or site owned by the defendant or respondent.

Overhead 19-60
Assessments and Audits

Assessments and Audits

Assessments and audits that are not otherwise available as injunctive relief are potential SEPs under this category. Assessments eligible to be treated as SEPs include pollution prevention assessments, as well as site assessments of the type described below. In some situations, environmental management system audits and compliance audits are also potential SEPs.

Pollution prevention assessments are systematic, internal reviews of specific processes and operations designed to identify and provide information about opportunities to reduce the use, production, and generation of toxic and hazardous materials and other wastes. To be eligible for SEPs, such assessments must be conducted under a recognized pollution prevention assessment or waste minimization procedure to reduce the likelihood of future violations.

Site assessments are inspections of the condition of the environment at a site or of the environment affected by a site, or inspections of threats to human health or the environment at a site. Such assessments include, but are not limited to, inspections of levels or sources of contamination in any

environmental medium at a site; inspections of discharges or emissions of pollutants at a site, whether from active operations or through passive transport mechanisms; ecological surveys related to a site; natural resource damage assessments, and risk assessments. To be eligible as SEPs, such assessments must be conducted in accordance with recognized protocols, if available, applicable to the type of assessment to be undertaken.

An environmental management systems audit is an independent evaluation of a party's environmental policies, practices, and controls. Such evaluation may encompass the need for: (1) a formal corporate environmental compliance policy and procedures for implementation of that policy; (2) educational and training programs for employees; (3) equipment purchase, operation and maintenance programs; (4) programs for environmental compliance officers; (5) budgeting and planning systems for environmental compliance; (6) monitoring, record keeping, and reporting systems; (7) in-plant and community emergency plans; (8) internal communications and control systems; and (9) hazard identification and risk assessment

Environmental compliance audits are an independent evaluation of a defendant's or respondent's compliance with environmental requirements. Credit is given for the costs associated with conducting the audit. While the SEP should require that all violations discovered by the audit be corrected promptly, no credit is given for remedying the violation because persons are required to achieve and maintain compliance with environmental requirements. In general, compliance audits are acceptable as SEPs only when the defendant or respondent is a small business. Since most large companies routinely conduct compliance audits, to mitigate penalties for such audits would reward violators for performing an activity that most companies already perform. In contrast, such audits usually are not performed by small businesses, perhaps because they may be too expensive.

These two types of assessments and environmental management system audits are allowable as SEPs without a commitment by the defendant or respondent to implementation. Implementation is not required because it is difficult to draft implementation requirements before the results of the study are known. Further, many of the implementation recommendations originating from such studies may concern activities that are in the defendant's or

respondent's own economic interest. Such assessments and audits are acceptable as SEPs only when the defendant or respondent agrees to provide EPA with a copy of the results of the study.

Such assessments and audits are acceptable when the primary effect of the project takes place at the same facility, at another facility owned by the violator, or at a different facility in the same ecosystem or within the immediate geographic area (for example, a publicly owned wastewater treatment works and its users).

**Overhead 19-61
SEPs That Promote
Environmental Compliance**

Environmental Compliance Promotion

An environmental compliance promotion project provides training or technical support to a regulated party to: (1) identify, achieve, and maintain compliance with applicable statutory and regulatory requirements; (2) avoid committing a violation of such statutory and regulatory requirements; or (3) go beyond compliance by reducing the generation, release, or disposal of pollutants beyond the levels imposed by legal requirements. For these types of projects, the defendant or respondent may lack the experience, knowledge, or ability to implement the project itself, if so, the defendant or respondent should be required to contract with an appropriate expert to develop and implement the compliance promotion project.

Acceptable projects can include, for example, producing or sponsoring a seminar directly related to correcting widespread or prevalent violations within the defendant's or respondent's economic sector or conducting a media campaign funded by the defendant or respondent to discourage tampering with automobile pollution control equipment.

Environmental compliance promotion SEPs are acceptable only when the primary effect of the project is focused on the regulatory program requirements that were violated and when EPA has reason to believe that compliance in the sector would be advanced significantly by the proposed project. For example, if the alleged violations involved violation of requirements for pretreatment under CWA, the compliance promotion SEP must be directed at ensuring compliance with those requirements.

