

Dated: December 5, 2002.

**Peter W. Preuss,**

*Director, National Center for Environmental Research.*

[FR Doc. 02-31466 Filed 12-12-02; 8:45 am]

BILLING CODE 6560-50-P

## ENVIRONMENTAL PROTECTION AGENCY

[FRL-7422-2]

### New Hanover County Burn Pit Superfund Site; Notice of Proposed Settlement

**AGENCY:** Environmental Protection Agency.

**ACTION:** Notice of proposed settlement.

**SUMMARY:** The United States Environmental Protection Agency is proposing to enter into an Administrative Order on Consent pursuant to section 122(h)(1) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA), as amended regarding the New Hanover County Burn Pit Superfund Site located in Wilmington, New Hanover County, North Carolina. This agreement is made and entered into by EPA and by Axel Johnson, Inc., Sprague Energy Corporation, and Unocal Corporation ("Settling Parties"). EPA will consider public comments on the proposed settlement for 30 days. EPA may withdraw from or modify the proposed settlement should such comments disclose facts or considerations which indicate the proposed settlement is inappropriate, improper, or inadequate.

Copies of the proposed settlement are available from: Ms. Paula V. Batchelor, U.S. EPA, Region 4, Sam Nunn Atlanta Federal Center, Waste Management Division, 61 Forsyth Street, SW., Atlanta, Georgia 30303. (404) 562-8887.

Written comments may be submitted to Ms. Batchelor within 30 calendar days of the date of this publication.

Dated: November 26, 2002.

**Anita L. Davis,**

*Acting Chief, CERCLA Program Services Branch, Waste Management Division.*

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## ENVIRONMENTAL PROTECTION AGENCY

[FRL-7421-7; CWA-HQ-2002-6001; EPCRA-HQ-2002-6001; CAA-HQ-2002-6001; RCRA-HQ-2002-6001]

### Clean Water Act Class II: Proposed Administrative Settlement, Penalty Assessment and Opportunity To Comment Regarding NEXTEL Communications, Inc., et al. and NII Holdings, Inc.

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice.

**SUMMARY:** On October 30, 2002, EPA published in the **Federal Register** information concerning a proposed settlement with NEXTEL Communications Inc., et al. and NII Holdings, Inc. The purpose of this correction is to provide additional information about this settlement. EPA has entered into a consent agreement with NEXTEL Communications, Inc., and its subsidiaries, and NII Holdings, Inc., collectively referred to as "NEXTEL", to resolve violations of the Clean Water Act ("CWA"), the Clean Air Act ("CAA"), the Resource Conservation and Recovery Act ("RCRA"), and the Emergency Planning and Community Right-to-Know Act ("EPCRA") and their implementing regulations.

The Administrator is hereby providing public notice of this consent agreement and final order and providing an opportunity for interested parties to comment on the CWA portions, as required by CWA section 311(b)(6)(C), 33 U.S.C. 1321(b)(6)(C).

NEXTEL failed to prepare Spill Prevention Control and Countermeasure ("SPCC") plans for forty-eight facilities where they stored diesel oil in above ground tanks. EPA, as authorized by CWA section 311(b)(6), 33 U.S.C. 1321(b)(6), has assessed a civil penalty for these violations. NEXTEL failed to obtain the appropriate operating permits or exemptions at eight facilities in violation of CAA section 110, 42 U.S.C. 7410, and various state implementation plan ("SIP") requirements for emergency generators. EPA, as authorized by CAA section 113(d)(1), 42 U.S.C. 7413(d)(1), has assessed a civil penalty for these violations. NEXTEL failed to file an emergency planning notification with the State Emergency Response Commission ("SERC") and to provide the name of an emergency contact to the Local Emergency Planning Committee ("LEPC"). NEXTEL failed to submit Material Safety Data Sheets ("MSDS") or a list of chemicals to the LEPC, the SERC, and the fire

