

“Knock, Knock . . . Who’s There?”

A Primer on Preparing for Regulatory Inspections,
Subpoenas and Search Warrants

Peter C. Anderson

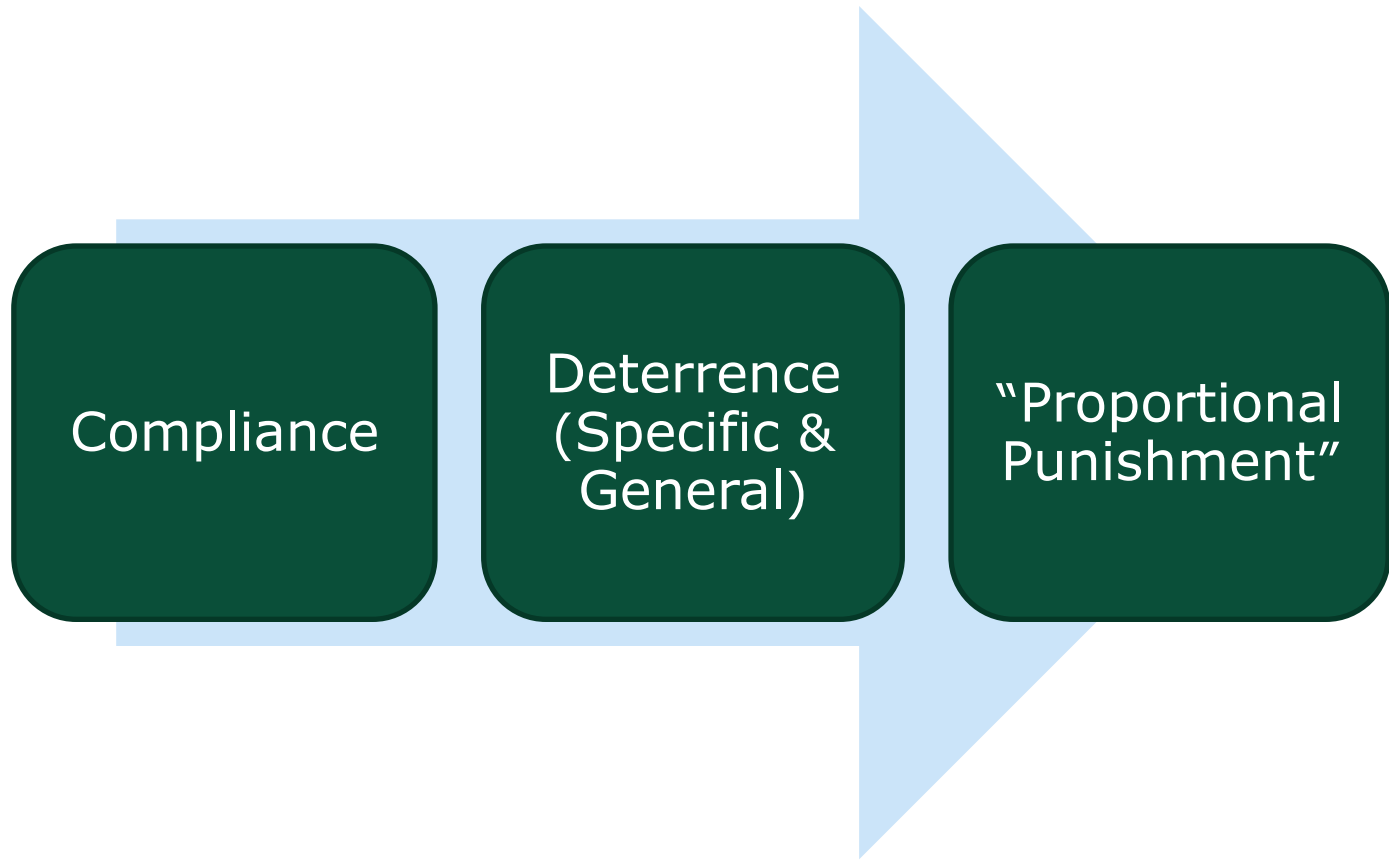
ACC Environmental Legal Quick Hit
May 14, 2015



