

EZ Inspect

How to have a successful
New Jersey Department of
Environmental Protection
Compliance Inspection

Copies of this guide may be
downloaded from:

www.state.nj.us/dep/enforcement

[http://www.nj.gov/dep/
enforcement/ezinspect.html](http://www.nj.gov/dep/enforcement/ezinspect.html)



New Jersey Department of Environmental Protection
Compliance and Enforcement
Office of Strategy Management



Chris Christie, *Governor*
Kim Guadagno, *Lt. Governor*
Bob Martin, *Commissioner*
John Giordano, *Assistant Commissioner*

Summer, 2014



State of New Jersey

DEPARTMENT OF ENVIRONMENTAL PROTECTION

CHRIS CHRISTIE
Governor

KIM GUADAGNO
Lt. Governor

BOB MARTIN
Commissioner

Dear Readers,

The purpose of the compliance and enforcement process is to protect human health and the environment. Although the compliance and enforcement process can be intimidating, we are working hard at the NJDEP to make the process easier to navigate while also remaining true to the purpose. While state law mandates fines for egregious violations, our primary goal at DEP is to work with the regulated community to prevent violations before they happen and to correct them if they should occur.

As part of an effort to better explain our process to the regulated community, the department has crafted a guide to our compliance and enforcement practices. My hope is that this guide will simplify the process of an enforcement inspection.

Protecting our environment is an effort that requires many partners and New Jersey's regulated community is an essential partner in this effort. Working together we can provide a cleaner environment and ensure a better quality of life for all of our state's residents.

Sincerely,

Bob Martin

NOTES



Station Plaza 4
PO Box 424
22 S. Clinton Ave.
Trenton, NJ 08625-0424

Release Prevention (609) 633-0610

PO Box 415
25 Arctic Parkway
Trenton, NJ 08625-0415

Assistant Director of Radiation Protection & Release Prevention	(609) 984-5636
Environmental Radiation	(609) 984-5400
Radon Programs	(609) 984-5425
Radiological Health	(609) 984-5634
Nuclear Engineering	(609) 984-7700
Licensure/Registration	(609) 984-5359

Radon Hotline 1-800-648-0394

How to Use This Guide

The EZ Inspect Guide is a guide to assist the regulated community in understanding the New Jersey Department of Environmental Protection's Compliance and Enforcement's inspection process. It is not intended to be program/media specific nor to contain all of the applicable regulations or requirements. This guide focuses on general questions. Please contact the appropriate office listed at the end of the guide for answers to your specific questions.



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Assistant Commissioner's Office	(609) 292-2795
PO Box 423	
401 East State Street, 3rd Floor	
Trenton, NJ 08625-0423	
Permit Coordination & Environmental Review	(609) 292-3600
PO Box 424	
401 East State Street, 3rd Floor	
Trenton, NJ 08625-0423	
Director of Environmental Safety & Health	(609) 633-7964
PO Box 424	
401 East State Street, 2nd Floor	
Trenton, NJ 08625-0424	
Quality Assurance	(609) 292-3950
Station Plaza 4	
PO Box 443	
22 S. Clinton Ave.	
Trenton, NJ 08625-0443	
Small Business Assistance Program	(609) 292-3600 or 1-877- 753-1151
Pollution Prevention & Right to Know	(609) 777-0518
Planning & Data/Management Analysis	(609) 777-0518
Station Plaza 4	
PO Box 405	
22 S. Clinton Ave.	
Trenton, NJ 08625-0405	
Rules, Compliance & Open Public Records Act	(609) 292-6714



