

Oops! My client had a spill – what do I do now?!

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Anyone who has raised a child or represented a company in a regulated industry knows that accidents will happen. This article will address what should happen when a business regulated by one of the state's environmental agencies has a spill, release or upset that involves environmental contamination.^[1] The article will also address the attorney's responsibilities and considerations when the client fails to do the right thing to redress the accident.

The statutory and regulatory framework of state and federal environmental laws is designed to be self-policing. It requires honest and candid environmental permit applications, conscientious monitoring of environmental protection systems and procedures, and truthful reporting to authorities of releases or upsets, and permit deviations. At least that is how it is designed to work in order to prevent significant risk of harm to human health and/or the environment. Because concerns for the public welfare are the driving forces behind the environmental regulatory scheme, crimes can be committed and prosecuted as strict liability crimes, without any apparent *mens rea* or intent required.^[2] Thus, many environmental violations can occur by accident or simple neglect, and the difference between criminal prosecutions versus the imposition of civil or administrative penalties is often how the client and/or attorney respond.

It is important to note that the decision to bring a criminal prosecution, as opposed to a civil or administrative enforcement action, is one based on "prosecutorial discretion." In deciding whether to bring a criminal action, the prosecuting authority (e.g., Oklahoma Attorney General's Office, District Attorney's Office, or U.S. Attorney's Office) will generally consider

1. The significance of the actual or threatened harm;
2. Whether there was a failure to report an actual discharge, release or emission;
3. Whether the violation appears to be widespread in the industry requiring deployment of a stratagem of deterrence;
4. Whether the conduct was intentional or negligent;
5. Whether there is a history of past violations;
6. Whether there was concealment of misconduct or whether the violator self-reported;
7. Whether there was tampering with monitoring equipment; or 8) whether documents were falsified.^[3]



Similarly, the Oklahoma Department of Environmental Quality (DEQ) has established enforcement priorities and protocols in its Enforcement Standard Operating Procedures.^[4] Self-reporting of environmental violations can mitigate penalty assessments, and is thus an important consideration in DEQ's establishment of administrative or civil penalties or criminal prosecution.^[5] In determining the degree of penalty mitigation appropriate given an appropriately submitted self-disclosure, the DEQ will consider

1. Whether the regulated entity voluntarily, promptly and fully disclosed the failure to comply;
2. Whether the failure was deliberate or intentional;
3. Whether there was a lack of good faith on the regulated entity to understand or attempt to comply with environmental management regulations;
4. Whether the regulated entity took immediate and reasonable action to correct the failure; and
5. Whether the regulated entity cooperated with DEQ.^[6]

Oklahoma statutes also list a number of considerations that would allow for mitigation of enforcement penalties for environmental violations.^[7]

Owners and operators of facilities who apply for and receive permits for air emissions, water discharges, and solid and hazardous waste disposal are subject to state and federal laws (often implemented by the state through delegated programs) requiring record retention, monitoring requirements, and reporting obligations, including the duty to report extraordinary events like a spill or release.^[8] Non-permitted facilities may also have reporting requirements in the event of a spill or release of a pollutant.^[9] Administrative, civil, and criminal penalties exist for violations of these regulatory requirements.^[10]

REPORTING DISCHARGES AND SPILLS TO WATERS OF THE STATE

Not all Oklahoma statutes and regulations designed to protect waters of the state from pollution require a *mens rea* or unlawful intent element to criminalize the conduct.^[11] For instance, Title 27A O.S. §2-6-105(A) makes it unlawful for any person to cause pollution of any waters of the state and does not contain an intent requirement.^[12] DEQ regulations require that an owner or operator of a facility or vessel must report any spill or discharge to waters of the state,^[13] pursuant to the federal requirements at 40 CFR. Part 117, which lists a long list of hazardous substances from A to Z (acetaldehyde to zirconium tetrachloride).^[14] In addition to reporting the spill, an owner or operator must immediately act to stop, contain, clean up and prevent the recurrence of the spill or discharge.^[15] A violation of the reporting or cleanup requirement can result in administrative penalties of up to \$10,000 per day of violation or criminal prosecution for a misdemeanor, with a fine of up to \$10,000 per day and up to six months imprisonment, or both such fine and imprisonment.^[16]