Overview of Presentation Topics

- Corporate Risks – Broadly Defined
- Pillars of Effective Compliance:
 - Prevent / Detect / Respond
- Understanding the Enforcement Mindset
- “Enforcement-Readiness” for 3 Key Events:
 - Checklists for:
 - Regulatory Inspections
 - Subpoenas
 - Search Warrants
 - Review the “Parade of Horribles” if Ignored

Understanding the Government's Enforcement Mindset & Goals



Staircase of Trust



Government Investigative Tools

- Common Threads
 - Fact-Gathering
 - See the “Attitude”
 - Opportunity to Show Good Corporate Citizenship or “Culture”
- Differences
 - Escalation
 - Timing
 - Trust
 - Temperature (aka “how hot is the water?”)

Regulatory Inspections

- A Fact of Life or A “Necessary Evil”
- “Repeat Player” Phenomenon
- Who is assigned to manage your regulatory relationships?
 - Importance?
 - Analogy to Difficult Customers
 - Personality Traits & Skill Sets
 - Process & Training

Subpoenas

AO 110 (Rev. 06/09) Subpoena to Testify Before a Grand Jury

UNITED STATES DISTRICT COURT
for the
Eastern District of North Carolina
SUBPOENA TO TESTIFY BEFORE A GRAND JURY

To: Serie Chernikov
c/o Lacy Presnell, Office of General Counsel

YOU ARE COMMANDED to appear in this United States district court at the time, date, and place shown below to testify before the court's grand jury. When you arrive, you must remain at the court until the judge or a court officer allows you to leave.

REQUEST FOR PERSON AND DOCUMENTS

Place: United States District Court, Eastern District of North Carolina Terry Sanford Federal Building 310 New Bern Avenue, Raleigh, North Carolina 27601	Date and Time: March 18-20, 2014 at 9:00am
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You must also bring with you the following documents, electronically stored information, or objects (*blank if not applicable*):

SEE ATTACHMENT

The appearance commanded by this document is a continuing obligation during the course of this proceeding. To avoid being away unnecessarily, please call my Legal Assistant, Julie King at (919) 856-4002 or toll free at 1-800-538-1564, for any assistance you may need.

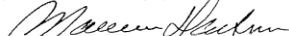
This information is requested pursuant to an official criminal investigation being conducted by a Federal Grand Jury. You are requested to not disclose the existence of this request. Any such disclosure could impede the investigation and interfere with the enforcement of federal law, in violation of Title 18, United States Code, Section 1510.

Date: February 11, 2014

CLERK OF COURT

Julie A. Richards

Signature of Clerk or Deputy Clerk



The name, address, e-mail, and telephone number of the United States attorney, or assistant United States attorney, who requests this subpoena, are:

Banumathi Rangarajan, AUSA
U.S. Attorney's Office, EDNC
310 New Bern Avenue, Suite 800
Raleigh, North Carolina 27601
(919) 856-4530

USAO # 2014R00058-03



Subpoenas

2 types of subpoenas: **Documents** and
Testimony

- The Next Step Up the Enforcement Staircase
- Still Asking – Not Grabbing
- Increased Legal Risks
- Need for Training and Procedure for Response
- Keys are:
 - Documents Produced
 - Process Followed & Documented

Subpoenas

1st Step: Get it in the right hands ASAP

- Train “First Responders”
 - What is a subpoena?
 - How to ID?
 - How to Handle Immediately
 - Where to Send
- Train In-House Team
 - In-House Counsel
 - Other Corporate Team Members Who Will Assist
 - Different from Civil Subpoenas – Important to Understand
- Set Up & Memorialize Immediate “Litigation Hold”

Subpoenas

2nd Step: Carefully Review

- Deadline?
- Scope? (often based upon “definitions”)
 - Date Range
 - Types of Documents Sought (** Read the Clues **)
 - Do You Possess Any Responsive Documents?
 - Any Ambiguities?
 - Capable of Narrowing?
- Can You Comply or “Unduly Burdensome?”
 - Why?

