

January 1997  
NSRP 0483

SHIP PRODUCTION COMMITTEE  
FACILITIES AND ENVIRONMENTAL EFFECTS  
SURFACE PREPARATION AND COATINGS  
DESIGN/PRODUCTION INTEGRATION  
HUMAN RESOURCE INNOVATION  
MARINE INDUSTRY STANDARDS  
WELDING  
INDUSTRIAL ENGINEERING  
EDUCATION AND TRAINING

# **THE NATIONAL SHIPBUILDING RESEARCH PROGRAM**

## **Environmental and Occupational Safety and Health Inspections: A Guide for Shipyard Managers and Employees**

U.S. DEPARTMENT OF THE NAVY  
CARDEROCK DIVISION,  
NAVAL SURFACE WARFARE CENTER

in cooperation with  
National Steel and Shipbuilding Company  
San Diego, California

## Report Documentation Page

*Form Approved*  
*OMB No. 0704-0188*

Public reporting burden for the collection of information is estimated to average 1 hour per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to Washington Headquarters Services, Directorate for Information Operations and Reports, 1215 Jefferson Davis Highway, Suite 1204, Arlington VA 22202-4302. Respondents should be aware that notwithstanding any other provision of law, no person shall be subject to a penalty for failing to comply with a collection of information if it does not display a currently valid OMB control number.

1. REPORT DATE <b>JAN 1997</b>	2. REPORT TYPE <b>N/A</b>	3. DATES COVERED <b>-</b>			
4. TITLE AND SUBTITLE <b>The National Shipbuilding Research Program, Environmental and Occupational Safety and Health Inspections: A Guide for Shipyard Managers and Employees</b>		5a. CONTRACT NUMBER			
		5b. GRANT NUMBER			
		5c. PROGRAM ELEMENT NUMBER			
6. AUTHOR(S)		5d. PROJECT NUMBER			
		5e. TASK NUMBER			
		5f. WORK UNIT NUMBER			
7. PERFORMING ORGANIZATION NAME(S) AND ADDRESS(ES) <b>Naval Surface Warfare Center CD Code 2230 - Design Integration Tools Bldg 192 Room 128 9500 MacArthur Blvd Bethesda, MD 20817-5700</b>		8. PERFORMING ORGANIZATION REPORT NUMBER			
9. SPONSORING/MONITORING AGENCY NAME(S) AND ADDRESS(ES)		10. SPONSOR/MONITOR'S ACRONYM(S)			
		11. SPONSOR/MONITOR'S REPORT NUMBER(S)			
12. DISTRIBUTION/AVAILABILITY STATEMENT <b>Approved for public release, distribution unlimited</b>					
13. SUPPLEMENTARY NOTES					
14. ABSTRACT					
15. SUBJECT TERMS					
16. SECURITY CLASSIFICATION OF:			17. LIMITATION OF ABSTRACT <b>SAR</b>	18. NUMBER OF PAGES <b>43</b>	19a. NAME OF RESPONSIBLE PERSON
a. REPORT <b>unclassified</b>	b. ABSTRACT <b>unclassified</b>	c. THIS PAGE <b>unclassified</b>			

## DISCLAIMER

These reports were prepared as an account of government-sponsored work. Neither the United States, nor the United States Navy, nor any person acting on behalf of the United States Navy (A) makes any warranty or representation, expressed or implied, with respect to the accuracy, completeness or usefulness of the information contained in this report/manual, or that the use of any information, apparatus, method, or process disclosed in this report may not infringe privately owned rights; or (B) assumes any liabilities with respect to the use of or for damages resulting from the use of any information, apparatus, method, or process disclosed in the report. As used in the above, "Persons acting on behalf of the United States Navy" includes any employee, contractor, or subcontractor to the contractor of the United States Navy to the extent that such employee, contractor, or subcontractor to the contractor prepares, handles, or distributes, or provides access to any information pursuant to his employment or contract or subcontract to the contractor with the United States Navy. ANY POSSIBLE IMPLIED WARRANTIES OF MERCHANTABILITY AND/OR FITNESS FOR PURPOSE ARE SPECIFICALLY DISCLAIMED.

January 1997  
NSRP 0483

# **NATIONAL SHIPBUILDING RESEARCH PROGRAM**

**Environmental and Occupational Safety  
and Health Inspections: A Guide for  
Shipyard Managers and Employees**

U.S. DEPARTMENT OF THE NAVY  
CARDEROCK DIVISION,  
NAVAL SURFACE WARFARE CENTER

in cooperation with  
National Steel and Shipbuilding Company  
San Diego, California

ENVIRONMENTAL AND OCCUPATIONAL SAFETY AND HEALTH  
INSPECTIONS: A GUIDE FOR  
SHIPYARD MANAGERS AND EMPLOYEES

Prepared for:

National Steel and Shipbuilding Company  
2798 E. Harbor Drive  
San Diego, California 92113

Submitted on behalf of:

Collier, Shannon, Rill & Scott, PLLC  
John L. Wittenborn, Esq.  
Michael O. Hill, Esq.  
3050 K Street, N.W.  
Washington, D.C. 20007  
(202) 342-8400

Austin Environmental, Inc.  
Dana M. Austin  
10606-8 Camino Ruiz No. 174  
San Diego, California 92186  
(619) 566-0995

January 29, 1997

Table of Contents

Page

**INTRODUCTION** ..... 1

**I. GENERAL HOUSEKEEPING PRACTICES TO IMPLEMENT EVEN IN THE ABSENCE OF A PARTICULAR INSPECTION.** ..... 2

**A. Keep Records In Order.** ..... 2

**B. Minimize Events That May Trigger An Inspection Or Otherwise Lead To A Finding Of Violations.** ..... 4

**C. Be Familiar With Regulatory Authorities And Guidelines For Inspections.** ..... 6

**D. Be Familiar With Agency Protocol For Sampling Related To Your Facility.** ..... 10

**E. Be Familiar With Agency Concerns Regarding Your Facility.** ..... 11

**F. Conduct Regular Internal Inspections Of The Facility To Determine Compliance Status And Take Corrective Measures That Are Needed.** ..... 11

**G. Employee Training.** ..... 12

**H. Designate A "Facility Contact," A Company Official Who Will Be Responsible To Meet And Accompany An Inspector.** ..... 12

**I. Instruct Facility Guards And Receptionists That They Should:** ..... 13

**II. PROCEDURES TO FOLLOW IN THE CONTEXT OF A PARTICULAR INSPECTION** ..... 13

**A. Notice Of The Inspection.** ..... 13

**B. In Most Contexts, Advance Notice Of An Inspection Need Not Be Provided.** ..... 14

**C. When The Inspector Arrives.** ..... 15

**D. Initial Conference With The Inspector.** ..... 16

**E. Ensure That The Inspector Adheres To OSHA And Other Relevant Requirements.** ..... 19

**F. The Inspection Itself.** ..... 19

**G. Exit Conference** ..... 22

**III. STEPS TO TAKE FOLLOWING THE INSPECTION.** ..... 23

**A. Copy Of The Inspector's Report.** ..... 23

**B. Draft The Company's Inspection Report; Possibly Send To Counsel.** . 23

**C. Notification To Other Company Facilities.** ..... 24

**CONCLUSION** ..... 24

**EXHIBIT 1** ..... 25

**EXHIBIT 2** ..... 26

**EXHIBIT 3** ..... 28

**APPENDIX I** ..... 29

## INTRODUCTION

This document is intended to provide, in outline form, legal advice concerning the various factors that shipyards should consider with respect to facility inspections relating either to environmental (e.g., clean air, clean water, hazardous waste) or occupational safety and health (hereafter referred to as “OSHA” issues).

The outline discusses steps that shipyard legal and environmental department personnel, managers and employees should take generally (even when no particular inspection is expected), as well as steps that should be taken when a particular inspection is anticipated, is occurring, or has recently occurred.

