Introduce yourself, mentioning your background and inspection experience and your role in the course.

Inspectors are the keystone of any country’s compliance and enforcement program. Without inspectors, there would be no enforcement cases, for it is the inspectors who collect the information upon which such cases are based. Inspectors are often considered the eyes and ears of the environmental agency.

To ensure the ultimate success of an enforcement action, the inspector's work must meet the highest standards. But first, let’s spend a moment talking about what each of you do.

Try to get an idea of how many and what types of inspections the different students conduct.

How many inspections do each of you conduct a year? Let me see a show of hands of everyone that does more than 100 inspections a year – Between 50 and 100 inspections a year – between 20 and 50 – How many of you conduct fewer than 10 inspections a year?

Ask for a recorder, and develop a list of the different types of inspections conducted by the participants.

What types of inspections do you perform? Let’s start over here.....

Possible answers:

Compliance monitoring at a particular industry
Air inspections
Hazardous waste inspections
Multimedia
etc....
During this session, we will talk about the different roles and responsibilities of inspectors, especially as it relates to the compliance team.

We will begin by discussing the different roles inspectors play in your agency’s compliance program, both for the public and for your agency.

We will discuss different ethical considerations that must be followed to keep you out of difficulty and to ensure the impartiality and transparency of your work.

We will touch on how you should handle confidential information shown to you by a company you are inspecting.

Finally, we will spend a few minutes talking about situations you have encountered and how to prevent different responsibilities in your job from conflicting with your job as an inspector.
The title, “ROLE OF THE INSPECTOR” will appear alone. Use that as the prompt for discussion about the different roles BEFORE clicking the mouse to advance. Ask:

What different roles do you serve during your inspection duties? Think about how your job fulfills different needs of your agency, and how those needs affect your activities and conduct. Let’s list a few different responsibilities you have as part of your inspection duties.

Have the recorder write the responses on a flip chart. Spend 5 minutes developing and discussing the list.

I have listed a few here that I’ve thought of. Some of these are on our list.

Click the mouse to bring up the first bullet....

- **Official representative**: You represents your agency and may be the only government official ever seen by a plant manager. This role requires tact, a professional attitude, and diplomacy. In addition, the facility staff and management may hold you accountable for other governmental activities completely outside your scope of work.
Role of the Inspector

- **Witness of Fact:** The inspector gathers information at a regulated facility that may be used to determine whether a facility is in compliance with the law or not. The inspector is the “eyes and ears” of the regulating agency. This task requires extensive knowledge of the requirements and skill in obtaining information and following up on leads to identify less obvious violations.

It is imperative that the inspector gathers information of verifiable quality, and documents its in a way that supports a finding of fact. The inspector then organizes the documentation into a supportable narrative report. The focus of this course is to improve your skills in this area.

In the legal universe, there is no such thing as a “fact” unless it is determined to be so by the “trier of fact” (a judge, jury, or hearing official). The inspector is therefore not the trier of fact as they do not legally determine the facts by themselves. However, the documentation gathered by the inspector and the testimony they give can be entered into evidence to support the determination of the facts of a case.
• **Enforcement case developer:** The inspector collects and preserves evidence of noncompliance. Since the inspection is usually the primary basis of the government's case, good documentation is essential. You may be involved in the case throughout its negotiation, litigation, and resolution. The inspector is often a key witness and is usually the initial member of a case development team that may include other staff, managers, and attorneys.

In some situations, the inspector may also work as a case developer, and may review the documentation and apply their own observations to the law and regulations. In this situation, the inspector is serving a dual role and needs to carefully maintain their objectivity.
Role(s) of the Inspector

- Official representative
- Witness of Fact
- Enforcement case developer
- Provider of enforcement presence

• **Provider of enforcement presence:** We talked earlier about the importance of deterrence as a motivator for compliance. The inspector "shows the flag," creating a visible presence of government interest in the environmental status of the facility; the potential of an inspection creates an incentive for compliance.
Role of the Inspector

- Official representative
- Witness of Fact
- Enforcement case developer
- Provider of enforcement presence
- Technical educator

