

**DOCUMENTATION GUIDELINES
FOR
COMPLIANCE RELATED FIELD ACTIVITIES**

Training Guide

CONTENTS

I.	PURPOSE	Page 3
II.	RESPONSIBILITIES	Page 4
III.	DOCUMENTATION	Page 4
IV.	FIELD INSPECTION GUIDELINES	Page 5
V.	REPORT WRITING GUIDELINES	Page 6
VI.	ATTACHMENTS	
	Sample Notice Of Potential Violations	Page 9
	Report Review Checklist	Page 10
	Entry and Exit Checklist	Page 11
	Field Pocket Card	Handout

I. PURPOSE

- A. The purpose of this document is to establish guidelines for the documentation of findings and observations made during EPA field activities⁽¹⁾.
- B. These guidelines establish the practice of providing a “Notice” to the regulated facility at the conclusion of the field activity (inspection). The “Notice” may be a Notice of Preliminary Findings (NOPF), Notice of Potential Violations (NOPV), or Notice of Violation (NOV), or other “Notice” that lists **all readily apparent violations**⁽²⁾ identified during the inspection.

The Notice serves three primary functions:

- 1. It informs the facility at the earliest possible time that potential⁽³⁾ violations were identified during the field activity.**
- 2. It provides the facility with a written record of potential violations at the earliest possible time. This will allow the facility to implement appropriate corrective actions in a timely manner.**
- 3. It documents the time when the facility was first notified that potential violations exist and serves as a written record for EPA.**

Each Notice should clearly explain that it does not constitute a compliance order, a penalty assessment, or any other administrative or judicial enforcement action. The Notice should state that it only includes those potential violations observed during the inspection and that additional violations may be identified later. In general, a Notice, or the listing of a given violation on the Notice, should not be provided/cited if the regulatory requirements are unclear. For example, when the requirements are exceptionally complex with varied interpretations or when the circumstances surrounding the violation are unclear. Attachment 1 contains several example of Notices.

⁽¹⁾ “Field Activities” - Typical field activities, hereinafter referred to as inspections, covered by this guidance will include but not be limited to compliance evaluation inspections, compliance sampling inspections, investigations, and responses to citizen complaints, etc..

⁽²⁾ “Violations” - Will include any violations of environmental statutes, permits, or regulations.

⁽³⁾ “Potential” - Will mean that all violations identified will be considered as “potential” violations until reviewed by a compliance officer or attorney.

II. RESPONSIBILITIES

Adherence to these guidelines will help ensure that potential violations are documented in a manner that provides for effective and consistent enforcement by EPA.

- A. Experience has shown that field conditions may limit the full implementation of these guidelines. Deviations from the outlined procedures and techniques, **based on unforeseen field conditions and best professional judgment**, are allowable. For example, records may not be available for copying, inclement weather or safety concerns may prohibit parts of the inspection, or facility personnel may not be cooperative or present. Significant deviations from these guidelines should be discussed between the inspector and compliance officer at the earliest possible time and they should be documented in the inspection report.

III. DOCUMENTATION

- A. For the purpose of this guidance, **“documentation”** will include all methods utilized to research, identify, collect, copy, gather, record, photograph, summarize, and report information **needed to demonstrate that a specific event, action, or activity occurred**. This is especially important when that event, action, or activity is a violation of environmental statutes, permits, or regulations. Procedures employed by inspectors must ensure that all findings and observations are complete, technically accurate, and effectively communicated in the inspection report.
- B. The inspection report, along with the oral testimony of inspector, serves as the primary evidence that a violation has occurred. Inspectors must always be aware of the potential need to testify to their findings and observations as part of an enforcement action.
- C. Proper documentation includes summarizing and reporting the findings and observations **“near-in-time”** to when they actually occurred. The time between when the observations were made and when the official inspection report is written must be kept to a minimum. **Excessive time delays can seriously compromise the value of the documentation for enforcement.** Inspectors should write the report as soon as they return from the field. Generally, a 30-day turn-around time should be used for completion of the final report for non-sampling inspections and a 60-day turn-around should be used for sampling inspections.

