

REPORT WRITING

A prosecutor's
perspective



Importance of Reports

- Initiates enforcement action
- Provides summary of violations
- Records events before memories fade or evidence is lost
- **IS A PIECE OF EVIDENCE ITSELF**



Who is Your Audience?

- Your Supervisor
- District Attorney, Attorney General, City Attorney
- Judge/Jury = fact finder
- Will be scrutinized by Defense Counsel

Therefore...



Your report should be the
most complete, accurate, timely
record of the facts



When Should I Refer the Case?

- It is never too soon to consult with your prosecutor about the case
 - Prosecutor can help determine:
 - (1) what further investigation is needed;
and
 - (2) critical evidence that needs to be preserved



Components of Your Report

- Face sheet/
Reference box
- Initial summary
- Narrative /
Chronology
- Evidence
- Costs



Face Sheet / Reference Box

Type of Case:	Event Date(s): NOV date:
Defendant(s): – Land Owner: – Operator (if different) – Corporation	Regulatory Agencies: Agency Contact Info.: Witness Info.:
Facility Info (address, telephone, APN, acreage, waterway, etc.):	Index of Evidence Collected (photos, samples, corporate records, maps, correspondence):
Violation(s): -current -previous	Crimes/Penalties (include copy of any local ordinances or regulations):

Who's who in the zoo?

- Identify ALL investigating agencies, defendants (businesses, landowners, and operators), & witnesses:
 - Full name w/ aliases
 - Addresses (home, business & mailing)
 - Phone numbers (home, business, & cell)



Business Entities

- Businesses are treated as persons under the law
- ALL information on corporate structure:
 - what kind of business is it? (LLC, corporation, partnership, sole proprietorship)
 - when was it formed?
 - how many employees?
 - gross revenue?
 - www.ss.ca.gov (business portal)
- ALL information on all potential responsible parties:
 - who is the land owner? Business owner? Operator of the business? Is there a lease?



Initial Summary

- Short synopsis of inspection / event
- Inspection or response to a call?
- List of violations
- Date(s) of violations (START & END)
- Identify parties involved



Narrative / Chronology

- Write in first person, active voice
 - NO PASSIVE VOICE (Passive voice occurs where there is a “to be” verb (i.e. “is”, “was”, “were”, “have”) followed by past tense verb)
 - Writing in the Passive Voice permits many interpretations and makes placing blame for conduct difficult
 - Writing in the Active Voice pinpoints responsibility for the conduct
 - Example of passive voice: The waste was dumped by Mr. X
 - Example of active voice: Mr. X dumped the waste



Narrative / Chronology

What Makes a Clear Report?

- Use specific, concrete facts and details
- Place descriptive words or phrases as close as possible to the words they describe
- Use diagrams and sketches
- Use abbreviations only when commonly recognized or clearly referenced
- Use short sentences, organized into short paragraphs



Narrative / Chronology

- Background
 - date business was formed / # of years operating
 - Changes of ownership
 - Relationships among parties, witnesses and business entities (include titles and who individuals report to)
 - History of past violations for owner, corp. and operator



Narrative / Chronology

- Chronology of Events
 - Complaint? (By whom? About what?)
 - Site Visits
 - Correspondence
 - Meetings and conversations with responsible parties
 - Take accurate notes using quotations re: admissions
 - Violations found
 - Provide start & end dates for all violations cited, unless unknown.
 - If unknown, state what is unknown, why, and how it can be determined.
 - Nevertheless, give reasonable estimate of start and end dates to violation based on experience and training.



Narrative / Chronology

- Proving a Violation By Its Elements
 - Identify elements of violation
 - Go to statute/regulation and list elements
 - Identify facts and evidence gathered in the investigation that support each element
- Example – Common Law Burglary
 - Breaking and entering a dwelling of another at night with the intent to dispossess another's property



Narrative / Chronology

- Elements of a Burglary
 - Breaking
 - entering
 - dwelling
 - of another
 - at night
 - with the intent to dispossess another's property



Narrative / Chronology

- Environmental Crime: Illegal Disposal of Hazardous Waste

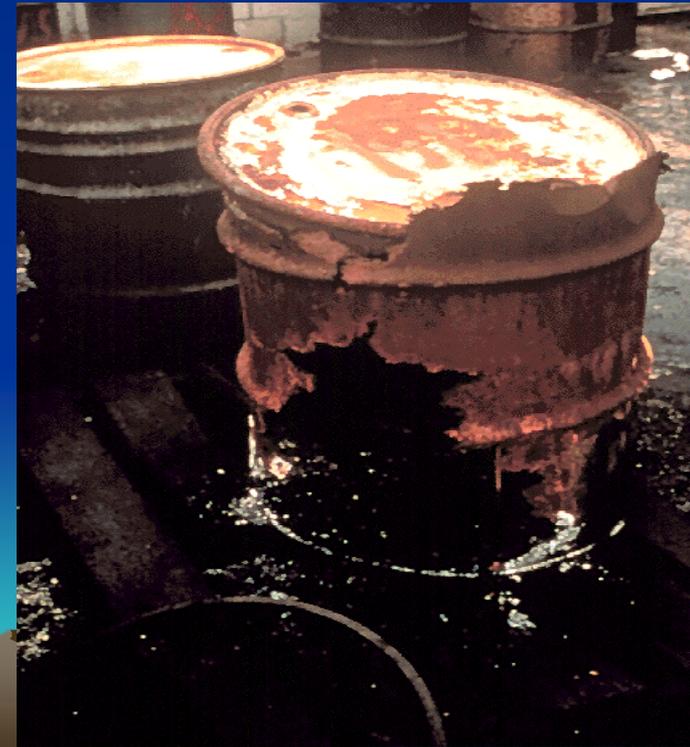
H&S § 25189.5 (a)

