

ADMINISTRATIVE WATCH

ADMINISTRATIVE WATCH ADDRESSES ENVIRONMENTAL, HEALTH AND SAFETY ISSUES



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New Law Requires Reporting of Emergency Events in West Virginia

On May 26, 2009, Governor Joe Manchin signed Senate Bill 279 into law, requiring West Virginia industrial facilities to report unexpected emergency events to appropriate state emergency authorities within 15 minutes of ascertaining the occurrence of the emergency event. Governor Manchin proposed this Senate Bill in response to the August 2008 explosion at a Bayer CropScience plant outside of Charleston. The new law adds section 15-5B-3a to the Code of West Virginia and will take effect on July 10, 2009.

The law effects state reporting of emergency events by "industrial facilities" that are defined as either:

- (1) Facilities required to submit a risk management plan to the U.S. EPA pursuant to Section 112(r) of the Clean Air Act of 1990, or
- (2) Facilities that are a factory, mill, plant or refinery, other than a coal facility, provided that the facility is placed on actual written notice via certified mail, return receipt requested, informing the facility that it must comply with the provisions of this new section. In regards to the facilities that will receive actual written notice via certified mail, the list of facilities shall be filed with the West Virginia Senate and House of Delegates by the first day of the 2010 legislative session.

An "emergency event" includes, *but is not limited to*, the following events:

- (1) An explosion,
- (2) A fire that cannot be contained within fifteen minutes of discovery, or
- (3) The release of a reportable quantity, as specified in 40 C.F.R. §302 (2009) or its successor, of an extremely hazardous substance listed in the appendices to 40 C.F.R. §355 (2009) or its successor, loss of life or serious personal injury at an industrial facility.

Upon "ascertaining the occurrence of an emergency event at an industrial facility," the industrial facility must contact the Mine and Industrial Accident Emergency Operations Center (1-866-987-2338) or its local emergency telephone system within 15 minutes. The industrial facility must provide certain information that is expressly specified in the statute.

Industrial facilities, as soon as practicable after the emergency event, are also required to provide appropriate state and local officials with timely authorized access, upon request. Civil penalties for noncompliance with this law will be determined by West Virginia's Director of the Division of Homeland Security and Emergency Management, with the Director having the authority to determine the amount of the civil fine.

Facilities in West Virginia should assess their reporting obligations and emergency response procedures and update them as necessary to reflect this new requirement.

For more information regarding Senate Bill 279 discussed above or its impact on your business, please contact Michael H. Winek at (412) 394-6538 or mwinek@bccz.com or Sean M. McGovern at (412) 394-5439 or smcgovern@bccz.com.