

Chapter 3

Gaining Entry to Inspect Sites For Actual or Suspected Pollution

Table of Contents

- 3.1 General Rules and Exceptions**
- 3.2 Procedure to be Followed to Gain Entry to a Site Where No Emergency Exists**
 - 3.2.1 Initial approach
 - 3.2.2 If voluntary consent is initially refused
 - 3.2.3 If consent cannot be obtained by the DLPS and time is not of the essence
 - 3.2.4 If consent cannot be obtained in response to a letter, or if time is of the essence
- 3.3 Procedure to be Followed to Gain Entry to a Site When an Emergency Exists**
- 3.4 Statutory Authority to Conduct Searches**

Field Sampling Procedures Manual

Chapter 3 – Page 2 of 7

Chapter 3

Gaining Entry to Inspect Sites For Actual or Suspected Pollution

3.1 General Rules and Exceptions

[◀ Return to TOC](#)

As a general rule, NJDEP employees do not have the right to enter on private property (other than a permitted facility) without a search warrant. Evidence, which is obtained during the course of an illegal search or inspection, may be suppressed in a legal proceeding. A NJDEP employee who has entered on private property without permission may be subject to a charge of trespassing.

- 3.1.1 The most important exception to the general rule requiring search warrants (for the Department's purposes) is voluntary consent to the search or inspection given by a person responsible for the property to be entered. Once consent to entry is given, a search warrant is not required and the investigator can no longer be considered a trespasser. However, consent must be given voluntarily; it must not be coerced.
- 3.1.2 In those cases, which the Department of Environmental Protection has issued a permit containing as a condition, a right of entry to inspect, the courts have decided that no search warrant is required prior to inspection to determine compliance with the terms of the permit, (in re: Department of Environmental Protection, 177 NJ Super. 304 (App. Div. 1981), commonly called the "Vineland Chemical Company Case"). Therefore, if a facility is subject to such a permit, or has a Departmental permit, voluntary consent to entry is not required for a warrantless search to determine compliance.
- 3.1.3 In some instances, a court will order a facility to permit warrantless inspections by NJDEP employees. These orders are usually conditioned upon notice to the property owner prior to entry. While such orders permit warrantless entry without voluntary consent, their terms must be strictly adhered to in order to preserve the validity of any evidence obtained and to avoid a trespass charge.
- 3.1.4 When an emergency which threatens the public health or safety arises which necessitates immediate entry onto property, such entry may be permitted without a warrant or prior consent. If, under the circumstances, obtaining consent or a warrant would take so much time that the public would be endangered, entry to investigate and mitigate the danger is permissible. This situation is most likely to occur in the case of spills or other accidental emissions of hazardous substances. Even in cases of an emergency, however, a reasonable attempt to gain consent prior to entry should be made.

3.2 Procedure to be Followed to Gain Entry to a Site Where No Emergency Exists

[◀ Return to TOC](#)

- 3.2.1 Initial approach:
 - 3.2.1.1 Present your NJDEP identification card and/or badge and request to speak with the owner of the premises and/or person in charge.
 - 3.2.1.2 Explain the nature of your visit and request consent for your inspection from the responsible party or the highest ranking facility person available.

Field Sampling Procedures Manual

Chapter 3 – Page 4 of 7

3.2.1.3 If necessary, point out the general Departmental authority to enter and inspect any place for investigating an actual or suspected source of pollution, N.J.S.A. 13:1D-9, on your I.D. card.

3.2.1.4 If necessary and applicable, apprise the person in charge of the permit condition, Administrative Consent Order provision, or Court Order providing for entry to inspect.

NOTE: Consent is not required for observations of things that are in plain view (i.e., that a member of the public could be in a position to observe). This includes observations made while on private property in areas that are not closed to the public (i.e., matters observed while the inspector presents his credentials).

3.2.1.5 Consent may be given with “conditions.” When such “conditional” consent is proposed, guidance should be sought from the Department of Law and Public Safety (DLPS), prior to further activity. This should be done through the appropriate Bureau Chief. “Conditions” must be accurately recorded.

3.2.1.6 Consent to conduct an inspection may be withdrawn at any time. That segment of the inspection completed before the withdrawal of consent remains valid. Withdrawal of consent is equivalent to refused entry.

