

# “Say What You Do, and Do What You Say:” Accuracy & Process in Environmental Disclosures and Performance Reporting

ACC – Environmental “Quick Hit”

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# Overview of Presentation

- Overview of Recent Trends relating to Disclosure & Reporting
- Types of Reporting
- Opportunities & Risks
- Common Themes
- General Recommendations

# Recent Trends



# Recent Trends

## More Disclosure

- Mandatory/Statutory
- Voluntary/Discretionary
  - Satisfy Stakeholder Expectations
  - Industry Trends / Competitive Forces

## Still No Rigid Standards or Requirements

- Develop Your Own – But Stick To Them. . .



# Sources & Types of Reporting

**Self-Disclosure &  
Voluntary Reporting**

- Incident-Based

**Certifications**

- Permit-Based

**Sustainability / Corporate  
Social Responsibility**

- Annual Reports



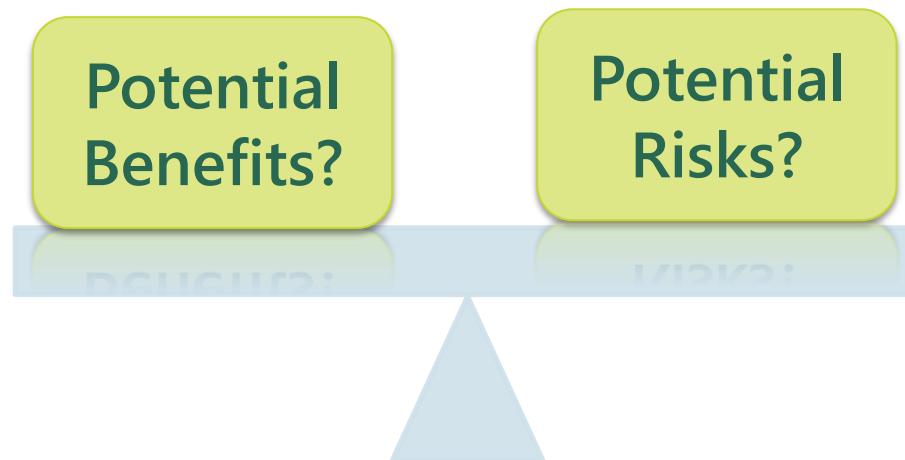
## Issue 1: Self-Disclosure & Voluntary Reporting

# Self-Disclosure & Voluntary Reporting

## Policy Incentives/Rewards

- EPA Audit Policy

## Balancing Act



# Self-Disclosure & Voluntary Reporting

## Common Strategic Options

- Pre-Committed Mandate: “Disclose All”
- **or**
- Case-By-Base Assessment: “It Depends”



# Self-Disclosure & Voluntary Reporting

## “Case-By-Case” Calculus/Factors:

- Likelihood of Agency Discovery?
- Consequences/Punishment . . . When, or If, Discovered?
- Benefits of Early/Self-Disclosure?

# Self-Disclosure & Voluntary Reporting – Regardless of Decision

- **Manage Expectations**
- **Be Prepared to Live with Decision**
- **Get Consensus for Decision**
  - **No Internal Second-Guessing or “Finger-Pointing”**

# Self-Disclosure & Voluntary Reporting – If Disclosed . . .



# Self-Disclosure & Voluntary Reporting – If Disclosed. . . .

- Timely ?
- Truthful / Accurate / Complete?
- Document the Process Followed in Gathering Information
- Supporting Documentation / Corroboration?

# Self-Disclosure & Voluntary Reporting – If Disclosed . . . .

Get Adequate “Coverage”



# Self-Disclosure & Voluntary Reporting – If Disclosed. . . .

- Plan for Robust Compliance Review & Report
- Key is to gain confidence of regulators
  - Do they perceive you as “self-regulating?”
  - If so – No Need for them to step in & take over
- If you avoid any concerns – you risk more follow-up questions and heightened scrutiny

# Self-Disclosure & Voluntary Reporting – If NOT Disclosed. . .

- If Not Disclosed. . . Have a Plan when/if Agency Discovers
- Partially Soften the Blow. . .
  - Show Self-Detection, “Root Cause” & Self-Correction
  - Be Prepared to Explain Decision Not to Disclose



**In the Immortal Words of that Great  
Environmental Regulator...**





Trust...  
But Verify!!



**Issue 2:**  
**Permit & Program Certifications**



# Permit & Program Certifications

- Role & Importance
- Information Submitted to Government
- Agency Reliance - “the honor system”
- Efficiency
- Trust - “Can Your Company Be Trusted?”
- Paper Trail. . . Just in Case

# Certifications

## Permit & Program Certifications

- CAA / Title V / GHG
- CWA / DMR
- RCRA
- EPCRA



# Other Certifications



- Importation/ESA
- Conflict Minerals (SEC)
- Others?