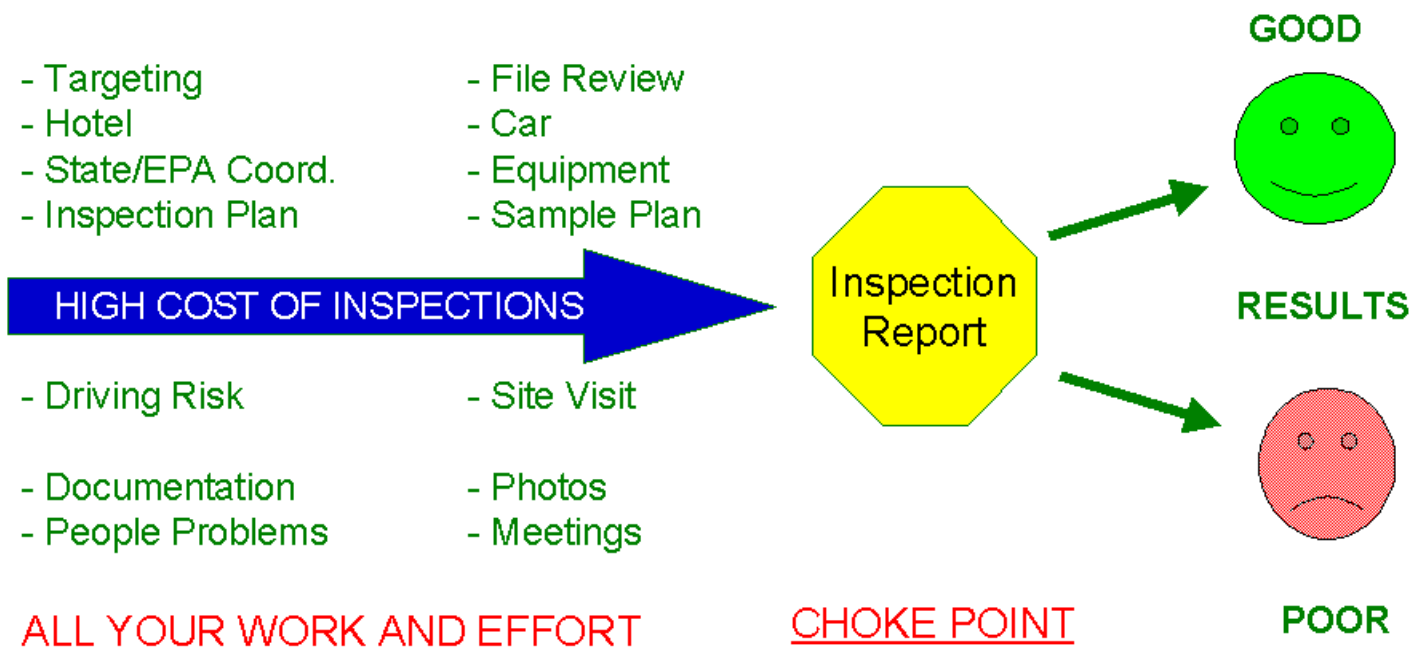
IV. FIELD INSPECTION GUIDELINES

- A. In order to ensure that **the evidence necessary to prove a violation is collected**, the inspector should implement the following procedures:
1. Obtain legible copies of all documents relevant to a potential violation from the facility. If copies are not available and should be, fully document that fact. The absence of the records may be just as important as the copies.
 2. Make maps, diagrams, photographs, and drawings that clearly identify the location of all potential violations. Locations should be identified by name, number, etc., and be referenced to the directions North, South, East, and West for easy identification.
 3. Prior to use, calibrate all environmental sampling and/or measurement equipment in accordance with the appropriate SOP. The time and date of the calibration should be documented in the inspection report.
 4. Make maps, diagrams, and drawings, that clearly identify all sampling locations by name, number, etc., and that are referenced to the directions North, South, East, and West.
 5. Document statements made by facility personnel in the field notes and identify the person making the statement by name and relationship to the facility. Include the date, time, and location, or have the facility personnel sign a written statement that includes this information.
 6. Document the timeframe that establishes when each potential concern or violation began, and how long it has occurred.
 7. Document the nature and extent of remedial actions taken or planned by the facility to correct past or present violations.
 8. Take photographs or videos of all potential violations to serve as a visual record of what was observed in the field (resolution of digital media should be selected to clearly show what was observed). Established digital camera policies should be followed.
- B. **Prior to leaving the facility**, inspectors should **ensure that they have collected all information** needed to thoroughly describe and provide proof of an observed violation. For example: Have copies of documents, photographs, statements, etc., to support allegations of violation. The inspector should be able to answer the following questions regarding their actions and observations in inspection report: Who? What? When? Where? How? and Why?
- C. All procedures outlined in the applicable inspection SOPs should be followed during the inspection.
- D. Inspectors should explain each potential violation listed on the Notice and all preliminary findings to facility personnel prior to leaving the facility. Inspectors should explain that their findings and observations were based on the information collected during the inspection and that additional findings and observations may be made upon return to the office. If a Notice

