



**YOU'VE CONDUCTED AN
ENVIRONMENTAL AUDIT...NOW WHAT?
MANAGING YOUR
AUDIT FINDINGS**

TRAINING TOPICS



**Pre-Audit
Considerations**



**Self-
Disclosure**



**Successful
Management
of Audit
Findings**

Speaker Qualifications

Wendy Krause

- Director of Environmental Services, Cornerstone Environmental, Health & Safety
- Specializing in Environmental Compliance for over 18 years
 - Environmental Compliance Auditing
 - Clean Water Act
 - Clean Air Act
 - Hazardous Waste Management
 - Chemical Reporting (Tier II, TRI)
- Executive Committee and Treasurer, Indiana Partners for Pollution Prevention
- Chapter Secretary, Alliance of Hazardous Materials Professionals



About Cornerstone

Cornerstone was founded in 1990

We service clients throughout
North America, Europe and Asia

ISO 9001:2015 Certified

Core Competencies

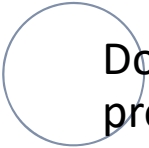
- ✓ **Environmental Compliance Services**
- ✓ **Health and Safety Training and Consulting**
- ✓ **Chemical Management**
- ✓ **Sustainability and Social Responsibility**
- ✓ **International Standards**
- ✓ **Environmental Site Assessment and Remediation**
- ✓ **Mergers and Acquisitions**
- ✓ **Economic Development**
- ✓ **Customized Software Applications**

Speaker Qualifications

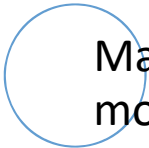
Michael T. Scanlon

- Partner, Barnes & Thornburg LLP
- Has worked in the industry and for environmental agencies and understands the practical application of environmental law to business operations.
- Practices:
 - Air quality
 - Brownfields and Environmental Transactional Diligence
 - Construction
 - Environmental
 - Environmental Litigation
 - Remediation, Corrective Action and Voluntary Cleanups
 - Toxic and Hazardous Materials – Domestic and International Requirements
 - Waste Management
 - Water

INITIAL THOUGHTS



Don't perform environmental and safety audits if you are not prepared to fix the problems identified.



Make certain you have upper management buy in because you may need to spend money to fix problems.



Understand why you are doing the audit and structure the audit to meet your goals.



Choose between a focused audit and a comprehensive audit.

REASONS TO PROTECT AUDIT RESULTS

Minimize the potential for government enforcement actions.

Minimize the potential for citizen suits.

Controlling the timelines to correct identified deficiencies.

TOOLS TO HELP PROTECT AUDIT FINDINGS

Control the distribution of audit findings to those who need to know.

Have counsel engage the auditor and be the conduit of information between the auditor and the company.

Comply with applicable audit privileges.

INDIANA'S ENVIRONMENTAL AUDIT STATUTE

Ind. Code 13-28-4

Except for criminal investigations or proceedings, environmental audit reports are privileged and inadmissible in civil and administrative actions, including enforcement actions.

For post 7/1/94 environmental audits, the privilege is lost if:

- It is asserted for fraudulent purposes.
- The material is not subject to the privilege.
- The material is subject to the privilege, demonstrates noncompliance with a rule, permit, order, etc., and appropriate efforts to achieve compliance were not promptly initiated and pursued with reasonable diligence.

The privileged can be waived by the owner or operator.

KEY TERMS

An “environmental audit” is a voluntary, internal, and comprehensive evaluation of a facility or activity regulated by environmental requirements or of a management system related to a facility or activity that is designed to identify and prevent noncompliance and improve compliance that is conducted by the owner or operator, an employee of the owner or operator, or an independent consultant.

- Ind. Code 13-11-2-68

KEY TERMS (CONT.)

An “environmental audit report” is a “set of documents prepared as a result of an environmental audit” that:

- Is labeled “Environmental Audit Report; Privileged Document”;
- Includes various documents and information that were “collected or developed for the primary purpose of preparing an environmental audit; and”
- Includes three components:
 - An audit report prepared by the auditor containing specific information;
 - Documents analyzing part or all of the report and discussing implementation issues; and
 - A compliance implementation plan addressing specific items.
- Ind. Code 13-11-2-69

THE PRIVILEGE DOES NOT APPLY TO EVERY DOCUMENT

The environmental audit privilege does not apply to:

- “Documents, communications, data, reports, or other information that must be collected, developed, maintained, reported, or otherwise made available to a regulatory agency” by statute, rule, permit, or order.
- “Information obtained by observation, sampling, or monitoring by any regulatory agency.”
- “Information obtained from a source independent of the environmental audit.”

INDIANA'S SAFETY AUDIT PRIVILEGE

A “safety audit” is “a written consultation report related to health and safety standards that is: (1) prepared for an employer by: (A) a third party; or (B) an employee whose principal responsibilities include an employer’s compliance with occupational safety and health standards; and (2) not otherwise required by state or federal law.”

• Ind. Code 22-8-1.1-24.7

INDIANA'S SAFETY AUDIT PRIVILEGE (CONT.)

A safety audit's contents are not admissible "if an employer has made a good faith and substantial effort to correct every hazard noted in the safety audit that is subject to enforcement under the federal Occupational Safety and Health Act".

This privilege does not apply to criminal violations.

WHY YOU MAY WANT OR HAVE TO DISCLOSE AUDIT RESULTS

Comply with state or federal self-disclosure requirements.

Reporting is required by a rule or permit condition.

The audit identified something that must be disclosed in financial statements.

WAYS AUDITS CAN RESULT IN LEGAL PROBLEMS

Identified noncompliance is not corrected.

Violations that must be disclosed are not disclosed.

The reports create records of what you knew and when you knew it if you do not promptly correct noncompliance.

Information in the reports can be used to demonstrate the knowledge component in a criminal enforcement action.

WHY CONDUCT AN ENVIRONMENTAL AUDIT?

As part of an Environmental Management System

To get a baseline for compliance status

Newly acquired facility

To monitor ongoing compliance

Customer requirements

BENEFITS TO CONDUCTING ENVIRONMENTAL AUDITS

Organizations with effective environmental auditing programs have reported improved compliance

Reduce exposure to civil and criminal liability

Identify operational cost savings

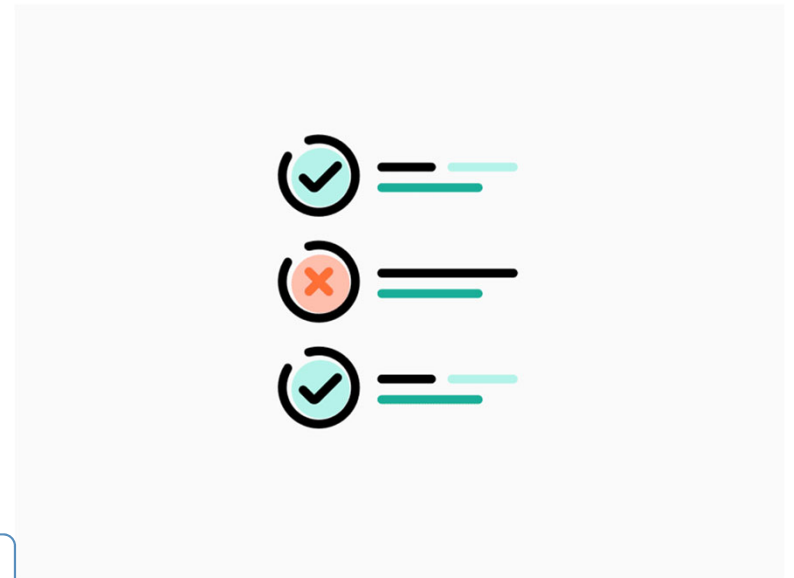
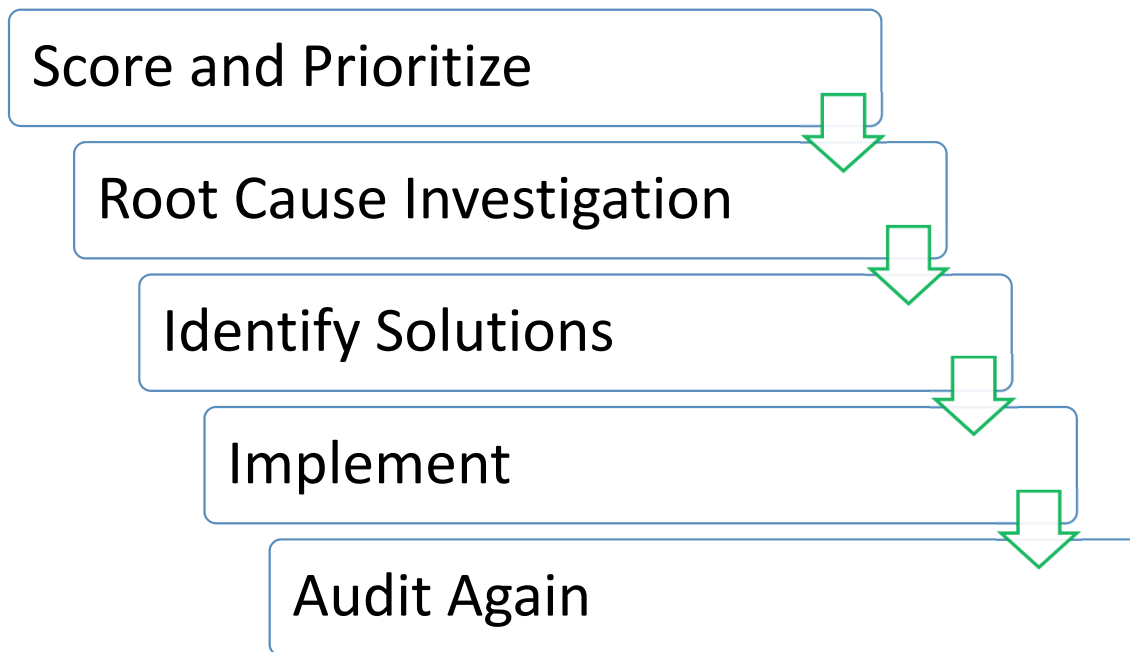
Reduce environmental hazards

