

Managing an EPA Inspection

32nd Annual Env. Permitting in Ohio Conference

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Overview

- ❑ Best Practices Before an Inspector Shows Up
- ❑ Day of Inspection
 - Opening Meeting
 - Records Review
 - Tour of Facility
 - Closing Meeting
- ❑ Summary





Best Practices Before an Inspection

- ❑ Develop a brief Inspection Plan
 - Have a written protocol for how your facility will respond to an inspection
 - Identifies who will be lead, backup, and other roles
 - Identifies where records are located
 - Identifies follow up requirements
- ❑ Train employees on their roles and responsibilities during an inspection



Best Practices Before an Inspection

- ❑ Read and become familiar with your permits!
 - Maintain copies of your permits in a space that is easily accessed (by you or your backup if you are not present that day)
 - Evaluate your permit requirements vs. reality on the shop floor
 - Inform your staff of requirements
 - Have a planned backup in case you are not present on a surprise inspection



Best Practices Before an Inspection

- ❑ Make sure you can identify:
 - Each process and potential source of pollution at the facility
 - Chemicals used at the facility
 - Raw materials used at the facility
 - Pollution control devices and/or waste minimization operations at the facility
 - Process equipment installation dates
 - Facility's regulatory compliance history and/or history of spills/accidents



Best Practices Before an Inspection

- Conduct Internal Audits or consider a Third-Party Audit
 - Ensure permit requirements are being followed
 - General Housekeeping
 - A clean facility makes a good impression – complete quarterly or monthly walk-throughs to ensure the shop floor is being kept clean
 - Training
 - Keep training requirements current and documented
 - Labeling
 - Ensure required labels or signage are present and visible
 - Logbooks
 - Not as prevalent as before, but if hardcopy logbooks are still used, make sure they are being kept current





Best Practices Before an Inspection

- ❑ Organized files = less stress on inspection day
 - Make recordkeeping as simple as possible and easy to match up with permit requirements
- ❑ Documentation is key – if it's not documented, it is not done!
- ❑ Attention to detail – keep accurate and clear notes
 - The easier it is to review your records, the smoother the inspection will go
- ❑ Develop a good rapport with your facility's neighbors and surrounding community
 - Inspections are sometimes initiated by phone calls from neighbors

Inspection Day

- ❑ When Inspector Arrives
 - Find out why inspection is being done
 - Politely ask for ID
 - Request an Opening Meeting
 - If criminal inspectors are part of the group, contact counsel immediately





Inspection Day

□ Opening Meeting

- Don't forget to go over safety/PPE required with inspector(s)!
- Include the plant manager and all personnel related to the program if possible
- Discuss what is to be reviewed that day/purpose of inspection
- Discuss trade secret or confidential business information so it can be protected
- If planned inspection, review documents and other information requested in advance
- If unplanned, discuss what documents the inspector would like to review and have them easily accessible
- Discuss facility processes
- Discuss required PPE for site tour



Inspection Day

□ Records Review

- Have a backup familiar with where files are in case you are not there
- Do not give inspector files that he/she does not ask for
- Have files/permits organized and easy to review
- Take notes on what the inspector reviews and comments made





Inspection Day

□ Tour of site

- Inspector will likely want to verify the permit matches reality
- Inspector will be looking for areas/units that may need a permit
- Don't take inspector into areas that he/she doesn't ask to see!
- Inspector will want to ask questions of operators
 - Ensure that they are trained on how to answer questions from an inspector
 - Answer direct questions honestly – do not offer more information than is requested!
 - Be polite – the inspector is just doing his/her job
- Take notes on what the inspector reviews, who they talk to, and what is reviewed and discussed





Inspection Day

□ Tour of site

- Inspector may take pictures – you should take the same pictures or can request copies of their pictures
- Inspector may take samples – you should take the same samples
- Don't know the answer to a question?
 - “Let me get back to you on that”
- Always avoid arguing with the inspector!





Inspection Day

❑ Close-Out Conference

- Ask to review their preliminary findings
- Corrective Actions – is there anything we can correct now?
- Areas requiring more information?
- Next steps – when should the facility expect the formal report?





