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;
    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

<table>
<thead>
<tr>
<th>Type of Case:</th>
<th>Event Date(s):</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>NOV date:</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Defendant(s):</th>
<th>Regulatory Agencies:</th>
</tr>
</thead>
<tbody>
<tr>
<td>– Land Owner:</td>
<td>Agency Contact Info.:</td>
</tr>
<tr>
<td>– Operator (if different)</td>
<td>Witness Info.:</td>
</tr>
<tr>
<td>– Corporation</td>
<td></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Facility Info (address, telephone, APN, acreage, waterway, etc.):</th>
<th>Index of Evidence Collected (photos, samples, corporate records, maps, correspondence):</th>
</tr>
</thead>
</table>

<table>
<thead>
<tr>
<th>Violation(s):</th>
<th>Crimes/Penalties (include copy of any local ordinances or regulations):</th>
</tr>
</thead>
<tbody>
<tr>
<td>-current</td>
<td></td>
</tr>
<tr>
<td>-previous</td>
<td></td>
</tr>
</tbody>
</table>
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.
• 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
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, Assessor's Parcel Maps
- Recordings (i.e., 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
<table>
<thead>
<tr>
<th>Sample 1</th>
<th>Sample 2</th>
<th>Sample 3</th>
<th>Sample 4</th>
<th>Sample 5</th>
<th>Sample 6</th>
<th>Sample 7</th>
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<tr>
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<td>Time = 16:13</td>
<td>Time = 16:20</td>
<td>Time = 16:40</td>
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<td>Temp. = 9.4</td>
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<td>UA = 2.49</td>
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<table>
<thead>
<tr>
<th>Grasslands Drain</th>
<th>San Luis Creek</th>
<th>San Luis Drain</th>
<th>Off Property</th>
<th>On Property</th>
<th>Neighbor’s Property</th>
<th>Lagoon</th>
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</thead>
<tbody>
<tr>
<td>Downgradient</td>
<td>Discharge</td>
<td>Upgradient</td>
<td>Discharge</td>
<td>Wastewater</td>
<td>Compost</td>
<td>Facility</td>
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<tr>
<td></td>
<td>Hearst Road</td>
<td></td>
<td></td>
<td>Hearst Road</td>
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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

- Flow from sump only occurs when sump pump is manually plugged in.
- Trench Drain System Sump
- pH adjust clarifier
- City water addition from hose
- Clearwell sock filters
- Sampling location
- To sewer
- Flow meter
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!