Overhead 19-62
SEPs for Emergency
Planning and Preparedness

Emergency Planning and Preparedness

An emergency planning and preparedness project is defined as one in which a defendant or respondent provides assistance, such as computers and software, telephone and radio communication systems, chemical emission detection and inactivation equipment, HAZMAT equipment, or training for first responders to chemical emergencies to a responsible state or local planning entity. The entity therefore can fulfill its obligations under the Emergency Planning and Community Right-to-Know Act (EPCRA) to collect information to assess the dangers of hazardous chemicals present at facilities within its jurisdiction, to develop emergency response plans and to train emergency response personnel. Such SEPs will enhance response capabilities that directly or indirectly are affected by the violations.

EPCRA requires regulated sources to provide information on production, storage, and use of chemicals to state emergency commissions (SERC), local emergency planning committees (LEPC), and local fire departments (LFD). States and local communities then can plan for and respond effectively to chemical accidents and inform potentially affected citizens of the risks posed by chemicals present in their communities, thereby enabling them to protect the environment or ecosystems that could be damaged by an accident. Failure to comply with EPCRA impairs the ability of states and local communities to meet their obligations and places emergency response personnel, the public, and the environment at risk from a chemical release.

Emergency planning and preparedness SEPs are acceptable when the primary effect of the project takes place within the same emergency planning district or state in which the violations occurred. Further, this type of SEP is allowable only when the SEP involves noncash assistance and when violations of EPCRA and reporting violations under CERCLA Section 103 are alleged in the complaint.

INSTRUCTOR NOTES

SUGGESTED CONTENT

Overhead 19-63 Unallowable SEPs

Except for projects that meet the specific requirements of one of the seven qualifying categories of SEPs, the following types of projects are not allowable as SEPs:

- General educational or public environmental awareness project -- for example, sponsoring public seminars, conducting tours of environmental controls at a facility, or promoting recycling in a community
- Contributions to environmental research at a college or university
- A project that, although beneficial to a community, is unrelated to environmental protection -- for example, making a contribution to a charity or donating playground equipment
- Studies or assessments that do not include a commitment to implement the results

Projects that are funded by low-interest federal loans or federal grants

Overview: Multimedia Inspections and Enforcement

- Define multimedia
- Define holistic approach
- Advantages and disadvantages of teams
- Advantages and disadvantages of multimedia inspections
- Four categories of inspections
- Targeting and resources
- Team skill requirements



Definition of the Term Multimedia

- Includes all environmental programs (for example, air, water, hazardous waste, pesticides) and all related environmental laws, regulations, or permits



Multimedia Compliance Inspections

Intended to determine a facility's compliance with all applicable laws, regulations, and permits



Definition of a Holistic Approach

"A holistic approach means approaching a facility as a whole by understanding the process(s) and not limiting the scope of the inspection to any one statute or set of ideals (Don't walk around with blinders on!)."



Advantages of the Team Approach to Compliance Inspections

- More eyes and ears involved in an inspection
- More diversity of knowledge and background with several inspectors
- Ability to share inspection tasks
- Ability to obtain immediate consultation with colleagues
- More comprehensive evaluation of facility



Disadvantages of the Team Approach to Compliance Inspections

- More resource intensive (before, during, and after the inspection)
- Fewer inspections (as a result of the use of more resources on a single inspection)
- Extensive coordination required



Advantages of Multimedia Inspections

- More comprehensive and reliable assessment of facility's compliance, with fewer violations missed
- Improved enforcement support and better potential for enforcement

(continued)



Advantages of Multimedia Inspections

- Higher probability that problems will be exposed or prevented before they occur, avoiding any environmental or public health risk
- Ability to respond more effectively to nonprogram-specific complaints, issues, or needs and develop better understanding of problems and issues affecting several media, such as waste minimization



Industry Comments

- Reduce the number of visits by inspectors
- Easier to get questions answered and address problem issues
- Inspectors develop better understanding of facility operations or problems
- More thorough inspections



Other Issues

Larger case settlements

Greater impact on regulated community and public

Improvements in environmental management systems



Disadvantages of Multimedia Enforcement Cases

- Resource-intensive
- Enforcement requirements differ from statute to statute
- Difficulty in getting all regulators working together



Four Types of Multimedia Inspections

Category A

→ Program-specific compliance inspection

Category B

→ Screening for potential violations in other programs during program-specific compliance inspection

Category C

→ Concurrent and coordinated program-specific compliance inspection

Category D

Comprehensive inspection of facility



Team Skills Required for Type A Inspections

- None: a single person skilled in a particular medium (John Wayne)



