

# O'NEILL & BORGES

AMERICAN INTERNATIONAL PLAZA  
250 MUÑOZ RIVERA AVENUE, STE 800  
SAN JUAN, PUERTO RICO 00918-1813  
TELECOPIER: (787) 753-8944

**CLIENT BRIEFING**  
December 28, 2009

## **Federal Regulatory Developments**

**RE:** *Final Rule on Mandatory Reporting of Greenhouse Gas Emissions from most Sectors of the Economy*

On October 30, 2009, the Environmental Protection Agency (EPA) published a notice in the Federal Register promulgating a regulation to require the reporting of Greenhouse Gas (GHG) emissions from most sectors of the economy. This final rule does not require control of the GHGs, but rather that sources surpassing certain levels of greenhouse gas emissions monitor and report their emissions. Some examples of potentially affected facilities are: solid waste landfills; facilities operating boilers, process heaters, incinerators, turbines, and internal combustion engines and electric generation companies. The final rule enters into effect on December 29, 2009 and reporters must begin collecting data on January 1, 2010.

\*\*\*\*\*

**RE:** *Oil Spill Prevention, Control, and Countermeasure (SPCC) Rule*

EPA's Administrator recently signed a notice amending some requirements of the SPCC Rule. These amendments revise the December 2008 amendments as a result of the agency's review of comments and consideration of facts. In general terms, the EPA is removing some 2008 provisions in order to: exclude farms and oil production facilities from the loading/unloading rack requirements; exempt produced water containers at an oil production facility; and provide alternative qualified facilities eligibility criteria for an oil production facility. Regarding the majority of 2008 amendments, the agency is either taking no action or providing minor technical corrections. The final SPCC rule will become effective on January 14, 2010.

\*\*\*\*\*

**RE:** *Submittal of Chemical Inventory Report required under Section 312 of the Emergency Planning and Community Right-to-Know Act of 1986, as amended ("SARA or EPCRA").*

Section 312 of SARA requires the owner or operator of a facility to prepare an annual chemical inventory report form (the "Tier II Report") for those hazardous chemicals covered under its provisions. In general terms, the purpose of the Tier II Report is to provide the state, local officials and the public with specific information about the hazardous chemicals present at the covered facilities in order to, among other things, prepare to respond to potential chemical emergencies. The Tier II Report must be submitted to the Local Emergency

Planning Committee, the State Emergency Response Commission, (*i.e.*, the Puerto Rico Environmental Quality Board), and the local fire department with jurisdiction over the facility on or before March 1, 2010.

**Local Judicial Developments**

**RE:** *Delineation of the Terrestrial Maritime Zone*

The Supreme Court of Puerto Rico recently decided a significant case regarding the delineation of the terrestrial maritime zone. In Buono Correa v. Department of Natural and Environmental Resources, 2009 TSPR 166, the Supreme Court clarifies the criteria that the Department of Natural and Environmental Resources (the "DNER") must consider in order to delineate the terrestrial maritime zone. Furthermore, the Court decided whether wetlands are considered part of the terrestrial maritime zone.

The Court held that the extension of the terrestrial maritime zone will depend on whether the tides are perceptible or not in the area under consideration. In these areas where the tides are perceptible, the terrestrial maritime zone will be delineated based on the ebb and flow of the tides. In places where tides are not perceptible, the delineation will be based on where the largest waves during a storm are felt. The Court also clarified that the DNER cannot consider the two mentioned factors simultaneously (ebb and flow of the tides and the area where the largest waves are felt during a storm) in areas where the tides are perceptible.

Furthermore, the Court held that the DNER shall strictly follow Regulation No. 4860, Regulation for the Use, Vigilance, Conservation and Management of Territorial Waters, Submerged Lands, and the Terrestrial Maritime Zone, as amended, and shall consider the factors therein included in order to make the delineation, including the consideration of topographic and geographic factors, among others. Finally, the Court held that wetlands will be considered an integral part of the terrestrial maritime zone if the wetland area is flooded as a consequence of the water of the sea, and there is a direct link between the wetland area and marine tides.

If you need further information on the referenced developments or their potential impact on your operations or should you need assistance completing and/or submitting the Tier II Report, please contact any of the following attorneys from our Environmental Law and Litigation Practice Group.

Jorge L. San Miguel	(787) 282-5745	Víctor R. Rodríguez	(787) 282-5764
Lillian Mateo-Santos	(787) 282-5729	Isis Pérez-Vélez	(787) 282-5733
Gerard Gil-Olazábal	(787) 282-5747	Antonio Collazo-Bennazar	(787) 282-5783

*O'Neill & Borges*