



Effecting Change: Evidence, Documentation, and Inspection Reports

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What Do We Want?

- Positive environmental **outcomes** and **benefits**.
- Environmental regulations **to be followed**.
- Our limited resources to be used **effectively**.
- **Be able to get people to comply with our requirements!**



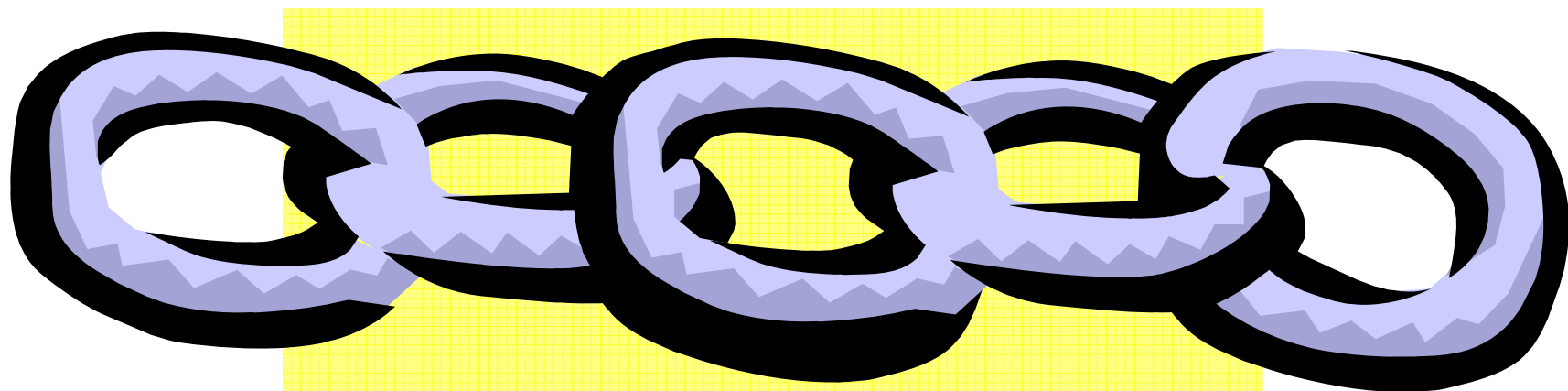
What We Will Cover

1. The “**System**” and the problem
2. A quick review of the **inspection process**.
3. What is “**evidence?**”
4. Good field “**documentation.**”
5. **Key elements** of a good inspection report.
6. Enforcement – A **change in behavior**



Recognize That Enforcement and Compliance Monitoring is a “System”

A system that contains five key links



1	2	3	4	5
Target Quality	+ Auditing Skills	+ Regulatory Knowledge	+ Communication Skills	+ Enforcement Actions



The Problem: Has this every happened to you?

Example: Facility with **ten known violations:**

10 violations

- **1 Lost**, forgot to collect evidence of violation
- **1 Lost**, could not read your notes
- **1 Lost**, missing “**elements of proof**” for violations
- **1 Lost**, poor reg. knowledge - violation not recognized
- **1 Lost**, violation buried in poorly written report

5 violations are left to enforce !!!

Do we want to waste 50% of our effort?



Review: The Inspection Process

- Pre-inspection planning and preparation
- On-site inspection activities
- Post-inspection activities

Be Prepared!





Pre-Inspection Planning and Preparation

- Where are you going and why?
 - Define scope and objectives.
- Review records and permits – **Make Notes!**
 - Identify key permit and regulatory requirements
 - Develop checklists, make notes, etc.
 - Review records and old reports
 - Talk with inspectors that have inspected facility
 - Talk with local authorities and search internet
 - Know facility ownership
- Notification of facility?
 - Do we or don't we?



Pre-Inspection Planning and Preparation

- Field Equipment – **The Minimum**
 - Notepad
 - Camera
 - Tape measure
 - Flashlight
 - Cell phone
 - Safety equipment: boots, hardhat, and safety glasses.
 - Copies of city, county, or state codes and regulations
 - If sampling (sample containers, labels, preservatives, cooler, chain-of-custody, etc.)
- Prioritize your inspection approach
 - **Worst first**
 - Go from **known to unknown**



Be Safe!



