

SURVIVING AN INSPECTION

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Recent regulatory reforms could increase the chance that business may be subject to inspection. Both the U.S. Environmental Protection Agency (EPA) and the Occupational Safety and Health Administration (OSHA) plan to direct more of their enforcement resources at facilities or industries with high levels of risk and potential for noncompliance. These federal agencies will spur their state counterparts to follow suit.

Businesses that did not face compliance attention in the past are now potential targets. It make good sense to know the environmental, health and safety laws that apply to your facility and to ensure that you comply with them.

Although regulatory agencies may make a courtesy call announcing their inspection, most environmental, health and safety regulations do not require them to do so. Inspectors can show up at any time – be prepared.

Preparation

Periodic compliance reviews help keep you prepared. These reviews spot and prioritize problems. Many environmental, health and safety regulatory programs track compliance through your records.

First, have your records in order. Inspectors will ask to review these records. Regulatory agencies may treat incomplete, inaccurate or missing records as seriously as violations of emission limits or safety rules.

Second, identify a coordinator and backup. Agency inspectors should have a single point of contact from your facility. The coordinator needs to know:

- your facility,
- the applicable regulations;
- your compliance history and status;
- how to handle potentially difficult situations; and
- when and how to contact your attorney.

Third, prepare an action plan. An action plan goes into effect when the regulators show up unannounced to inspect your plant. The action plan should list the coordinator and backup for each program, your attorney, consultants, and appropriate federal, state and local regulatory agencies. It should also list where to find the documents that the inspectors will want to see. State and federal agencies often develop checklists for enforcement inspections. Contact these agencies, ask for copies, and incorporate the checklists into your plan.

Your action plan should direct your employees and subcontractors to treat agency inspectors respectfully. It is to your advantage to develop trust and rapport with the inspectors. It should also emphasize that, whenever possible, direct communication with the agency inspectors should go through the coordinator. You may want to have an attorney familiar with the regulatory program review the action plan. Periodically conduct a test inspection to see how well your plant handles an inspection.

The Inspection

If inspectors from a state or federal agency show up unannounced, ask for their credentials. If they can produce proper agency identification, they probably have the authority to inspect your plant without advance notice. Denying them access could result in a fine. They may return armed with a search warrant. If inspectors do not have proper credentials, or if you have any questions about their authority to inspect your facility, contact your attorney.

Agencies may subcontract inspections to consultants. Federal employees face federal criminal penalties if they divulge trade secrets discovered during an inspection. These penalties may not apply to subcontractors. If you have questions about their authorization, contact your attorney.

When an inspector shows up at your facility, plant staff should immediately contact your coordinator or backup. Your coordinator should ask for a pre- and post-inspection meeting. The coordinator should coordinate the inspector's activities, accompany them from the time they enter your site to when they leave, and act as the contact point. At the pre-inspection meeting the agency inspector should explain their reason for inspecting your facility and detail any information that they need. Ask if the agency is conducting a routine inspection, responding to a complaint, or investigating potential violations. The agency inspector should also tell you how long the inspection will take and discuss any other requirements such as making copies, obtaining samples, and taking photographs. At the pre-inspection meeting your coordinator should discuss any confidentiality issues that you may have.

Your coordinator should guide the inspector only to those areas of your plant required for the purpose of the inspection. Do not give the inspector random access to your plant or your files. If the inspector asks to see files or documents, get the materials for them and have them review the materials in a separate area. Do not give the inspector any extraneous materials such as field notes, photographs, or internal memoranda that may be in your files. Do not volunteer any more information than the inspector requests. Answer the inspector's questions but do not lie, mislead or guess if you do not know the facts. Most federal and state programs have criminal penalties for providing false information.

During the inspection, your coordinator should take extensive notes regarding the focus of the inspection, any questions asked, information provided, and issues raised. Ask for duplicates of any samples taken during the inspection and request information on any parameters they intend to test for. You should request copies of any photographs the inspectors take. If the inspectors request confidential information, you need to take proper steps in advance to ensure its confidentiality.

At the post-inspection conference, ask for any findings and request a copy of their final report when available. Follow up the inspection with a letter.

What Happens Next?

You may not hear from the inspecting agency for several weeks. The inspecting agency may follow-up with a request for information or with a report of their findings. If the agency sends you a letter alleging a violation, you should review your records of the inspection with your attorney before you respond to the agency. Be aware that, if the inspection reveals alleged violations, enforcement or penalties may follow.

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