



ENVIRONMENTAL ENFORCEMENT ACTIONS AS OPPORTUNITIES TO IMPROVE COMPLIANCE

by [Bridget L. Dorfman](#) –Manko, Gold, Katcher & Fox, LLP

An [enforcement action](#) by a federal, state, or local agency that seeks to address alleged environmental violations is never welcome. In some cases, work must stop. If violations are alleged, generally legal counsel must become involved to either negotiate a reasonable settlement or challenge the enforcement action.

Companies of financial size and strength make attractive targets for governmental enforcement, partly because the government can get bigger compliance gains by making an example out of the alleged violator. In fact, the U.S. Environmental Protection Agency describes, at times, its enforcement agenda as specifically targeting the larger companies in a given industry specifically for the press such enforcement actions will receive. By issuing press releases to publicize these enforcement actions, the government puts the rest of the industry on notice to assess and correct its own compliance status under the regulatory scheme.

One well-known example is Wal-Mart's entry into a Consent Decree with the federal government in 2001 for violations of storm water requirements during construction of its stores, pursuant to which Wal-Mart was assessed a \$1 million civil penalty and agreed to certain injunctive relief. Wal-Mart subsequently entered into another [Consent Decree with the federal government in 2004](#), again for storm water violations, and was assessed a \$3.1 million civil penalty. Enforcement actions of this magnitude and the repeat attention paid to Wal-Mart [made the rest of the real estate development construction industry take notice](#) and implement steps to avoid finding themselves in an enforcement situation. The federal government issued a very [detailed fact sheet on this settlement](#), describing the measures that were required of Wal-Mart to comply with the Consent Decree.

Nevertheless, the complexity of environmental regulations and the difficulty of maintaining total compliance at all times mean that your company may become the subject of an environmental enforcement action. Although this is a regrettable situation, sophisticated companies also realize that an enforcement action presents an opportunity to better understand applicable regulatory requirements, avoid future enforcement actions, and even (assuming the enforcement action is resolved with some tact) build an improved relationship with the regulatory agency, which is useful if compliance questions or permitting needs arise in the future. Furthermore, when a company responds proactively to an

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enforcement action by making changes to its environmental management practices – perhaps by improving its employee training, recordkeeping, or reporting procedures – the regulatory agency will likely be more amenable to a reduction in the civil penalty.

In closing, in-house counsel would be wise to keep abreast of environmental enforcement actions that affect their industry and then learn from them by effectuating changes to improve their company's environmental compliance. In-house counsel can stay up to date most readily by monitoring the [enforcement press releases](#) issued by federal and state regulatory agencies, as well as the advisories issued by industry and trade groups. Effecting on-the-ground changes and improvements to environmental practices may be difficult, but is preferable to making six- or seven-figure civil penalty payments, issuing disclosures to shareholders regarding compliance problems, or fielding press inquiries about alleged violations. By making continued environmental compliance a matter of company policy, your company can greatly reduce the risk of facing an environmental enforcement action and can avoid the enforcement difficulties faced by competitors.

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