



Environmental Compliance: Before, During, and After an Inspection

John B. King

john.king@bswllp.com

(225) 381-8014

Before the Inspection...

- Compliance culture and system
- Housekeeping
- Record-keeping
- Availability of records

Before the Inspection...

Compliance culture and system

- Company-wide commitment to ensuring rules are followed
 - corporate policy and statement of commitment
 - buy-in by management – corporate and facility
 - backed up with possible disciplinary measures
- Systematic method in place to...
 - understand applicable rules
 - place into compliance plans (such as SWPPP/SPCC)
 - monitor day-to-day compliance at facility/unit level
- Inspection plan
 - designate primary and secondary personnel and responsibilities
 - identify location of records
 - training as to environmental laws, permits, and inspection plan

Before the Inspection...

Housekeeping

- Meaning(s)
 - orderly
 - not sloppy
 - everything in its place
- Creates a good first impression
- Visual statement to LDEQ that company values compliance
- Examples
 - used oil drum in containment, with spill kit next to it, no stained soil
 - hose curled up or on a rack
- Use internal inspections to assist in maintaining day-to-day
 - SWPPP/SPCC include inspections and documentation
 - units may have their own daily walk-throughs

Before the Inspection...

Record-keeping

- Rules/permits require records to be kept
 - Air Permit - Part 70 General Conditions I, J
 - LPDES Permit – Part III, Sections C.3, 4
- Mainly for regulatory agency to verify compliance
- Systematic method in place to...
 - understand what records are required to be kept by regulations/permit
 - determine who will keep records
 - determine how records will be kept (computer/paper)
 - determine where records will be kept

Before the Inspection...

Availability of records

- Generally, should be available at facility
 - some rules/permits allow 'central facility'
- General rule(s)
 - readily available
 - compliance staff knows ...
 - where the records are located
 - how the records are stored/labeled
 - how to retrieve the records
- Segregate environmental records from other documents
 - do not want to inadvertently turn over internal/ proprietary/financial documents
 - eliminates potential problems during stress of inspection
- Have in a descriptively labeled binder/folder or computer file
 - "DMR – 2012 – May"
 - SWPPP/SPCC inspection records - in same binder with the actual plan

During the Inspection...

- Basis for inspection
- Behavior during
- Records/Copies
- Correction
- Photos
- Sampling
- Exit interview

During the Inspection...

Basis for inspection

- Types
 - annual monitoring - to assure compliance with law, regulations, and permit
 - exigency - limited to matters reasonably related to exigent condition
- Permit is conditioned on allowing inspections
 - Air Permit - Part 70 General Condition H; LPDES Permit – Part III, Section C.1
- Allowed to...
 - enter the premises and inspect facilities, equipment, practices, or operations
 - sample emissions/discharges
 - have access to and review records required to be kept
- Warrantless inspections allowed in pervasively regulated industries
 - must show identification
 - announce purpose of the inspection
 - follow facility safety, internal security, and fire protection rules
- Refusal to allow entry, interference with/impeding the inspection
 - can get court order and subjects company to penalties

During the Inspection...

Behavior during

- Opening Conference
 - determine nature, scope, duration of inspection
 - ask them what they want to see, make arrangements to accommodate
 - allows company to determine personnel needs
- Cooperation
 - adversarial behavior only creates problems
 - non-cooperation makes agency wonder what the facility is hiding
- Assign a knowledgeable company person to each inspector
 - never let an inspector wander about unescorted
 - Inspection Plan should designate these individuals
- Questions/information requests
 - document each agency question/request
 - truthfully answer but no need to volunteer information
 - document the company's response

During the Inspection...

- Records/Copies
 - allowed access to all records required to be kept
 - allowed to copy records at agency expense
 - keep a copy of each document requested and provided
 - refusal leads to civil penalties
 - refusal may lead to criminal penalties
 - *US v. Pruett and La. Land & Water Company*, 681 F.3d 232 (5 Cir. 2012)
- Correction
 - if possible, correct right then and there
 - document the correction with notes and photo, if possible
 - example – put hazardous waste label on drum
- Photos
 - allowed to take (although not mentioned in statute)
 - take same photo as agency and get a copy of each photo taken
 - if of a proprietary process, tell inspector and immediately seek confidentiality

During the Inspection...

- Sampling
 - agency allowed to take samples
 - agency must give “a receipt describing the sample” (the chain of custody form)
 - if requested and if practical, agency must provide a split sample
 - facility should...
 - closely watch how the sample is taken
 - always request a split sample
 - analyze for the same parameters as agency
- Exit interview
 - should provide a Field Interview Form (FIF)
 - review FIF for errors before inspector leaves
 - inspector will detail its area(s) of concern during exit interview
 - facility should note every area of concern the agency mentions
 - request inspector notes in FIF any corrections made during inspection

After the Inspection...

- Internal company meeting
- Corrective action
- Response
- Potential actions
- Penalties

After the Inspection...

- Internal company meeting to ‘de-brief’ company participants
 - conduct as soon as possible after inspection ends
 - collect participant's notes and clarify action items (such as document requests)
- Corrective action
 - correct any areas of concern/violations not addressed during inspection
 - document corrective action (internal memo and photos)
 - disagreements with agency over areas of concern/violations
 - determine if cost/effort of ‘compliance’ outweighs ‘non-compliance’
 - meet and discuss with LDEQ
- Response
 - provide to agency inspector as soon as possible
 - detail correction of areas of concern/violations and actions taken in response
 - provide documents and/or confirm document requests
 - include request for interim authority, if needed
 - for longer-term items, provide status and steps to compliance
 - for disagreements, ask for meeting with agency to discuss

After the Inspection...

Potential Actions

- No action
- Violations Clear Letter
 - no areas to correct and agency does not seek penalty
- Compliance Order (CO)
 - to correct areas of concern/violations not yet corrected
 - agency not seeking penalty
 - could include interim limits or compliance schedule
- Consolidated Compliance Order & Notice of Potential Penalty
 - CO and agency seeks penalty
- Notice of Potential Penalty
 - no areas to correct but agency seeks penalty
- Settlement Agreement

After the Inspection...

Penalties

- Based on 'Nine Factors' in statute (La. R.S. 30:2025.E)
 - ostensibly used to determine whether to issue a penalty
- Amount determined by 'Penalty Rule' (LAC 33:I.Chapter 7)
 - violation specific risk, nature and gravity
classified as major, moderate, minor for each
used to determine penalty range in matrix
 - violator-specific compliance history, gross revenues,
mitigation, culpability/recalcitrance,
reported v. concealed used to adjust
amount within penalty range
 - monetary benefits discretionary
document costs of corrective actions
 - enforcement costs mandatory
agency will recoup



QUESTIONS?

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