This session should be used to prompt an open discussion. The time allotted to the topic will allow most of the students to offer some of their experiences in the different areas under consideration. The instructional goal is not to dictate the way to conduct an inspection, but to expose the students to different models represented by the experience in the room.

In this session, I will discuss some of the different on-site activities involved with the inspection, including getting access to the facility, the inspector’s first communications with the facility personnel, and usual procedures for looking at the facility.

I hope that you will help me in some areas by explaining what you know about legal constraints or tools that can be utilized in your country for gathering the information needed to determine a facility’s compliance status. I would like to make this more of an introduction to a discussion than a lecture.
On-Site Activities

- Site entry
- Opening conference
- Site tour
- Information collection
- Documenting your inspection
- Closing conference

In this session we will at least cover the following topics:

• Site entry – How to gain access to the facility you wish to inspect
• Opening conference – Strategies to use to start the inspection on the right foot
• Site tour – How to get around the facility in a way that will reveal useful information
• Information collection – Different ways to collect information while you are on-site
• Documenting your inspection – How to keep track of everything you observed
• Closing conference – Ending your inspection in a positive, professional way
• Different countries have different approaches to protecting the privacy of individuals and companies vs. allowing the government to observe what happens on private property. You must be familiar with those laws and respect any limits on your inspection authority.

• The most commonly used “authority” to get on a site is the consensus of the facility itself. The inspector asks a responsible person at the facility for permission to conduct the inspection, and in most cases, the facility grants the inspector access and allows the inspection to occur. In effect, the owner or manager of the facility is waiving their rights to privacy by allowing the inspection to occur.

• By giving consensual access, the facility shows cooperation and saves the inspector the time and trouble it takes to get a warrant from a court. Most of the time, facilities that have nothing to hide willingly allow inspectors to do their job.

• You should first attempt to obtain access to a facility or site by consent. What does consent mean? Consent is the intentional foregoing of right to privacy that has not resulted from fear, ignorance, or trickery. Only if you have followed the previous inspector requirements you may request entry. So when have you been granted entry?

1. When the person-in-charge grants you entry.

2. Or “express consent is not necessary: absence of express denial constitutes consent.”
What If I’m Denied Access?

- Contact your supervisor and/or agency counsel
- Avoid threatening or inflammatory statements

Other times it may be necessary to use higher authority, such as a court order or “warrant” to give the inspector the authority to enter the site, despite the owners reluctance. Usually, you need the cooperation of law enforcement officials.

When have you been denied entry?

If the person-in-charge denies you entry. Note who and when in your log book.

When unreasonable delays prevent you from conducting a thorough and accurate inspection. In this case the inspector must inform the person-in-charge of exactly when the inspector will consider a delay unreasonable. For example; After a delay of one hour the inspector should formally inform the person-in-charge. “I will wait another half an hour before I will have to consider this a denial of entry.” Exact times will depend upon the circumstances but the inspector must set the limits.

Any unreasonable threat to the safety or health of the inspector should be treated as a denial of access. General plant operations would not be considered unreasonable. Failing to secure a guard dog probably would. Any real or suggested threat of violence would absolutely be considered denial. The inspector is best suited to determine unreasonable threats to safety or health.

Unreasonable conditions. For example the person-in-charge might allow a facility tour but not allow the taking of samples, copying documents, or taking photographs. Any of these might be considered unreasonable conditions and denial of entry or access.

If you are denied entry… leave. Any delays may be argued as intimidation, threatening or an unauthorized infringement of privacy.

Before leaving the area, notify your supervisor and/or agency counsel. They may be able to persuade the facility to grant entry. Psychologically this leaves the inspector in a neutral and more objective position to continue with the inspection. The facility may prefer to deal with the inspector rather than the bureaucrat that just informed them that Agency policy is to obtain a warrant.

(notes continue on next page, but don’t advance the slide until you have discussed.)
•At this point, you should take about 5 – 10 minutes for the class to discuss their pertinent laws that grant inspectors authority, and what happens when a facility does not provide the inspector with permission to inspect.

1. Has this ever happened to anyone?
2. Is there a process for getting a warrant?
3. Does anyone else have to be there to serve the warrant?
4. Are there any penalties associated with denying access to the facility?
5. Have any of the students ever been threatened, and what happened?
Usually, as soon as you can, you should have a meeting with the facility’s representatives to explain the purpose and scope of the inspection, what methods you will use to assess compliance, and outline any needs you know of at the time. This will help the facility anticipate what you will be asking for, and will give them an understanding of what to expect. I often present them with a list of documents I will want to review, and people I will want to talk to so they can immediately begin to bring that information together.

