

Strategy & Insights

Doing Business in the United States: Managing Environmental Liabilities

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Environmental regulation in the United States creates business liabilities during all phases of operations. Firms traditionally subject to the highest levels of scrutiny -- those whose businesses involve routine discharges of regulated pollution -- know this from experience. Many of them have learned that having a superior compliance program in place minimizes liabilities and produces a competitive advantage.

The reach of environmental regulation, however, goes well beyond the likes of power plants and chemical manufacturers. Grocers, retailers, construction companies and real estate developers, among other industries, are subject to environmental regulation. U.S. businesses of all types and sizes need to understand environmental law and how to manage environmental obligations. Such obligations range from seemingly minor recordkeeping requirements to more substantive pollution limits that demonstrably affect environmental quality.

Violations of environmental obligations are costly. The United States Environmental Protection Agency (EPA) has the authority to issue fines of up to \$37,500 per day -- with each day of a continued occurrence counting as a separate violation. But the scope of environmental liabilities does not end there. Most environmental statutes provide that criminal liability can attach to certain serious offenses. The United States Department of Justice and United States Attorney's office have prosecutors assigned to environmental enforcement. Additionally, private tort litigation can arise, particularly after substantial breakdowns in regulatory compliance. The lawsuits that followed the Exxon-Valdez and Deepwater Horizon oil spills are among the most noticeable examples of this.

Environmental regulation rivals the tax code in terms of its complex structure and ever-changing nature, but businesses must be prepared for it. Due to the volume and complexity of the environmental liabilities arising at the Federal, State, and local levels, a detailed analysis is beyond the scope of this presentation. For firms doing business in the U.S., this article provides a roadmap of environmental obligations and the compliance tools used by the regulated community.

I. STRUCTURE OF U.S. ENVIRONMENTAL REGULATION

There are currently no less than 20 major Federal statutes pertaining to environmental protection administered by the EPA. Many Federal environmental laws require States to set environmental standards at least as stringent as those at the Federal level. Often State or local law can be more stringent than Federal law.

It is not uncommon for businesses to be subject to three to six different laws that relate to the same environmental issue. For example, a plant in Chicago that has an underground storage tank (UST) containing solvents may be regulated under any of the following laws:

- Federal – The Resource Conservation and Recovery Act (RCRA) regulations for underground storage tanks.
- State – The Illinois Environmental Protection Agency RCRA regulations for underground storage tanks.
- State – The Illinois State Fire Marshal Regulations for underground storage tanks.
- Local – The Chicago Municipal Code.

II. MAJOR ENVIRONMENTAL STATUTES AND INITIATIVES

A. *Water Quality*

There are several federal laws directed at protecting waters from pollution. Those most likely to affect business on a day-to-day basis, however, are the Federal Water Pollution Control Act and the Safe Drinking Water Act.

1. Federal Water Pollution Control Act

The Federal Water Pollution Control Act, also known as the Clean Water Act, provides the basic framework for protection of surface waters such as rivers, streams, lakes and oceans and adjacent watersheds from industrial, commercial, private and domestic discharges, including industrial discharges and discharges from sewers, drainage ditches and septic systems. The Act accomplishes this by:

- setting up programs for the funding, construction and operation of publicly owned treatment works (POTW); and
 - issuing permits regulating effluent and storm water discharges into public waterways.
- a. Permit System For Discharges to “Waters of the United States”

Any source of discharge into “waters of the United States” requires a National Pollutant Discharge Elimination System (NPDES) permit or the state equivalent. Permit applications are made by the discharger to the State, and the State in turn grants a permit to the discharger. It is the discharger’s responsibility to obtain and complete the permit forms and to comply with the terms and conditions of State regulations and the permit. The NPDES system requires a discharger to meet technology-based or water-quality-based effluent limitations. The scope of waters regulated by the NPDES permit is exceedingly broad, encompassing wetlands and intermittent streams, and other waters where navigation is impossible. Essentially any discharge within a watershed to a conveyance capable of eventually reaching a navigable water, such as a drainage ditch, is regulated.

