

# Dealing with uninvited company

## A brief guide to preparing for and surviving a government inspection

In 1976, Ronald Reagan stated, “The nine most terrifying words in the English language are, ‘I’m from the government and I’m here to help.’” Unfortunately, the government doesn’t always feel the same way. In fact, OSHA proudly proclaims on its website that “We Can Help.” And companies operating in the Marcellus Shale know that the watchful eye of the government is never far away.

The Pennsylvania Department of Environmental Protection (DEP) has conducted over 20,000 inspections of Marcellus Shale drilling operations since 2008. That’s an average of 13 inspections per day including weekends and holidays. During this period, DEP noted violations at the rate of 1.2 per day. And DEP is not the only government agency inspecting the oil and gas industry. During the same time frame, OSHA has conducted over 250 inspections of the oil and gas industry in Pennsylvania and documented nearly 400 violations.

It seems obvious that your drilling site will receive a visit—or in many cases, another visit—from a government inspector in the near future. The good news is that you can prepare for a government inspection and take steps to increase the odds of a successful outcome.

### What triggers an inspection?

Several things can lead to an OSHA or DEP inspection. OSHA is authorized to conduct workplace inspections and investigations to determine whether employers are in compliance with agency health and safety standards. Accordingly, OSHA will conduct an inspection in cases of imminent danger that require immediate attention; where an employer has notified the agency of an employee fatality or catastrophic accident; where the agency has received a complaint from an employee or former employee; or referral inspections where another federal, state or local agency advises OSHA of hazardous workplace conditions. Additionally, OSHA will conduct regular compliance inspections and follow-up inspections to make sure that any previously documented violations have been remedied.

There are also a number of triggers for a DEP inspection including permit compliance checks, DEP’s knowledge of a probable violation of a regulation and complaints from any number of sources including your employees, private citizens, other government agencies and private industry organizations.

Government inspections are typically unannounced. Government inspectors want to catch you by surprise. And, when they show up, they will be exhaustively thorough. The best approach is to assume that the government inspector will be at

### Authors:



T.H. Lyda



Edwin B. Palmer

# No risk? Know risk.

No one can fully predict tomorrow’s risks. But in today’s fundamentally changed investment world, the risks are less foreseeable and more misunderstood than ever — and can cause lasting damage.

We’ve reviewed thousands of investor portfolios and found unexpected risks — and missed opportunities — in 99%.

Wondering if your portfolio is in the rare 1%? Find out with our complimentary, confidential 2020 Risk Audit<sup>SM</sup>.

Kerry M. Pulaski  
(412) 234-9049

[bnymellon.com/truth](http://bnymellon.com/truth)



Who’s helping you?

your door tomorrow and to prepare accordingly.

### Preparing for the inspection

The good news is that there are a number of steps that you can take to increase the odds of a successful inspection:

Conduct your own inspection. Audit your facility operations and identify any safety and compliance issues. Immediately address any acute threats to employee or public safety.

Review any previous citations/violations that your facility may have received. Have they been corrected? Review the status of any violations on the DEP's eFACTS and EPA's ECHO databases and make sure they are accurate.

Review your recordkeeping. Make sure your files are organized and that all required documentation is readily accessible. Keep any documents that you do not want your inspector to see, such as correspondence with your attorney or proprietary or trade secret information, separate from documents you are required to have on hand.

Designate an inspection team. Ideally your inspection team should consist of an inspection supervisor who is a member of your management team, a photographer and a document controller. Train your inspection team with respect to what to expect and how to interact with government inspectors.

The inspection supervisor must be knowledgeable of all governing regulations and your company's policies and procedures. He or she also needs to know what company information is proprietary information or trade secrets. Your inspection supervisor must be someone with time to devote to this role. This person should regularly attend seminars and make other efforts to remain current with industry and regulatory trends and developments.

Establish and maintain the best possible working relationship with your employees. Remember, many inspections are triggered by employee complaints. Provide a means for employees to report health and safety concerns to management. Treat all employee concerns seriously and address those areas of concern that can be remedied.

Know your facility. Anticipate what the DEP or OSHA inspector will be looking for. Review your permits. Being familiar with the permitting requirements helps you to anticipate where the inspector will focus his or her attention. Additionally, DEP and EPA have audit protocols on their websites. These audit protocols are intended to provide regulated facilities with specific guidance in periodically evaluating their compliance with agency regulations.

### The knock at the door

Although we all hope the government inspector never shows up at your place of business, the statistics highlighted at the outset of this article make clear the chances are that you will get such a visit. Accordingly, it is best to understand what you can do to make the inspection run as smoothly as possible.

When the government inspector announces his presence, greet him cordially and direct him to a specific pre-designated place. Notify the inspection team of the arrival of the inspector. Do not allow the inspector into your facility until you, or someone you have appointed, are present and can accompany the inspector.

