

# WHAT TO DO WHEN THE DOT HAZARDOUS MATERIALS INSPECTOR CALLS

## Seven Immediate Actions to Take



*Any company that ships or carries a hazardous material is subject to the U.S. Department of Transportation (DOT) hazardous materials regulations. A hazardous material is a substance or material that the Secretary of Transportation has determined is capable of posing an unreasonable risk to health, safety, or property when transported in commerce, which includes hazardous waste and hazardous substances as defined by the U.S. Environmental Protection Agency. The rules may be enforced by DOT personnel, or by state or local government authorities. The likelihood of an inspection is small, but with the growing number of state and local officials getting involved with enforcement, that likelihood is growing.*

### **The entity enforcing the rules matters.**

DOT is made up of five relevant modal subgroups, each of which is vested with some regulatory enforcement authority:

- The Federal Railroad Administration deals with rail carriers, tank car manufacturers, and shippers primarily of tank car quantities of hazardous material.
- The United States Coast Guard deals with water carriers and shippers of hazardous materials by water, both in bulk and in packaged form.
- The Federal Aviation Administration deals with operators of aircraft, including corporate aircraft, and with anyone who has anything to do with offering a hazardous material for air transport or carrying such material onto an airplane, including passengers doing so in their baggage.
- The Federal Highway Administration enforces the regulations applicable to motor carriers of all types and sizes, the makers of cargo tanks, and companies shipping hazardous materials by highway.
- The Pipeline and Hazardous Materials Safety Administration enforces regulations applicable to the makers, reconditioners, and retesters of packaging and commonly enforces rules against persons shipping hazardous materials by highway. They also have authority to enforce rules against shippers who have used multiple modes of transportation.

Each of these enforcement bodies, although implementing the same words of the same statute, does so in somewhat different ways and follows different procedures.

## **Have a clear protocol in place for dealing with an inspection.**

The best preparation is to establish clear written procedures. These procedures should be in the operational manual for each site as well as part of new employee training. The protocol should include, at minimum, the following seven steps.

### **1. Identify the inspector.**

Ask to see credentials, and write down the relevant information, including the inspector's name, agency affiliation, address, telephone number, and the statutory authority under which the inspection is being conducted.

### **2. Identify the appropriate company official to interact with the inspector.**

This should be a supervisory level employee. If none is present, the inspector should be asked to return at another time, or to await the arrival of the supervisor. As long as this request is valid and is made politely, it usually will be accommodated.

### **3. Determine the scope of the inspection.**

Ask the inspector what areas of the company activity he or she will inspect, and what has prompted this inspection. Also, allowing the inspector to speak to nonsupervisory personnel should generally be discouraged.

### **4. Alert legal counsel to the presence of the inspector.**

Many companies have their supervisor contact legal counsel for the company before the inspection begins, or at least while the inspector is there, although the lawyer need not be present.

### **5. Take notes on: what is seen, what is said, who is spoken to, and any samples or copies of documents taken.**

This information could come in handy for purposes of roughing out the defense to an enforcement action, even if one will not commence for many months. Preparation when the events are fresh is invaluable.

### **6. When in doubt on any question the inspector asks, do not answer.**

Instead, ask the inspector to put the question in writing, addressed to the company counsel. Similarly, any direct questions should be answered, politely, but no additional information should be volunteered.

### **7. Prepare a memorandum of the visit as soon as the inspector leaves.**

Contact counsel in order to prepare for the consequences of the inspection. Did the inspector reveal his discovery of any violations? If so, these should be verified and corrected immediately, and appropriate memos to the file made to document the correction. It also is helpful to write the inspector advising him of the correction.