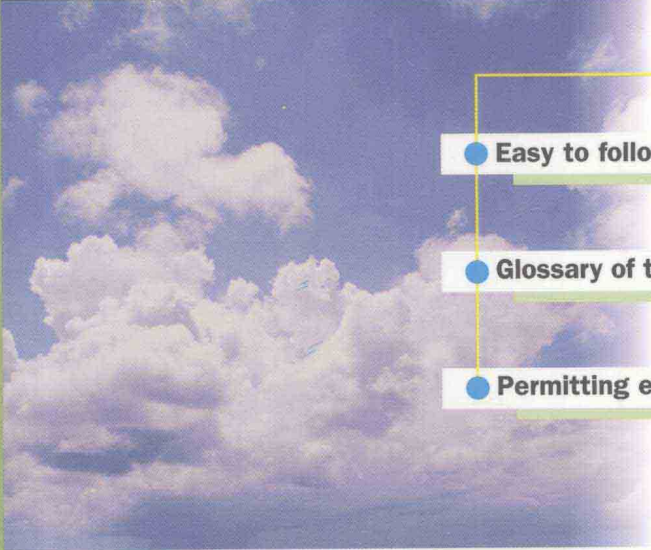


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Air Quality Compliance and Permitting Manual

Richard Trzupek

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Air Quality Compliance and Permitting Manual

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The Paper Maze

1.0 The Big Question

After nearly 20 years of experience in air pollution regulation, there is one question that I have been asked more often than any other: “How do I find out what I am supposed to do?” It’s the common, forlorn cry from a great many men and women in industry. They are, by and large, men and women who want to do the right thing—who are fairly desperate to do the right thing—if only they could figure out what the right thing is.

The answers to the question are hidden within a complex maze of legislation, regulation, and governmental guidance that is as imposing and confusing as tax law. In fact, perhaps industrial air pollution regulation is even more confusing than anything the IRS has to offer. Air pollution regulations must, necessarily, endeavor to understand and fairly account for the thousands of types of processes that operate in an industrial economy. Furthermore, the nature of the law requires that regulations be written in language that is awkward, tedious, and confusing. Indeed, one of the basic mistakes people make is assuming regulations are written in English. Regulatory language looks like English, it even uses English phrases; therefore, people conclude, it must be English. It’s not. Regulations, environmental and otherwise, are written in a hybrid language that is part Latin, part scientific notation, and part Esperanto. Any resemblance to English is purely coincidental.

That’s why we have lawyers.

“Know your process better than your regulator.”

William J. Anaya
Arnstein & Lehr

It should come as little surprise to most that the lawyer and the technical consultant disagree—even though each sees the same thing. Sure, the regulations are a maze, necessarily complex and often one or two technologies behind the process that is regulated. That is to say the law and the regulations are almost always slightly or significantly behind the technology being used at the plant. How could it be otherwise?

One important consideration for environmental managers is that they know their business better than the regulator. The environmental manager must convince the regulator that the technology is critical to the business and the regulation must be fitted to growth and innovation.

The language of the law is legalese, but the language used in the regulation is not. To the contrary, regulations contain a great deal of techno-jargon written by nonlawyers. They often use awkward terms. (The term “off-gassing” isn’t taught at Harvard Law School, for example.) The use of such jargon represents significant attempts to communicate discrete features of a process better known to the regulated person than the lawyer or the regulator.

Because of the structures of the law and its goals, the regulatory process requires technical consultants, lawyers, and environmental managers savvy enough to blend the principles, the process, and technology. When I am asked “How do I know what I am supposed to do?” I say, “Explain your process to me in detail.” The environmental manager must know the process and be able to articulate it well to all members of the team.

1.1 Air Pollution and Production

Air pollution regulations also differ from many other types of environmental rules in a very important way: Air pollution regulations involve themselves in the production process. This is not the case for the majority of solid waste and wastewater rules, the forms of regulation with which most of the industrial community is more familiar and comfortable. In the case of solid and liquid wastes, you are most often dealing with a static quantity. Drums lie in a field. Water has been contaminated. A waste stream must go to a landfill. In all of these cases, the issues do not directly involve the processes upon which the company depends. They are largely financial issues and most companies approach them as such. A company accepts its liability and responsibility for cleaning up a Superfund site, for example. That decision being made, the issue boils down to one of negotiating the lowest cost to accomplish the cleanup. That negotiation may be financially significant, but it ultimately has no direct effect on production. (See Fig. 1.1.)

It is not so with air pollution regulation. A permit to limit air emissions from a process will directly affect, and sometimes limit, production. At a minimum, there will be some level of accountability that is placed on production personnel. Accountability may manifest itself in the form of operating practices, or additional recordkeeping requirements, or limitations on rates of production. Often accountability means all of the above. Now we are playing a different ballgame. Now we are talking about regulations that directly affect operations at the factory and, therefore, directly affect the bottom line.