If a publicly owned treatment works (POTW) discharges into surface waters such as a river, stream, lake or pond, that POTW must apply for and obtain an NPDES permit from the state.

b. Industrial Discharges into POTWs

If a company discharges to a POTW, which in turn discharges into a U.S. water, the company need not obtain an NPDES permit because the POTW is covered by an NPDES permit. However, in order for a POTW to meet the terms of its NPDES permit, it often must limit the amount of pollutants it receives from industrial discharges. Thus, companies that discharge to POTWs may be required to obtain POTW permits or have limits set by a user ordinance. Industrial discharges to POTWs may also be subject to a comprehensive set of “pre-treatment” standards which are specifically established for various industrial categories.

c. Stormwater

In addition to industrial discharges, EPA has established a comprehensive set of regulations requiring regulation of, and NPDES permitting requirements for, stormwater discharges. The stormwater regulations require permits for stormwater discharges associated with a variety of business operations.

d. Wetlands

The Clean Water Act also provides the authority for regulating the use, management and degradation of wetlands, and establishes procedures for permits issued by the Army Corps of Engineers for the development of real property upon which wetlands may be present.

2. The Safe Drinking Water Act

The Safe Drinking Water Act is the authority for development of both above-ground and underground drinking water standards. EPA has defined maximum contaminant level goals (MCLGs) for chemicals that may be present in drinking water and has set up maximum contaminant levels (MCLs) for those chemicals. The standards are developed by EPA based upon health considerations and on the costs associated with obtaining clean water. Requirements relating to maximum contaminant levels of chemicals in drinking water apply not only to the public water supplies, but also to businesses that provide their own source of drinking water to employees or the community.

The Safe Drinking Water Act also authorizes EPA to protect underground sources of drinking water by preventing contamination from underground injection of chemicals and wastes of businesses.

B. Air Quality – The Clean Air Act

The Clean Air Act is the authority for regulating emissions of air pollutants into the environment. In general, the Clean Air Act requires EPA to develop air standards and regulations; EPA in turn delegates responsibility to the States to set up regulations to implement federal programs to prevent and control air pollution at the source of that pollution. Pursuant to a State Implementation Plan (SIP), each State must have requirements equivalent to or more stringent than the Federal program. Following Federal approval, States administer and enforce the SIP air pollution control programs.

1. Permits

EPA identifies and determines criteria pollutants and sets standards, known as the National Ambient Air Quality Standards (NAAQS). Criteria pollutants include: carbon monoxide, lead, nitrogen dioxide, ozone, particulate matter, and sulfur dioxide. Pursuant to each State's SIP, each State develops regulations intended to obtain compliance with the NAAQS. States do so by issuing air operating permits as well as construction permits. The type of permit required depends upon the following factors:

- whether a facility is in an attainment area or a non-attainment area,
- whether the permit is an operating permit or a construction permit, and
- whether the facility is a major source of air pollutants or is not a major source of air pollutants.

In addition to existing State and Federal permit programs, comprehensive regulations require all States to develop air quality permitting systems for major sources. The new permit scheme is referred to as "Title V" permitting. Federal regulations have defined the minimum elements for State programs and set procedures and standards for States. All major emission sources subject to the Title V regulations must obtain a permit to operate.

2. Hazardous Air Pollutants (Air Toxics)

EPA has developed emissions limitations and technology-based standards for hundreds of hazardous air pollutants. Significant effects of the HAP program are as follows.

- Major stationary sources are those that have the potential to emit 10 tons per year or more of any one HAP, or 25 tons per year or more of any combination of HAPs.

- For such major sources, EPA has established industrial categories and subcategories, with rules setting emissions limits and technology standards.
- Sources which are not major sources may be considered “area sources,” for which EPA identifies standards for emissions and controls.
- Facilities using HAPs must develop, maintain and implement programs for prevention, detection, and response to “accidental releases.” These Risk Management Plans are required to be submitted to EPA for review.