Manage risk

WHY DO YOU NEED TO MANAGE YOUR AUDIT FINDINGS PROPERLY?

- ☐ To protect human health and the environment
- ☐ To prevent loss of ISO or other certifications
- ☐ To prevent loss of credibility with customers
- ☐ To meet SEC Disclosure Requirements (if publicly traded)
- ☐ To avoid civil and criminal fines and penalties

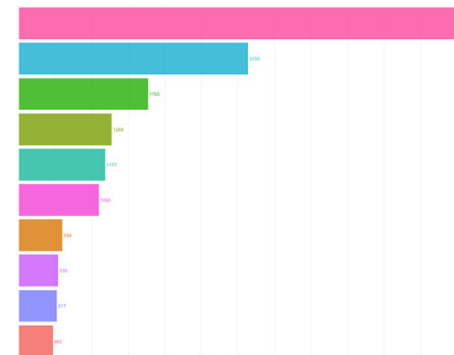
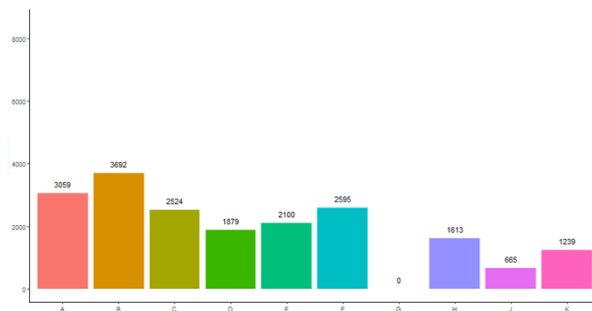
MANAGE YOUR FINDINGS



SCORING AUDIT FINDINGS

Multiple Methods to Score your audit findings.

One Method ASTM E2365-14 Environmental Compliance Performance Assessment standard which utilizes a 4 tier scoring system.



TIER 1



Tier 1 Performance Standards

The first step of analysis identifies standards that prevent or require a response to those imminent hazards which would likely cause actual harm to human health or the environment. Failure to meet these standards carries the highest liability for both harm to third parties, as well as government fines and penalties.

Tier 1

Preventing and responding to actual releases, emissions, discharges or alterations

Waste

Reporting and response to a hazardous waste or material release

Air

Reporting and response to excess air emissions

Water

Reporting and response to an actual unpermitted release or water supply contamination incident, including notification to the public.

Prevention

Reporting and response to releases of hazardous materials, such as petroleum. Restoration of containment following an actual release. Response to petroleum vapor emissions.



TIER 2



Tier 2 Performance Standards

The second step identifies significant, high priority requirements, approval for releases, emissions, discharges or potential releases to the environment. A facility should evaluate these benchmarks immediately after Tier 1, since they manage potential risk to human health and the environment. These requirements, if not met, are considered serious violations of environmental standards.

Tier 2

Required permits and approvals for releases or alterations to the environment

Waste

Obtaining required approval for release or disposal of material into the environment. Required approval for treatment, storage, management, transport, receipt or delivery of wastes. Meeting conditions and limits of required approvals.

Air

Approval for emissions, detection and conditions within limits of approval. Approved installation of emission monitoring devices.

Water

Required approval for water resource activity such as a discharge, filling, drinking water analysis or withdrawal. Maintaining conditions within approved limits. Reporting discharge above approved limits. Approval for public, community or industrial water supplies.

Prevention

Required approval for storage of petroleum or hazardous materials. Installation of secondary containment and alarm systems for air and hazardous materials storage. Disclosure of hazardous materials. Approvals for vapor recovery and drainage systems.





Tier 3 Performance Standards

TIER 3

The operation, maintenance, repair and monitoring of controls on emissions, discharges, releases or prevention devices are some standards in step three.

Regular checking and adjustment of air and water pollution control devices, management of hazardous waste storage areas and similar activities are the third set of benchmarks evaluated by the facility. These requirements, if not met, are considered serious because repeat violations of environmental regulations for pollution control systems could result in actual or increased releases to the environment.

Tier 3

Operating conditions and best management practices

Waste

Identify, label and mark wastes. Waste sampling and analysis. Maintain storage areas and vehicles. Complete waste manifests in accordance with Federal hazardous materials transportation regulations.

Air

Inspections and reports of pollution control equipment, report compliance status. Emission testing and monitoring. Report excess emissions.

Water

Water quality discharge reports. Recording conditions on wetlands work. Treatment plant operator licensing. Correct sampling and monitoring procedures. Routine water quality reports. Pretreatment preventative maintenance.

Prevention

Measures to reduce potential for harm or risk. Toxic use reduction and documentation. Maintenance of vapor recovery and drainage systems. Tank maintenance.





TIER 4

Tier 4 Performance Standards

The final step to complete the analysis includes record keeping or other requirements that demonstrate the performance of controls on emissions, discharges, releases, and prevention devices. Retention and review of pollution management records may also help the facility analyze its opportunities for pollution prevention, a reduction or elimination of regulatory requirements and a reduction in costs to the facility.

Tier 4

Managing environmental records

Waste

Technical completeness and retention of records. Written documentation of required notifications. Timely reporting. Financial audits.

Air

Record keeping, manuals and test result retention. Document management. Timely reporting of emissions.

Water

Registering wetlands work. Retaining monitoring results for discharges and water supply.

Prevention

Toxic use reduction cost and alternatives analysis. Records on installation and maintenance of vapor recovery, drainage and tank systems.



