

**ENVIRONMENTAL
PRACTICE GROUP**

The Environmental Practice Group at Murtha Cullina LLP is pleased to provide clients and friends with information about topics of interest in the environmental area.

If you have questions about the issues addressed in this newsletter, or any other matters involving environmental legal issues, please feel free to contact the following attorneys:

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HOSPITAL'S ENVIRONMENTAL AUDITS

PROVIDE SELF-PROTECTION FROM AGGRESSIVE EPA AND DEP ENFORCEMENT SANCTIONS

The U.S. Environmental Protection Agency ("EPA") has targeted hospitals for inspections and enforcement activities. For example, in June, EPA Region 2 fined a New York hospital \$45,000 for hazardous waste violations as part of an enforcement inspection initiative aimed at bringing hospitals into compliance with environmental laws. At the same time, EPA Region 1 (New England) issued a report on the success of its College and Universities Audit Initiative identifying hospitals and research laboratories as enforcement targets. Region 2 has already begun such an initiative. State agencies, such as the Connecticut Department of Environmental Protection ("DEP"), have followed EPA's lead. A number of Connecticut hospitals have been inspected, violations have been found, and fines have been imposed.

Your hospital should not wait for an inspection to occur before taking action to ensure that the hospital complies with environmental laws. By the time an inspection occurs, it is too late to avoid the possibility of having to pay potentially significant penalties. Instead, a proactive approach would allow your facility to take advantage of EPA's "Audit Policy: Incentives for Self-Policing" ("Audit Policy") in order to reduce or eliminate its exposure to potential civil penalties.

EPA's Audit Policy, as well as Connecticut's similar DEP policy, is designed to encourage members of the regulated community to perform environmental audits of their facilities. For example, a hospital that performs an environmental audit and identifies violations of environmental requirements can disclose the violations under the Audit Policy. In exchange, EPA and DEP will not pursue so-called gravity-based penalties, which can be as high as \$25,000 per day for each violation and for each day a violation continues, or pursue criminal prosecution of the hospital for a violation. EPA and DEP would still levy penalties based upon any significant economic benefit associated with noncompliance.

For hospitals, environmental compliance problems can arise in a number of contexts. Some examples of such problems are (1) the failure to properly identify and handle chemotherapy wastes as hazardous wastes, (2) the failure to comply with underground storage tank requirements, (3) the failure to comply with the permitting or permit-by-rule requirements that apply to emergency generators or other equipment, and (4) the improper handling of laboratory wastes and wastewater discharges. Even something as seem-

ingly innocuous as improper storage and disposal of used fluorescent bulbs can lead to problems.

Murtha Cullina's environmental attorneys have extensive experience in helping hospitals comply with environmental laws and with EPA's and DEP's Audit Policies; our experience bears out the benefits of availing oneself of the Audit Policy. We have assisted many clients in performing environmental compliance audits and in disclosing any violations discovered during such audits to EPA or the DEP under each agency's respective audit policy. As a result, our clients have avoided liability for hundreds of thousands of dollars in gravity-based penalties. In one case, proactive disclosure of environmental violations helped to avoid criminal prosecution by EPA of our client. Moreover, an environmental audit will often identify inefficiencies in, and alternatives to, current operations. If the inefficiencies or alternatives are addressed or incorporated, an audit can both reduce operating costs and reduce or eliminate environmental compliance issues.

Another benefit of being proactive about environmental compliance is that it can give a hospital optimum control over how violations are perceived by the public. Rather than waiting for EPA or DEP to discover a violation and then hold up the hospital as a prime example of a bad actor, identifying violations using an environmental audit enables a hospital: (1) to get ahead of the news cycle, (2) to better prepare its message regarding such violations, and (3) to place any violations in the proper context of the hospital's ongoing efforts as an upstanding member of the community to ensure that its operations comply with all legal requirements.

One way of maximizing the benefits of an environmental compliance audit is to retain environmental regulatory enforcement expertise to supervise the audit process. By engaging Murtha Cullina LLP, an environmental compliance audit can be performed under the auspices of the attorney-client and attorney work product privileges. This assures that a hospital will have the maximum discretion allowed by law with respect to how, and how much, information developed by the audit is disclosed or kept confidential.

In addition to being a full service law firm, Murtha Cullina LLP has highly developed and specialized expertise in all areas of environmental law and compliance. We would be glad to meet with you at no charge to introduce ourselves to you and to discuss how we can be of assistance in helping your hospital take full advantage of the Audit Policy.

This newsletter is one of a series of publications by Murtha Cullina LLP and should not be construed as legal advice or legal opinion on any specific facts or circumstances. The contents are intended for general information purposes only, and you are urged to consult your own lawyer concerning your own situation and any specific legal questions you may have.

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