

Traps to Avoid: Closing Down a Facility Without an Environmental Assessment



When a company is having financial problems, it may consider eliminating business operations or even closing down entire facilities. Although this strategy can make a lot of financial sense, it might also trigger certain legal requirements that tend to get overlooked, such as the need for an environmental assessment. If your company simply turns off the lights and locks the doors on a facility without getting a required assessment, it could be hit with an environmental violation and a fine.

Assessments Aren't Just for New Facilities or Activities

The primary goal of an environmental assessment is to determine a project's potential impact on the surrounding environment and identify the measures necessary to eliminate or reduce the project's risk of actual harm to the environment. The idea is that such harm is easier to prevent than it is to repair.

Given this goal, you might assume that environmental assessments are only needed for *new* facilities and activities or *new* activities at existing facilities. But in fact, environmental assessments may also be required when a company is closing a facility or ceasing a certain activity, particularly if an assessment was required to open the facility or begin the activity.

In some parts of Canada, the environmental laws specifically state that environmental assessments are required when a facility is closed or activity ceased. For example, Québec's *Environmental Quality Act* says that a person who permanently ceases a designated industrial or commercial activity is required to perform a characterization study of the land on which the activity was carried on within six months of the cessation [Sec. 31.51].

In other jurisdictions, the requirement for an assessment when closing a facility or ceasing an activity is less obvious. *Explanation:* Assessment laws in some jurisdictions use various terms to refer to projects that require an assessment, such as 'project,' 'activity,' 'development' and 'undertaking.' Some of the definitions of these terms are very broad and cover not only the launching of a new facility or activity but also the abandonment or

decommissioning of one. For example:

- A regulation under the federal *Canadian Environmental Assessment Act 2012* designates the physical activities to which the statute applies to include the construction, operation, decommissioning and abandonment of various types of facilities or structures; and
- Newfoundland's *Environmental Protection Act* defines 'undertaking' as an enterprise, activity, project, structure, work or proposal and a modification, abandonment, demolition, decommissioning, rehabilitation and an extension of them that may, in the opinion of the minister, have a significant environmental effect [Sec. 2(mm)].

In either case, the rationale for requiring an assessment is that the closing of a facility or cessation of an activity may impact the environment in the same way that the opening of a facility or launching of an activity may do so. For example, if an offshore oil platform is abandoned, the equipment, materials and substances left behind could harm the environment. In addition, during a facility's operation, it might have contaminated the property and so remediation might be required after it's closed.

Solution: Check Law to See if Assessment Is Needed

If your company wants to close a facility or cease certain activities, it should do two things:

Determine if an environmental assessment is needed. You need to determine if the company's proposed action will trigger environmental assessment requirements. Facilities or activities that required an assessment before they were launched will likely need an assessment when they're ended. But even if the facility or activity didn't need an assessment in the beginning, it may need one now. Have the company's lawyer check the law in your jurisdiction to determine whether an assessment is needed.

Factor assessment costs into decision. Environmental assessments take time and money. So your company should factor these costs into its decision to close that facility or cease that activity. At the end of the day, it may end up costing the company more to close a plant than to continue operating it.