3.2.2 If voluntary consent is initially refused:

3.2.2.1 Do not attempt to coerce the person in charge; avoid confrontation.

3.2.2.2 Request the name and telephone number of the person in charge and of that person’s (or company’s, whichever is appropriate) attorney.

3.2.2.3 The Bureau Chief should contact the DLPS and request that a Deputy Attorney General (DAG) contacts the person in charge of the site to be inspected and/or the attorney, to obtain consent.

3.2.3 If consent cannot be obtained by the DLPS and time is not of the essence:

3.2.3.1 Write a letter to the responsible person requesting permission to inspect and state the reason for the inspection. Cite the appropriate general (N.J.S.A. 13:1D-9) and any specific statutory authority for entry and inspection. Also cite, where applicable, the permit condition, administrative consent or judicial order provision concerning right of entry. If relying on a permit condition, cite the Vineland Chemical Case (see section VIA.2.) for the holding that the NJDEP has the right to conduct warrantless searches of facilities subject to a permit condition providing for the right of entry to inspect.

3.2.3.2 If consent is gained in response to the letter, conduct the inspection at a mutually agreed upon time.

3.2.4 If consent cannot be obtained in response to a letter, or if time is of the essence:

3.2.4.1 At a site which is subject to a permit condition, administrative consent, or judicial order provision requiring submission to inspection by NJDEP, and your entry would be in compliance with the terms of the permit or order:

Request the DAG to assist you.

3.2.4.1.1 If so advised contact the local Police Department or State Police and request assistance in gaining entry, citing N.J.S.A. 2C: 29-1. Meet with the officer and his supervisors, if necessary, and explain the situation. Inform them of your right to inspect and the regulatory authorities involved.

- 3.2.4.1.2 If any problems are encountered in obtaining a law enforcement officer to accompany you to the site, call the DLPS or request the officer to call the DLPS for confirmation of authority to conduct a warrantless search.
 - 3.2.4.1.3 Have the officer accompany you to the site and again speak to the person in charge and apprise them of your right to enter and inspect.
 - 3.2.4.1.4 Be firm but polite and leave any threat of prosecution under N.J.S.A. 2C:29-1 to the law enforcement officer.
 - 3.2.4.1.5 Write a memo to your supervisor giving the details of the procedure which you followed to gain entry.
- 3.2.4.2 At a site, which is not subject to a permit condition, administrative consent or judicial order provisions for right of entry or if your entry would not be in compliance with the terms of the permit or order:
- 3.2.4.2.1 Request the DAG to assist you in obtaining an administrative search warrant. The investigator should prepare a case status brief which substantiates the need for the warrant. It is important that the site be accurately described, especially those specific areas for which the warrant is to apply. Additionally, sample or evidence collection plans should be included.
 - 3.2.4.2.2 A warrant can usually be obtained to allow an entry and inspection within two days. The following is a general outline of the procedure to be followed: Bring all information available which gives you probable cause to believe that pollution exists on the site to be inspected to a meeting with the DAG. The purpose of this meeting will be to prepare an affidavit if necessary, and sign an application for a search warrant.

The DPLS will have a DAG assigned to obtain the warrant.

- Make arrangements to accompany the DAG to court, in the county in which the site is located to obtain the warrant.
- Arrange to have a member of the local police department or State Police accompany you to the site to serve the warrant.
- Serve the warrant on the responsible person at the site, giving him/her a copy and retaining the original.
- Conduct the inspection in strict compliance with the warrant, i.e. search only those places and undertake only those activities specified in the warrant.
- If anything is taken from the site, i.e. samples or copies of records give the responsible person a receipt for the items taken, request that they sign it and retain a copy the receipt.

NOTE: The chain of command should be notified, aware, and involved in all steps of this process.

3.3 Procedure to be Followed to Gain Entry to a Site When an Emergency Exists

[◀ Return to TOC](#)

- 3.3.1 If time permits and a person responsible for the site is readily available, identify yourself by presenting your NJDEP identification and explain that it is necessary for you to enter the site in response to the emergency.

