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DATA CENTER SUSTAINABILITY: KEY QUESTIONS TO CONSIDER

Data center construction and operation involve a number of environmental, social and governance (“ESG”) considerations, which may include comprehensive ESG risk assessment and legislative horizon scanning.

Below is a non-exhaustive list of common ESG issues and questions applicable to data center construction and operation, which data center developers and operators should consider in their applicable jurisdictions. The list below is jurisdiction-agnostic, but includes illustrative examples of laws in the US, EU and UK.


While this checklist focuses on construction and operation, additional legal requirements could apply to data centers with respect to procurement, health and safety matters, and sustainability-focused reporting, due diligence, and governance. Please reach out to any of the authors to find out more.


Environmental construction and operating permits:


ARE THERE REQUIREMENTS TO:

- Conduct environmental surveys or impact assessments?
- Seek authorization or a permit from the environmental authority?

EXAMPLES INCLUDE:

 US Executive Order 14318, “Accelerating Federal Permitting of Data Center Infrastructure” (June 2025).

 US Army Corp of Engineers' new nationwide 404 permits (January 2026).


 UK Infrastructure Planning (Business or Commercial Projects) (Amendment) Regulations 2026. Also see, [planning setbacks](#) for new UK data center sites over environmental matters (latest 2026).

Energy consumption:

- Are there requirements for measuring energy efficiency performance against specific indicators e.g., power usage effectiveness, energy reuse factor, and renewable energy factor?
- What are the relevant obligations for waste heat re-use?

EXAMPLES INCLUDE:

 Energy Efficiency Directive (2023).

 California's proposed AB222.

Opponents have argued that data center electricity demands could raise prices for ratepayers and stress electricity grids. Energy efficiency programs and site specific generation can alleviate demand stress on the grid and ratepayers.

Climate change and emissions:

- Are data center owners subject to limits or restrictions on, or targets for reducing, greenhouse gas emissions? Are they required to prepare and/or publish a climate transition or net zero plan?
- Are there any restrictions on the use of specific refrigerants (hydrofluorocarbons) / fluorinated gases (F-gases) / ozone depleting substances?
- Are there any restrictions and/or targets for global warming potential of refrigerants?
- Are data center owners or operators obliged to implement pollution control or prevention measures (e.g., air emissions)?

EXAMPLES INCLUDE:

 EU's F-gas Regulation (2024); the EU's Energy Performance of Buildings Directive (2024).

 EPA's new guidance on New Source Performance Standards and New Source Review (2025). Also note tech companies' exposure to toxic pollutant emission lawsuits (including via [notice of intent to sue](#) (latest 2026)) for powering data centers with unpermitted methane gas turbines.

Water use:

- What are the requirements for the management of use of water resources (e.g., water use permits for data center cooling systems)?
- What are the requirements for wastewater and stormwater discharge permits / monitoring?

EXAMPLES INCLUDE:



Virginia's [SB 1449](#).



California's [AB 93](#) (although vetoed, similar bills are expected in 2026).



Also see, the Taskforce on Nature-related Financial Disclosures [case study](#) examining the financial risks associated with data centers' water-related dependencies. Opponents have argued that data centers consume excessive volumes of water; however, data centers may employ closed-loop systems which minimize water consumption.

Waste:

ARE THERE OBLIGATIONS WITH RESPECT TO:

- Waste take-back and recycling of IT/electronic equipment?
- Waste management plans?
- Packaging and/or packaging waste?

EXAMPLES INCLUDE:



"Extended producer responsibility" rules under [The Packaging and Packaging Waste Regulation](#) (which will apply from mid-2026), [Batteries Regulation](#), the [Waste Electronic and Electrical Equipment Directive](#) ("WEEE") (as amended in 2024).



Also see US federal universal and hazardous waste management laws including the [Resource Conservation and Recovery Act](#) and [Toxic Substances Control Act](#).

Biodiversity and ecosystem protection:

- Are there legal requirements / targets set concerning the ecosystem, biodiversity preservation, restoration, or net gain (general), or pollution control?
- What about requirements for the mandatory protection or restoration of specific land types or habitats (coastlines; wetlands; forests; marine, etc.)?

EXAMPLES INCLUDE:



UK's 2024 Biodiversity Net Gain [provision](#) as a condition of planning permission.



EU's [Nature Restoration Regulation](#).

For a deeper dive on any of the questions in this checklist, or for more information on ESG & sustainability considerations for data centers, please contact the authors below.



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