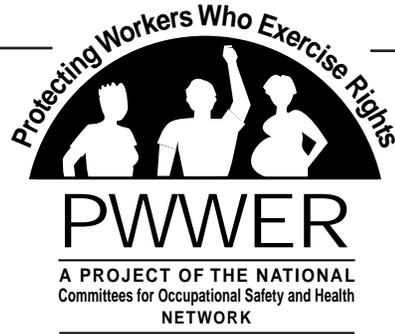


---

# Workers' Whistleblower Protection Under Seven Federal Environmental Laws



FACTSHEET OF THE “PROTECTING WORKERS WHO EXERCISE RIGHTS” PROJECT OF THE NATIONAL COSH NETWORK

Environmental laws have been enacted to protect natural resources and the public health. A number of these laws recognize that workers may be the ones who spot their employers violating the law and polluting the environment. Seven federal environmental statutes contain “whistleblower protection” that was designed to protect workers against employer retaliation for their whistleblowing activities.

## Federal Environmental Laws That Contain “ Whistleblower” Protections:

The federal environmental laws covered in this fact pack that provide worker protection against bosses’ retaliatory discipline or discharge for whistleblowing activities include:

- the Safe Drinking Water Act,
- the Federal Water Pollution Control Act,
- the Toxic Substance Control Act,
- the Solid Waste Control Act
- the Clean Air Act
- the Energy Reorganization Act
- the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA)

It is **illegal** for an employer to retaliate against workers who “blow the whistle” on violations of these environmental laws.

## What Are “ Illegal Employer Retaliatory Actions” ?

Illegal employer actions include actions such as:

- firing, suspending or demoting a worker
- changing shift or work assignments to less desirable assignments
- intimidating, threatening, restraining, coercing or blacklisting a worker

## **29 CFR Part 24: “Procedures for the Handling of Discrimination Complaints Under Federal Employee Protection Statutes”:**

*“No employer...may discharge any employee or otherwise discriminate against any employee with respect to the employee’s compensation, terms, conditions, or privileges of employment because the employee, or any person acting pursuant to the employee’s request, engaged in [whistleblowing activities under these environmental laws]...”*

## What “ Whistleblower ” Activities Are Protected By These Laws?

Workers have the right to engage in the following activities without suffering employer retaliation:

- Inform a government agency about an employer’s illegal activity under any of these environmental laws;
- Encourage others to inform a government agency about an employer’s illegal activity under any of these environmental laws;
- Plan to inform a government agency or plan to encourage others to inform a government agency about an employer’s illegal activity under any of these environmental laws;
- Testify or plan to testify in any legal proceeding regarding these environmental laws;
- Assist or participate in any action to carry out the purposes of these environmental laws.

Workers will **not** be protected against employer retaliation in connection with “blowing the whistle” on any of these environmental laws if they deliberately acted on their own (without direction from their employer) or acted in collusion with their employer (for example, for shared monetary gain) to cause a violation of the environmental law.

**To preserve your rights to protection against illegal employer retaliation, you must act quickly and strategically!** (See Section on “How To Blow The Whistle.”)

## A Profile of the Seven Environmental Statutes’ “ Whistleblower ” Protections

### **The Safe Drinking Water Act, 42 U.S.C.A. 300f**

The Safe Drinking Water Act (SDWA) was established to protect and provide high quality drinking water in the U.S. This law focuses on all waters actually or potentially designed for drinking use, whether from above ground or underground sources. The Act authorizes the Environmental Protection Agency (EPA) to establish regulations for contaminants in drinking water. States are primary enforcers and are permitted to grant variances as long as they are stricter than federal laws. Those who violate this law may face criminal and civil penalties.



### **The Federal Water Pollution Control Act, 33 U.S.C.A. 1251**

Also known as the Clean Water Act, this law’s goal is to prevent, reduce or eliminate the discharge of pollutants into “navigable waters.” It makes it unlawful to discharge pollutants without a National Pollution Discharge Elimination System permit. A Freedom of Information Request can be filed with your state environmental department to see if an employer has such a permit. The Act also regulates activities in wetlands or waterways.