Team Skills Required for Type B Inspections

- Inspector with skill in a particular medium
- Ability to communicate with personnel of other media programs at the conclusion of the inspection (John begins to socialize)



Team Skills Required for Type C Inspections

- The team leader should be able to:
 - Lead an inspection
 - Collect, organize, and integrate individuals to form team
 - Coordinate activities of the team members
 - Prepare inspection reports
- Team members:
 - Communicate with the team leader
 - Conduct their individual inspections
 - Write the report and provide it to the team leader

(John forms a posse)



Team Skills Required for Type D Inspections

- The team leader assumes the role of team supervisor
- Team members:
 - Pursue active communication between the leader and other team members
 - Conduct inspections within their areas of expertise
 - Identify areas of concern for other members
 - Write report and provide summary information to the team leader(John enlists the services of "The Wild Bunch")



Four Types of Multimedia Inspections

Category A

Program-specific compliance inspection

Category B

Screening for potential violations in other programs during program-specific compliance inspection

Category C

Concurrent and coordinated program-specific compliance inspection

Category D

Comprehensive inspection of facility



Overview of Pollution Prevention and Waste Minimization

- Pollution prevention and waste minimization
- Hazardous and Solid Waste Amendments of 1984
- Pollution Prevention Act of 1990



Waste Minimization

- Definition of waste minimization
- Source reduction and recycling
- Source reduction
- Recycling, energy recovery, treatment, and disposal
- A first priority in hierarchy



Source Reduction

- Prevents the generation of wastes and environmental releases and conserves natural resources
- Is the preferred approach to environmental management

(continued)



Source Reduction

- Source reduction includes reducing:
 - Hazardous and solid wastes
 - Environmental releases
 - Use of raw material
 - Inventory losses
 - Spills and accidental releases
 - Use of energy
 - Use of water
 - Packaging wastes



Source Reduction Goals

- Source reduction goals include:
 - Conserve natural resources and materials
 - Use environmentally sound products
 - Prevent product losses
 - Prevent spills and releases
 - Minimize waste generation



Source Reduction Techniques

- Techniques include:
 - Improvements in process efficiency
 - "Green" purchasing
 - Substitution of materials
 - Improvements in supply system
 - Good housekeeping
 - Preventive maintenance



Improvements in Process Efficiency

- Improvement of process efficiency is:
 - The most effective means of conserving materials and resources
 - Measured by the time, labor, equipment, materials, and energy required for accomplishing a task

(continued)



Improvements in Process Efficiency

- Examples include:
 - Use a high-volume, low-pressure (HVLP) paint gun for painting operations
 - Use centralized fluid distribution systems
 - Use automated parts washers



"Green" Purchasing

- Reduce your impact on the environment by changing your purchasing decisions
- Examples include:
 - Purchase products that have the least amount of packaging
 - Use reusable products instead of disposable items
 - Purchase less toxic products
 - Use products having recycled content



Substitution of Materials

- Replace hazardous chemicals with less toxic alternatives
- Examples include:
 - Use soap and water instead of solvent
 - Purchase water-based paint instead of solvent-based paint



Improvements in Supply System

- Reduce product losses resulting from expiration of shelf life and overstocking
- Improved inventory control can be achieved by:
 - Restricting access to supply areas
 - Maintaining accurate inventory records to prevent overstocking
 - Purchasing materials with limited shelf-life in small quantities
 - Practicing "just-in-time" inventory control
 - Practicing "first-in, first-out" inventory procedures



Good Housekeeping

- Keeping a clean shop:
 - Conserves resources and materials
 - Prevents product losses
 - Prevents spills and leaks
- Excessive cleaning is not good



Preventive Maintenance

- Includes any activity that might prevent equipment malfunctions and releases to the environment
- Examples include:
 - Routinely inspecting equipment and storage containers
 - Fixing problems immediately
 - Following standard operating procedures



Recycling

- Refers to the practice of using materials produced as wastes in either the same or a different process after reprocessing
- Is the next preferable approach after source reduction
- Typically requires expenditures of time and money



What Can You Recycle?

