

# How to Set Up An Early Warning System for Your Own Protection

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If you are the person who is responsible for your company's environmental management program, you carry certain personal liability. For example, if EPA were to find out or suspect that someone within your organization has falsified your Discharge Monitoring Report (DMR) under the Clean Water Act, who do you think will be the first person the agency wants to interview? What will be your response to the enquiry? What will you say to the FBI agents?

To minimize your own personal liability, it is important for you to understand all the requirements and the enforcement process.

Try to look at enforcement from the agency's viewpoint. In other words, understand how the agencies select their targets. And remember that your response to the agencies will often determine their responses to you. This is particularly true in the case of agency inspection. Always cooperate with the agencies while protecting your rights. A good place to start is to have a set of clearly defined environmental procedures so that your employees know how to behave before, during and after an agency inspection. They also need to understand how to manage their records.

Understand that as an environmental manager, you do have certain specific responsibilities and the agencies expect you to carry them out lawfully.

If you are negligent in your duties and something bad happens, you may be held personally accountable. Let's say you have personal knowledge that an aboveground storage tank storing some very hazardous chemical has some structural instability problems. The base of the tank is showing signs of severe corrosion. When that tank collapses a few weeks later and fatalities or severe environmental damage occur, the agency will want to know why you fail to take action. The agency will want to know if anyone within your organization directed you not to take action or perhaps you have decided upon yourself to keep this known defect secret. You may be held liable as a result of the investigation.

If someone has falsified your DMR, the agency will want to know how that happened under your watch since you are the person responsible for the

company's environmental program. They will want to know if you played a role – directly or indirectly – in the illegal act.

### **Early Warning System**

What you need to have is an Early Warning System to protect you.

The Early Warning System is very simple: As the environmental manager within your organization, you want to pay special attention to what your employees say and do when it comes to compliance issues. If someone within your organization – especially someone at a more senior level than you are - makes some suggestions to you that you know to be in violation of some environmental regulations, it is your responsibility to voice your objections forcefully and immediately. Let those around you know that you will not be party to any kind of “conspiracy” to commit an environmental crime. Let your supervisor know immediately. If your supervisor is the person suggesting such illegal activities, work your way up the organization until you find someone who will listen to you and will take action. Alert your organization's legal counsel and make sure you have documented proof (with date and time) that you have raised such objections.

Remember this: your silence can often be taken to mean acquiescence.

Pay close attention to emails and memo that come across your desk. If you see any evidence of diversion from compliance, you need to stop the illegal thinking process immediately and steer the ship back to the right course.

Ignore those people within your organization who tell you that you are “rocking the boat” or not being a “good team player” by being vigilant. These people are wrong and they do not have your best interests at heart.



One final piece of advice: When it comes to environmental compliance in the corporate setting, NEVER go along to get along. That is a recipe for disaster.

Here is an example from EPA's website: “A *plant manager at a metal finishing company directs employees to bypass the facility's wastewater treatment unit in order to avoid having to purchase the chemicals that are needed to run the wastewater treatment unit. In so doing, the company sends untreated wastewater directly to the sewer system in violation of the permit issued by the municipal sewer authority. The plant manager is guilty of a criminal violation of the Clean Water Act.*” If you are the environmental manager and you go along with this plant manager's decision, you will very likely be prosecuted as well.



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