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Polychlorinated Biphenyl Inspection Manual

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Chapter Seven

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7.0 Post-Inspection Activities

7.1 Introduction

The effectiveness of a PCB compliance inspection is dependent on many factors, including the thoroughness of the inspection, the evidence collected by the inspector, and the cooperation of the facility being inspected. Critical to the success of the inspection process are two steps that follow the inspection itself:

- Conducting necessary follow-up activities at the conclusion of the inspection
- Preparing the inspection report
- Ensuring data is entered into the appropriate databases.

This chapter addresses inspection follow-up activities (Section 7.2), the preparation of the inspection report (Section 7.3), and what to do with the completed inspection report (Section 7.4). It also includes tips for developing narrative language for the inspection report.

Some of the actions described above may change as new technologies (e.g., handhelds, notebook computers) are implemented. These technologies may enable inspectors to complete their inspection reports in the field; however, the information regarding the elements that should be included in the report and the practical tips for report writing and preparation will continue to be applicable.

7.2 Inspection Follow-up

Prior to preparing the inspection report, the inspector should gather all data collected during the inspection, including records and reports and other supporting evidence (e.g., photographs, samples, affidavits, laboratory analyses reports, and the field logbook and/or other inspection notes). The inspector should review the information, noting any gaps or discrepancies, and refresh her/his memory of the entire inspection process. The inspector may need to fill in gaps by a phone call to the facility or, if necessary, by a follow-up visit. The inspector may also use written requests to collect additional information. Requests for supplemental data should specify a time frame for a response.

The inspector should conduct any necessary follow-up activities to answer outstanding questions and obtain relevant documents. The inspector should also collect information that clarifies the data already in the inspector's possession and include the additional and/or clarifying information in the inspection report (see Section 7.3.4). Other follow-up can be through EPA Headquarters (late reports, etc.), other contacts suggested onsite, or other program offices, if warranted.

In some instances, the inspector may have identified potential violations of other statutes. In this case, the inspector should refer this information to the applicable EPA or State program office or other Federal or State agency.

7.3 The Inspection Report

The primary function of the inspection report is to serve as the main document upon which the Division Director or other delegated authority will base enforcement decisions concerning the facility. The inspector's role in the preparation of the report is to be as accurate and inclusive as possible in recording the events that occurred and the observations that were made during the inspection. The following guidance on preparing the PCB inspection report includes objectives of the report (Section 7.3.1), the time frame for preparing the report (Section 7.3.2), CBI considerations (Section 7.3.3), and report elements (Section 7.3.4).

The inspection report should present a complete and factual record of the inspection process from opening conference, through the inspection itself, to closing conference. The inspector should keep in mind that the report should contain enough information about the facility and the inspection (as well as observations made during the inspection) to enable the Division Director or other delegated authority to make enforcement decisions pertaining to the subject facility and to develop a case, as necessary.

7.3.1 Objectives

As the inspector prepares the report, she/he should have the following objectives in mind:

- To include in the report all of its basic elements (see Section 7.3.4), ensuring that the report contains copies of relevant forms and documents as appendices, and the narrative component of the report references those forms and documents
- To substantiate with as much evidence as possible each potential violation of PCB regulations cited in the report (including location, type and size of PCB equipment in violation, size and description of spills, and nature of the suspected violation)
- To ensure that any documents and/or photographs are appended to the report and referenced in the narrative component of the report. (This is necessary so that the Division Director or other delegated authority know how the data relates to the inspection.)
- To write the report in clear and concise language
- To present factual and accurate information pertaining to all steps in the inspection process from opening to closing conference and follow-up

- To make only those observations that are based on firsthand knowledge of the facility since enforcement personnel must be able to depend on the accuracy of all information
- To include only information that is relevant to the facility and its compliance with PCB regulations. (Irrelevant facts can interfere with enforcement decision-making.)

7.3.2 Time Frame for Preparing the Inspection Report

The inspector should prepare the inspection report as soon as possible following the inspection. EPA recommends that the report be completed within 45 days of the inspection. However, the actual amount of time will depend on the ability to obtain any additional required information in a timely fashion. This time frame should be sufficient to conduct necessary follow-up and to prepare the report.

7.3.3 Confidential Business Information Considerations

While preparing the inspection report, the inspector should keep in mind that some or all of the data gathered during the inspection may be CBI, if claimed as such by the facility. Under normal circumstances, a report may be released to the public in response to a Freedom of Information Act (FOIA) Request, unless the report falls under a FOIA exemption, such as law enforcement. On the other hand, if the inspection report contains CBI, those portions of the inspection report must be treated in accordance with CBI procedures and not released under FOIA. In preparing the inspection report, it is recommended that the inspector reference CBI in a non-confidential manner (i.e., by Document Control Number and a general description of the information contained in the document). Note, inspection reports may be released after the case file is closed.

7.3.4 Elements of the Inspection Report

Although inspection reports may vary in general content and format, there are certain elements that should be contained in each inspection report to ensure that necessary information is not inadvertently overlooked. The basic components of the inspection report are discussed below.

The inspection report should be a concise account of observations made and activities undertaken during the inspection, from opening conference to closing conference and follow-up. The inspector should use the field logbook and an inspection checklist (if one was used) to develop the narrative. These tools can help the inspector recall and include in the narrative important details concerning the inspection. Inspectors should include and note in the report any information submitted by the company as a result of the inspection.

The following is suggested information that may be included in the inspection report. The inspector is encouraged to include additional information in the inspection report as may be necessary.