**Know what
kind of hazards
you are dealing
with!!**



On-site Activities

- Off-site surveillance (from public right-of-ways)
 - Do we see any problems?
- Site entry and first meeting
 - Present identification or credentials
 - **Start establishing rapport**
 - Explain
 - Why we are there
 - Authority to be there
 - What we will do
 - What general order we will do it in
 - How long it will take
 - **Be courteous, professional, and respectful**
- Denial of access
 - Restate authority, document time, date, who denied, and why



On-Site Activities

- First off, the inspection is **directed by you!**
 - Be polite, professional, and courteous
- Record review, visual inspection, and **evidence collection**
 - Review site activity, processes, and operations.
 - Identify sources of waste/wastewater/etc.
 - Inspect treatment processes, storage areas, etc.
- Evaluate compliance with media regulations



On-Site Activities

- Use a “compare” and “contrast” approach
 - You must train yourself to think in these terms
 - “Trust but verify” all information
- Document all occurrences of potential violations!!!
- Collect evidence to “prove” your observations and allegations of non-compliance
- Exit conference to summarize observations



Evidence and Documentation of Evidence

“Any type of proof.....legally presented at a trial.....for the purpose of inducing belief in the minds of the court or jury.” Black’s Law Dictionary



Evidence: What Are “Elements of Proof?”

“Each item or criteria of a requirement that **must** be **demonstrated** by evidence”.

- Example: Containers of hazardous waste shall be closed in storage.
- You **must** be able **to prove** that:
 - The vessel is a “**container**”, not a tank, sump, etc.
 - The material in the container is a “**hazardous waste,**” not water or other non-hazardous material.
 - The container is “**closed**” per DOT requirements.
 - The container is “**in storage.**”



Evidence

- Four types of evidence
 - **Real**
 - Samples, containers, objects or items, etc.
 - **Demonstrative**
 - Maps, flow charts, diagrams, photographs, etc.
 - **Documentary**
 - Field notes, documents, inspection report, sample results, etc.
 - **Testimonial** (oral or written assertion)
 - What you saw, said, and heard
 - What others saw, said, and heard



Evidence

- Good evidence answers
 - Who
 - What
 - When
 - Where
 - How
 - And Why
- **Must ask** for each **“fact”** collected



The Only Evidence Question: How Do I Know What I Know?

- “This is the **single most important question** an inspector **must** be able to answer”.
- It **must** be answered for **each observation or piece of information** collected or presented in an inspection report.
 - “The facility has been in operation since 1965.” How is this known? Who said so? etc.
 - “The lagoon was running into the creek” Photos? Drawings? Time? Date? Location?
 - Failure to answer this question, leads to information gaps, lack of proof, bad cases and a waste of time.



Documentation

“The procedures, methods, and techniques used to obtain **factual** and **objective** information from **people** and **their activities**.”

- Common elements include
 - Date and time
 - Location
 - Persons Present
 - Body of facts
 - Who, What, When, Where, How, and Why



Documentation

- Consists of
 - Notes, photographs and videos
 - Statements
 - Samples and measurements
 - Findings and observations etc.
- Items or materials taken or given
 - Who gave and who received?
- Reminder notes
 - Use key/buzz words to jog memory
- Recording of non-violations if necessary
 - Work of the day “**Apparent**”



Documentation

- Follow the pattern you are most comfortable with
 - Outline, bullets, sub-headings, etc.
 - Develop you own short hand
 - Initials for speaker, symbols for photos, violations, questions, etc.
- Focus on key points
- Complete sentences are not necessary
- WRITE LEGIBLY...
- Use a page numbered, waterproof, notebook (one per inspection) or checklist
 - Corrections: Line-through and initial



Documentation

- Entries should be
 - Objective/not subjective
 - Factual
 - No opinions (professional opinions, i.e., that of a Professional Engineer are appropriate as relevant to the facts observed)
 - Avoid writing potentially embarrassing notes
- Discuss unusual conditions
- Note times of specific events
- Note deviations from SOP



Documentation

- Chain of Custody

- Used to trace the possession of evidence **from the time it was obtained**, until **the time it was introduced** as evidence
- Very important for material that may be tampered with
 - Samples



Documentation: Common Problems

- Poor Questioning/Interviewing Skills.
 - Not knowing how to “get to the bottom of it.”
 - Poorly focused questions.
 - Ineffective follow-up questions.
 - Closed rather than open-ended questions.
 - Often caused by using yes/not checklists
- Not knowing the “Elements of Proof” for each statute, regulation, or permit.
 - Inspectors must know these before they do the inspection.



