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INSPECTION REPORT WRITING

GUIDANCE FOR

UNIFIED PROGRAM AGENCIES

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Inspection Report Guidance

I. Introduction

This Inspection Report Guidance has been jointly developed by State, Federal and CUPA staff as part of ongoing cooperative efforts to ensure continual Unified Program improvement. Inspection report writing was identified as an area where additional guidance and training was necessary. This is based on observations of incomplete inspection reports found during some evaluations of CUPA jurisdictions. In addition, comments have been received from industry regarding inconsistencies in CUPA and PA inspection activities.

Inspections and reporting of inspection findings are the foundation for the basic mandate of the Unified Program: ensuring compliance with requirements of the six Unified Program elements. Complete and appropriately written reporting of inspection findings is essential for full, effective and consistent program implementation.

Important to the success of this effort was an early recognition of the need for a common understanding of what constitutes “complete and appropriate” inspection reporting within the Unified Program. The Unified Program Administration and Advisory Group’s (UPAAG), Enforcement Steering committee chartered an Inspection Workgroup to develop mutually agreeable standards to train Unified Program Agencies as a basis for future evaluations. While inspection reporting for virtually any regulated activity by any regulatory agency entails the same basic elements, this document is uniquely tailored to meeting the needs of the Unified Program.

Also important in the development of this guidance was the continual need to balance work activities and priorities against ever present resource constraints. This guidance identifies the essential elements that should be in all Unified Program inspection reports. It allows for the use of differing paper or electronic formats and the addition of other information that individual agencies may find necessary. It does not mandate adherence to any specific state, local or federal agency’s reporting policy, nor does it require lengthy reports with extensive narrative. The intent is quality—not quantity.

The Inspection Workgroup acknowledges that common sense and professional judgment are important elements in the daily activities of an inspector. However, in constructing this guidance, the Inspection Report Workgroup has outlined some basic requirements. Some of these basic requirements are mandated by statute and others constitute good inspection practices. It is also important for local programs to structure their own staff training in a way that presents clear and objective inspection protocols. Good inspection reports are not only necessary for documentation, follow-up compliance measures, enforcement, and public disclosure that is clear and specific, but also for the owner/operator who needs the

same information to understand exactly what needs to be done to come into compliance.

The Inspection Workgroup is aware that many agencies are moving towards electronic inspection tools that will present challenges in documenting observations in a narrative format. While some observations can be identified using electronic checkboxes, there are pieces of information that must be inserted, such as where the violations were observed. While not perfect, these tools should have some capabilities to electronically record narrative information.

This guidance is intended to outline basic requirements of an acceptable inspection report for all Unified Program elements. There are specific requirements for documentation that can be found in statute, some of which only apply to hazardous waste. Understanding that there is a wide array of violations, statutes, and requirements being documented, the Inspection Workgroup also recognizes that there are commonalities for writing a good inspection report. Finally, this guidance is not intended to describe enforcement requirements such as where to take enforcement. These issues are addressed in the Inspection and Enforcement Guidelines and other documents found elsewhere.

Questions about any element of this guidance can be addressed to the Cal CUPA Forum Board, Enforcement Issue Coordinator, Bill Jones or to Larry Matz or Dennis Karidis at Cal/EPA.

Many thanks to the UPAAG Inspection Workgroup members for their hours of work on this project: Dennis Karidis (Cal/EPA) - Chair, Bill Jones (LA County Fire) – Issue Coordinator, Larry Matz (Cal/EPA), Mickey Pierce (DTSC), Susan Williams (San Bernardino County Fire); Eiji Watanabe (LA County Fire), Hernan Gomez (Oakland Fire), Jennifer Bower (Orange County Fire Authority), Pearl Boelter (Orange County Environmental Health), Leslie Graves (SWRCB), Chuck Snyder (OES), and Jim Sullivan (US-EPA).

II. The Purpose of an Inspection Report

Writing inspection reports is a key element of conducting inspections in California. The primary purpose of the report is to communicate and document the findings of an inspection. Since the potential audiences that view the report will vary, the inspection report must be clearly written and describe all elements of the inspection. Some readers may want to know the technical issues as well as the exact regulatory citations and language. Other readers may want a “bigger” picture of the inspection in order to note trends. Prosecutorial agencies will need to know specific details regarding violations noted and evidence obtained during the inspection. In all cases, the inspection report serves to communicate and document the findings of the inspector to the reader. Nothing in this guidance is intended to require lengthy narratives. It is intended to require that essential inspection details are included in all inspection reports.

