

AUTHORED ARTICLES & PUBLICATIONS | APR 19, 2016

Best in Law: Get Out in Front on Possible Environmental Violations

Businesses Will Find That Honesty Is the Best Policy, Writes BB&K Partner Danielle Sakai in the *Press-Enterprise*



By Danielle Sakai

It's no secret that businesses must run a gauntlet of federal, state and local environmental regulations in order to successfully operate in California.

But the hardest test may be when a business suspects that it may be in violation of one of the many applicable environmental regulations. The first reaction may be to rely on the old adage that "ignorance is bliss" and not take any action in the hopes that it will simply go away.

Actually, a different rule should prevail when dealing with environmental regulators: honesty is the best policy.

If there is a potential environmental issue or regulatory violation, it may ultimately be a better financial decision for the business to investigate the environmental issue and proactively report it to the appropriate regulatory agency.

Obviously, when a major accident has occurred and there is clear risk to human health and the environment, emergency measures must be taken and first responders will notify the environmental regulators.

However, when a violation has occurred on a much smaller scale, or when there is not a significant risk to human health and the environment, the natural reaction may be to take the chance that the regulators will not do an inspection or an audit and will never find out. After all, the percentages of businesses that are inspected and/or audited are low.

Nevertheless, it is a better practice to consult with legal counsel and environmental consultants immediately, as well as consider voluntarily reporting the violation to the appropriate regulatory agency.

People



Danielle G. Sakai

CHIEF TALENT OFFICER

(951) 826-8328

Related Practices

[Business](#)

[Environmental Law & Natural Resources](#)

[Hazardous Waste](#)

Related Industries

[Business](#)

The reason to consider self-reporting is that if the regulators discover the environmental violation through an inspection or an audit, that violation will likely come with a hefty price tag. Violations of certain federal environmental regulations allow for the assessment of penalties as high as \$25,000 per violation, which can be assessed daily. It is not uncommon for civil penalties to exceed \$100,000.

For the past two decades, the U.S. Environmental Protection Agency has been encouraging self-disclosure of violations of environmental laws through its policy called Incentives for Self-Policing: Discovery, Disclosure, Correction and Prevention of Violations. The California Environmental Protection Agency adopted a similar guidance document in 2003 that also identified incentives for voluntary disclosure.

The federal EPA policy provides several important incentives for self-disclosure, including: reduction of “gravity-based penalties,” which reflect the egregiousness of the violator’s behavior and constitute a punitive portion of the penalty; recommendation against pursuing criminal enforcement; and not requesting copies of audit reports prepared by the business.

The policy has been successfully implemented in California. The EPA has waived potential penalties ranging from \$8,700 to \$459,000 for dozens of companies that satisfied all of the conditions of the EPA self-disclosure policies and had no economic-benefit gains.

Under the federal EPA’s small business compliance policy, the EPA also can eliminate or significantly reduce penalties for businesses with fewer than 100 employees that voluntarily discover violations of environmental laws and promptly disclose and correct them.

Additionally, the federal EPA has incentives for new owners of businesses to encourage them to look closely at compliance issues at their recently acquired facilities, self-disclose and fix environmental problems they find. These incentives include penalty mitigation beyond those available to existing owners and include additional categories of violations.

If it is known or suspected that there has been a potential violation of an environmental law, time is of the essence, as a business has 21 days from the discovery to disclose the violation in writing to the federal EPA. Take action immediately. Consult a lawyer, discuss self-reporting and avoid paying penalties that would be better off going toward the bottom line.

** This article first appeared in [The Press-Enterprise](#) on April 17, 2016
Republished with permission.*

