

## **CHAPTER THREE: INSPECTIONS AND INFORMATION REQUESTS**

### **SECTION I. INTRODUCTION**

The goal of ensuring compliance requires DNREC to undertake activities that support a determination of whether a person who is subject to environmental laws is in compliance. In many cases, an inspection of a site, facility, or activity is the key to an accurate compliance determination. An inspection may be a regular (e.g., annual) visit to a facility, it may be part of a pre-determined targeting strategy, or it may be part of the response to a citizen complaint or other source of information which leads DNREC to believe that a violation may have occurred or may be occurring. An inspection can include (but is not limited to) photographing or videotaping activities or conditions, sampling actual or suspected wastes/contaminants and process streams, and interviewing employees of the regulated entity or other potentially knowledgeable individuals. The circumstances surrounding the inspection (including the reason for the inspection) will determine what specific activities are needed.

Site/facility representatives should be aware that although DNREC is doing more multi-media inspections, most inspections are still single-media based. This means that an inspection by staff from one DNREC program (e.g., NPDES/surface water discharges) probably will not cover compliance with requirements of other DNREC programs (e.g., RCRA-C/hazardous waste), and it certainly does not preclude any other applicable DNREC program from doing an inspection of the same site/facility/activity. Also, an inspection by DNREC does not preclude an inspection by EPA under the same program or under a different one. Finally, site/facility representatives should be aware that they may be subject to regulation by more than one state agency (e.g., Department of Labor, Department of State), and that information given to one state agency does not mean that all state agencies have the information.

In addition to conducting inspections, DNREC frequently requests a regulated entity to submit information as part of a compliance determination. For example, such requests may be made for records that were not available at the time of an inspection (e.g., records kept at the home office of a company that has more than one location) or for reports that are required by environmental laws to be submitted on a regular basis but that were not received by DNREC on time.

Since DNREC typically does not know whether a site, facility, or activity is in compliance prior to doing an inspection, all field work must be conducted in such a way that an enforcement action can be supported if it is the most appropriate follow-up response. Not only is it important for DNREC to gather all necessary information and properly document it, but it is also important for the work to be done in a safe manner that does not jeopardize an individual's health or well being.

### **SECTION II. INSPECTIONS**

#### **A. NATURE AND SCOPE**

The nature and scope of an inspection depends, as noted above, on the reason for the inspection and what information is needed to make a compliance determination. This can vary widely from one DNREC program to another. For example, an inspection done under the Storm Water Program, may involve comparing "before" and "after" topography

of a site, looking at building plans or staked areas on the property to determine the appropriate construction and materials management. This is quite different from an inspection of a wastewater treatment facility, where DNREC will observe the facility's operations, inspect daily laboratory records and other log sheets, and sample effluent. This in turn is quite different from an inspection of a hazardous waste transporter, which involves examining the vehicle in which hazardous wastes are being transported, inspecting the containers in which the hazardous wastes are being carried, and checking the transporter's permit and the manifests required to accompany the wastes during transport. A transporter inspection in turn is quite different from an inspection relative to dredging and filling in wetlands, for which DNREC will observe (and possibly sample) vegetation, hydrology, and soil types on disturbed and undisturbed areas of a property.

## **B. INSPECTORS**

All inspections are done by trained staff. All DNREC staff carry photo-identification cards that clearly identify the individual as a DNREC employee and most carry business cards. Occupational safety and health training is provided to all DNREC staff whose job tasks require such training. Staff members whose jobs require specific safety training, such as use of personal protective equipment, confined space entry, etc., receive that training in accordance with applicable recommendations and requirements as set forth by OSHA, NIOSH, etc. All personnel are encouraged to be safety pro-active. Programs have identified the safety issues most likely to be encountered during a typical inspection and have tried to ensure that inspectors are equipped appropriately, e.g., with safety glasses, steel-toed boots, high visibility/reflective vests, etc.

## **C. RIGHT TO INSPECT**

Each statute underlying a regulatory program implemented by DNREC authorizes DNREC to inspect land and buildings on or in which the regulated activity may be occurring, subject to the requirements of the statute.

## **SECTION III. INFORMATION REQUESTS**

As noted in the Introduction to this chapter, DNREC occasionally requests a regulated entity to submit information as part of a compliance determination. Whether the regulated entity is required to submit the information may depend on the basis for the request.

### **A. STATUTES**

Certain statutes implemented by DNREC authorize DNREC to require the submittal of information. For example:

7 Del. C. Chapter 40 Sediment and Stormwater Law

7 Del. C. Chapter 60 Section 6028

7 Del. C. Chapter 74 Sections 7405 and 7408

If a request for information is made pursuant to these authorities, the person is legally obligated to provide the information.

### **B. REGULATIONS**

Many programs have developed regulations that require certain records to be maintained. Some of the regulations require that these records be submitted periodically to DNREC, while others only require the records to be made available upon request by DNREC. If DNREC requests records that are required by regulation to be maintained,

the regulated entity is legally obligated to provide the records upon request, and failure to do so constitutes a violation separate and distinct from any violation that may be shown by the information in the records.

### **C. PERMITS**

If a site, facility, or activity is required by statute to have a permit, the permit itself may contain record keeping or reporting requirements. As with records required by regulation, if DNREC requests records that are required by a permit to be maintained, the regulated entity is legally obligated to provide the records upon request, and failure to do so constitutes a violation separate and distinct from any violation that may be shown by the information in the records.

### **D. ORDERS**

If DNREC issues an Administrative Order, the order may contain a requirement to keep records not otherwise required to be kept (e.g., logs of more frequent sampling than otherwise required) and to submit such records as provided in the order. If a regulated entity receives an order that contains a requirement to maintain or submit records, the regulated entity is legally obligated to provide the records, and failure to do so constitutes a violation of the order separate and distinct from any violation that may be shown by the information in the records.