A. What is an Inspection Report?

An inspection report as used in this guidance document can mean many things to the many different jurisdictions and agencies that implement a wide variety and combination of Unified Program elements. An inspection report can be a separate document from the summary of violations, notice of significant violation, notice to comply, or can be combined. In some cases, inspection documentation is lengthy and detailed. In other cases, it may not be necessary to repeat notations found in a file document, company status, fee information, or other legally collected information. Very simply, the inspection report can best be described as a document or documents produced or generated as a result of an inspection that includes the relevant details described in this guidance.

B. Basis for Follow-up

Any inspection may lead to an enforcement action. For inspections that don't identify violations requiring an immediate enforcement response, a complete inspection report enables an agency to maintain a record of each business's compliance with environmental regulations. Compliance issues may occur years after an inspection and the inspection report may become the first piece of evidence for litigation. Businesses that are recalcitrant or repeat violators will ultimately require further enforcement follow-up. To determine recalcitrant violators, UPAs should use their best efforts to obtain and consider multi-program compliance information from sources such as past inspection reports. Such a review may provide insight into a business's overall environmental management practices. This insight should provide an indication of whether an informal enforcement action is adequate.

Well-documented inspection reports will provide information that allows the reader to quickly assess the regulatory status of the business and determine if the appropriate enforcement actions have been taken. Additionally, agencies can use inspection reports to determine the level of oversight that is required, from a one time follow-up to more frequent inspections. Proper inspection documentation may also allow inspectors to quickly determine if a pattern of conduct is occurring over the course of time. Likewise, when the information contained in inspection reports is considered on a business sector by business sector basis, the information is valuable because it can be used to set future inspection priorities based on patterns of non-compliance.

C. Agency Record

Inspection reports serve as a record of the inspection findings. The report may be used as a basis for refreshing the inspector's memory for any required testimony. In addition, agency records are often used during site remediation, site closure, land sale transactions, epidemiological studies, and other activities.

Note: Businesses may have processes that they consider subject to trade secret. In some instances, information regarding these processes is collected and recorded in inspection reports or in documentation such as photographs that are attached to a report. If requested, handle trade secrets requests pursuant to Health and Safety Code (HSC) Section 25173 (Hazardous Waste), HSC Section 25511 (Business Plan), and HSC Section 25538 (California Accidental Release Prevention Program).

D. Business Follow-up

The key to writing a complete inspection report is for the business owner/operator to have clear and specific direction on what violations occurred and how to correct them. If, for example, the Inspection Report was given to someone else in the company that person should be able to read the report and know what needs to be done. This also saves inspector time in not having to explain details later to the operator.

III. Elements of an Inspection Report

The following elements should be included in an inspection report.

A. General Information

- Name of the business
- Business address
- Owner/operator
- All agency and facility personnel directly involved in the inspection, including their titles
- The date the inspection was conducted
- Inspector name (with signature)
- Recipients name (with signature acknowledging receipt)

This information establishes all potential witnesses and provides future inspectors a point of contact when conducting inspections. It is also recommended that any additional information be included, such as the CUPA facility and EPA identification numbers.

B. Purpose of Inspection

An inspection report should clearly state the reason or reasons for the inspection. This allows the reader to understand the purpose and scope of the inspection and what they should find in the inspection report.

Agencies may conduct inspections for some of the following reasons:

- Routine compliance
- Follow-up/re-inspection
- Complaint
- Emergency response
- Installation, removal, or closure

Note: This guidance is intended to be focused on routine regulatory inspections.

C. Consent

Why is documenting consent necessary? First, to protect you against later accusations of impropriety, perhaps even claims of civil rights violations and damages. Second, to protect a future enforcement action based on what you saw. The burden is always on the government in any administrative, civil or criminal matter to prove the “reasonableness” of any search done without a warrant (Katz v. US). Although there may be statutes or other authority to inspect, these are always subject to challenge and possible constraint based on constitutional protections against unlawful search and seizure. Consent to conduct the inspection, to take samples and photographs establishes the solid legal foundation that supports the inspector’s right to conduct the inspection. There are only three legal ways in which an inspector can enter a facility: a search warrant, an administrative inspection warrant, and consent. The majority of inspections are performed with consent of the business owner/operator. If the owner/operator is not present, you should make your best effort to obtain consent from a person with authority to grant consent. By simply documenting their consent, future problems can be avoided.

D. Business activities

Documenting the types of regulated activities of the businesses gives a better understanding of the potential regulatory requirements. For example: J & J Brothers is a decorative chrome plating facility.