PRIORITIZING AUDIT FINDINGS

EXAMPLES OF TWO APPROACHES:

Risk

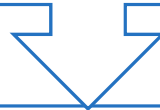
VS

Rank

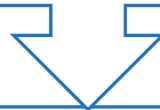


RISK BASED APPROACH

Identify media or compliance area that poses the greatest risk at the facility and rank these areas in order of priority

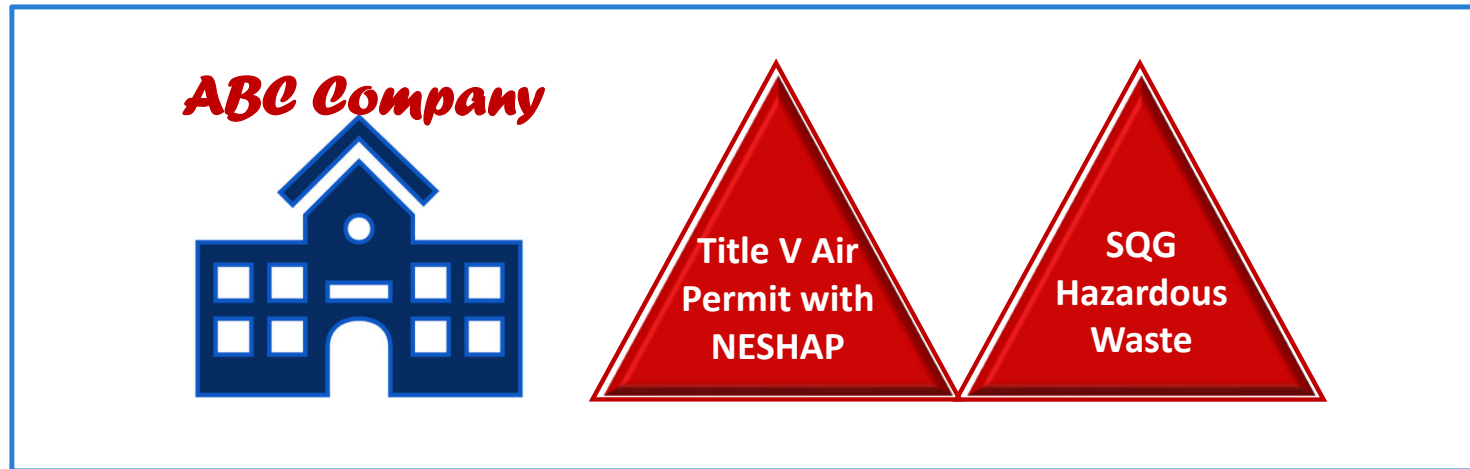


Within each media or compliance area, rank your deficiencies (Tier 1-4 or other method)



Subjective approach which rates risks and deficiencies on the basis of specific facility activities

EXAMPLE OF RISK APPROACH



Audit identified deficiencies in the Title V Air Permit that impacted their NESHAP requirements

- Tier 2 Rank


Audit identified that 2 months of the year the facility was a SQG of hazardous waste, but did not have an EPA ID Number

- Tier 2 Rank

Which finding would you prioritize??

RANK BASED APPROACH

Within each media or compliance area, rank your deficiencies
(Tier 1-4 or other method)



Prioritize your deficiencies based solely on rank, regardless of media

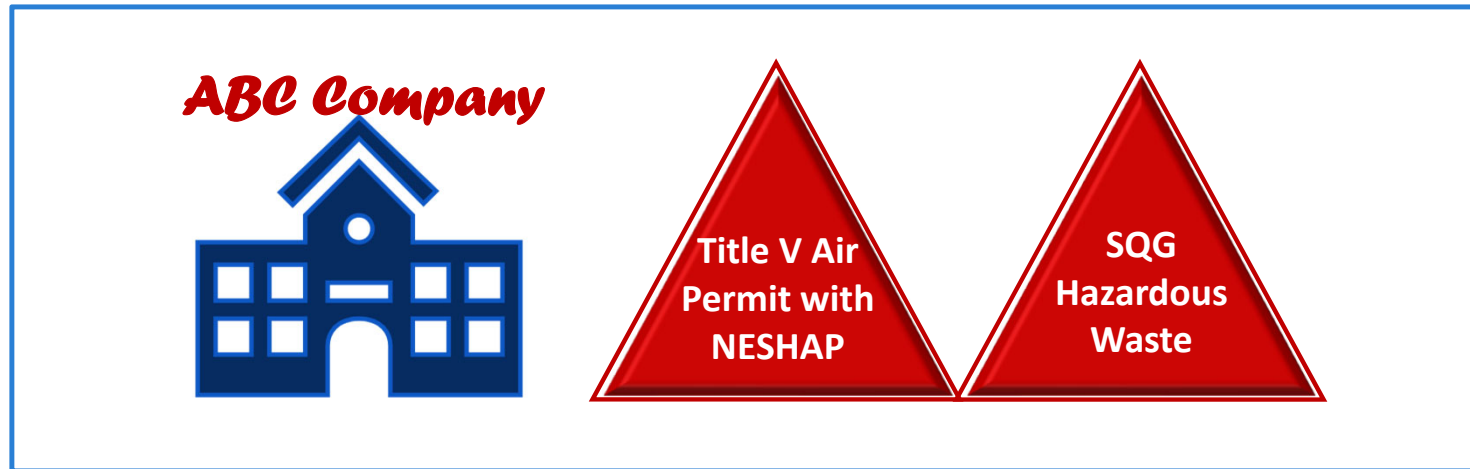


Less subjective



Doesn't consider risk

EXAMPLE OF MEDIA/COMPLIANCE AREA APPROACH



Audit identified deficiencies in the Title V Air Permit that impacted their NESHP requirements

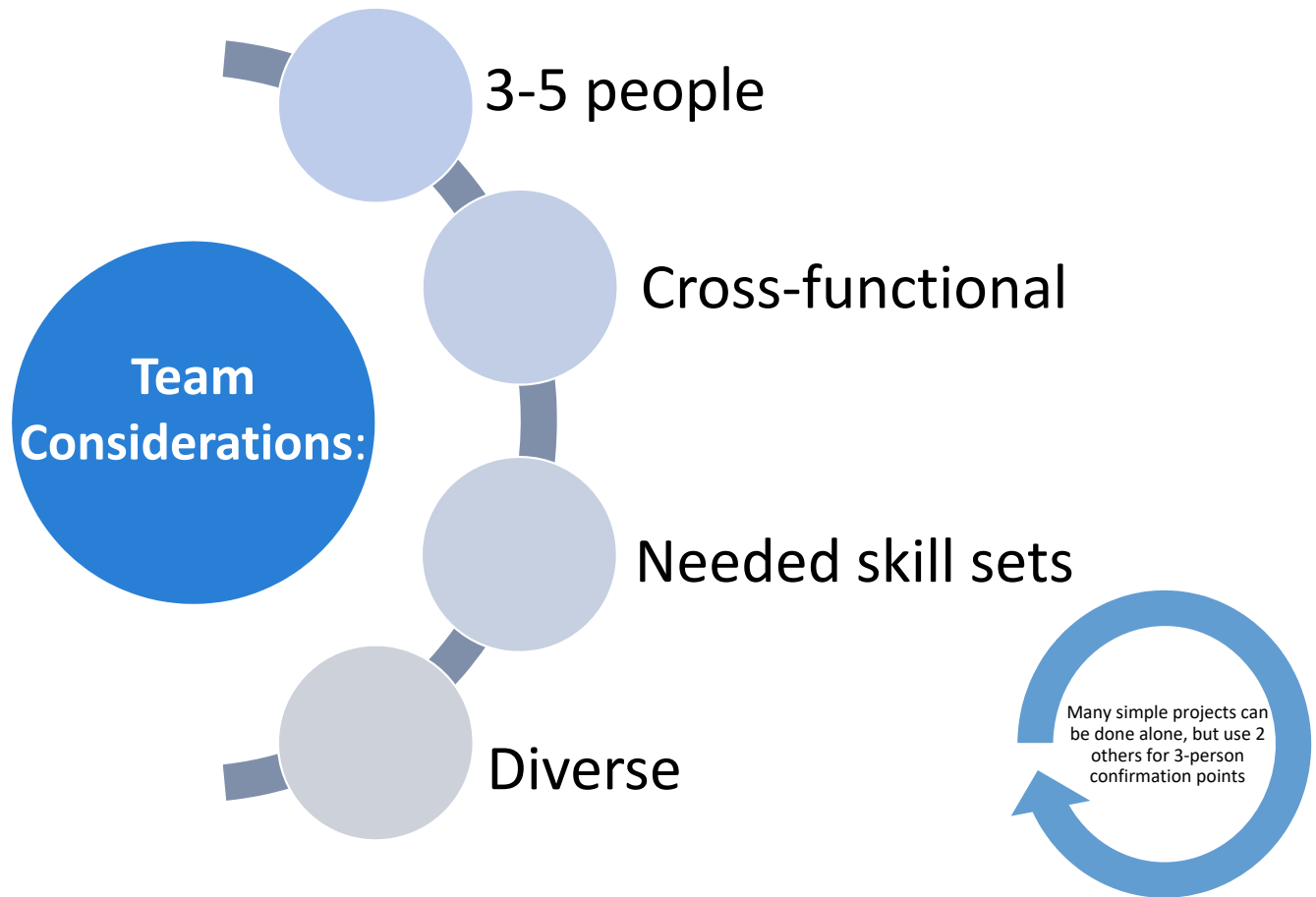
- Tier 2 Rank

Audit identified that 2 months of the year the facility was a SQG of hazardous waste, but did not have an EPA ID Number