The inspection will begin with an opening conference. Determine why the inspector is visiting and whether the inspection is due to an employee complaint or if it is a compliance inspection. If the inspection is in response to an employee com-



**GATEWAY®**  
On Call. On Time. On Target.  
A FULL-SERVICE CIVIL ENGINEERING FIRM



**Experience**  
*The right approach...*

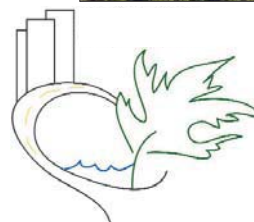
Aggressive schedules...  
Site constraints...  
Regulatory requirements...  
Safety protocols...

**When can we start?**

[www.gatewayengineers.com](http://www.gatewayengineers.com) 412-921-4030

## LAND FOR SALE

- 10-year Tax Free Zone (KOZ)
- Located at 6838 Route 338, Knox, PA 16232.
- 1.5 miles north of Exit 53 of I-80
- All utilities in place to serve site including storm water retention
- 71 sub dividable acres available priced as low as \$8500 per acre



**Clarion County Economic  
Development Corporation**  
Clarion, PA 16214

For more information, please call **814-226-9045** or visit our website [www.clarioncountycommercenter.com](http://www.clarioncountycommercenter.com)

plaint, ask for a copy of the complaint and negotiate the scope of the inspection. The inspection should only address the complaint in question rather than your entire facility.

The inspector may ask to review your required documentation at this time. Only produce documents when specifically requested and log all document productions. Keep unsolicited material out of sight—anything the inspector sees can be used against you.

After your opening conference, it is time for the inspection. If the inspector requests to see a specific area of the facility, control the route you take to the facility. Anything the inspector sees on the way is fair game. During the inspection, the inspector may take photographs or conduct sampling. Your photographer should take duplicate photographs as well as photograph anything the inspector appears to miss that you feel may be helpful. If sampling is conducted, request split samples and save the results for later comparison to the agency’s findings.

Any discussion of what to do should include a discussion of what not to do during the inspection. The biggest mistake you can make is avoiding the inspector. Everyone says “safety is job one”—but if site manager or safety director doesn’t have time to talk to the inspector, that leaves a bad impression. Besides, if management won’t talk to the inspector, he or she will interview non-management personnel.

Don’t get angry or hostile with the inspector. Answer the inspector’s questions truthfully, but carefully. Do not volunteer information that is not requested and do not speculate. Don’t feel pressured into providing immediate responses. Consult with your attorney if you feel unsure about something. Do not admit to noncompliance. However, if the inspector points out a violation, correct deficiencies immediately if possible, as this demonstrates good faith and may lower a penalty.

The inspector may also ask to interview a number of your employees, privately if desired. Make sure your employees are prepared to answer questions truthfully, but they should not volunteer information. Conduct a post-interview with the employee to learn what the inspector wanted and what the employee said. It is important to remember that discrimination by employers against workers because of anything they say or show an inspector is prohibited.

At the end of the inspection, there will be a closing conference. This is an opportunity for you to understand what actions, if any, the agency will take. You should agree on a list of follow-up items that you need to provide to the agency. The closing conference is not the time to admit to any wrong doing or make any abatement date promises.

After the inspection, promptly follow up with the agency and provide any requested follow-up items, especially documentation that shows compliance efforts you have made. If violations have been corrected, notify the agency of these as well, as this may be helpful in eliminating a violation or securing a reduced penalty. Remember, any correspondence you have with the agency will become public record. Do not admit to a violation, and make sure your attorney reviews any correspondence before you send it.

**Conclusion**

While none of us looks forward to a visit from a government inspector, the good news is that you can take steps to prepare for the inspection and increase your chances of a good outcome. Good health, safety and environmental programs are good business—and making sure these are continuing priorities will put you on the path to being well prepared for any government inspection. □

*T.H. Lyda and Edwin Palmer, members of the law firm Burns White LLC in Pittsburgh, practice in the areas of occupational illness, toxic torts and product liability for clients in the transportation, oil and gas and manufacturing industries, as well as advising clients in several industries on Pennsylvania DEP, EPA and OSHA inspections and citation contests. Attorneys Lyda and Palmer have been invited speakers on these topics at several national conferences.*

**AMERICAN REFINING GROUP, INC.**

**Purchasers of Penn Grade Crude Oil**

**David Mahan**  
**Crude Oil Buyer PA / NY**  
 814-368-1320  
 dmahan@amref.com

**Supplying Quality Lubricants Refined Using Penn Grade Crude Oil**

77 N. Kendall Ave.  
 Bradford, PA 16701  
 814-368-1200  
**www.amref.com**  
 ISO 9001:2008 Certified

**BRAD PENN LUBRICANTS**

**ADVANCED WASTE Services**

FLUIDS RECYCLING  
 WASTE SOLIDIFICATION  
 ON-SITE TANK CLEANING  
 WATER TRANSPORTATION

**ENERGY SERVICES**

**A LEADING PROVIDER OF CLEAN, CREATIVE, AND COMPETITIVE ENVIRONMENTAL SOLUTIONS**

**ANTHONY CIALELLA**  
 VP, ENERGY SERVICES  
 OFFICE: 724-657-8777  
 MOBILE: 724-333-3053  
 acialella@advancedwasteservices.com

**SAFETY DRIVEN ENVIRONMENTAL PROFESSIONALS**