



Electronic Dispatch

# Municipalities/Environmental Law Information Memo

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## U.S. ENVIRONMENTAL PROTECTION AGENCY DEPARTMENT OF PUBLIC WORKS COMPLIANCE INITIATIVE: WILL YOUR MUNICIPALITY CHOOSE THE CARROT OR THE STICK?

Most municipalities in New York State received a letter from the U.S. Environmental Protection Agency ("EPA") in late 2006 emphasizing the importance of assuring compliance with federal environmental regulations. EPA focused its attention on municipal Department of Public Works ("DPW") facilities because they contribute to the presence of toxic chemicals and hazardous wastes in the environment, and are subject to a variety of environmental regulations, but are not aware of, or do not consistently comply with, those regulations. In an effort to improve environmental compliance by DPW facilities, EPA's letter informed municipalities that they could voluntarily evaluate their environmental compliance and disclose any violations or potentially be subject to EPA inspections and enforcement for identified violations.

EPA has already begun to inspect municipal DPW facilities in New York State, and the agency will continue to implement its inspection program at facilities which do not voluntarily perform an environmental audit and disclose audit results. Some municipalities have agreed to perform an environmental audit, and in doing so, hope to avoid inspections, enforcement, and the resulting assessment of significant monetary penalties.

### Common Environmental Concerns at Municipal DPW Facilities

Municipalities, including DPW facilities, are subject to numerous environmental regulations, including, but not limited to those related to air quality, hazardous waste, underground storage tanks, and water quality. Some of the most common environmental regulatory concerns at municipal DPW facilities include the following:

*Air Quality.* Maintenance operations have the potential to cause air pollution. For example, improper servicing and disposal of motor vehicle air conditioners, or the use of degreasers that are considered Hazardous Air Pollutants ("HAPs"), can adversely impact air quality and lead to regulatory violations. Auto body painting operations also release significant air contaminants into the environment.

*Hazardous Waste.* Common violations of hazardous waste regulations at any facility, including municipal DPW facilities, involve: (1) a failure to make a proper hazardous waste determination (i.e., failure to determine that a solid waste is a hazardous waste); (2) improper or no labeling of hazardous wastes; (3) improper or no weekly inspections of hazardous waste storage/satellite areas; (4) maintaining open containers of hazardous waste; (5) improper disposal; (6) improper hazardous waste manifesting procedures; and (7) inadequate or no training of employees in hazardous waste management. Municipal DPW facilities generate a wide range of hazardous wastes, including mercury, lead, asbestos, cleaning solvents, and paints, among others.

*Underground Storage Tanks ("USTs").* At municipal DPW facilities, EPA is concerned about ensuring proper management of USTs. Common violations include the failure to upgrade or close USTs as required, and malfunctioning leak detection systems.

*Water Quality.* Municipal DPWs have also failed to comply with applicable water quality regulations in the past, and violations have included improper disposal of wastes in floor drains, and the failure to have a Spill Prevention, Control and Countermeasure Plan, among others.

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## The “Stick” – Inspections and Enforcement

EPA will take appropriate enforcement action against municipalities in New York State when violations are identified during an inspection. Violations can result in significant civil penalties and can also result in criminal prosecution if the violations are willful and/or intentional. In similar compliance initiatives involving colleges and universities and hospitals, since 1995, EPA Region 2 has assessed over \$2 million dollars in penalties for hazardous waste, air, toxic substances, and water violations.

## The “Carrot” – Voluntary Compliance Audits

To avoid these sanctions, municipalities should voluntarily evaluate their compliance with environmental regulations before they are inspected, and self-disclose identified violations in accordance with EPA's audit policy entitled “*Incentives for Self-Policing: Discovery, Disclosure, Correction and Prevention of Violations*” (the “EPA Audit Policy”). The EPA Audit Policy can be an effective tool to mitigate or eliminate penalties for federal environmental violations. These benefits are not automatic, however, and municipalities must carefully plan their compliance evaluation activities to meet specific EPA Audit Policy requirements. Only through such advance planning can a municipality maximize its ability to receive EPA Audit Policy benefits. It is also important to understand that assessing your own environmental compliance, and putting the results of your assessment in a file, will not eliminate the possibility of an EPA inspection and resulting enforcement. Additionally, because the EPA Audit Policy is a federal policy, municipalities in New York State should consider whether to disclose violations of state environmental requirements to the New York State Department of Environmental Conservation.

## Our Experience

Unfortunately, there is no way to predict whether your municipality will be among those inspected. However, if you have not been inspected, and have not yet used the EPA Audit Policy, it is not too late to voluntarily evaluate your environmental compliance and manage your environmental risk.

The attorneys in Bond, Schoeneck & King's Environmental Law Practice Group have extensive experience representing municipalities in environmental regulatory compliance and enforcement matters, including compliance auditing, and have successfully utilized the EPA Audit Policy on behalf of many clients. For this reason, we can help guide your municipality through the environmental compliance audit process, and decide whether to make any voluntary disclosure to regulatory agencies of identified violations.

If you have questions regarding the EPA municipal DPW facility inspection initiative, or about how you can prepare for a possible inspection and/or evaluate environmental compliance, please contact us.

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