REPORTING RELEASES OF HAZARDOUS WASTES

Releases of hazardous wastes, or releases of materials that become hazardous wastes due to spillage, leakage, or discharge to the land, or to the air, or to surface or groundwater – above reportable quantities, or in excess of the limits of a discharge permit, and which could threaten human health or the environment — must be reported, to the DEQ and/or other authorities (e.g., the National Response Center) immediately consistent with applicable requirements.^[17] Steps must also be taken to contain or

mitigate the harmful effects of the release.[18] The failure to report a reportable spill can result in administrative suspension or revocation of operating permits or licenses and civil penalties of up to \$25,000 per day.[19] Criminal fines of up to \$25,000 and imprisonment of up to six months, or both, for each day or part of a day during which the violation is continued or repeated, can be assessed upon the misdemeanor conviction of failing to report.[20]

Note that the reporting requirement for spills or discharges of hazardous wastes is on the “owner” and “operator.” However, to the extent that failing to make a report could be treated as “concealment,” an undefined term in the criminal statute, arguably “any person” who knows of the spill and fails to report/conceals it could be prosecuted for the crime of unlawful concealment of hazardous waste.[21] An element of the concealing hazardous waste statute requires that the violator knowingly subjects “other persons, including but not limited to peace officers, emergency responders or clean-up crews to the potential for immediate or long-term risk to their health and safety.”[22] Unlawful concealment of hazardous waste is a felony crime punishable by two to 10 years imprisonment and a fine of up to \$100,000.[23]

REPORTING SPILLS AND LEAKS FROM STORAGE TANKS

Unlike the regulation for reporting spills of hazardous wastes, state statutes concerning the Oklahoma Corporation Commission’s authority over storage tanks makes reporting the responsibility of not only the owner and operator, but also the responsibility of those employees and agents *with knowledge* of the storage tank leak or spill.[24] Those responsible for making a report of a release from a storage tank system must do so within 24 hours of the release.[25] The failure to make such a report can render “any person” who has violated the Oklahoma Storage Tank Regulation Act or any rule promulgated thereunder subject to an administrative penalty of up to \$10,000 for each day the violation continues.[26]

REPORTING EXCESS AIR EMISSIONS

There are also excess air permit emission reporting requirements under state law.[27] DEQ regulations under the Oklahoma Clean Air Act require notification by “the owner or operator”[28] to DEQ as soon as possible but no later than 4:30 p.m. the following working day of the first occurrence of excess emissions.[29] A detailed report must follow within 30 days after the start of any excess emissions event describing the event and the actions taken in response to the event.[30] A knowing and willful failure to notify or report as required by the Oklahoma Clean Air Act can be prosecuted as a misdemeanor crime, with a fine of up to \$25,000 per day of violation and up to one year in county jail, or both such fine and imprisonment.[31] The crime becomes a felony and the penalty substantially increased if the person(s) failing to report knew at the time that he or she placed another person in danger of death or seriously bodily injury.[32] The felony crime is punishable by a fine of up to \$250,000 and imprisonment for up to 10 years, or both such fine and imprisonment.[33]

THE ENVIRONMENTAL ATTORNEY’S OBLIGATIONS

An environmental attorney’s ethical obligations are necessarily intertwined with the reporting obligations of his/her client. Under Rule 1.2 of the Oklahoma Rules of Professional Conduct (RPC), a lawyer may not assist a client in conduct that the lawyer knows is criminal or fraudulent.[34] Clearly, a lawyer cannot advise the client on how he or she may continue violations of environmental regulations without getting caught or on what actions the client might take to avoid discovery of his or her crime or fraud.[35] This does not mean that the lawyer is prohibited from explaining to the client the difference between right and

wrong, criminal and non-criminal conduct. RPC 1.2 provides that “a lawyer may discuss the legal consequences of any proposed course of conduct with a client and may counsel or assist a client to make a good faith effort to determine the validity, scope, meaning or application of the law.”^[36] Thus, an attorney may “discuss, explain, and predict the consequences that would constitute crime or fraud, but a lawyer may not counsel or assist in such conduct,” as would make him an “aider or abettor” or a “joint tortfeasor.”^[37]

