



## Enforcement Trends for Sacramento Air Permitting Violations

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### Summary

*Since 2008, reported enforcement activity by Sacramento authorities for failure to obtain certain air permits appears to have increased. Two noteworthy areas are internal combustion engines and asbestos abatement or removal activities. For internal combustion engines, permits are required if they exceed certain horsepower ratings. Enforcement of asbestos abatement and removal activities will likely always be high on the regulators' list because of the hazards associated with airborne asbestos fibers. The reported local enforcement activity suggests that construction firms, retailers with significant facilities, and owners/operators of commercial or industrial facilities could be at risk for potential enforcement.*

### Internal Combustion Engines (Other than Motor Vehicles)

Locally, the Sacramento Metropolitan Air Quality Management District ("SMAQMD") has assessed fines for having failed to obtain the necessary permits under SMAQMD Rule 201, General Permit Requirements, to operate portable internal combustion engines. A close look at Rule 201, section 112.1, reveals that the rule provides an exemption from the permitting requirement for "internal combustion engines with a manufacturer's maximum continuous rating of 50 brake horsepower or less or gas turbine engines with a maximum heat input rate of 3,000,000 British thermal Units (Btu) per hour or less . . . ." Meanwhile, section 112.2 of Rule 201 exempts certain "combustion equipment that has a maximum heat input of less than 1,000,000 Btu per hour (gross) [which are] equipped to be fired exclusively with purchased quality natural gas, liquefied petroleum gas or any combination thereof."

To further complicate the situation, an internal combustion engine regulated by Rule 201 not only requires a permit, but might need to satisfy certain control technology



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requirements ("Best Available Control Technology" or "BACT"). And, if multiple combustion engines are used in the same process, the ratings of all the equipment will be accumulated to determine compliance.

### Examples of Penalties Related to Internal Combustion Engines

Since 2008, SMAQMD has taken enforcement measures to enforce Rule 201 with respect to internal combustion engines. The regulated communities that seem to have been impacted are industrial and commercial facilities and the construction industry. Examples include the following:

- \$208,560 penalty assessed against a construction company for having failed to comply with Rule 201 and BACT pertaining to diesel-fueled engines that powered cranes.
- \$79,200 penalty assessed against an internet-based company for having failed to comply with Rule 201 associated with certain "standby generators" that emitted certain pollutants in excess of limits imposed by existing permits.
- \$24,960 penalty assessed against a major retailer for having failed to comply with Rule 201 related to certain "standby generators" at a facility.

- \$12,882 penalty assessed against a flight service company for having failed to comply with Rule 201 associated with certain portable engines at the Sacramento International Airport.
- \$14,400 penalty assessed against the California State Prison Sacramento for having failed to comply with Rule 201 associated with the operation of a “standby generator.”

In addition to the foregoing, the California Attorney General’s office reached a settlement in 2008 with a major construction company pertaining to alleged violations of, among other things, the requirement to obtain permits for the operation of internal combustion engines. (State of California v. MCM Construction, Inc., Sacramento County Superior Court Case No. 06AS00151.) According to the complaint, the internal combustion engines were part of the company’s construction equipment, such as cranes, pile-drivers, generators, and air compressors. The complaint alleged multiple violations of the California Health and Safety Code for having violated the requirements of several local air pollution control districts to obtain permits for the operation of internal combustion equipment at various construction sites. According to the State’s press release, the company paid a fine of \$4 million and agreed to spend \$2 million to upgrade certain of the company’s equipment with cleaner-burning equipment.

## Asbestos Abatement and Removal

The second area is the abatement, removal, or disturbance of building materials that contain asbestos fibers (“Asbestos Containing Material” or “ACM”). Because of the health risks associated with airborne asbestos fibers, the abatement, removal, or disturbance of ACM is comprehensively regulated at the federal, state, and local levels.

Locally, SMAQMD Rule 902, consisting of 22 pages of definitions, exemptions, and requirements, implements federal law restricting emissions of asbestos fibers. One could easily conclude that the Rule is not easily understood and even those in the business of asbestos abatement have been accused of violating Rule 902’s requirements. For example, in 2008 the SMAQMD reached a settlement with an asbestos abatement company and a redevelopment authority over the alleged failure to remove and dispose property certain ACM at a redevelopment project. The settlement provided for a penalty payment totaling \$39,000.

Also in 2008, the SMAQMD obtained a jury verdict for over \$740,000 in penalties against an individual for having intentionally violated SMAQMD’s asbestos removal requirements. And, a construction company settled with

SMAQMD by paying a fine of \$15,000 for allegedly improperly removing and disposing ACM in violation of SMAQMD requirements.

Because of the toxicity of asbestos fibers, continued enforcement of the abatement, removal, or disturbance of ACM will likely continue.

## Conclusion

As the Sacramento region’s air quality continues to be in focus, regulators will likely place increasing pressure on community businesses to reduce emissions, even though motor vehicle emissions will continue to contribute a significant amount to Sacramento’s overall air emission inventory. And, enforcement associated with emissions of toxic materials will also likely be a focus.

The key to avoiding potential enforcement and fines is a practical and cost-effective environmental compliance program. Environmental laws and regulations are often written to reduce the ability of the accused to defeat the claim of an alleged violation. At the same time, local and state enforcers have discretion to determine the amount of any fine or the extent of any corrective action. A practical and cost-effective environmental compliance program can lessen the chance of a violation and can improve credibility and stature with the enforcers in the event a notice of violation is issued.



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