# Certifications

## General Sample Language/Elements:

- “I certify. . .
- based upon information and belief formed. . .
- after reasonable inquiry. . .
- the statements and information are true, accurate and complete.”

# Certifications

## More Detailed Language/Elements:

- “I certify under penalty of law. . .
- That this document and all attachments. . .
- Were prepared under my direction/supervision. .
- In accordance with a system designed to assure that qualified personnel properly gather and the information submitted. . .”

# Certifications

## More Detailed Language/Elements (Cont'd):

- “Based on my inquiry of the person who managed the system . . .
- The information submitted is, to the best of my knowledge and belief, true, accurate and complete .
- I am aware that there are significant penalties for submitting false information, including the possibility of fines and imprisonment for knowing violations.”



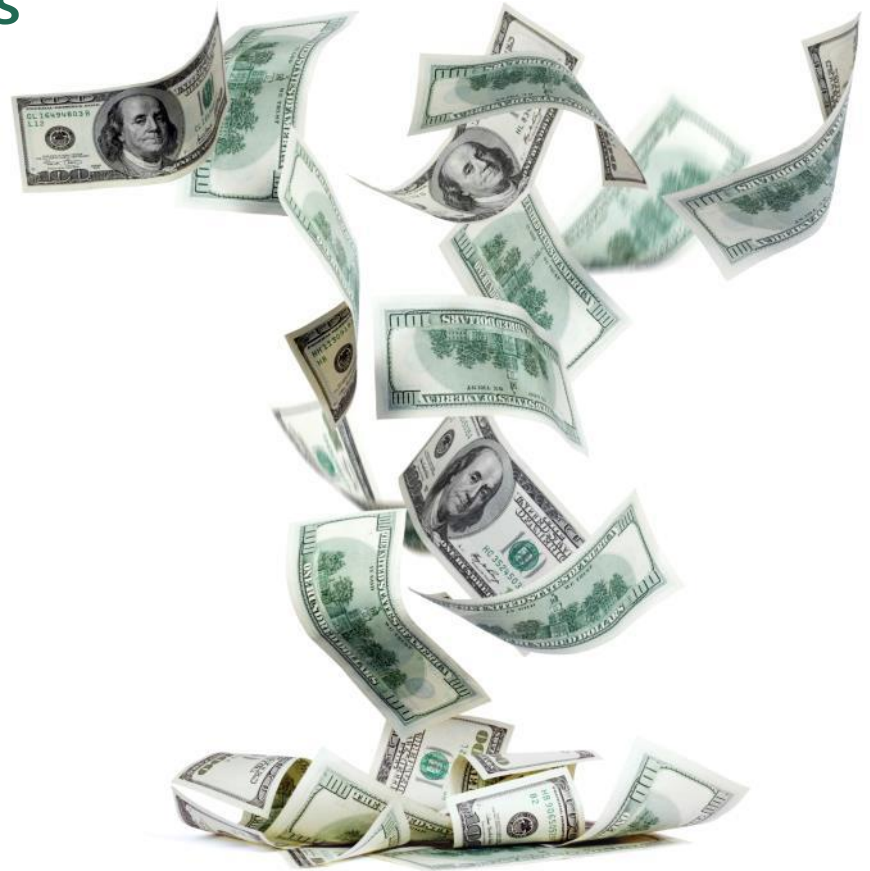
# Consequences for False Certifications

## Administrative/Civil Penalties

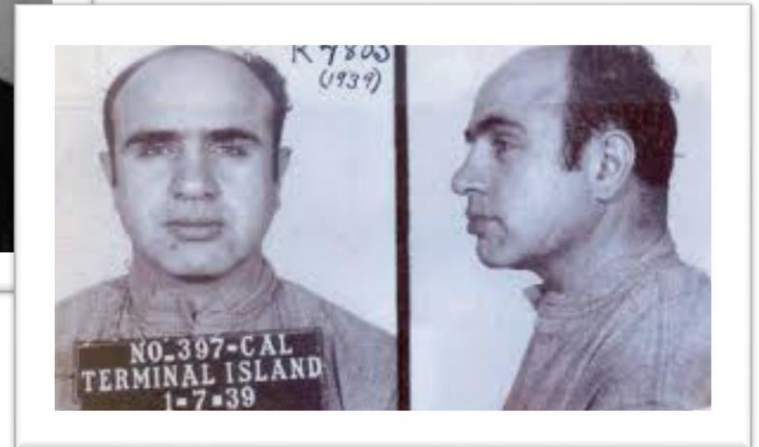
- \$37,500 / day

## Criminal

- \$250K/person
- \$500K/companies
- Up to 2 years in prison



# Remember . . .



# Examples of False Certifications

## *U.S. v. Columbus Steel Castings (S.D. Ohio)*

False CAA Title V annual compliance certifications; \$660K fine.

