



# **Environmental Compliance: Before, During, and After an Inspection**

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# 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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