

Money Pits

Big risks lurk in municipal landfills.



There is no such thing as a risk-free landfill. Even the best-designed sites can expose their operators and owners to significant government fines and legal backlash. Though landfill construction is far more sophisticated and secure than it was in the day when municipalities dumped trash into abandoned quarries or big holes in the ground, tighter standards do not automatically protect site operators and owners from liabilities.



INSURANCE

Consider recent history: In August, two landfill operators in northern New Jersey were fined more than \$2 million for violating reporting and operating requirements at their sites. Hundreds of similar fines are levied each year.

In an average year, more than 8,300 fires break out in U.S. landfills – many of them burning out of control underground – often releasing toxic gases into the atmosphere.

The 6,000 U.S. landfills produce 450 billion to 650 billion cubic feet of methane per year, creating odors, health threats and explosion risks – and attracting the attention of environmental organizations nationwide.

There are numerous exposures for those working in the landfill industry, and the federal government's policy of encouraging municipalities to take an integrated approach to the handling of waste only increases the exposure for municipalities and their landfill operators.

Recycling Reduces Fill, Raises Risks

Many municipalities have created materials recovery facilities (MRFs) to sort recyclables from the waste materials headed to the landfill. The benefit of these MRFs is the reduction of refuse that finds its way into landfills. But the unintended consequence is that, as municipalities and operators take greater responsibility to screen waste, they implicitly assume greater responsibility for the waste dumped into landfills, and for the problems that waste may eventually create.

For example, suppose MRF workers are lax about removing paint cans, oil cans, solvents and other hazardous materials from the waste stream. Problems stemming from these pollutants could be compounded if regulators decide the toxins were allowed into the landfill due to negligence on the part of the site's owner and operator. That can result in significant damages and remediation costs.

Four Questions Can Protect You

Regular review of management practices, awareness of changes in the regulatory environment and appropriate insurance will ensure your landfill stays profitable and environmentally sound. To that end, owners and operators should ask themselves four key questions:

- **Does your landfill operate with a focus on compliance?** The goal of all compliance programs is to pass a state, federal or local audit at any time.

- **Does your landfill's quality control program include screening for hazardous wastes if the facility is not permitted to handle them?** Screening includes evaluation of manifest information prior to delivery to the site, use of electromagnetic and other screening tools at the weigh scales, and establishing procedures in the event hazardous material makes its way into a waste cell.

- **Does your landfill require certificates of insurance?** Customers making deliveries should provide certificates of insurance in the event that they create a liability exposure while on the site, or in cases where potentially responsible parties (PRP) must be established. By requiring current certificates and mapping loads into specific cells, operators and owners can pass or at least share liability for a specific problem with the customers who caused it.

- **Do you maintain good public relations with the community and participate in community events that will establish your reputation as a "good neighbor?"** Good community relations can dramatically reduce complaints, which in turn reduces the risk of exposure.

Insurance as Defense

Municipal landfill owners and operators can safeguard themselves with a strong insurance program, which can guard against general liability exposures and extend protection against third-party pollution liability exposures. A regulatory action or unidentified exposures can threaten the landfill operators' very existence. A knowledgeable insurer will assess and underwrite risks appropriately.

Operated efficiently, today's landfills can be profitable businesses for their operators and owners. It is critical for site owners to have a strong risk management program, including compliance, strong management practices and an appropriate insurance program. ■

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