

“The Swords”

- Substantial Risk of Death or Serious Bodily Injury (“Knowing Endangerment”)
- Significant Environmental Harm
 - Actual
 - Potential
- Foreseeability of the “Incident”
- Hazardous/Toxic Wastes/Materials
- History of Non-Compliance / Serious Past Regulatory Violations
 - Acute Violations
 - Large Volumes
 - Long Duration
 - Chronic or “On-Going and Continuous” Violations
 - Clear/Unambiguous Regulations or Permit Terms
- Significant Clean-up Costs
- Economic Benefits Arising From Violations/Non-compliance
- Proof of Intent (vs. “Accidental”)
 - Degree: “Knowing” or “Negligent” (CWA)
 - Type:
 - Witness testimony/whistle-blower
 - Notices of Violations
 - Emails
 - Reports/Memos
- Corporate Culpability Booster
 - Level of Participation in Violations
 - Pervasiveness of Wrongdoing Within Company
- “Process” Crimes
 - Lies/Cover-up/Concealment
 - Perjury
 - False Statements
 - Permitting
 - Investigation
 - Obstruction
 - Document Destruction
 - Witness Intimidation

“The Shields”

- “Effective” Corporate Compliance Program
- Voluntary Disclosure of Violations
- Cooperation with Authorities
- Internal Investigation
 - Prompt Initiation
 - Credible & Transparent Process
 - Root Cause Analysis
 - Disclosure (?)
- Post-Violation Remedial Actions
 - Voluntary Clean-up
 - Termination of Bad Apple Employees
- Collateral Consequences of Violations (“Potential Overkill”)
- Adequacy of Civil/Regulatory Enforcement (“Proportional Enforcement”)
- Adequacy of Prosecuting Individuals (“Bad Apples” vs. “Bad Orchard”)
- Continuous Improvements in Compliance Program/Training

Beveridge & Diamond’s White Collar Crimes & Compliance Practice

Beveridge & Diamond routinely defends clients in administrative, civil and criminal enforcement actions brought by federal and state agencies. Our team includes, among others, a former federal environmental crimes prosecutor (who worked both as an Assistant U.S. Attorney and as a Trial Attorney in the U.S. Department of Justice’s Environmental Crimes Section); a former U.S. Environmental Protection Agency (“EPA”) General Counsel; a former EPA Assistant Administrator for Enforcement and Compliance Assurance; a former Internal Revenue Service Criminal Investigator; and a “cavalry” of lawyers with vast experience and regulatory depth.

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