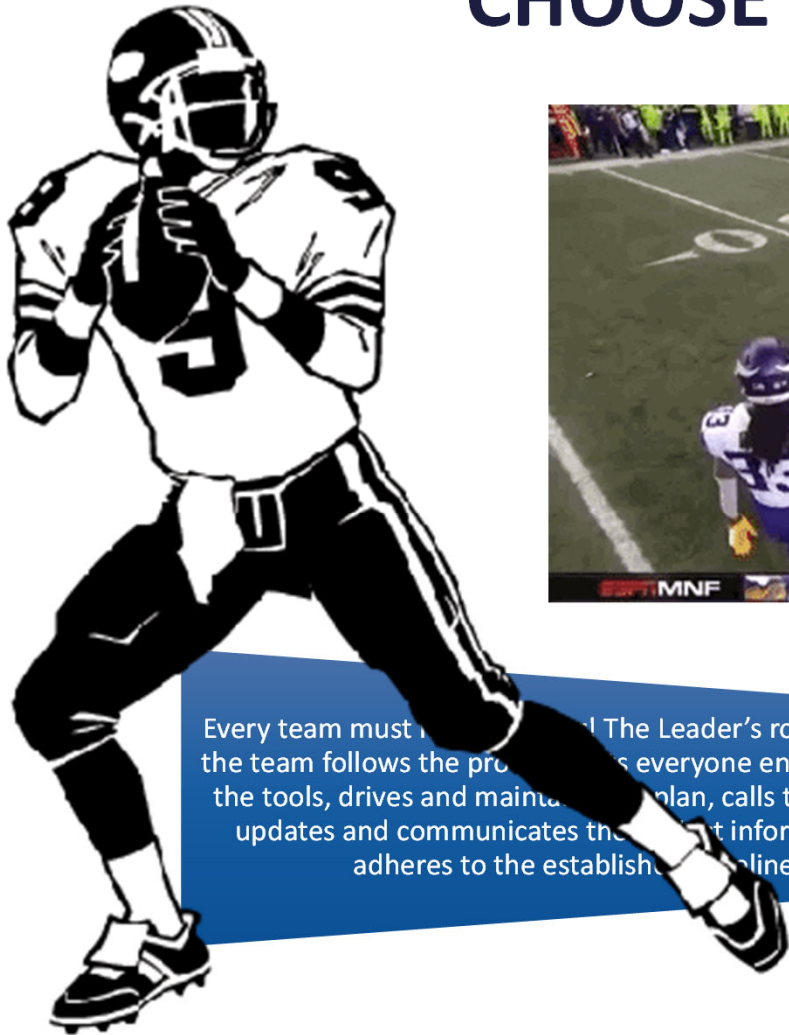
- Tier 2 Rank

Which finding would you prioritize??

IDENTIFY AND ORGANIZE YOUR PRIMARY TEAM



CHOOSE YOUR QUARTERBACK

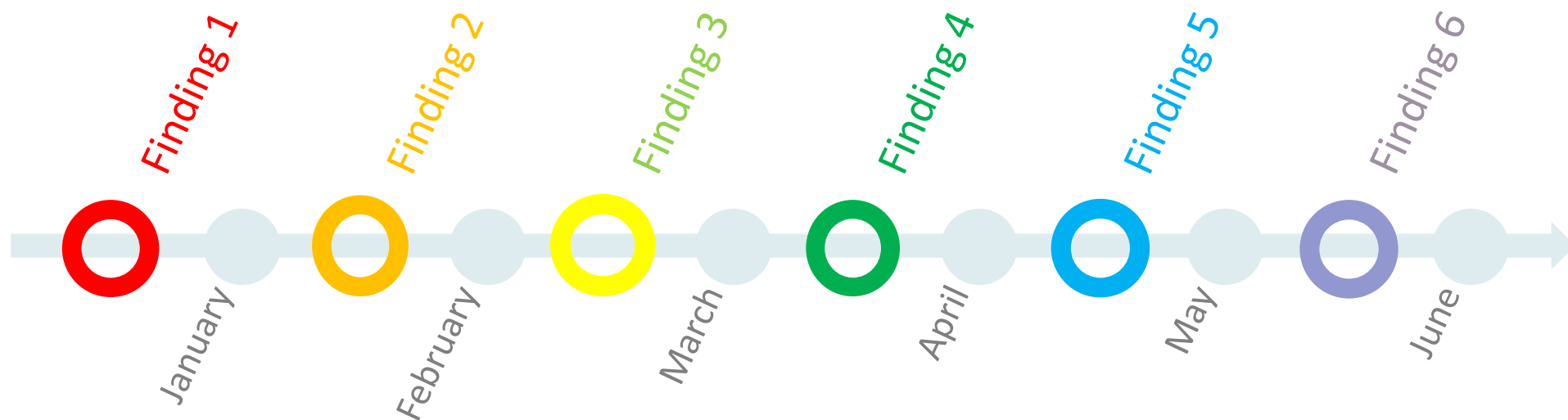


Every team must have a leader. The Leader's role is to assure the team follows the plan, keeps everyone engaged, utilizes the tools, drives and maintains the plan, calls the meetings, updates and communicates the latest information and adheres to the established guidelines.

Approach as a "Special Project" that's above your day job.

SET A TIMELINE FOR RESOLUTION OF FINDINGS

Set a schedule for resolution of findings based on prioritization. The schedule should be achievable based on priorities and resources. If using the EPA or State Audit Policy, you must ensure resolution of finding based on policy guidelines.



WHAT'S IN YOUR TOOLBOX?

Identify what resource(s) you will use to manage the “project”