- Applies to any material or resource associated with a process that otherwise would be considered a waste
- Can take place either on site or off site



The Environmental Management Hierarchy

- The environmental management hierarchy consists of
 - 1) Prevention
 - 2) Recycling
 - 3) Treatment
 - 4) Disposal



Basic Waste Minimization Requirements of HSWA

- Hazardous waste generators submit waste minimization information as part of the biennial reports
- Generators certify on manifest that waste reduction program is in effect
- As a permit requirement, all TSDFs must certify annually that waste reduction system is in place



Minimum Requirements for Inspectors for Waste Minimization

- Checking the manifest
- Checking the biennial report and operating record
- Other waste minimization language
- Outreach



Checking the Manifest

- Appropriate language on manifest
- Signed by generator or authorized representative
- Waste minimization plan in place



Checking the Biennial Report and Operating Record

- Submitted during even-numbered years
- Contains certification of waste minimization program
- Report and observations should correspond
- Known omissions can result in criminal investigation



Other Waste Minimization Language

- Check for enforceable waste minimization requirements in documents
 - Permits
 - Enforcement documents
 - Settlement agreements
- Note discrepancies in inspection report for later follow-up



Outreach

- Recommend and distribute waste minimization literature
- Refer facility to technical assistance program for specific advice
- Provide basic advice when appropriate



Further Actions To Promote Waste Minimization

- Training for the inspector
- Incentive programs



Overview of Environmental Justice

- Define environmental justice
- Describe the origins of concern about environmental justice
- Develop community involvement skills



Environmental Justice Defined

- Fair treatment
- Equal share of negative consequences



The Need for the Environmental Justice Program

- Low-income and minority populations
- Racial discrimination
- Locations of hazardous waste sites
- Environmental leadership summit of 1991
- Environmental Equity Work Group



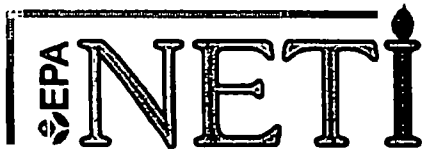
Environmental Justice Program: Federal Response

- Executive Order 12898
- Environmental Justice Interagency Working Group



Environmental Justice Program: EPA Initiatives

- Office of Environmental Justice
- National Environmental Justice Advisory Council
- OSWER Environmental Justice Task Force
- OSWER recommendations



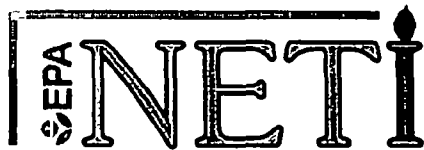
Environmental Justice Discussion Questions

- Injustice in low-income and minority communities
- Other factors that contribute to injustice
- Overcoming the barriers
- Activities that build public trust



Environmental Justice in Our Work

- Learn about the community
- Understand cultural diversity
- Understanding the limits that poverty imposes on options and opportunities



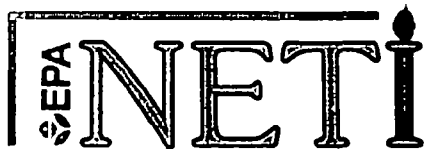
Supplemental Environmental Projects

- To further EPA's goals to protect and enhance public health and the environment
- To obtain protection that might not occur otherwise



Penalties

- Promote environmental compliance
- Protect public health by deterring future violations
- Send a message to regulated community
- Ensure no economic advantage by noncompliance



Factors Governing Penalties

- Economic benefit derived from violation
- Gravity of violation
- Prior history
- Ability to pay



Supplemental Environmental Projects

- Pollution prevention
- Environmental justice



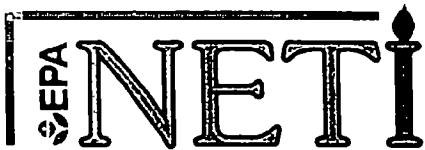
Evaluation of SEP Projects

- Meets definition
- Satisfies legal guidelines - NEXUS
- Fits in a SEP category
- Represents an after-tax cost proportionate to mitigation of penalty
- Satisfies implementation and other criteria



Characteristics of SEPs

- Environmentally beneficial projects
- In settlement of an enforcement action
- Not otherwise required under law
- Have no effect on compliance requirements



NEXUS and Legal Guidelines

- Relationship between violation and project
- Must advance objectives of applicable statute
- "What, when, and where" determined by settlement agreement
- Type and scope stated in settlement agreement
- Cannot be a project that is required by statute



Categories of SEPs

- Public health
- Pollution prevention
- Pollution reduction
- Environmental restoration and protection
- Assessments and audits
- Environmental compliance promotion
- Emergency planning and preparedness



