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# WHAT TO DO WHEN AN EPA INSPECTOR CALLS ... PRACTICAL SUGGESTIONS TO FOLLOW BEFORE, DURING AND AFTER AN ENVIRONMENTAL INSPECTION

*Presented By: Ryan Markland*

# OVERVIEW

- Preparing for a Regulatory Agency Inspection
- Inspection Team
- Inspection Process Overview
- Day of Inspection
- After the Inspection
- Notice of Violation
- Common Violations



# PREPARING FOR A REGULATORY AGENCY INSPECTION

- Develop a regulatory agency inspection strategy
- Notify plant management and corporate EHS of inspection
- Notify consultant, if one is utilized
- Conduct overdue training
- Develop a list of compliance requirements or compliance matrix
- Understand your processes, permits, and plans

# PREPARING FOR A REGULATORY AGENCY INSPECTION

- Inspect your facility to identify compliance deficiencies
- Do a facility walkthrough to identify housekeeping issues
- Schedule a bulk shipment of multiple waste streams
- Book conference room
  - Projector/TV to display records

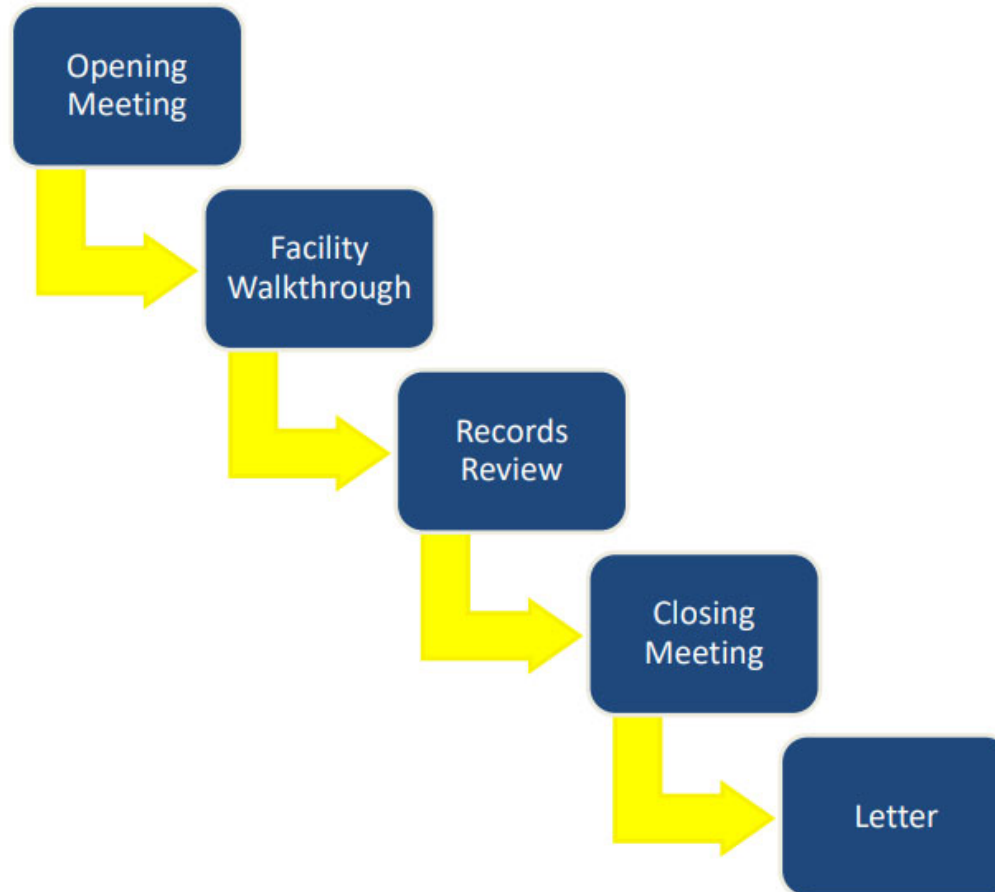
# PREPARING FOR A REGULATORY AGENCY INSPECTION

- Organize and review EH&S records including, but not limited to:
  - Permits
  - Plans
  - Report submittals
  - Training records
  - Monitoring logs and relevant spreadsheets
  - Analytical data
  - Waste manifests or Bills of Lading
  - Calibration records
  - Maintenance PMs
  - Incident reports
  - Site diagrams/figures

# INSPECTION TEAM

- Two-member team is ideal
  - EHS manager
  - Facility Engineer/Plant Manager
- Include environmental consultant (if utilized)
- Clarify roles

# INSPECTION PROCESS



# DAY OF THE INSPECTION

- Final walkthrough of site for housekeeping
- Final document prep
- Assemble PPE for visitor(s)
- Inform receptionist/security of impending agency inspection