## *U.S. v. Team Industrial Services (N.D. Tex.)*

False emissions reporting: \$200K fine.

## *U.S. v. Christian (E.D. Wash)*

False DMRs under CWA.

# Examples of False Certifications

- Checkout U.S. EPA Criminal Database
- Hundreds of Other Environmental Prosecutions Involving “Process” or “False Reporting” Crimes
- Targets: Companies & Individuals



## Issue 3: Sustainability/CSR Reports

# Sustainability/CSR Reports

## What Are They?

- Non-financial reports, published by a company/organization, about the *economic*, *environmental*, and *social* impacts caused by its activities/operations.
- Multiple Uses:
  - Risk Assessment
  - Public Relations / Reputational
  - Strategic
  - Change Management

# Sustainability/CSR Reports

- Recent Trends
- Voluntary, not regulatory/mandated
- Why prepare the reports?
  - Opportunities?
  - Risks?

# Sustainability/CSR Reports

## Analogies to Financial Reporting

- Similarities?
- Differences?

## Other analogies

- FTC Green Marketing Guides
  - Substantiation Requirements



# Sustainability/CSR Reports

Content	What is being reported?
Process	Who/what basis?
Credibility	Reliable? Accurate?
Uses	Who is relying on them? For what purpose? <ul style="list-style-type: none"><li>• Investors?</li><li>• Regulators?</li><li>• Others?</li></ul>



# Opportunities

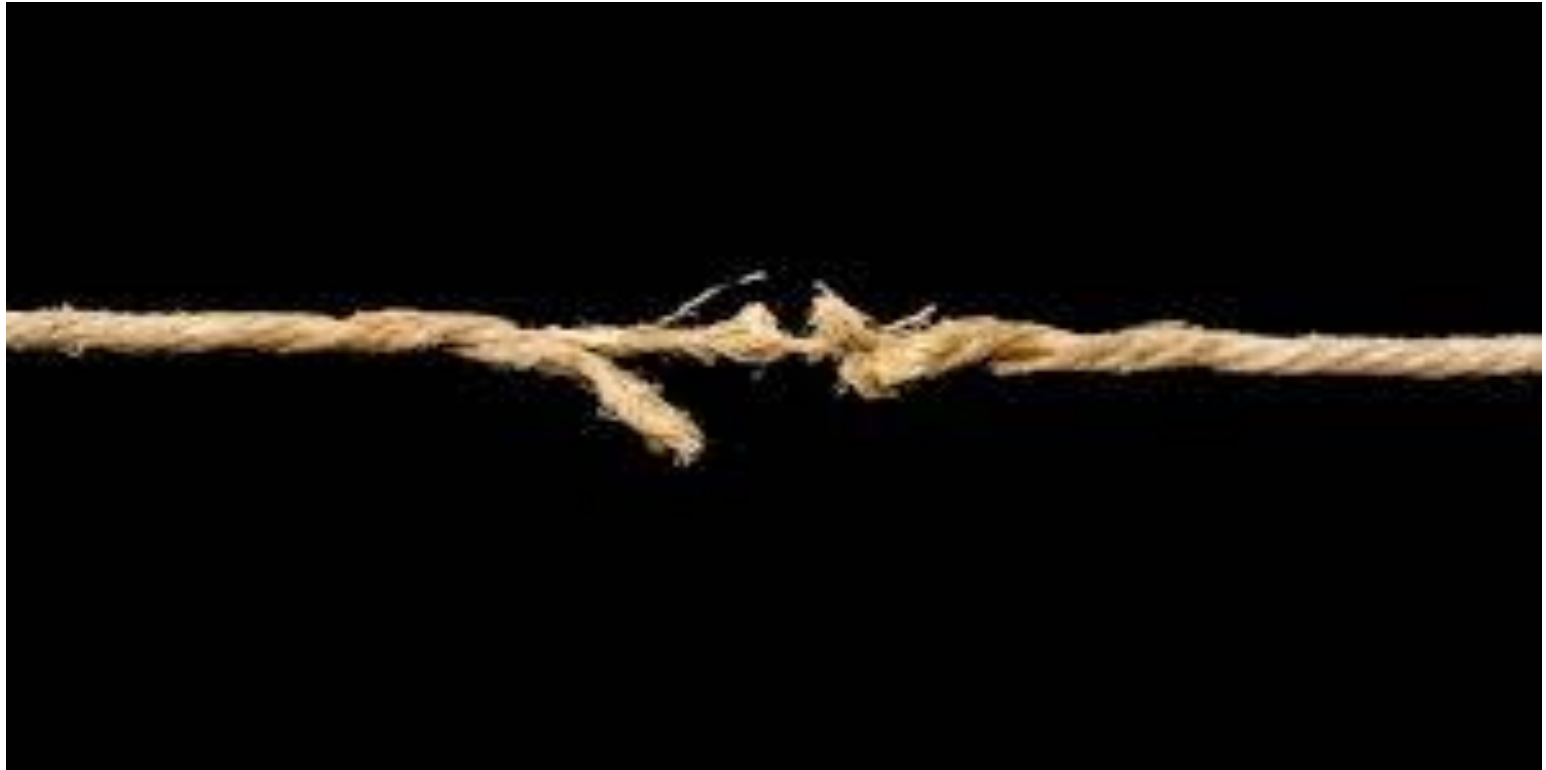
- Further Enhance Reputation & Brand
- Demonstrate Corporate Values
  - What you “say”
  - What you “do”  
(Fund/Measure/Incentivize)
- Increase Awareness & Get More Return on Your “Good Corporate Citizen Investments”

