

The Cost of Environmental Compliance – Responding to Inspections

Presented by
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to

NTAEP

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Summary

- I. The Cost of Environmental Compliance
- II. How to Handle an Inspection
- III. Being Proactive – Internal Audits

The Cost of Compliance



The Cost of Compliance



▶ Federal

◦ CWA

- Up to \$35k per day civil
- Up to 250,000 per day criminal or up to 15 yrs in prison for individuals or up to \$1 mil for company

◦ SWDA

- Up to \$35k per day civil
- Up to \$50,000 per day criminal or up to 5 yrs prison;

▶ Texas

- \$25,000 per day per violation
- Criminal Penalties

The Cost of Compliance

▶ EPA FY2023

- 1,791 enforcement cases completed (highest since FY 2018)
- \$167 million in penalties
- \$13 million for 44 supplemental environmental projects



▶ TCEQ FY2023

- 108,000 inspections
- \$8.4 million in penalties
- \$3.6 million for 144 supplemental environmental projects

The Cost of Compliance

- ▶ **Factors Considered When Assessing Penalties**
 - Gravity of Violation
 - Cooperation
 - History of Compliance
 - Good Faith Efforts to Comply/Correct
 - Economic Benefit

The Cost of Compliance

▶ Supplemental Environmental Projects

- Up to 75% of penalty
- State and Federal penalties
 - Texas – pre-approved projects
 - EPA – define your own project
- Nexus to Violation

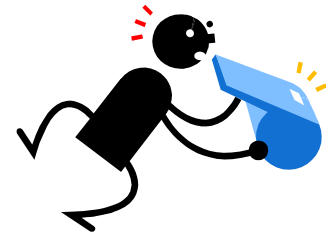


Responding to Inspections



Responding to Inspections

- ▶ What drives inspections?
 - Disgruntled employees/ex-employees
 - Neighbor complaints
 - Competitor complaints
 - Chance (announced)



Responding to Inspections

- ▶ Always be Prepared
 - Organized Files
 - Document Retention Policy
 - Privileged Documents Separate and Labeled
 - Point of Contact
 - Inspection Procedures



Responding to Inspections

- Keep an Inspection Kit
 - Camera
 - Clipboard with paper
 - Sample collection containers
 - Blank Chain of Custody Sheets
 - List of Phone Numbers
 - ✓ Corporate Office
 - ✓ Legal Counsel



Responding to Inspections

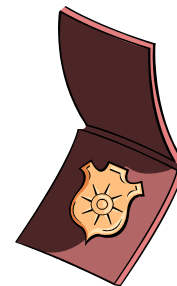
- ▶ When they arrive:
 - Put them in a conference room
 - Find company contact
 - Ask for identification
 - Determine scope
 - Reason for inspection
- ▶ Next steps:
 - Safety orientation
 - Where do they want to go?



Responding to Inspections

▶ Criminal Investigations

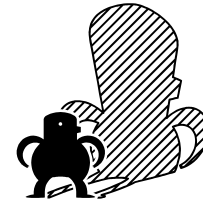
- Call legal counsel
- Cooperate unless otherwise instructed by counsel
- If they have a search warrant
 - Timing
 - Scope
 - Receipt of items taken



Responding to Inspections

▶ During the Inspection

- Escort them at ALL times
- Photo what they photo
- Sample what they sample
- Document where they go and what they do
- Direct all questions to company escort



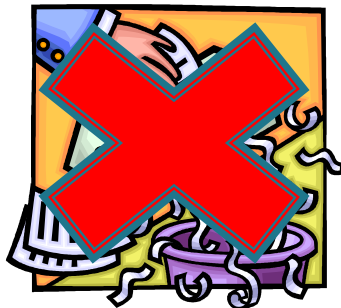
Responding to Inspections

▶ Answering Questions

1. Tell the truth
2. Answer the Inspector's Questions
3. Don't speculate
4. If in doubt, see #1 & #3

Responding to Inspections

- ▶ Providing Documents
 - Keep a log of what is taken
 - Is anything confidential/trade secret?
 - Offer to copy and send later
 - (Don't forget to follow through)



Responding to Inspections



- ▶ Concluding the Inspection
 - Ask for a closing conference/exit interview
 - Did they see any problems?
 - Correct while inspector is there, if possible
 - Citation expected?
 - Request copy of inspector's report

Responding to Inspections

- ▶ After the Inspection
 - Send in any samples
 - Verbally notify corporate of outcome
 - Summarize facts in writing
 - Follow-up with any info requested during the inspection

Responding to Inspections

▶ Top 5 Things Not to Do

- 1) Make them get a search warrant
- 2) Destroy evidence
- 3) Belittle the inspectors
- 4) Leave them alone
- 5) Volunteer information



Minimizing the Cost of Compliance

- ▶ Get Ahead of the Game
 - Recordkeeping
 - Training
 - Organized Files
 - Calendar

Minimizing the Cost of Compliance

▶ Self-Audits

- EPA Self-Disclosure Policy
 - Discovered During an Audit
- Texas Audit Privilege Act
 - Prior Notice to TCEQ
 - Audit Document is Privileged
 - Immunity When Disclosed if Timely Corrected
- Programs in at Least 26 Other States
- Not for Criminal Violations

Conclusions

- ▶ Be Proactive
- ▶ Be Organized
- ▶ Don't Panic

Questions??

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