

RCRA notice requirements

McAfee & Taft RegLINC - September 2011

By **Chris A. Paul**

If a notice pursuant to the Resource Conservation and Recovery Act asserts that there is an ongoing release of pollutants, then it is unnecessary for a plaintiff to specify the date on which the violations occurred. That was the court's finding in *KFD Enterprises Inc. v. City of Eureka, N.D. Cal.*, No. 08-4571, 4/28/11. This federal court also found that the plaintiff's notice sufficiently alleged an "imminent and substantial endangerment" by asserting that the contamination involved was migrating toward a residential community's drinking water wells.



KFD Enterprises Inc. owns and operates a dry cleaner in Eureka, California. KFD filed suit against the city of Eureka under RCRA, the Comprehensive Environmental Response, Compensation, and Liability Act, and several theories of tort liability. KFD alleged the city, through acts and omissions as the owner-operator of the sewer system, caused or allowed releases of hazardous substances from the sewer system, which resulted in contaminated soil and groundwater.

The city moved to dismiss the RCRA count, arguing that KFD's notice did not contain sufficient facts to meet RCRA's notice requirements. The city said "a broadly worded letter alleging violations over a 20-year period is not sufficient to comply with the pre-suit notice requirements," and that because KFD did not specify the time period in which Eureka violated RCRA, it could not figure out when its sewer started leaking, for how long it had leaked, and what chemicals and in what concentrations.

The court found that "Although the notice does not specify a particular date or dates on which such leakage occurred, such specification is not required where, as here, the notice asserts the public entity's contribution to the pollution is essentially ongoing," and that KFD's assertion that pollution is "migrat[ing] beneath the downgradient residential

McAfee & Taft
REGLINC
September 2011
REGULATED ANALYZED LOCAL POLLUTION NEWS & DEVELOPMENTS

INSIDE THIS ISSUE

- 1 Federal impact on pesticide use in construction regulation
- 2 RCRA penalties: Is there a duty of care for hazardous substances?
- 3 NRC's framework for the 90% rule: implications for environmental protection and public health
- 4 Resource Allocation: Speaking to the public interest
- 5 EPA's new approach to cleanup: implications for CERCLA and RCRA
- 6 Public utility regulation: implications for environmental protection
- 7 EPA's new approach to cleanup: implications for CERCLA and RCRA
- 8 RCRA notice requirements: implications for CERCLA and RCRA
- 9 RCRA notice requirements: implications for CERCLA and RCRA
- 10 RCRA notice requirements: implications for CERCLA and RCRA

EDITORS
Chris A. Paul
Kirk J. Dackman

ADVISORY BOARD
Kirk J. Dackman
David M. Boyden
Frank J. DeWanna
Mary Ellen Evans

Long-term reauthorization of CERCLA remains uncertain

BY NEIL KENNEDY BOGARD

The House's Pollution Prevention and Control (P2) program reauthorized by the Department of Homeland Security (DHS) expires at the end of the fiscal year 2011. The program, which is authorized by the Pollution Prevention Act of 1990 (P2A), has been extended by the House and the Senate, but the program's future remains uncertain.

Under Section 206, DHS was required to submit a risk-based performance strategy to the Senate and Congress, covering infrastructure investments and development programs for the fiscal year 2012. The strategy was due to be submitted by DHS to the Senate and Congress in early 2011, but it has not yet been submitted.

A recent public hearing more than qualified the program's future. The hearing, which was held on September 22, 2011, was held in the House of Representatives. The hearing was held in the House of Representatives, and it was held in the House of Representatives.

On May 18, 2011, the House Energy and Commerce Committee approved H.R. 3018, full reauthorization of the CERCLA Act, with an amendment (HR 3018) and a single amendment (HR 3018) that would extend the program's authorization through 2015. The bill would extend the program's authorization through 2015, and it would extend the program's authorization through 2015.

Another House Committee report, H.R. 3018, was approved on June 11, 2011, and has been sent to the House Energy and Commerce Committee. The report was approved on June 11, 2011, and it was approved on June 11, 2011.

The Senate Committee on Environment and Public Works has also held a hearing on the program's future. The hearing was held on September 22, 2011, and it was held in the Senate Committee on Environment and Public Works.

The program's future remains uncertain, and it is uncertain whether the program will be reauthorized. The program's future remains uncertain, and it is uncertain whether the program will be reauthorized.

community, toward water supply wells, surface water and nearby schools” to be sufficient notice of “imminent and substantial endangerment.”

LINKS

- [Chris Paul's Bio](#)
- [McAfee & Taft RegLINC - September 2011](#)

Oklahoma City Tenth Floor • Two Leadership Square 211 N. Robinson • Oklahoma City, OK 73102-7103(405) 235-9621 office • (405) 235-0439 fax

Tulsa 1717 S. Boulder Suite 900 • Tulsa, OK 74119 (918) 587-0000 office • (918) 599-9317 fax