New Jersey Department of Environmental Protection

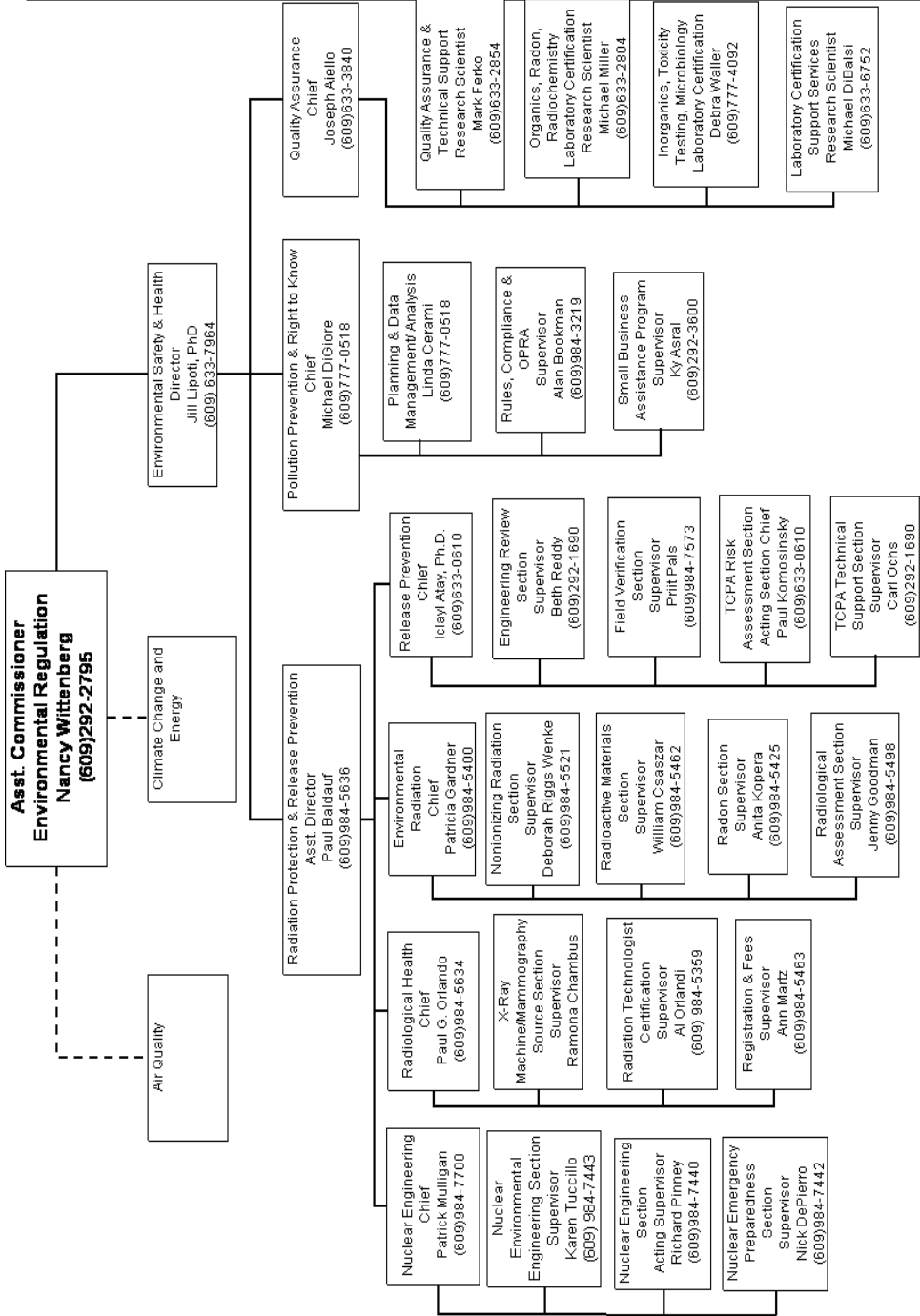


Figure 2. Environmental Regulation Organizational Chart



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Introduction

One certainty for a business within the State of New Jersey is that action must be taken to comply with state and federal environmental laws and regulations. The New Jersey Department of Environmental Protection (Department) is responsible for administering and enforcing the state’s various environmental program rules and regulations. The main environmental protection rules/regulations in the state are the following:

Air
Air Pollution Control Rules N.J.A.C. 7:27 et. seq.

Land Use
90-day Construction Permit Rules N.J.A.C. 7:1 C et. seq.
Coastal Permit Program Rules N.J.A.C. 7:7 et. seq.
Coastal Zone Management Rules N.J.A.C. 7:7E et. seq.
Flood Hazard Area Control Act Rules N.J.A.C. 7:13 et. seq.
Freshwater Wetlands Protection Act Rules N.J.A.C. 7:7A et. seq.

Pesticide Control
Pesticide Control Program Rules N.J.A.C. 7:30 et. seq.

Pollution Prevention & Community Right to Know
Pollution Prevention Program Rules N.J.A.C. 7:1K et. seq.
Worker & Community Right to Know Regulations N.J.A.C. 7:1G et. seq.

Quality Assurance
Regulations Governing the Certification of Laboratories & Environmental Measures N.J.A.C. 7:18 et. seq.

Radiation
Radiation Protection Program Rules N.J.A.C. 7:28 et. seq.

Release Prevention
Discharges of Petroleum & Other Hazardous Substances N.J.A.C. 7:1E et. seq.
Toxic Catastrophe Prevention Act (TCPA) Program Rules N.J.A.C. 7:31 et. seq.



Environmental Regulation Contact Information

The following pages contain the organizational chart for programs within Environmental Regulation that conduct compliance inspection activities. Included are contact personnel, phone numbers and the location and jurisdiction of each field office.



**Toms River Field Office
1510 Hooper Avenue
Toms River, NJ 08753**

Coastal and Land Use Enforcement Southern Region
(Counties of Atlantic, Southern Burlington,
Cape May, Cumberland, Eastern Monmouth,
Eastern Ocean and Salem)

(732) 255-0787

**Highlands Field Office
100 North Road
Chester, NJ 07930**

(908) 879-3769
or (908) 879-3734

Coastal and Land Use Enforcement Highlands Region
(Counties of Bergen, Morris, Passaic,
Sussex and Warren)

**Office of Legal Affairs
PO Box 402
401 East State Street, Floor 4
Trenton, NJ 08625-0402**

(609)292-0716

**Office of Dispute Resolution
PO Box 402
401 East State Street, Floor 4
Trenton, NJ 08625-0402**

(609)341-3822



Site Remediation

Industrial Site Recovery Act (ISRA) Rules	N.J.A.C. 7:26B et. seq.
Underground Storage of Hazardous Substances (UST) Rules	N.J.A.C. 7:14B et. seq.
Procedures for Departmental Oversight of the Remediation of Contaminated Sites (Oversight) Rules	N.J.A.C. 7:26C et. seq.
Technical Requirements for Site Remediation (Tech) Rules	N.J.A.C. 7:26E et. seq.

Waste Management

Hazardous Waste Rules	N.J.A.C. 7:26G et. seq.
Recycling Rules	N.J.A.C. 7:26A et. seq.
Solid Waste Rules	N.J.A.C. 7:26 et. seq.
Solid Waste Utility Regulations	N.J.A.C. 7:26H et. seq.


Water Supply


Agricultural, Aquacultural & Horticultural Water Usage Certification Rules	N.J.A.C. 7:20A et. seq.
Safe Drinking Water Act	N.J.A.C. 7:10 et. seq.
Water Supply Allocation Rules	N.J.A.C. 7:19 et. seq.

Water Quality

New Jersey Pollutant Discharge Elimination System (NJPDES) Regulations	N.J.A.C. 7:14A et. seq.
Stormwater Management	N.J.A.C. 7:8 et. seq.
Water Pollution Control Rules	N.J.A.C. 7:14 et. seq.