The outline is devoted primarily to issues raised by federal environmental and occupational safety and health statutes. Additional requirements imposed by state or local laws may dictate that other steps be taken. These requirements should be considered in implementing procedures for a particular shipyard to follow in the context of environmental or OSHA inspections. Additionally, the outline references various checklists and other materials that should be reviewed in the context of specific types of inspections (e.g., those related to compliance with OSHA, the Clean Air Act, the Clean Water Act, etc.).

Finally, a shipyard safety and environmental agency inspection checklist is included as an appendix to this document. This checklist was developed to serve as ready reference for the shipyard contact during an inspection by a safety or environmental agency.

---

<sup>1</sup> This term derives from the Occupational Safety and Health Act, (“OSHA”), 29 U.S.C. §§ 651 et seq., which sets forth various federal requirements relating to worker safety and health.

I. GENERAL HOUSEKEEPING PRACTICES TO IMPLEMENT EVEN IN THE ABSENCE OF A PARTICULAR INSPECTION.

Even in the absence of a particular inspection, shipyards should take various steps in anticipation of a possible inspection, either because the steps are required by law or because they are sound management practice.

A. **Keep Records In Order.**

1. Many records are required by law -- either by statute, regulation, or the conditions of a particular shipyard's permit -- to be maintained on the premises and accessible to inspectors. In some cases (particularly under OSHA), the documents must be posted; in others, the originals must be kept on the premises.

To ensure that these requirements are met, facilities should have clear procedures for the maintenance of required documents, and these procedures should be well known to all persons with any responsibilities for the collection or maintenance of the documents or the information contained therein.

Illustrative examples<sup>2</sup> of documents that must be kept at the facility and available for inspection include:

- (a. Clean Water Act ("CWA"): Discharge monitoring reports (must be kept 3 years), 40 C.F.R. § 122.41(j)(2);
- (b. Clean Air Act ("CAA"): Continuous emissions monitoring data (must keep 2 years), 40 C.F.R. § 51.214(d)(1);
- (c. Resource Conservation and Recovery Act ("RCRA"): Hazardous waste manifests (generators, transporters, and owner/operators generally must keep 3 years), see 40 C.F.R. §§ 262.40(a), 263.22, 264.71(a)(5), 265.71(a)(5);
- (d. The Comprehensive Environmental Response, Compensation, and Liability Act ("CERCLA"), as amended by the Superfund Amendments and Reauthorization Act of 1986 ("SARA"): Section 313 toxic release inventory "Form R" reports and associated documents generally must be kept 3 years, 40 C.F.R. § 372.10; and

---

<sup>2</sup> A complete list of federal record retention requirements has been compiled in a single volume by the publishers of the Code of Federal Regulations. Guide To Record Retention Requirements, (Revised 1994). OSHA requirements are set forth at pp. 271-84; environmental requirements are at pp. 330-418.



- (e. OSHA:
  - (1) OSHA Form 200 (Log and Summary of Occupational Injuries and Illnesses), and OSHA Form 101 (Supplementary Record of Occupational Injuries and Illnesses) must be posted by the employer, 29 C.F.R. 1904;
  - (2) Inventory of all hazardous materials used in the workplace, 29 C.F.R. § 1910.1200; and
  - (3) Material Safety Data Sheets (“MSDS”), for each hazardous material used in the workplace, 29 C.F.R. §1910. 1200(g).
- 2. Some records, even though not required to be kept by law, should be kept (for some period of time), in accordance with an established document retention policy. These include, for example:
  - (a. Audits and audit-related documents; and
  - (b. Sampling and analytical results and related materials that the company has performed on a voluntary basis and is not required (by the company’s permit or otherwise) to provide to regulators.
- 3. Document Retention And Destruction Policy.

Facilities should have a written “document retention and destruction” policy.

- (a. Such a policy determines when documents that are out-of-date or otherwise no longer useful (and possibly harmful, such as environmental audits that are no longer current) to the company should be destroyed. A document retention and destruction policy can:
  - (1) save space;
  - (2) avoid confusion (because company personnel will not confuse out-of-date documents with current ones); and
  - (3) minimize the risk of irrelevant and prejudicial documents being discovered by third parties & regulators during inspections; regulators or private parties through discovery in litigation).
- (b. A written policy makes the procedures clear to all company personnel.

- (c. A written policy makes the procedures clear to regulators and other third parties, eliminating the need to explain the absence of individual documents that have been destroyed pursuant to the policy.
  - (d. The policy should clarify that some documents must be retained indefinitely (for example, documents that relate to ongoing litigation or enforcement actions). Failure to retain these documents could result in criminal sanctions.
4. Segregation of documents.
- (a. Documents required to be kept: Documents that facilities are required to keep should be segregated from other documents, ideally in a separate room.
  - (b. Privileged documents: Under no circumstances should documents that are privileged or otherwise confidential (e.g., containing trade secrets) be kept with or even near documents to which inspectors may be given access. Furthermore, privileged or otherwise confidential documents should be clearly and individually marked as privileged. Even the inadvertent release of a privileged document to a regulator (or to any other person who is not with your company or your attorney) may result in a waiver of privilege with respect to that document as well as related documents.

**B. Minimize Events That May Trigger An Inspection Or Otherwise Lead To A Finding Of Violations.**

In some cases, periodic (e.g., annual) inspections are required by law. There is, obviously, nothing that can be done to avoid these inspections.

With respect to other inspections, however, a number of steps can be taken to avoid (or at least minimize) them. These include the following:

1. Provide information to regulators as required by law. EPA and OSHA have a number of statutorily-provided tools to gather information. The failure to provide the required information in a timely and accurate manner can not only result in civil or criminal penalties, but can also trigger an inspection or other enforcement or compliance steps by regulatory entities.

Regulators' information-gathering tools can be broadly divided into two types: (a) reports that shipyards must make irrespective of individual requests from regulators; and (b) individual requests for information.

- (a. Examples of reports that shipyards must make irrespective of individual requests from regulators include:

- (1) Discharge monitoring reports, CWA Section 402;
    - (2) Spill reports under CERCLA Section 103; EPCRA (CERCLA) Section 304; and CWA Section 31 l(b).
  - (b. Examples of statutory provisions authorizing individual requests for information are set forth below, at Section I.C. 1.
2. Communicate -with employees and communities so that complaints are brought first to the company, instead of the regulators.
- a. Be responsive to nuisance complaints, such as foul odors, paint overspray or abrasive blasting dust, from community neighbors or shipyard employees. People are much less likely to advance safety and/or environmental complaints to regulatory agencies if they feel that the company sincerely cares about their grievances and is making an honest effort to correct problems.
  - b. Some statutes expressly provide protections for employees who report violations to regulators (commonly referred to as “whistle-blower” protections), e.g., CWA Section 507.
  - c. Citizens are always free to report violations. Indeed, some maybe financially motivated to do so. Under the False Claims Act, 31 U.S.C. §3729, and other statutes, persons who initiate enforcement proceedings may receive a share of any resulting penalties as “relators.” E.g., United States v. Accudyne, No. 93-C-801-S (W.D. Wis. July 5, 1995) (settlement agreement) (\$2.64 million of \$12 million penalty given to relator for identifying violations of RCRA, CERCLA, and CWA to federal authorities). Also, the Clean Air Act provides for discretionary awards up to \$10,000 for persons who furnish information leading to a criminal conviction or civil or administrative fine for virtually any violation of the Act. CAA § 113(f).

3. Business competitors.

Business competition can often result in complaints to agencies that result in inspections. In most cases, your business competitors know much more about your business than the regulatory agencies, including any problems you may be having with regulatory compliance. Many competitors will complain to the agencies when they feel they are not competing on a “level playing field” (i.e., they are losing business to you because your company does not incur the cost of complying with safety or environmental requirements).