3. Ozone Protection

EPA has several regulations and programs for the phasing-out of use of chlorofluorocarbons (CFCs) and other ozone-depleting chemicals. EPA has identified Class I and Class II substances subject to the phase-out and will develop regulations which have set standards and limits for the use and disposal of those chemicals as well as for the service, repair and disposal of appliances or equipment associated with those chemicals.

C. Wastes and Cleanup

1. Resource Conservation and Recovery Act

The Resource Conservation and Recovery Act (RCRA) regulations are commonly referred to as the “hazardous waste” regulations. These regulations establish a “cradle to grave” system of regulating hazardous waste from its generation, its transportation and its ultimate disposal.

The applicability of the RCRA regulations is determined by the operations of a particular business. While one business may be regulated merely under the generator or underground storage tank standards, another business may, by virtue of storage or recycling of chemicals, be subject to generator standards, treatment, storage and disposal facilities standards, recyclable materials standards, land disposal restrictions, and underground storage tank regulations. Thus, the manner in which a facility handles its raw materials and wastes determines, in large part, the extent of RCRA regulation.

States may develop their own RCRA programs. EPA may delegate authority to a State to administer and enforce the State program in lieu of the Federal RCRA program. Such approved State programs may have provisions more stringent than required by the federal regulations.

a. Identification and Listing of Hazardous Waste

The RCRA regulations initially require all generators of solid wastes (which includes “liquid” wastes) to identify whether the waste is hazardous. The identification can be made in three ways. First, wastes are automatically considered to be hazardous if they appear on an EPA list of hazardous wastes. Second, the generator can test its waste-streams to determine if they exhibit the “characteristics of a hazardous waste.” Third, a generator may determine, based on familiarity and knowledge of its wastes, that they are hazardous.

b. Generator, Transporter, Interim Status and Permitted Facility Standards

Once it is determined that a business generates hazardous waste, that business will be regulated according to how it handles the waste. Businesses that generate waste but do not treat, store, or dispose of those wastes on-site are subject to the “generator standards,” requiring the labeling, manifesting and proper off-site recycling or disposal of hazardous wastes and disposal under written manifests, of which copies must be retained for three years.

Facilities, depending on the status of pending permit applications, that treat, store, recycle or dispose of hazardous wastes on-site, are subject to the “interim status” or “permitted” facility standards. These facility standards contain comprehensive requirements that identify how wastes can be handled and disposed of and how to properly “close” treatment, storage and disposal units or areas. These regulations also impose cleanup or “corrective action” requirements and require financial assurance to guarantee the cleanup of such facilities.

c. Recyclable Material Standards

The RCRA regulations contain specific regulations for handling recyclable materials, and contain a comprehensive set of limitations on the recycling and reuse of solid and hazardous waste materials.

d. Land Disposal Restrictions

EPA has developed a program which prohibits the placement of waste materials into or upon the land unless those wastes meet, either by their nature or through treatment, certain criteria. These regulations are known as the "Land Disposal Restrictions" or "land ban" and set limits that determine whether wastes may be land disposed or landfilled.

e. Underground Storage Tank Standards

The RCRA regulations specifically address the construction, operation, maintenance, closure and cleanup of releases from underground storage tanks containing either petroleum (gasoline or diesel) or other regulated substances.

f. Medical Waste Standards

The RCRA regulations contain standards for the tracking, handling and disposal of medical wastes.

g. Used Oil Standards

EPA has developed regulations which establish management standards for generators of used oil, used oil collection centers and aggregation points, used oil transporters, used oil processors and re-refiners and persons or businesses involved in the marketing and burning of used oil as a fuel. Thus, every stage of used oil, from generation to ultimate recycle and reuse, is covered by these regulations.