Most businesses find the scope and number of regulations requiring compliance intimidating. To add to the confusion, a business may also be subject to federal regulations. One quick way to get the attention of any businessperson in New Jersey is to announce that his or her company is about to be inspected by the Department. He or she may not know all of the regulations that are applicable to their business, but he or she is aware that failure to comply with any of the regulations can result in penalties. Knowing what to expect during and after the inspection may help reduce apprehension regarding the inspection process.

	Page 8	New Jersey Department of Environmental Protection
	<p>While the scope and intent of environmental compliance inspections varies, this guide will help answer frequently asked questions about the inspection process and provide contacts for further information.</p>	
<p><i>What if I am not sure if I am in compliance with the regulation(s)?</i></p>	<p>The Department has developed a compliance assistance program known as GreenStart to help small businesses and municipalities comply with their environmental obligations. The program helps facility owners and operators interpret environmental regulations and evaluate compliance for air, water, pesticides, solid and hazardous waste, Right-to-Know (RTK), Toxic Catastrophe Prevention Act (TCPA) regulations, and spill containment plans under Discharge Prevention, Containment and Countermeasures (DPCC). If violations are discovered during the process, a grace period of up to six months is provided, except for egregious violations. At the close of the free on-site consultation, preliminary findings and compliance requirements are reviewed. A comprehensive report of findings and recommendations is issued to the facility after the on-site visit.</p>	

	Page 41	New Jersey Department of Environmental Protection
<p>Central Field Office PO Box 420 9 Ewing Street Trenton, NJ 08625-0420 Enforcement Jurisdiction: Mercer, Middlesex, Monmouth, Ocean and Union Counties</p> <p>Hazardous Waste Enforcement Program (609) 943-3019 Solid Waste Enforcement Program (All NJ Counties) (609) 292-6305 Office of Local Environmental Management (609) 292-1305</p>		
<p>Central Field Office PO Box 420 22 South Clinton Avenue 4 Station Plaza Trenton, NJ 08625-0420 Enforcement Jurisdiction: Burlington (air only), Mercer, Middlesex, Monmouth, Union (water only) and Ocean</p> <p>Air Enforcement Program (609) 292-6450 Water Enforcement Program (609) 292-3010</p>		
<p>Southern Field Office One Port Center 2 Riverside Drive Suite 201 Camden, NJ 08103 Enforcement Jurisdiction: Atlantic, Burlington, Camden, Cape May, Cumberland, Gloucester, and Salem Counties</p> <p>Air Enforcement Program (856) 614-3601 Hazardous Waste Enforcement Program (856) 614-3658 Water Enforcement Program (856) 614-3655</p>		



Assistant Commissioner's Office (609) 984-3285
PO Box 420
401 East State Street, 4th Floor
Trenton, NJ 08625-0422

Air Enforcement Administration (609) 633-7288
Water Enforcement Administration (609) 984-5855
County Environmental & Waste Enforcement Program Administration (609) 292-6704
Coastal and Land Use Enforcement Administration (609) 984-4587
Coastal and Land Use Enforcement Northern & Central Regions (Counties of Northern Burlington, Camden, Essex, Gloucester, Hudson, Hunterdon, Mercer, Middlesex, Western Monmouth, Morris, Western Ocean, Southern Passaic, Somerset and Union) (609) 292-1240

PO Box 420
22 South Clinton Avenue, 3rd Floor
Trenton, NJ 08625-0411
Pesticide Control Program Administration (609) 984-2011
Pesticide Compliance (609) 984-6568
Pesticide Operations (609) 984-6647

Northern Regional Field Office
7 Ridgedale Avenue
Cedar Knolls, NJ 07927
Enforcement Jurisdiction: Bergen, Essex, Hunterdon, Hudson, Morris, Passaic, Somerset, Sussex, and Warren Counties
Air Enforcement Program (973) 656-4444
Hazardous Waste Enforcement Program (973) 656-4470
Water Enforcement Program (973) 656-4099



What if I am not sure if I am in compliance with the regulation(s)? (cont.)



Visual clues of possible non-compliance are:

- Sloppy housekeeping or poor maintenance in work and storage areas or labs
- Stains or discoloration of soil, concrete, or floors in work areas
- Distressed vegetation-unhealthy, discolored, or dead
- Dark smoke or dust clouds, or smoke coming from other than a smoke stack
- Unusual odors or strong chemical smells
- Sheen on surface waters

If necessary, free follow-up visits are conducted to ensure identified problems are corrected within an agreed upon time period. You may obtain an application for a GreenStart visit at <http://www.state.nj.us/dep/enforcement/greenstartfaqs.html>

Also, the **Small Business Assistance Program (SBAP)** within the Office of Pollution Prevention and Right to Know is a technical and administrative support component within the Department that provides compliance assistance to small businesses with specific technical, administrative, and compliance problems with the Clean Air Act (the Act).

Other responsibilities of the SBAP include:

- Informing businesses of all requirements in the Act that apply to them, and the dates these requirements will apply
- Helping small businesses deal with specific technical, administrative, and compliance problems
- Disseminating up-to-date information about the Act to the small business community, including easy to understand public information materials



What if I am not sure if I am in compliance with the regulation(s)? (cont.)

- Referring small businesses to environmental auditors who can evaluate how effective a company's work practices, monitoring procedures, and record-keeping are in complying with applicable requirements.

Additional information on the SBAP can be found at <http://www.state.nj.us/dep/opppc/small.html>

What if I tell the Department about violations before I'm inspected?

To encourage "self-disclosure" of violations the Department can, on a case by case basis, reduce or eliminate penalties for the disclosed violations altogether. To take advantage of this, a facility should, upon discovery of a violation of an environmental law, submit a Self-Disclosure Report which can be downloaded from the Department's website at www.state.nj.us/dep/enforcement/self-disclosure.htm.