This problem can best be avoided through mutual cooperation and the coordination of your and your competitor's environmental and safety compliance programs. Use your business or trade association to establish a joint company environmental and/or safety committee. This will provide a forum to resolve perceived injustices without resorting to actions by the agencies.

4. TRI Forms; Number Of Violations.

Finally, inspections are also prompted where large levels of emissions are reported through the Toxic Release Inventory ("TRI") reporting system, or at facilities that may have a history of violations. Although avoiding these circumstances may involve a number of complex steps, the added benefit of taking the steps will likely mean fewer inspections.

c. Be Familiar With Regulatory Authorities And Guidelines For Inspections.

EPA, OSHA, and their state counterparts are each authorized by specific statutes to conduct shipyard inspections. Each has, in turn, drafted checklists and guidelines that their inspectors are instructed to follow. Facilities should become familiar with these authorities and guidelines before an inspection is underway.

1. Examples of applicable statutory authorities are:

(a) CAA Section 114(a)(2): "[T]he Administrator or his authorized representative, upon presentation of his credentials, shall have a right of entry to, upon, or through any premises of such person or in which any records required to be maintained. . . are located, and may at reasonable times have access to and copy any records, inspect any monitoring equipment and method . . . and sample any emissions . . . ."

b CERCLA Section 104(e)(1): "[A]ny officer, employee or representative . . . [of the Administrator] is authorized to enter at reasonable times any . . . vessel, facility, establishment or other place where any hazardous substance or pollutant or contaminant may or has been generated, stored, treated, disposed of, or transported from [or] has been or may have been released [or] where such release is or may be threatened [or] where entry is needed to determine the need for response or the appropriate response to effectuate a response action under this title."

(c) CWA Section 30 S(a)(4) (13): "[T]he Administrator or his authorized representative, upon presentation of his credentials, shall have a right of entry to, upon or through any premises in which an effluent source is located or in which any records required to be maintained . . . are located, and may at reasonable times have

access to and copy any records, inspect any monitoring equipment or method . . . and sample any effluents which the owner or operator of such source is required to sample . . . .“

- (d. FIFRA Section 8: “[A]ny . . . person who sells or offers for sale, delivers or offers for delivery any pesticide or device subject to this subchapter, shall, upon request of any officer or employee of EPA] . . . furnish or permit such person at all reasonable times to have access to . . . records . . . .“
- (e. FIFRA Section 9: “[O]fficers or employees . . . of [EPA] . . . are authorized to enter at reasonable times (A) any . . . place where pesticides or devices are held for distribution or sale for the purpose of inspection and obtaining samples . . . .“ “Before undertaking such inspection, the officers . . . must present . . . appropriate credentials and a written statement as to the reason for the inspection, including a statement as to whether a violation of the law is suspected.”
- (f. OSHA Section 8(a): The Secretary of Labor or his/her representative is authorized “(1) to enter without delay at reasonable times any . . . environment where work is performed by an employee . . .; and (2) to inspect . . . during regular working hours and at other reasonable times, and within reasonable limits . . . any such place of employment . . . and to question privately any such employer, owner, operator, agent or employee.”
- (g. RCRA Section 3007(a) (regarding RCRA Subtitle C hazardous wastes): “[A]ny person who generates, stores, treats, transports, disposes of, or otherwise handles or has handled hazardous wastes shall, upon request of any . . . employee or representative of the Environmental Protection Agency . . . furnish information relating to such wastes and permit such person at all reasonable times to have access to, and to copy all records relating to such wastes . . . [S]uch . . . employees or representatives are authorized to enter at reasonable times any establishment or other place where hazardous wastes are or have been generated, stored, treated, or disposed of, or transported from; to inspect and obtain samples from any person of any such wastes and samples of any containers or labeling for such wastes.
- (h. RCRA Section 9005(a) (regarding RCRA Subtitle I, regarding underground storage tanks, or “USTs”): “[A]ny owner or operator of an underground storage tank . . . shall, upon request of any officer, employee, or representative of the [EPA], duly designated by the Administrator . . . furnish information relating to such

tanks . . . , permit such officer at all reasonable times to have access to, and to copy all records relating to such tanks . . . . [S]uch officers. . . are authorized. . . to enter at reasonable times any establishment. . . where [a UST] is located; . . . to inspect and obtain samples . . . ; [and] to conduct monitoring or testing of the tanks . . . or surrounding [environment].”

- (i. SDWA Section 1445(b)(1): “[T]he Administrator, or [designated] representatives, upon presenting appropriate credentials and a written notice . . . is authorized to enter . . . to determine whether such supplier or other person has acted or is acting in compliance, [and to inspect] records. . . processes, controls and facilities, or in order to test any feature or a public water system . . . .“
- (i. TSCA Section 11(a): “[A]ny duly designated representative of the Administrator . . . may inspect any establishment . . . in which chemical substances or mixtures are manufactured, processed, stored, or held before or after their distribution in commerce and any conveyance being used to transport chemical substances, mixtures, or such articles in connection with distribution in commerce. Such an inspection may only be made upon the presentation of appropriate credentials and of a written notice to the owner, operator, or agent in charge of the premises or conveyance to be inspected.”

## 2. Guidelines for environmental inspections.

While checklists and guidelines expressly do not create any substantive “rights” for the regulated entities, they can be tremendously useful to the regulated entities because they identify the types of areas or items upon which regulators will focus.

- (a. The most broadly applicable guideline for environmental inspections is EPA’s Multi-Media Investigation Manual. Document No. PB92-161553 (March 1992). This can be obtained from the Department of Commerce’s National Technical Information Service (NTIS), 5285 Port Royal Rd., Springfield, VA 22161 (703/487-4650). The Manual contains a helpful summary of federal environmental authorities regarding right of entry, inspections, sampling, and testing.
- (b. EPA’s Office of Enforcement and Compliance Monitoring, Fundamentals Of Environmental Compliance Inspections, ISBNNO. O-86587-782-3 (April 1991). This was prepared by EPA’s Office and Enforcement and Compliance Assurance for its basic inspector training course. It can be obtained from Government Institutes,

Inc., 4 Research Place, Suite 200, Rockville, MD 20850 (301/921-2300).

- (c) Other, media-specific, “guidance documents” or “directives” can be obtained from EPA headquarters or regional offices, or EPA’s state counterparts, either by contacting Government Institutes (see preceding paragraph for address), or through the agencies themselves. There likely will be a minor cost involved, and a request may need to be made in writing pursuant to the Freedom of Information Act (“FOIA”).<sup>3</sup>

Examples of media-specific guidelines include:

- (1) EPA’s Revised RCRA Inspection Manual, Office of Solid Waste and Emergency Response, Directive No. 9938.02(b), ISBN NO.0-86587-395-X (March 1994);
- (2) EPA’s Pretreatment Compliance Inspection and Audit Manual for Approval Authorities, Office of Water Enforcement and Permits, ISBN No. 0-86587-790-4 (Oct. 1989);
- (3) EPA’s Pretreatment Compliance Monitoring and Enforcement Guidance, Office of Water Enforcement and Permits, ISBN No. 0-86587-790-4 (Oct. 1989);
- (4) EPA’s NPDES Compliance Inspection Manual, Office of Enforcement and Compliance Assurance, ISBN No. 0-86587-465-4 (3d ed. April 1995)

<sup>3</sup> The federal FOIA statute is codified at 5 U.S.C. §§ 552 et seq. Most states have statutory provisions that parallel the federal provisions. A “generic” FOIA request is attached hereto, as Exhibit 2. Although EPA is required by law to respond to FOIA requests within 10 working days, this deadline is missed more often than it is met, and it is often missed by many weeks or even months. The best way to obtain guidance or other documents in a timely fashion is to call the appropriate official(s) within the agency that may possess the documents, telecopy or hand- deliver a FOIA request, and say that you will come to the agency after the 10-day period to pickup the documents. Phone numbers of appropriate “Hotlines” to call within EPA for various subjects (e.g., CERCLA, TSCA, storm water) are contained in Exhibit 3). The address, phone and fax numbers of the current FOIA officer for EPA headquarters are also provided.