department with jurisdiction over each facility for seventy-five facilities in violation of EPCRA section 311, 42 U.S.C. 11021. At sixty-six facilities, NEXTEL failed to submit an Emergency and Hazardous Chemical Inventory form to the LEPC, the SERC, and the fire department with jurisdiction over each facility in violation of EPCRA section 312, 42 U.S.C. 11022. EPA, as authorized by EPCRA section 325, 42 U.S.C. 11045, has assessed a civil penalty for these violations. NEXTEL failed to make a hazardous waste determination and improperly disposed of hazardous waste at one facility in violation of 9 VAC 20-60-261(A), (40 CFR 261.5(g)(1) and (g)(3)). NEXTEL violated RCRA section 9003(d), 42 U.S.C. 6991b(d) and 30 TAC sections 334 and 37.801, when the insurance policy for underground storage tanks failed to use the terms "corrective action" or "sudden, non-sudden or accidental release" to describe coverage for four facilities. At one facility NEXTEL failed to notify the State or local agency or department of the existence of an underground storage tank in violation of RCRA section 9002(a), 42 U.S.C. 6991(a)(1). NEXTEL failed to follow all of the relevant underground storage tank regulations in violation of RCRA section 9003, 42 U.S.C. 6991b at one facility.

**DATES:** Comments are due on or before January 13, 2003.

**ADDRESSES:** Send written comments to the Docket Office, Enforcement and Compliance Docket and Information Center (2201T), Docket Number EC-2002-021, U.S. Environmental Protection Agency, EPA West, 1200 Pennsylvania Avenue NW., Room B133, Washington, DC 20460 (in triplicate if possible.)

Please use a font size no smaller than 12. Comments may also be sent electronically to [docket.oeca@epa.gov](mailto:docket.oeca@epa.gov) or faxed to (202) 566-1511. Attach electronic comments as a text file and try to avoid the use of special characters and any forms of encryption. Please be sure to include the Docket Number EC-2002-021 on your document.

In person, deliver comments to U.S. Environmental Protection Agency, EPA West, 1301 Constitution Avenue, NW., Room B133, Washington, DC 20460. Parties interested in reviewing docket information may do so by calling (202) 566-1512 or (202) 566-1513. A reasonable fee may be charged by EPA for copying docket materials.

**FOR FURTHER INFORMATION CONTACT:** Beth Cavalier, Multimedia Enforcement Division (2248-A), U.S. Environmental Protection Agency, 1200 Pennsylvania

Avenue, NW., Washington, DC 20460; telephone (202) 564-3271; fax: (202) 564-9001; e-mail: [cavalier.beth@epa.gov](mailto:cavalier.beth@epa.gov).

**SUPPLEMENTARY INFORMATION:** *Electronic Copies:* Electronic copies of this document are available from the EPA Home Page under the link "Laws and Regulations" at the **Federal Register—Environmental Documents** entry (<http://www.epa.gov/fedrgstr>).

## I. Background

NEXTEL Communications, Inc., its subsidiaries, and NII Holdings, Inc., collectively referred to as "NEXTEL", are telecommunications companies incorporated in the States of Delaware, Georgia, and Texas. NEXTEL is located at 2001 Edmond Halley Drive, Reston, Virginia, 20191 and NII Holdings, Inc. is located at 10700 Parkridge Boulevard, Suite 600, Reston, Virginia, 20191. NEXTEL disclosed, pursuant to the EPA "Incentives for Self-Policing: Discovery, Disclosures, Correction and Prevention of Violations" ("Audit Policy"), 65 FR 19618 (April 11, 2000), that they failed to prepare SPCC plans for forty-eight facilities where they stored diesel oil in above ground storage tanks, in violation of the CWA section 311(b)(3) and 40 CFR part 112. NEXTEL disclosed that for eight facilities they had failed to obtain operating permits or exemptions in violation of CAA section 110, 42 U.S.C. 7410, and various SIP requirements for emergency generators. NEXTEL disclosed that at seventy-two facilities they had failed to file emergency planning notifications with the SERC and failed to provide the name of an emergency contact to the LEPC, in violation of EPCRA sections 302 and 303, 42 U.S.C. 11002 and 11003. NEXTEL further disclosed that at seventy-five facilities they had failed to submit MSDS or a list of chemicals to the LEPC, SERC, and the fire departments with jurisdiction over the facilities, in violation of EPCRA section 311, 42 U.S.C. 11021; and that at sixty-six facilities had failed to submit an Emergency and Hazardous Chemical Inventory to the LEPC, SERC, and fire departments with jurisdiction over the facilities, in violation of EPCRA section 312, 42 U.S.C. 11022. At four facilities NEXTEL failed to ensure that the language in their financial assurance insurance policies for underground storage tanks was exactly as required by regulation, in violation of 30 TAC sections 334 and 37.801 and RCRA section 9003(d), 42 U.S.C. 6991b(d). NEXTEL violated RCRA section 9002(a)(1), 42 U.S.C. 6991(a)(1) when it failed to notify the state of the existence