Where the spill or release has already occurred, and is not continuing, RPC 1.2(d) is not implicated, because the crime (*i.e.*, the unreported release) has been completed. But what if the plume of contamination is migrating underground and threatens public or private water supplies? Is passive migration of an earlier spill or release a reportable event? Sorry, no clear answer here, but discussing with the client the potential implications of passive migration and potential harm to third parties and future potential for criminal and/or civil liability should be paramount.

In the event an investigation by the DEQ or other authorities begins, it is clear that an attorney may not, on behalf of his/her client, knowingly make false representations to environmental regulators to the effect that no spill or release has occurred or that discharge permits have not been exceeded.^[38] And should the matter go forward to an enforcement hearing, the lawyer may be placed in a position requiring disclosure to a tribunal if his or her client has offered material evidence that the lawyer knows to be false and disclosure is necessary to avoid assisting a criminal or fraudulent act by the client.^[39] Under certain circumstances, a lawyer’s silence may be treated as corroboration of a client’s misrepresentation.^[40] If the lawyer fails in his or her duty to avoid assisting the client in continuing a criminal scheme or perpetrating a fraud, the lawyer may not only be sanctioned by the court, but may also be suspended or disbarred under the Code of Professional Responsibility, and even subjected to civil and criminal penalties.

Comments to RPC 1.2 recognize that where the client’s course of conduct “has already begun and is continuing,” the lawyer’s responsibility is “especially delicate.”^[41] “The lawyer is required to avoid assisting the client, for example, by drafting or delivering documents that the lawyer knows are fraudulent or by suggesting how the wrongdoing might be concealed.”^[42] A lawyer may not continue to assist the client in conduct once he discovers the conduct is criminal or fraudulent.^[43] If the client persists in the criminal or fraudulent conduct, the lawyer is required to withdraw from the representation, and may have to give notice of the fact of the withdrawal, and disaffirm any opinion, document, affirmation or the like.^[44]

The attorney who fails to disclose the client’s confidential information concerning a hazardous waste release or other spill could be pulled into court under tort theories of a duty to warn, *i.e.*, not to conceal, if harm should occur to innocent bystanders or emergency responders, who come in contact with the hazardous waste or hazardous substances.

The lawyer’s imperative to keep client information confidential is the other horn of the dilemma for the lawyer confronted with illegal or fraudulent conduct committed by or intended by his client. RPC 1.6(a) provides:

A lawyer shall not reveal information relating to the representation of a client unless the client gives informed consent, the disclosure is impliedly authorized in order to carry out the representation, or the disclosure is permitted by paragraph (b).

The duty of confidentiality “contributes to the trust that is the hallmark of the client-lawyer relationship.”^[45] Rules of Professional Conduct 1.6 applies “not only to matters communicated in confidence by the client

but also to all information relating to the representation, whatever its source.”^[46] But there are exceptions to the lawyer’s duty of client confidentiality.

The exceptions to the Rule of Client Confidentiality are found in subsection (b). Under RPC 1.6(b): A lawyer may reveal information “to the extent that the lawyer reasonably believes necessary:

1. To prevent reasonably certain death or substantial bodily harm;
2. To prevent the client from committing: (a) a crime; or (b) a fraud that is reasonably certain to result in substantial injury to the financial interests or property of another and in furtherance of which the client has used or is using the lawyer’s services;
3. As permitted or required to comply with these rules, other law or a court order.

In discussing the exception that allows for disclosure of confidential client information to prevent “reasonably certain death or substantial bodily harm,” Comment 6 to RPC 1.6 employs an example of an accidental discharge of a toxic waste into a public water supply that could present a risk of contraction of a life-threatening disease or debilitating disease — as being within the exception — despite the fact that the onset of potential harm may not occur until a much later date if the lawyer fails to take action necessary to eliminate the threat. Thus, the risk of “substantial bodily harm” need not be imminent.