### 3. Guidelines For OSHA Inspections.

Guidelines from OSHA are generally easier to obtain and do not require a FOIA request. One copy of the materials is usually available for free or for a nominal cost. These should be requested either from an OSHA field office, or from the OSHA Publications Office, 200 Constitution Avenue, NW, Room N-3101, Washington, D.C. 20210 (202/219-4667).

Guidelines that employers should obtain include the following:

- (a. U.S. Department of Labor, Field Inspection Reference Manual ("FIRM"), OSHA Instruction CPL 2.103 (Sept. 26, 1994). This document provides detailed instructions to OSHA personnel regarding field inspections. A September 26, 1994 cover letter memorandum from J. Dear, Assistant Secretary for Occupational Safety and Health, provides a useful list of other references for particular issues (e.g., Guidelines for Administration of Corporate-Wide Settlement Agreements, OSHA Instruction CPL 2.90; Field Operations Manual, OSHA Instruction CPL 2.45B);
- (b. U.S. Department Of Labor, OSHA Handbook For Small Businesses, OSHA 2209 (revised 1992). This book was written by OSHA for owners, proprietors, and managers of small businesses, rather than inspectors. Nevertheless, it provides a useful, 16-page self-inspection checklist for businesses to review in evaluating their compliance with OSHA requirements.
- (c. U.S. Department of Labor, Employer Rights & Responsibilities Following An OSHA Inspection, OSHA 3000 (1994). This book was also written by OSHA for employers, rather than inspectors, but it is a useful reference for businesses to review in evaluating their compliance with OSHA, as well as their rights in the wake of an OSHA inspection.
- (d. U.S. Department of Labor, Hazard Communication -- A Compliance Kit, OSHA 3104 (1992). This is a reference guide for employers providing step-by-step requirements for compliance with OSHA.

#### D. Be Familiar With Agency Protocol For Sampling Related To Your Facility.

EPA, OSHA, and their state counterparts have numerous established protocol for sampling different waste streams. The protocol that are applicable for your facility should be obtained and reviewed in advance of any inspection, to enable company personnel to determine whether inspectors are adhering to that protocol during the course of an inspection.



E. Be Familiar With Agency Concerns Regarding Your Facility.

1. In addition to reviewing agency guidelines on inspections -- which will inform you in a general sense of the types of concerns that agencies may have regarding facilities of your kind --it is sometimes possible to discover the agency's concerns with your particular shipyard before those concerns have prompted an inspection or other enforcement action. Before taking these steps, however, it is important to evaluate in a particular instance whether they could "backfire" and result in increased scrutiny (or even hostility) from the regulators.
  - (a. Particular branches of an agency (e.g., the "water" branch) may keep a separate file on your company, in which discharge monitoring reports, inspection reports, administrative orders or settlement agreements, permits (and identification of any permit violations), or even internal agency memoranda are kept. These documents may be accessible through a FOIA request, described above, or simply by going to the agency and asking to review the files.
  - (b. Depending on the relationship that your facility may have with inspectors or other individuals at the agency involved, it may be helpful to contact those persons individually to discuss environmental programs that you have in place and to inquire about the agency's positions with respect to those or other programs.

F. Conduct Regular Internal Inspections Of The Shipyard To Determine Compliance Status And Take Corrective Measures That Are Needed.

It is of obvious interest to the shipyard to conduct regular internal inspections of the facility to determine compliance status and take corrective measures that are needed, before an inspection is undertaken or notice of an inspection is received.

On December 22, 1995, EPA released a new policy designed to encourage companies to conduct environmental audits and/or comprehensive environmental management systems. The policy provides generally that facilities that discover violations through environmental audits or qualifying environmental management systems, voluntarily disclose the violations, and take prompt corrective action will receive immunity for the "gravity" component of any applicable civil penalty. 60 Fed. Reg. 66,706 (Dec. 22, 1995). Several limitations exist. Therefore, the policy should be carefully reviewed.

Several states have enacted laws designed to protect environmental audits from forced disclosure. Some states have also enacted laws providing for penalty immunity for voluntary disclosure of violations. These laws should be reviewed to determine how each shipyard should structure internal audit programs and maintain internal audit reports.

## G. Employee Training.

1. Ensure that adequate employee training is in place. This will include initial training for new hires, refresher training, craft specific safety and environmental training and on-going training such as safety “gang-box” meetings.

This is particularly important in the context of OSHA inspections, where employees will likely be singled out and questioned to determine whether they have been adequately trained. For example, employees may be asked to locate within 5 minutes an “MSDS” for a particular hazardous material, or to describe the extent (and time periods) of their OSHA training with respect to hazardous chemicals. See 29 C.F.R. § 1910.1200.

Gang-box meetings are an effective method to impart safety and environmental training in the shipyard. For example, environmental Best Management Practices can be broken down into ten to fifteen minute training sessions and given to appropriate craft personnel on an on-going basis. The shipyard must ensure that each training session is documented, including what instruction was provided, on what date and to whom. To an agency, undocumented training is usually no different than no training at all.

2. Ensure that all training is documented in writing and that such documentation is immediately available. The lack of documentation is the easiest type of violation to find and to fix.

## H. Designate A “Shipyard Contact,” A Company Official Who Will Be Responsible To Meet And Accompany An Inspector.

1. This may be a different person, depending upon the type of inspection (e.g., OSHA, RCRA, water, etc.). The shipyard contact should have authority to address questions by the regulator.

Personal qualifications include that the shipyard contact should:

- (a) be knowledgeable about the shipyard and its operations
- (b) be familiar with the appropriate statutes and associated regulations;

<sup>4</sup> It cannot be emphasized enough that the shipyard contact should be knowledgeable about the matters likely to be the subject of an inspection. If the person whom the shipyard wants to entrust to be the shipyard contact is not and cannot become sufficiently knowledgeable, he should bring with him on the inspection other persons who are knowledgeable (but who are also aware of their limited role and will be circumspect in what they say).

- (c. be aware of the status and location of company permits, exemptions, and waivers under the regulations;
- (d. be aware of the regulatory status of the shipyard with respect to regulators (e.g., knowledgeable of prior notices of violation, litigation, orders, agreements, etc.); and
- (e. have the appropriate demeanor to interact with regulators.

I. Instruct Shipyard Security Guards And Receptionists That They Should:

- (a. not permit the inspector beyond the reception area;
- (b. be polite, but not engage in any discussion with the inspector;
- (c. request that the inspector show his or her credentials or other identifications and
- (d. immediately contact the company official who will be responsible to meet and accompany an inspector.

II. PROCEDURES TO FOLLOW IN THE CONTEXT OF A PARTICULAR INSPECTION.

A. Notice Of The Inspection.

- 1. Some statutes require that regulators provide written notice of inspections, except under unusual circumstances.
  - (a. SDWA Section 1445(b)(1);
  - (b. FIFRA Sections 8(b) and 9(a)(2);
  - (c. TSCA Section 11(a).<sup>6</sup>

<sup>5</sup> Under some statutes (e.g. OSHA, 29 C.F.R. § 1903.7(a)), inspectors are required to show their credentials or otherwise identify themselves. However, the failure of an inspector to follow these procedures will not necessarily invalidate his or her findings of any violations. See Accu-Namics, Inc. v. OSHRC, 515 F.2d 828, 833 (5th Cir. 1975), cert. denied sub nom. Accu-Namics, Inc. v. Usery, 425 U.S. 903 (1976).