This is also a chance for you to get an overview of any facility – specific concerns that you may not be aware, such as safety concerns or abnormal operating conditions. This is also your opportunity to introduce yourself and your team to the facility personnel and exchange business cards and other information.

You should also discuss how you will handle “Confidential Business Information.” Who remembers what I mean by CBI? This is information that the company needs to keep secret to maintain their competitive edge; information such as patents, process or engineering details, client lists, product formulation, etc. Our agencies should have procedures to prevent the release of this information, but to allow us to review it as needed for compliance determinations.

Now take 3-4 minutes to discuss the students experiences:

1. Do the students hold an opening conference?
2. Have they ever had to take a company mandated safety orientation? How did they handle it?
3. Does their agency(ies) have established procedures to protect CBI?
After the opening conference, we usually conduct a “site tour”. “TOUR” may be a poor choice of words, since you should be the one deciding where to go. You should not let the facility representatives lead you to different areas of the plant, since they may be trying to control where you go and when. However, they know the site better than you do, so you should ask for their participation and suggestions in getting to different areas that you want to see.

Initially, I like to trace the production process from the point where the raw materials enter the facility to their ultimate transformation into products or wastes. This allows me to look at all aspects of production in a systematic way rather than starting with waste treatment and moving to raw materials handling. It also provides the opportunity to look for unreported waste streams or releases, as well as pollution prevention opportunities.

During that “tour” I will note specific areas I want to return for a longer visit or specific individuals I want to interview. This usually gives me a chance to schedule the rest of the inspection and meet the rest of the people I will want to talk to later.
I usually begin collecting information as soon as I walk in the door. At the opening conference, I notice the people in authority, and try to see how decisions are made.

- I also ask for an overview of activities at the facility, and have them discuss how they make their products.

- In some cases, we go through an in-depth discussion of process flows and create process flow diagrams if they are not already developed.

- I always ask for a layout of the facility if there are multiple buildings or production units, and try to get oriented so I can refer to things quickly and accurately.

- I also ask for a history of the facility discussing ownership, different products over the years, any changes in use of the production units, and if they have had any environmental compliance problems.

- This is also the chance for them to tell you how they are regulated, including what permits they hold, any discharge limits, or any special permissions they have that alter the way they are regulated. Their interpretations may differ from yours, so pay careful attention.
Many environmental rules or laws require extensive record keeping to demonstrate compliance with the standard. Records are kept to show the performance or the activities of the facility when the inspector is not there, which is most of the time. These records allow the facility to demonstrate that they are continually in compliance, but also show the inspector when a violation may occur. Often, not keeping the records is a violation itself.

These records should be reviewed while you are on the site. In many cases, the requirement may state that the records be submitted to the agency, so you can review them in your office. Nonetheless, some on-site verification is required to see that the records are accurate.

You should finally identify any follow-up activities that might need to occur later. In some programs, the inspector may not conduct sampling, but will identify when it needs to be done, and request that someone visit the site later to take the samples.

You may also find other people you want to talk with, or additional records you need to review. If you ask the facility to send you anything for review after the inspection, follow the request up in writing, and don’t let them wait too long to send them to you.
How many of you use cameras as part of your inspections? Do you use digital or film based cameras? We use both, though I prefer ______________. (Be personal if you wish)

Pictures, either used as evidence or simple as a means of recording your inspection, are invaluable for recording observations. Photographic evidence has been known to have more subjective influence on a case than solid technical data because of its ability to tie things together and add perspective. Inclusion of photographs into the inspection report makes it more readable, more interesting, and clearer as the pictures help support the written description of events.

How do you enter a photograph into evidence? The counsel asks a single question to a witness present when the photograph was taken?

“Is this a fair and accurate representation of what you saw?”

Since the only way to enter a photograph as evidence is through the corroboration of a witness, the technique used to capture the image is not so important. Digital images can be easily altered, but if the witness can vouch for the photograph, it is still useful. The initial image should be secured and stored in an unalterable medium such as a non-rewriteable CD, or original negatives, but images can be enhanced or improved if the image is still an accurate representation of the true situation.

(notes continue on next page, but don’t advance the slide until you have discussed.)
Be sure to take enough batteries, film, disks or memory cards, flash or other equipment you may need (and “enough” usually means much more than you think you will need). Also, become very familiar with the use of the equipment before the inspection, just as you would with sampling devices or safety gear. An inspection is not the time to learn how to use the borrowed camera.

Take lots of pictures! You often will not know what photographs you will need until you write the final report and piece together the facts of the case. However, avoid taking photographs of the inspectors. It is not necessary to show that we are using proper techniques, and any photographs taken of improper procedures can be used to lower the credibility of the inspection team.

Finally, what if the facility refuses to allow you to take pictures? Should you leave? Probably not. You can still establish proof of violation without a photograph through your notes and observations. Usually, they don’t want confidential information in a photograph, so think about how to avoid that part of the picture by changing the angle or masking background.