Technical educator: The inspector serves as a source of regulatory information and may provide technical assistance to facility managers by directing them to sources of technical information. This becomes more important with small businesses that do not have the resources to look for outside help.
### Role of the Inspector

- **Official representative**
- **Witness of Fact**
- **Enforcement case developer**
- **Provider of enforcement presence**
- **Technical educator**
- **Technical authority**

- *Technical authority:* Inspectors may be called upon to help the agency interpret regulatory requirements, assess the adequacy of control measures, interpret technical data, and assess environmental effects. You probably have more experience in the field seeing how the environmental programs are implemented than anyone else in your agency.
We talked earlier about different types of inspections you conduct. Here are a few broad categories of activities that we consider. The approach to each one varies.

Compliance monitoring inspections are usually routine inspections to determine if a facility is in compliance with the regulations and is operating the facility in a manner that will prevent environmental harm. This course focuses around this particular type of inspection.

Criminal investigations are somewhat different in that we are acting on the suspicion that the individual or company under investigation has purposefully broken the law. We are trying to determine the facts and to collect evidence that will put that person in jail or severely penalize them. In these situations, the police or other law enforcement agencies may be involved, and the inspection can be much more confrontational. However, the collection of evidence and observation skills that you will need are the same.

Finally, how many of you are called upon to provide compliance assistant to the regulated community to help them better understand their responsibilities under the law? Ask for a show of hands, then ask a couple of them the following:

What kind of Compliance Assistance do you provide?

Do you provide that assistance during your normal inspection?

There can be an awkward overlap between helping and enforcing at a particular facility. On one hand, we are trying to be friendly while on the other hand, we are looking for evidence of violations that may lead to a serious enforcement action and penalty. It may be best to separate these two activities so there is no confusion between whether you are helping a company comply, or trying to force the company to fix their violations.
Integrity and professional impartiality are crucial. The inspector must not only be impartial, but must also appear to be impartial. Ask yourself how things would look to your boss, your mom, or the press.

Enforcement actions based on the inspector’s work may represent a major commitment of your agency’s funds and time. Success before a judge or court may hinge on the inspector’s freedom from bias, so don’t jeopardize a case by even an appearance of bias.

It is crucial that inspectors be familiar with and comply with laws and regulations about conflict of interest and ethics. This could also needlessly jeopardize a case.

Have any of you ever experienced unethical behavior in your work? Ask for a show of hands. I can understand if you don’t wish to discuss particular instances, but does anyone have an example? Encourage them to share, but understand reluctance to discuss sensitive or compromising situations. Listen to their examples – if they are unwilling to share, use the below examples or others from your own experience to spark discussion.

Two examples I know of involve inspectors who did not think they were doing anything wrong at the time, however, the appearance of impropriety affected the rest of their work.

1. A senior inspector finished a thorough inspection and found several significant violations. His inspection report was a key piece of evidence during the trial and he was called to the witness stand. He had listed on his resume that he had a masters degree in environmental engineering, but when asked by the defense attorney about his background, he admitted that he had not finished his thesis and was not awarded the degree. This put the rest of his testimony in question, and the case was lost.

(Note continued on the next page without a slide; don’t advance the slide)
2. An inspector was asked to do an inspection at a facility where his brother worked. No violations were found, but the inspection was called into question because of the apparent conflict of interest.

Do any of you have written guidelines from your agency on Ethics? Please describe.

What are some of your standards of conduct?

- **Professionalism**
- **Dress (do you wear a uniform?)**
- **Knowledge of the regulations and law**
- **Not accepting gifts or bribes**

Continue the Discussion bring out other standards of conduct.
How many of you conduct inspections by yourselves? Do most of you go out as part of a team of inspectors? A team can be any size more than one. *Wait for a show of hands.*

The team leader is responsible for all planning aspects of the inspection, as outlined in the next session, Inspection Planning. Team members should assist in the planning process and offer suggestions, but defer decisions to the team leader.

Team leaders are the primary “trouble shooters” in the field. They are the focal point for interaction between the team and the facility, their lawyers, the media or public. They coordinate communication and prioritize responses to events or emergency situations.