# Sustainability/CSR

- Verification / Independent Assurance
- Sustainability Reporting Guidelines Global Reporting Initiative ("GRI") – [www.globalreporting.org](http://www.globalreporting.org))



# What Could Possibly Go Wrong?



# Dual Risks of “Gaffs”

Legal & Reputational



# What Could Possibly Go Wrong?

**“It takes 20 years to build a reputation,  
and 5 minutes to ruin it.”**

**-- Warren Buffet**

# Common Themes

“Can Your Company Be Trusted?”

Information: Truthful/Accurate/Complete?

Opportunities & Risks

# Common Themes

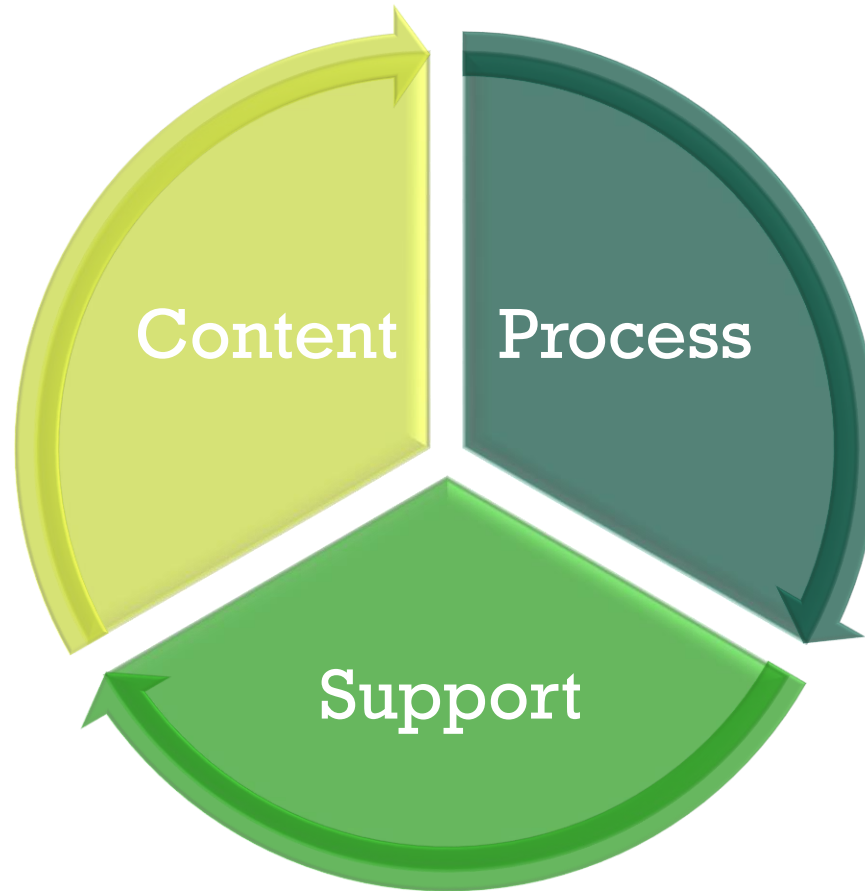
Self-Governance

Accountability

Transparency



# Common Themes



# General Recommendations

## All Disclosures & Reporting

- ✓ Develop Process/Methodology & Metrics
- ✓ Seek Consensus on Both
- ✓ Gather & Retain Support/Documentation
- ✓ Review Content . . . Objectively & Critically

# Questions?



Thanks for attending.

Feel free to call for any follow-up.

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