

When the EPA comes a Knockin'

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WHEN THE EPA COMES A KNOCKIN' A SURVEY OF RECENT EPA ENFORCEMENT MATTERS

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The Environmental Law Firm SM

OUTLINE

- Why Should You Care?
- Key Federal Statutes
- Recent Enforcement Matters

NATIONAL ENFORCEMENT INITIATIVE

<http://www2.epa.gov/enforcement/national-enforcement-initiative-ensuring-energy-extraction-activities-comply>



KEY FEDERAL STATUTES

**Safe Drinking Water Act
(42 USC § 300f)**

**Clean Water Act
(33 USC § 402)**

**Clean Air Act
(42 USC § 7401)**



**Emergency Planning
Community Right-to-
Know Act (42 USC §
11001)**

**Comprehensive
Environmental Response,
Compensation and
Liability Act
(42 USC § 9601)**

CLEAN AIR ACT

■ Noble Energy (April 2015)

- Concerned violations stemming from the company's oil and gas exploration and production activities north of Denver, Colorado.
- Joint EPA and Colorado investigation that found significant VOC emissions coming from storage tanks, primarily due to undersized vapor control systems.
- As part of the settlement, Noble will spend an estimated **\$60 million** on system upgrades, monitoring and inspections to reduce emissions.
- In addition to **\$4.5 million** to fund environmental mitigation projects.
- **\$4 million** on supplemental environmental projects.
- **\$4.95 million** civil penalty.

CLEAN AIR ACT

■ Kinder Morgan (September 2012)

- Facilities that contain hazardous and flammable substances above specified thresholds must develop and submit a risk management plan to assist with emergency preparedness, chemical release prevention, and minimization of releases that occur.
- EPA inspectors found that the Kinder Morgan facilities had not adequately implemented those regulations.
- Kinder Morgan agreed to pay a total of \$316,000 in penalties for violating Risk Management Plan provisions at natural gas plants
- The company agreed to:
 - Establish new operating procedures,
 - Improve equipment maintenance, and
 - Perform integrity tests on pressure vessels to reduce the possibility of an accidental release of hazardous chemicals.

CLEAN AIR ACT

■ QEP Field Services, Co (May 2012)

- Resolves alleged violations of the Clean Air Act at five natural gas compressor stations on the Uintah and Ouray Reservation in Northeastern Utah.
- QEPFS will pay a **\$3.65 million** civil penalty and pay **\$350,000** into a Clean Air Trust Fund to be established by the tribal member intervenors.
- The settlement also requires QEPFS to:
 - Reduce its emissions by removing certain equipment,
 - Installing additional pollution controls, and
 - Replacing the natural gas powered instrument control systems with compressed air control systems.

CLEAN AIR ACT

■ Elm Ridge Exploration (October 2012)

- Resolved alleged violations at the Ignacio Gas Treating Plant near Ignacio, Colorado.
- The settlement requires Elm Ridge to pay \$207,150 in civil penalties as well as \$67,850 in unpaid permit fees.
- The company agreed to:
 - Replace existing compressor engines with lower-emitting engines equipped with pollution-control equipment,
 - Administer a wood stove change out program with the Southern Ute Indian Tribe, and
 - Implement a project that will reduce greenhouse gas emissions and conserve natural gas at the plant.

CLEAN AIR ACT

■ Gasco Energy (September 2011)

- Gasco Energy, Inc. will pay \$350,000 penalty and providing for air pollution controls at its facilities in the Uinta Basin.
- Gasco allegedly violated several provisions of the Clean Air Act at the Riverbend facility including:
 - Emission standards for hazardous air pollutants,
 - Federal permitting, and
 - Emissions monitoring and reporting requirements.

CLEAN WATER ACT

■ XTO Energy, Inc. (December 2014)

- Will pay **\$2.3 million** for violations of Section 404 of the CWA , which prohibits the filling or damming of wetlands, rivers, streams, and other waters of the United States.
- Will also spend an estimated **\$3 million** to restore eight sites damaged by unauthorized discharges of fill material into streams and wetlands in connection with hydraulic fracturing operations.
- XTO will also implement a comprehensive plan to comply with federal and state water protection laws at the company's West Virginia oil and gas extraction facilities that use horizontal drilling methods.

