
EPA New England Announces Enforcement Initiative Aimed at Hospitals and Healthcare Facilities

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On April 13, 2004, the New England Regional Office of the U.S. Environmental Protection Agency (EPA) announced the launch of a regional enforcement initiative focusing on hospitals and other healthcare facilities. In his formal announcement, EPA Regional Administrator Robert Varney identified, in particular, laboratories, power plants, vehicle maintenance facilities and similar operations as posing particular environmental risks. EPA's announcement included a recommendation that all healthcare facilities educate themselves about the array of regulations that apply to their operations, an invitation to an EPA outreach program focusing on healthcare facilities, and a warning that a vigorous inspection and enforcement effort will soon follow.

EPA New England's healthcare enforcement initiative is patterned after a similar effort recently conducted by EPA Region II. In that program, Region II used its discretion under EPA's voluntary self-disclosure policy as an incentive to the industry. EPA encouraged individual healthcare facilities to enter into an agreement with the Region, under which each facility would audit the environmental compliance status of its operations, disclose any violations identified to EPA, and correct those violations on a timely basis. In return, EPA agreed to waive the "gravity-based" component of penalties that could be assessed on the self-reported violations.

The healthcare enforcement initiative announced by EPA New England also follows the Region's well-publicized college and university enforcement initiative. In that initiative, the Region targeted for inspection and enforcement actions those institutions that did not conduct self-audits. That initiative resulted in significant and costly enforcement proceedings and follow-on compliance agreements at a number of highly regarded institutions. We anticipate that EPA New England will take a similar posture against hospitals and healthcare facilities in its new initiative.

On May 20th, EPA New England will hold a workshop at Boston University's Corporate Education Center in Tyngsboro, Massachusetts to provide information on this initiative and major federal environmental compliance requirements specific to healthcare facilities.

EPA's policy on voluntary self-disclosure-the so called "audit policy"-has been used by hundreds of companies over the past several years to address environmental compliance issues. We have assisted clients in connection with audits at scores of locations nationally. In our experience, audits

accompanied by disclosures are an appropriate means of satisfactorily resolving many, but not all, environmental compliance issues. Deciding whether and how to conduct an audit involves careful evaluation of an institution's conditions, risks and objectives. Of equal importance is the fact that an audit and voluntary disclosure to EPA will not resolve liability to state regulatory agencies, and we are aware of at least one instance in which EPA New England inspectors elected to cite a facility for possible failures to meet certain technical requirements of a state hazardous waste regulation after a multi-day inspection found no violations of applicable federal regulations.

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