

THE AIR DVD: *Chapter 3 – Inspections and Enforcement*

The majority of the NDEQs inspections are considered routine compliance evaluations. These are typically conducted at sources that have a permit or are subject to a federal regulation.

During these inspections, we will verify compliance with state and federal regulations and permitting requirements.

We may conduct an inspection if we receive a complaint on a facility. During this type of inspection, we look at the area directly related to the complaint.

There are times we may do a partial inspection where we are focused on compliance with a particular rule, such as a new source performance standard or an air toxics standard.

We also conduct emission inventory audits. We are required by the EPA to audit 10% of major sources annually and a handful of others, chosen randomly.

The auditor will verify information you've submitted in your annual emissions inventory like your emission points, your throughputs, and your consumption records.

The NDEQ sends representatives to observe stack tests. While the observer is on-site, they verify that the tests are being conducted appropriately and that the source is operating at 90% of their maximum production rate.

The NDEQ is required to submit an inspection plan to The EPA every two years telling them who we plan to inspect. The EPA has developed a national strategy that advises states when inspections must be conducted and for which types of sources.

This strategy requires that a full compliance evaluation be conducted once every two years at major sources and once every five years at class II synthetic minor sources and sources subject to the federal air toxics standards.

A full compliance evaluation includes a review of all reports, an on-site inspection, a review of all records available, visible emissions observation, and possibly emissions testing.

In addition to our inspections, the EPA Region VII out of Kansas City will conduct several air inspections in Nebraska each year.

These sources are either picked randomly or as a national compliance effort. Many times an NDEQ inspector will accompany the EPA inspector, but the EPA will have the lead on all enforcement and follow-up actions.

Before we conduct an inspection or compliance evaluation, our inspectors will review your NDEQ files and any applicable federal regulations.

Our inspections are unannounced. We do this so that we can see how facilities operate normally on any given day.

Before the inspector enters your facility's boundaries, he or she will drive around the perimeter to observe the stacks, emissions, and other activities visible from outside.

Once the inspector enters your facility, they will request to meet with the environmental manager. They will explain to him or her the purpose and scope of their inspection.

Then, they will conduct a records review and request to observe the emission points and processes. Once they have finished collecting the information they need, they may conduct an exit interview.

The inspector may provide an overview of their observations and discuss potential violations. However, they will not cite actual violations or discuss potential enforcement actions until they have discussed the situation with the compliance supervisor

You will always receive an inspection report documenting the inspection observations. There may be times the inspector needs more information to evaluate your status. He or she will request it by phone, email, or letter.

If violations are identified we will determine a course of action.

We first consider if the violation is a high priority violation. Both the NDEQ and the EPA have criteria that classify HPVs.

They usually involve violations of federal standards, major source thresholds, state orders, or certification of compliance reports.

An HPV is treated harsher than lesser infractions, like minor source recordkeeping violations. HPV policies can be found on the EPA's website

We take into account whether the violation is an actual emissions violation and if so how bad the emissions are and how long they have been emitted. Your compliance history also factors in.

Then, we evaluate mitigating circumstances, like your response time to correct the violation.

Once all these aspects are evaluated, the violation can be addressed. We may provide assistance by informing sources of their violations verbally or by written letter.

Inspectors will typically verify when issues are addressed and the facility has returned to compliance.

We may send you a letter of warning, or LOW, when a violation needs to be formally addressed. The letter will include the potential penalties for non-compliance and the regulatory citation or permit condition of the violation.

The letter may also include action items for the facility to complete in order to come back into compliance. LOWs don't typically lead to further enforcement action.

If your violation is designated high priority, we will send you a Notice of Violation, or NOV, and may refer you to our legal department for further action.

If the violations warrant enforcement action, an enforcement package is created by the Inspector and Compliance Supervisor. The enforcement package will include documentation of the violations, your compliance history, copies of air permits, and any other applicable information needed to assess the situation.

The enforcement package is reviewed and approved by the Air Division Administrator and the Deputy Director of Programs before it reaches the Legal Division.

Once the Legal Division has reviewed and assessed the enforcement package, they send it on to the state Attorney General's office. The enforcement package may be stopped at any one of these steps.

Most violations are prosecuted as civil actions. However, a severe violation can be prosecuted as a criminal offense if the evidence proves the violation was conducted knowingly.

The Attorney General's office will either develop a settlement agreement or take the case to trial. The NDEQ's Legal Division will act as the Department's liaison for the enforcement referral.

Most likely a penalty will be part of the settlement agreement. NDEQ's maximum penalty is \$10,000 per day per violation. All penalty monies collected are distributed to the local school district where the violation occurred.

As part of a settlement, the source may voluntarily agree to undertake an environmentally beneficial project in exchange for mitigation of the penalty. This is referred to as a Supplement Environmental Project or a SEP. SEPs don't count towards the activities a violator must do to return to compliance with the law.

The EPA may take the lead on an enforcement action if they find violations during an inspection, if Nebraska has not adopted the regulation that was violated, or if they feel the case needs to be raised to a higher court.

The EPA can assess penalties of \$32,500 per day per violation. The EPA frequently increases their maximum penalty amounts so this amount may become higher. They can also prosecute a case in criminal court instead of civil court.

We hope we have given you useful information that helps you understand our inspections and enforcement policy.