<sup>6</sup> Cf. CAA Section 114(d) (federal authorities must notify the state prior to inspecting for State Implementation Plan (“SIP”) violations).

2. Where advance notice of an inspection is received, companies will, of course, want to:
  - (a. inform the person(s) responsible for meeting and accompanying the inspector; and
  - (b. take appropriate steps to correct any regulatory deficiencies in advance of the inspector's arrival.

B. In Most Contexts, Advance Notice Of An Inspection Need Not Be Provided.

In most cases, the government need not provide advance notice of an inspection. The provisions cited above, in Section II.A, are the exception, not the rule.

1. OSHA Section 8(a) authorizes the Secretary of Labor's representative:

“(1) to enter without delay and at reasonable times any . . . environment where work is performed by an employee. . . ; and (2) to inspect . . . during regular working hours and at other reasonable times, and within reasonable limits. . . any such place of employment. . . and to question privately any such employer, owner, operator, agent, or employee.”

2. Examples of environmental statutes that do not require advance notice include:
  - (a. CAA Section 114(a)(2)(B);
  - b** CERCLA Section 104(e);
  - (c. CWA Section 308(a)(B)(ii); and
  - (d. RCRA Section 3007(a)(1).’

<sup>7</sup> The case law is unclear on the issue of whether a warrant is required to inspect a facility where a facility refuses to grant access to an inspector voluntarily. Compare *Marshall's v. Barlow's, Inc.*, 436 U.S. 307 (1978) (warrant is required, despite OSHA provision allowing warrantless entry), with *Donovan v. Dewey*, 452 U.S. 594 (1981) (upholding a warrantless inspection under the Federal Mine Safety and Health Act). As discussed below, however, facilities generally should not deny access, even when no warrant is provided, except in unusual circumstances and after conferring with counsel.

c. When The Inspector Arrives.

1. As indicated above, shipyard security guards or receptionists should not permit inspectors past the reception or other area of entry until the shipyard contact has been notified of the inspector's arrival and come to the area to greet the inspector.
2. Security guards, receptionists, and other company personnel should be polite and refrain from engaging in conversation with the inspector.
3. Once notified, the shipyard contact or his/her designee(s) should coordinate facility preparations.
4. Inspectors who show up unannounced should not expect to be greeted immediately by the designated company official. The receptionist or guard should be instructed to direct the inspector to a comfortable waiting area while the shipyard contact person is located. If the shipyard contact person is on the telephone, in a meeting, or is otherwise unable to greet the inspector within 15 or 20 minutes of his or her arrival, another responsible company official should greet the inspector and begin the inspection process.
5. Showing of credentials: OSHA and most of the environmental statutes (but not CERCLA or RCRA) require inspectors to show their credentials to facility personnel. If inspectors do not offer to show their credentials, the shipyard contact should ask that they do so. If they do not have their credentials, the shipyard may be in a position to deny access, but counsel should probably be consulted before such a step is taken.

If the inspector is unknown to shipyard personnel, an added precaution would be to call the office that the inspector claims to represent (the EPA regional office) to verify that the person is, in fact, an agency representative. This will most likely occur when the inspector is an agency contractor.

Occasionally EPA, OSHA, or a state agency will be accompanied by a consultant to assist in the inspection. Under the Clean Air Act, courts are split as to whether consultants must be allowed to enter facilities as "authorized representatives" of EPA's Administrator.<sup>8</sup> The plain language

<sup>8</sup> Compare United States v. Stauffer Chemical Co., 647 F.2d 1075 (10th Cir. 1981) (consultant cannot qualify as an "authorized representative"), and United States v. Stauffer Chemical Co., 684 F.2d 1174 (6th Cir. 1984) (same), aff'd, United States v. Stauffer Chemical Co., 464 U.S. 165 (1984), with In re Clean Air Act Administrative Inspection of the Bunker Hill Co., 658 F.2d 1280 (9th Cir. 1981) (consultant can be an "authorized representative"). See generally A. Reitze & C. Holmes, Inspections Under The Clean Air Act, 1 Environmental

of FIFRA (Sections 8 and 9) indicates that only officers or full-time employees of EPA may conduct inspections. The legislative history behind other statutes is also split: The Clean Water Act's history indicates that contractors may not be used for inspections, whereas RCRA'S history indicates that they may.<sup>9</sup> Depending on the statutory authority for the inspection, therefore, and on the context of the inspection, facilities may want to deny access to a consultant, but they should do so only after conferring with counsel in light of the harsh consequences that may follow from a wrongful refusal of access. See p. 19, below. Moreover, whenever access to a consultant is denied, shipyard personnel should state clearly they are not denying access to the government official, since doing so could result in sanctions. The shipyard should also make clear that access is being denied because of the irregularity of the circumstances, and not out of a desire to conceal violations of any sort. The government official may not be prepared to conduct the inspection without the consultant, and therefore may elect to postpone the inspection until a warrant can be obtained or an agreement with the facility can be reached.

#### D. Initial Conference With The Inspector.

Immediately after greeting the inspector, the shipyard contact should bring the inspector to an office or other private area for an initial conference. The conference should address the following subjects:

1. The Scope And Authority Of The Inspection.
  - (a. Unless the scope of the investigation (i.e., the geographical areas, or the types of potential violations, to be reviewed) and the source of the inspector's authority (e.g., the specific statute), have been defined in advance of the inspector's arrival (e.g., through advance written notice or by phone), the shipyard contact should inquire as to these.

Determining the scope is important because, unless violations that are beyond the scope of the investigation are "in plain view" of the

Lawyer, 29,41-42 (1994) (discussing the split among the circuits on this issue); 72 A.L.R. Fed. 176 (1992) (article discussing same).

<sup>9</sup> Compare S. Rep. No. 92-414, 92d Cong., 2d Sess. (1971), reprinted in [1972] U.S. Code Cong. & Ad. News 3668, 3729 ("The [CWA'S] authority to enter is not extended to contractors with the EPA . . ."), with H.R. Conf. Rep. No. 96-1444, 96th Cong., 2d Sess., 35 (1980), reprinted in [1980] U.S. Code Cong. & Ad. News 5019, 5021 (the words "or representatives" of the Administrator was included in RCRA Section 3007(a) to clarify "that the Administrator may authorize EPA contractors to obtains samples, perform inspections, and examine records

inspector during the inspection, he/she may be precluded from using any evidence of violations that are discovered beyond the stated scope.

2. The Type Of Information To Be Collected, And The Permissibility Of Sharing/Duplicating Efforts.
  - (a) It is almost always worthwhile for a company to duplicate the inspector's evidence-gathering efforts to provide a check on the reliability of the results. To ensure that the company will be prepared to do this, the shipyard contact will need to discuss the types of evidence that the inspector intends to collect, and should ensure that the inspector will not object to the duplication of effort.
  - (b) The types of evidence that might be gathered, or information that might be shared, include:
    - (1) Sampling. The inspector may take water, air emission, soil, or other types of samples. Under some statutes -- e.g., CERCLA Section 104(e)(4)(B); FIFRA Section 9(a); RCRA Section 3007(a)(2) (regarding hazardous wastes) -- the company has a right to take split samples. Under others (w CAA Section 114, SDWA Section 1445(b), RCRA 9005(a) (regarding USTS)), there is no such requirement, but the company generally may take samples by permission. At a minimum, the inspector should be asked, and any refusal to permit split sampling should be noted in a letter sent to the agency later the same day, as such a letter may help undercut the reliability of the samples).
    - (2) Sampling results. The shipyard contact should request that sampling results be sent to the company at the same time as, or immediately after, they are sent to the agency. Again, some statutes require that sampling results be provided to the company (e.g., FIFRA, CERCLA, RCRA Subtitle C), while others do not (e.g., CAA, CWA, SDWA, RCRA Subtitle I), but again, the request should be made and any refusal noted in writing.
    - (3) Photographs. At some facilities, taking photographs may violate the National Security Act. Inspectors should be notified that failure to comply with the National Security Act is a criminal offense. If national security issues are not present, the inspector should be asked to provide a duplicate set of any photographs that are taken. In addition, the shipyard may want to take pictures of any spills or other matters that are photographed by the inspector, if possible

from perspectives that may be less prejudicial and more objective than the inspector's.