- *Disposal of any hazardous waste, or the causing thereof, is prohibited when disposal is at a facility which does not have a permit from DTSC, or at any point not authorized*



Narrative / Chronology

- Illegal Disposal of Hazardous Waste Elements
 - Disposal, or the causing thereof
 - Hazardous
 - Waste
 - Unpermitted
 - Facility



Narrative / Chronology

- Impression of Witness(es)
 - Physical Appearance
 - Cooperativeness
 - Demeanor
 - Bias (especially important for informants)
 - Propensity for exaggeration
 - Credibility
 - Issues related to recollection and perception



Narrative / Chronology

- Back story
 - Any relevant but previously untold information concerning relationships between people or entities
 - Fill in the gaps
 - Motivation to fabricate
 - Competing businesses
 - Disgruntled employee
 - Profit motive



Narrative / Chronology

- REPORTS MUST BE WRITTEN CLOSE IN TIME TO WHEN INSPECTION(S) OCCURRED!
 - This factor is critical to ensure accuracy
 - Close in time
 - A week is too long
 - 3 days is reasonable



Supplementing v. Revising Reports

- **DO NOT GIVE PROSECUTORS DRAFT REPORTS!**
 - All correspondence with prosecutor is discoverable
 - No attorney-client privilege exists (A Prosecutor's client is "The People" not the agency, unless AG representing agency)
- **Revised Reports** – Only when necessary to ensure factual accuracy
- **Supplementing Report: new information or evidence**
 - OK, even encouraged (Same rules as above apply, ie close in time, etc.)
 - Usually additional inspections/investig. is necessary and information learned should be included in supplement

Evidence that should be included in EVERY report

- Photos, photos and more photos
 - All photos, on CD preferably
 - Start outside the property/facility
 - Paint the landscape [show scale]
 - Include aerial photos
 - All Photos must be captioned [what is pictured, what direction, violation?]
 - Pictures of People and Conduct













Evidence that should be included in EVERY report

- Maps, Assessors Parcel Maps
- Recordings (ie. Taped interviews)
- Samples [Chain of Custody]
- Business records reviewed
- Secretary of State Business information
- NOV's (past and present)
- Organizational Chart
- Diagrams of operation/facility/process
- Internet research
- Letters, correspondence
- Prior Stipulated Judgments
- Any other documentation supporting violation





Sample 1	Sample 2	Sample 3	Sample 4	Sample 5	Sample 6	Sample 7
Time = 15:54	Time = 16:13	Time = 16:20	Time = 16:40	Time = 16:45	Time = 16:52	Time = 17:00
EC = 3931	EC = 3823	EC = 3010	EC = 4816	EC = 3380	EC = 3380	EC = 10,012
Temp. = 10.4	Temp. = 9.9	Temp. = 9.4	Temp. = 9.7	Temp. = 9.0	Temp. = 9.3	Temp. = 10.4
PH = 8.22	PH = 8.29	PH = 8.36	PH = 7.9	PH = 8.26	PH = 8.23	PH = 7.60
TDS = 2180	TDS = 2030	TDS = 1710	TDS = 2770	TDS = 1900	TDS = 1500	TDS = 9620
UA = 0.0966	UA = 0.1110	UA = 0.0896	UA = 1.38	UA = 1.70	UA = 0.138	UA = 2.49
Grasslands Drain	San Luis Creek Downgradient	San Luis Drain Upgradient	Off Property Discharge Hearst Road	On Property Wastewater Hearst Road	Neighbor's Property Compost Facility	Lagoon