Track
progress

Assign tasks

Monitor
Timelines

Organize
Information

Communicate
with
Stakeholders

Spreadsheet

Gantt Chart

Software
Application

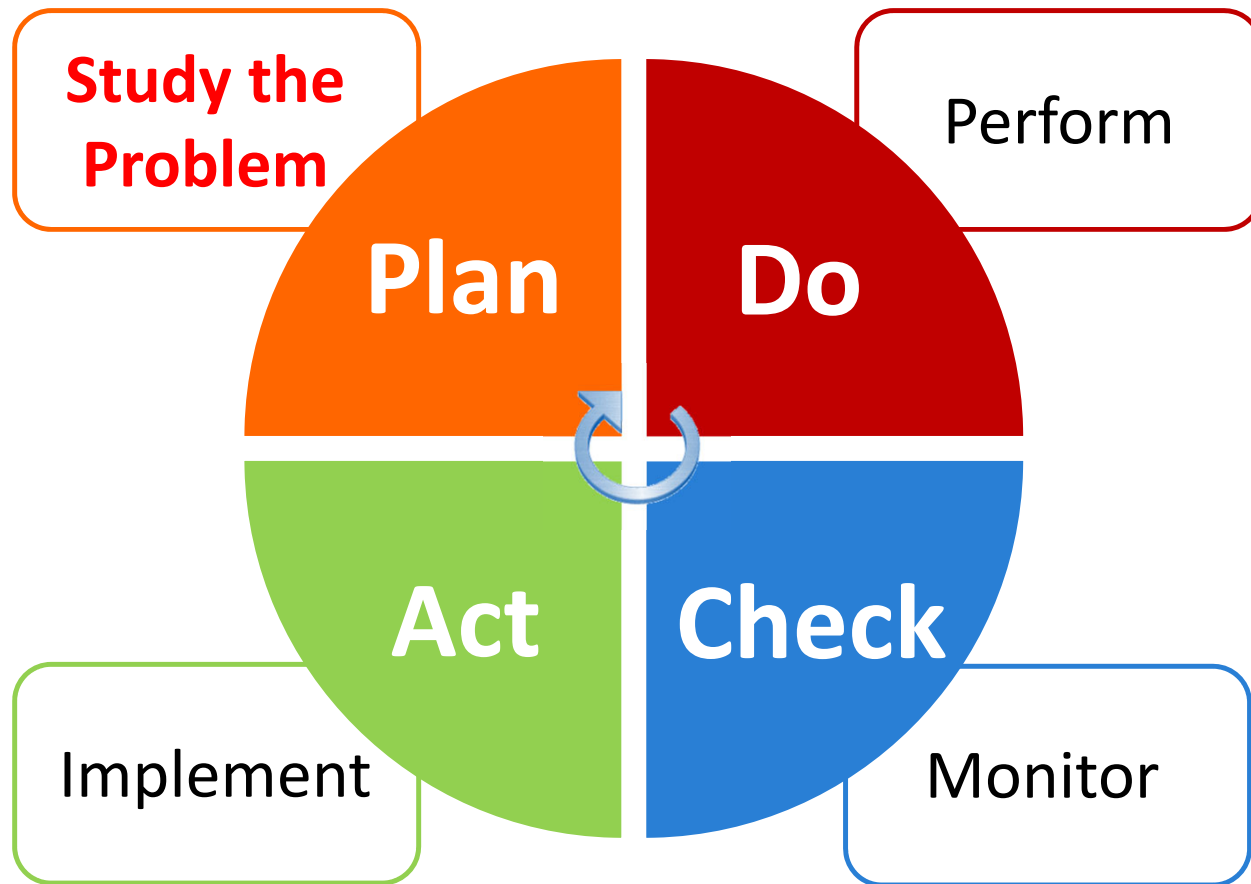
Shared filing
system

Internal

External



PLAN, DO, CHECK ACT





MAN



MACHINE



MATERIAL

Root cause analysis



ENVIRONMENT



METHOD



MANAGEMENT

WHAT'S YOUR PROBLEM??

Construct the "Problem Statement"

Take the initiative: Go to the floor

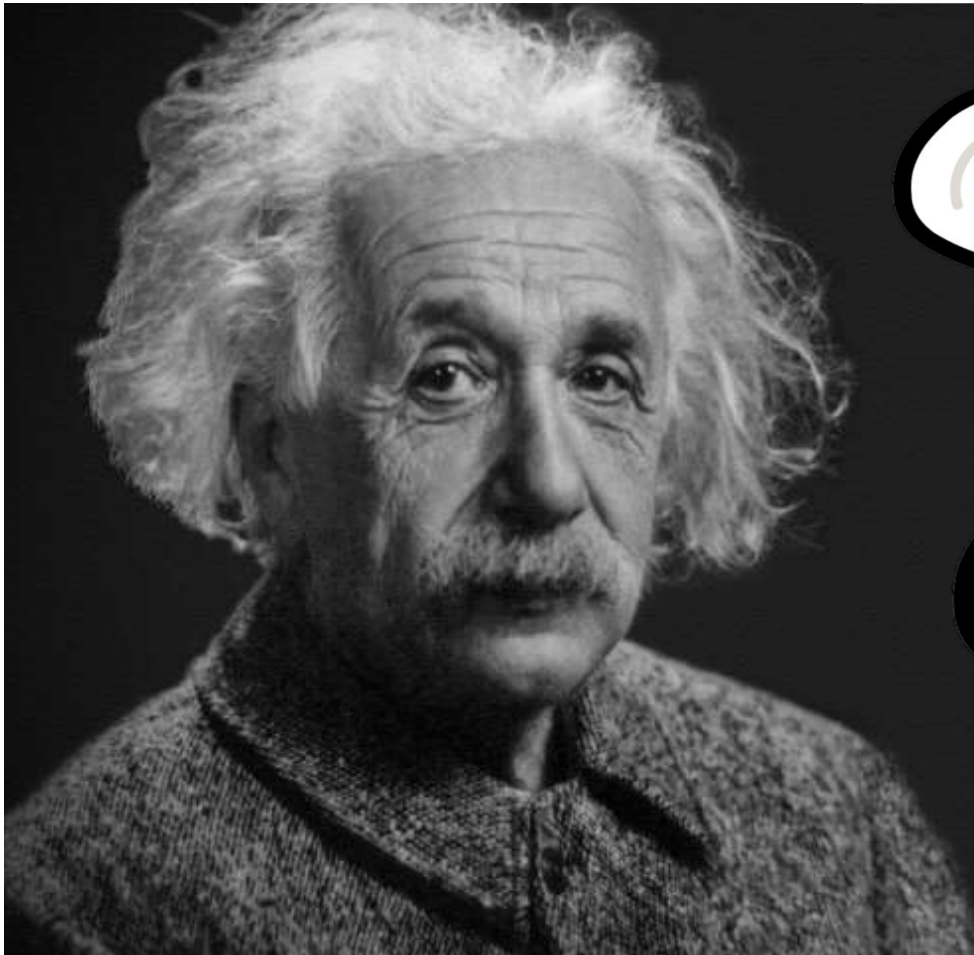
- Physically examine and interview the situation first-hand
- Talk to everyone who "should" know something

Get on the phone
with suppliers,
vendors and/or
service providers,
if applicable

Make sure this is a
non-defensive
discussion and
doesn't involve
liability

Defining your
problem does not
include
determining your
solution

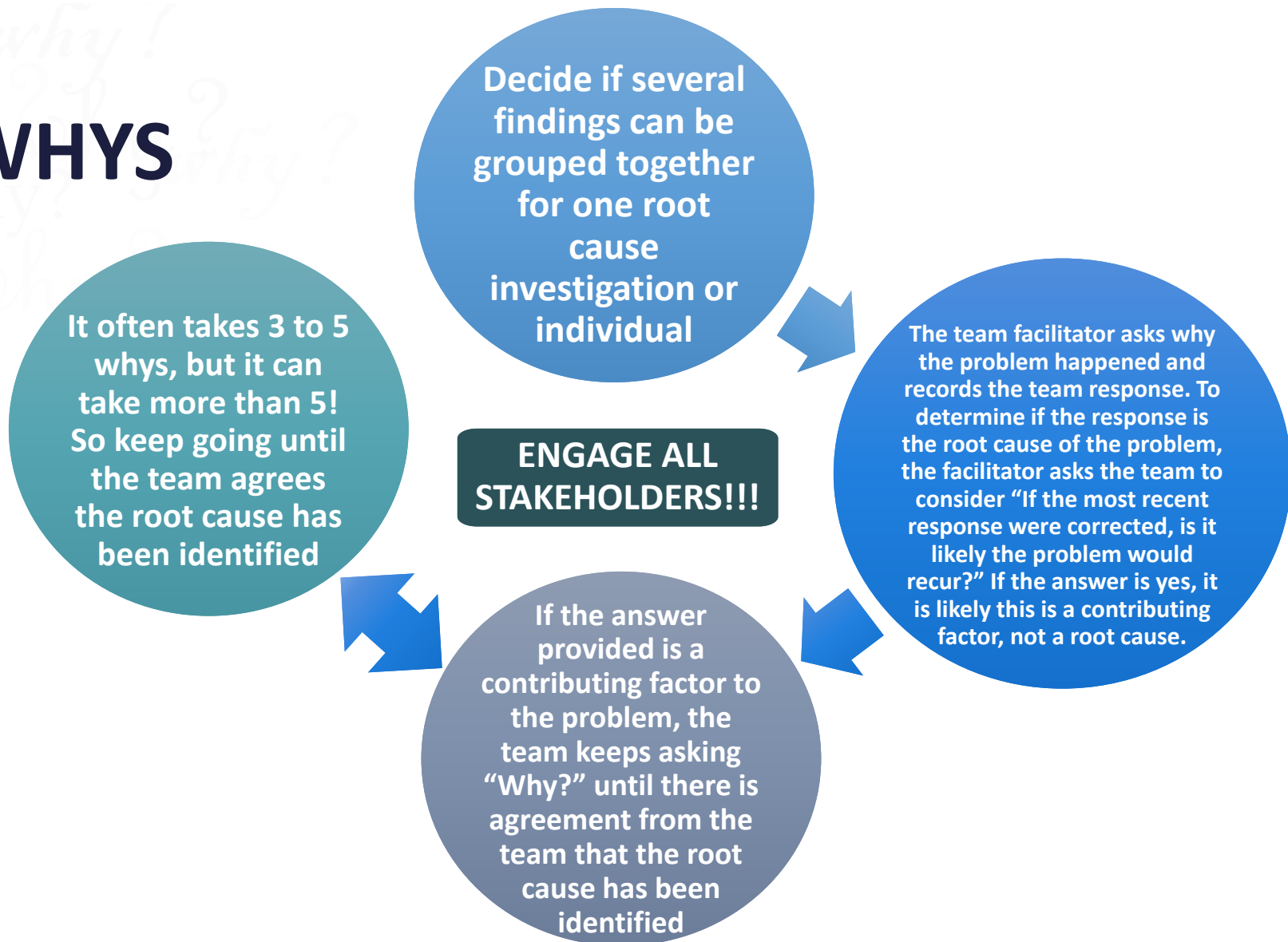
WHAT'S YOUR PROBLEM



“If you cannot say it simply, you do not understand the problem”

“If I had an hour to solve a problem, I'd spend 55 minutes thinking about the problem and five minutes thinking about solutions.”

