

Update: EPA New England's Healthcare Assistance Program and Increased Enforcement Efforts

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Region 1 of the United States Environmental Protection Agency (EPA), the region that includes Connecticut, is increasing its enforcement efforts at hospitals, while continuing its longstanding program to encourage hospitals and other healthcare facilities to reduce their pollution output voluntarily. This past April, Robert Varney, EPA's Region 1 Administrator, wrote to more than 250 New England hospitals to "strongly encourage you to immediately identify and correct violations that could stem from operations such as hazardous waste storage, laboratories, power plants, and vehicle maintenance." This report on new developments supplements our advisory from last February reporting that EPA Region 1 would soon launch a new program for healthcare institutions.

Since our February 2004 advisory and Mr. Varney's April 2004 letter, Region 1 has decided to conduct its hospital inspections on a case-by-case basis and then to determine, on an ongoing and iterative basis, how to develop the Region's approach toward hospitals and other healthcare facilities. Although Region 1 has not launched a formal compliance initiative like Region 2 (which covers New York, New Jersey, Guam, and the U.S. Virgin Islands), we understand that it will increase the number of hospital inspections through 2005. The results of these inspections will influence (1) whether Region 1 follows the lead of Region 2, and (2) the areas of non-compliance on which such an initiative might focus. As Region 1 evaluates its next steps, New England hospitals should take steps to assure they have adequate

compliance systems in place and take necessary corrective measures. They should also take full advantage of EPA's workshops and other educational opportunities regarding compliance.

While Region 1 weighs its options, Region 2's Healthcare Compliance Initiative, which the Region launched in December 2002, has moved full-speed ahead. Most recently, Region 2 signed self-audit agreements with fourteen Rochester, New York, hospitals, which account for two-thirds of all hospitals in the greater Rochester region. In July, Region 2 entered into an environmental self-audit agreement with the Health and Hospitals Corporation of New York City, which includes eleven acute care hospitals, four long-term care centers, six diagnostic and treatment facilities, and more than 100 community health centers. In February and March, Region 2 reached similar self-audit agreements with ten hospital systems in New York and New Jersey. Demonstrating its clear commitment to enforcement, Region 2 also issued a complaint against the Elmhurst Hospital Center in Queens, New York, proposing a \$73,562 penalty for hazardous waste violations discovered during an inspection.

Regardless of whether it will develop its own formal healthcare facility initiative, Region 1 remains strongly committed to its participation in the National Hospitals for a Healthy Environment (H2E) program, a voluntary program that focuses on the reduction of mercury and solid waste produced at hospitals and other healthcare facilities. H2E is a joint

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program among EPA, the American Hospital Association, the American Nurses Association, and Healthcare Without Harm. Currently, 116 of the 260 New England hospitals, including ten Connecticut hospitals, take part in this program, which provides a wide range of tools and information for its participants, along with a forum in which healthcare professionals can share information. This past April, EPA awarded two grants amounting to \$134,000 to H2E's Hanover, New Hampshire, office. One grant will fund a project to evaluate new methods of reducing and effectively disposing of pharmaceutical waste in hospitals, and the other will be used to incorporate environmental compliance into the hospital accreditation process.

Region 1 remains strongly committed, as well, to educating New England hospitals and other healthcare institutions about their environmental responsibilities and compliance options. The following are a few examples of educational projects that Region 1 is undertaking or promoting:

- A Region 1 official will speak at a November 9, 2004, workshop on hazardous and infectious waste requirements sponsored by the Connecticut Hospital Association. Other speakers include a Connecticut Department of Environmental Protection official, who will focus on state-specific infectious waste disposal obligations, and a representative from a Region 2 hospital, who will speak about how to prepare for and handle EPA inspections.
- This fall, EPA's Office of Enforcement and Compliance Assurance in

Washington, DC, will complete a "sector notebook," an environmental compliance profile for the healthcare industry. This notebook will provide a wide range of environmental information relevant to this industry, including descriptions of the applicable pollutants, regulations, pollution prevention opportunities, compliance history, and voluntary initiatives. Designed for inspectors, this notebook will also provide hospitals and other healthcare institutions a solid understanding of the major environmental issues affecting their industry.

- By late 2004 or early 2005, the National Center for Manufacturing Sciences, using an EPA grant, will create an "on-line compliance assistance center" for hospitals and other medical facilities. This center will provide easy-to-understand pollution prevention and environmental compliance information, including descriptions of EPA regulations and links to state and local authorities.

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The environmental lawyers in the Real Estate, Environmental, and Land Use practice group at Wiggin and Dana have the extensive compliance audit experience necessary to assist hospitals and other healthcare facilities who prudently choose to undertake such audits. We have helped clients to meet the compliance audit requirements of the Connecticut Health Education Facilities Authority (CHEFA) and have conducted environmental and structural diligence in transactions involving medical/hospital and pharmaceutical properties. Our "hands-on" audit experience includes advising

industrial clients on multi-media compliance issues, structuring and implementing responses to complex and invasive EPA multi-media audits, drafting guidance documents for clients to use in developing internal audit programs, and working on the substantive elements of environmental compliance software. Our proficiency in assisting clients with regulatory compliance and permitting for air emissions, waste water discharges, and solid waste treatment, storage, and disposal complements our work in the audit arena.

Our extensive audit experience with commercial and industrial operations, combined with our in-depth knowledge of healthcare institutions drawn from years in the field, enables us to provide broad-based counseling to clients conducting environmental audits in the context of Region 1's Healthcare Assistance Program.

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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