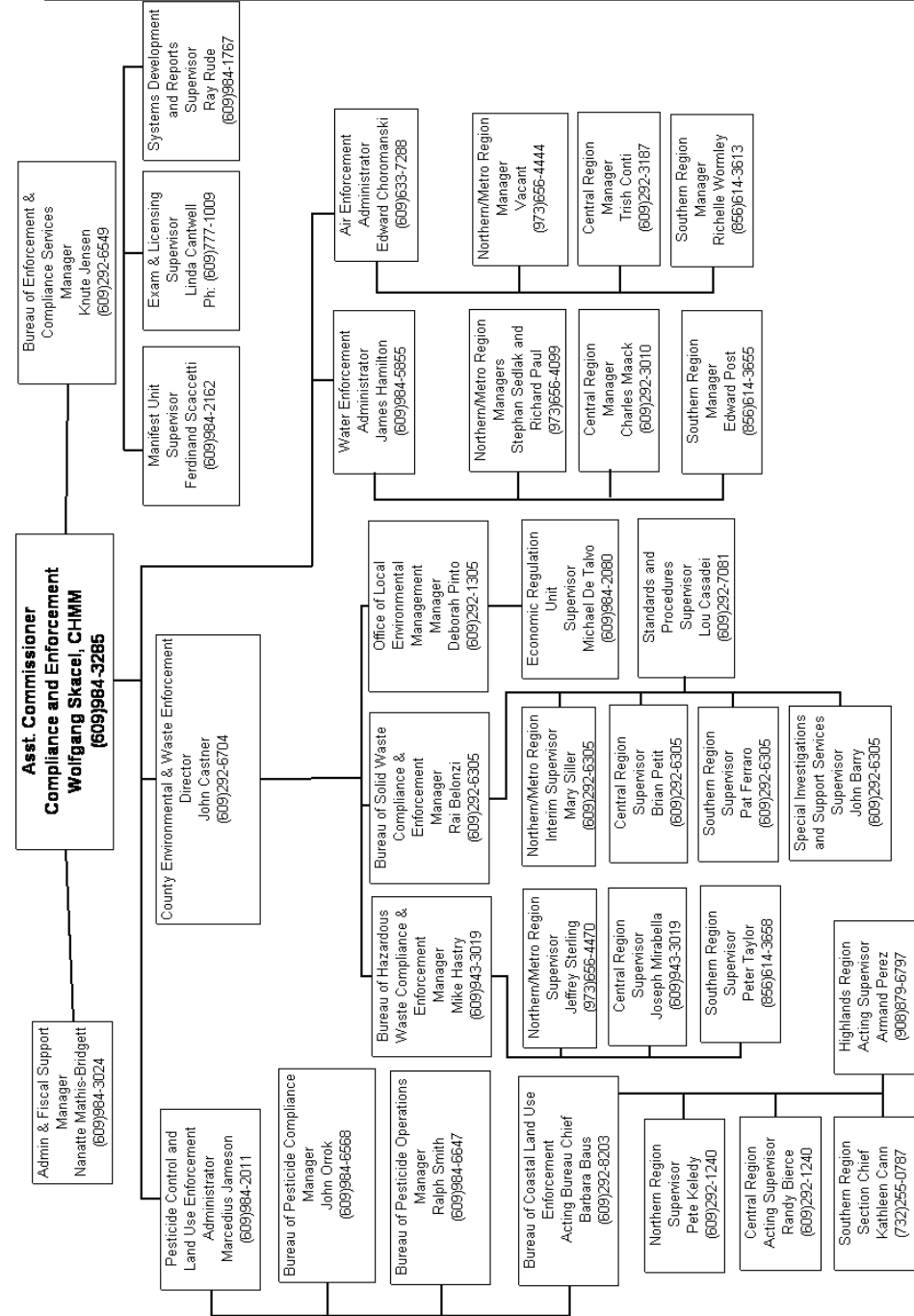


Figure 1. Compliance and Enforcement Organizational Chart



Compliance and Enforcement Contact Information

The following pages contain the organizational chart for the programs within Compliance and Enforcement including contact personnel, phone numbers and the location and jurisdiction of each field office. Also included is information on the Office of Legal Affairs and the Office of Dispute Resolution.



What should I expect when an inspector arrives at my facility?

The compliance process begins with a site inspection, audit, or record review to determine whether a facility is in compliance with applicable permits, regulations and statutes. The typical site inspection consists of an opening conference, the inspection and a closing conference. During the inspection, an inspector may conduct a visual observation of a facility's operation, review records, take samples for analysis, take photographs or any combination thereof. At some point, either while the inspector is on the site or at a later date, the findings are reviewed to determine whether the facility is in compliance with applicable requirements. The results of these findings are entered into the Department's New Jersey Environment Management System (NJEMS) and become a part of the facility's enforcement history. If the facility is in compliance, no further action is warranted. If a violation is identified, a determination is made as to whether it is minor or non-minor violation based on rules established by each program through their Grace Period Rules. An enforcement action is prepared for the facility informing them of the violation and the steps necessary to correct the violation.



What should I expect when an inspector arrives at my facility?



Be cooperative and courteous with the inspector.

Don't panic. The purpose of the inspection is not to shut down your business or to make it difficult for you to operate. The purpose of the inspection is to determine your compliance with the applicable regulations and, where possible, provide compliance assistance.

Upon arrival, the inspector will identify him/herself as a DEP inspector, show photo identification, provide a business card, and ask for the owner/operator of the facility.

Will the inspection be announced?



Create an inspection plan indicating staff members who are knowledgeable and the location of records.

