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OFTEN, CONTRACTORS MUST deal with environmental issues and the long-arm authority of the Environmental Protection Agency (EPA).

Take, for example, the disposal of construction debris. Included in almost every construction contract is the requirement that the contractor "clean up" the area in which it provides its services. In years past, the contractor believed it met its contractual obligations, as well as its legal duties, by filling the dumpster with construction debris to be carted off to some remote landfill. The contractor thought he was "doing the right thing" and being a responsible citizen under the law, but depending on what the contractor tossed in that dumpster, he potentially violated a myriad of regulations.

Even well-intentioned and careful disposal of certain wastes may incur liability under state and federal regulations.

Consider some of the pitfalls in managing construction and demolition debris, or C&D debris, specifically HVAC units. The key to working in today's environment is knowing what violates certain codes, and what penalties a contractor may face.

WHEN WORLDS COLLIDE

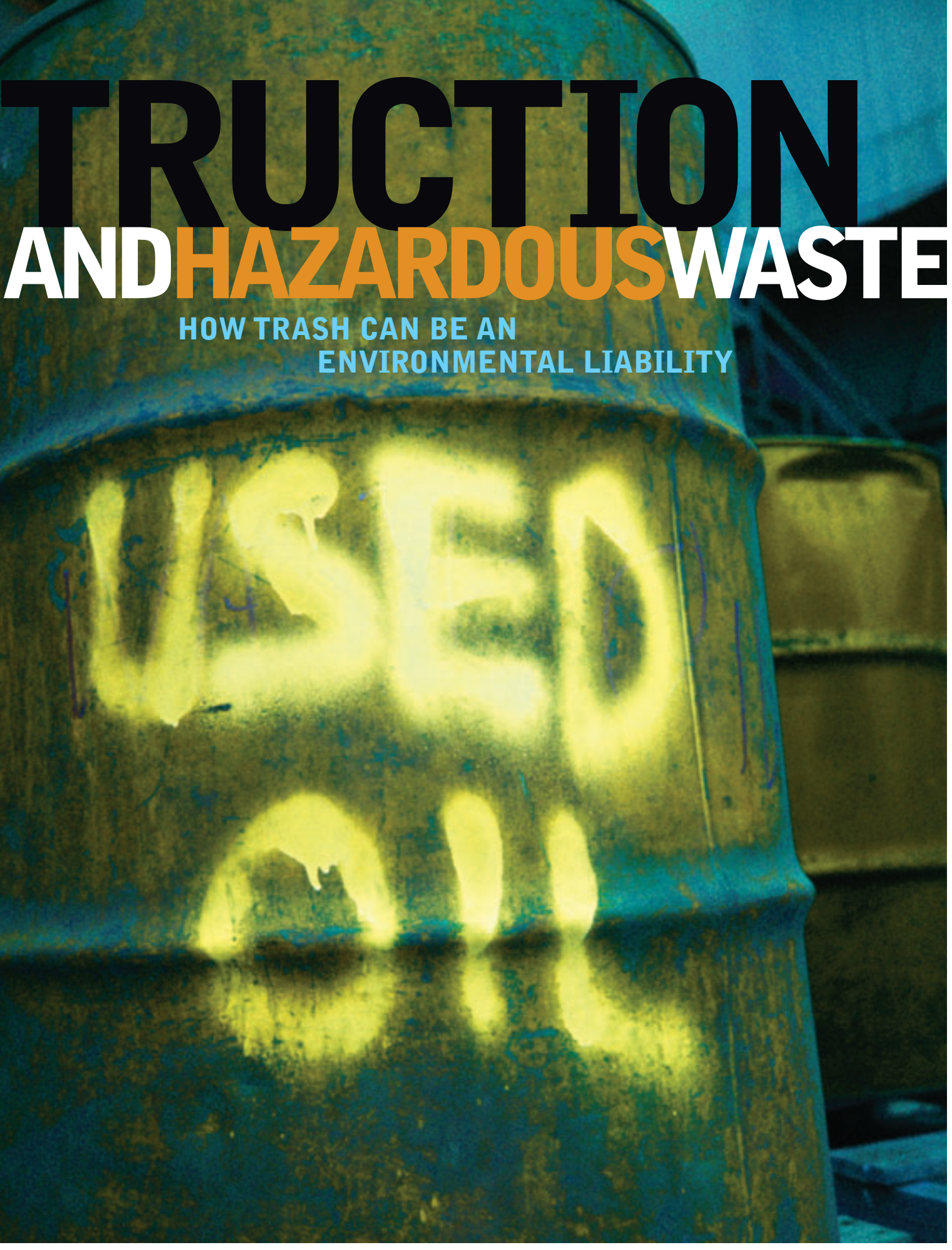
What happens when the worlds of C&D debris, recycling and environmental regulations collide? In other words, what consequences does a general or specialty contractor face when it disposes of certain construction debris? These questions may best be answered by scrutinizing one particular seemingly innocent piece of construction debris: the HVAC unit.

