

Practice Update

Approval of \$1.375 million in EPA Fines Highlights Importance of Commercial Property Owners Complying with Environmental Reporting Obligations

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By [Robyn D. Neely](#) and [Jarrett D. Bingemann](#)

On January 3, 2013, the Environmental Appeals Board approved an administrative settlement that requires New Cingular Wireless PCS to pay a total of \$1.375 million in fines and environmental projects for alleged violations of the Emergency Planning and Community Right-to-Know Act (EPCRA), the Clean Water Act, and the Clean Air Act at facilities in 43 states (In re New Cingular Wireless, EPA EAB, No. EPCRA-HQ-2009-8001, CWA-HQ-2009-8001, CAA-HQ-2009-8001, 1/3/13).

This administrative settlement highlights the importance of owners and operators of commercial property portfolios, multi-family housing complexes, hospitals/healthcare facilities, and manufacturing sites with potentially regulated chemicals or substances to carefully identify and comply with their respective environmental reporting and compliance obligations.

EPA discovered alleged violations related to EPCRA reporting of sulfuric acid contained in batteries and diesel fuel in generators at New Cingular Wireless PCS cellular sites, transmitter sites, switching stations, and warehouses. The facilities also

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reportedly had inadequate or no Clean Water Act Spill Prevention, Control, and Countermeasure (SPCC) Plans, and minor Clean Air Act source permitting violations related to diesel-powered backup generators.

EPCRA requires owners and operators to report threshold quantities of regulated chemicals stored on-site to enable state and local agencies to track and respond to potential chemical hazards in communities. Under EPCRA, properties with generators having above ground fuel storage tanks generally containing more than 1,360 gallons or 10,000 lbs of diesel fuel are required to file annual notices/registrations with EPA or designated authorities (in Florida, the Florida Division of Emergency Management). Further, properties with more than 2,780 lbs of batteries or 500 lbs of sulfuric acid (generally contained in lead acid batteries such as forklift batteries or Uninterrupted Power Supply System batteries), are required to file annual notices/registrations under EPCRA. As such, what may appear to be relatively minor amounts of regulated chemicals stored on-site may trigger reporting obligations under EPCRA.

The Clean Water Act generally requires property owners with the capacity to store oils of more than 1,320 gallons in above ground containers such as above ground fuel storage tanks, or more than 42,000 gallons underground storage tanks, to prepare and implement SPCC Plans in accordance with the SPCC Rule (40 CFR Part 112), to prevent oil discharges to navigable waters and adjoining shorelines.

Akerman has environmental attorneys with experience in advising clients on their respective environmental reporting and compliance obligations, and coordinating response activities in the event violations have been identified by authorities.

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