For logistical reasons and to ensure the appropriate staff are available to answer questions and provide information to the inspector, the inspection may be announced. However, to observe what normal everyday operations are like at a facility, the inspection may also be unannounced. The best thing that you can do is to be prepared regardless of whether you are notified in advance of the inspection or the inspector shows up unannounced.



provides a forum outside of the administrative and trial courts for resolution of disagreements between the Department and affected parties. The ODR acts as an impartial third party to help the parties explore options for resolution that may not previously have been considered. This voluntary, no-cost forum serves a dual purpose: to reduce costly and protracted legal proceedings at taxpayer expense and establish more meaningful lines of communication among environmental regulators and the regulated community.

A settlement, whether reached with a Department program under the auspices of the ODR or at the OAL, is the final determination of the enforcement action appeal and is fully enforceable.



Can I appeal an enforcement action? (cont.)

- The defenses to each of the findings of fact in the enforcement document
- Information supporting the request
- An estimate of the time you will need to make your case
- A request, if necessary, for a barrier-free hearing location for physically disabled persons
- A clear indication of any willingness to negotiate a settlement with the Department prior to the Department's processing of your hearing request

All hearing requests must be submitted to the Office of Legal Affairs (OLA), which manages the hearing request process, and to the department program that issued the enforcement document by the applicable deadline. The addresses are listed on the form. Lateness is grounds for denying a hearing request. The OLA will determine if the matter is a "contested case" under the applicable statute and rules and, if so, send a letter granting the hearing request. The case then will be transmitted to the Office of Administrative Law (OAL). The OAL will docket the case and assign it to an Administrative Law Judge (ALJ) for hearing.

Once you've filed and a hearing request has been granted, there is another option available for you to consider when contesting an enforcement action. The Office of Dispute Resolution (ODR)



Why is my business being inspected?



By changing the way you conduct business



or manufacture/process your product, or by implementing pollution prevention strategies you could reduce or eliminate your environmental risk. You may even become non-regulated and avoid the inspection process altogether.



To ensure compliance with environmental regulations, the Department conducts several types of inspections, including:


- Routine inspections for many types of permitted facilities, unpermitted facilities that have applied for a permit, and regulated facilities that do not need a permit. (These may or may not be unannounced.)
- Follow-up inspections to check on prior violations. (These are usually announced but in some cases may be unannounced inspections.)
- Targeted inspections as part of a focus on a specific region, industry or type of environmental non-compliance. (These are more commonly announced and are often preceded by compliance assistance or other outreach.)
- Inspections associated with either a citizen complaint or other information which leads the Department to believe that a violation has occurred. (These are more than likely to be unannounced inspections and may occur outside of normal business hours.)


How does the inspector prepare for the inspection?


Inspectors review previous inspection(s) and permits, if any, prepare an inspection checklist, review any required submittals, and obtain driving directions. Depending on the type of inspection, the inspector may also review aerial photographs and environmental maps, prepare sampling equipment and containers, and secure a camera for taking photographs.


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<p><i>Can I get a copy of the checklist the inspector will use?</i></p>	<p>Each inspection and corresponding checklist is specific to the facility, the permit requirements if applicable, and the particular area, equipment, process, and media being inspected on that day. In theory, the checklist for your facility could change each time you are inspected. However, you can ask the inspector for a copy of the checklist he/she used after the inspection is completed to use as reference for the future. The Department has produced some generic checklists that you may use that are available on the web at www.nj.gov/dep/enforcement/ca-checklists.html. As new checklists are produced they will be posted on the web.</p>	
<p><i>What should I do to be prepared for the inspection?</i></p>  <p>Don't stuff your permit into a drawer when you get it</p> <p>- READ IT! Pay close attention to monitoring and record keeping requirements and share them with key staff people.</p>	<p>The first thing you should do is to get your records in order and know where they are so you can easily find them. You should do a periodic housekeeping check (proper storage and disposal of chemicals, drums, solid/hazardous wastes, etc.) and if necessary, clean up the facility. Check periodically to see if there was new equipment added that would need a permit or if there were modifications to your manufacturing process or facility that would require a modification to your current permit. You should check for stormwater discharges and the need for a permit. If you have a stormwater permit make sure you send in your annual recertification for your stormwater pollution prevention plan.</p>	


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<p><i>When and how can I get the results of the inspection?</i></p>	<p>Once your inspector has entered the data into NJEMS you can view the results online at www.nj.gov/dep/opra/online.html. Be sure to ask your inspector when he/she expects to have the results entered. You may also look at previous inspection results at any time. The program is user friendly but on occasion information inquiries are slow to download.</p>	
<p><i>Can I appeal an enforcement action?</i></p>  <p>You may request a hearing to:</p> <ul style="list-style-type: none"> • Dispute the findings of fact • Dispute the penalty amount and/or request a settlement 	<p>You may appeal the following enforcement actions by requesting a hearing:</p> <ul style="list-style-type: none"> • Administrative Order with penalty (AONOCAPA) • Administrative Order without penalty (AO) • Penalty Assessment (NOCAPA) <p>At the end of the enforcement document is the administrative hearing request checklist and tracking form to fill out and submit to the department. In order for the request to be considered complete you must sign and date the form and submit with all of the following information:</p> <ul style="list-style-type: none"> • The date that you received the Enforcement Document • A copy of the Enforcement Document and a list of all issues being appealed • An admission or denial of each of the findings of fact, or a statement of insufficient knowledge 	


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<i>Will I get a penalty? (cont.)</i>	It is important to note that only 20 percent of all penalties assessed in the past year were mandatory penalties. More importantly, approximately half of all facilities where an inspector found violations during a compliance evaluation achieved compliance within the timeframe stipulated in the NOV and no penalty was assessed.	
<i>What should I expect during the exit interview or closing conference?</i>	The inspector will review findings or provide general observations about any problems observed at this time, but the final compliance evaluation will be completed at the office. Also, the inspector may ask for clarifications as well as identify further information needed including, a timeframe for submittal.	
<i>What happens after the inspection?</i>	If violations were found, the Department will follow-up with actions aimed at correcting the problem(s). The Department will not take steps to stop activities at a facility unless those activities are causing substantial harm to the environment or human health. The inspector will complete the compliance evaluation and enter it into the New Jersey Environmental Management System (NJEMS) to become part of the facility's permanent compliance record.	