Subpoenas

3rd Step: Call the Prosecutor & Communicate

- Listen Carefully -- Clues
- Ask Key Questions
 - Basis of Investigation?
 - Status of Company (and EE's) ?
(Witness/Subjects/Targets)
 - What Info Are They Willing to Share?
- Narrow Scope – Resolve Ambiguities
- Show “Document Hold”
- Extend Deadline (if necessary)
 - or Rolling Production
- Memorialize Conversation & Changes

Subpoenas

4th Step: Develop & Implement GJ Response Plan

- Assemble Internal Team
- Determine Where Might Responsive Documents Be Found?
 - Electronic
 - Hard-Copies
 - On-Site & Off-Site
- Who in Company Might Know?
- Document Process Followed (But Do Not Produce)
- Review Responsive Documents
- Review for Privilege
- Provide Robust Production with “Guiding” Cover Letter
- Keep Copies

Search Warrants

AD-20 (Rev. 6-85) Search Warrant

FILED
ASHEVILLE, N.C.
12 APR 10 PM 12:38
U.S. DISTRICT COURT
W. DIST. OF N.C.

United States District Court
Western DISTRICT OF North Carolina

In the Matter of the Search of
(Name, address or brief description of person or property to be searched)
Steelcase Incorporated
Cane Creek Industrial Park
Fletcher, North Carolina

SEARCH WARRANT
CASE NUMBER: 92-07511

TO: Special Agent Thomas A. Burleson and any Authorized Officer of the United States

Affidavit(s) having been made before me by Special Agent Thomas A. Burleson who has reason to believe that on the person of or on the premises known as (name, description and/or location)
Steelcase Incorporated
Cane Creek Industrial Park
Fletcher, North Carolina

In the Western District of North Carolina there is now concealed a certain person or property, namely: (describe the person or property)

See attached affidavit

I am satisfied that the affidavit(s) and any recorded testimony establish probable cause to believe that the person or property so described is now concealed on the person or premises above-described and establish grounds for the issuance of this warrant.

YOU ARE HEREBY COMMANDED to search on or before ten days from this date

(not to exceed 10 days) the person or place named above for the person, or property specified, serving this warrant and making the search (in the daytime — 6:00 A.M. to 10:00 P.M.) ~~(at any time in the day or night so long as reasonable cause has been established)~~ and if the person or property be found there to seize same, leaving a copy of this warrant and receipt for the person or property taken, and prepare a written inventory of the person or property seized and promptly return this warrant to J. Tolliver Davis, U.S. Magistrate
as required by law. Furthermore, the FBI may take onto Steelcase Property those USEPA, NCSBI Special Agents and those North Carolina DEM personnel and their agents deemed necessary to examine the facility and take samples. Additionally, the FBI and those individuals are permitted to enter and leave said premises as often as the FBI deems necessary to complete this search, not to exceed two days.

April 8, 1992 - 2:25 P.M. at Asheville, North Carolina
Date and Time Issued City and State

J. TOLLIVER DAVIS, U.S. MAGISTRATE JUDGE
Name and Title of Judicial Officer

J. Tolliver Davis
Signature of Judicial Officer



Search Warrants

- Here: They Are Grabbing – Not Asking
- Indicates Lack of Trust
- Enforcement Waters Have Heated Up
- Near the Top of the Enforcement Staircase
- Need for Training and Procedure for Response
- Company Goals Are:
 - Get Agents In & Out ASAP
 - With Minimum Disruption to Company
 - Protect Legal Interests of Co & EE's
 - Manage Internal Angst
 - Convey "Good Corporate" Image
 - Prevent Stressful "Cowboy" Reactions/Obstruction