is not provided to the facility, all findings and observations should still be thoroughly explained in the inspection report.

V. REPORT WRITING GUIDELINES

- A. The objective of the inspection report is to describe what **YOU** observed during the inspection and effectively communicate it to the reader. You must do this in a clear, comprehensive, and legally defensible manner. The report is the **CHOKES POINT** for all future actions against the facility and for most environmental improvements.



For example: *If the inspector observed ten (10) violations in the field, but only communicates and has proof for five (5) violations, by the time the report is written and reviewed, then the value of the inspection activity has been reduced by 50%!!!*

- ☛ **All relevant observations must be made obvious to the reader.**
- ☛ **Each regulatory violation must be made obvious to the reader.**
- ☛ **All proof of the violation must be made obvious to the reader AND linked back to the violation.**

- B. **How inspection findings and observations are communicated in the inspection report is a critical part of proper documentation.** The following are two examples of how to effectively communicate potential observations and violations. Each uses a “compare and contrast” style.

1. **Examples**

First (Compare) - State the regulatory requirement **in the actual language** of the statute, permit, or regulation.

Second (Contrast) - Describe and present the evidence that shows how the facility failed to meet the requirement. **Each potential violation must be made obvious to the reader** by thoroughly and clearly describing all documents, photographs, statements, and other evidence.

- I. ***Failure to Meet Missouri State Operating Permit (MSOP) Conditions - The Missouri MSOP, MO0023456, issued to the City of Pollutionville, at Section C. Special Conditions, Subsection 6. General Criteria, contains the following requirement: “a) Waters shall be free from substances in sufficient amounts to cause formation of putrescent, unsightly or harmful bottom deposits or prevent full maintenance of beneficial uses.” On January 5, 2002, at the WWTP’s outfall #2 (see map - attachment 3), I observed the receiving water body, Greenfoot Stream, to have approximately 4-5 inches of sludge deposit on the bottom (see photos # 10-14, approximation of depth made with 12" ruler) as well as significant blood worm populations (photos #15-16, estimate of blood worm population based on counting the number of blood worms per square foot of water surface to a depth of about one foot). Greenfoot Stream is on the Missouri 303(d) list for nutrient content. Mr. Smith, the plant operator, signed a statement that the plant had been losing solids to the stream for four months due to an increased organic load from Acme Meat Packing Co. (see attachment 5)...***
- II. ***NOV #4 - Failure To Close Hazardous Waste Satellite Accumulation Container - While in the aerosol fill area (see map- attachment 3), I observed one full 55-gallon satellite accumulation container that was open (photo 1). I verified that the drum was full by looking inside of it. Mr. Helpful, the Aerosol Can Fill Operator, said that he used the container to collect spent line flushing solvent. He said the solvent consisted of Mecos laquer thinner and that the thinner was used to wash the paint out of the fill equipment (MSDS- attachment 9). I asked Mr. Helpful if he considered the spent laquer thinner a hazardous waste. He said yes, that he managed it as F003/F005 hazardous waste. Containers holding hazardous waste are required to be closed per 40 CFR 262.34(a)(1)(i) ref. 40 CFR 265. 173(a).***