Facilities that have a “no photographs” or “no cameras” policy should direct the inspector's attention to the policy (which should be in a written form) and ask that the inspector refrain from taking photographs. If the inspector refuses, the shipyard may want to try to reach an agreement that the photographs will -be treated as confidential business information, see 40 C.F.R. § 2.201 et seq., or, in an extreme case, may want to insist that the inspector obtain a warrant before the shipyard's policy will be violated. Counsel should be consulted before the company insists upon a warrant or takes any other step that might be considered a denial of access, since a refusal to allow an inspection (or a particular aspect of an inspection) could result in civil penalties (e.g., for violating a Permit condition or one of the statutory provisions quoted in Section I.C. 1), or even a criminal conviction (for obstruction of “the due and proper administration of the law.” See 18 U.S.C. § 1505).<sup>10</sup> Even apart from these sanctions, however, such a refusal should be avoided because it will likely increase the level of scrutiny or even hostility from the inspector. Finally, insisting upon a warrant is unlikely to do much for the company, since warrants are generally easily obtainable within a relatively short period of time (possibly as little as a few hours).

3. The subjects to be covered.

The shipyard contact will want to know what subjects are likely to be covered, so that he can arrange to have appropriate records obtained (or personnel available) to address the inspector's concerns.

4. The reason for the inspection.

Inspectors may (although they generally are not required to) divulge the reason for the inspection (e.g., a specific complaint, or company report), and this question should be asked.

5. The confidentiality of the information collected.

<sup>10</sup> See United States v. Berg, 710 F. Supp. 438, 445 (E.D.N.Y. 1989) (conviction for obstructing a customs inspection), aff'd sub nom. United States v. Schwartz, 924 F.2d 410 (2d Cir. 1991).



The shipyard contact should insist that any photographs or other records taken (other than discharge monitoring reports or other documents that are generally publicly available) will be kept confidential until the company has had an opportunity to raise and resolve with the EPA Regional Administrator or other regulatory personnel the confidentiality of the information gathered (either because the information contains trade secrets or otherwise protected information). Failure to invoke a claim of confidentiality could result in a waiver of that claim. See 40 C.F.R. § 2.201 et seq. (regarding confidential business information).

E. Ensure That The Inspector Adheres To OSHA And Other Relevant Requirements.

Prior to beginning the inspection itself, the inspector must be provided with any necessary safety equipment (e.g., hardhat, boots, respirator), and must otherwise comply with OSHA and other relevant requirements.

F. The Inspection Itself.

1. The shipyard contact should keep his/her substantive comments to a minimum, should not make any admissions, and should not speculate.

Any admission of a violation, or even comments that might be taken as agreement with the inspector's opinion that a violation exists, might be admissible in an administrative hearing, court, or other forum, even if the shipyard contact is not called as a witness.<sup>11</sup>

Under no circumstances should shipyard personnel speculate, in part because providing incorrect information is a violation of law. If the shipyard contact cannot answer a particular inquiry, in most cases he/she should locate the person who can answer the question. If that alternative is not available, the shipyard contact should assure the inspector that the information requested will be provided promptly following the inspection.

2. Accompany the inspector, and take notes, during the entire inspection.
  - (a. It is important that the shipyard contact accompany the inspector at all times, to preclude the inspector from claiming that he/she witnessed violations while alone.

<sup>11</sup> That is because "admissions by a party-opponent" or "statements against interest" are generally considered outside the scope of the evidentiary doctrine that excludes "hearsay" as evidence. Fed. R. Evid. 801(d)(2), 804(b)(3).

- (b. The shipyard contact -- or preferably his/her assistant<sup>12</sup> -- should take detailed notes concerning the inspection, including a description of any violations noted by the inspector, and any favorable comments made by the inspector. In the same way that damaging statements made by shipyard personnel might be used against the company despite the “hearsay” doctrine, so too might helpful statements by the inspector.

3. Duplication of evidence gathering (samples, photographs, notes).

As indicated in the previous subsection, companies should take (or arrange to obtain) duplicate samples, sample results, photographs, or other evidence where possible.

4. Notation of sampling or other inspection errors.

As noted above, EPA, OSHA, and their state counterparts have established protocol for sampling and other inspection techniques. Where the inspector deviates from established protocol, those deviations should be noted. Deviations can, for example, skew sample results upward (or downward) significantly. The greater the chance of error, the less likely that the results can be used to prove an exceedance of permit or other emission standards.

5. Interviews of company personnel.

- (a. OSHA. As quoted above, Section 8(a) of OSHA expressly authorizes inspectors “to question privately” employees or various other company personnel. OSHA’S Field Operations Manual specifically instructs that employees shall be informed that the interview is to be in private (although the employee must be permitted to have an employee representative present for the interview as well). An employer objection to private interviews will be construed as a “refusal of entry.” Field Operations Manual, OSHA Instruction CPL 2.45B, at Section D.8.d(4) (6th ed. 1994).

OSHA’S Field Operations Manual directs that employee interviews “shall be conducted within reasonable limits and in a reasonable manner and shall be kept as brief as possible.” Id. at Section D.8.d(1).

- (b. Environmental. Perhaps because, unlike OSHA, environmental statutes are not primarily designed to protect employees,

<sup>12</sup> To enable the shipyard contact to address the inspector’s concerns, it is generally preferable that the note-taking role be assigned to an assistant.

environmental statutes generally do not state whether employees may be interviewed privately. Whereas most environmental statutes provide that the regulatory agency may “require any person who has or may have [relevant] information” to provide that information “upon reasonable notice,” CERCLA Section 104(e), they do not state whether that information can be requested during the course of an inspection, particularly where such a request was not made by the agency prior to the inspection and where compliance might require interruption of the employee’s work. EPA’s inspector’s manual, Fundamentals Of Environmental Compliance Inspections, ISBN No. O-86587-782-3 (April 1991), at p. 14-7, instructs inspectors that, during the initial conference with the shipyard contact, instructors should try to “work out” a schedule for interviewing employees. This statement indicates that the agency may take the view that it does not have authority to demand employee interviews at any time.

Another of EPA’s inspection manuals, Multi-Media Investigation Manual, Document No. PB92-161553 (March 1992), at Appendix L (pp. L-1 to L-2), instructs inspectors to “[m]ake sure that the interviewee feels that there is sufficient privacy,” but unlike the OSHA Manual (and OSHA’S statutory language itself), does not dictate that interviews are to be conducted in private.

6. Records.

- (a) As stated above, all records that a shipyard is required by law to keep should be made available in a location that is segregated from other records, particularly privileged records.
- (b) Records requested by an inspector should be brought to the inspector for review. It generally is not a good idea to allow an inspector to conduct a random search of the company’s files.
- (c) If the inspector requests and receives copies of documents during the inspection, the shipyard contact should prepare a list or index of the documents and obtain a receipt from the inspector showing the documents which the inspector obtained.

As for any records that may have been requested but were not available, unless the request was overburdensome, sought confidential information, or was otherwise objectionable, the company should provide such records promptly following the inspection, and should assure the inspector that this will be done. A list of such documents should be prepared at the time of the inspection.

