

Agribusiness Alert: Authorities Increase Enforcement and Prosecutions under Federal and State Environmental Laws—The Corn Plus Example

November 14, 2011

On September 30, 2011, the United States filed a criminal action in federal district court against Corn Plus, an ethanol plant located in Winnebago, Minnesota. In its Amended Information, charging the company with a felony, the federal government asserts that Corn Plus knowingly made a false material statement, representation, and certification in a report required under the Clean Air Act.

Specifically, the case involves an alleged false compliance certification by Corn Plus concerning its air emissions permit requirements for particulate matter (PM). Corn Plus' air permit requires the company to submit an annual compliance certification to the Minnesota Pollution Control Agency (MPCA) and United States Environmental Protection Agency (EPA) stating that it is meeting all permit requirements and, if all requirements are not met, the certification must disclose all deviations from those requirements and the reasons for the deviations. This certification requirement is common to most individual Title V/Part 70 air quality permits. In this felony prosecution, the federal government alleges Corn Plus falsely certified compliance with its permit requirements, knowing that its pollution control equipment for PM was operating outside permit parameters. [View a copy of the amended pleading.](#)

The permit in question was issued to Corn Plus not by EPA, but by the MPCA. The MPCA is reportedly pursuing civil enforcement for the alleged false compliance certification filed by Corn Plus with MPCA. On September 18, 2011, the Faribault County Register interviewed the Corn Plus plant manager who acknowledged that MPCA was presently conducting a civil investigation of Corn Plus.

This is not the first time in recent years that Corn Plus faced dual enforcement by MPCA in a civil action and EPA in a criminal action for the same conduct. In 2009, Corn Plus pled guilty to a federal misdemeanor charge and agreed to pay a \$150,000 fine to EPA for discharging its wastewater into the storm water system that led to Rice Lake via a county ditch. In 2010, in the related state civil MPCA enforcement proceeding for these wastewater discharges, Corn Plus agreed to pay a \$200,000 penalty to the MPCA and complete a Supplemental Environmental Project that will cost at least \$691,000.



Corn Plus' cases may illustrate a "new normal" in environmental regulatory matters under current federal and state administrations—more coordination between agencies, and a willingness to aggressively pursue parallel enforcement tracks. Companies need to be prepared for this enhanced regulatory climate.

This article is provided for general informational purposes only and should not be construed as legal advice or legal opinion on any specific facts or circumstances. You are urged to consult a lawyer concerning any specific legal questions you may have.