

A Company's Rights after the Inspection

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As the state reopens after the COVID-19 closure, government inspectors face the challenging task of determining compliance under unusual circumstances. After an agency inspection, the Regulatory Bill of Rights continues to protect companies by requiring the state or county agency to provide a copy of the inspection report, either at the inspection or no later than thirty working days after. If the inspector finds deficiencies during the inspection or audit, the inspection report must say so. The company also is entitled to the name and telephone number of a contact person at the agency who is available to answer questions.

With this information, a company can try to set the record straight and correct errors in the inspection report. There isn't a set process for seeking to correct a report. A written statement followed by a telephone call to the inspector or agency contact is a good general approach. Companies should keep in mind that an inspection report identifying deficiencies is not the same thing as a notice of violation, which may come later. The state or county agency must provide a monthly status report to the company, unless the agency advises no action will be taken.

After a company's efforts to correct any errors in a state or county inspection report, if the agency still thinks there are deficiencies in the company's compliance, generally the agency still cannot issue a notice of violation. Instead, the company has the opportunity to correct deficiencies, and thereby avoid a notice of violation. Because this is one of the most important rights in the Regulatory Bill of Rights, the precise language is quoted below:

Unless otherwise provided by state or federal law, the agency shall provide the regulated persons an opportunity to correct the deficiencies unless the agency documents in writing as part of the inspection report that the deficiencies are:

1. Committed intentionally.
2. Not correctable within a reasonable period of time as determined by the agency.
3. Evidence of a pattern of noncompliance.
4. A risk to any person, the public health, safety or welfare or the environment.

. . . If the agency is unsure whether a regulated person meets the exceptions . . . the agency shall provide the regulated person with an opportunity to correct.

A.R.S. §41-1009 (E) & (F). See also, A.R.S. §11-1603(E) (same provision for counties).

If the agency does not allow the company the opportunity to correct deficiencies, the agency must provide a “detailed written explanation of the reason.” If the opportunity to correct is allowed, the company must make the correction within a reasonable time and give written notice to the agency when completed. The agency then has 30 days to notify the company whether it agrees or disagrees the company is in substantial compliance after its efforts to correct. If the agency disagrees and decides to issue a notice of violation, it must meet criteria for specificity and provide an opportunity to discuss.

As noted in a previous update, the agency’s failure to comply with the rights referenced in the Regulatory Bill of Rights may result in the mitigation of fines and penalties, exclusion of evidence (at least in civil cases with a state agency), and dismissal or other disciplinary action for the state or county employee.