1. Regulated program elements

The inspection report should specify which of the six program elements of the Unified Program are being covered under the inspection. Include the permit/authorization status of units (e.g., PBR, CE, CA, UST permit, Unified Program permit). This information will indicate which regulations are applicable to the unit/facility. This can be handled by having standard check boxes for each program element that the inspector checks as applicable for each inspection. Or it can be a single statement in the report that says something like: To conduct a routine hazardous waste generator, tiered permit and business plan inspection.

Note: To assist CUPAs in data management, it is recommended that inspection reports include additional information required to be maintained or reported by CUPAs, such as the “classification” of a hazardous waste generator as “RCRA LQG”.

2. Process information

In some cases, documentation of additional information related to the operation of the facility may be necessary. For example:

- description/diagram of tiered permitting flow
- operation of recycling systems

- points of generation that are not common/norms (i.e. note oil generation from skimming catch basin but not from being drained from vehicles)
- laboratory profiles
- logs
- process discharge reports
- monitoring systems
- chemical volumes
- type of manufacturing/service provided
- waste streams commonly generated

In some cases, earlier agency inspection reports contain detailed process descriptions. If no change has occurred, an earlier report may be referenced with a notation that there has been no change.

Process information is generally not a required element. However, it can provide additional information needed for clarity and may be necessary in some cases. Existing file information on processes need not be duplicated on each subsequent inspection unless there is a change in process or the inspector feels there is a need.

E. Violation Documentation

Properly documenting violations in an inspection report will greatly increase the probability that the violation will be enforceable and stand up should the violation be challenged during enforcement. There are four key elements to documenting a violation: Identify the violation, gather evidence that supports the elements of the violation, provide corrective action and compliance timeframes, and document compliance. When all four of these elements are present, the inspection report will demonstrate a “closed loop” of discovery, action, and correction/closure.

1. Identify the Violation

Each alleged violation that is identified must be adequately supported and accompanied by a statutory or regulatory citation.

a. Violation details

Each violation should include the details necessary to establish the elements of a violation. The details should be clear enough so that a third party would understand. It is not enough to simply state that the law was violated. Details such as who, what, when, where, why, and how help in providing adequate details.

Example: Copies of the manifests were not available for review at the time of the inspection. Provide copies of the

manifests for the waste acids that were disposed of in 2004.
To be corrected by (date).

Example: Two (2) uncovered 55-gal. containers of waste oil were observed in the rear drum storage area. Waste containers must be closed when not being filled. Correct by (date).

Example: The facility did not have any records of personnel training or of their hazardous waste contingency plan for review. Provide these documents by (date).

b. Statutory or regulatory citation

All alleged violations should be accompanied by a statutory or regulatory citation. For the majority of violations this can be provided via the agency's inspection form and/or handouts. When a violation is found which is not addressed in the agency's standard forms and handouts, the inspector needs to provide that citation.

Example: Health and Safety Code Section. #####.

Example: HSC. #####

2. Evidence

Evidence must be obtained to support all elements of the alleged violations and recorded in the report in conjunction with each violation. In many cases the inspectors properly documented observation of a violation provides sufficient evidence of a violation. In other situations additional evidence may be needed for enforcement follow-up. An inspector should use professional judgment regarding the amount and type of additional evidence needed. The discussion below indicates elements that must be included in the Inspection Report.

a. Observed Violations

The inspector's observation of violations constitutes qualifying evidence. Details of observations that address the elements of alleged violations are an important part of any inspection report. During potential future litigation, the inspection report will provide this necessary information to the prosecutor and defense and will serve to refresh an inspector's memory during testimony.

b. Photographs

Photos should be taken as necessary to establish evidence of the violation. Photos should include an object to show

scale. Include the date the photo was taken using a time stamp, if available. All photos that are evidence of a violation must be included in the report.

c. Samples

All laboratory reports and supporting documentation, including chain of custody, must be included in the inspection report. If these are not available at the time the report is issued, a notation of this should be included in the report. When available, they should be appended to the report.

d. Documents

Documents obtained during the inspection that support the alleged violations must be included or referenced in the inspection report.

e. Statements obtained

Any statements made that provide evidence for a violation or potential violation, or describe an operational process in a unique manner should be documented. Report the source of the statement. Use language such as Mr. Jones stated “I have not had time to label those hazardous waste drums since John Doe left the company last year.”

3. Corrective action

The inspector must include in the report the corrective action to be taken and the time frame for correction. Be general, recognizing that the business may have a number of options available to correct the violation. Our responsibility is to identify legal options. Selection of an appropriate option is up to the regulated business. Corrective action language may include requests for documentation demonstrating that the corrective action has been completed.