In August 2002, the HVAC industry celebrated the production of the 130 millionth central air conditioner, according to the Air Conditioning and Refrigeration Institute. Reportedly, 85 percent of new single family homes are built with central air conditioning. Shipments from U.S. manufacturers of air conditioning and refrigeration equipment are expected to top $32 billion. With the number of air conditioners or HVAC units in the United States, many contractors and their employees will give the same consideration to discarding an HVAC unit as they would to discarding an aluminum can—recycling is a nice gesture, but dumping it is easier.

Alternatively, more cost-conscious contractors may see a scrap HVAC unit as a way to get some pocket change from a scrap metal recycler. The problem with each of these scenarios is that the HVAC unit, like other C&D debris, may contain hazardous waste, such as ozone-

TRUCTION AND HAZARDOUS WASTE:

HOW TRASH CAN BE AN ENVIRONMENTAL LIABILITY



depleting chlorofluorocarbons, better known as CFCs.

Quite suddenly, the general or specialty contractor may find himself entangled in a web of environmental regulations and subject to potentially severe fines. For example, in California, in certain instances a contractor that removes an HVAC unit from a building may be considered a hazardous waste generator subject to various regulations and fines. However, it is more likely that *the person actually removing the wastes* from the unit will be found to be the waste generator. A contractor also must pay attention to the method of disposing of certain C&D debris.

Hazardous Wastes In Everyday Things

Hazardous wastes are identified and defined by the Office of the Federal Register in the Code of Federal Regulations and in state regulations. Some wastes may not be considered hazardous if the waste is properly disposed of and/or recycled. Generally, however, if the substance is flammable, combustible, toxic, corrosive or will contribute significantly to illness or pose a threat to human health, safety or welfare, then it is likely a hazardous waste.

Commonly encountered categories of hazardous wastes include paints, solvents, contaminated antifreeze and oils, sludges, and, in some states, waste or used oils. In addition, some wastes considered not hazardous may nonetheless require special handling. Special handling requirements pertain to refrigerants and wastes taken from major appliances, such as the HVAC unit.

Other than the tin, steel and copper composing the HVAC unit, these units also may contain CFCs, used oil, encapsulated polychlorinated biphenyls, commonly known as PCBs, mercury and perhaps wood.

Chlorofluorocarbon (CFCs)

CFCs are potentially hazardous waste unless disposed of properly for recycling. If allowed into the atmosphere, and not recycled, the person discharging this gas may be subject to severe EPA fines because CFCs are Class 1 regulated ozone-depleting gases.

Venting CFCs into the atmosphere will render a person or entity liable for severe fines. For example, on July 31, 2003, the EPA announced a $5.25 million dollar settlement/civil penalty with a large corporation for a significant annualized leak rate for releasing refrigerant into the atmosphere. The EPA also fined a small specialty contractor in Arizona $2,227 for a single incident of knowingly venting CFC-12 into the atmosphere from a home air conditioning unit.

Used Oil

HVAC units, like most machines, require oil to efficiently run. However, once the air conditioning unit's useful life expires, its oil is very much used and likely contains CFCs. Other examples of used oils are: industrial oils, hydraulic oils and metal-working oils. Regulated used oils also may include any synthetic or refined crude oil, that, as a result of use, was contaminated with physical or chemical

impurities, as well as oils that were contaminated as a consequence of extended storage or spillage.