Public Health SEPs

- Provides diagnostic, preventive, or remedial support to those at risk from a violation
- Application of public health SEPs



Pollution Prevention SEPs

- Occurs before pollutants or waste streams are generated
- A variety of source reduction activities are possible
- Does not apply to the mere transfer of pollution
- Application of pollution prevention SEPs



Pollution Reduction SEPs

- Appropriate after pollutants or waste streams are generated
- Accelerated compliance project
- Application of pollution reduction SEPs



Environmental Restoration and Protection SEPs

- Restore and protect natural and artificial environments
- Includes remediation of buildings and facilities
- Application of environmental restoration and protection SEPs



Assessment and Audit SEPs

- Must not be otherwise available as injunction relief
- Identify opportunities to reduce waste
- Site assessments
- Environmental management system audits
- Environmental compliance audits
- Application of assessment and audit SEPs



SEPs That Promote Environmental Compliance

- Provides training or technical support to regulated parties
- Includes seminars and media campaigns
- Provides training or technical support to regulated parties
- Application of environmental compliance promotion SEPs

SEPs for Emergency Planning and Preparedness

- Provide assistance to state and local planning entities under EPCRA
- EPCRA requires that facilities provide information on production, storage, and use of chemicals
- Application of emergency planning and preparedness SEPs



Unallowable SEPs

- General public education
- University research
- Projects unrelated to environmental protection
- Studies without commitment
- Projects funded by low-interest federal loans or grants



Notes

SESSION 20

TOPIC: OVERVIEW OF CRIMINAL PROGRAM INSTRUCTOR'S OVERVIEW

Time: 240 minutes

PURPOSE	<p>Introduce inspectors to criminal enforcement and explain how to recognize potential criminal violations</p> <p>Provide an overview of criminal litigation</p>
KEY POINTS	<ul style="list-style-type: none">· Inspectors are involved in every aspect of an enforcement case· Inspectors should recognize potential criminal violations and refer them for investigation.· Inspectors should know the names of their criminal investigator contacts
ADVANCE PREPARATION	<p>Prepare to describe an EPA criminal case in your Region that was referred by an inspector and developed/prosecuted successfully.</p>
EQUIPMENT	<ul style="list-style-type: none">· Overhead projector· Slide projector
OVERHEADS	<ul style="list-style-type: none">· 20-1 Principal Differences Between Civil and Criminal Enforcement· 20-2 "Red Flags" That Indicate Possible Criminal Activity
SLIDES	<ul style="list-style-type: none">· To be developed by instructor

Introduction

Introduce yourself, mentioning your background and EPA experience and your role in the course.

LECTURE**OVERVIEW OF CRIMINAL PROGRAM**

This session is intended to give inspectors a sense of the history of the criminal program and an overview of the program. As you discuss the various points, be sure to emphasize the ways in which inspectors are involved

If this course is taught solely to a state, local, or tribal audience, the instructor should be someone from that governmental entity - or at least someone familiar with the applicable criminal laws

History & Background**1. Formation**

- a. 1982 formation of CID by Congress
- b. USEPA decision to employ 1811's

2. Federal Law Enforcement Authority

- a. Execute arrest and search warrants
- b. Carry firearms

3. Transfer from USEPA-HQ to NEIC**4. Pollution Prosecution Act passed 1990**

- a. Transfer to USEPA - HQ
- b. Mandate to hire at least 200 agents
- c. Establishment of numerous RAC offices in EPA office and U.S. Attorney - 10 Regional Offices

5. Size of CID past & Present

- a. 1982 - 23
- b. 1997 - over 200

Overview of Criminal Enforcement

Criminal investigations always are led by EPA's criminal investigative staff. The Office of Criminal Enforcement, Forensics, and Training (OCEFT), Criminal Investigation Division (CID) has special agents in each Regional office and Headquarters.

Regular EPA inspectors (and other staff, such as scientists) who are involved in criminal investigations are given special training at the Federal Law Enforcement Training Center (FLETC) in Glynnco, Georgia.

OCEFT-CID in Headquarters and the Offices of Regional Criminal Counsel work with the criminal investigators and DOJ in actual prosecution of criminal cases.

Because of the special legal issues associated with criminal investigations and the rights of the accused, inspectors who become involved in criminal investigations always should follow the direction of the special agent in charge (SAIC) or the resident agent in charge (RAIC).

