

The Environmental Black Swan: What Manufacturer's Don't Know They Don't Know

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Regardless of what side of the political fence you reside on and regardless of whether under this current administration you believe environmental enforcement has taken a holiday, the fact remains that most manufacturers don't adequately appreciate the depth and breadth of environmental regulations that apply to their business. To compound this lack of awareness, the federal and state environmental regulations seem to be always changing.

So how do manufacturers solve this Black Swan problem?

One strategy is to have environmental counsel direct an environmental compliance audit with a trusted environmental consultant. If non-compliance is detected during the audit, counsel can work with the manufacturer to determine how and when to get the manufacturer back into compliance. Often this environmental audit exercise reveals two concerns: (1) non-compliance with regulations the manufacturer is aware of and (2) non-compliance with an entirely new regulatory platform the manufacturer is not aware of. Other items frequently revealed in an audit include the necessity of obtaining a permit in order to continue the manufacturer's current operations.

Remember, just because the EPA has not visited your facility doesn't mean that your facility will get a pass for your non-compliance. Moreover, ignorance of an applicable regulatory platform is no excuse when it comes to enforcement by the EPA for fines and penalties.

So why should you care, and why should you act now?

The answer to this dual question is simple: fines and penalties for environmental non-compliance are substantial.

For example, the maximum fines for non-compliance with the most significant environmental statutes are referenced below:

- \$99,681 per day for a Clean Air Act violation
- \$74,552 per day for a hazardous waste violation under the Resource Conservation and Recovery Act (RCRA)
- \$54,883 per day for a Clean Water Act violation
- \$57,317 per day for an Emergency Planning and Community Right to Know Act (EPCRA) violation
- \$57,317 per day for a violation under the Comprehensive Environmental Response Compensation and Liability Act (CERCLA)

Additionally, if a manufacturer is operating outside a regulatory platform, there is a very real risk that the affected facility may be shut down or an operation suspended until the requisite permit can be obtained. To add to this grim reality, it may take months to obtain the requisite permit, subjecting the manufacturer to additional pain and discomfort.

The Vedder Price Environmental Practice Group has advised hundreds of manufacturing companies all over the world through the implementation of this environmental audit process to quickly and efficiently assess a manufacturer's non-compliance risk and to develop an action plan to achieve compliance.

If you have any questions regarding the topics discussed in this article, please contact **Brett D. Heinrich** at +1 (312) 609 7799, or any Vedder Price attorney with whom you have worked.