5 WHYS



BRAINSTORM



THINK OUTSIDE THE BOX AND YOUR FACILITY FOR SOLUTIONS

Finding:

Required inspections
have not been
performed

Finding:

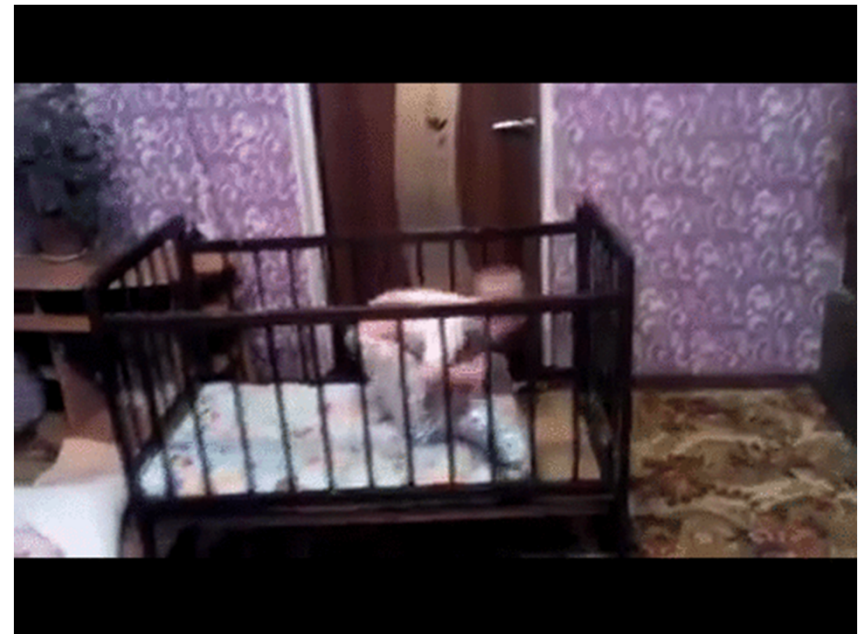
Required records
were not able to be
located for inspection

Solution:

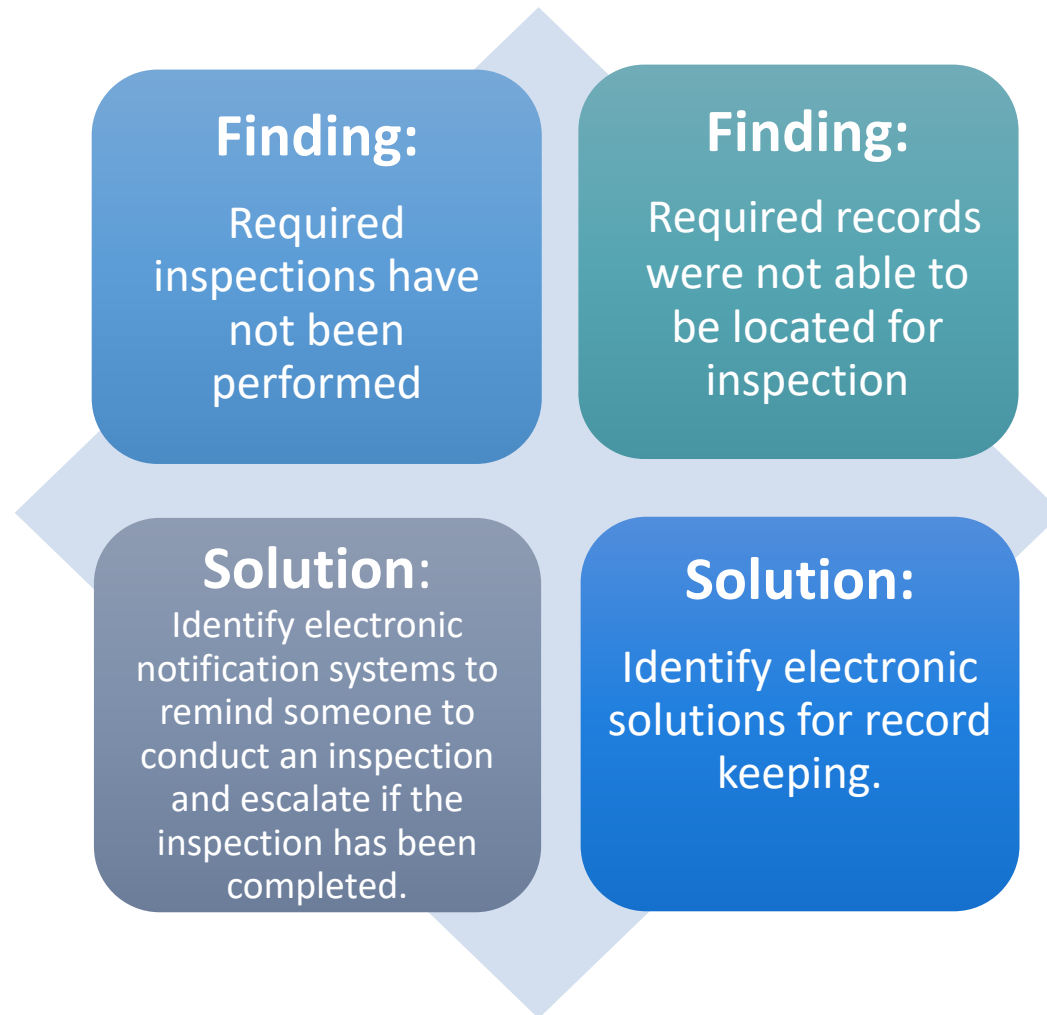
Identify electronic
notification systems to
remind someone to
conduct an inspection
and escalate if the
inspection has been
completed.

Solution:

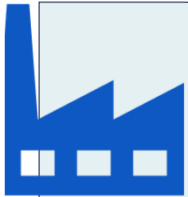
Identify electronic
solutions for record
keeping.



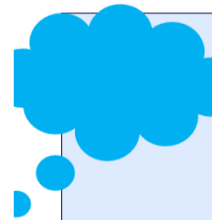
THINK OUTSIDE THE BOX AND YOUR FACILITY FOR SOLUTIONS



BENCHMARKING



Do other facilities in your company have similar issues and/or solutions?

