


Information Gathering



Lesson No. 5

ENV H 471
Environmental Health Regulation
Winter Quarter 2004

Lesson Overview


- ❖ What Information?
- ❖ **Legal Issues with Obtaining Information**
- ❖ **Methods**

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Lesson Objectives


- ❖ **Know the types of information required to document a problem or condition**
- ❖ **Be able to explain the major techniques and processes routinely used by environmental health practitioners to obtain information**

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 **Lesson Objectives** (Continued)


- ❖ Describe the proper usage of the *subpoena duces tecum* and the procedures for obtaining one

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 **What Information?**


- ❖ **Required Records/Information**
 - Those items required by enabling legislation, i.e., statutes, codes and rules and regulation often specify that certain records must be maintained by a regulated industry and made available to the administrative agency.
 - They may also require that the administrative agency establish and maintain certain records.

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 **What Information?**

- ❖ **Evidence**
 - Information which may be used at some point as evidence in an administrative, criminal or civil proceeding should adhere to the **Rules of Evidence**.
 - These, plus certain legal precedents, govern not only what kind of information is needed, but also how it may be obtained and kept.


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 **What Information?**

❖ **Evidence**

- **At a minimum, it is usually necessary to have the following information:**
 - **Location of the Property;**
 - **Owner of Record;**
 - **Legal Rationale for action; and**
 - **Facts of the Case/Incident.**


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 **What Information?**

❖ **Inappropriate Information**

- **Certain types of information should not be contained in a case file.**
- **The "rules of evidence and relevance" may be helpful in judging whether a specific item should be included.**
- **As a rule of thumb: any information which would be clearly judged by the courts as inadmissible in a legal action probably does not belong in a case file**


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 **Obtaining Information**

❖ **Voluntary Disclosure**

- **Information may be obtained in a variety of ways and still be considered voluntary.**
- **Grad states that the voluntary disclosure of information "creates no legal problems."**
- **However disclosure by the agency may**


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 **Obtaining Information**
(Continued)

❖ **Compulsory Disclosure**

- It may not be possible or practical for an agency to commit the resources necessary to continuously monitor the operation of an industry or site.
- The owner/operator of the regulated activity can be required to maintain records of key items, conditions or processes (e.g., records of chlorination, BOD levels, and food temperatures).


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 **Methods**

❖ **Observations**

- The principal means of identifying and documenting a problem is for the inspector to see it.
 - He/she must be able to recognize the problem (deviation from code or standard, unsafe practice, etc.).
 - He/she must be able to describe it in terms that will later be understood by each of the parties concerned (industry, supervisor, courts, etc.).
 - He/she must document its existence -- date, time, place, circumstances and persons present. (photographs can be invaluable)


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 **Methods** (Continued)

❖ **Tests and Samples:**

- Time, temperature, light and noise levels are common physical factors which can be measured on site.
- So can a number of situations involving chemical concentrations, e.g., CO levels, chlorine concentration in water, and certain other gases in air.
- Most biological, and certain physical and chemical, problems require the collection and laboratory analysis of samples.


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 **Methods** (Continued)

❖ **Tests and Samples:**

- **In Situ Tests.** For tests conducted at the site of an investigation, the legal requirements include:
 - The test used be accepted --
 - by common sense (e.g., a thermometer for temperature),
 - by testing and practice (e.g., *Standard Methods for the Examination of Water and Wastewater*), or
 - by theoretically consistent design;
 - The tests must be conducted under proper circumstances;
 - Any instrumentation must be properly calibrated;
 - The tests must be carried out in accordance with accepted practice; and,
 - The results must be recorded.


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 **Methods** (Continued)

❖ **Tests and Samples:**

- The further a test is from an obvious common sense standard, the more likely it is to be challenged, and
- therefore, the greater is the degree of documentation of its appropriateness, reliability and accuracy that will be required.


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 **Methods** (Continued)

❖ **Tests and Samples:**

- **Sample Collection and Analysis:**
 - All of the above requirements are equally true.
 - In addition there is **chain of custody** requirement
 - the results in the record are the results of the sample collected, and further
 - that the sample was indeed analyzed (within the proper limits of time, temperature, accuracy, procedures, etc.) and
 - that it was not contaminated, tampered with or otherwise made unsuitable for use as evidence.