2. Comprehensive Environmental Response, Compensation and Liability Act (CERCLA/Superfund)

The Comprehensive Environmental Response, Compensation and Liability Act of 1980 (CERCLA), as amended by the Superfund Amendments and Reauthorization Act of 1986 (SARA), contains procedures for the following:

- Selecting sites which should be cleaned up because they present an imminent and substantial danger to public health or welfare.
- Identifying the acceptable procedures and remedies to be used for such cleanups.
- Identifying potentially responsible parties liable for cleanups (PRPs).
- Identifying procedures for funding cleanups.

CERCLA imposes liability for cleanup costs on certain categories or entities as follows:

- Current owners or operators of the property being cleaned up,
- Past owners or operators of the property who owned the property or operated on it at the time hazardous substances were released onto the property,
- Generators or persons who "arranged for" the disposal of hazardous substances,
- Transporters who selected the disposal site.

Depending upon the circumstances, operator liability can extend to officers and shareholders (including parent corporations). Following a merger, the surviving corporation succeeds to the CERCLA liability of its predecessor.

The extraordinarily complex process of cleaning up a contaminated site is highly regulated and is normally conducted under the direction of, or with significant input from, EPA and the State agency having authority over the cleanup site. The National Contingency Plan (NCP) establishes the minimum requirements for cleaning up a site. The cleanups can be accomplished by responsible parties voluntarily, or EPA or a State agency may issue an administrative order requiring parties to conduct a cleanup. Once a party or parties have incurred costs involved in a cleanup of a site, they can seek contribution from other potentially responsible parties for that site who are not part of the voluntary cleanup or are not named in the administrative order.

The CERCLA regulations, in addition to providing for the cleanup of contaminated sites, establish the procedures a business must follow when there is a spill, release or accident involving a "hazardous substance." Those regulations require immediate reporting of "releases" of hazardous substances into the environment if the hazardous substance has been released in a quantity which exceeds the "reportable quantity" established by EPA.

D. Public Information and Reporting Requirements

Many of major environmental laws contain provisions that address releases, both planned and accidental, and impose recordkeeping and reporting obligations. Additionally, State and local laws and regulations, some more stringent than Federal law, address chemical releases as well.

1. Emergency Planning and Community Right-to-Know Act

The Emergency Planning and Community Right-to-Know Act (EPCRA) requires businesses and employers to identify to the government and members of the public the chemicals handled, stored, or used by that business. There are three basic provisions to the community right-to-know requirements, as more fully described below:

- Emergency planning and notification procedures.
- Hazardous chemical inventory reporting.
- Toxic chemical release reporting.

a. Emergency Planning and Notification

The emergency planning and notification procedures require companies to identify to the community those "extremely hazardous substances" that are present on the property and require companies to work with local emergency authorities to develop plans to respond to emergencies involving those extremely hazardous substances. EPA has designated what chemicals are considered "extremely hazardous" and has published the list of chemicals in 40 CFR Part 355 Appendices A and B. Further, each extremely hazardous substance has been given a "reportable quantity." If a release exceeds that reportable quantity, then a spill notification is triggered. In the event of the release of a "reportable quantity" of a hazardous substance (under Superfund) or an extremely hazardous substance, the facility must make proper notification of the release to the community by reporting to the State Emergency Response Commission (SERC), Local Emergency Planning Committee (LEPC), and the local fire department.

b. Hazardous Chemical Inventory Reporting

Under the hazardous chemical inventory reporting provisions, owners and operators of facilities that have hazardous chemicals present in excess of the threshold quantity established for that particular chemical, must annually report to the State Emergency Response Commission, the Local Emergency Planning Committee, and the local fire department. The report filed with the Tier I or Tier II forms must include the existence of such chemicals on the property, the quantities of those chemicals and the health hazards associated with such chemicals. The facilities must identify the location of storage or use of each regulated chemical on the property so as to assist the fire department in responding to emergencies relating to those hazards.

c. Toxic Chemical Release Reporting

Companies must annually report to EPA and the State Emergency Response Commission a summary of any “releases” of toxic chemicals into the environment. Under this portion of the regulations, releases are not only considered to be those that are accidental, such as spills, but must include any emission or discharge of a chemical into the environment, whether permitted or not. Thus, the toxic chemical release reporting provisions require companies to disclose on the “Form R” to the community (sending a copy of the report to the Local Emergency Planning Committee), to the state, and to the EPA, a description of how and where chemicals are used at the facility, and how and where those chemicals are discharged, emitted, spilled, recycled, or disposed of – on or off-site. Companies are required to identify the efforts they have made toward pollution prevention during the reporting year.