Summary

- ❑ Keep organized and current Records
- ❑ Keep good housekeeping practices
- ❑ Perform internal audits
- ❑ Have a backup selected in case you aren't there
- ❑ Prepare your staff on how to answer questions from an inspector
- ❑ Be honest
- ❑ Don't offer more information than asked
- ❑ Address deficiencies and respond to requests in a timely manner



Questions or Comments?

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Best Practices for Managing an EPA Compliance Inspection, Particularly an Unannounced Inspection

32nd Annual Environmental Permitting in Ohio
Conference

Bradley Strait, Managing Associate

Grow | Protect | Operate | Finance



Inspection Overview



Inspection Authority

- Most complaint driven inspections are unannounced, so have a plan in place, educate your employees on the plan, and practice implementing the plan. All employees should understand their respective roles if an inspector shows up unannounced.
- Once the inspector arrives, ask them to identify themselves and get a business card, they will likely be your contact if any issues arise.
- Be polite. It's in your best interest to cooperate with the inspector.
- If you deny access, the inspector can obtain a warrant and you may have to pay the costs associated with obtaining the warrant.

Inspection Authority

- The inspector may, among other things, do the following:
 - enter a premises at any reasonable time;
 - complete inspections of facilities, equipment and activities;
 - investigate environmental conditions;
 - take samples or conduct tests;
 - examine records or reports; and
 - take photographs, access and copy records.

After the Inspection

- Company will receive a Compliance Letter or a Notice of Violation (NOV) Letter
- The NOV will:
 - Describe the violations (identify specific regulations);
 - Outline the facts observed during the inspection that supports their conclusion;
 - Set forth corrective measures the facility will need to take; and
 - Provide a timeline or deadline to correct the violations.

After the Inspection

- If you have received an NOV
 - Timely respond to the NOV in writing and consider consulting with an attorney.
 - Contact the inspector with any questions, if the facts are wrong, if you need assistance correcting the violations, or if you need more time to respond.
 - Stay in contact with the inspector - the EPA's ultimate goal is compliance.
 - Importance of working together with EPA inspector

After the Inspection

Challenging the NOV - Escalating Enforcement

- If the inspector believes more formal action is required, the case may be referred to the Enforcement Unit at Ohio EPA where a committee will determine the appropriate level of enforcement to pursue.
- A Director's Final Findings & Orders (DFFO) may be issued setting forth facts that support which violations have occurred. A DFFO will set forth deadlines and proposed civil penalties.
- Possible referral from Ohio EPA to the Attorney General's Office. If the case cannot be settled, the Attorney General may file a complaint and proceed with litigation.

After the Inspection

Director's Final Actions / Orders are Appealable

- ORC § 3745.04 governs appeals to the Environmental Review Appeals Commission (ERAC) by a person who was a party to a proceeding before the Director by filing an appeal within 30 days of notice of final action.
- Pursuant to ORC § 3745.04, a final “action” includes, among other things, the issuance, modification or revocation of any lawful order (other than an emergency order), and the issuance, denial, modification, or revocation of a license or permit.
- Appeal must be filed with ERAC with a copy served on the Director within three days after filing the appeal.
- An NOV may eventually escalate to a Director's Final Action. As a general rule, you can tell when a letter or order is a “final action” when (1) the EPA director signs the letter; (2) the letter specifically states that it is a final action; (3) the letter notifies the company of its appeal rights; and (4) the letter indicates that the action has been entered into the Director's journal as a final action. See *Shelly Materials, Inc. v. Koncelik*, 2010 WL 500338 (Feb. 9, 2010).

Attorney-Client Privilege

Overview

- Attorney-client privilege protects certain communications made between attorneys and clients in the course of seeking or rendering legal advice.
- The main purpose is to encourage open dialogue and sharing of information to obtain legal advice without fear of disclosure to unintended parties.

Attorney-Client Privilege Elements

- The attorney-client privilege applies:
 - (1) where legal advice of any kind is sought
 - (2) from a professional legal adviser in his capacity as such
 - (3) the communications relating to that purpose
 - (4) made in confidence
 - (5) by the client
 - (6) are at his instance permanently protected
 - (7) from disclosure by himself or by the legal adviser
 - (8) unless the protection is waived
- The attorney-client privilege does not require that the communication pertain purely to legal advice, but if a communication between a lawyer and client would facilitate the rendition of legal services or advice, the communication is privileged.

