



Preparing for an EPA inspection

Increased scrutiny is being placed on farming practices, especially livestock farms. The Environmental Protection Agency (EPA) continues to have a presence in the state with aerial flyovers, internet investigations and on-site inspections. The Iowa Department of Natural Resources (DNR) also inspects, investigates complaints and responds to emergency spill situations. Because these situations usually occur with no notice to the farmer, it is important that livestock and poultry farmers are prepared to be inspected at any time. This discussion sheet should assist you in thinking about how you would respond and prepare for the day when EPA drives into your yard.

Prior to inspection

- **Review your records:** Confined animal feeding operations (CAFOs) have very strict record keeping requirements. Whether your farm meets the definition of a CAFO or not, you should keep monthly records to verify your animal inventory, rainfall, waste levels in a retention structure, and manure application (including date(s) and location(s) of application; crops that received manure; and nutrient testing results). Any records are better than no records.
- **Designate a point of contact:** Choose one person to be the point of contact. This person should be the family member or employee most familiar with the farm's environmental compliance and operations. He or she should always be with the inspector when they are on the farm. Do not give an inspector unaccompanied access to your property. You may want to consider having a back-up point of contact.
- **Establish procedures for inspections:** Develop a plan so everyone knows what to do if/when an inspector arrives. These procedures should include whom to notify and under what conditions the inspector should be provided access to documents and property. Everyone should be courteous and truthful, but should only answer the questions asked and should never speculate.
- **Consider whether counsel or your environmental consultant should be present:** Most farms do not have legal counsel on-hand during inspections. However, it may be wise to have counsel present if the inspection is unannounced and not routine, an EPA or state enforcement action is threatened or pending, or there are indications of a criminal investigation.
- **Get as much information as possible:** If you are contacted prior to the inspection, ask questions such as how long the inspection will take, what portions of the farm will be inspected, what prompted the inspection, how many inspectors are coming, which employees the inspector intends to interview, and whether the inspector intends to collect samples. (Please note: EPA is not legally required to notify you before stopping at your farm.)
- **Identify confidential information:** Determine which farm records will be off-limits to inspectors (such as correspondence with your attorney or environmental audits) and which will be made available to inspectors but claimed as confidential business information (CBI). Also determine which areas, if any, may be off limits to the inspector due to safety or biosecurity requirements.
- **Take corrective actions:** Do a quick compliance check and fix what you can before an inspection. If you have questions about the issues EPA or DNR may be looking for, contact the Coalition to Support Iowa's Farmers at 1-800-932-2436.

During the inspection

- **Do as the inspector does:** The point of contact (and if possible, a second person) should accompany the inspector at all times. If the inspector takes notes, photos or samples, you should as well. If the inspector wants a copy of certain records, make one for yourself also. Obtain receipts for any samples or original documents taken off the farm. By following these steps, you will know exactly what information the inspector has and can dispute any discrepancies in the future.
- **Cooperate but do not speculate:** Federal law prohibits knowingly and willfully falsifying or concealing material facts from, or making false or fraudulent statements of material facts, to the United States. It is important to answer the inspector's questions truthfully; however it is equally important not to volunteer too much information or speculate. If you don't know an answer, promise to get back to the inspector and follow-up in a timely fashion.
- **Employee interviews:** If the inspector wants to formally interview specific individuals other than the point of contact, legal counsel should be notified immediately. The interviews may signal that EPA or DNR is building a record to be used against the farm.
- **Identify the inspector:** It is important all family members and/or employees know who the inspector is and that he or she is an EPA enforcement official evaluating the farm's environmental compliance.
- **Claim confidential business information if applicable:** If the inspector copies records that contain trade secrets, make sure to claim the records as confidential business information (CBI). Failure to claim CBI at this point may waive the farm's claim and subject the records to public scrutiny.
- **Request an exit interview:** Although most inspectors will ultimately send an inspection report, it may take months and may include surprises. By requesting an exit interview, you can learn as much as possible about the findings of the inspection. Make sure they are not based on inadequate information or a misunderstanding. The exit interview will assist the farm with any future disputes.

After the inspection

- **Correct as many violations or potential violations as quickly as possible:** This will demonstrate a cooperative attitude and cuts off additional "per day" penalties.
- **Respond to EPA requests in a timely manner:** If the inspector requested additional information, provide it as soon as possible. You may want to consult legal counsel to help you prepare this information and to communicate with EPA on your behalf.
- **Complete notes about the inspection:** The person who went around with EPA on your farm should prepare something in writing summarizing the inspection and exit interview. Any owners or management not present should be immediately notified of the result of the inspection. If possible violations were noted, contact legal counsel to determine the next steps.
- **Obtain the inspection report:** The inspection report can be obtained either directly from the inspector or by requesting it through the Freedom of Information Act. Promptly notify, in writing, the EPA or DNR of any errors in the report.
- **Decide how to respond to EPA's conclusions and follow through with them:** EPA responds to non-compliance in a number of ways depending on the circumstances: no follow-up needed; a letter notifying facility of violations; administrative compliance order; administrative compliance order plus an administrative penalty; civil judicial enforcement action (penalties and/or injunctive relief); or criminal enforcement. Communications from EPA require immediate attention; don't leave it on the mail pile to be discovered again later.