Disclosure is certainly permitted under the Rules of Professional Conduct to prevent substantial bodily harm,^[47] but is it mandatory in certain circumstances? In considering this question, it is very important not to overlook RPC 1.6(b)(6), which provides an exception for disclosure of client confidences “as permitted or required to comply with these rules [of Professional Conduct], other law or a court order.” Would the reference to attorney disclosures “as required to comply with other law” include those environmental statutes and regulations, previously discussed, requiring reporting of spills, leaks, discharges and permit exceedances?

Arguably, the disclosure of spills and releases may be required by “other law,”^[48] where the statute is not limited to “owners and operators,” but refers to “any person” or an “employee or agent,”^[49] which would include an attorney.^[50] A similar conclusion concerning the meaning of “any person” was reached in a matter before the New York Department of Environmental Conservation that did not involve a lawyer, but an environmental consultant.^[51] In overruling the administrative law judge’s opinion below, the environmental conservation commissioner ruled that the term “any person,” in the statute requiring “any person with knowledge of a spill, leak or discharge of petroleum” to report the incident within two hours after obtaining knowledge should be given “a broad, not limited or restrictive, interpretation.”^[52] The commissioner wrote, “The rationale for requiring ‘any person’ to report a spill or discharge to the department within two hours is obviously to enable stoppage of ongoing contamination as quickly as possible after detection of a spill.”^[53]

Weighing in favor of a conclusion that the lawyer must disclose the fact of the release to the regulators, if no amount of persuasion will convince the client to do so, is the “remedial and preventive purposes” behind the criminal statute, *i.e.*, to prevent potential serious harm to persons unaware of the dangers presented by the unlawful abandonment or disposal. The sanctity of human life is a value expressly recognized in the Rules of Professional Responsibility:

Although the public interest is usually best served by a strict rule requiring lawyers to preserve the confidentiality of information relating to the representation of their clients, the confidentiality rule is subject

to limited exceptions. Paragraph (b)(1) recognizes the overriding value of life and physical integrity and permits disclosure reasonably necessary to prevent reasonably certain death or substantial bodily harm.

Whether the environmental attorney must disclose the fact of an accidental or deliberate release of pollution to the environment caused by his client — or whether he simply may do so to prevent death or serious bodily injury, to prevent a crime or a fraud, notwithstanding the confidentiality owed to his client — is not an easy decision to make. Factors such as the extent of the potential harm caused, the involvement of the attorney in past or future action surrounding the release and explanations to authorities, and the attorney's dependence on the client, especially in the situation of in-house counsel, all add to the calculus of determining the lawyer's appropriate response. Difficult ethics questions can be directed to the Oklahoma Bar Association's ethics counsel from which OBA members can obtain informal advice and interpretations of the rules of attorney conduct. Given the inherent dangers to human health from spills and releases of toxic substances, a lawyer's educated decision on the subject of ethical dilemmas that may arise with reporting releases is a much better strategy than willful blindness or intentional ignorance or trusting to dumb luck.