CLEAN WATER ACT

■ Trans Energy (September 2014)

- Will restore portions of streams and wetlands at 15 sites in West Virginia polluted by the company's unauthorized discharge of dredge or fill material.
- Trans Energy will pay a penalty of **\$3 million** to be divided equally between the federal government and WVDEP.
- EPA discovered the violations in 2011 and 2012 through information provided by WVDEP and the public, and through routine field inspections.
- In summer 2014, the company conducted an internal audit and ultimately disclosed to EPA alleged violations at eight additional locations, which are also being resolved through this Consent Decree.

CLEAN WATER ACT

■ Fluid Recovery Services (May 2013)

- Operates three wastewater treatment plants in western Pennsylvania.
- Resolves discharge permit violations associated with the treatment of wastewater generated from oil and gas extraction activities.
- Under the settlement, FRS request that PADEP include:
 - The more stringent discharge limits than in Pennsylvania's wastewater treatment standards.
 - This includes a new standard of 500 milligrams per liter for total dissolved solids in their renewed permits.
 - The company will pay an **\$83,000** penalty for violations that occurred at facilities.
 - FRS will invest as much as **\$30 million** to upgrade the facilities to comply with the new more stringent discharge limits.

CLEAN WATER ACT

■ Chesapeake Appalachia, LLC (Dec. 2013)

- Chesapeake will spend an EPA-estimated **\$6.5 million** to restore 27 sites damaged by unauthorized discharges of fill material into streams and wetlands and to implement a comprehensive plan to comply with federal and state water protection laws.
- The company will also pay a civil penalty of **\$3.2 million**, one of the largest ever levied by the federal government for violations of the Clean Water Act (CWA), under the Section 404 program.
- EPA discovered some of the violations through information provided by the public and routine inspections.
- In addition, the company voluntarily disclosed potential violations at 19 of the sites following an internal audit.
- In 2010 and 2011, EPA issued administrative compliance orders for violations at 11 sites.

CERCLA

■ Encana Oil and Gas (Dec. 2011)

- Despite petroleum exclusion, using authority under 104(a) of CERCLA to (1) investigate alleged contamination and (2) provide alternative water supplies to residents whose water was allegedly impacted.
- Claimed groundwater was impacted by chemicals utilized in hydraulic fracturing operations which are not subject to petroleum exclusion.
- EPA's Draft Report was subsequently withdrawn.

CERCLA

■ Cabot Oil and Gas (January 2012)

- Same claims as in Encana matter.
- Also sought information under 104(e) of CERCLA seeking information of the Company's operations, sampling, etc.
- March 2012 EPA sent email to residents which indicated that there were no signs of contamination from oil and gas development.

SDWA

■ Range Resources (December 2010)

- Emergency Order issued under the SDWA which provides EPA authority to address conditions that pose an “imminent and substantial endangerment to health.”
- Ordered Range to:
 - Stop alleged contamination of two residential drinking water wells in Parker County
 - Monitor water, soil and air in the area for contamination
 - Provide drinking water and methane gas monitors to homeowners
 - \$16,500 a day for non-compliance
- Question whether Emergency Order was a final agency action with provided Range with pre-enforcement review.
- Supreme stated it was in the *Sackett* case.
- Range case was dismissed shortly thereafter.

SDWA

■ Murphy Exploration (December 2010)

- Emergency Order issued under SDWA in response to alleged oil production-related contaminants in the public water supply that serves Poplar, Montana.
- Contamination came from storing salty water in unlined pits.
- Required companies to monitor the city's municipal water wells.
- Provide additional water treatment and/or alternate supplies.

EPCRA

■ Talisman Energy (July 2012)

- Will pay a \$62,457 penalty to settle alleged violations of hazardous chemical reporting requirements at 52 hydraulic fracturing facilities throughout Pennsylvania that include natural gas well sites and compressor stations.
- Talisman discovered the violations and self-disclosed them to the EPA.
- EPCRA requires companies that store specified amounts of hazardous chemicals to submit material safety data and lists of chemicals on site with state and local emergency response agencies and the local fire departments.

EPCRA

■ Atlas Resources (October 2012)

- Will pay an \$84,506 penalty to settle alleged air and hazardous chemical violations at its natural gas production facility in Avella, Washington County, Pa.
- EPA alleged that Atlas failed to provide state and local emergency responders required information on hazardous chemicals stored at the company's Avella production facility during 2008 and 2009.
- Atlas was also cited for violating CAA provisions for failure to develop and submit a risk management plan to assist with emergency preparedness.

SUMMARY

- Expect 700+ EPA inspections this year.
- CAA violation most common and costly followed by CWA
- Increasing need for outside technical assistance to stay compliant
- Environmental audits are worth considering
- Be prepared – don't be caught fishing

QUESTIONS?



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