Attorney-Client Privilege

Best Practices

- Avoid inadvertent waiver. See *Morgan v. Butler* - Ohio Court of Appeals, March 7, 2017
- If the information is disclosed to people outside the corporation, such as an inspector, the privilege may be considered waived.
- Make sure communications are sent to the proper parties.
- Ensure your employees understand the importance of not disclosing privileged or confidential information to outside parties.

Summary

- Be prepared for an unannounced inspection.
- Stay in touch with your inspector if you receive an NOV, so they can help you make steps towards compliance.
- If you disagree with the NOV, reach out to your inspector. Be prepared to explain why you disagree with the NOV.
- Follow best practices for preserving attorney-client privilege.
- Maintain a good working relationship with the Ohio EPA - you have the same goal, compliance!

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Questions?



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Managing an EPA Inspection

Racheal Davies

Ohio EPA, Southeast District Office

Division of Environmental Response and Remediation

July 20, 2023



Learning Objectives

- Understand how to prepare for an inspection
- Identify what air and hazardous waste inspectors look for
- Identify common violations found during an inspection
- Understand what to expect in the inspection report and the inspection letter

Ohio EPA Inspections

- Different divisions in Ohio EPA have their own inspectors:
 - Surface Water (direct discharge & stormwater)
 - Drinking & Ground Waters
 - Materials and Waste Management (solid, infectious)
 - Environmental Response & Revitalization (hazardous waste)
 - Air Pollution Control

A business may be inspected by different inspectors representing different programs over time. Inspectors may talk to each other. Some entities may undergo a multimedia inspection where two or more inspectors, representing different divisions, may visit at the same time.

Note: U.S. EPA may also conduct inspection in Ohio.



Ohio EPA Division's Statutory Inspection Authority

- Ohio Revised Code (ORC) 3704.03(L) (DAPC)
- ORC 3714.08 (DMWM – C&DD facilities)
- ORC 3734.07(C) (DMWM and DERR)
- ORC 6109.34 (DDAGW – Drinking Water)
- ORC 6111.05 (DSW)



Reasons for Inspection

- Annual inspections (U.S. EPA grant commitments)
 - Large permitted facilities
 - Commercial waste treatment facilities (every 2 years)
 - Large quantity generators of hazardous waste
- Complaint Investigations
- Significant noncompliance
- Special inspection initiatives (dry cleaners, salvage yards, storm water controls at construction sites)

Inspections can be scheduled in advance or unannounced per division policy. Most complaint-driven inspections are unannounced.



Before the Inspection, Have a Plan

- Know who will meet with the inspector and have a backup.
 - Plant/EHS Manager
 - Pollution control equipment operator
 - Utilities Director (if public entity)
- Ohio EPA can conduct an inspection even if the business owner is not on-site.
- Know how you (and your backup) will describe your operations, wastes, discharges, etc. to the inspector.
- Know where to find your environmental records and keep them up-to-date.
- Need assistance? Ask us!



Inspection Process



Opening
meeting



Records
review



Site
walkthrough



Closing
meeting



Inspection
follow-up



Letter

When the Inspector Arrives

- Find out why the inspection is being done (in many cases it is routine if you are a permitted entity).
- Request the identification of the inspector and ask for the inspector's business card.
- Tell the inspector about safety requirements of your plant.
- Take a deep breath and relax. Our main focus is compliance and compliance assistance.
- Answer the inspector's questions. Don't guess or make things up. If you don't have an answer, say so. Future follow up is acceptable.