	Page 15	New Jersey Department of Environmental Protection
		<p>If you have a stream encroachment or wetlands permit or waiver, make sure copies of the DEP approved plans and permit(s) are available for review. If you have x-ray equipment, ensure that it is operating properly and in compliance with performance requirements.</p> <p>Last, but not least, you should have a designated, knowledgeable person assigned to accompany the inspector.</p>
<i>Can I refuse to allow the inspection?</i>	Yes you can, but refusal could subject you to administrative penalties. Each day is considered a separate and distinct offense and each program within the Department has specific penalties written into their regulations ranging from \$2,500 to \$50,000 per offense per day. Refusing entry also creates the perception that the facility must have “something to hide.” The inspector is certain to come back with a warrant accompanied by local or state police to conduct a thorough inspection.	
<i>How long will the inspection take?</i>	The inspection will typically take anywhere from an hour to a day depending on the type of inspection, number of processes/equipment/media to be inspected, amount of records to be reviewed, etc., and will generally be conducted during normal business hours. Facilities like refineries or large chemical manufacturers/distributors could take several days to inspect.	


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<p><i>How long will the inspection take? (cont.)</i></p>	<p>Inspections associated with either a citizen complaint or other information which leads the Department to believe that a violation has occurred may occur outside of normal business hours.</p>	
<p><i>What should I expect during the opening conference?</i></p>	<p>The opening conference may be a formal meeting or an informal discussion of the plan for the inspection. Employees with knowledge of the facility's environmental activities should be available for the opening conference. The inspector may ask about facility operations down to the process level, safety, employee training, environmental management, and other information related to the permit or inspection. The inspector will take notes throughout the inspection process so do not be alarmed when he/she writes something down. The information will be used later to develop the written inspection report. The inspector will also identify the records he/she wants to review either at the facility or back at the office. Issues regarding confidentiality claims should be raised at this time.</p>	
<p><i>Who should accompany the inspector on the inspection?</i></p>	<p>The opening conference and the facility inspection are the tools that the inspector will use to gather information about your facility to determine compliance. The inspector may ask about any/all of the following:</p> <ul style="list-style-type: none"> • Process information • Equipment operations 	

	Page 33	New Jersey Department of Environmental Protection
		<ol style="list-style-type: none"> 2. Any <i>actual harm to the environment or to human health</i>, including injury to or impairment of the air, waters, or natural resources 3. The <i>cost of cleanup and the cost of restoration</i> of the natural resource 4. The <i>nature and degree of injury to or interference</i> with general welfare, health, and property 5. The extent to which the <i>location of the violation</i>, including the location near waters or areas of human population, creates the potential for harm to the environment or to human health and safety 6. The <i>available technology</i> and economic reasonableness of controlling, reducing, or eliminating the violation 7. The degree of <i>hazard posed by the particular pollutant</i> or pollutants involved 8. The extent to which the current violation is part of a <i>recurrent pattern</i> of the same or similar type of violation committed by the violator 9. <i>Economic Benefit</i> that was realized by not complying 10. Timeliness and effectiveness of actions taken to correct or remediate

	Page 32	New Jersey Department of Environmental Protection
<p><i>What is an NOV? (cont.)</i></p>	<p>occurred and then to allow for the consistent application of enforcement discretion by bringing supervisors/management into consideration of further enforcement action.</p> <p><u>The overall goal of the NOV is not to punish the facility, but instead, to have the facility gain compliance with the applicable rules and resolve and correct noncompliance in the shortest timeframe possible.</u></p>	
<p><i>Will I get a penalty?</i></p>	<p>Some statutes and regulations require mandatory penalty assessments (within a certain monetary range) for certain violations. If the inspector finds a violation that falls into this category, then yes, you will receive a penalty. In calculating the amount of the penalty, the Department will start with a base penalty amount. The Department will then consider each of the following specific factors on a case-by-case basis to make adjustments to the base penalties. While all factors will be considered, it is not necessary for all of the factors to be applicable before the maximum penalty may be assessed. A single factor may warrant the imposition of the maximum penalty. Furthermore, all factors, even if applicable in a given case, are not necessarily of equal weight in the Department's determination of a reasonable penalty.</p> <p>1. The <i>willfulness of the violation</i>, the extent to which the existence of the violation was known but uncorrected by the violator, and the extent to which the violator exercised reasonable care</p>	

	Page 17	New Jersey Department of Environmental Protection
		<ul style="list-style-type: none"> • Waste generation • Air emissions • Wastewater generation • Permit requirements • Waste minimization • Site security • Quality assurance <p>It is important to provide accurate information to the inspector. An employee who has knowledge of the above and can respond to the inspector's questions should go along on the inspection.</p>
<p><i>Will the inspector collect samples?</i></p>	<p>Sampling is conducted to document potential evidence of noncompliance or to confirm laboratory accuracy. The inspector may take samples of air emissions, water/wastewater discharges, soils or wastes. All sampling activities will be documented and follow chain of custody procedures to ensure the validity of the sample's analytical results. You can collect split or duplicate samples at the same time as the inspector collects samples and have them analyzed at a certified laboratory of your choice. This is optional so you can compare data between your results and the Department's. If you choose to collect samples, you must provide sample collection containers and analytical services.</p> <p>An x-ray inspector will take an image of a testing tool designed to have similar absorptive properties as specific human anatomy (hand, chest, etc.) known as a phantom. The x-ray image of the phantom is then evaluated for image quality.</p>	