- 3.3.2 If consent to enter is refused, immediately contact the local Police Department or State Police, who may already be on scene. Identify yourself, explain the necessity for your obtaining access to the site and request their assistance in gaining entry.
- 3.3.3 If a problem arises with obtaining the assistance of a law enforcement officer, have the appropriate Bureau Chief call the DLPS or request the officer to call the DLPS for confirmation of your authority to enter the site.
- 3.3.4 If no responsible party is readily available from who to request consent, enter the site in a manner, which is non-destructive of property. If entry cannot be gained to the site of the emergency (i.e., a locked door or fence), request the assistance of a law enforcement officer as in 2. and 3. above.
- 3.3.5 Write a memo to your file giving the details of the procedure which you followed to gain entry.

3.4 Statutory Authority to Conduct Searches

[◀ Return to TOC](#)

N.J.S.A. 13:1D-9 (General Department Authority)

[The department shall...have the power to:] Enter and inspect any building or place for the purpose of investigating an actual or suspected source of pollution of the environment and ascertaining compliance or noncompliance with any code, rules and regulations of the department.

N.J.S.A 58:10A-6 (Water Pollution Control Act)

g. The Commissioner and a local agency shall have a right of entry to all premises in which a discharge source is or might be located or in which monitoring equipment or records required by a permit are kept, for purposes of inspection, sampling, copying or photographing.

N.J.S.A. 58:10A-30 (Underground Storage of Hazardous Substances Act)

The Department shall have the authority to enter any property or place of business where underground storage tanks or non-operational storage tanks are or may be located; to inspect said tanks or photograph any records related to their operation; and to obtain samples or evidence of discharge from the surrounding air, soil, surface or groundwater.

N.J.S.A. 13:1E-42.1 (Solid Waste Management Act)

The Department of Environmental Protection and Energy shall conduct a complete inspection, at least weekly, of each major hazardous waste facility.

N.J.S.A 13:1E-65 (Major Hazardous Waste Facility Siting Act)

The Department and the local board of health or the county health department, as the case may be, shall have the right to enter any major hazardous waste facility at any time in order to determine compliance with the registration statement and engineering design, and with the provisions of all applicable laws or rules and regulations adopted pursuant thereto.

N.J.S.A. 26:2C-9b (Air Pollution Control Act)

[The department...shall have the power to -] (4) Enter and inspect any building or place, except private residences for the purpose of investigating an actual or suspected source of air pollution and ascertaining compliance or non-compliance with any code, rules and regulations of the department.

N.J.S.A. 26:2C-9.1 (Air Pollution Control Act)

No person shall obstruct, hinder or delay, or interfere with, by force or otherwise, the performance by the department or its personnel of any duty under the provisions of this act, or refuse to permit such personnel to perform their duties by refusing them, upon proper identification or presentation of a written order of the department, entrance to any premises at reasonable hours.

N.J.S.A 58:12A-4 (Safe Drinking Water Act)

(f) The Commissioner shall have the right to enter any premises upon presentation of appropriate credentials during regular business hours, in order to test, inspect or sample any feature of a public water system and in order to inspect, copy or photograph any monitoring equipment or records required to be kept under the provisions of this act.

N.J.S.A 58:16A-9 (State Flood Control Facilities Act)

(4) Notwithstanding the provisions of any general, special, or local law, the Commissioner, his officers or agents, when engaged on flood control projects may enter upon property for the purpose of making surveys, test pits, test borings, or other investigations.

N.J.S.A. 26:2D-9 (Radiation Protection Act)

[The department shall:] (j) Enter and inspect radiation sources, their shielding and immediate surroundings and records concerning their operation for the determination of any possible radiation hazard.

N.J.S.A. 13:1F-9 (Pesticide Control Act of 1971)

[The department shall have power, in addition to those granted by any other law, to] c. Enter and inspect any building or place, except private residences, for the purpose of investigating an actual or suspected violation of law relating to pesticides and ascertaining compliance or noncompliance with any rules, regulations or order of the [D]epartment.

N.J.S.A. 58:10A-6 et. seq. (Clean Water Enforcement Act)

g. The Commissioner and a local agency shall have a right of entry to all premises in which a discharge source is or might be located or in which monitoring equipment or records required by a permit are kept, for purposes of inspection, sampling, copying or photographing.