

CLIENT ALERT

New Government Investigations Regarding Hazardous Air Pollutants Could Result In Enforcement Actions and Class Action Lawsuits

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Late last week, the Oregon Department of Environmental Quality (DEQ) announced an expansive and unprecedented effort to conduct inspections (including “surprise” inspections) of over 300 facilities located in the state that will concentrate initially on emissions of chromium and eight other metals (arsenic, cadmium, cobalt, lead, manganese, nickel, and selenium). This initiative followed a letter exchange with the U.S. Environmental Protection Agency (EPA) that indicated two glass manufacturing facilities located in Oregon could be subject to hazardous air pollutant (HAP) regulations.

The Oregon DEQ stated its investigation will eventually expand into a “wider variety of industrial and other air toxics” beyond the list of targeted metals. The initiative will also include enhanced air monitoring efforts and focus on “high priority” areas where industrial emissions and air toxics might affect local air quality. Therefore, while the final scope of the review is presently unknown, it has the potential to affect many different companies and industries.

The Oregon DEQ plans to require each identified facility to provide the agency with information concerning:

- Types and volumes of particular metals used
- Material Safety Data Sheets for materials used
- Operating hours and information on production
- Recent emissions testing
- Current air pollution control measures and equipment
- Results of any efforts to model ambient air concentrations of metals

The Oregon DEQ also indicates that it will determine the proximity of facilities to “residences, schools, daycare, long-term health care centers, health care facilities and correctional facilities.” DEQ plans to physically inspect 100 of the identified facilities within six weeks, and to “eventually” inspect all of the listed facilities.

The Oregon effort stems from that state’s and EPA’s review of two art glass manufacturing facilities located in the Portland area, after U.S. Forest Service sampling of moss showed “bioindicators” of cadmium deposition. As a result of that work and additional state air monitoring, the current program is aimed at a broader evaluation of local air quality around industrial facilities and providing surrounding communities with greater information about proximate air emissions and potential health impacts. Significantly, the Oregon DEQ states it will endeavor to address a “regulatory gap” through new regulatory reform efforts.

Companies with facilities located in Oregon should take note of this effort. At the same time, there are strong reasons to conclude that the Oregon effort will be studied and emulated by other states and regulatory bodies.

For example, EPA has conducted a number of projects concerning community-scale air toxics monitoring (See, *e.g.*, [this project](#)) and has held several national workshops in this area, the most recent last fall. Additionally, EPA has heightened its review of toxic air pollution from refineries, chemical plants, and other industries emitting hazardous air pollutants “that are known or suspected to cause cancer and birth defects, seriously impact the environment, and pose risks to local communities and facility employees.” Thus, the current Oregon effort will add to the growing body of information in this area, and possibly be utilized in additional rulemaking efforts.

It is also worth noting that, even prior to this Oregon initiative, the plaintiff bar initiated a series of class action lawsuits against at least one of the Portland glass manufacturers, claiming it was emitting excessive concentrations of various metals and thereby endangering human and environmental health. Accordingly, as state and potential federal investigations concerning facility air emissions proceed, it is likely the plaintiff bar will be watching closely and looking for new litigation opportunities.

For more information, please contact the professional(s) listed below, or your regular Crowell & Moring contact.

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