**Overhead 20-1
Principal Differences Between
Civil and Criminal
Enforcement**

The principal differences between civil and criminal enforcement are that, in criminal cases.

- Searches of property can occur only with consent or with a warrant based on sworn testimony that there is "probable cause" to believe a crime has been committed
- The defendant has other constitutional guarantees
- Discovery of government-held information is limited, except for information that would tend to show the innocence of the accused
- The burden of proof is more strict than that for civil cases: "beyond a reasonable doubt"
- The penalties are more severe imprisonment or a fine, or both (Some statutes allow felony sanctions, under which corporations and their individual officers are potential defendants)

Statutes Investigated by CID

1. Environmental Statutes

a. Resource Conservation & Recovery Act (RCRA)

1. Generator
2. Transporter
3. Storage
4. Disposal

**b. CERCLA (Comprehensive Environmental Response,
Compensation & Liability Act aka "Superfund"**

1. Emergency Notification
2. Release into atmosphere
3. Reportable Quantity

c. Clean Water Act

1. NPDES Permitting (direct discharge)
2. Pretreatment (Industrial Users to POTW)
3. Oil Pollution Act (1990)
4. Wetlands

d. Clean Air Act (CAA)

1. Asbestos - Renovation & Demolition - Falsification
of Certificates
2. Emissions with NOV
3. Gray Market

e. Toxic Substance Control Act (TSCA)

1. PCB's
2. Dioxins

f. Safe Drinking Water Act (SDWA)

1. Regulates public drinking water systems
2. Underground Injection Control Program (UIC)

**g. Federal Insecticide, Fungicide & Rodenticide Act
(FIFRA)**

h. Marine Protection Research Act (MPRSA)

i. Medical Waste Tracking Act (MWTa)

j Emergency planning & Community Right to Know Act (EPCRA)

1. State emergency response commissions

2 Related Environmental Statutes

a. Hazardous Materials Transportation Act (HMTA)-DOT

1. Regulates interstate commerce
2. U.S. Dept. of Transportation

b. Endangered Species Act - Fish & Wildlife

c Migratory Bird Act - Fish & Wildlife

3 Title 18, U.S.C., Federal Criminal Code

- a. Conspiracy (§ 371)
- b. Mail & Wire Fraud (§ 1341 & 1343)
- c. False Statements (§ 1001)
- d. Extortion (§ 871)
- e. Explosives (§ 831)
- f. RICO (§ 1961) Racketeer Influenced and Corrupt Organizations

How EPA Conducts a Criminal Investigation

All initial leads to potential criminal activity are referred to the SAIC or RAIC

Depending on the reliability of the lead, a preliminary inquiry may be conducted or assessment made to determine whether a complete investigation is warranted.

The SAIC or RAIC notifies OCEFT and the Office of Regional Counsel (ORC) and brings in technical staff from the program office(s), as needed.

The special agent who manages the investigations:

Determines the basic investigative approach

Leads the conduct of interviews and the assembling and review of records

Plans and executes surveillances

INSTRUCTOR NOTES

SUGGESTED CONTENT

Coordinates actions with the U.S. attorney's office and other federal, state, and local law enforcement agencies

Contacts other witnesses

- Completes investigative reports

Inspectors assigned to assist in an investigation work under the direction of the special agent

EPA policy is to neither confirm nor deny the existence of a criminal investigation. Any requests for information must be referred to the special agent.

EPA must comply with the requirements of the Jencks Act, which is designed to allow the defendant to have all relevant information provided by a government witness so that the defendant can attempt to impeach.

- If the defendant's ability to cross-examine is hindered because the government lost information -- whether purposely or inadvertently -- the court may refuse to allow the witness to testify at all or to strike the entire testimony of the witness.
- It is EPA policy to turn over all relevant notes, records, and reports to the defense, if so requested through the court -- after direct examination.
- Because of the requirements of the Jencks Act, it is vital that inspectors keep accurate and complete notes, records, and reports that are factual and contain no opinions or biases. In addition, inspectors should throw nothing away, not even scraps of paper.

All material associated with a criminal investigation must be kept according to security procedures.

DISCUSSION

RECOGNIZING POTENTIALLY CRIMINAL VIOLATIONS

Inspectors are not expected to be able to determine whether criminal behavior has taken place at a facility. However, they

INSTRUCTOR NOTES

SUGGESTED CONTENT

should be able to recognize the types of activities that warrant referral to the criminal investigation staff.