(continued on page 3)

### **The Toxic Substance Control Act, 15 U.S.C.A. 2601**

The Toxic Substances Control Act of 1976 (TSCA) was enacted by Congress to test, regulate, and screen all chemicals produced or imported into the United States. Many thousands of chemicals and their compounds are developed each year with unknown toxic or dangerous characteristics. To prevent tragic consequences, TSCA requires that any chemical that reaches the consumer marketplace be tested for possible toxic effects prior to commercial manufacture. Any existing chemical substance or mixture that poses health and environmental hazards is tracked and reported under TSCA. In cases of clean-up of toxic materials contamination, procedures are authorized under TSCA for corrective action.

### **The Solid Waste Disposal Act, 42 U.S.C. 6901**

Now known as the Resource Conservation and Recovery Act (RCRA), it protects the environment and health from improper storage, treatment and disposal of solid or hazardous waste. Another purpose of RCRA is to reduce the generation of waste. The RCRA provides regulations that include recordkeeping, labeling and permit requirements. Any person who deals with hazardous wastes must provide required information relating to the waste. This information is public, subject to certain exceptions. Any person may bring a civil action against any person violating a permit, standard, regulation or other violation of this law if the waste presents an "imminent and substantial danger to health or the environment." A violator may face civil and criminal penalties.

### **The Clean Air Act, 42 U.S.C.A. 7401**

The Clean Air Act regulates prevention and control of outdoor air pollution. Specific hazardous air pollutants that endanger the public health are regulated with baseline standards. Permits may be required for certain emissions. These air pollutants are known to cause death, injury or have serious adverse effects to human health or the environment. Any person who violates these requirements may be fined.

### **The Energy Reorganization Act, 42 U.S.C. 5801**

The Energy Reorganization Act (ERA) regulates the development and utilization of energy sources with "goals of restoring, protecting, enhancing the environment and assuring public health and safety." The ERA established the Nuclear Regulatory Commission which regulates/licenses nuclear reactors regarding construction, processing, handling and transportation of materials and wastes. A notice, "Your Rights Under the ERA," must be posted in workplaces covered by the Act.

### **The CERCLA, 42 U.S.C.A 9601**

The Comprehensive Environmental Response, Compensation and Liability Act (CERCLA) or the Superfund Law holds all owners, operators or generators of hazardous substances responsible for damaging, destructing or loss of natural resources due to the release, disposal or transport of hazardous substances. Emergency planning is set up in each area. The Act requires immediate notification of hazardous substance releases. The violator is liable for the full and total costs of all damages from the release or threatened release of the hazardous substance.

*(continued on page 4)*

## How To Blow The Whistle: Think Before You Act

Unfortunately, worker protection from employer retaliation under these laws is not as strong as it needs to be. There is no guarantee that workers will get their jobs back if they are illegally fired for blowing the whistle. Therefore, it is important that workers plan a strategy that includes:

- if and when to blow the whistle
- how to blow the whistle
- what actions to take to prevent retaliation, or to have employer's retaliatory actions reversed.

### **BEFORE you blow the whistle, answer these questions:**

- ✓ Is what you're about to tell everyone so bad for people and the environment that it is worth it to take this risk?
- ✓ Would others agree with what you are about to say?
- ✓ Can what you say be proven?
- ✓ Will what you say make a difference?

### **BEFORE you blow the whistle:**

- ✓ talk to your union and/or co-workers
- ✓ secure union and/or co-worker support
- ✓ talk to family and friends
- ✓ document your evidence
- ✓ contact a COSH group, the Government Accountability Project or other resource to help you plan your strategy (see "Resources" at the end of this fact pack.)

### **WHEN blowing the whistle:**

- ✓ do not exaggerate the charges
- ✓ do it on your own time
- ✓ if possible, be part of a group that is blowing the whistle together
- ✓ consider the possibility of providing your evidence anonymously (however, this may make it harder for government agencies to investigate a violation of an environmental law.)

