



pennsylvania

DEPARTMENT OF ENVIRONMENTAL PROTECTION



Dealing with Difficult Access Issues

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▶ Examples of “Difficult” Access Issues

- No Trespassing sign
- “Get the hell off my property”
- Firearms or pitchforks
- Insisting on a warrant
- Biosecurity areas

Constitutional Basis

“The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.”

- **U.S. Constitution, 4th Amendment**

When a Warrant is Not Required

- Pervasively Regulated Businesses
- Plain View
- Abandoned Property
- Exigent Circumstances/Emergency
- Consent
- Open Fields

Pervasively Regulated Businesses

- Nature of business is such that owner cannot help to be aware that his property will be the subject of periodic searches
- Examples – permitted solid waste facilities, nuclear power plants
- Probably does not include farms

Plain View

- Must already be on the property legally
- Site condition or evidence must be “immediately apparent”
- Property owner has no expectation of privacy to conditions or objects left open to view

Abandoned Property

- A person does not have a reasonable expectation of privacy in property that he or she abandons
- Example – abandoned drums

Exigent Circumstances/Emergency

- Delay resulting from seeking a warrant would endanger life, limb, or overriding law enforcement interests
- Mere speculation that evidence may be destroyed is inadequate to justify warrantless entry

Consent

- Consent must be voluntary
- Need not advise a person that he or she has the right to refuse consent
- Consent may be present by virtue of permit conditions

Open Fields

- “Open fields” are not “effects” protected from unreasonable searches
- Applies even to fields that are fenced and posted “no trespassing”

Biosecurity at Agricultural Sites

Inspectors can be charged with trespassing if they do not follow the landowner's biosecurity measures when they are within the landowner's biosecurity area

Agricultural Biosecurity Area

- Agricultural or other open lands
- Associated buildings and containment areas
- Can include forested areas capable of producing timber or other wood products
- Research areas associated with agricultural
- Landowner may self-designate areas as agricultural biosecurity areas and needed measures

Agricultural Biosecurity Area

- Unannounced inspections are permitted
- Area must be properly posted
- Generally, efforts should be made prior to inspection to determine what biosecurity measures are required
- Refer to Department's Standard Procedure for Biosecurity at Agricultural Sites, 2/19/2013

Practical Tips

- When possible, contact property owner prior to inspection to get consent
- Do not provoke confrontation
- Leave when confronted with threat, consult with your supervisor or attorney
- Involve state police as necessary
- Use your common sense; safety is paramount



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