E. *Brownfields and “Risk Based” Cleanups*

In recent years businesses have devoted an increasing amount of attention to the voluntary cleanup of properties, often regulated under Brownfields or voluntary cleanup rules using risk-based cleanup standards. Brownfields are commonly understood to be properties or businesses which are impaired because of the presence of environmental contamination. To encourage development and cleanup of these properties, EPA, as well as many States, have enacted legislation which provides such incentives as tax credits, releases from liabilities or “No Further Action”-type reliance letters which can be used by businesses, lenders or other owners of property to assist in the sale or redevelopment of the contaminated property.

Many States have developed voluntary cleanup programs designed to stimulate the re-use of environmentally impaired properties. Many of these State laws identify risk-based cleanup objectives which allow owners to leave contamination in place so long as it presents little risk to the intended users of the property.

F. *Product Regulation: Tracking Known Hazards / Risks to Human Health or the Environment*

While laws tend to focus on the control and regulation of pollution once it is generated, there are laws that focus on chemical use or products, so as to preclude or minimize the creation of pollution in the first instance.

1. Toxic Substances Control Act (TSCA)

The Toxic Substances Control Act (TSCA) applies to chemicals manufactured, processed or imported in the United States. TSCA has two major goals. First, it requires the manufacturers, processors and users of chemicals, rather than the government, to assume responsibility for testing and providing data on the health effects of chemicals and mixtures of chemicals. Second, TSCA allows EPA to regulate, through limitations or prohibitions, the manufacturing, processing or use of toxic chemicals.

a. Premanufacture Notification (PMN)

The Premanufacture Notification (PMN) provisions require any manufacturer or importer of a new chemical substance to identify the substance to the EPA ninety days before the company intends to manufacture or import this chemical. The 90-day notice requirement allows EPA to review a chemical before its introduction into commerce.

b. Testing

EPA has developed several regulations relating to chemical testing, which impose the burden of testing on the manufacturers, processors or users of certain chemicals.

c. Regulation of Existing Chemicals

If a determination is made that the manufacturing, processing, distribution in commerce, use or disposal of an existing (as opposed to a new) chemical substance presents an unreasonable risk of injury to human health or the environment, EPA has the authority to develop regulations to prohibit or limit production of that chemical, to impose labeling requirements, or to regulate the processing, distribution, use or disposal of such chemical.

EPA has prohibited the manufacturing, processing and distribution in commerce of polychlorinated biphenyls (PCBs), with few exceptions. EPA regulations also govern the marking, storage, disposal and spill cleanup of PCBs.

d. Recordkeeping and Reporting

The TSCA requirements for recordkeeping and reporting are a significant part of each of the major TSCA regulations. The regulations require businesses to prepare, maintain, and where necessary, submit to the EPA records and reports of information relating to manufacturing, processing and use of chemicals, as well as the environmental or human health effects of chemicals.

2. Hazard Communication in the Workplace

Part of the Occupational Safety and Health Act (implemented by the Occupational Safety and Health Administration, or OSHA) covers communication of hazards to employees by employers.

According to OSHA, "Haz Com" rules are designed to ensure that "hazards of all chemicals produced or imported are classified, and that information concerning the classified hazards is transmitted to employers and employees."

OSHA has recently promulgated changes to its "Haz Com" rules that are intended to align with the provisions of the United Nations Globally Harmonized System of Classification and Labeling of Chemicals (GHS). This system regulates labeling and involves the use of standardized safety data sheets (SDS) used to communicate risks of hazardous chemicals. The new rules will be phased in over a period of time.