## To Blow The Whistle on Your Employer's Illegal Environmental Activities, You Can:

- call government or corporate hotlines (some past whistleblowers do not recommend this approach)
- call the U.S. Department of Labor's Inspector General or Office of the Special Council (some past whistleblowers recommend that you get your own attorney first)
- call your Congressperson (this can be a very good idea in a planned strategy)
- call the news media (this can also be a good idea in a planned strategy)
- call your local COSH group or the Government Accountability Project for advice and assistance (this can be a very good idea!)

*(continued on page 5)*

## How To Exercise Your Rights To Protection from Retaliation

If you feel you have been discriminated against because you blew the whistle on your employer for violating one of these laws, you must file a complaint **within thirty (30) days** of when your employer took retaliatory action, **in writing to OSHA**. For the phone number of the OSHA office nearest you, call 1-800-321-OSHA. The exception to the 30-day filing period is the Energy Reorganization Act where whistleblowers have 180 days to file their complaints with OSHA.

OSHA will investigate your allegations. The OSHA investigator has 30 days to make a finding and issue a "Notice of Determination." If OSHA believes that retaliatory action has occurred, OSHA will attempt to settle the case with your employer. **The employer may be ordered to reinstate you and award damages including back pay, attorney fees, and other actual costs.** An employer may appeal OSHA's orders within five (5) days to the Chief Administrative Law Judge (ALJ) of the U.S. Department of Labor in Washington, D.C. for a hearing.

If OSHA determines that no retaliation has occurred, or that retaliation was not connected to a worker's whistleblowing activities, you will be notified by OSHA of this determination. You then have five (5) days to appeal to the Chief Administrative Law Judge (ALJ) of the Department of Labor in Washington D.C. for a hearing.

## What Should You Do If Your Employer May Be Violating One Of These Environmental Laws?

- 1) **Document.** Write down exactly what happened including time and sequence of events. Keep a record. Write down the names of witnesses. Save this and all other documentation.
- 2) **Contact your Union,** the nearest COSH/Labor group and/or the Government Accountability Project (GAP) for advice and assistance.
- 3) **If you blow the whistle,** or were about to blow the whistle, and employer retaliation occurs, file a **written complaint** with OSHA **within 30 days** of when the retaliation occurred. Your complaint should contain a full statement of the facts. Be brief in explaining the problem. Do not list witnesses at this time — you can provide these later

## Can Workers' Whistleblower Protections Serve To PREVENT Violations of Environmental Laws?

Yes! If employers know that their actions are being watched daily by workers who are aware of environmental laws, of their rights to "blow the whistle" on employers who violate these laws **and** are aware of workers' "whistleblower" protections should employer retaliation occur; employers may be less likely to violate the law in the first place! With small and dwindling resources plaguing government agencies of all sorts, laws that truly protect whistleblowers serve to add hundreds of thousands of eyes to watch out for, and protect voices to speak out about, violations of these environmental laws.

While the "whistleblower" protections in each of these seven environmental laws could and should be stronger, workers' awareness of these laws, the protections they offer and how to act strategically to prevent or reverse retaliation **can** make a difference in both the effectiveness of the environmental laws **and** the protection they currently offer whistleblowers.

*(continued on back, page 6)*

RESOURCES

-  **Your Union**
-  **A COSH Group (Committee for Occupational Safety and Health).** COSH groups can present information and training on these laws at union and community meetings, and provide material for newsletter articles and other educational forums. For the number of the COSH group nearest you, contact NYCOSH at (212) 627-3900.
-  **The Government Accountability Project (GAP):** (202) 408-0034. A national non-profit organization that aids and assists whistleblowers.
-  **The Occupational Safety and Health Administration (OSHA):** to find the OSHA office nearest you, call 1-800-321-OSHA.

This material was produced under grant number 46A7-HT51 from the Occupational Safety and Health Administration, U.S. Department of Labor. It does not necessarily reflect the views or policies of the U.S. Department of Labor, nor does mention of trade names, commercial products, or organizations imply endorsement by the U.S. Government