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<p><i>Will the inspector take photographs?</i></p>	<p>If it is the first time the inspector has been to your facility or something at your facility has changed, then he/she may take photos. The inspector will also take photos to document noncompliance or potential violations. If the inspector takes photos of a confidential or proprietary operation, inform him/her immediately so that a confidentiality request can be documented.</p>	
<p><i>What kinds of records will the inspector want to look at?</i></p>  <p>Organize your records. Create binders to hold all of your required documentation.</p>	<p>You should be prepared to have the inspector review any and all records required for compliance with your permit(s). The specific records reviewed depend on the area or media of environmental compliance under evaluation. An air inspector most likely will not look at hazardous waste manifests. For a multi-media inspection the inspector could review any or all of the following:</p> <ul style="list-style-type: none"> ✓ Facility process information ✓ Material purchasing information ✓ Hazardous and nonhazardous manifests ✓ Analytical results ✓ Air emissions data ✓ Wastewater discharge data ✓ Logbooks ✓ Sampling reports ✓ Water level data ✓ Waste handling and disposal information ✓ Facility inspection reports ✓ Operation records ✓ Training records 	

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	<p><i>Notice of Prosecution (NOP)</i> – An enforcement action used by programs which only have authority to assess civil penalties, as opposed to civil administrative penalties. The NOP identifies the violation, directs corrective action, and offers a penalty settlement amount. If the violator is not willing to settle, the case is referred to the Office of the Attorney General.</p>	
<p><i>What is an NOV?</i></p>	<p>The purpose of the NOV is to:</p> <ul style="list-style-type: none"> • Provide formal notification that a violation is being or has been committed • Provide a precise and thorough description of the details of the violation so that the respondent has no doubt exactly and specifically what the Department is asserting he/she did wrong • Provide formal notification to cease the offending activity • Provide formal notification that if compliance is not achieved, the situation can be considered “knowing behavior” or “major conduct” for future penalty decisions • Provide starting point for significant cases to allow for case follow-up and tracking • Provide a consistent Department response regardless of who the inspector/case manager is and where the violation has 	

<p>What types of enforcement actions are there? (cont.)</p>	<p>In many instances, if the violation is corrected, no additional actions will follow. An NOV is the most common type of enforcement action.</p> <p>Administrative Order (AO) – An enforcement action issued after determining that a violator has not complied with an NOV, or after determining that the violation is not a minor violation. An Administrative Order by itself carries no penalty assessment, but orders the violator to comply with a requirement in accordance with a prescribed compliance schedule. Some programs are mandated to issue AOs in place of NOVs. AOs are contestable through the state's Office of Administrative Law.</p> <p>Notice of Civil Administrative Penalty Assessment (NOCAPA) – An enforcement action which includes a penalty issued for a violation where a corrective action is not possible or has already occurred. This may include a violation that has federally mandated penalties, that was a temporary but foreseeable and preventable occurrence, that had a significant impact or significantly deviated from regulations or acceptable practices. NOCAPAs are contestable through the state's Office of Administrative Law.</p> <p>Administrative Order and Notice of Civil Administrative Penalty Assessment (AONOCAPA) – An enforcement action which includes a penalty issued after determining that a violator has not complied with an NOV, the violation has mandated penalties, or the violation is a non-minor violation. AONOCAPAs order the violator to comply with a requirement in accordance with a prescribed compliance schedule and are contestable through the state's Office of Administrative Law.</p>
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	<ul style="list-style-type: none"> ✓ Annual/biennial reports ✓ Emergency response plan ✓ Spill control plan ✓ Site security plan ✓ DEP issued permits ✓ DEP approved site plans ✓ Local construction permits ✓ Certified soil erosion and sediment control plan ✓ Quality assurance plan
<p>What are the most common violations that an inspector finds?</p>	<p>These are the most common problems discovered as a result of inspections over the past 12 months listed in order of the most commonly cited:</p> <p>Air</p> <ul style="list-style-type: none"> • Failure to obtain a preconstruction permit • Failure to fulfill all conditions and provisions of the preconstruction permit and operating certificate • Failure to obtain an operating certificate • Failure to keep required records • Failure to fulfill all conditions of a compliance plan • Failure to fulfill all conditions and provisions of the Operating Permit



What are the most common violations that an inspector finds? (cont.)

- Releasing odors and/or particulates into the atmosphere in quantities which result in air pollution
- Failure to submit an emission statement
- Idling the engine of a diesel-powered motor vehicle for more than three consecutive minutes while not in motion
- Failure to maintain records for surface coating and graphic arts operations

Hazardous Waste

- Failure to comply with emergency response requirements
- Failure of generator to clearly mark container with the words "Hazardous Waste" and the date when accumulation period begins
- Failure of used oil generator to comply with used oil-labeling requirements
- Failure to determine if waste is hazardous
- Failure to perform inspection of each area where containers are stored
- Failure to pay a fee within specified timeframe
- Failure to comply with requirements for the management of containers



What happens if the inspector finds a violation?



Correct easy things found during the inspection (ex. labeling). You will still receive an NOV for the violation but it will go into the report that you achieved compliance during the inspection.

An enforcement action, which is a document issued by the Department to a person or facility responsible for a violation that was discovered or confirmed through a compliance evaluation, will be issued either in the field or after the inspector returns to the office.

What types of enforcement actions are there?

The following types of enforcement actions are most commonly issued:

Notice of Violation (NOV) – An enforcement action that puts the violating party on notice that a violation has occurred. An NOV can be prepared either as the result of an inspection or upon review of a submittal from a regulated facility. The NOV lists the date of discovery of the violation, description of the violation, and a compliance due date. NOVs do not carry penalties, but can serve as the basis for additional enforcement action. Generally an NOV will allow 30 to 60 days for compliance but note that some violations will require immediate compliance. NOVs cannot be appealed but may be rescinded if the basis for the violation is incorrect.