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 **Methods** (Continued)

❖ **Industry Records**

- **Requiring Industry to Maintain Records**
 - Constitutional Challenges
- **Program Requirements.**
 - Know what information is needed;
 - Be able to collect it, i.e., the industry must be able to supply the data;
 - Be able to monitor the reports to ascertain:
 - all the regulated industries are reporting
 - that the reports are complete
 - the data is reliable;
 - Be able to verify the data through periodic inspections or other methods.


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 **Methods** (Continued)

❖ **Industry Records**

- **Failure to Report.** The simple act of failing to file a required report should be immediately obvious to the regulating agency and permits the agency to choose from several enforcement options, e.g., revocation of the license, obtain a search warrant, subpoena of records, etc.
- **Reliability of Required Records/Reports.** A more difficult problem for the agency is identifying inaccurate or unreliable information. This requires close scrutiny of all submitted reports and considerable experience with the regulated industry


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 **Methods** (Continued)

❖ **Subpoena duces tecum**

- Most regulated industries, businesses or other activities maintain records of their operation.
- In some cases the administrative agency can/should require that certain records be kept and made available to it.
- The *subpoena duces tecum* is a court order to produce the specified documentary material.


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 **Methods** (Continued)

❖ **Subpoena duces tecum**

- **Nature/Authority.** The *subpoena* should not be considered as a routine investigatory tool.
 - In the first place it is usually not needed, and in the second,
 - not all administrative agencies have the legal authority to use it.

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 **Methods** (Continued)

❖ **Subpoena duces tecum**


- **Requirements/Use.** The material must be relevant to the purpose of the agency, i.e., it can not be used as a "fishing expedition",
 - must be confined to certain specified data concerning an operation which the agency has specific authority to regulate.
 - However, you do not have to wait until you have filed a legal action before you can use the *subpoena duces tecum*.
 - An agency may use it to discover and produce information necessary to determine whether further legal action is warranted.

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 **Questions**




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 **Assignment for Lesson 6**


- ❖ **Grad: Chapter 7 -- Searches and Inspections**
- ❖ **Statutes: Various sections pertaining to information gathering**
- ❖ **Case Briefs Due: February 3, 2004**
 - **Reading # 14 - Frank v. Maryland (Group A)**
 - **Reading #15 - Camara v. San Francisco and See v. Seattle (Group B)**
 - **Reading # 16 - United States v. Thriftmart, Inc. (Group C)**

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 **Assignment for Lesson 6**

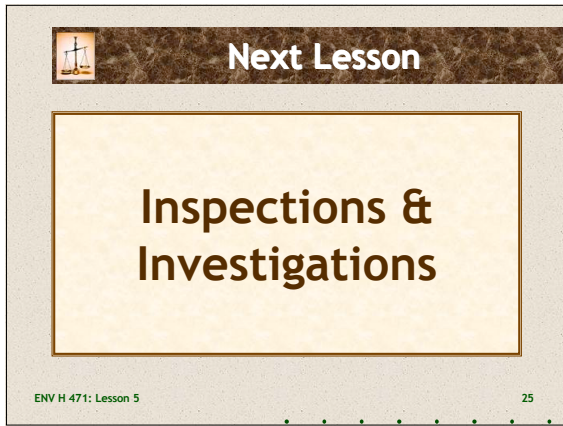
- ❖ **Case Briefs Due: February 5, 2005**
 - **Reading #17 -- Marshall v. Barlow's, Inc., [Group A]**
 - **Reading #18 -- Northwest Airlines, Inc., [Group B]**
 - **Reading #19 -- California v. Salwasser, [Group C]**
 - **Reading #20 -- Seattle v. McCready, [Group A]**

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 **Cases**

- ❖ **U.S. v. Tivian Laboratories, Inc., 589 F.2d. 49 (1978).**
- ❖ **U.S. v. Ouelette, 11 ERC 1350 (1977)**
- ❖ **General Motors Corp. v. Director of NIOSH, 636 F.2d. 163 (1980).**

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The slide features a dark brown header with a small icon of a scale of justice on the left and the text "Next Lesson" in white. Below the header is a large, light-colored rectangular box with a dark border containing the text "Inspections & Investigations" in a bold, dark font. At the bottom left of the slide, it reads "ENV H 471: Lesson 5" and at the bottom right, it reads "25". A series of small dots is visible along the bottom edge of the slide frame.