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1. These are also spill or release reporting requirements under federal law, including primarily the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA §103, 42 U.S.C. §9603), the Emergency Planning and Community Right to Know Act (EPCRA §304, 42 U.S.C. §1004), and requirements incorporated within federal programs delegated to state agencies as discussed herein.
 2. See e.g., *Magnolia Pipe Line Co. v. State*, 1952 OK DR 42, 243 P2d
 3. See e.g., Memorandum from Earl E. Devaney, director, Office of Criminal Enforcement, EPA, *The Exercise of Investigative Discretion* (Jan. 12, 1994) (establishing principles to guide the exercise of investigative discretion – EPA Special Agents). www.epa.gov/Compliance/resources/policies/criminal/exercise.pdf; see also EPA Civil Penalty Policies (incorporating elements of EPA Civil Penalty Policies, which provide penalty calculation matrices and worksheets for arriving at a specific penalty amount based upon multiple factors, including degree of departure from regulatory requirements and potential for or actual harm to human health and the environment) at <http://cfpub.epa.gov/compliance/resources/policies/civil/penalty/>.
 4. See www.deq.state.ok.us/aqdnew/ComplianceEnforcement/Enforcement_SOP.pdf (incorporating penalty policy elements of delegated federal programs).
 5. OAC 252: 4-9-5 – Considerations for self-reporting of noncompliance. (a) Conditions for not seeking administrative and civil penalties. Except in the case of habitual noncompliance or as otherwise provided in this section, in evaluating an enforcement action for a regulated entity's failure to comply with DEQ rules, the DEQ will not seek an administrative or civil penalty when the following circumstances are present: 1) The regulated entity voluntarily, promptly and fully discloses the apparent failure to comply with applicable state environmental statutes or rules to the appropriate DEQ division in writing before the division learns of it or is likely to learn of it imminently; 2) The failure is not deliberate or intentional; 3) The failure does not indicate a lack or reasonable question of the basic good faith attempt to understand and comply with applicable state environmental statutes or rules through environmental management systems appropriate to the size and nature of the activities of the regulated entity; 4) The regulated entity, upon discovery, took or began to take immediate and reasonable action to correct the failure (i.e., to cease any continuing or repeated violation); 5) The regulated entity has taken, or has agreed-in writing with the appropriate division to take, remedial action as may be necessary to prevent recurrence of such failure. Any action the regulated entity agrees to take must be completed; 6) The regulated entity has addressed, or has agreed in writing with the appropriate division to address, any environmental impacts of the failure in an acceptable manner; 7) The regulated entity has not realized and will not realize a demonstrable and significant economic or competitive advantage as a result of noncompliance; and 8) The regulated entity cooperates with the DEQ as the DEQ performs its duties and provides such information as the DEQ reasonably requests to confirm the entity's compliance with these conditions.
 6. *Id.* Note that the EPA also offers an opportunity for self-disclosure pursuant to the EPA's Audit Policy, *Incentives for Self-Policing: Discovery, Disclosure, Correction and Prevention of Violations*, 65 *Fed. Reg.* 19618 (April 11, 2000) available at www.epa.gov/compliance/incentives/auditing/auditpolicy.html.
 7. See 27A O.S. §2-3-504(H) ("In determining the amount of a civil penalty the court shall consider such factors as the nature, circumstances and gravity of the violation or violations, the economic benefit, if any, resulting to the defendant from the violation, the history of such violations, any good faith efforts to comply with the applicable requirements, the economic impact of the penalty on the defendant, the defendant's degree of culpability, and such other matters as justice may require.")
 8. See generally, Oklahoma Environmental Quality Code, 27A §2-1-101 through §4-2-105; Environmental Crimes Act, 21 O.S. §1230.1 - 1230.10; Oklahoma Storage Tank Regulation Act, 17 O.S. §301 - §318.
 9. *Id.*
 10. *Id.*
 11. Negligent violations of the Clean Water Act, 33 U.S.C §1319(c), may also be pursued criminally by the state of Oklahoma via delegation of Environmental Protection Agency (EPA) authority to ODEQ, or by EPA in its oversight role.
 12. Title 27A O.S. §2-6-105(A): "It shall be unlawful for any person to cause pollution of any waters of the state or to place or cause to be placed any wastes in a location where they are likely to cause pollution of any air, land or waters of the state. Any such action is hereby declared to be a public nuisance."