What happens if the inspector finds a violation? (cont.)

Non-Minor Violations: Certain violations uncovered during the inspection are considered non-minor due to the nature of the violation. Examples include:

- Major exceedences from permit limits
- A direct threat to human health or the environment
- A pattern of chronic, non-compliant behavior
- A history of repeat violations or ongoing violations
- A violation defined as significant under federal or state law

If a violation is non-minor the Department may do one or more of the following:

- Issue an Administrative Order with or without a penalty assessment
- Enter into an Administrative Consent Order
- Seek judicial relief
- Make a criminal referral to the Attorney General

These actions are further described on the following pages.

Some programs have specific sanctions spelled out in law. The enforcement option that is pursued depends on a variety of factors and circumstances including: whether certain actions are prescribed by state/federal delegation or enforcement agreements, the severity of the violation, degree of harm or potential harm to human health or the environment, the past compliance history of the facility, and the willfulness of the act.



Land Use

- Conducting regulated activities such as clearing, filling, or construction near a stream, in a flood plain or within wetlands without a valid permit or waiver
- Failure to adhere to soil erosion and sediment control plan specifications

Pollution Prevention (P2) & Community Right to Know (CRTK)

- Failure to complete and submit a CRTK survey
- Failure to complete and submit a P2 plan survey
- Failure to complete a Release & P2 Report (RPPR)
- Failure to make the CRTK survey available to the inspector at the time of inspection
- Failure to report all extraordinary hazardous substances (EHS) over the reporting threshold on the CRTK survey

Radiation

- Failure to register x-ray machine or pay annual registration fees
- Failure to conduct radiation safety survey



What are the most common violations that an inspector finds? (cont.)

- Failure to implement a quality assurance program
- Failure to perform required quality control tests
- Taking medical x-rays with an expired license
- Unauthorized individual taking medical x-rays
- Performing x-ray tasks outside the scope of the license category

Release Prevention

Toxic Catastrophe Prevention Act (TCPA)

- Failure to submit a Risk Management Plan (RMP) to register a facility
- Failure to perform operator refresher training
- Failure to complete preventative maintenance inspections and tests
- Failure to complete emergency response training and exercise requirements
- Failure to comply with “management of change” requirements (unauthorized modifications to the process or incomplete documentation)



What happens if the inspector finds a violation?

Minor Violations: Sometimes a violation is discovered that is minor in nature and does not have the potential to affect human health or the environment. These may include:

- Minor exceedences from permit limits
- Minor record keeping violations
- First offenses that present no imminent harm or potential harm to human health or the environment
- Violations that can be corrected immediately or in short order

If a violation is minor, the facility is issued a Notice of Violation (NOV) informing them of the violation, the steps necessary to correct it and the specific timeframe in which to correct it. A follow-up inspection is then conducted to determine if the violation has been corrected. The inspector may request that a violation be corrected prior to leaving the facility, in which case a follow-up inspection would not be necessary.



What are the most common violations that an inspector finds? (cont.)

Underground Storage Tanks

- Using regulated tanks without a valid registration certificate
- Failing to **inspect and clean** all submersible turbine pumps (STPs), dispenser and piping sumps, spill buckets and catchment basins every 30 days
- Failure to test mechanical line leak detector (LLD) at least once/year
- Failure to perform three year test of cathodic system
- Release Response Plan not available
- Failure to perform an acceptable method of release detection monitoring for the tanks and piping
- Fill ports are not marked (API Code #1637)
- Failure to submit an accurate UST questionnaire



Discharge Prevention Containment & Countermeasure (DPCC)

- Failure to submit a DPCC plan and a Discharge Cleanup & Removal (DCR) plan
- Failure to perform testing of aboveground tanks
- Failure to amend a DPCC or DCR plan
- Failure to conduct an annual emergency response drill
- Failure to conduct facility inspections
- Failure to maintain current financial responsibility documentation

Solid Waste

- Failure to obtain an approved registration statement before transporting solid waste
- Failure to properly mark each solid waste vehicle and/or to carry current DEP registration
- Failure to obtain a solid waste facility (SWF) permit prior to constructing or operating a solid waste facility
- Failure to affix capacity of unit to the driver's side of the solid waste vehicle
- Failure to comply with recycling center approval conditions



What are the most common violations that an inspector finds? (cont.)

- Failure to prepare and submit an annual report summarizing the utilities' ownership, financial condition, contractual arrangements, and operations for the preceding calendar year
- Failure to register any device used for the transportation of solid waste
- Failure to file initial customer list in the proper format
- Failure to only display current period decals, and remove all decals and registration numbers from vehicles that were sold or had expired leases
- Failure to obtain approval prior to engaging in solid waste disposal
- Failure to register as a regulated medical waste generator and pay annual fees

Water Supply

- Failure to submit an agricultural annual water use report
- Reporting a non-numeric value for monthly static water level value
- Failure to report water diverted per month as required by water use registration
- Failure to submit public quarterly monitoring report
- Failure to report monthly static water level



- Exceeding the amount of water permitted for diversion
- Failure to perform sampling and/or failure to report results
- Failure to provide public notice as required by the regulations

Water Quality

- Failure to submit Stormwater Pollution Prevention Plan (SPPP) information **(greater than half of all water violations written were for this issue)**
- Failure to comply with all conditions of the permit
- Discharging pollutants **including stormwater** to the waters of the state without a valid NJPDES permit
- Failure to maintain a current Operation & Maintenance Manual that includes an emergency plan
- Failure to submit an Acute Whole Effluent Toxicity Test Report
- Failure to conduct monitoring
- Failure to implement best management practices