# DAY OF THE INSPECTION

- Inspector arrives:
  - Greet at reception/security
  - Obtain inspector's identity & exchange contact information
  - Safety video/briefing
  - Determine purpose
    - Routine regulatory inspection
    - Response to complaint or accident
  - Discuss agenda
    - Plant tour → Records review?
  - Take a deep breath and relax. Focus is compliance and compliance assistance

# DAY OF THE INSPECTION

- General conduct
  - Professional and courteous
  - Answer questions honestly and directly
  - Do not speculate, guess or make things up → No answer? Say so
  - Do not admit guilt

# DAY OF THE INSPECTION

- Plant tours
  - Define inspection area
  - Avoid unnecessary site tours
  - Diagrams and maps may help initial briefing
  - Provide PPE and reiterate potential safety hazards (i.e., heavy forklift traffic, cranes)
  - If possible:
    - Inspection team members should address questions
    - Avoid employee interviews
  - Take notes

# DAY OF THE INSPECTION

- Records review
  - Inspector is entitled to inspect and receive copies of records, data, and other required information
  - Ensure at least one other person is familiar with files
  - Use discretion in granting access to files
    - Protect confidential business information (CBI) and privileged documents
  - Keep records of documents reviewed or copied

# DAY OF THE INSPECTION

- Take detailed notes
  - Areas inspected
  - Records reviewed
  - Inspector's comments or questions
  - Answers provided
  - Other relevant observations (i.e., employee interviews, samples collected)

# AFTER THE INSPECTION

- During the close-out meeting:
  - Ask for inspector's findings and conclusions
  - Inquire about receiving the inspection report or letter of compliance/notice of violation
  - Take notes

# AFTER THE INSPECTION

- If appropriate, take corrective actions while inspector is present or commit to prompt corrective actions
- Prepare inspection summary
  - Prepare immediately
  - Factual and detailed
  - Avoid admissions or subjective characterizations
  - Legal counsel may want this provided in memorandum
- Letter of Compliance (LOC) or Notice of Violation (NOV) received
  - Resolution of Notice of Violation (RNOV)

# NOTICE OF VIOLATION

- Assemble a team
- Consult with legal for advice (attorney involvement?)
- Respond to NOV in writing
  - Acknowledge receipt of NOV
  - Ask questions about the NOV
  - Explain the intent to correct the violations observed/noted
  - Refute any violations that the party feels are incorrect.
    - Back up with documentation
- If agency-proposed deadline is not achievable, propose realistic deadline
- Do not ignore the NOV or wait until the last day to respond



## COMMON VIOLATIONS (AIR)

- Permit deviations not reported
- Exceeding permit limits
- PMs not documented or completed
- Incorrect dates in records
- Not maintaining required records or emissions data
- Processes not evaluated for air permit applicability
- Installing and operating equipment without proper permits

# COMMON VIOLATIONS (STORMWATER)

- Gap in training
- Inadequate or not updated Stormwater Pollution Prevention Plan (SWPPP)
- Housekeeping issues
- Illicit discharges
- Missing documentation (e.g., monitoring, inspections)
- Monitoring and reporting violations (e.g., failure/late to submit reports)
- Exceeding limits
- Failure to apply for permit coverage

# COMMON VIOLATIONS (WASTEWATER)

- Installing new wastewater treatment equipment or conveyance without a PTI
- Failure to have an Operator of Record
- Failure to notify of change in operator or permit holder
- Failure to operate and maintain wastewater treatment equipment
- Missing documentation (e.g., monitoring, calibration)
- Monitoring and reporting violations (e.g., failure/late to submit reports)
- Exceeding limits
- Failure to apply for coverage under NPDES permit or PTI

# COMMON VIOLATIONS (WASTE)

- Container management (condition, open)
- Wastes not evaluated if hazardous or not
- Incorrect labeling, including misclassified waste
- Inadequate aisle space
- Weekly inspections (SQG, LQG)
- Accumulation start dates
- Exceeding accumulation limits or generator status

## COMMON VIOLATIONS (WASTE cont'd)

- Universal Waste – improper packaging and labeling
- Used Oil – Labeling
- Manifests improperly completed
  - LDR notification not maintained
- Personnel training (LQG)
  - Lack of job titles, job descriptions, and type and frequency of training
- Inadequate or not updated hazardous waste contingency plan (LQG)
  - Missing a Quick Reference Guide

# QUESTIONS?

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# What to Do When an Environmental Inspector Calls

