

Preparation is key to surviving EPA inspections
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From air contaminants to infectious waste, health care facilities face many unique environmental compliance challenges. One of these challenges is surviving the government's inspections to determine whether compliance with standards established by federal and state environmental laws is maintained.

Under Ohio's laws, the state environmental protection agency (Ohio EPA) has the authority to inspect a health care facility subject to those laws at any time. And these inspections are happening all over the state of Ohio with increasing frequency. Facilities that might have escaped inspection suddenly find themselves in the regulatory cross hairs for the first time. Those facilities, and even seasoned targets, cannot afford to be caught flat-footed when the inspector's knock on the door comes – and come it will. During these inspections, the Ohio EPA may walk through the facility, collect samples and examine and copy records. Keep in mind that in cases where access to the health care facility is refused, the Ohio EPA may obtain a search warrant, the cost of which may be legally recovered from the facility.

Health care facilities may be inspected randomly based on one of their state or federal EPA registrations or permits. Investigations may also stem from an employee or other complaint, a special enforcement emphasis on the health care industry, or a previous investigation. Because inspections are usually unannounced, health care facilities should be prepared to handle an investigation at all times.

Handling Inspections

Preparation plays an integral role in handling inspections properly. Health care facilities should strive to maintain compliance with all environmental regulations at all times. Environmental records should always be kept up-to-date and in order for easy self-audits and for retrieval during an inspection. Be sure to segregate confidential and privileged documents from documents which must be shown to an inspector. For example, letters from outside legal counsel about compliance issues should not be kept in a general environmental issues file shown to an inspector. In addition, facilities should designate one representative, who is fully informed on policies and compliance programs, to serve as a spokesperson during all environmental inspections.

The inspection report becomes the blueprint for any subsequent enforcement action. By looking at inspections as a series of stages, preparing for and managing them is much less daunting. Inspections can be divided into three basic stages: the initial meeting, the actual inspection and the concluding meeting. Following are practical strategies for dealing with each stage.

Initial meeting

When an investigator arrives, contact legal counsel immediately, even if the investigator is made to wait. The hospital representative should then do the following:

- **Ask for the inspector's identification and credentials.** It is important to know which office or division the inspector represents.
- **Ask the reason for the inspection.** Representatives should also find out the specific documents or areas of the hospital the inspector wishes to examine. In addition, ask the inspector to sign a waiver of liability for any accidents or injury he or she may suffer during the tour, and document any refusal to sign.
- **Ensure that the inspector remains with the designated representative at all times.** Request that all questions be directed to that representative only.
- **Choose an observer.** An observer should be selected to accompany the representative and the inspector at all times. The observer should take notes of the inspection, record where samples are taken and take photographs, as appropriate.

Inspection

During the inspection, both the representative and the observer should be courteous to and cooperative with the inspector, while keeping answers brief and to the point. Never volunteer information, offer off-the-record comments or voluntarily produce documents without a specific request from the inspector. If a question arises that the representative cannot answer, he or she should simply admit a lack of knowledge on the point and offer to provide the answer at a later date. Other helpful strategies include:

- Limiting the inspection to only the areas or documents identified by the inspector;
- Prohibiting the inspector from interviewing employees (advise employees not to speak with inspectors during the facility tour);
- Making copies of all documents, pictures and samples taken;
- Obtaining a receipt from the inspector for any items taken;
- Requesting a split sample of all samples taken, so the facility can do its own testing;
- Requesting a copy of the results of any analysis made from the inspector's sample; and
- Prohibiting the examination of any privileged documents.

Concluding meeting

Following the facility tour, the inspector should be asked to summarize his or her findings. The representative should then find out the paperwork procedures and schedule that follow the inspection. The representative should also request that any facility information, such as patient information, be treated as confidential and withheld from public disclosure. After the inspector leaves, the representative and the observer should immediately prepare a memorandum documenting the inspection for legal counsel.

Common Areas of Inspection

Due to the distinctive nature of their business, health care facilities have different types of environmental concerns than other businesses inspected for EPA compliance. Common areas of inspection for health care facilities include:

- **Hazardous waste.** Inspectors examine how the facility generated, treated, stored and disposed of hazardous (noninfectious) waste. For hospitals and other health care facilities, hazardous waste can include aerosol cans, used chemo bags and syringes, mercury, lab wastes, radiology department wastes, and facility maintenance wastes, such as paints, solvents, and cleaning chemicals.
- **On-site underground storage tanks.** Inspectors check to make sure that these are registered properly and meet compliance requirements.
- **Wastewater-related compliance.** For health care facilities, inspectors examine the discharge of water into sewers and treatment facilities and compliance with discharge permits and ordinances.
- **Air-related compliance.** In health care facilities, air pollution sources include boilers, incinerators for solid and infectious waste, sterilizers, lab equipment and construction projects.
- **Infectious/solid waste.** In this area, inspectors look at registrations and certifications, waste segregation procedures, waste transportation and storage facilities. For on-site treatment facilities, they review operating records and current performance test results. For generator facilities, they review training manuals and standard operating procedures.

By addressing these distinctive areas of inspection regularly, maintaining compliance and making early preparations, health care facilities can make EPA inspections more manageable. Incorporating the above guidelines and strategies into a plan for response to the EPA's "knock on the door" can help health care facilities survive EPA inspections.

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