Documentation: Regulatory Knowledge

- How well are the statutory, regulatory, or permit requirements **known?**
 - Managers: How do you know your inspectors know?
- **Key requirements must be memorized!!!**
 - This is critical to **recognizing** and **identifying violations.**
 - It takes effort and should be rewarded.
 - Checklists help **but do not substitute for memorization.**



Inspection Reports

- Goal of the inspection:
“To identify regulated facility activities and collect information and evidence necessary to determine compliance”
- Goal of the inspection report
“To communicate what happened in an organized, complete, and factual way.”
 - Answers who, what, when, where, how, and why
 - Findings and observations should be self-evident
 - Evidence of violations or concerns should be well documented
 - Capable of supporting potential enforcement
 - Done without drawing personal conclusions



Report Writing: Communication is the **Choke Point!**

YOUR EFFORTS

- Targeting
- Hotel
- State/EPA Coord.
- Inspection Plan
- File Review
- Car
- Equipment
- Sample Plan

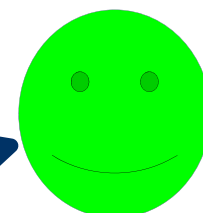
HIGH COST OF INSPECTIONS

- Reg. Review
- Driving Risk
- Documentation
- People Problems
- Training
- Site Visit
- Photos
- Meetings

**Inspection
Report**

**CHOKE
POINT**

THE RESULTS



GOOD



POOR



Report Writing: Structure

- Structure provides an **organized** approach to **communicating** your findings and observations
- Provides the basis for your inspection **plan**:
 - File review, drive-by, entry/exit conference, etc.
- **Reduces** the chance of lost information
 - Uses a separate section for each type of information.
- **Reduces** the “can’t get started” problem.



Report Writing: A Top-Notch Report

- Have a **Plan**
 - Priorities, pre-drafted inspection report, checklists, etc.
- Have a **Procedure** (SOPs)
 - Three Parts
 - **Pre-inspection**
 - **During inspection**
 - **Immediately after inspection**
- Have a good **Report Structure** (SOP)
 - Location, time and date; Participants; Purpose; Facility Description; Compliance History; Findings and Observations; Attachments (photos, copies, maps, etc.)



Report Writing: Writing Style

- Write in **first person** and use action verbs.
 - This will help ensure your actions, findings, and observations are not be misinterpreted by the reader.
- Use a “**Compare**” and “**Contrast**” writing style:
 - **Compare the Standard** - Using the actual language of the requirement or permit condition...

AGAINST:

 - **The Observations (Contrast)** – What you observed or witnessed at the facility. This is what you document as evidence to demonstrate compliance or non-compliance.
- Reference **all supporting evidence** in your report
 - Photos, drawings, statements, etc.



Report Writing

- **A good inspection report is:**
 - **Timely**, written “near in time” to the inspection.
 - **Organized** → intro, procedures, findings, etc.
 - **Clear** → Use simple words and short sentences.
 - **Scale** → Provides a sense of scale, e.g., “I reviewed 10/10 vs. 10/500 record.”
 - **Factual** → Recount only factual information, no personal opinions or comments.
 - **Referenced** → All photos, maps, and attachments must be referenced in the report.

How Do I Know What I Know?



Report Writing: Example

Potential Violation #4 - Failure To Close Hazardous Waste Satellite Accumulation Container:

On Monday morning, in the northwest corner of the paint booth (see map attachment 3), I observed one, open, 55-gallon satellite accumulation container (photo 1). I asked Mr. Helpful, the painter, what he used the drum for. He said he cleaned his painting equipment at the end of his shift and put the spent solvent in the drum. He said he stored the solvent in the drum until the drum was full, then he moved it to the hazardous waste storage area. I asked him what solvent he used. He said he used Mecos lacquer thinner (MSDS-attachment 9). I asked if the spent solvent was a hazardous waste. He said "yes," that he managed it as F003/F005 hazardous waste. I looked inside the drum and verified it was 75% full.

A container holding hazardous waste must always be closed during storage, except when it is necessary to add or remove waste, per 40 CFR 262.34(a)(1)(i), ref. 40 CFR 265. 173(a)."

Who, What, When, Where, Why, and How?



Enforcement

“The process to coerce a change in behavior”

- Two types
 - Formal
 - Fine, penalty, jail
 - Informal
 - Discussion with facility, Letter of Warning, etc.
- If you thoroughly documented your findings and observations... Enforcement is easy!
- Prepare as though you and your inspection report is **going to trial?**