Practical Suggestions to Follow  
Before, During and After an  
Inspection

March 28, 2023

# Goals for Webinar

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- Review potential triggers to an inspection
- Discuss steps you can take in advance to make the inspection process go more smoothly
- Understand your rights and responsibilities
- Understand the stages of an agency inspection
- Discuss how best to respond to the findings
- Learning from the experience



# Why Should I Care?

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- Increased on-site inspections coming out of the pandemic
  - Goal of annual on-site inspections in overburdened communities to 55% (EJ Initiative)
- 2022 – EPA collected over \$300 million in penalties, fines, restitutions
- New ECHO Notify service alerts communities when a local facility has a violation or enforcement action
- Potential for criminal liabilities – including individuals

# Environmental Inspection Triggers

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- Agency inspections can be triggered by:
  - Administration of state and federal permit programs
  - Response to general enforcement initiative
  - Response to specific complaints
  - Response to environmental/workplace incidents
- Triggers can affect the scope and outcome of the inspection

# Survey

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- Who has been through an agency environmental inspection?
- Did it result in a formal enforcement action/penalty assessment?

# Before an Inspection

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- Develop an inspection policy
  - Designate points of contact/escorts
  - Maintain required environmental records
  - Establish a protocol for response to agency inquiries and observations
  - Review the inspection policy with your employees

# Inspection Policy

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- **Designating points of contact/escorts**
- Select escorts knowledgeable in various areas of potential inspection (e.g., air emissions)
  - Some programs have designated operators that should be involved (wastewater, storm water)
- Consider two escorts
  - One to answer questions
  - One to take detailed notes\*

# Survey

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- What qualities would you look for in a site escort and/or note taker?

# Inspection Policy

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- **Maintaining required environmental records**
- Records should be readily accessible to escorts
  - Some records must be maintained in certain areas (e.g., hazard communications plans)
  - Make sure the escorts know their locations
  - Frequently requested documents
- Clearly mark if privileged and/or confidential
- Identify a separate area for agency review

# Inspection Policy

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- **Establish protocol for response to agency inquiries and observations**
- Request pre- and post-inspection conferences
- Split samples or just request results?
  - If splitting, have sample collection materials handy
- Prepare to make quick fixes during inspection
- Understand rights if interviews are requested



# Inspection Policy

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- **Review the inspection policy with your employees**
- Security personnel should know whom to contact in event of an inspection
- Escorts should know their responsibilities in each stage of the inspection
- Employees should know their rights and responsibilities if interview is requested

# Survey

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- Has your company conducted any training on how to respond to an agency inspection?

# Rights and Responsibilities

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- Entry
  - Permits include consent to access for inspections
  - Requesting a warrant
    - If identified criminal investigation, should be requested
    - If not, note that cooperation can be a mitigating factor
- Samples/Photos
  - You are entitled to split samples and make copies
  - You may designate business confidentiality

# Rights and Responsibilities

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- Documents
  - Confidential business information
  - Privileged documents (e.g., audit reports)
- Interviews
  - Employees cannot be directed not to speak to agency or forced to speak to agency
  - Escort(s) can be present and employees can request third-party (e.g., shop steward)
  - If you do not know an answer, don't speculate; offer to provide answer as follow-up

# Stages of an Agency Inspection

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- Pre-Inspection Conference
- Walk-through
- Post-Inspection Conference with Inspector

# Stages of an Inspection

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- **Pre-Inspection Conference**
  - Introductions (set cooperative tone)
  - Review scope of inspection
  - If document review is included
    - Ask for list of documents to be reviewed
    - Be prepared to assert potential confidentiality/privilege
  - Ask for estimate of duration of inspection
  - Inform inspector of any safety protocols
  - Request post-inspection conference

# Stages of Inspection

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- **Walk-Through**

- Escort should be present throughout
- Keep detailed notes on observations, questions asked and answers given, samples and photos taken, documents reviewed
- Oversee document review
- Oversee any employee interviews

# Stages of an Inspection

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- **Walk-Through** (continued)
  - Ask for split samples and for a list of all tests that will be run on them
  - Get receipts for anything taken from the premises
    - Make extra copies of any documents the inspector wants to take with them
    - Resist any attempt to remove documents you are legally required to maintain on site
  - Correct and document any quick fixes



# Stages of an Inspection

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- **Post-Inspection Conference with Inspector**
  - Review findings of inspection
  - Confirm any outstanding inspector document requests
  - Confirm requests for split samples, copies of warrant/supporting affidavits, if applicable
  - Present documentation of any quick fixes
  - Discuss any anticipated follow-up (next steps)

# Responding to Inspection

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- Immediate follow-up
- Response to agency enforcement
  - Response to NOVs
  - Response to request for enforcement conference
- Future preparation/prevention

# Responding to Inspection

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- **Immediate Follow Up**

- Consider seeking participation of counsel to maintain privilege of discussions and documents
- Conduct debriefing of personnel involved
- Discuss follow up to items identified by inspector
  - What can be fixed quickly? By whom and when?
  - Who is responsible for responding to pending requests for information? What is the timing for these?
  - What will take longer? What resources are needed?

