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AN ENVIRONMENTAL AND ENERGY LAW PRACTICE



YOU MAY HAVE MORE ENVIRONMENTAL ISSUES THAN YOU THINK

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Typically, when people think of companies likely to have “environmental issues,” they think of manufacturers, particularly those companies you drive by and see smoke or steam pouring out of large stacks. However, the citations and penalties we see issued by federal, state and local environmental agencies often involve entities that manufacture nothing. Common targets include property managers, companies that have any type of trucking fleet, and retailers of all kinds and sizes. So, if you think your company has no environmental concerns, below are some questions you should consider. If you answer “yes” or even “maybe” to any of these questions, your company may have more environmental issues than you think.

Does your company have any underground or aboveground tanks? While many companies realize there are state regulatory programs governing underground tanks, more and more states are imposing similar requirements on aboveground tanks. Requirements can be imposed by state environmental regulations or fire codes, and can range from obtaining permits or submitting registration forms with an accompanying fee to requiring regular inspections and tightness tests.

Does your company store any type of oil on site? Facilities that store oil of any kind, including animal fats and greases, vegetable oils and all types of petroleum products, that have storage capacity of greater than 42,000 gallons underground or greater than 1,320 gallons combined aboveground, require [Spill Prevention, Control and Countermeasure \(“SPCC”\)](#) plans. Note that these requirements are triggered by storage capacity, not actual volume stored, and that containers of 55 gallons or greater are included. So, one 500 gallon tank and 15 standard 55 gallon drums would suffice to trigger these requirements.

Does your company use lead-acid batteries for backup power? Many companies use “wet cell” or “gel cell” batteries as their source of backup power. These batteries contain sulfuric acid and lead, which are considered an “extremely hazardous substance” (“EHS”) and a “hazardous chemical,” respectively, under the [Emergency Planning and Community Right-to-Know Act \(“EPCRA”\)](#). Some EPCRA requirements are triggered by as little as 500 lbs. of an EHS, which can be exceeded by as few as four backup batteries.

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ENVIRONMENTAL ISSUES (cont'd)

Does your company ever have 10,000 lbs. or more of a "hazardous chemical" on site? Don't be so quick to say "no". "Hazardous chemicals" include diesel fuel, fuel oil and gasoline. Filling one 1,450 gallon tank would trigger these requirements. "Hazardous chemicals" actually include any materials that require an MSDS under [OSHA's HazCom standard](#).

Does your company have fuel burning equipment, such as standby generators, boilers or furnaces? Any equipment that burns fuel emits air pollutants. While non-manufacturers and smaller companies may not trigger federal Title V requirements, standby generators, boilers or furnaces can trigger state or local air requirements. Most states require some form of construction and/or operating permit for stationary fuel burning equipment. Different states' permitting requirements are based on various criteria ranging from the existence of any emission to a source's maximum heat input rating.

Does your company have a facility that falls within the SIC codes for warehousing and storage (e.g., 4222 or 4225)? If so, you might be surprised that these facilities are considered to have "stormwater discharges associated with industrial activity" and may require coverage under a permit through the [National Pollutant Discharge Elimination System \("NPDES"\)](#) program. (Facilities can avoid stormwater permitting obligations if they meet the requirements for a "no exposure certification".)

Is your company engaged in construction activity that involves clearing, grading or excavating more than one acre in total? Construction activity impacting more than five acres trigger [stormwater permitting requirements](#). However, even smaller projects that disturb less acreage can trigger state permitting requirements or other state or local requirements concerning soil erosion and stormwater best management practices.

Does your company have buildings that were constructed prior to 1981? Certain materials in buildings constructed prior to 1981 are presumed to contain asbestos. In older buildings, asbestos may be present in a range of materials including insulation on boilers and pipes; in asphalt, vinyl, cement and other materials used for roofing shingles and felts, exterior siding, floor tile, wall board, joint compounds and adhesives; and in surfacing material that includes sprayed, troweled-on or otherwise applied material such as acoustical plaster on ceilings and fireproofing materials. Asbestos in buildings is regulated by EPA and OSHA. EPA regulates renovation activity where certain threshold amounts of asbestos-containing material is disturbed and any demolition activity. OSHA regulates asbestos in buildings by requiring notification to housekeeping staff and other employees who may come in contact with asbestos while working at a facility.

As an environmental attorney, I often find myself defending companies that did not realize they were subject to certain, or any, environmental requirements. So -- you've now been warned!