13. OAC 252:606-1-6 - Spill Reporting "(a) Report. The owner or operator of a facility or vessel must report to the DEQ any spill or discharge to the waters of the state on or from the facility or vessel according to 40 CFR Part 117. Reports to the DEQ may be telephoned to (800) 522-0206."
14. 40 CFR 117.3.
15. OAC 252:606-1-6 - Spill Reporting "(b) Response. Whenever a spill or discharge occurs that is required by 40 CFR Part 117 and this rule to be reported to the DEQ, the owner or operator of the facility or vessel must immediately act to stop, contain, clean up and prevent recurrence of the spill or discharge."
16. Title 27A O.S. §2-3-504(A)(1) and (2): "Except as otherwise specifically provided by law, any person who violates any of the provisions of, or who fails to perform any duty imposed by, the Oklahoma Environmental Quality Code or who violates any order, permit or license issued by the Department of Environmental Quality or rule promulgated by the Environmental Quality Board pursuant to this Code: 1) Shall be guilty of a misdemeanor and upon conviction thereof may be punished by a fine of not less than Two Hundred Dollars (\$200.00) for each violation and not more than Ten Thousand Dollars (\$10,000.00) for each violation or by imprisonment in the county jail for not more than six (6) months or by both such fine and imprisonment. 2) May be punished in civil proceedings in district court by assessment of a civil penalty of not more than Ten Thousand Dollars (\$10,000.00) for each violation; 3) May be assessed an administrative penalty pursuant to Section 2-3-502 of this title not to exceed Ten Thousand Dollars (\$10,000.00) per day of noncompliance;..."
17. See delegated RCRA regulatory provisions 40 CFR Parts 262, 264, 265 adopted by reference at OAC 252:205-3-1 including spill response and reporting requirements as part of general facility requirements and contingency plans. A general reporting requirement is also included at OAC 252:205-13-1 Incidents: "Release of hazardous waste. Upon release of materials that are or become hazardous waste whether by spillage, leakage, or discharge to soils or to air or to surface or ground waters (outside the limits of a discharge permit), or by other means, and which could threaten human health or the environment, the owner or operator shall immediately notify the DEQ and take all necessary action to contain, remediate, and mitigate hazards from the release."
18. *Id.*
19. Title 27A O.S. §2-7-129.
20. Title 27A O.S. §2-7-130 – "Except as otherwise provided by the Oklahoma Hazardous Waste Management Act or other law, any person who violates any of the provisions of the Oklahoma Hazardous Waste Management Act or rules promulgated thereunder shall be deemed guilty of a misdemeanor and upon conviction thereof shall be subject to imprisonment in the county jail for not more than six (6) months, or a fine of not less than Two Hundred Dollars (\$200.00) nor more than Twenty-five Thousand Dollars (\$25,000.00), or by both such fine and imprisonment. Each day or part of a day during which such violation is continued or repeated shall constitute a new and separate offense."
21. Title 21 O.S. §1230.7 Unlawful Concealment of Hazardous Waste: "Any person commits the offense of unlawful concealment of hazardous waste who knowingly and willfully subjects any other person, including but not limited to peace officers, emergency responders or clean-up crews, to the potential for immediate or long-term risk to their health or safety by exposure to chemical wastes, by knowingly and willfully: 1) Concealing ... the unlawful abandonment or disposal of hazardous waste ..."
22. *Id.*
23. Title 21 OS. §1230.8(5): "Any person convicted of the offense of unlawful concealment of hazardous waste shall be guilty of a felony punishable by imprisonment for not less than two (2) years nor more than ten (10) years and a fine of not more than One Hundred Thousand Dollars (\$100,000.00)."
24. 17 O.S. §309(A): "No owner or operator, employee or agent of such owner or operator shall knowingly allow a release from a storage tank system to occur or continue to occur without reporting the release to the Corporation Commission within twenty-four (24) hours upon discovering such a release."
25. *Id.*
26. Title 17 O.S. §311(A): "Any person who has been determined by the Corporation Commission to have violated any provisions of the Oklahoma Storage Tank Regulation Act or any rule promulgated or order issued pursuant to the provisions of the Oklahoma Storage Tank Regulation Act shall be liable for an administrative penalty of not more than Ten Thousand Dollars (\$10,000.00) for each day that said violation continues."
27. Excess air emissions may also include nonconventional air pollutants, like toxics, which might also require release reporting under CERCLA §103 and EPCRA §304.
28. OAC 252:100-1-3 defines "Owner or operator" as "any person who owns, leases, operates, controls or supervises a source" [of air pollution]<.
29. OAC 252:100-9-7 - Excess emission reporting requirements. (a) "Immediate Notice: Except as provided in OAC 252:100-9-7(a)(1), the owner or operator of excess emissions shall notify the director as soon as possible but no later than 4:30 p.m., the following working day of the first occurrence of excess emissions in each excess emission event. Notification may be made by telephone 1-877-277-6236, by email excessemissions@deq.ok.gov by web <http://deq.state.ok.us/excessemissions> or by other method as approved in writing by the director prior to the excess emissions event."
30. OAC 252:100-9-7 - Excess emission reporting requirements. (b) "Excess emission report. No later than thirty (30) calendar days after the start of any excess emission event, the owner or operator of an air contaminant source from which excess emissions have occurred shall submit a report for each excess emission event describing the event and the actions taken by the owner or operator of the facility in response to this event..."
31. Title 27A O.S. §2-5-116(A)(5): "Any person who knowingly and willfully fails to notify or report as required by the Oklahoma Clean Air Act, rules promulgated thereunder or orders or permits issues pursuant thereto shall, upon conviction, be guilty of a misdemeanor, and be punished by a fine not to exceed Twenty-five Thousand Dollars (\$25,000.00) per day of violation or for not more than one (1) year imprisonment in the county jail, or both such fine and imprisonment."
32. Title 27A O.S. §2-5-116(B)(1): "Any person who knowingly and willfully violates any applicable provision of the Clean Air Act or any rule promulgated thereunder, or any order of the Department or any emission limitation or substantive provision or condition of any permit, and who knows at the time that he thereby placed another in danger of death or serious bodily injury shall, upon conviction, be guilty of a felony and subject to a fine of not more than Two Hundred Fifty Thousand Dollars (\$250,000.00) or for not more than ten (10) years imprisonment, or both such fine and imprisonment."
33. *Id.*
34. RPC 1.2(d): "A lawyer shall not counsel a client to engage, or assist a client, in conduct that the lawyer knows is criminal or fraudulent..."
35. *Id.*; RPC 1.2 Comments 9 and 10.
36. See RPC 1.2(d).
37. *Attorney Grievance Commn of Maryland v. Rohrback*, 591 A.2d 488, 495 (Md. 1989).
38. See RPC 4.1 (Truthfulness in Statements to Others).

