

EPA Region Is Poised to Target Hospitals for EPCRA Tier II Reporting Enforcement

WIGGIN AND DANA

Counsellors at Law

The federal Emergency Planning and Community Right-To-Know Act (EPCRA) requires hospitals and other healthcare institutions to submit *annual* Tier II reports which describe chemical inventories, management, and use. Such health-related facilities in Connecticut and elsewhere in New England should immediately take note that Region 1 of the United States Environmental Protection Agency (EPA) is considering an enforcement initiative targeting facilities that do not submit their annual Tier II reports. Region 1 has demonstrated its resolve in this area by recently extracting more than \$17,000 in a settlement it reached with a Massachusetts warehousing company that failed to file required inventory forms. Although the Region has made efforts to educate and work cooperatively with New England hospitals for the past two years by organizing workshops and communicating directly with hospitals via email, persistent non-compliance in the face of these efforts may prompt Region 1 to change tactics and consider enforcement actions.

Report on Deficient Tier II Reporting

We spoke recently about this issue with Len Wallace, an EPA Region 1 regulator responsible for Tier II reporting, who told us that the Region is "taking an interest in hospitals" following on the heels of its universities enforcement initiative. Region 1 recently hinted at this potential change by disclosing a survey of Maine hospitals showing that only about half the hospitals in that state submit Tier II

reports and those that report do so only for a fraction of the chemicals they actually store or use. Mr. Wallace expressed his opinion that hospitals in other New England states also under-report. Not surprisingly, in the report accompanying its Maine survey, EPA Region 1 recommended that non-reporting hospitals take advantage of the EPA's voluntary compliance program.

Mr. Wallace also reminded us that, with its electronic filing system and search capabilities, Region 1 easily could identify hospitals that fail to submit Tier II reports. Significantly, if the Region decides to begin an enforcement effort, it could use its readily accessible electronic data to target non-reporting facilities for inspections. According to an official at Connecticut's State Emergency Response Commission (SERC), EPA Region 1 also is working to increase inspections of reporting facilities to investigate whether reports are complete.

Enforcement Actions in Other Sectors

On November 18, 2005, EPA Region 1 reached a settlement with Crystal Warehouse Corporation in Wilmington, Massachusetts, under which the company must pay more than \$17,000 for failing to file required inventory forms from 2002 to 2004. In the past few months Region 1 has also taken enforcement actions against companies in Massachusetts and New Hampshire for failing to report and prevent releases, follow safety procedures, and have risk management programs.

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Hurricane Katrina's Spotlight on Reporting

The environmental disaster caused by Hurricane Katrina has focused Region 1's attention on the vital importance of inventorying hazardous materials. Without accurate inventories of chemical storage and descriptions of management practices for those chemicals, the EPA (and its state and local counterparts) may not be able, in an emergency, to prevent chemical releases or mitigate their effects. EPA Region 1 is concentrating its efforts on hospital reporting to ensure that, in a disaster, hospitals maximize their lifesaving emergency capabilities while minimizing the potential risk of hazardous material releases.

How to Comply with Reporting Requirements

By March 1, 2006, hospitals must submit Tier II reports covering the 2005 calendar year to the SERC and local emergency planning committees and fire departments. In addition, Region 1 strongly encourages hospitals that are out of compliance to enter the EPA's voluntary compliance program in order to avoid penalties from each of the preceding years. Upon submitting their first reports, hospitals that do not enter this program alert the EPA to previous non-reporting and therefore become easy targets for enforcement actions. Under the voluntary compliance program, hospitals that voluntarily disclose to the EPA their failure to submit Tier II reports are eligible for penalty mitigation if they disclose within twenty-one calendar days

of discovering that a violation has or may have occurred and submit a 2005 Tier II report within sixty days of discovery, among other requirements.

Free Workshops

As it has done for the past ten years, Region 1 has organized free workshops in Connecticut to walk hospitals through the steps necessary to submit Tier II reports. This year, these informative workshops will take place on January 10, 11, and 12 in Torrington, Middletown, and Danielson, respectively.

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The environmental lawyers in the Real Estate, Environmental, and Land Use Department at Wiggin and Dana, LLP, have the extensive experience necessary to assist hospitals and other healthcare facilities in submitting Tier II reports and entering the EPA's voluntary compliance program. With the EPA contemplating targeting healthcare facilities that fail to submit these reports and recently levying a penalty against a non-reporting company, it is critical that healthcare institutions seize the opportunity to comply and minimize penalties. Our in-depth knowledge of healthcare facilities, coupled with our extensive expertise in broad-based environmental compliance counseling, enable us to work with clients to bring them into compliance with the full spectrum of environmental requirements, including the submission of Tier II reports by the impending March 1, 2006 deadline.

If you have any questions about this message, please contact Bruce McDermott in our New Haven office at 203.498.4340, bmcdermott@wiggin.com, or Barry Trilling in our Stamford office at 203.363.7670, btrilling@wiggin.com.

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One Century Tower
P.O. Box 1832
New Haven CT
06508-1832
Telephone 203.498.4400
Telefax 203.782.2889

400 Atlantic Street
Stamford CT
06911-0325
Telephone 203.363.7600
Telefax 203.363.7676

450 Lexington Avenue
Suite 3800
New York NY
10017-3913
Telephone 212.490.1700
Telefax 212.490.0536

One CityPlace
185 Asylum Street
Hartford CT
06103-3402
Telephone 860.297.3700
Telefax 860.525.9380

Quaker Park
1001 Hector Street, Ste. 240
Conshohocken PA
19428-2395
Telephone 610.834.2400
Telefax 610.834.3055