

2.7 What About Regulations?

The environmental regulatory climate provides incentives and barriers for small businesses. This section considers the implications and concerns about environmental regulations that affect small businesses. Section 5 of the guidebook provides a **primer** of environmental regulations, offering information about specific areas of environmental regulations.

A recent study of small- to medium-sized manufacturers in Wisconsin revealed that environmental regulation was one of two top issues for Wisconsin companies. Similar observations have been made in business retention questionnaires. Issues related to wastes and environmental regulations rank very high as concerns. Most often the concerns stem from a company or business not in compliance, or not knowing all the regulations that apply to the business.

Where Do Regulations Start?

For a new business, environmental regulations can be a large factor before the business has opened its doors. There are several things to consider, such as types of wastes the business will generate and what regulations will apply. Regulations could impact the equipment purchased and processes used. In addition, the business location may be restricted by the type of wastes generated.

Consider finding a property or building that seems suitable for a new business. A new business owner may find what appears to be a good site and building. However, the site could be a bad environmental location. For example, does the property have any known contamination or was there previous business activity that generated contaminants? If the property has an underground fuel storage tank or was contaminated by a spill, the buyer assumes responsibility for cleanup costs.

A small ice cream shop might find an old gas station an ideal location and that the building is easily adapted to serving ice cream. The owner of the new business should have an environmental audit of the property completed to make certain that no environmental liabilities exist or remain unknown before purchase. This actually happened, but the new shop owner did not have an environmental audit done before buying the property. It was found later that leaking fuel tanks, though they had been removed, left contaminated soils to be remediated. The shop owner was subject to testing and cleanup costs.

In another case a small furniture manufacturer was going out of business and wanted to sell his property. An environmental audit revealed that the land was contaminated by a previous occupant. The furniture manufacturer found that remediation costs equaled the property's market value. He could not recover his initial investment in the property because he had assumed responsibility for the land.

In a third example, a small metal fabricating facility wanted to locate a plant in an industrial area near Lake Michigan. An ideal property was found with no contamination problems. However, another regulatory obstacle was found. The company cleans parts with halogenated solvents, but discovers that the region is in an ozone “non-attainment” area. Under the Clean Air Act requirements, limits are placed on air emissions. Maximum available control technology is required to limit those emissions. This could add an unanticipated cost, unless the business can find an alternative coating system that eliminates the emissions problem.

If There are Wastes, There are Regulations

A good rule of thumb is that if a business generates any waste, it is likely to be subject to an environmental regulation. The most obvious wastes subject to regulation are hazardous wastes, air emissions, sewer discharges, and solid wastes. For each of these wastes, there are a number of regulations at the local, state, and federal level (see Section 5).

The more dangerous the material is to the environment or human health, the more complex the regulations. Hazardous materials resulting in hazardous waste, are regulated in terms of shipping or transport, storage and labeling, employee exposure, treatment and disposal, and long-term liability. These regulations involve agencies such as the U.S. EPA, Wisconsin Department of Natural Resources, Department of Transportation, OSHA, Department of Commerce, and so forth.

Solid wastes that have little apparent environmental hazard may still be regulated. Certain recyclable materials, for example, cannot go to a landfill. Businesses must have an appropriate recycling program in place, or one accessible to the business. Trash that must go to a landfill cannot be disposed of or burned on-site. In special cases, materials such as waste wood or waste oil may be used as an on-site energy source.

A company with a large amount of air pollutants once claimed that it was not a polluter because it complied with its air permit. Compliance with regulatory permits, however, does not necessarily relieve a company from legal responsibility if a lawsuit is filed for damages caused by the emissions.

A sewer discharge that is acceptable in one location, may not be acceptable in another. Sewer treatment facility discharges are regulated as to the content and volume of materials. Capacity varies both in terms of the facility design and the receiving surface water. A small rural dairy may have to pretreat before it can discharge its load to a small municipal facility. However, in another community a competitor finds that the sewer plant can handle its discharge.

These examples illustrate that the potential issues are diverse and often depend on a variety of factors, including location.

What Is a Small Business to Do?

With these few examples, it is apparent why small businesses are overwhelmed by environmental regulations. It is extremely difficult for a small business to keep up with all the regulations. However, the question is, "what regulations apply to a small business and who can provide that information."

The key is to identify the processes, materials, and wastes that a business is likely to use or generate. Once that information is known, a business can identify sources of help, or a business counselor can assist the business to identify sources of help.

For example, if a person wants to start a dry cleaning business, it would be important to know the air emission and hazardous waste regulations that apply to the business. This information is critical in ensuring that the new owner does not invest in a "good deal" on used equipment that releases too much cleaning solvent. There is always used equipment available, but it might not be a good investment if using it results in regulatory problems.

Section 5 of this guidebook is a regulatory primer that can be used as a first look at the regulatory environment. While consultants and technical assistance providers often guide businesses through the regulatory maze, they cannot provide a final interpretation. This is best done through the appropriate regulatory agency.