Example:

Background: The facility is storing 2000 gallons of petroleum product on site in an AST. They use the product once or twice a year for maintenance.

Violation: The facility does not have an SPCC.

Statutory or Regulatory Citation: CHSC 25270.5(c). Failure to establish a SPCC.

Corrective Action: A re-inspection will be conducted within 90 days to verify that an SPCC has been established for the facility. If the amount of petroleum product is reduced below 1320 gallons on site, an SPCC will be unnecessary. However, the inventory page of the business plan must be amended to reflect the change.

Example:

Background: The facility has one 220 cu. ft. cylinder of argon on site.

Violation: The facility does not have a business plan.

Statutory or Regulatory Citation: CHSC 25503.5. & CHSC 25505. Failure to establish and submit a business plan.

Corrective Action: Either submit 2 copies (1 original, 1 copy) of the business plan to this Department within 30 days, or reduce the quantity of argon to less than 200 cubic feet. If quantities are reduced, submit a statement and supporting documentation of the change.

Note: The background is provided in the examples above to help readers understand the violation write up. It may or may not be part of an inspection report.

4. Compliance

Correction of all identified violations must be verified and documented. The level of verification and documentation will vary depending on the nature and extent of the violation. In some cases this may require a re-inspection. For others, a signed statement of return to compliance with necessary proof such as photos or documents may be sufficient.

a. Minor Violations

For minor violations, a business MUST submit a signed notice to comply with a certification that states all violations have been corrected (Health and Safety Code (HSC) sections 25187.8(b) and 25404.1.2(c)(1)). If the certificate is not received, the UPA may re-inspect and document in their inspection report that the certificate was not received and the original violations have been corrected. It should be documented in the inspection report that the certificate was not received and that the original violations have been corrected.

b. Non-Minor Violations

Compliance with all non-minor violations should be documented through either a re-inspection or submittal of documentation needed to support the person's claim of compliance.

c. Compliance timeframes

Minor violations of the Unified Program must be corrected within 30 days of the business receiving the notice to comply.

If a notice of significant violation(s) is issued for the Underground Storage Tank Program, the violation(s) must be corrected within 7 days or a red tag may be affixed to the fill pipe.

The inspection report should describe the specified timeframes for correction of each violation of the Unified Program.

d. Unresolved compliance issues

Document issues that cannot be resolved during the inspection, including those that will be addressed in the future.

e. Corrected minor violations

Document all minor violations that were corrected during the inspection as observations.

f. Re-inspection

If a re-inspection is conducted to verify compliance, it is recommended that a new inspection report be generated. A multi-day inspection would not be considered a re-inspection and would not call for a new inspection report.

F. Observations

Hazardous Waste Control Law requires that inspection reports fully detail all observations made at the facility or site. There are no such requirements for the other Unified Program elements. However, relevant observations necessary to fully understand the regulated activities should be noted in the inspection report. Examples of observations which may be noted in inspection reports include the types of paperwork reviewed, alarms or sensors tested, dates noting changes in operation or testing, names of process areas visited, and information provided by the facility regarding decisions they have made that affect the regulation of a material

or waste. Observations need not be lengthy to convey important information.

Example: “At the cleaning desk, dirty solvent is poured to a desktop still. The still processes about 5 gallons of solvent for reuse each month.” can tell the inspection report reader the location, waste encountered, regulatory status of the waste (really an excluded recyclable material) and some of the regulatory requirements (no recycling report needed – less than 100 kg./month recycled).

G. Notes

Notes are a common tool used by a vast majority of inspectors. Notes are also considered to be part of the public record. It is recommended that notes taken during an inspection follow the same guidelines as reports. That is they should be factual, non-judgmental, etc. Many agencies follow a practice of using notes to compile the inspection report. They compare those notes to the final report to ensure accuracy and completeness and then destroy the notes. Defense attorneys may use inappropriate comments in the inspector’s notes in an attempt to discredit them and/or their report.

Note: The policy your agency has regarding the handling of notes should always be applied consistently.

IV. Timeliness

Issuing the inspection report in a timely manner helps insure consistency.

A. Mandatory timelines for report issuance

For minor violations of Hazardous Waste law, a notice to comply shall be provided to the facility at the conclusion of the inspection. For minor violations of all other Unified Program elements, a notice to comply shall be provided to the facility, although no timeframe for issuance is specified. Any notice to comply should be issued at the conclusion of the inspection.

Hazardous Waste law requires a summary of violations be provided to the facility at the conclusion of the inspection. For Hazardous Waste, inspection reports must be provided to the facility within 65 days of the end of the inspection. Provisions for extension are found in HSC 25185(c)(2)(B) and (C).

