

INSIGHTS

EPA's NY/NJ EPCRA Sweep Points to Broader Enforcement Effort

June 5, 2014

By: [Timothy A. Wilkins](#)

Last week's [announcement](#) by the US EPA of EPCRA violations at 17 facilities comes as part of the Agency's heightened scrutiny of chemical storage facilities in the aftermath of the West, Texas explosion and the Charleston, West Virginia release into the Elk River. As [we noted earlier this year](#), these incidents have raised concerns from regulatory agencies and legislatures as to the adequacy of reporting requirements and the effectiveness of their implementation.

The Agency's recent sweep of regulated facilities, led by EPA Region 2 and focused on New York and New Jersey sites, does not appear to be driven by a search for one-off violations. Rather, EPA has undertaken a much broader inquiry into industry compliance, contacting "several hundred" facilities under its information gathering authorities with plans for more on-site inspections.

Like the Agency's previous refinery and hydraulic fracturing initiatives, the current EPA actions could be read as a precursor to stricter regulatory oversight or as the beginning of an effort to seek structural reforms. In fact, the EPA press announcement touting the results of its efforts specifically referenced last year's Executive Order issued by President Obama directing Executive Branch agencies to increase their focus on facility safety.

Moreover, it is not uncommon for the EPA to seek to replicate the "success" of one "lead" regional office in other areas of the country. In-house counsel and environmental managers thus should redouble their efforts to ensure EPCRA compliance, whether through confidential audits, closer coordination with local responders, and certainly enhanced recordkeeping. Additionally, EPA's FY2014 guidance for enforcement managers has identified priority facilities as those with "significant" quantities of CERCLA hazardous or EPCRA extremely hazardous substances, in proximity to population centers, or that have reported continuous releases.

Proactive EPCRA compliance reviews can look to the objective, plainly-stated chemical inventory requirements concerning, among other things, the identity of chemicals stored on-site and their quantities, their locations, Safety Data Sheets, and forms filed with state and local emergency planning authorities. Our experience indicates that EPA inspectors may seek to interview facility employees about regulatory requirements, response planning, and training (regardless of whether the statute authorizes such information gathering). Engagement by in-house environmental professionals can also go a long way towards mitigating a high-profile problem. Ensuring that first-responders have the information required by EPCRA eliminates a

potential point of heightened scrutiny in the unfortunate event of an incident or unpermitted release. With these points in mind and the extra efforts that may be undertaken now, facilities not only can minimize the risk of violations, but also avoid the potentially catastrophic damages that we have seen in the past year.

Environmental counsel can assist in updating or enhancing compliance programs, as well as providing incident management training and assistance with preparations for agency inspections.