Generally, criminal behavior falls into one of these categories

Knowing or willful violation of the law (all statutes)

Negligent actions (in violation of requirements under the Clean Water Act [CWA])

False or fraudulent reporting (all statutes)

- Intent

Knowledge

Prior civil/administrative actions for similar or like activities

Deception

Deception

Significant actual or potential harm to environment

- Significant actual or potential harm to individuals or animals

Ask the group to identify ways to recognize violations. Points to cover, if not raised by the group, are shown in the column to the right and on the overhead.

Evidence of criminal wrongdoing is usually subtle. If inspectors observe anything suggesting criminal behavior, consult with the criminal investigation unit.

Typical Activities Which are NOT Criminal

1 Accidental Occurrences

2 Regulatory Offenses

3 Civil offenses for which there are no criminal sanctions

Overhead 20-2
"Red Flags" That Indicate
Possible Criminal Activity

Listed below are some red flags that suggest criminal action may have taken place. If one or more of such signals are discovered, consult with the criminal investigation unit

Conflicting data: two sets of books or inconsistent monitoring reports on the same incident.

- *Conflicting stories:* an inspector is led to believe one thing and sees something different in records or through observations.

Unsubstantiated data. monitoring or other recordkeeping and reporting data lack credibility

Deliberate actions: an employee says he was told to do something the inspector knows is illegal.

- *Claims of ignorance about requirements:* copies demonstrating knowledge are discovered in the records, or statements during interviews demonstrate knowledge

Criminal Indicators for
Environmental Crime
(handout)

Discussion Questions:

INSTRUCTOR NOTES

SUGGESTED CONTENT

Some suggested questions to stimulate discussion are shown in the column to the right

What other types of indicators of a criminal violation might be discovered? How deeply should the EPA inspector probe before referring the situation to the criminal investigation staff?

- Has any trainee been involved in a criminal investigation? How was the experience different from routine inspection work? What aspect of the investigation did the trainee find most difficult? Was there sufficient coordination between offices?

Case Development

- 1 Obtain information or allegation
 - a Regional EPA
 - b. State & local regulatory agencies
 - c Disgruntled employees
 - d Anonymous
2. Background & regulatory review
3. Determine if regulated by statutes/regulations
4. Does it meet criminal requirements
5. Requirement for immediate response
6. Probable evidence & its sources
7. Gather evidence using investigative methods
- 8 Prepare for prosecution
9. Indictment or information
10. Trial preparation

Search Warrants

1. Consent Searches
2. Search incident to an arrest or other warrantless searches

Criminal Search Warrants

1. Probable cause that an environmental crime has been committed

- a. RCEC
- b. Regulatory personnel
- c. Assistant U.S. Attorney (AUSA)

- 2. Probable cause that evidence of the crime will be found at a particular place that is in the possession of a suspect
- 3. Particularly describe place to be searched
- 4. Particularly describe things to be seized

Grand Jury

- 1. Federal Grand Jury: 16-23 members
- 2. Only witness, attorney for gov't, and stenographer
- 3. Case agent is an agent of the GJ
- 4. Prosecutor asks GJ to vote on recommended indictment
- 5. Secrecy Rule 6(e)(2)
 - a. Prevent escape of those who may be indicted
 - b. Ensure utmost freedom of GJ deliberations
 - c. Prevent tampering with witnesses & subornation of perjury
 - d. Ensure free disclosures

Parallel Proceedings

- 1. Simultaneous pursuit of criminal prosecution and civil judicial or agency administrative enforcement actions against the same parties for the same violation based upon the same statute.
- 2. Two separate teams for civil & criminal
- 3. Civil may share info with criminal staff
- 4. Criminal may share info with civil staff until Grand Jury proceedings

5. No information gathering solely for developing evidence used subsequent to criminal action

6. Halper/Double Jeopardy considerations - Civil sanction "overwhelmingly disproportionate" and determined to be punitive.

Investigative Case Study

Slide Presentation

CERCLA & CWA violations

Title 18 U.S.C. § 371

Northern District of Indiana

Handout 20-1

CRIMINAL INDICATORS FOR ENVIRONMENTAL CRIME

1 Bad compliance history, Notices of Violation (NOV's), confusing status of a facility, administrative compliance orders,

These can be issued through the Region, state, or local regulatory agency

Reviewing your Region's regulatory files as well as those maintained by the state and locals provides information and leads in these areas. Interviewing the inspectors at all levels can provide leads and valuable information as they usually talk to lower level managers and employees.