UST law requires that an inspection report be prepared and that a copy be sent to the permit holder and the owner or operator, if the owner or operator is not the permit holder. No timeframe for issuance is specified.

B. Recommended timelines for report issuance

In general, at the end of an inspection, the facility should be informed of any violation found. If an inspection report is not completed at the conclusion of the inspection, then the report should be completed as soon after the inspection as possible. An inspection report should be provided to every inspected facility regardless of whether violations were noted so that the facility is aware of its status. If an inspection report is not provided to the facility, the UPA should maintain adequate documentation of the inspection that includes all essential elements listed in this guidance.

V. Elements of Good Reporting

The following elements should be considered when writing an inspection report.

A. Fairness

Your reports must be entirely objective. Be impartial, unbiased and unemotional. You must be a conduit of the facts you have gathered. Convey these facts so they speak for themselves. Avoid distortion by being aware of the emotional tone of words. For example, “I am firm,” “you are stubborn,” and “he is pigheaded.” Note the difference between “cooperation,” and collusion” or between “planning” and “scheming.” An attempt to emphasize the significance of the evidence may be held against you and materially diminish the value of the report. For example, by attempting to emphasize that the conduct was thoroughly evil and vile, you may succeed only in providing your own bias.

B. Quality

The overall quality of the inspection report may depend on how you communicate your findings to the reader.

1. Exact

Be exact. Say precisely and accurately what you mean to say in plain language. Precision depends on dictation, phrasing, and sentence structure.

2. Quotes

Use good judgment in determining whether to quote or to paraphrase a witness. Consider such factors as the significance, importance, or length of the statement. If you quote, use the person’s exact words: otherwise, omit quotation marks.

3. Exaggerations

Avoid exaggerations. One small exaggeration may cast doubt on the accuracy of other statements in the report. For example, do not state that something was obvious; just state the facts.

- 4. Opinions, conclusion and inferences**

Opinions, conclusion and inferences normally should be omitted from inspection reports. It is your business to state the facts. Opinions may slip into a report unnoticed. For example, to say “this act indicated his knowledge” is a conclusion and should be clearly identified. Your goal should be to present facts so clearly that there will be no need for conclusions or interpretations.
- 5. Facts**

State facts so that inference can be drawn from them, but do not let inferences replace facts. If you saw someone loading drums marked “waste”, do not write that you saw a person loading waste or that you witnessed disposal of waste. You only saw someone loading drums, marked waste.
- 6. Superlatives**

Avoid superlatives. Reviewers may tend to doubt your objectivity. For example, do not write, “This reports relates the worst violation...” Say instead, “This report relates a violation...” To say, “He is a good operator” conveys a stronger and more convincing picture than “He is a very good operator,” And in certain contexts, “He is the operator” is the strongest of all.
- 7. Accuracy**

Accuracy means truthfulness. The accuracy of your findings and computation must be verified and cross checked before the final report is submitted. A typographical error in date or time may cast doubts on other facts in your report.
- 8. Technical Writing and Acronyms**

CUPAs, by nature, work with chemicals with complex scientific names. Many of these chemicals are given common names or are identified by acronyms (e.g. MTBE instead of methyl-tert-butyl ether). Take care when using acronyms. It is recommended that the acronym be followed by the scientific or common name the first time it is mentioned in a document or report. Common names should be used only when the contents or composition of the chemical is commonly known outside the industry group (i.e.: gasoline, antifreeze or bleach) or when the scientific name is previously noted.

- C. Simplicity**
Simplicity in writing is not easily accomplished, especially if the subject matter is complex. Try to remove all that is elaborate or non essential without omitting the facts, details, and necessary explanations. Readers like to read short sentences and short paragraphs. For those who read an

inspection report, most are not likely seeking entertainment or esthetic stimulation. They are interested in getting the facts and getting them as quickly as possible.

D. Completeness

A good report paints a complete picture to the reader.

1. Relevance

Include all information that is relevant and material. Do not attempt to practice law while writing a report by omitting evidence because you think it would not be admissible in court. If it is relevant and material to the offense, include it in your report. Use good judgment in deciding which facts are relevant and what material should be included. If in doubt, include them.

Completeness implies that all the known facts and details have been reported so that no further explanation is needed and the reviewer will be convinced that the inspection was thorough and complete.

2. Reader

Many writers take their readers' knowledge for granted. Ideally, an inspection report takes nothing for granted and is clear to any reader. If you knew nothing about your inspection except the material in your report, would you understand it all?

3. Completeness Test

The report is complete if it answers the questions of who, what, when, where, why, and how.