2. A separate, indented paragraph should be used to highlight each violation along with an obvious font change. As in the above example, each violation was ***bolded and italicized***. Other formats may be used as long as each violation is formatted in a manner to be clearly obvious to the reader.
 3. The inspector should write the report as soon as possible after returning from the field. As noted earlier, excessive delays or reports not written “**near-in-time**” to the inspection can seriously compromise EPA’s ability to conduct timely enforcement.
- C. Each inspector should use the following techniques to ensure a well-documented inspection report:
1. Write the report as soon as possible upon return from the field.
 2. Write the report in the first person and in a “**compare and contrast**” style, i.e., each violation identified should be stated in a manner where the facts are presented and then compared against the statute, permit or regulatory requirement.
 3. Use simple, direct language, and short sentences.
 4. Identify, by name and relationship to the facility, who said what.
 5. Clearly identify all potential violations observed during the inspection or evaluated prior to the report write-up.
 6. Reference the applicable statute, permit, or regulation for each potential violation identified. If the inspection is conducted in a state that is authorized to implement the regulation, then the applicable state law or regulation should be co-referenced.
 7. Provide a complete and detailed description of all materials gathered to support the alleged violation, e.g., all photographs, maps, diagrams, etc.
 8. Identify, number, and reference all attachments in the text of the field report.
 9. Use consistent word choice, e.g. if a particular device is called a "Waste-o-matic," use the term "Waste-o-matic" throughout the report to describe that particular device.
 10. Do not use negative inferences. For example, avoid saying "... the only drums found were...", which is not first person and implies that no other drums were at the facility. Simply state what was observed, e.g., “During the inspection, I observed five drums which were...”
 11. **Do not use** vague and ambiguous terms or statements. For example, avoid using words like *indicated, implied, suggested, several, many, some, or it was determined*.
 12. **Do not use** absolute terms like *all, always, or every*, unless the findings and observations have been fully verified and documented (be as precise and accurate as possible).
 13. **Do not repeat or use** information obtained from previous inspection reports that was not verified during the inspection.
 14. Describe all actions (including timeframes) that the facility said they would complete as a result of the inspection.

Attachment 3, Entry and Exit Checklist, and Attachment 4, Field Pocket Card (handout), have been developed to assist in properly documenting field inspection activities.

Attachment 1

SAMPLE
NOTICE OF POTENTIAL VIOLATIONS

FACILITY NAME: _____ I.D. #: _____ DATE: _____

FACILITY ADDRESS: _____ INSPECTOR: _____

The purpose of this inspection was to determine compliance with the requirements of the **(Your Regulations , e.g., Clean Air Act)** and regulations promulgated pursuant there to **(your authority)**. The following potential violations were identified:

#	<u>CITATION</u>	<u>DESCRIPTION</u>

This Notice is provided to call your attention to those readily apparent areas of non-compliance at the earliest possible time. It is not intended to be a complete list of all potential areas of non-compliance. This Notice does not constitute a compliance order, a penalty assessment, or any other administrative or judicial enforcement action.

[Optional

You may submit, in writing, within **X-days (normally 10 days)** of receipt of this Notice, a description of all corrective actions taken and/or a schedule for completion to:

_____ Phone: _____

U.S. Environmental Protection Agency
901 N. 5th St.
Kansas City, Kansas 66101

The undersigned hereby acknowledges having received and read a copy of this Notice.

