

**North Carolina Department of Environment and Natural  
Resources**

**Report on**

**Examinations, Inspections and Audits**

Report to the General Assembly

Pursuant to

Session Law 2012-187

Section 10.1 (a)

**Background:**

The Regulatory Reform Act of 2012, Session Law 2012-187, Section 10.1 (a) requires each agency to report on the amount of notice that is required to provide a business, nonprofit and individual prior to conducting an audit, examination or inspection. The Department of Environment and Natural Resources have provided information on routine, scheduled and complaint inspections for the Divisions of Air Quality, Coastal Management, Energy, Mineral and Land Resources, Marine Fisheries, Waste Management, Water Quality and Water Resources.

**State and Federal Laws Regarding Inspections**

**Summary:** Rather than require specific notice of audits, examinations and inspections, most state and federal environmental statutes require that inspectors be allowed access to a regulated facility upon presentation of their credentials or “at all reasonable times”. Having access without prior notice is often critical to identifying operating violations and obtaining records necessary to document violations. Generally, federal water quality, air quality and solid waste laws require that states taking on those delegated programs have the ability to inspect without prior notice. With respect to the activities of law enforcement officers, such as the Marine Patrol in the Division of Marine Fisheries, advance notice for inspections necessary to enforce catch limits, gear restrictions and license requirements would not be possible because the people and activities being regulated are not stationary.

Generally, state law requires DENR inspectors to have the permission of the property owner or occupant to enter the property unless there are conditions that would create an imminent hazard. (Note that many environmental permits include standard language stating that the permit holder must agree to provide access to inspectors for purposes of ensuring compliance with the permit.) If a property owner/occupant refuses to grant access, the statutes governing most state programs require the DENR inspector to get an administrative search warrant.

Some specific examples of state and federal language on inspections is provided below:

**Air Quality/Water Quality:** DENR's Division of Air Quality carries out federal Clean Air Act permitting and enforcement programs in North Carolina. The Clean Air Act requires that EPA (and delegated state air quality programs) have authority to enter a site where an air emissions source is located or where records may be kept "upon presentation of credentials and other documents...required by law". 42 U.S.C. 7414. That requirement has been interpreted to mean that EPA has the authority to conduct an inspection without prior notice; EPA also has taken the position that states with delegated programs must also have authority to do unannounced inspections.

DENR's Division of Water Quality carries out federal Clean Water Act permitting and enforcement programs in North Carolina. The Clean Water Act has language similar to the Clean Air Act. Inspections do not require prior notice and EPA has taken the position that state water quality programs must have the ability to inspect unannounced based on presentation of appropriate credentials.

**Coastal Management:** The state Coastal Area Management Act authorized staff in the Division of Coastal Management to enter property to do field reports on permit applications and to investigate violations. CAMA permit applications require the applicant to "grant[s] permission to representatives of state and federal review agencies to enter on the aforementioned lands in connection with evaluating information related to this permit application and follow-up monitoring of the project."

**Fisheries:** Sworn law enforcement officers of the Marine Patrol have the authority under G.S. 113-136(f) to temporarily stop and inspect persons and vehicles they reasonably believe to be engaged in regulated activities. G.S. 113-136(k) provides:

“It is unlawful to refuse to exhibit *upon request* by any inspector, protector or other law enforcement officer any item required to be carried by any law or rule as to which inspectors or protectors have enforcement jurisdiction. The items that must be exhibited include boating safety or other equipment or license, permit, tax receipt, certificate or identification. It is unlawful to refuse to allow inspectors, protectors, or other law enforcement officers to inspect weapons, equipment, fish or wildlife that the officer reasonably believes to be possessed incident to an activity regulated by any law or rule as to which inspectors and protectors have enforcement jurisdiction.”

Note: N.C. appeals courts have interpreted the law to mean that Marine Patrol officers have the authority to conduct warrantless administrative inspections.

## **Oil Pollution/Hazardous Substances Control**

**Inspection and investigation of spills:** G.S. 143-215.79 of the Oil Pollution Hazardous Substances Control Act (OPHSCA) provides that the state inspectors are “empowered upon presentation of their credentials to enter upon any private or public property...for the purposes of inspection or investigation or in order to conduct any project or activity to contain, collect, disperse or remove oil or other hazardous substances discharges or to perform restoration....”

**USTs:** The federal Resource Conservation Recovery Act (RCRA), 42 U.S.C. § 6991d, provides for inspections of petroleum underground storage tanks (USTs). While an authorized representative must inspect at “reasonable times,” there is no specific prior notice requirement to inspect. 42 USC § 6991d(a)(1) provides that lawful representative are authorized to “enter at reasonable times any establishment or other place where an underground storage tank is located.”

## **Solid and Hazardous Waste**

RCRA, 42 U.S.C. 6927, addresses inspections of facilities that generate or handle hazardous waste. The federal law gives EPA or an authorized state the authority to inspect facilities and records. Federal law state that those officials must have access to hazardous waste records *at all reasonable times*.

G.S. 130A-295.02(d) provides that a resident inspector assigned to a commercial hazardous waste facility shall have *unrestricted access* to all operational areas of such facility *at all times*.” (emphasis added)

G.S. 130A-17 gives the DENR Secretary right of entry to enforce rules and regulations under Chapter 130A (which includes the state solid and hazardous waste laws). There is no prior notice requirement, but entry on property to inspect or enforce must be with consent unless there is an imminent hazard. If the property owner or occupant does not give consent and it is not a situation involving an imminent hazard, the department must get an administrative search and inspection warrant pursuant to G.S. 15-27.2.

Note: Most, if not all, permits and Administrative Orders on Consent issued by the Hazardous Waste Section include boilerplate language to the effect that the facility/person(s) must “assure access at all reasonable times to the Facility and to any other property where access is necessary to ensure performance of the activities required by this [permit/order].”