

Although Charlie Baker sent business a friendly message with his Executive Order suspending new regulations, Attorney General Maura Healey and her staff of Assistant AGs in the Environmental Protection Division are not so charitable. Yesterday, four senior AAGs presented on the use of the False Claims Act against environmental violators. The False Claims Act is a “very strong tool” and they are “anxious to use it.” In translation, “watch out” if you are engaged in business with the government and unfortunate enough to get into a related environmental beef that is referred to the AG.

The AG’s Office is increasingly using False Claims allegations to soften up environmental enforcement targets with additional investigative tools, increased penalties and the specter of triple damages (i.e. disgorgement of up to 3X any economic benefit). Liability can be established if a defendant makes a “false statement” to the government (or any of a host of other related parties like government contractors and subcontractors) that results in an underpayment to or overpayment from the government. The AG has used the FCA to leverage hefty penalties from companies that charged the DOT for improper disposal of catch basin cleanings, engineers that filed a certification of landfill closure when the vertical height limit was exceeded, and gas stations that obtained reimbursement from the 21J underground storage tank fund where insurance had already been recovered.

Every time you sign a “certification,” submit an invoice or pay a bill to the government involving environmental compliance, be forewarned.

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For questions, call or email Tom Mackie.