7. The inspector should be taken to the location of the inspection (e.g., waste storage area, waste water treatment facility, machine or equipment, etc.) by the most direct route that will not expose the inspector to areas of the plant that are beyond the scope of the inspection. It is not necessary, and generally is inappropriate, to volunteer to lead the inspector on a complete tour of the company facility. However, in some cases, particularly with a new inspector, it may be a good idea to arrange for a tour to acquaint the inspector with the nature of the operations. This should be carefully arranged and coordinated with counsel.
8. Adherence to inspection rules or guidances.

In the event that the inspector strays beyond the stated scope of the inspection or otherwise deviates from the rules set forth in agency guidance documents or other rules governing the inspection, the shipyard contact should in most cases insist that the rules be followed. Any deviations should be noted, and, if serious enough, the inspector's superiors should be called.

It is important, however, to maintain a professional and, ideally, friendly relationship with the inspector, to avoid unnecessary confrontations. It is perhaps for this reason more than any other that companies must wisely select who will be the shipyard contact.

#### G. Exit Conference.

1. Perhaps just as important as the initial conference is an exit conference. The exit conference should address the following subjects:
  - (a. Observations of violations or compliance. It is important to determine at this time what the inspector does, or does not, consider to be a problem.
    - (1) Problems can in this way be promptly addressed (and the agency notified of the corrective action taken).
    - (2) The lack of problems can be noted (again, demonstrating the importance of having a person take careful notes).

As noted above, it is crucial that the shipyard contact not acknowledge the existence of any apparent violations that the shipyard may wish to contest.

- (b. Compliance with respect to any apparent violations noted by the inspector.

While not admitting the existence of what may be questionable findings of violations, the shipyard should also demonstrate its willingness to correct any problems that may exist. Thus, the shipyard contact should inquire as to steps (and timelines) that the inspector would suggest to bring the facility into compliance.

Any factual misstatements made by the inspector during the exit interview (or during the inspection itself) should be politely corrected.

- 2. Affidavits or other statements.

In the event that an inspector requests that the shipyard contact review and sign a prepared affidavit or other statement, the contact should probably refuse. At a minimum, the contact should inquire as to the inspector's authority to request such a statement, and should confer with counsel before signing a statement.

### **III. STEPS TO TAKE FOLLOWING THE INSPECTION.**

- A. Copy Of The Inspector's Report.

The shipyard contact should follow up the exit conference by making a written request for a copy of the inspector's report.

- B. Draft The Shipyard's Inspection Report; Possibly Send To Counsel.

Immediately following the inspection, the shipyard contact and his/her assistant (the person taking notes) should write their own inspection report, discussing in an objective manner their impressions of the facility conditions during the inspection, and noting in particular any sampling errors committed by the inspector, as well as favorable statements made by the inspector.

Ideally, this report would be written the same day as the inspection, so that it might later be given more weight than an inspector's report, which might be written several days or even weeks after the inspection.

If it appears that the inspection may lead to, or become the subject of, litigation (either judicial or administrative), the report should be clearly identified as "Privileged: Attorney Work Product, and Attorney-Client Communication," and it should immediately be sent to counsel to enable counsel to provide prompt legal advice.

c. Notification To Other Company Facilities.

If the inspected facility is part of a multi-facility shipyard, the company should prepare a memorandum for the other facilities, informing them of the inspection and alerting them to the fact that their facilities might also be inspected. This step is particularly important with respect to OSHA, under which facility violations may be considered “repeated” if the employer has been cited for the same or a “substantially similar” condition anywhere in the nation within the past three years.

It is important to bear in mind that -- as with the shipyard’s post-inspection report and even the notes taken during the inspection -- this memorandum might not be considered “privileged” by a court of law, and therefore might have to be produced in judicial discovery or other contexts. Therefore, its content must be carefully crafted.

CONCLUSION

Environmental and OSHA inspections of industrial facilities are a way of life, and although some steps can be taken to minimize them, they cannot be prevented. However, substantial measures can be taken to prepare for inspections, to have them run smoothly, and to avoid substantial sanctions for violations that may be discovered during the course of them. From a general (and mostly federal) perspective, those steps are outlined above, but, to minimize a shipyard’s exposure to penalties, shutdowns, or other sanctions, they should be supplemented with a review of state and local requirements, and facility-specific factors.

**EXHIBIT 1**

**SUMMARY OF FEDERAL ENVIRONMENTAL ACTS REGARDING RIGHT OF ENTRY, INSPECTIONS, SAMPLING, TESTING, ETC.<sup>13</sup>**

Act/Section	Designated Representative	Presentation of Credentials	Notice of Inspection	Sampling Permitted	Inspection of Records	Sample Splits	Receipt for Agency's Samples	Return of Analytical Results
Clean Water Act - § 308(a)	Yes, authorized by Administrator	Required	Not required	Yes (effluents which the owner is required to sample)	Yes	Not required	Not required	Not required
FIFRA - § 8(b) (Books and Records)	Yes, designated by Administrator	Required	Written notice required with reason and suspected violation note	Access and copy records	Yes	N/A	N/A	N/A
FIFRA - § 9(a) (Inspection of Establishments)	Yes, designated by Administrator	Required	Written notice required with reasons for inspection	Yes	See § 8	Required, if requested	Required	Required, pr
Clean Air Act - § 114(a)	Yes, authorized by Administrator	Required	Not required, except must notify State for SIP sources	Yes	Yes	Not required	Not required	Not required
RCRA - § 3007(a) § 9005(a)	Yes, designated by Administrator	Not required	Not required	Yes	Yes	Required, if requested	Required	Required, pr
SDWA - § 1445(b)	Yes, designated by Administrator	Required	Written notice required; must also notify State with reasons for entry if State has primary enforcement responsibility	Yes	Yes	Not required	Not required	Not required
TSCA - § 11(a,b)	Yes, designated by Administrator	Required	Written notice required	(The Act does not mention samples or sampling in this section. It does state an inspection shall extend to all things within the premise of conveyance)	Yes	N/A		N/A
CERCLA - § 104(e)	Yes, designated by President	Not required	Upon reasonable notice for information	Yes	Yes	Required, if requested	Required	Required, pr

13

This chart is taken from EPA's Multi-Media Investigation Manual, Doc. No. PB92-161553 (March, 1992)

EXHIBIT 2

(Form/Sample Letter For Request Under  
The Freedom of Information Act)

[Date]

Ms. Jeralene B. Green  
Freedom of Information Act Officer  
U.S. Environmental Protection Agency  
401 M Street, S.W. (W-385)  
Washington, D.C. 20406

Re: Freedom of Information Act Request ; Response Due [insert date  
that is ten days from when the agency receives the request]

Dear Ms. Green:

Pursuant to the Freedom of Information Act, 5 U.S.C. § 552, I hereby request the following documents from the Environmental Protection Agency (“EPA”):

1. EPA’s Multi-Media Inspection Manual, Dec. No. PB92-161553 (March 1992);
2. EPA’s Revised RCRA Inspection Manual, OSWER Dec. No. 9938.02(b) (March 1994); and
3. All other documents that are in the possession or control of EPA and that set forth or describe inspection procedures applicable to the [ ] industry.

Pursuant to 5 U.S.C. § 552(a)(6), please provide these documents to me within ten business days of your receipt of this request, or by [insert date that is ten days from when the agency receives the request]. As to any portion of this request that you believe may require excessive amounts of time to address, please contact me within ten days of your receipt of this request, 5 U.S.C. § 552(a)(6), and I will attempt to modify the request accordingly. In the case of any document or portion thereof that you believe falls within the exemptions provided in 5 U.S.C. § 552(b), (c), I request that the document or portion thereof be identified and that the reason for invocation of the exemption be stated.



I agree to reimburse EPA for processing fees pursuant to this request in accordance with the applicable statutory requirements. 5 U.S.C. § 552(a)(4). However, to minimize unnecessary effort and expense given the potentially large number of documents responsive to this request, I would like to review such documents prior to duplication, in the event that copying fees may exceed [\$.]. Further, to reduce any delays in production, please advise me as the documents requested become available for review, rather than waiting until all documents responsive to the request have been assembled.