# Responding to Inspection

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- **Immediate Follow-up** (cont.)
  - Prepare internal report
    - Mark all materials privileged and confidential
  - Note samples collected, photos taken, documents copied, questions asked, employees interviewed, areas inspected
    - Note any areas of special attention/time spent
  - Identify follow-up issues
  - Obtain counsel review and input

# Tip

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- When responding to any follow up requests for information, you can also provide further documentation of any quick fixes.

# Responding to Inspection

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- **Response to Agency Enforcement**

- Inspection report
  - Confirms the inspection, absence of issues requiring further action
- Notice of violation
- Request for enforcement conference

# Responding to an Inspection

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- Notice of violation
  - Identifies outstanding enforcement items and timeframe for expected response
  - Must prepare timely written response responding to every alleged violation (even if cured)
    - Primary opportunity to refute alleged violations
    - Opportunity to document correction of violations, often without further enforcement
  - Can request additional time if reasonable
    - May trigger formal compliance order

# Responding to an Inspection

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- Request for enforcement conference
  - Generally indicates formal enforcement is planned
  - Opportunity to present additional information
    - to refute alleged violations
    - to mitigate penalty
  - Opportunity to enter into consent order
    - Opportunity to negotiate penalty
    - Minimal opportunity to negotiate other provisions
    - Stipulated penalties for future violations



# Responding to Inspection

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- **Future Preparation and Prevention**
  - Preventing recurrences
    - Make improvements in program areas of violation
    - Update employee training
    - Improve recordkeeping practices
    - Improve inspection policy
    - Empower employees to identify deficiencies
  - Consider formal internal audit program\*

# Survey

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- Does your company have a formal auditing program?
- Is it run strictly in-house, or do you use outside consultants?

# Responding to Inspection

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- **Future Preparation and Prevention (cont.)**
  - Monitor laws and enforcement initiatives
  - Consider use of government resources
    - Small Business Environmental Assistance Programs
    - IDEM Compliance and Technical Assistance Program
    - KYDEP Environmental Compliance Assistance Program
    - OEPA Office of Compliance Assistance and Pollution Prevention
    - EPA National Compliance Assistance Centers

# Questions?

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# Thank You!

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For more information, please contact:

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## Biographical Information

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Sharon Newlon has served as lead outside environmental counsel on Stellantis transactional matters beginning in 2008, and FCA Realty transactional matters beginning in 2015. Sharon also served as lead outside counsel on Stellantis' in-house environmental auditing program from 2008 to 2011. Sharon's work for Stellantis and FCA Realty on transactional matters nationwide has encompassed not only drafting and negotiating environmental provisions for dozens of purchase, sales and lease agreements, but also the preparation of long-term access and remediation agreements for obligations extending past the closings. Her environmental support work follows and supports Stellantis' and FCA Realty's business interests at these properties, including drafting and negotiation of due care obligations, environmental provisions in supplier ALUA agreements, reimbursement requests and enforcement of tenant and seller environmental obligations. In addition to Sharon's significant transactional work, she has provided support to Stellantis' environmental counsel on a variety of environmental compliance matters, including spill reporting, remediation obligations, wastewater discharge permitting issues and DOT hazardous substance transportation requirements. In recognition of her broad environmental expertise and more than 30 years practicing environmental law, Sharon has frequently been asked to serve as a primary contact for Stellantis and FCA Realty personnel on compliance issues when environmental counsel have been away from the office for extended periods. Sharon is Co-Chair of DW's Environmental Practice Group, she has been recognized as a Michigan Super Lawyer for Environmental Law for 12 consecutive years, and she was named by Best Lawyers as 2022 Lawyer of the Year in Environmental Litigation for the Detroit area.

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Mr. Markland is a Compliance Consultant II out of the August Mack Environmental office in Lewis Center, Ohio. He has worked with August Mack for over six years. He has experience assisting industrial clients with regulatory challenges, such as air permitting, Tier II chemical reporting, Toxic Release Inventory (TRI) reporting, National Pollutant Discharge Elimination System (NPDES) permitting, Stormwater Pollution Prevention Plan (SWPPP), and Spill Prevention, Control, and Countermeasure (SPCC) plan development, as well as third party environmental compliance audits covering air, water, and waste regulations.

Mr. Markland graduated with a Bachelor of Science degree in Environmental Engineering from The Ohio State University (2016). He is working on becoming a registered Professional Engineer in the state of Ohio.