Air Inspection: Records Review

- Common air related records reviewed during inspections include:
 - Records required by the permit
 - Inspection logs/visible emission checks
 - Material throughput, production rates
 - Pollution control equipment monitoring and maintenance
 - Operating records
 - Emissions test results (if required)



Air Inspection: Site Walkthrough



- Process overview
- Emissions units
- Control equipment
- Emissions points
- Visible emissions observations

“Snapshot of compliance status”

Common Air Pollution Violations



- Installing and/or operating equipment without permits
- Not maintaining records required by permits
- Excess emissions/exceeding permit limits
- Not maintaining air pollution control equipment, as required by permit
- Open burning

4 Rules of Thumb

1. Something with a stack, vent, or dust collector
2. Something that uses solvents, paints, inks, or adhesives
3. Something that burns fuel
4. Something that causes smoke, dust, or odors

Permanent exemptions are listed in OAC rule 3745-31-03. The de minimis exemption is listed in OAC rule 3745-15-05.



Hazardous Waste Inspections

HAZARDOUS WASTE
FEDERAL LAWS PROHIBIT IMPROPER DISPOSAL
IF FOUND, CONTACT THE NEAREST POLICE OR PUBLIC SAFETY AUTHORITY, THE U.S. ENVIRONMENTAL PROTECTION AGENCY OR THE NEW JERSEY DEPARTMENT OF ENVIRONMENTAL PROTECTION

GENERATOR'S INFORMATION:
NAME: _____
ADDRESS: _____ PHONE: _____
CITY: _____ STATE: _____ ZIP: _____
EPA ID NO.: _____ STATE MANIFEST DOCUMENT NO.: _____
ACCUMULATION START DATE: _____ EPA WASTE NO.: _____

D.O.T. PROPER SHIPPING NAME AND UN OR NA NO. WITH PREFIX

HANDLE WITH CARE!

Used Oil

GENERATOR INFORMATION

COMPANY _____
ADDRESS _____
CITY, STATE, ZIP _____
SOURCE _____
CONTACT _____

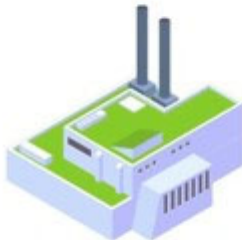
UNIVERSAL WASTE

SHIPPER _____
ADDRESS _____
CITY, STATE, ZIP _____
CONTENTS _____
ACCUMULATION START DATE _____

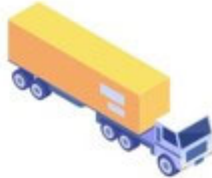


Hazardous Waste

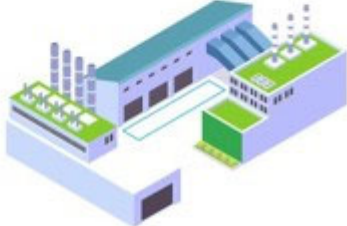
“Cradle-to-Grave” Management



Generator



Transporter



Treatment
Storage
Disposal
Facility

Hazardous Waste Generator Categories

Very Small Quantity Generator (VSQG)



Fewer Requirements

**Small Quantity Generator (SQG)
Large Quantity Generator (LQG)**



More Requirements

Permitted Treatment, Storage, and Disposal Facilities (TSDFs)

- Last link in the cradle-to-grave hazardous waste management system
- Extensive requirements for management of hazardous waste
- Management activities authorized through Ohio Hazardous Waste Facility Installation and Operation Permit



HW Inspection: Records Review

- Common hazardous waste records reviewed during inspections include:
 - Waste evaluation information
 - Manifests/Land Disposal Restriction (LDR) forms
 - Inspection logs for hazardous waste containers
 - Personnel training and contingency plan (LQG)
 - Hazardous waste tank information (if applicable)
 - Universal waste and used oil management information



HW Inspection: Site Walkthrough

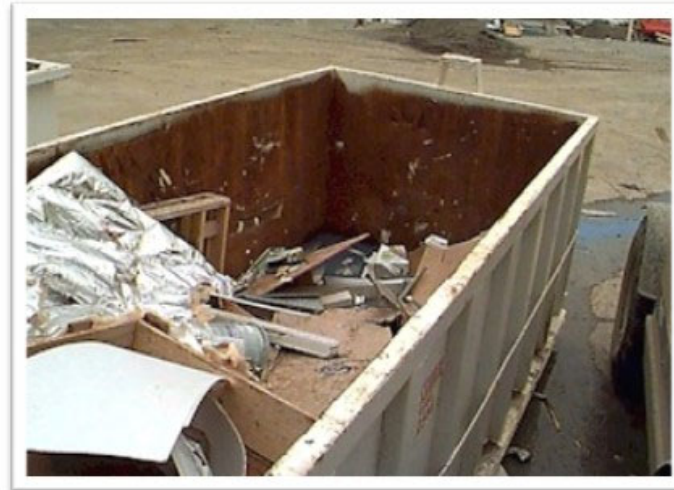
- Process operations
- Waste generation points
- Hazardous waste satellite and storage accumulation areas
- Used oil and universal waste accumulation areas
- Emergency equipment