39. See RPC 3.3(a)(3) - (4) (Candor Toward the Tribunal).
40. See *Rohrbach*, 591 A.2d at 497 ("If the circumstances are such that the court would treat the lawyer's silence as corroboration of a client misrepresentation, as would normally be the case, Rule 3.3 requires the lawyer to volunteer the truth.")
41. See RPC 1.2, Comment 10.
42. *Id.*
43. *Id.*
44. RPC 1.16(b)(2) (Declining or Terminating the Representation); see also Comment 10 to RPC 1.2 (Scope of Representation).
45. Comment 2 to RPC 1.6 (Confidentiality of Information).
46. Comment 3 to RPC 1.6 (Confidentiality of Information).
47. See RPC 1.6(b)(1).
48. See RPC 1.6(b)(6).
49. See e.g., 21 O.S. §1230.7, 17 O.S. §309(A).
50. See RPC 1.6(b)(6), Comment 12 ("Other law may require that a lawyer disclose information about a client. Whether such a law supersedes Rule 1.6 is a question of law beyond the scope of these Rules.")
51. See *In the Matter of Middleton, Kontokosta Associates Ltd. and Donald J. Middleton Jr., individually and as vice president*, 1998 WL 939495 (NY Dept of Environmental Conservation December 31, 1998).
52. *Id.*
53. *Id.*
54. See RPC 1.2, Comment 6.
55. RPC 1.6(b)(4) provides an exception to client confidentiality to the extent the lawyer reasonably believes necessary to "secure legal advice about the lawyer's compliance with these Rules [of Professional Conduct.]"

LINKS

- [Gerald Hilsher's Bio](#)

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