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Environmental Law: Does my business need an Environment Act licence?

By Sheryl Rosenberg



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Do I need an Environment Act licence?

Whether or not your business requires an Environment Act licence is a question that many manufacturers may not have considered. If you are contemplating a new manufacturing business or if your company started operating after 1987, the answer to the question could be “yes, indeed.”

In 1987-88, Manitoba adopted a new law, which embodied a “cradle to grave” approach to sound environmental management. The idea behind the law was that any development that could have an environmental impact should begin its life with foresight; planning ahead to minimize and mitigate its environmental effects. It should operate under an environmental licence that sets the rules for operation and, very often, what should happen at the end of operation.

Regulations specify which developments are subject to the licensing regime. Given that many manufacturing businesses have the potential to discharge some pollutant in the course of their operations, most fall under the licensing regime as either Class 1 or Class 2 developments.

What if my business pre-dates the licensing regime?

Manufacturing operations established prior to 1987 are not necessarily exempt from licensing requirements. If your development has been operating continually since before the conditions came into effect, you may still be subject to the licensing regime under a variety of circumstances. For example, there is a duty to give notice to the Director before undertaking even “minor alterations” of the development. If the configuration of your operation has changed in a way that could have changed its environmental effects, you might be in violation of that duty. As well, the Director has the ability to require unlicensed developments to submit to *The Environment Act* process. It may be wise to consider whether the duty to give notice has been triggered at any time in the past and to deal with the matter on a proactive basis.

What will happen if I need a licence and haven't gotten one?

The general approach on the part of regulators in Manitoba is to work with clients as much as possible to encourage compliance. In most circumstances, a client who has good legal representation and technical advice from an experienced consultant is able to work out a cooperative approach for coming into compliance without incurring shut-down or penalty.

The key is to assess your legal compliance and the environmental management of your operation. Manufacturers who have been applying LEAN principles often are well on their way to being able to produce the information needed to obtain an environmental licence. If you act reasonably and are able to demonstrate that you are working diligently towards sound environmental management of your operation, it is likely that an approach can be developed to bring you into compliance.

If you do need a licence, the regulator will require you to file a report containing a detailed project description, a description and assessment of the environmental effects of every aspect of the operation and an explanation of all the measures you are taking to measure and mitigate those impacts. The licensing process also will involve notice to the public with an opportunity for the public to comment. After the regulators have enough information, they will prepare a draft licence for consultation with you and then issue it in final form. The key to management of the process is to anticipate and provide for your approach to cover every aspect of legal compliance and for your consultant to produce and reduce the quality of information the regulators need to inform their decision-making to acceptable form. As with the management of contaminated sites, the key to successful management of your legal risks is to understand your obligations in law and to develop a compliance approach based on addressing genuine environmental concerns.

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