

ADMINISTRATIVE WATCH

ADDRESSING ENVIRONMENTAL, ENERGY AND NATURAL RESOURCE ISSUES



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A PROFESSIONAL CORPORATION
ATTORNEYS AT LAW

www.bccz.com

Pittsburgh, PA

Two Gateway Center
603 Stanwix Street
6th Floor
Pittsburgh PA 15222
(412) 394-5400
1-800-829-5695
FAX (412) 394-6576

State College, PA

Suite 302
330 Innovation Blvd.
State College, PA 16803
(814) 867-8055
FAX (814) 867-8051

Sewell, NJ

380-A Tylers Mill Road
Sewell, NJ 08080
(856) 256-2495
FAX (412) 586-1082

Utility Poles Claimed To Be Point Sources Subject To Clean Water Act Permitting

In a case that could change the face of electrical transmission and distribution, an environmental group is claiming that treated wood “utility” poles constitute discharges under the federal Clean Water Act and therefore require National Pollution Discharge Elimination (“NPDES”) permits. If the environmental group is successful in the case, it could significantly impact the status of the estimated 120 million treated wood utility poles currently in service in the United States.

Ecological Rights Foundation commenced a suit in the United States District Court for the Northern District of California against Pacific Gas and Electric Company (“PG&E”) under Section 505(a)(1) of the Clean Water Act. The complaint alleges that PG&E is discharging pollutants from individual utility poles located in several northern California Counties into waters of the United States without having NPDES permits, in violation of the CWA. The discharges allegedly occur during rainfall storm events, when storm water runoff carries a mixture of oil and wood treating chemicals from the poles into surface water bodies. According to the complaint the discharged chemicals, including pentachlorophenol, “enter the food chain and cause and threaten to cause cancer, reproductive, developmental and immunological harm to humans and other mammals, fish, birds and other wildlife.”

Each of the identified utility poles allegedly constitutes a separate point source into the waters of the United States. The complaint claims that CWA violations began to accrue on or before June 4, 2004, and will continue for “every future day of significant rainfall in the vicinity of the [p]oles” until PG&E obtains NPDES permits for the poles. The lawsuit requests that the Court enjoin PG&E from discharging pollutants from the utility poles, require PG&E to apply for and secure NPDES permits; and pay civil penalties of up to \$32,500 per day per each violation. The plaintiffs also seek costs of litigation, including attorney, witness, and consultant fees as authorized by the CWA.

For a copy of the complaint or for additional information regarding this and other water discharge issues, contact Tim Wolfson at (412) 394-6536 or twolfson@bccz.com or Don Bluedorn at (412) 394-5450 or dbluedorn@bccz.com.