2 Look for several companies interconnected through the same individuals. Also look at the subsidiaries for large companies and sister companies in different states using the same production methods

Unscrupulous individuals may open numerous small companies to conceal movement of waste and/or violation of the environmental laws.

State incorporation documents and annual reports will show officers of a company. Also check Dunn and Bradstreet; will show sister companies and subsidiaries

3 Declaration of Bankruptcy

Often companies use this to avoid cleanup of hazardous waste stored and/or accumulated at a facility. Categorical users to the sewer systems often use this or just abandon a plant

4 Non notifying status; either does not notify or changes status frequently.

Hazardous waste generators do this as well as industrial users who claim their treatment system is "a closed system " with no discharge; therefore are not regulated or have to submit to sampling.

5. Hiring several consultants and environmental firms to generate conflicting reports.

Many companies hide behind these consultants to prove their "concern" for the environment without actually remedying their criminal activities

6 Same company re-emerges at different locations with different names (Usually same plant manager and/or "Environmental Manager")

7. Selection of business locations away from metropolitan areas that have more sophisticated and rigorous industrial user programs for regulation.

This occurs in large cities where companies move to suburbs to avoid close environmental scrutiny. Often some suburbs have few industries so they have less personnel to monitor companies' activities

8 Low paid employees, non English speaking, along with a history of OSHA violations.

Usually these employees working under poor conditions with little training and lack of knowledge of any environmental regulations.

9 History of refusing inspections or long delays at the front door before regulatory people are allowed access

These tactics allow for illegal activities and other circumventions of the regulatory system to shut down before inspection and detection

Principal Differences Between Civil and Criminal Enforcement

Warrants based on "probable cause"

Other constitutional guarantees

Burden of proof: "beyond a reasonable doubt"

More severe penalties: imprisonment or fine

"Red Flags" That Indicate Possible Criminal Activity

Conflicting data

Conflicting stories

Unsubstantiated data

Deliberate actions

Claims of ignorance about requirements

SESSION 21

TOPIC: WRAP UP AND EVALUATION INSTRUCTOR'S OVERVIEW

Time: 60 minutes

PURPOSE	· Answer any questions outstanding and to obtain an evaluation of the overall course.
KEY POINTS	Students and instructors will identify any key points or areas that should be addressed.
ADVANCE PREPARATION	· Refer to specific text reference, all chapters.
EQUIPMENT	· Flip chart
LIST OF VISUALS	None
LIST OF HANDOUTS	Course Evaluation

COURSE EVALUATION
Basic Inspector Training Course
National Enforcement Training Institute

ORGANIZATION. _____ NAME (Optional) _____

Years of Experience as an Inspector: _____ Job Title: _____

Course Date(s): _____

Please take a few minutes to assist us in evaluating this training program. Please comment and make recommendations for improvements in future courses.

1. I FEEL THE OVERALL PROGRAM WAS:

_____ VERY WORTHWHILE _____ WORTHWHILE _____ OF SOME VALUE _____ OF LITTLE
VALUE

COMMENTS:

2. ORGANIZATION OF PROGRAM AND MATERIAL WAS:

_____ EXCELLENT _____ SATISFACTORY _____ INADEQUATE

COMMENTS:

3. PRESENTATION AND MATERIAL:

_____ WERE APPROPRIATE _____ EXCEEDED NEEDS OF THE CLASS _____ WERE INSUFFICIENT FOR CLASS
NEEDS

COMMENTS:

4. **HOW WELL DID THIS COURSE MEET YOUR PURPOSE:**

_____ EXCELLENT _____ TOO BASIC _____ TOO TECHNICAL _____ SATISFACTORY

COMMENTS:

5. **WHICH PRESENTATION(S) DID YOU THINK WERE MOST BENEFICIAL AND WHY?**

6. **WHICH PRESENTATION(S), IF ANY, DO YOU THINK SHOULD BE REMOVED FROM THE COURSE AND WHY?**

7. **WHAT CHANGES, IF ANY, DO YOU THINK WOULD IMPROVE THIS TRAINING COURSE?**

8. **ADDITIONAL COMMENTS ON COURSE, SPEAKERS, FACILITY, OR OTHER ASPECTS OF THE COURSE**