of an underground storage tank at one facility; and NEXTEL violated RCRA section 9003, 42 U.S.C. section 6991b and all of the relevant underground storage tank regulations at one facility. NEXTEL failed to make a hazardous waste determination and improperly disposed of hazardous waste at one facility in violation of 9-VAC 20-60-261(A).

Pursuant to 40 CFR 22.45(b)(2)(iii), the following is a list of facilities at which NEXTEL self-disclosed violations of CWA section 311(b)(3): 3719 East LaSalle St., Phoenix, AZ; 984 Walsh Ave., Santa Clara, CA; 475 14th Street, Oakland, CA; 11423 Sunrise Gold Circle, Rancho Cordova, CA; 17275 Derian Ave., Irvine, CA; 5996 Gleason Drive, Dublin, CA; 11175 Inland Ave., Mira Loma, CA; 9800 East Easter Ave., Englewood, CO; 10002 Park Meadows Drive, Lone Tree, CO; 4643 South Ulster Street, Denver, CO; 333 Inverness Drive South, Englewood, CO; 1370 Park Central Blvd., Pompano Beach, FL; 200 Avenue B, NW., Winter Haven, FL; 1101 N. Keller Road, Orlando, FL; 1150 Emma Oaks Trail, Lake Mary, FL; 400 Embassy Row, Atlanta, GA; 5952 Peachtree Industrial Blvd., Norcross, GA; 5295 Brookhollow Parkway, Norcross, GA; 2975 Breakinridge Blvd., Duluth, GA; 4150 Shackelford Rd., Norcross, GA; 880 Ashbury Drive, Buffalo Grove, IL; 40 Hartwell Ave., Lexington, MA; 135 Forbes Blvd., Mansfield MA; 11900 Bournefield Way, Silver Spring, MD; 7249 National Drive, Hanover, MD; 39200 Schoolcraft Rd., Livonia, MI; 6435 Hix Road, Westland, MI; 11322 Lackland Road, St. Louis, MO; 610 Industrial Ave., Greensboro, NC; 2 Industrial Road, Fairfield, NJ; One South Street, Garden City, NY; 175 Clearbrook Road, Elmsford, NY; 400 Bursca Drive, Building 400, Bridgeville, PA; 401 North Broad Street, Philadelphia, PA; 901 Jefferson Blvd., Norristown, PA; 4740 Perrin Creek, San Antonio, TX; 4407 Alpha Road, Farmers Branch, TX; 1600 Eberhardt Road, Temple, TX; 1412 East North Belt, Houston, TX; 1766 Old Meadow Road, McLean, VA; 421 Butler Farm Road, Hampton, VA; 400 Butler Farm Road, Hampton, VA; 593 Herndon Parkway, Herndon, VA; 2001-2003 Edmund Halley Drive, Reston, VA; 1505 Farm Credit Drive, McLean, VA; 11710 118th Avenue, NE., Kirkland, WA; 1400 NE McWilliams Road, Bremerton, WA. These facilities are not required to obtain water permits for these requirements.

In addition, violations of EPCRA sections 302, 303, 311 and/or 312 were reported at facilities in the following states: Arizona, California, Colorado,

Florida, Georgia, Illinois, Kansas, Massachusetts, Maryland, Michigan, Minnesota, Missouri, North Carolina, New Jersey, New York, Ohio, Pennsylvania, Tennessee, Texas, Utah, Virginia and Washington. Violations of CAA section 110 were reported at facilities in Arizona, California, Kansas, New Jersey and Pennsylvania.

Violations of RCRA section 9003(d) were reported in California and Illinois, and violations of RCRA section 9003(d) and 30 TAC sections 334 and 37.801 were reported in Texas. A violation of RCRA section 9002(a)(1) was reported in Pennsylvania. In Virginia, NEXTEL reported a violation of 9 VAC 20-6-261(A).