III. CORPORATE RESPONSIBILITY AND MANAGING POTENTIAL LIABILITIES

Under many environmental laws, certain violations must be self-reported, such as exceedence of an NPDES permit limit, or the accidental release of hazardous substances beyond the reportable quantity. U.S. regulators such as EPA and OSHA also have the authority to inspect facilities and demand records in order to determine if violations exist. Regulators also rely on public vigilance to report suspect environmental practices. Employees, whether legitimately concerned over the environment or merely disgruntled due to a perceived workplace injustice, often become "whistleblowers," going directly to a governmental agency with their concerns.

Regulators take violations quite seriously and the statutes provide a broad array of enforcement tools backed by stiff environmental penalties. The threat of criminal liability also helps to keep industrial managers, employers, officers, directors, shareholders and employees accountable for environmental compliance. Large fines and jail time have been imposed on violators. Additionally, the eligibility of companies to receive government contracts may be lost as a result of convictions under some federal laws.

As public interest in the environment continues to grow, companies have realized that environmental compliance means good business and protection of shareholder value. Consider as an example the immediate and dramatic drop in the value of BP PLC's stock following the Deepwater Horizon Oil spill in 2010. Consider also the desire of companies to be recognized for their sustainability efforts, or to qualify for specialized stock funds that invest only in "environmentally aware" companies.

To ensure environmental compliance, many companies employ a systematic approach. A systematic approach typically includes various elements intended to maximize its effectiveness. These elements include:

- policies, standards and procedures to be followed by employees,
- top-down support with specific high-level personnel assigned overall responsibility to oversee compliance,
- effective communication of the company's standards and procedures to all employees,
- means to achieve and maintain compliance (monitoring, auditing and reporting system,
- disciplinary mechanisms for violations, and

- appropriate response after an offense has been detected.

These elements are warranted not only to ensure effectiveness, but also to minimize liability should a violation arise. For example, the Department of Justice Guidelines “[e]ncourage self-auditing, self-policing and voluntary disclosure of environmental violations by the regulated community by indicating that these activities are viewed as mitigating factors in the Department’s exercise of criminal environmental enforcement discretion.” Similarly, EPA has an auditing policy that results in reduced penalties for self-policing.

With proper precautions these audit programs may be protected by the attorney-client work product or self-evaluative privileges. Additionally, many States now have enacted “audit” laws to encourage companies to voluntarily assess and correct environmental infractions.

Conclusion

Knowledge of and compliance with environmental laws and regulations are critical factors in business today. Any business or company moving into the United States must carefully review the entire range of environmental regulations to determine the applicability to its business. Once a determination has been made, programs should be developed for ensuring compliance.

Key Environmental Considerations for Doing Business in the United States

1. Does the Company have an Environmental Policy/Code of Responsibility?
2. Does the Company have internal procedures in place to ensure compliance with environmental requirements?
 - 2.1. Do the procedures meet applicable industry standards such as ISO 14001, Responsible Care, etc.?
 - 2.2. Do the procedures satisfy Federal Corporate Sentencing Guidelines?
 - 2.3. Are the procedures effective in ensuring/improving compliance?
 - 2.3.1. Have auditing privilege/lack of privilege issues been addressed?
 - 2.3.2. Does the Company have a hotline? Is it prepared to deal with a whistleblower?
 - 2.3.3. How will a violation be addressed?
 - 2.4. Does the Company’s program satisfy EPA’s Audit Policy and is the Company prepared to make a voluntary disclosure to minimize penalties?
3. Have the financial liabilities associated with historic activity been appropriately evaluated, reserved and reported in public filings?
4. Is the Company able to effectively evaluate environmental liabilities that arise from a real estate property transfer? A merger or acquisition? A plant or facility closure?
5. Has the Company integrated environmental considerations into other areas of its business, such as facility expansion, product expansion?
6. Has the Company integrated environmental considerations (social responsibility) into its existing operations, such as product substitution, waste minimization, supplier auditing, good-neighbor/open door policies, etc.?
7. Does the Company make products that may create toxic exposure to end-users, and are necessary MSDS and warnings being provided?
8. Does the Company generate hazardous substances and are they being managed in accordance with state law and RCRA?
9. Does the Company generate air emissions and are they in compliance with the CAA and State law?

