

INSIGHTS

Monitor/Sidebar Crossover Part 2: I Am the One Who Knocks

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In the second of a two-part series on government investigations and inspections, Bracewell partners [Kevin Collins](#) and [Seth DuCharme](#) join Environmental Law Monitor host [Daniel Pope](#) for a discussion of what to do when the government is actually knocking on your front door.

What are some of the best things to do when an agency comes looking to inspect or when enforcement authorities come with guns to visit the facility? What are some of the things that non-lawyers need to be able to do and need to be confident about while they wait for support from in-house counsel or outside counsel?

Typically we would say don't volunteer information that you're not required to provide, but if there are true safety concerns about the physical space and you're accepting the authority that the agents represent, they have to come in. You should feel comfortable giving limited information that creates a safe environment for everyone. You can even ask for some direction from the agents or make yourself an assistant in helping them do whatever they have the authority to do safely. Beyond that, it's important to distinguish between record search authorities or searches pursuant to warrant for documents and things and then the rights you may have with respect to statements.

What are the best ways to push back on what you think are unjustified document requests that go beyond the scope of the agency's authority or the scope of their investigation?

Too many organizations are afraid to pick up the phone and call the agent or call the authority that sent you the document request. These are government workers who are not specialists in your field, whatever that field is, whether it's refining, chemicals, hazardous waste shipments, baseball, banking, whatever. They may pick up some vocabulary here and there depending on their tenure, but they are not specialists. So they're going to have asked you questions about things that they don't 100 percent understand. So, you should pick up the phone, talk to them and negotiate an extension because you can't get it done in 30 days. Tell them if you're willing to cooperate. Tell them you're willing to cooperate. Tell them you're interested in a rolling production. Then go through the hundred requests they've asked you and start to redefine things and rescope things.

So you don't want to provide the government with more information than it needs to conduct the information request that they've given you or over-provide information that's ultimately not relevant to the claims that they're seeking to investigate.

Correct. That's why experience on both sides is so critical. You've got to have somebody who can empathize with the government and figure out what they're really after and what they're thinking about. And you've got to have somebody who knows the client inside and out, knows the business operations, the commercial interests, their reputational interests, what the resources are to even undertake an effort if the demand is overly broad. So, you've really got to have somebody who knows both sides of the court.

Have questions about best practices for preparing for and responding to government investigations and inspections? Contact [Daniel Pope](#), [Kevin Collins](#) and [Seth DuCharme](#).

The opinions expressed in this podcast are those of the speakers and do not necessarily reflect the viewpoint of their institutions or clients.