EPA determined that NEXTEL met the criteria set out in the Audit Policy for a 100% waiver of the gravity component of the penalty. As a result, EPA proposes to waive the gravity based penalty (\$1,994,810) and proposes a settlement penalty amount of thirty-five thousand and four dollars (\$35,004). This is the amount of the economic benefit gained by NEXTEL, attributable to their delayed compliance with the CWA, CAA, RCRA, and EPCRA regulations. NEXTEL Communications, Inc. has agreed to pay this amount. EPA and NEXTEL negotiated and signed an administrative consent agreement, following the Consolidated Rules of Practice, 40 CFR 22.13(b), on October 18, 2002 (*In Re: NEXTEL Communications, Inc. et. al. and NII Holdings, Inc.*, Docket Nos. CWA-HQ-2002-6001, EPCRA-HQ-2002-6001, CAA-HQ-2002-6001, and RCRA-HQ-2002-6001). This consent agreement is subject to public notice and comment under CWA section 311(b)(6), 33 U.S.C. 1321(b)(6).

Under CWA section 311(b)(6)(A), 33 U.S.C. 1321 (b)(6)(A), any owner, operator, or person in charge of a vessel, onshore facility, or offshore facility from which oil is discharged in violation of the CWA section 311(b)(3), 33 U.S.C. 1321(b)(3), or who fails or refuses to comply with any regulations that have been issued under CWA section 311(j), 33 U.S.C. 1321(j), may be assessed an administrative civil penalty of up to \$137,500 by EPA. Class II proceedings under CWA section 311(b)(6) are conducted in accordance with 40 CFR part 22.

Under CAA section 113(d), the Administrator may issue an administrative order assessing a civil penalty against any person who has violated an applicable implementation plan or any other requirement of the Act, including any rule, order, waiver, permit or plan. Proceedings under CAA

section 113(d) are conducted in accordance with 40 CFR part 22.

Under EPCRA section 325, the Administrator may issue an administrative order assessing a civil penalty against any person who has violated applicable emergency planning or right to know requirements, or any other requirement of the Act. Proceedings under EPCRA section 325 are conducted in accordance with 40 CFR part 22.

Under RCRA section 3008, the Administrator may issue an administrative order assessing a civil penalty against any person who has violated applicable hazardous waste requirements, or any other requirement of the Act. Proceedings under RCRA section 3008 are conducted in accordance with 40 CFR part 22.

Under RCRA section 9006, the Administrator may issue an administrative order assessing a civil penalty against any person who has violated applicable underground storage tank requirements, or any other requirement of the Act. Proceedings under RCRA section 9006 are conducted in accordance with 40 CFR part 22.

The procedures by which the public may comment on a proposed Class II penalty order, or participate in a Clean Water Act Class II penalty proceeding, are set forth in 40 CFR 22.45. The deadline for submitting public comment on this proposed final order is January 13, 2003. All comments will be transferred to the Environmental Appeals Board ("EAB") of EPA for consideration. The powers and duties of the EAB are outlined in 40 CFR 22.4(a).

Pursuant to CWA section 311(b)(6)(C), EPA will not issue an order in this proceeding prior to the close of the public comment period.

Dated: December 2, 2002.

**Rosemarie A. Kelley,**  
*Acting Director, Multimedia Enforcement Division, Office of Enforcement and Compliance Assurance.*

[FR Doc. 02-31467 Filed 12-12-02; 8:45 am]

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## ENVIRONMENTAL PROTECTION AGENCY

[FRL-7421-8; CWA-HQ-2002-6000; EPCRA-HQ-2002-6000; CAA-HQ-2002-6000]

### Clean Water Act Class II: Proposed Administrative Settlement, Penalty Assessment and Opportunity To Comment Regarding ADT Security Services, Inc.

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice.

**SUMMARY:** EPA has entered into a consent agreement with ADT Security Services, Inc. ("ADT") to resolve violations of the Clean Water Act ("CWA"), the Clean Air Act ("CAA"), and the Emergency Planning and Community Right-to-Know Act ("EPCRA") and their implementing regulations.

The Administrator is hereby providing public notice of this consent agreement and final order and providing an opportunity for interested persons to comment on the CWA portions, as required by CWA section 311(b)(6)(C), 33 U.S.C. 1321(b)(6)(C).

