

Environmental Manager

Responding to Environmental Inspections



**A regulatory inspection can occur at any time.
The best way to successfully handle an inspection
is to be prepared for it before it happens**

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One of the most unsettling experiences in a company's existence may be the surprise regulatory inspection by a representative of the U.S. Environmental Protection Agency (EPA) or a State Environmental Agency. What if you refuse to let them in? What are your rights? How can you best ensure that the inspection goes smoothly? This article briefly summarizes the government's environmental inspection authority and provides some practical tips on how to prepare for and survive an environmental inspection.

Preparing for an environmental inspection should be viewed as any other necessary business activity. A company's best chance of successfully surviving an environmental inspection is to be prepared for it before the inspector is knocking at the door. This involves both reviewing the company's compliance with applicable regulations as well as having a plan in place for handling an inspection when it occurs.

Governmental authority

Most environmental regulatory agencies have broad inspection authority to determine a company's compliance

with the environmental laws and regulations that the agencies enforce. In many cases, this includes the authority to inspect processes and monitoring equipment, to copy records, and to take samples of materials stored or used at the facility, as well as discharges and emissions from the facility.

An inspection may be limited to a single issue (such as compliance with the company's air permit), may be a "multi-media" inspection intended to determine a facility's compliance with all applicable environmental laws and regulations, or may be in response to a specific complaint (for example, a neighboring property-owner's complaint about runoff or dust from your facility). The scope of an inspection will be determined by the purpose of the particular visit.

If your facility has an environmental permit, the permit likely includes a condition granting the issuing agency the right to inspect your facility for the purpose of determining compliance with the permit. If you refuse to let the inspector enter, you may be in violation of your permit and the inspector may be able to return with a search warrant, sometimes even on the same day. A potential advantage of denying access is that it may provide a brief chance to correct problems. However, denial of access may lead the inspec-

tor to believe the company is hiding something and you will have lost whatever goodwill you may have otherwise had with the inspector. If there is any doubt as to what inspection authority an agency has in a particular situation, consult with legal counsel immediately.

Preparing for an inspection

Companies should assume that an environmental investigation may occur at any time and have a general plan for what should happen when an inspector arrives. Companies should designate an official who is authorized to allow an inspector access to a facility and who will be the inspector's primary point of contact, as well as a backup person in case the primary contact person is not available.

The best way to ensure that an environmental inspection goes smoothly is to be in compliance with all applicable environmental laws and regulations pertaining to your operations. Know your company's operations, keep your permits up-to-date, and understand what your responsibilities are. Environmental compliance documents, such as inspection records and logbooks, should be organized and physically segregated from internal or privileged documents that would not normally be subject to inspection (for example, compliance audits and/or attorney-client-privileged communications).

If you do not have the necessary environmental expertise in-house to determine whether your facility is in compliance, consult with an experienced

consultant or environmental counsel. Consider conducting an internal environmental audit to identify and correct any deficiencies before an inspector arrives. Use a checklist to make sure you don't inadvertently overlook something. Once you are satisfied that your facility is in compliance, periodically review your operations to make sure they remain in compliance with the latest regulatory developments.

What to do during the inspection

When government inspectors show up at your facility, consider the following actions:

1. Immediately notify the appropriate company official. If an environmental inspector is on-site, immediately notify the company official who has been designated to be the agency's primary point of contact. Ask the inspector to wait until the designated person arrives to escort him or her around the facility.

2. Review the inspector's credentials. Only authorized government officials are allowed to conduct inspections. Local citizens or environmental advocacy groups generally do not have the right to enter and inspect private property without the property owner's knowledge and informed consent.

3. Let them in (or refuse entry in limited circumstances). Although there are a few valid reasons for denying a government inspector access to a facility, entry should be refused only if there is a compelling reason to do so, such as if the inspector does not have the safety equipment required by the facility (see Item 5, below).

4. Determine the scope. Request an initial conference and an explanation of the scope of the investigation. If the inspector indicates that it is a criminal investigation, consult with an attorney and ask the inspector to wait for the attorney to arrive at the facility. Make sure that the inspection is conducted in strict compliance with the search warrant.

5. Be safe. Require all inspectors to take the same types of safety precautions that employees and visitors are required to take. If this includes the use of hard hats, safety goggles, or

other personal protective equipment, then the inspector should wear the same equipment and take the same precautions, just as any employee or visitor would.

6. Be courteous. Treat visiting government inspectors with respect and courtesy. An inspection can provide an opportunity to develop a good relationship with an inspector with whom the company may have to deal for many years to come.

Be responsive and provide the inspectors with the information they ask for, but also be careful what you say. You do not have any obligation to volunteer additional information. If you do not know or don't have the information they are asking for, do not speculate or guess at the answer. Simply indicate that you will find out the answer and provide it in a timely manner. Never misrepresent facts or lie to an inspector.

7. Accompany the inspector everywhere. No matter how busy you are, do not let the inspector wander around the facility unattended. The designated company representative should accompany the inspector throughout the facility. Try to avoid taking an inspector anywhere that is not within the scope of the inspection, but be careful about denying access to an area of the facility that the inspector specifically asks to see, as that may lead the inspector to think you have something to hide and they may be able to return with a warrant.

Take notes on what the inspector observes and any particular items of interest. If they take samples of any materials or discharges from the facility, take duplicate samples and request copies of laboratory analytical results and any photographs taken by the inspector.

8. Manage document productions. Environmental regulations and permits require many types of documents to be kept, and these are all "fair game" in an inspection. This does not mean that the inspector is entitled to see every single document at the company's facility. Many documents will be unrelated to environmental issues or may be privileged or confidential. If

there is any doubt as to whether an inspector is entitled to view a particular document, consult with legal counsel.

9. Protect confidential business information. The information obtained by the inspector during the inspection may be subject to public disclosure under the Federal Freedom of Information Act or state equivalent. There are, however, several categories of information that are exempt from public disclosure, such as confidential commercial or financial information, trade secrets and so on. If any portion of your company's process or documents is confidential, advise the inspector so that he or she can take appropriate precautions.

10. Request a post-inspection debriefing. At the end of the investigation, request an exit conference with the inspector to learn of any potential adverse findings. Always request a copy of any written statement of observations or final inspection report. If the inspector identifies a need for follow-up action or potential violations, fix any violations quickly and then send a note to the inspector requesting a re-inspection. Demonstrating to the inspector that you are a responsible business trying its best to comply with all applicable laws and regulations may minimize the chance of enforcement action or fines. ■

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Author's note

This article is intended for general informational purposes only and is not legal advice to any person or entity.

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