Search Warrants

- 1st Step – First Responders
 - Request Credentials & Warrant
 - Contact In-House & Outside Counsel ASAP
 - Provide Agents with Copy of Company Memo
 - See Separate Handout/Article
 - Assemble “SWAT” Team
 - Search Warrant Action Team
 - Who Have Been Trained re: Procedures

Search Warrants

- 2nd Step – Review Warrant & Meet/Plan
 - Review Warrant for Scope
 - Provide Org. Chart and Physical Layout to ID areas for records/documents/computers
 - Discuss Plan for Search (if Agents Are Willing to Listen)

Search Warrants

- 3rd Step – Alert Employees & Prep for Media
 - Reduce Stress Level
 - Both Statements Should:
 - Acknowledge Search
 - Company Does Not Believe Search Was Necessary – Would Have Assisted Voluntarily
 - Emphasize Early Stage of Investigation
 - Company is Fully Cooperating with Authorities
 - Highlight Company’s Strong Compliance History
 - If accurate
 - Inappropriate to Comment Further
 - Channel All Questions to Company Contact Person

Search Warrants

- 3rd Step – Alert Employees
 - For Employees – Additional Points:
 - Alert them to their Rights
 - Employee Rights:
 - Can Speak with Agents
 - Or Can Choose Not to Speak with Them
 - Or Can Speak with Them in Presence of an Attorney
 - Either Company Lawyer
 - Or Separate Lawyer
 - Strategy Call: Send Employees Home
 - But Explain to Agents to Avoid Appearance of Obstruction

Search Warrants

- 4th Step – Accompany Agents & Monitor Search
 - Look For Clues
 - What Type of Documents Are Seized (or are of interest)
 - Avoid Even Appearance of Obstruction/Interference
 - Maintain Professionalism
 - Request Search Warrant Inventory & Return of Documents (Prioritize)
 - Seek to Unseal SW Affidavit
 - Speak with Federal Prosecutor

Search Warrants

- 5th Step – Post Search Activities
 - Assemble SWAT Team to Compare Notes
 - Debrief Employees Who May Have Been Interviewed
 - Request Return of Documents (Prioritize)
 - Seek to Unseal SW Affidavit
 - Speak with Federal Prosecutor re: Status
 - Initiate Internal Investigation to Catch Up

“Parade of Horribles” (aka - Mistakes to Avoid)

Inspections

- Dysfunctional Relationship with Regulators
 - Bad “spokesperson”
- Failure to Follow-up with Requests or Improvements (or Significant Delays)
- Repeated Violations
- History of Past Violations/Fines
- Negative / Disrespectful Attitude
- Deficient Compliance Program
- Poor Housekeeping
- Sloppy Record-keeping

Subpoenas

- Slow Response
- Incomplete
- Inaccurate/False Information Provided
- No Documentation of Process Followed & Personnel Involved
- Failure to Keep Copies of What Was Provided
- Waiver of Privilege
- No Open Communication with Prosecutor
- Untimely or “Bare-Boned” Production
- Low Credibility

Search Warrants

- Cowboy Mentality
- Consent to Expand Search
- Failure to Fully Monitor Search
- Waiver of Privilege
- Failure to Calm Down Employees
- Failure to Address Media
- Obstruction or Appearance of Obstruction
- Failure to Initiate Internal Investigation

Takeaways

- “Enforcement Readiness” is Critical Part of Overall Environmental Compliance Program
- Can’t Do It On the Fly
 - Prepare, Train & Test in Advance
- Earn & Demonstrate Good Corporate Citizenship At Each Phase
- Positively Influence the Regulator’s Broad Enforcement Discretion

Questions & Comments



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Principal

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- Leader of Firm's White Collar/Compliance Group
- Former Federal Prosecutor
- Board Certified in Corporate Compliance