We usually send the facility a copy of the pictures after they are developed, but are not required to do so. They may want to review them for confidential information, which is much easier to do with a digital camera.
Photo documentation should tell a story:
Use three basic kinds of photographs to help put things in context:
The Establishing shot shows a wider area that includes the subject and background such as a fixed landmark to establish location and relevance.
The Subject shot shows the object of interest with more emphasis.
The Close-up or detailed shot shows the unique details of the object or event that makes it unique and different from other similar objects.

Transformers often contain PCBs, a very nasty Persistent Organic Pollutant. The first shot shows where the transformers are located. The second shows the overall condition of the transformer. The third picture shows the label, and (if you could see it better), identifies that it does contain PCB’s. Any of these alone has limited use, but together, they tell a compelling story that may show non-compliance.
I’ve seen a single picture of a drum used to show that it had no label. What if the label is on the other side? Shoot all angles.

These three shots show the condition of the drum, markings or identifiers for the drum, leakage coming from the drum, and evidence that the leakage is leaving the containment pad and migrating into the soil. You might add another “establishing” picture showing where the drum is located.

Think about what elements of proof you must establish and how your photographs can help demonstrate the facts you are trying to prove.
Document All Observations:

- Who
- What
- Where
- When
- Why
- How

Just like any other part of the inspection, your focus should be to identify the answers to these questions.

- Who
- What
- Where
- When
- Why
- How

You must document these answers carefully in your inspection log, since they will be the basis for your inspection report and provide the support for any enforcement actions.
There are two methods for documenting the inspection as you conduct it: A checklist and notes.

- A checklist uses a previously written list of questions to guide the inspector as they ask questions or review information. Checklists can be very helpful in condensing complex requirements into yes/no questions that can be verified in the field. Checklists serve as a useful tool to ensure the inspector doesn’t forget any key areas. They may be created for a specific set of regulations, or an individual permit.

- Notes are simply that – your record of what happened as recorded by you. You should take notes of all aspects of the inspection, who you talked, what they said, what you asked, what you saw, etc.
Checklists are quick and easy to fill out in the field, and can simplify questioning and fact gathering. They can reduce the amount of time writing notes and creating reports, since some people can submit the completed checklist as their report. They also provide inspectors with a guide and can help prevent them from missing key areas.
Checklists (Problems)

- Limited record of inspection activities
- Observations, statements, and other details are not documented without narrative notes

However, they can set artificial limits on the inspections. I have seen programs that require the inspectors to use a particular checklist on all inspections. The checklist does a good job at guiding them through compliance verification for the particular issues covered by the checklist, but if anything else is going on at the site, it may be completely ignored. Checklists can focus the inspector to tightly and at best, checklists do not encourage innovation.

Also, a checklist limits the recording of other observations, statements, or details that may not be covered by the checklist. Many times, a simple yes/no question will not ask enough to get the information the inspector really needs.

At this point, solicit the students’ experiences with checklists. Do any of them use them? If so, who created the checklist?
The closing conference is a chance to meet again with the facility managers and close up the inspection. You should get the answers to any remaining questions, clarify any misunderstanding, and give the company managers a chance to clarify anything their staff may have said that was incorrect or misunderstood. This is also the chance for the facility managers to ask you questions, either about the inspection, or the requirements. This is often an ideal opportunity to give the facility information about other aspects of environmental management such as pollution prevention or compliance assistance.
I think you should tell the facility what happened during the inspection, but with some caveats. For example, you should not make conclusions of law, or speculate about what the punishment or fines for violations will be unless your program specifically gives you that authority.

If you do have the authority to issue penalties on the spot, this is the time to explain your actions and how the facility can respond.

You should also try to get any additional information you need. In many cases, there may still be outstanding questions or documents you still haven’t reviewed. Make a list of anything the facility is supposed to provide to you after the inspection, and agree to a timetable for delivery.

Also, you should provide the facility with a receipt of any thing such as samples, documents, or other evidence that you are taking with you, so they know what will happen with their property.

I believe the facility has a right to know what their problems are so they can fix them as soon as possible. The fact that they fix a violation as soon as you find it does not make your finding any less credible, but does help solve the compliance and/or environmental problem, which is what we are supposed to do.

At this point, you should facilitate a discussion about how this information may differ from the inspection procedures the students use. Go around the room and pointedly ask individuals if they follow this routine, and if not, what variations exist.

1. Do they have a field citations process for immediately collecting penalties for violations?
2. Do they have a policy about telling the facility what violations were found?
3. What do you do if the company has a lawyer on the inspection?

What do you say if the facility asks for a copy of your notes?