- Title Page
- Index
- Facility Information
 - Company name, address, and telephone number
 - EPA Federal Registry System (FRS) ID Number
 - Primary NAICS/SIC code
 - DUNS number
 - Number of employees
 - Type of facility
 - Parent company name and address
 - Primary areas of business
- Inspection Conduct Information
 - Type of inspection conducted
 - Date and time of inspection
 - Responsible official's name, title, and telephone number
 - Name of EPA inspector(s) (Identify lead inspector if there is more than one inspector.)
 - Other facility participants
 - Person to whom the inspector presented his credentials
 - Person to whom the inspector provided the Notice of Inspection
 - Narrative of the inspector's observations regarding compliance/noncompliance with the regulations.
- Administrative Exhibits
 - The inspector should attach, as exhibits to the inspection report, all documentary evidence that supports the observations made during the inspection (and which should be described in the report narrative, as appropriate). The inspector should be sure that any data attached to the report as an exhibit is labeled as such and is mentioned within the narrative. Also, the inspector should prepare an index of exhibits (or attachments) listing the name and the location of each exhibit. This index should precede the exhibits and serve as a reference for enforcement personnel. Exhibits the inspector should include are: Notice of Inspection, Inspection Confidentiality Notice, Declaration of Confidential Business Information, Laboratory Analyses, Receipt for Samples and Documents, and other evidence.
- The inspector's signature with date.

The inspection report should not include any statements concluding that violations of PCB regulations exist.

7.3.5 Practical Tips for Report Preparation and Writing

The style of the inspection report should be clear, concise, accurate, factual, fair, complete, and logical. The inspector should write the report in such a way as to eliminate the possibility of

erroneous conclusions, inferences, or interpretations. The report will become part of the permanent records for the facility, along with the samples, formal statements, photographs, and other pieces of evidence. A well-written report will serve as a summary of these other records.

In general, three rules apply to the preparation of good inspection reports:

- Write to express, not to impress. The inspector should include only facts and evidence that are relevant to the compliance situation.
- Keep the report simple. The inspector should discuss complicated matters in organized, simple, direct terms.
- Keep the reader in mind. The inspector should use writing, language, and terms familiar to the reader.

Keeping these rules in mind, the inspector should follow these basic steps when preparing to write the inspection report:

- Review the information. As the first step, the inspector should collect and review all information gathered during the inspection, including inspection report forms and checklists. The inspector should then review the information for relevance and completeness. If the inspector identifies gaps, he or she can make follow-up telephone calls or, if necessary, conduct a follow-up inspection.
- Organize the material. There are several different methods available for organizing the inspection data. Whatever the method, the inspector should present the material in a logical, comprehensive manner and organize it so it is easily understood.
- Reference accompanying material. The inspector should clearly reference all pieces of evidence (e.g., copies of records, analytical results, and photographs) that accompany the report so that the reader can locate them easily. The inspector should check supporting documents for clarity prior to writing.

When developing the narrative language portion of an inspection report, the inspector should:

- Ensure that the reader is able to readily ascertain the following information from the narrative:
 - The persons who participated in the inspection (i.e., identity of each facility representative and inspector)
 - A brief description of the facility being inspected (i.e., what it manufactures and/or imports, physical size of plant, number of buildings, etc.)
 - Verification that all required notices and receipts were completed and issued as required and are attached to the report
 - The actions taken and observations made during the inspection which establish compliance status
 - The evidence (e.g., documents, photographs) that was collected during the inspection.

- Include the facility information, inspection conduct information, and inspection results within the narrative.
- Consider the types of information necessary to prove the circumstance and extent of noncompliance as shown in the PCB Penalty Policy, which can be found on the following website:
<http://www.epa.gov/Compliance/resources/policies/civil/tsca/>.

In writing the report, the inspector should record in a factual manner the procedures used in, and the findings resulting from, the evidence-gathering process. The report should refer to routine procedures and practices used and describe in detail the facts relating to potential noncompliance and discrepancies, but should not suggest or conclude that there may be or are potential violations.

7.4 What To Do With the Completed Inspection Report

After the inspector files the inspection report, the supervisor or designated senior inspector reviews it and sends it to the case development officer (CDO). If a case is issued and does not settle out-of-court, the inspector may need to appear as a witness in court.

7.5 Data Entry

In addition to writing the inspection report, the inspector should submit required information for EPA's data tracking system. PCB inspectors must enter or provide appropriate information to data entry staff.

Inspectors must complete the Inspection Conclusion Data Sheets (ICDS) forms immediately after completing the inspection. If inspectors enter the ICDS information directly into ICIS they may include the ICDS information in their inspection notes without filling the actual form. Refer to Appendix D for information on Inspection Conclusion Data Sheets (ICDS). Current information on ICDS is found in the EPA inspector website at <http://intranet.epa.gov/OECA/OC/CAMPD/inspector>.

Finally, it is important that inspection data is submitted to the FIFRA/TSCA Tracking System (FTTS). FTTS is a regional system used to track compliance activities such as inspections, case review, enforcement actions taken, and samples collected. Compliance monitoring and enforcement activities are tracked from the time an inspector conducts an inspection until the time the case is closed.

7.6 Appearing as a Witness

The majority of cases that the EPA files result in out-of-court settlements that will not usually require the inspector's testimony. However, in cases that do not settle, the inspector may be

called upon to be a “fact witness,” or one who describes personal knowledge obtained through one of the five senses. Throughout the enforcement process, everything an inspector hears, sees, samples, or records may become evidence about which he or she may be questioned. Many cases are tried years after the field and laboratory activities have been conducted. Thus, the inspection report and field notebook should be sufficiently detailed and legible to allow the inspector to reconstruct the inspection “on the record.” See Appendix Q for detailed information regarding preparing to testify; legal etiquette, appearance, and demeanor; and testifying during deposition, direct examination, and cross-examination.

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