Used oil must be managed as hazardous waste *unless* it can be shown that the contaminants do not exceed indicated regulatory limits, the oil is not hazardous by any other characteristics, and the oil is not mixed with any federally listed hazardous waste. Some listed contaminates are arsenic, cadmium, chromium, halogens, lead and PCBs. Any used oil exceeding the threshold for contaminates is a hazardous waste that must be managed accordingly. If a contractor accumulates used oil, it must obtain an EPA identification number for its handling, storing and transporting.

Encapsulated Polychlorinated Biphenyls (PCBs)

PCBs were essentially made illegal after 1978, so it is likely only to be encountered in very old units. But PCBs are commonly encountered in ballasts and capacitors. PCBs must be managed as a hazardous waste. Like used oil, generators and haulers of PCBs are required to have an EPA generator I.D. number and to manifest any shipments of ballasts and capacitors that have PCBs.

There are some exceptions to the manifesting and transporter registration requirements that may apply to some generators of PCB ballasts and capacitors, but these exceptions vary from state to state. For example, California's acceptable methods for disposing of PCBs in electronics are: (1) incineration in an approved incinerator with a PCB Destruction Removal Efficiency of 99.9999 percent; or (2) disposal in a hazardous waste landfill after placement in a lab pack.

Mercury

An obvious common component of an air conditioner is its thermostat. A not so obvious component is the mercury found within the thermostat. Mercury is also found in vacuum gauges, switches, relays and thermostat probes. The federal government has determined that mercury is an acute hazardous and toxic hazardous waste. It is not exempt by code or regulation and therefore requires special handling.

Wood

While the contractor removing a residential HVAC unit is unlikely to encounter wood as an integral part of the unit, specially treated wood is a component part in some cooling towers and larger pieces of machinery.

Wood is pressure treated by creosote, pentachlorophenol, inorganic arsenic, copper napthenate, zinc napthenate, tributyltin oxide or chromated copper arsenate, which is the most common. A new wood preservative, ammoniacal copper quatenary, also is used and is less toxic than chromated copper arsenate. In general, most of these wood treatments use hazardous waste chemicals requiring special handling and disposal. Consequently, specially treated wood must be separated from other construction debris and specially handled.

Such categorization and separation of debris appears unnecessary, but the practical result lies in preventing these chemicals from leaking into the soils and eventually reaching the water tables.

Contractor Responsibility

Just because a contractor handles CFCs, PCBs, used oil, mercury or specially treated wood, it is not necessarily a generator of hazardous wastes. The EPA defines a generator as any person, by site, whose act or process produces hazardous waste identified or listed in 40 CFR part 261, or whose act first causes a hazardous waste to become subject to regulation.

All participants in the waste stream may conceivably be included under the definition of generator. A contractor that removes any of the materials requiring special handling is potentially a hazardous waste generator. A prudent contractor will use a licensed and certified hazardous waste recycler to properly dispose of these items.

Contractor Penalties

The codes and regulations are written to capture every person in the waste stream. Potentially, the EPA may extend its regulatory arm to impose liability on anyone or any company coming into contact with the hazardous waste (or material requiring special handling) at any time of its life, from cradle to grave.

The EPA uses different enforcement methods, including monitoring, civil and criminal enforcement, incentives and compliance assistance. Monitoring consists of inspections and information gathering, and may result in a notice of violation or warning letter. This is often the first formal step in the enforcement process.

The EPA may then move on to an informal or formal administrative action in conjunction with an associated state regulatory agency. At this point, the contractor may confront state and federal regulatory penalties. With regard to HVAC units and the Clean Air Act, the EPA may assess fines of up to $27,500 per day for any violation of applicable regulations. Because most states adopted the EPA's regulations or stricter versions, the unwary contractor also may face similar state fines.

Ultimately, the EPA and/or state agencies may step into the judicial forum and seek civil suit and criminal penalties through the courts.

Though a contractor may believe its worries end when it disposes of C&D debris in the dumpster, in reality, a contractor's worries are just beginning. Contractors may find it difficult, if not impossible, to free themselves from the entangled web of rules and regulations mandated by the EPA. The most economic and worry-free response to these issues is to contract with licensed and certified environmental or scrap recycling companies. Such licensed recyclers may be found through a state's environmental agency.

In the end, the small amount of money spent on finding and using a licensed recycler may prevent spending millions later.

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