

Enviro Self-Assessment is Key

By: John E. Osborn

Methods of addressing environmental enforcement have evolved over the past 30 years and virtually all of the mystery has been taken out of compliance. Agencies at the Federal, state and local levels urge education, sharing information and active management on the part of the regulated parties. Clearly, the key to avoiding environmental enforcement action under emergency conditions is to undertake a well-managed and thorough environmental self-assessment.

Last May, our firm, together with ATC Associates, Inc., a national environmental consulting firm, presented a forum before Greater New York Construction User Council to examine environmental enforcement priorities at all levels. Hosted by Deutsche Bank at their New York headquarters, it featured presentations by Patrick Harvey, Chief of the Compliance Assistance Bureau, U.S. Environmental Protection Agency; Russell Pecunies, assistant counsel, New York City Department of Environmental Protection; and Louis Oliva, acting regional counsel, New York State Department of Environmental Conservation.

There are a number of things you should know about each level of enforcement. EPA, for example emphasizes education and information rather than enforcement and penalties. Some of its priorities have been the Clean Air Act, CFCs, asbestos and Title 5 permits and lead-based paint regulations.

EPA also targets specific industries that have trouble complying and sets a priority to assist those industries in promoting compliance. During 2000, colleges and universities are the subject of a New York and New Jersey regional initiative. Past initiatives have included commercial and manufacturing operations.

Due to the array of issues facing colleges and universities, their environmental track record is often poor. To address these issues, EPA has encouraged institutions to participate in a voluntary environmental audit program focused on attaining compliance. The program was started by sending questionnaires to colleges and universities in the NY/NJ region. In response, an institution may disclose problems that may lead to violations and, if the problem is corrected promptly, no violation or penalty will be issued or assessed. Excluded from this amnesty are serious environmental hazards that threaten public health and safety, failure to allow prior judicial or administrative orders and patterns of non-compliance.

Russell Pecunies, assistant counsel of the NYC DEP, listed the following priorities: asbestos, hazardous materials, community right -to-know, back flow prevention and air and noise. He specifically noted that DEP has relinquished its role relating to lead-based paint violations to the NYC Department of Health.

He also suggested ways to avoid prosecution, including careful hiring of asbestos abatement contractors, complying with NYS's independent air monitoring requirements

for asbestos projects, and understanding that the owner will be assessed a fine equal in magnitude to that assessed against a violating contractor.

Other major pitfalls cited were failing to identify hazardous substances in high-end office buildings and ignoring hazardous waste and petroleum spills in the urban environment. Noise and food odor violations-of which the current administration in city hall has taken a particularly harsh view-have resulted in heavy fines and even closure of restaurants and nightclubs.

Lou Oliva of the NYS DEC focused on the agency's spills program relating to hazardous waste and petroleum. He urged that corporate attitudes focus on aggressively completing clean-up and getting back to core business. He stressed that there is a focus on technical issues rather than on legal jockeying. The key players, he said, are the NYS DEC technical staff and the outside environmental consultant hired by the property owner. Realistic goals for remediation can be set, and the agreement with DEC about how to proceed can then be drafted based on the remediation study without the need for further significant legal expense.

Overall, he said that DEC's view is that being proactive puts building owners in a good light in all three points of contact with the DEC: enforcement, permitting and remediation.