A Simple Organization Chart

Mr. Big, Director of Operations

Plating Shop

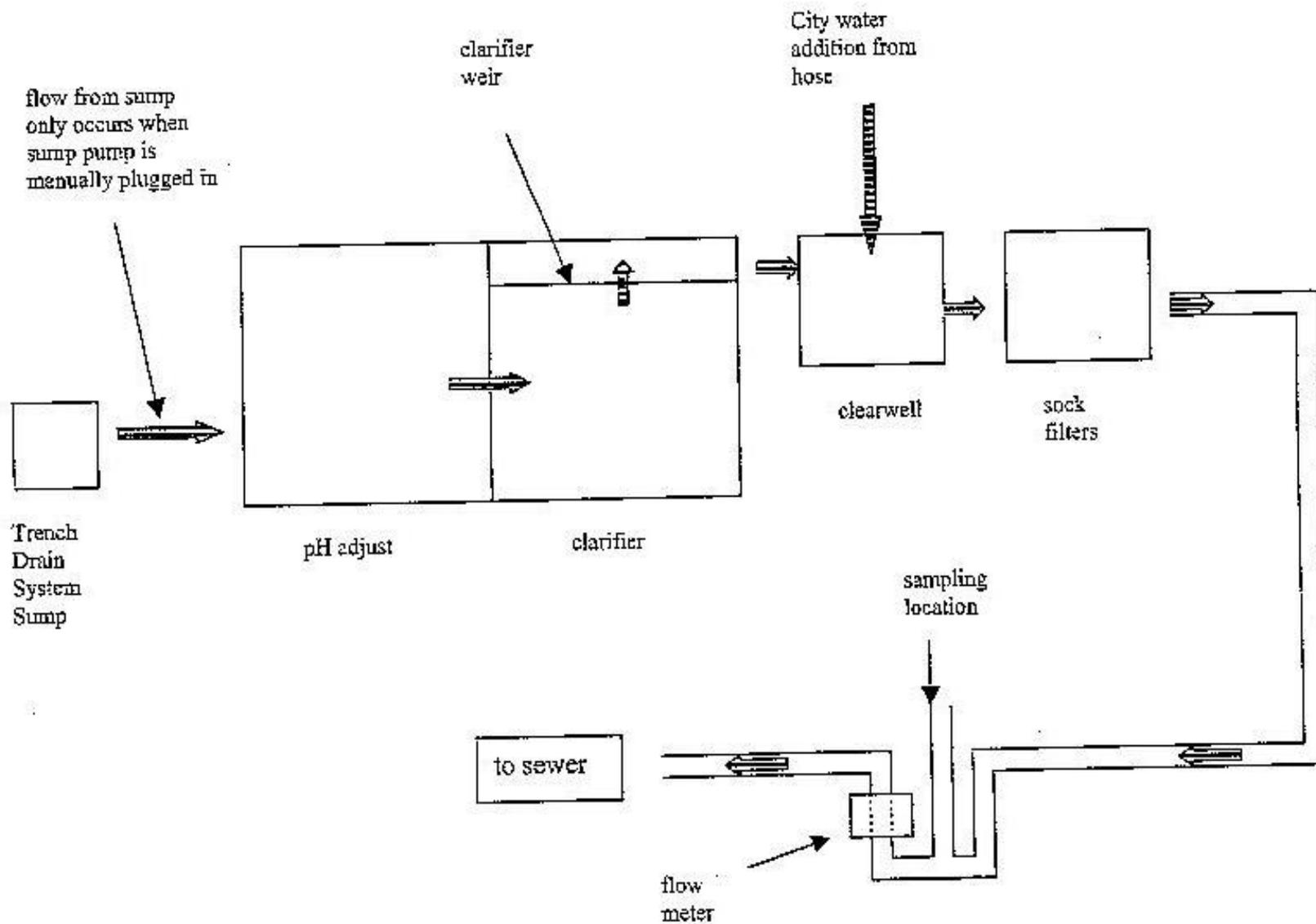
Circuit Assembly

Mr. Insider, Shift Manager

Mr. Witness, aka "the whistleblower"

3 other employees (Larry, Moe, and Curly)

Plating Treatment System Flow Schematic



Documentation

- Attach copies to the report. You keep the originals for chain of custody.
- Reference them in your report by document name and by attachment (i.e., Attach. #6).
- Index or page tabs are helpful



Other Evidence

- MSDS
- Copies of local ordinances
- Training Records
- Lab testing results
- Experts consulted?



Concluding Your Report

- Remember to include your COSTS of investigation!
- Please do NOT:
 - Make a request: “This case is being submitted for filing.”
 - Include legal conclusions: “This is only worth a misdemeanor”, or “this should be filed civilly.”
- Any referrals to other agencies for follow-up?



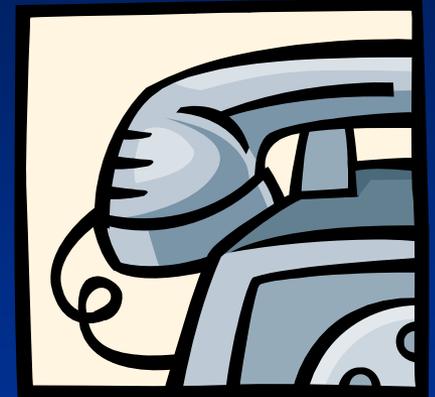
Last Minute Checklist

- Have you identified everyone?
- Have you listed all of the violations?
- Have you attached ALL supporting documents?
- Does your narrative provide evidence for each element of each violation?



Don't Hesitate to Call Your Lawyer or Prosecutor

- If you have a question,
REQUEST HELP
- Even before submitting a report
- But get the report done **ASAP!**
- Any media contact? Include in
report. **No** contact once referred
to DA.



Variety of Resources

- Your Supervisor
- Your Local Prosecutor
- Your Agency or House Counsel
- Other Investigators
- Task Force Contacts
- Everyone in this room!



THANK YOU

- For protecting the environment
- Serving The People
- And, most importantly, not sleeping – err, listening and participating!