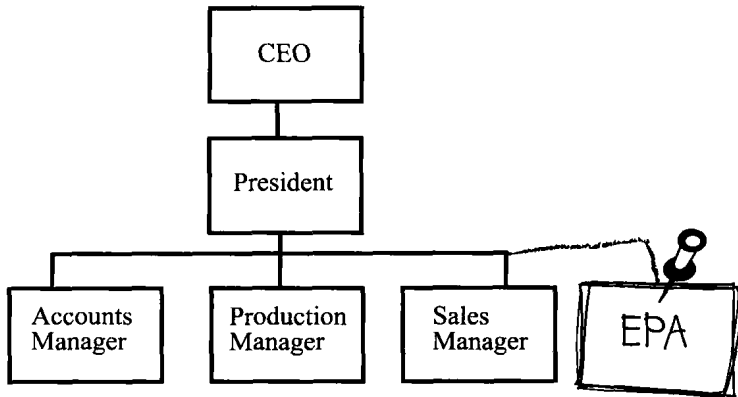


Figure 1.1 The new organizational chart.

1.2 The Business Perspective

The fact that air pollution rules can have such a profound effect on a company's business result both in their complexity and in the frustration that the men and women of America's factories feel in trying to sort out this maze of paper. In attempting to outline a systematic, understandable approach for maintaining compliance with air pollution regulations, the perspective of this book is that you, as a responsible member of industry, need to keep two objectives in mind:

- You should protect your company's liability and contribute to a healthy environment by understanding and complying with all of the rules that apply to you.
- You should ensure the continuing viability and profitability of your company by complying in ways that are least costly and least intrusive to its business.

The second point is every bit as important as the first. If you are expecting a dry resuscitation of regulations and laws, hedged in language designed to cover every possible contingency, you should not be reading this book. Books that aim to do so abound, and there are many fine ones. For the most part they are written by lawyers for lawyers, or by scientists for scientists. This book is about your business and the way pollution regulations interact with your business. It's about doing as much as you can to keep air pollution regulations from getting in the way of running your business. If you are a business owner trying to understand the process, or if you are an environmental manager who wants to both protect the environment and contribute to the bottom line, you are in the right place.

“Any capital improvement or change potentially opens the company to after-the-fact second-guessing.”

Roy M. Harsch

Gardner Carton & Douglas

USEPA's involvement in controlling growth and changes through the PSD and new source nonattainment review rules has a tremendous stifling effect on industries' ability to respond to market changes and demands to keep abreast with competition both here and abroad. It affects business' ability to simply make the necessary capital investment to continue improvements in efficiency and economies. This is almost an insidious form of regulation, one which is not very well understood by businesspersons and one which appears to be almost always ripe for potential enforcement if USEPA takes a hard look at changes that have been made.

You should recognize that any capital improvement or change to the production process, including what is thought to be routine repair and replacement, potentially opens the company to after-the-fact second-guessing by the regulators, under the guise of new source review permitting.

“Environmental law is business law.”

William J. Anaya

Arnstein & Lehr

Environmental law is business law? Does the cost of the compliance equal or exceed the cost of noncompliance?

All members of the team must be cognizant of the fact that there is a significant difference between the regulation designed to implement the national standard and liability principles associated with historic activities, cleanup enforcement, and criminal enforcement of environmental laws. For example, waste regulations within the Resource Conservation and Recovery Act regulate the generation, transfer, treatment, storage, and eventual disposal of solid and hazardous waste. Indeed, those regulations are part of a process.

However, in those instances where waste was improperly stored by leaving drums in the field, or where waste was buried and allowed to release into the soil and groundwater, there are no regulations per se. That activity is historic, not a part of a process. There are liability principles that attach under RCRA or the Comprehensive Environmental Response, Compensation and Liability Act of 1980 (CERCLA).

Environmental managers simply must be able to distinguish between liability principles and regulatory mandates in order to effectively manage environmental issues associated with the company's production. Rather than conclude that regulations affect only the bottom line of a going concern, it is more accurate to say that regulations affect production processes, whereas both liability principles and regulatory mandates affect the bottom line.

1.3 Risk Management

The concept of risk management must be understood up-front. The astute businessperson knows that compliance with any government regulation is an exercise in risk management. Risk management, in air pollution terms, does not mean attempting to get away with something. It does not mean knowingly emitting more air pollution than you are allowed. That is gross negligence and could possibly result in criminal violations. It is assumed that you are neither ethically nor financially interested in engaging in gross negligence.

In the realm of air pollution regulations, risk management encompasses the decisions you make regarding accountability, completeness