How Should You Respond to EPA Information Requests? Very Carefully.


You’re looking through your mail one morning when you see it: a certified letter from EPA. The letter requests information about your company’s operations over the last 20 years. It includes paragraph-after-paragraph of information about EPA’s authority and the penalties that can be imposed if you don't comply. How do you respond?

EPA has broad authority under federal law to seek information from persons and companies to assist it in enforcing federal environmental laws. For example, CERCLA Section 104(e) allows EPA to obtain information that may link the person or company to a Superfund site. Many companies respond to the request without seeking advice from an attorney. That's a mistake, and an example indicates why.

ABC Company (not its real name) received a CERCLA Section 104(e) request from EPA. In its response, the company admitted that it sent waste to the site at issue, but “guessed” when it answered a question about how the waste was generated. Later, EPA used this information to determine the waste ABC sent was a listed hazardous waste. That meant the soil and groundwater at the site was itself a listed waste under the “contained in” rule, something that guaranteed any remediation of the site would be a very expensive proposition indeed. The only reason EPA made this determination was because the particular method of generation described by the company necessarily required the waste to be classified as a listed waste.

The company was wrong. The truth was that the waste was not generated in the manner described, and it wasn't a listed waste. In fact, because the waste did not exhibit a characteristic of hazardous waste, it wasn't a hazardous waste at all. After more than a year of effort, EPA was persuaded the company made a mistake. That saved the company from being required to pay significant cleanup costs.

The lesson here is that it is extremely important to be accurate in answering EPA’s questions. An environmental attorney could have recognized the fine distinctions the company needed to make in responding to EPA, but the company decided to "go it alone."

What happens if you answer an EPA information request and later determine that your answer was not
accurate? Should you tell EPA or keep silent? You know the answer, but another example proves that not everyone does.

A well-known company received an information request from EPA asking whether it sent hazardous substances to a site in Troy, Ohio that EPA recently had listed as a Superfund site. Soon after advising EPA that it had not, the company realized its response was inaccurate, but it did not inform EPA for nearly three years. EPA did not look kindly upon this and filed suit to recover penalties. The company settled the case by agreeing to pay $1.2 million. That amount was more than $1,000 for each day the company failed to provide the correct information.

Companies that receive an EPA information request should respond in a timely manner and with care. Accurate information is essential, and the wording of the response should be reviewed by an environmental attorney. The worst thing you can do is treat the request lightly.

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- Channing J. Martin – 804.420.6422 – cmartin@williamsmullen.com

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