

Environmental Department

Gregory H. Smith
Michael J. Quinn
Barry Needleman
Claudia C. Damon
Asteghik K. Brock
Krista E. Canty

Government Affairs

Timothy W. Fortier, Advisor

ENVIRONMENTAL UPDATE

Edited by Barry Needleman

REGULATORY UPDATE: NEW FEDERAL REGULATIONS RE- QUIRE AMENDMENTS OF YOUR SPCC PLANS

Federal regulations require that facilities with certain types of above-ground tanks must have spill prevention, control, and counter measure (SPCC) plans in place. On July 17, 2002 the United States Environmental Protection Agency finalized amendments to the regulations governing these plans.

Given this change, facilities should review and update their existing SPCC plans. Moreover, if you have storage tanks and you have not evaluated the applicability of SPCC regulations to those tanks, now is a good time to do so.

Existing plans must be amended by February 17, 2003 to account for the new regulatory requirements. The regulations do provide certain exemptions. Thus, not all tanks will be covered.

In addition to SPCC planning, storage tanks may also be subject to other regulatory requirements depending on their size and contents. It might be useful when facilities analyze these new SPCC requirements to consider other regulatory issues such as Emergency Planning and Community Right-to-Know Act reporting requirements and Clean Air Act (EPCRA), Section 112(r), Accidental Release Requirements.

ENFORCEMENT: ADVANTAGES TO SELF-REPORTING ENVIRONMENTAL NON-COMPLIANCE

Many states, including New Hampshire, encourage the self-reporting of environmental violations. The United States Environmental Protection Agency also has a policy that deals with self-reporting. Voluntary disclosure of non-compliance can offer several advantages but each situation must be managed and evaluated carefully.

Depending on the particular facts, entities that self-report may be entitled to receive a significant, and possibly complete, reduction in the civil or administrative portion of any penalty. For example, in one recent State air compliance matter, the Attorney General's office specifically acknowledged the importance of self-reporting and indicated that cooperation and responsiveness in that matter resulted in a significant penalty reduction from what might otherwise have been assessed.

Determining how and when to self-report environmental violations is an exercise that requires care. In order to meet the requirements of federal and certain State audit privilege policies, specific information must be provided and entities must adhere to strict deadlines. Some care must also be taken to determine whether a particular violation is one that can or should be reported under a given audit policy. Information also needs to be handled in such a way that appropriate legal privileges are established and maintained throughout the entire process.

Generally, identifying and self-reporting environmental problems is a good corporate policy that may offer substantial benefits. The key to accessing those benefits is to be proactive about compliance and to be careful about how information is developed and managed.

UPCOMING ENVIRONMENTAL SEMINARS

December 13, 2002 (8:30 to 3:30) "The BIA's Water Symposium '02",
Held at the Grappone Conference Center, Concord, NH, McLane
Speaker: Gregory H. Smith

January 14, 2003 (9:00 to 4:30) "Major Land Use Laws in NH" Held at
the Grappone Conference Center, Concord, NH
McLane Speakers: Barry Needleman and Linda C. Connell

February 12, 2003 (9:00 to 4:30) "Environmental Compliance Law in
NH" Held at the Holiday Inn in Concord, NH
McLane Speakers: Barry Needleman and Michael J. Quinn

ENVIRONMENTAL DEADLINES

Oct. 15 - Air emission fees were due to NHDES for all
holders of New Hampshire State Air Permits