Thank you very much.

Sincerely yours,

[Name]

### EXHIBIT 3

#### EPA HOTLINE AND FOIA NUMBERS

EPCRA Hotline	1 (800) 535-0202
RCRA/Superfund Hotline	1 (800) 424-9346
Safe Drinking Water Hotline	1 (800) 426-4791
Stratospheric Ozone Protection Hotline	1 (800) 296-1996
TSCA Hotline	1 (202) 554-1404
Wetlands Protection Hotline	1 (800) 832-7828
Hazardous Waste Ombudsman Program	1 (800) 262-7937
FIFRA (telecommunications network)	1 (800) 858-7378

EPA Headquarters: Jeralene B. Green, Agency FOIA Officer  
U.S. EPA, 401 M Street, S.W. (W-385)  
Washington, D.C. 20406  
Phone No. (202) 260-4048  
Fax No. (202) 260-0295

## **APPENDIX I**

# **SHIPYARD SAFETY AND ENVIRONMENTAL AGENCY INSPECTION CHECKLIST**

**SHIPYARD SAFETY AND ENVIRONMENTAL AGENCY INSPECTION  
CHECKLIST**

1. Inspection Notice

a. Method of Notice

i. Letter

(1) Addressed to: \_\_\_\_\_

(2) Date Arrived: \_\_\_\_\_

(3) Letter Dated \_\_\_\_\_

ii. Telephone notice

(1) Call received by: \_\_\_\_\_

(2) Date and Time call received:  
\_\_\_\_\_

(3) Call received from:

(a) Agency: \_\_\_\_\_

(b) Name: \_\_\_\_\_

(c) Title: \_\_\_\_\_

iii. Arrival at facility w/o prior notice

2. Inspector Arrival at Facility

a. Security/Reception

i. Secure inspector(s) in reception area.

ii. Contact facility agency contacts:

(1) Environmental \_\_\_\_\_

(2) Safety \_\_\_\_\_

(3) Legal \_\_\_\_\_

Date: \_\_/\_\_/\_\_

Prepared by: \_\_\_\_\_

# SHIPYARD SAFETY AND ENVIRONMENTAL AGENCY INSPECTION CHECKLIST

- (4) Operations \_\_\_\_\_
- (5) Administration \_\_\_\_\_

111. Inspector Identification

- (1) Examine Inspector(s) Credentials.
- (2) Collect business cards from all parties.

3. Pre-inspection Conference

a. Conduct inspector(s) to private office or conference room.

b. Determine scope of inspection:

i. What initiated this inspection ?

---

---

---

---

ii. What is the scope of inspection?

(1) Specific areas of the shipyard to be inspected?

---

---

---

(2) Specific shipyard processes or equipment to be inspected?

---

---

---

---

Date: \_\_/\_\_/\_\_

Prepared by:

---

**SHIPYARD SAFETY AND ENVIRONMENTAL AGENCY INSPECTION  
CHECKLIST**

(3) Specific violations or complaints ?

---

---

---

(4) Specific permit conditions?

---

---

---

---

iii. Determine information inspector(s) intends to gather.

(1) Media samples:

(a) Water samples.

(i) Ask for split samples.

1) Allowed?

2) Refused?

(b) Air samples.

(i) Ask for split samples.

1) Allowed?

2) Refused?

(c) Soil or sediment samples.

(i) Ask for split samples.

1) Allowed?

2) Refused?

Date: \_\_/\_\_/\_\_

Prepared by:

---

**SHIPYARD SAFETY AND ENVIRONMENTAL AGENCY INSPECTION  
CHECKLIST**

- (d) Waste samples.
  - (i) Ask for split samples.
    - 1) Allowed?
    - 2) Refused?
- (2) Photographs or Video
  - (a) Provide inspectors with company “no-camera” policy.
  - (b) Will inspectors take photos or video?
    - (i) Photographs
      - 1) Ask for duplicate photos.
        - a) Allowed?
        - b) Refused?
    - (ii) Video
      - 1) Ask for duplicate video.
        - a) Allowed?
        - b) Refused?
- (3) Facility records.
  - (a) Will inspector(s) examine facility records?
    - (i) What specific records are requested?

---

---

---

---

Date: \_\_/\_\_/\_\_

Prepared by:

---

# SHIPYARD SAFETY AND ENVIRONMENTAL AGENCY INSPECTION CHECKLIST

- (b) Confidentiality of Information.
  - (i) Inform inspectors(s) that all information, records and/or photos must be kept confidential.
- (4) Employee interviews.
  - (a) Will inspector(s) interview employees?
    - (i) What specific employees will be interviewed, if any?

---

---

---

---

## 4. During the Inspection

- a. Safety briefing.
  - i. Brief inspector(s) as to potential safety hazards in the shipyard.
  - ii. Brief inspector(s) as to required personal protective equipment.
  - iii.
  - iv. Inform inspector(s) that they are required to be escorted at all times while in the shipyard.
- b. Inspection Route.
  - i. Determine route through shipyard to areas of inspection.
  - ii. Do not allow inspector(s) to stray from established route.
  - iii. Do not allow inspectors to split up and go on separate routes.

Date: \_\_\_/\_\_\_/\_\_\_

Prepared by:

---



## **SHIPYARD SAFETY AND ENVIRONMENTAL AGENCY INSPECTION CHECKLIST**

- c. At the inspection site(s).
    - i. Take detailed notes of inspection process.
    - ii. Take duplicate samples and/or photos.
    - iii. Copy any facility records provided to inspector(s).
  - d. Employee interviews.
    - i. Explain to employee the nature of inspection.
      - (1) Ask employee not to speculate if he/she does not know the answer to an inspector's question.
      - (2) Ask employee if he/she would like a company representative present during the interview.
  - e. Records review.
    - i. Provide inspector(s) with a desk to review documents, apart from the records storage area.
    - ii. Only provide the specific records requested by the inspector.
    - iii. Prepare list of documents that are copied for inspector to remove from facility.
    - iv. Prepare list of all documents which were requested, but could not be located at the time of inspection.
5. Exit interview
- a. Ask inspector(s) for observations of violations or compliance.
    - i. Document inspector's comments.
    - ii. Do not confirm or deny the existence of violations.

Date:    /    /   

Prepared by:

---

**SHIPYARD SAFETY AND ENVIRONMENTAL AGENCY INSPECTION  
CHECKLIST**

- b. Ask inspector(s) to explain what steps the agency will take following the inspection.
  - i. Document inspector's comments.
- c. Correct and document any factual misstatements made by the inspector(s) during the inspection.
- d. Do not sign any statement or affidavits prepared by the inspector w/o approval by company counsel.

6. After the Inspection

- a. Write agency requesting a copy of inspector's report.
- b. Prepare company inspection report.
  - i. Follow-up on any corrective actions required to ensure compliance.
    - (1) Document all corrective actions.
  - ii. Prepare follow up letter to agency memorializing any understandings or agreements reached during the inspection.

7. Other Notes or Comments

---

---

---

---

---

---

---

---

---

---

Date: \_\_/\_\_/\_\_

Prepared by:

---

**SHIPYARD SAFETY AND ENVIRONMENTAL AGENCY INSPECTION  
CHECKLIST**

---

---

Date: \_\_/\_\_/\_\_

Prepared by:

Additional copies of this report can be obtained from the  
National Shipbuilding Research and Documentation Center:

**<http://www.nsnet.com/docctr/>**

Documentation Center  
The University of Michigan  
Transportation Research Institute  
Marine Systems Division  
2901 Baxter Road  
Ann Arbor, MI 48109-2150

Phone: 734-763-2465  
Fax: 734-936-1081  
E-mail: [Doc.Center@umich.edu](mailto:Doc.Center@umich.edu)