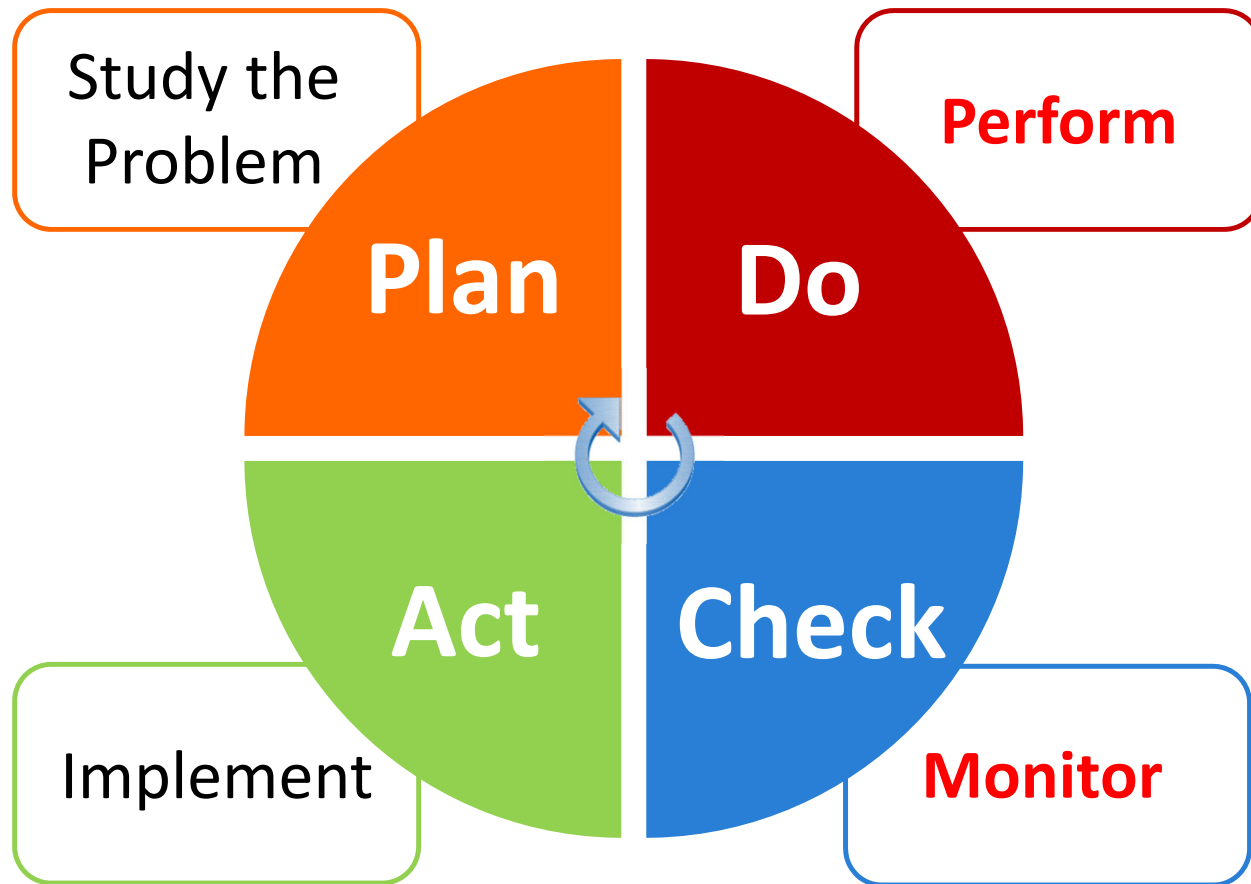


What are other companies doing?



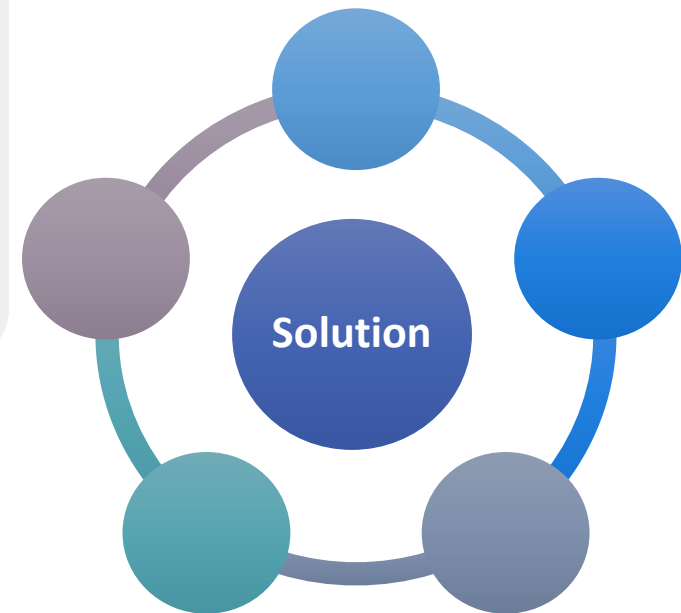
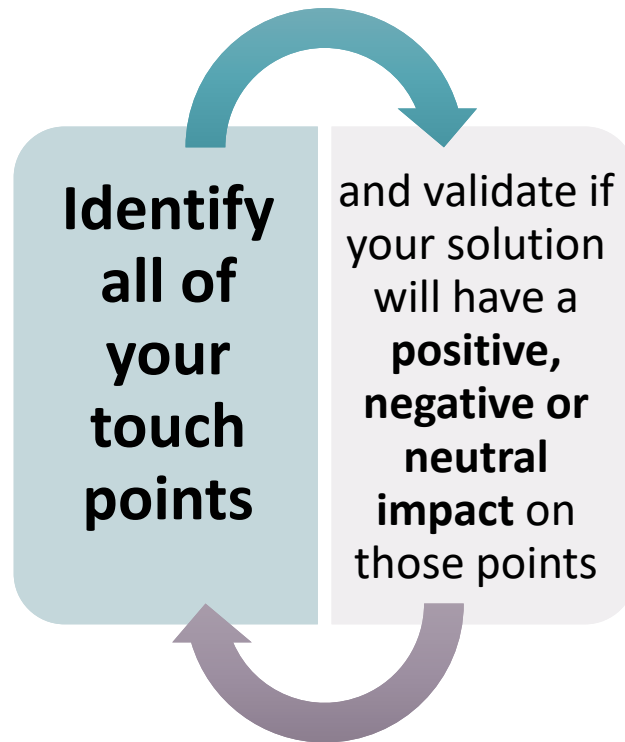
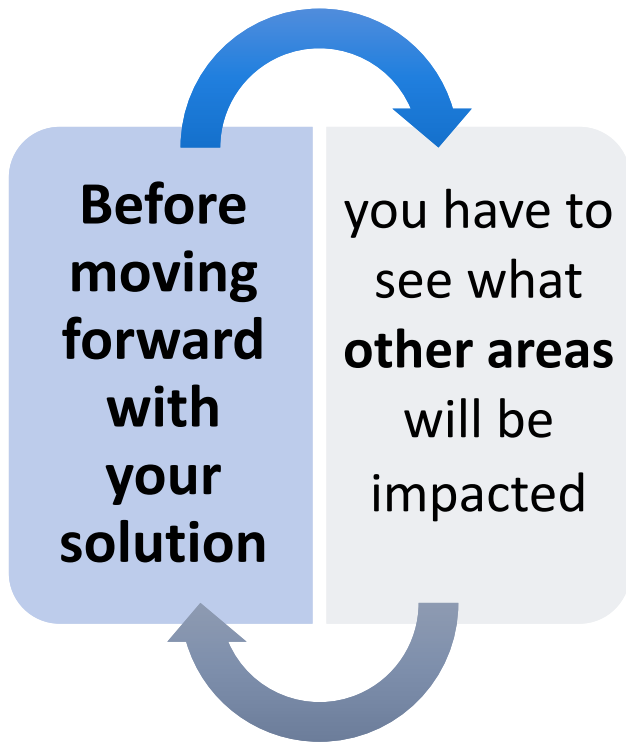
Check with your trade associations and other industry groups