PRINTED NAME: _____

TITLE: _____

SIGNATURE: _____ DATE: _____

Attachment 2

DOCUMENTATION GUIDELINES - REPORT REVIEW CHECKLIST

Reviewer Name: _____

Date: _____

Inspector Name: _____

Facility: _____

CRITICAL REPORT ELEMENTS	YES	NO
1. Written and transmitted within established turn-around times?		
2. Written in first person using simple, direct language, and short sentences?		
3. Identified, by name and relationship to the facility, who said what?		
4. Used "compare and contrast" writing style to describe what was observed vs. what was required?		
5. Clearly identified and highlighted each potential violation using a separate paragraph and unique format to make it obvious to reader?		
6. Used actual language of statute, permit or regulation to identify violations?		
7. Provided detailed description of all supporting material, photos, maps, etc.?		
8. Identified, numbered, and referenced all attachments in <u>text</u> of report?		
9. Used photographs and/or videos to clearly show the violation, the direction the photograph or video was taken from, and referenced it to the directions North, South, East, & West?		
10. Documented the start time and duration of each violation?		
11. Made maps, diagrams, and drawings to show the locations of the violations and referenced them to directions North, South, East, and West?		
12. Made, maps, diagrams, and drawings to show all sample locations and referenced them to directions North, South, East, and West?		
13. Documented that sampling equipment was properly calibrated prior to use?		
14. Used consistent word choice to describe things throughout report?		
15. Did not use negative inferences, vague or ambiguous terms, or absolute terms?		
16. Did not repeat information from previous reports that was not verified?		
17. Described all actions (including timeframes) the facility said they would complete?		
18. Described if past violations were addressed?		
Comments:		

ENTRY AND EXIT CHECKLIST

Facility: _____ Date: _____ Arrival time: _____

DRIVE-BY

1. Drive-by conducted from public right-of-way? Yes No _____ Diagram Facility Orientation
2. Determine the direction "North" with respect to the facility and provide a brief sketch of the layout and orientation (as can be viewed from the public right-of-way): →
3. Obvious concerns visible from public right-of-way (photos)? Yes No
- Containers
 - Loading Areas
 - Open Drums
 - Unusual Odors
 - Safety Concerns
 - Tanks
 - Unloading Areas
 - Stressed Vegetation
 - Obvious Discharges
 - Other Concerns
 - Processing Equipment
 - Security Devices
 - Unusual Staining
 - Improper Disposal

SITE ENTRY AND INBRIEFING

1. Used main entrance Entered during normal operating hours Excessive delays (>15 minutes - denial of access?) - No
2. Facility Representative(s): _____ Title: _____
3. Does representative have intimate knowledge of all waste management practices? Yes No How long in position? _____
4. **Introduction:**
- Presented credentials
 - Verified presence at correct facility (checked address/I.D. #)
 - Explained authority to conduct inspection (Section 3007 of RCRA)
 - Explained the purpose, scope, and order of the inspection
 - Explained documentation process - worksheets, checklists, photo's, notes, statements, etc
 - Explained facility's right to claim CBI
 - Explained responsibility to provide accurate information and provided copies of Section 1001 and 1002 U.S.C. to facility
 - Identified personal safety considerations: _____
 - Completed Multimedia screening checklist
 - Provided SBREFA handout
 - Obtained GPS reading
5. Was full access granted? Yes By facility representative Other (name): _____
- No - Access denied Name of person denying access: _____ Time of denial: _____
- Reason for denial, or limitations placed on access:

EXIT BRIEFING

1. Reviewed all data collected and documented all concerns or violations? Yes No
- Location of the violation, type and amount of waste involved, time frame, frequency, specific dates & when first started occurred
 - Illegal units - unit location (diagram/picture), dimensions, conditions, construction material, gradient of the base (for spills), other information.
 - Illegal disposal - how, when (each occurrence), where sent or disposed of, how shipped, who shipped, when shipped/disposed of, quantity
 - Identified/verified violations from previous inspection were corrected (if applicable)
 - Addressed all unresolved inspection related issues
 - Summarized findings and observations for the facility representatives
- NOV issued?** Yes No Violations clearly identified and explained, including: circumstances, location, and applicable regulations
- Explained the importance of a timely (14 day) and adequate response
 - Explained that findings and observations are based on your current knowledge of RCRA and that the final findings may differ
 - Explained that compliance officer will make the final compliance decisions and that all compliance questions should be directed toward them
 - Explained that recommendations provided are for informational purposes only and **DO NOT** require specific actions by the facility
 - Provided facility with CBI form
 - Prepared Document Receipt form
3. Specific information requested from facility? Yes No _____
4. Facility appears to have awareness of RCRA regulations and/or has its own environmental staff? Yes No
5. Facility has copy of applicable regulations? Yes No
6. Attitude and demeanor of facility representative(s): OK Not OK _____