ADT failed to prepare Spill Prevention Control and Countermeasure ("SPCC") plans for eight facilities where they stored diesel oil in above ground tanks. EPA, as authorized by CWA section 311(b)(6), 33 U.S.C. 1321(b)(6), has assessed a civil penalty for these violations. ADT failed to obtain the appropriate operating permits or exemptions at seven facilities in violation of CAA section 110, 42 U.S.C. 7410, and various state implementation plan ("SIP") requirements for emergency generators. EPA, as authorized by CAA section 113(d)(1), 42 U.S.C. 7413(d)(1), has assessed a civil penalty for these violations. ADT failed to file an emergency planning notification with the State Emergency Response Commission ("SERC") and to provide the name of an emergency contact to the Local Emergency Planning Committee ("LEPC"). ADT failed to submit Material Safety Data Sheets ("MSDS") or a list of chemicals to the LEPC, the SERC, and the fire department with jurisdiction over each facility for ninety-two facilities in violation of EPCRA section 311, 42 U.S.C. 11021. At ninety-two facilities, ADT failed to submit an Emergency and Hazardous Chemical Inventory form to the LEPC, the SERC, and the fire department with jurisdiction over each facility in violation of EPCRA section 312, 42 U.S.C. 11022. EPA, as authorized by EPCRA section 325, 42 U.S.C. 11045, has assessed a civil penalty for these violations.

**DATES:** Comments are due on or before January 13, 2003.

**ADDRESSES:** Send written comments to the Docket Office, Enforcement and Compliance Docket and Information Center (2201T), Docket Number EC-2002-020, U.S. Environmental Protection Agency, EPA West, 1200 Pennsylvania Avenue NW., Room B133, Washington, DC 20460 (in triplicate if possible.)

Please use a font size no smaller than 12. Comments may also be sent electronically to [doCKET.oeca@epa.gov](mailto:doCKET.oeca@epa.gov) or faxed to (202) 566-1511. Attach electronic comments as a text file and try to avoid the use of special characters and any forms of encryption. Please be sure to include the Docket Number EC-2002-020 on your document.

In person, deliver comments to U.S. Environmental Protection Agency, EPA West, 1301 Constitution Avenue, NW., Room B133, Washington, DC 20460. Parties interested in reviewing docket information may do so by calling (202) 566-1512 or (202) 566-1513. A reasonable fee may be charged by EPA for copying docket materials.

**FOR FURTHER INFORMATION CONTACT:** Beth Cavalier, Multimedia Enforcement Division (2248-A), U.S. Environmental Protection Agency, 1200 Pennsylvania Avenue, NW., Washington, DC 20460; telephone (202) 564-3271; fax: (202) 564-9001; e-mail: [cavalier.beth@epa.gov](mailto:cavalier.beth@epa.gov).

**SUPPLEMENTARY INFORMATION:** *Electronic Copies:* Electronic copies of this document are available from the EPA Home Page under the link "Laws and Regulations" at the Federal Register—Environmental Documents entry (<http://www.epa.gov/fedrgstr>).

### I. Background

ADT Security Services, Inc. a security services company incorporated in the State of Delaware and located at One Town Center Road, Boca Raton, Florida 33064, disclosed, pursuant to the EPA "Incentives for Self-Policing: Discovery, Disclosures, Correction and Prevention of Violations" ("Audit Policy"), 65 FR 19618 (April 11, 2000), that they failed to prepare SPCC plans for eight facilities where they stored diesel oil in above ground storage tanks, in violation of the CWA section 311(b)(3) and 40 CFR part 112. ADT disclosed that for seven facilities they had failed to obtain operating permits or exemptions in violation of CAA section 110, 42 U.S.C. 7410, and various SIP requirements for emergency generators. ADT disclosed that at sixty-eight facilities they had failed to file emergency planning notifications with the SERC and failed to provide the name of an emergency contact to the LEPC, in violation of EPCRA section 302, 42 U.S.C. 11002. ADT further disclosed that at ninety-two facilities they had failed to submit MSDS' or a list of chemicals to the LEPC, SERC, and the fire departments with jurisdiction over the facilities, in violation of EPCRA section 311, 42 U.S.C. 11021; and that at ninety-two facilities had failed to submit an