PLAN, DO, CHECK ACT

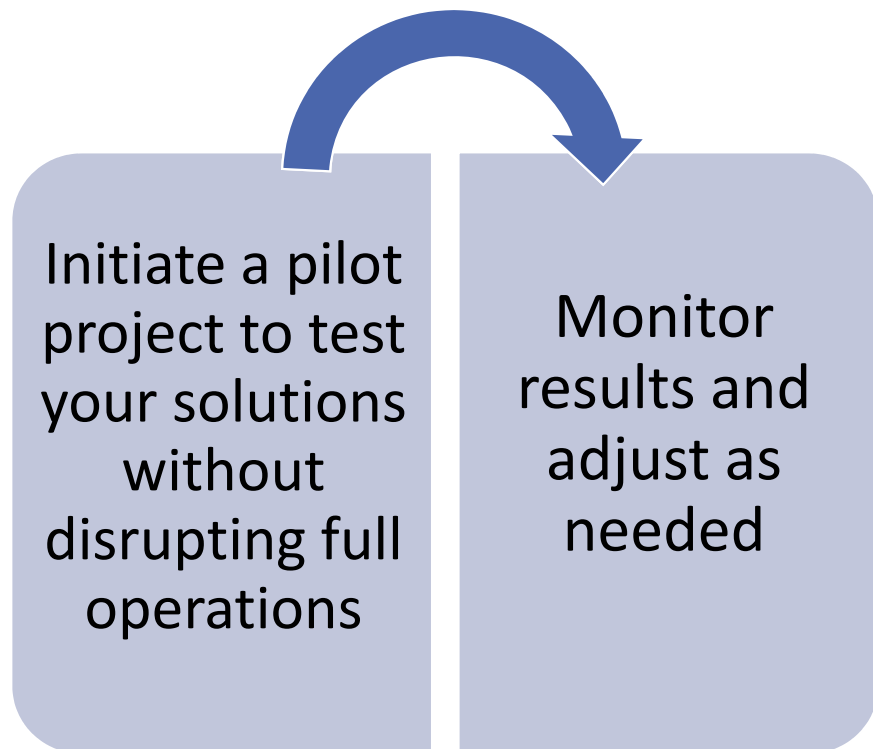




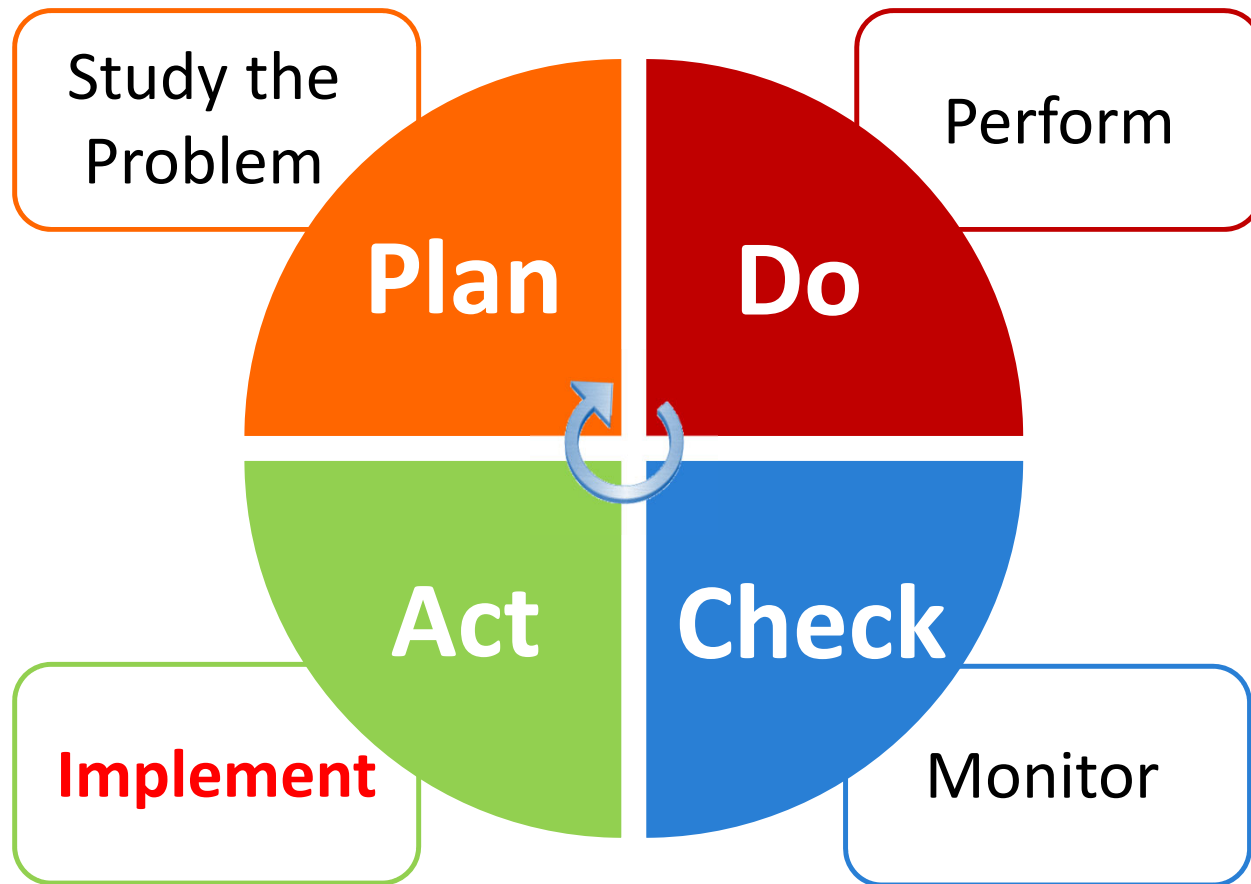
STOP!!!!!!



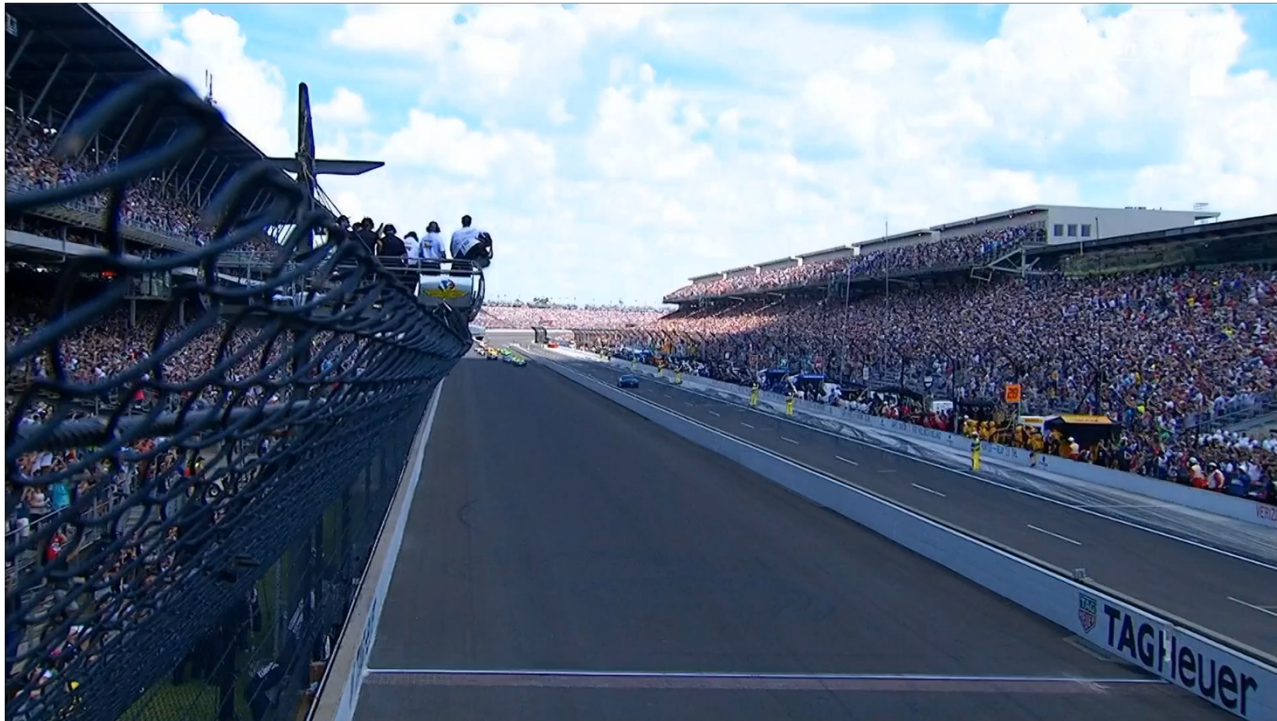
TEST AND CHECK



PLAN, DO, CHECK ACT



READY, SET, GO!!
IMPLEMENT YOUR SOLUTION



AUDIT AGAIN

You must audit again at periodic intervals to ensure your solution is

Successful

Sustainable



MANAGING BEYOND COMPLIANCE

When managing your audit findings, don't simply focus on non-compliance

- Review your auditor's recommendations for Best Management Practices for Opportunities for Improvement.
- Review compliant findings to identify opportunities to increase efficiency, decrease waste, implement pollution prevention and reduce risk

Example

- Your audit finding for Toxics Release Inventory (TRI) was compliant as all reports had been submitted in a timely manner. Use the Tier 4 performance standard and identify which TRI chemicals are being reported and work with your suppliers to find material substitutes that do not contain a TRI chemical.

REPORT YOUR SUCCESSES

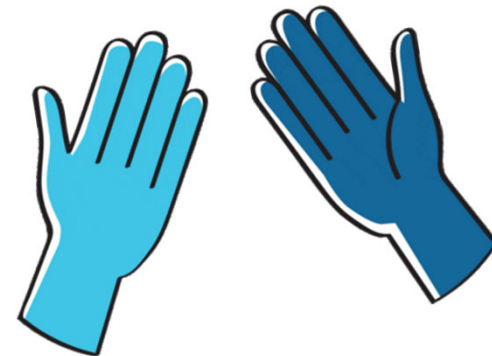
You've worked
hard and should
let others know!



Nothing breeds
success like
success!



Gain management
support for
future activities!



Questions?

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