Common Violations Hazardous Waste

Waste Evaluation

Evaluate your waste when generated and document evaluation. Based on evaluation, manage appropriately.



Waste Evaluation

Types of Hazardous Waste

Characteristic:

- Ignitable (D001)
- Corrosive (D002)
- Reactive (D003)
- Toxic (D004-D043)

Listed

- Various process waters
- Commercial chemical products
- F, K, P and U-codes

Consequences of Failing to Evaluate Waste

Unlawful treatment of hazardous waste



Unlawful storage of hazardous waste



Consequences of Failing to Evaluate Waste

Unlawful disposal of hazardous waste



Waste incompatibility



Common Violations Hazardous Waste

Container Management



Labeling – “Hazardous Waste”



Accumulation
Date



Common Violations Hazardous Waste

Container Management

Hazard Indication



Common Violations Hazardous Waste

Container Management



Open Containers

Common Violations Hazardous Waste

Container Management



Container Condition

Common Violations Hazardous Waste

Container Management



Aisle Space

Common Violations

Hazardous Waste

- Manifests and Land Disposal Restriction (LDR) notification
 - Improperly completed
 - LDR notification not maintained
- Personnel Training (LQG)
 - Lack of job titles, job descriptions, and type and frequency of training
 - Initial and annual refresher training



Common Violations Hazardous Waste

- Contingency Plan (LQG)
 - Not updated to reflect changes to facility or personnel
 - Quick Reference Guide (QRG) deficiencies
 - Not sending updates to all local emergency responders
- Failure to test and maintain emergency equipment
- Failure to inspect hazardous waste container storage areas at least weekly



Common Violations Used Oil



Labeling and releases

Common Violations Universal Waste



Packing and labeling

Closing Meeting

- Provide a general overview of what we have observed
- Review known violations
- Review concerns and potential violations
- Review any necessary follow-up

Inspection Documentation

- Typically includes:
 - Letter
 - Inspection checklists
 - Photos
 - Other documentation (visible emissions observation forms, test results, etc.)
- The full inspection package may or may not be sent to the facility, depending on division policy. You can request it



Inspection Documentation

- Letter
 - Notice of Compliance (NOC)
 - Notice of Violation (NOV)
 - NOV/Resolution of Violation (ROV)
 - Partial ROV (PROV)
 - Resolution of Violation (ROV)
 - Transmittal letter



What if Ohio EPA finds a violation?

- Typically relayed at the time of observation
- Documented in the NOV
 - Rule citation
 - Observation
 - Action Item with timeline
- NOV vs. recommendations



Navigating the NOV with Ohio EPA

- Open communication
- Be responsive
 - Requested response timeline!

Questions? Concerns? Reach out!



Remember

Ohio EPA's goal is compliance **NOT** enforcement!

- Stay current on your facility and know your processes
- Develop a pattern for recordkeeping and reports
- Make recordkeeping as simple as possible
- Foster a good relationship with neighbors



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Mr. Liebert is a Directing Consultant in ALL4's St. Louis, Missouri office. He has been working in the environmental compliance industry for 25 years and specializes in environmental regulatory applicability analysis, environmental compliance for manufacturing industries, preparation of emission inventories, environmental auditing, Title V operating permit applications, New Source Review (NSR) air permit applications, Maximum Achievable Control Technology (MACT) compliance, State Construction Permitting, and Toxic Release Inventory (TRI) reporting.

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Racheal Davies is an Environmental Specialist for Ohio EPA. She has about eleven years' experience in the Division of Air Pollution Control and recently switched to the Division of Environmental Response and Revitalization. As an Environmental Specialist, she conducts inspections and drafts permits.