10. Does the Company discharge waste water to a POTW or to a waterbody and are they in compliance with the CWA and State law?
11. Is the Company subject to CERCLA cleanup orders?
12. Is the Company in litigation for toxic exposure - toxic torts - arising from its products or from contamination resulting from its operations?
13. Does the Company have insurance coverage for its environmental liabilities?
14. Is the Company ready for a governmental inspection?
15. Is the Company aware of its reporting requirements and prepared to address reporting associated with an spill of a hazardous substance?
16. Is the Company ready to deal with an emergency (explosion or death) from its operations?
17. Are workers being protected in compliance with OSHA?
18. What does the Company do to monitor environmental developments and proposed legislation or regulations that may affect its operations? Is the Company positioned to participate in the lobbying or rulemaking process?

Commonly Asked Questions and Answers

- Q. Are small companies likely to be exempt from environmental protection regulations?
- A. *Small companies generally are not exempt. However, there are reduced recordkeeping, reporting and administrative burdens for small businesses under some regulations.*
- Q. What can be done to minimize enforcement risks?
- A. *Knowledge of, and strict adherence to the requirements of environmental laws is needed. Compliance policies and procedures, coupled with periodic operational audits are helpful.*
- Q. Is negligence or intentional wrongdoing necessary for companies to have liability for environmental protection violations?
- A. *No, under most programs, strict liability may impose daily penalties without regard to fault. However, the size of potential fines and risks of criminal enforcement increase in cases of negligence or intentional misconduct.*
- Q. How can companies be aware of new environmental protection requirements?
- A. *There are a number of environmental periodicals reporting on new regulatory developments, some of which are directed to specific States. Also, subscriptions to applicable federal and state regulations are available. Many publishers offer update services to effectively deliver new regulations in some areas. Further, many trade associations also provide guidance and notices of environmental requirements impacting their industry or association members. The Internet offers good opportunities to access information made available by the government and private parties.*
- Q. Who at my company should be responsible for environmental compliance?
- A. *Everyone at a company should be responsible for environmental compliance. Administratively, each company has its own personnel structure and it is up to the company to determine how to staff its environmental department. Large companies with air, water, and waste issues may have an entire department dedicated to environmental compliance with several engineers specializing in air matters, wastewater treatment, etc. Smaller companies with simple environmental concerns may only have one or two people assigned to environmental compliance. Companies should be aware the EPA has, in the past, and intends in the future, to prosecute companies who fail to have adequate environmental programs and staffing, where the absence of such employees results in non-compliance with environmental regulations.*

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Q. Can individual employees be criminally liable for environmental non-compliance?

A. *Yes, individuals, as well as corporations, have been investigated, indicted, and convicted of environmental crimes. EPA and the FBI, as well as the U.S. Department of Justice and many State agencies, are expanding the number of inspectors, investigators, and attorneys in their Environmental Crime Units in an effort to enforce environmental laws.*

Q. What do we do if we have a spill of a chemical at our facility?

A. *Companies should have Contingency Plans in place which describe in detail the procedures which must be followed and the reporting and recordkeeping which must be made in response to a spill. The major federal environmental laws, the Clean Air Act, Clean Water Act, RCRA, SARA and CERCLA all have comprehensive spill reporting and response procedures, and many States have additional requirements. Because there are so many spill response and reporting obligations, companies should have plans and programs in place before spills occur to facilitate proper notifications, recordkeeping and reporting. In fact, the major federal laws and many States require companies to prepare and maintain Contingency Plans and Spill Response Programs.*