



Inspection Essentials – Traps for the Unwary

Best Practices and How to Effectively Prepare for State and Federal Inspections

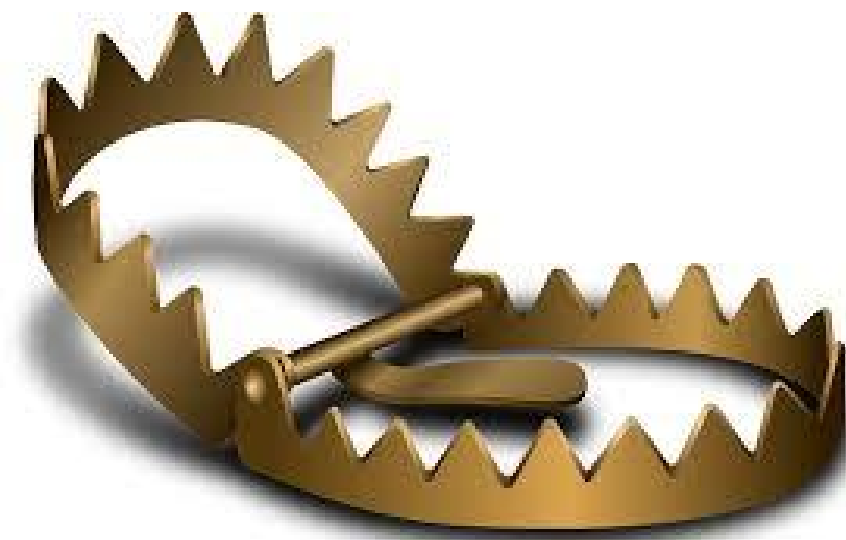
Tammy L. Helminski
Barnes & Thornburg LLP
171 Monroe Avenue, N.W., Suite 1000
Grand Rapids, Michigan 49503
(616) 742-3926
thelminski@btlaw.com



Overview

- Trap #1 – are you *prepared* for an inspection?
- Trap #2 – do you know what happens *during* an inspection?
- Trap #3 – do you know what to expect *after* the inspection?

Trap #1 – Not Being Prepared



Investigation Preparation: Always Be Prepared

- Conduct regular internal inspections.
- Conduct regular employee training.
- Designate a “facility contact” (and back-up).
- Consider establishing procedure for agency inspections.

Inspection Preparation: Recordkeeping

- Keep records in order (sound management):
 - Establish procedures for maintaining documents.
 - Draft *Document Retention and Destruction Policy*.
 - Save space, avoid confusion, and minimize risk of unnecessary disclosure.

Inspection Preparation: Recordkeeping

- Segregate documents:
 - Based on legal requirements.
 - Based on confidential business documents (should be marked).
 - Based on privilege (should be marked).
 - Based on historic need (*e.g.*, audit).

Inspection Preparation: Avoid Inspection “Trippers”

- Build positive, trusting, and ongoing relationships with your regulators.
- Provide information required by law in timely and accurate manner.
- Communicate with employees or contractors to encourage them to report problems internally.
- Communicate with local community.

Inspection Preparation: Be Familiar with Inspection Guidelines

- Review relevant legal and regulatory authorities.
- Review internal inspection checklists/guidance documents.
- Review other Agency publications/websites.

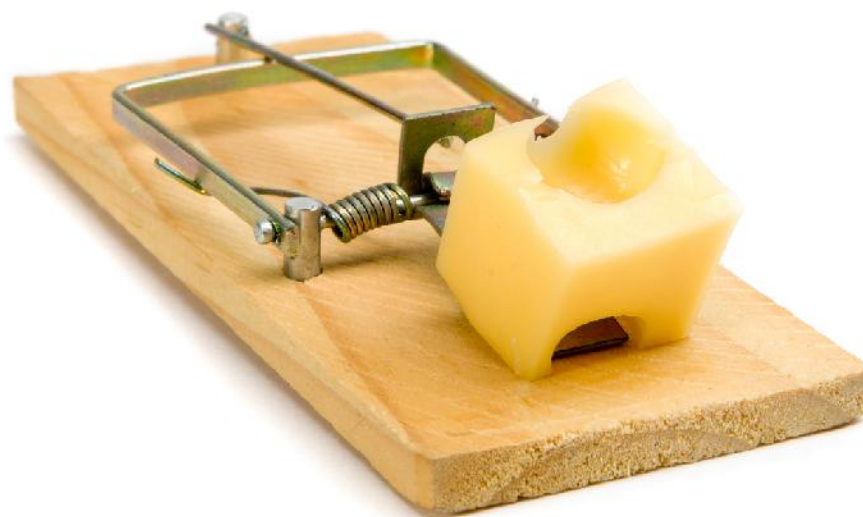
Inspection Preparation: Understand Monitoring Protocols

- Understand monitoring protocols:
 - If analytical samples of discharges may be collected during the inspection, understand the protocol and observe inspections to ensure consistency with the protocol.
 - If visual observations are conducted, understand that protocol and recognize/record methods used by inspector.

Inspection Preparation: Understand Agency Priorities

- Review publicized enforcement priorities.
- Keep an ear out regarding inspections at other sites.
- Ask your environmental attorney!

Trap #2 – Not Knowing Inspection Protocols



The Inspection: Lay down the Welcome Mat

- Arrival notification and “opening conference.”
- Attitude/first impression:
 - provide reasonable comfort.
- Check credentials.
- Provide/ensure proper protective equipment.
- Contact counsel and/or appropriate company management.

The Inspection: Importance of the Opening Conference

- Determine scope of inspection.
- What information will be collected?
 - Samples
 - Files
 - Photographs/Videos

The Inspection: General Tips

- Minimize comments/banter (avoid admissions).
- Don't speculate.
- Take detailed notes – what was reviewed, comments, actions.
- Duplicate evidence – photos/samples.
- Bring records to the inspector.
- Prepare list/index of copied files.
- Always accompany inspector.

The Inspection: Handling Any Issues

- Odds are in the inspector's favor that they will find some violations or arguable violations.
- Remember, inspectors are only there a short time and won't have an understanding of all your facility's nuances.

The Inspection: The Closing Conference

- Seek inspector's observations of violations/compliance:
 - ensure quick response (no admission).
 - note lack of problems.
- Politely correct any misunderstandings or misstatements.

Trap #3 – Failing to Follow-Up



Post-Inspection

- Follow-up and request (in writing) a copy of the inspection report.
- Draft internal report – if inspection may lead to legal action, mark it as privileged and send to counsel.
- If any violations are found, IEPA will provide written notification spelling out any issues and required corrective actions.



Questions?

Tammy L. Helmski

BARNES & THORNBURG LLP

171 Monroe Avenue, N.W., Suite 1000 | Grand Rapids, MI 49503

616.742.3926

thelmski@btlaw.com