The team leader is also responsible for supervising on-site and post-inspection activities, to include completion of the inspection report. Normally, all team members will assist in this effort, usually writing up portions of the report concerning areas they inspected while on site. While on-site, inspectors are responsible for following all safety requirements, to include ensuring that contaminated equipment is disposed of or cleaned properly.

The bottom line is that the team leader and team members must perform as a team, with the team’s overall success being the paramount goal. Team members must guard against becoming buried in individual tasks and losing sight of the big picture. Likewise, team members must avoid a parochial set of blinders which might cause them to overlook potential violations in media other than the program to which they are assigned. On the other hand, the team leader must ensure that the team members stay focused on the inspection objectives, and accomplish those objectives in a timely manner. Finally, the team leader will coordinate potential enforcement actions with management and the legal staff, and assign individual team members to assist in specific enforcement activity as appropriate.
Inspectors gain access to and collect information that companies ordinarily would not make available to outsiders. We may need to see that type of information to make a compliance determination.

Your agency should develop procedures to ensure that confidential information is not released. This will provide the facilities more security that the information will not be released.
Inspectors gain access to and collect information that companies ordinarily would not make available to outsiders. We may need to see that type of information to make a compliance determination. Your agency should develop procedures to ensure that confidential information is not released. These procedures will provide the facilities a greater sense of security that the information will not be released and they will speak with you more openly.

CBI is information such as process, formulation, sales, and production data that could hurt a company's competitive position if it became known publicly. In many cases, companies work very hard and spend large amounts of money to develop their product or process in the most economical and profitable way possible. Release of that information to other companies can eliminate their competitive advantage and threaten the profitability of a company.

*Please use your own example where access to CBI has been necessary, or use this one:*

For example, a petroleum refinery I inspected had a unique process that could take low quality crude oil, used oil, and even contaminated water, and refine the materials into gasoline. They were the only refinery in the United States with this type of process, and were able to take material everyone else would consider waste and convert it to gasoline. The unit was very profitable, since they could get the raw materials very cheaply. We needed to examine the process to ensure that they were not, in actuality, illegally treating or disposing of hazardous wastes. The company reluctantly allowed us to review their confidential engineering records, (after being assured that WE go to jail if the information is released). We were able to determine that the unit was operating in compliance with environmental laws, and they were able to maintain the confidentiality of the process, and their profit.
Some of the government’s information needs to be treated confidentially for other reasons having nothing to do with proprietary business secrets. When we engage in enforcement proceedings, certain documents should be shielded from the defendant and from the public for a variety of reasons.

Initial agency determinations often should not be made public until a final decision is reached. If draft documents are made public, we are often put in an awkward position where we must defend statements or conclusions that don’t represent official views. For example, we may write a draft inspection report that fails to cite a particular violation that is later changed based on a more thorough analysis of the facts or additional evidence.

Another reason for keeping enforcement information confidential is the potential damage to a company’s reputation or business is potentially damaging information is “leaked” to the public before it can be confirmed. For example, a facility may be targeted for an inspection based on complaints that they have polluted the groundwater. After the inspection and sampling, the agency may determine that there is no problem. If the public found out the company was targeted, they may become unnecessarily concerned about their water just by knowing the facility is under investigation or unnecessarily condemn the company.

In many cases, documents concerning internal agency deliberations about subjects such as penalties or enforcement responses may be kept confidential to allow the agency to discuss or analysis different ideas before reaching a decisions. Early release could jeopardize the case.

Withholding information from the public must only be done when it is crucially important. Otherwise, the public has a right to know what their employees in the government are doing. Transparency and openness in governing allows the public to oversee our actions and participate more fully in a democratic government.
Our next topic is called “Enforceability of Regulations”, and we’ll discuss how to analyze a regulation or permit condition and determine how to inspect for compliance with that regulation. You will need to work as a group to assess a requirement and determine how to determine compliance with the requirement.

________ will be facilitating that session. *(introduce the next speaker).* We’re going to take a break for lunch, now. *(describe lunch logistics and location).* Please be back at (_____ ) so we can keep on track.