



Enforcement Alert

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Airlines Must Comply With Federal Fuel Standards, Stormwater and Spill Prevention Requirements, and Report Emergency Releases

The U.S. Environmental Protection Agency (EPA) and AMR Corporation (American Airlines) entered into a settlement that is expected to eliminate nearly 700 tons of pollutants from the air annually.

In a settlement under EPA's "Audit Policy," American Airlines disclosed to

EPA violations of Section 211 (federal fuel standards) of the Clean Air Act discovered at 10 of its facilities. The disclosures were a result of the airlines' voluntary audit of its facilities at 150 airports.

Under the terms of the settlement with the Texas-based airline, EPA cut total penalties by more than 90 percent for violations that the airline voluntarily disclosed and promptly corrected. The company also agreed to additional pollution reduction measures at Boston's Logan airport.

The American Airlines settlement serves as a model for national companies that want to come forward to resolve multiple federal environmental violations at one time.

Clean Air Act Prohibits Use of High-Sulfur Diesel Fuel in Vehicles

In its disclosures to EPA, American Airlines reported the use of a high-sulfur fuel in motor vehicles at 10 major airports around the country, including JFK in New York and O'Hare in Chicago. The violations occurred during October 1993 to July 1998.

Section 211 of the Clean Air Act prohibits the knowing use in any motor vehicle of diesel fuel that contains a concentration of sulfur in excess of 0.05 percent (by weight). In addition, the diesel fuel regulations in 40 C.F.R. Part 80 prohibit dispensing, selling, supplying, offering for sale or supply, transporting, or introducing into commerce diesel fuel for use in motor ve-

hicles unless the diesel fuel has a sulfur percentage, by weight, of no greater than 0.05 percent.

Violators are subject to a civil penalty of \$27,500 per day for each violation and the amount of the economic benefit or savings resulting from the violation.

Audit Policy Settlement Benefits Public Health, Environment, Industry

EPA's Audit Policy, formally known as "*Incentives for Self-Policing: Discovery, Disclosure, Correction and Prevention of Violations*" 60 Fed. Reg. 66706 (Dec. 22, 1995), was developed as an incentive for companies to conduct self-audits to determine compliance with environmental laws. When applicable, the policy substantially reduces and, in many cases, eliminates, penalties for violations discovered and corrected by a company.

Because of its voluntary audit, prompt disclosure and correction of violations, and cooperative efforts to resolve this matter with EPA, American Airlines received a 100 percent waiver of the gravity-based penalties, potentially totaling \$1.4 million, that otherwise could have been assessed.

American Airlines paid only a \$95,000 penalty, the amount of the economic benefit it realized through non-compliance. A penalty that captures economic benefit ensures that the vio-

About

Enforcement Alert

"*Enforcement Alert*" is published periodically by the Office of Regulatory Enforcement to inform and educate the public and regulated community of important environmental enforcement issues, recent trends and significant enforcement actions.

This information should help the regulated community anticipate and prevent violations of federal environmental law that could otherwise lead to enforcement action. Reproduction and wide dissemination of this newsletter is encouraged.

See Page 3 for useful compliance assistance resources.

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lator does not obtain an unfair advantage over its competitors.

American Airlines also agreed to purchase 12 electric-powered belt loaders to replace existing gas-powered loaders at Logan airport, an improvement expected to eliminate nearly 700 tons of pollutants from the air at Logan Airport annually.

The new belt loaders at Logan are expected to remove annually the following pollutants from the air: 644 tons of carbon monoxide, the equivalent of removing 11,000 cars from the roads; 21 tons of volatile organic compounds—the equivalent of 3,100 cars; 15 tons of nitrogen oxides—the equivalent of 2,300 cars; and 420 pounds of particulate matter—the equivalent of 160 cars (these comparisons are based on cars meeting 1999 emissions standards).

Logan Airport was not one of the airports where the violations occurred, but was chosen to receive the new belt-loaders because it has newer electrical circuitry that can support the electrical loaders.

Companies interested in an advanced understanding about meeting certain Clean Air Act conditions of the policy are encouraged to contact Leslie Jones, EPA's National Audit Policy Coordinator, at (202) 564-5123.

Federal Reporting Requirements

Airlines should be aware of the following federal environmental requirements, as well as others, that may affect their facilities. For example, airlines may be required to report emergency releases of hazardous chemicals and/or may be required to have and implement a Spill Prevention Control and Countermeasure (SPCC) Plan and Facility Response Plan.

The American Airlines Audit Policy settlement serves as a model for national companies that want to come forward to resolve multiple federal environmental violations at one time.

Section 103 of the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA) requires the person in charge of a facility to immediately notify the National Response Center when a release into the environment of certain hazardous substances occurs at levels equal to or greater than designated reportable quantities.

Section 101(9) of CERCLA has a broad definition of "facility" that includes motor vehicles, aircraft, or "any site or area where a hazardous substance has been deposited, stored, disposed of, or placed, or otherwise come to be located." The person in charge of each facility, including the one in charge of the de-icing truck, airplane or airport, is responsible for ensuring that releases from his facilities are properly and accurately reported. The persons in charge of the different facilities may coordinate their actions to ensure proper reporting—either independently or as aggregated and reported by the airport. The person in charge of each facility, however, is liable for any failure to comply with these reporting obligations, including when he has relied upon someone else to report the release.

Releases of hazardous substances that are continuous and stable in quantity and rate may qualify for reduced reporting under the CERCLA and EPCRA continuous release reporting regulations, published at 40 CFR 302.8. In addition, releases that are federally

permitted (as defined in CERCLA) are exempt from CERCLA and EPCRA reporting requirements. Releases that are in full compliance with a Clean Water Act (CWA) stormwater permit, for example, are exempt from CERCLA and Emergency Planning and Community Right-To-Know Act reporting. Stormwater permits, however, contain independent reporting and prevention requirements. The CWA Section 311 reporting exemption for CWA permitted discharges is further described in regulations set forth at 40 CFR 117.12.

Section 304 of the Emergency Planning and Community Right-To-Know Act (EPCRA) also requires the owner or operator of a facility to immediately notify State Emergency Response Commissions (SERCs) and Local Emergency Planning Committees (LEPCs) of releases of reportable quantities of hazardous substances or designated "extremely hazardous substances."

EPCRA may also require a facility to submit Material Safety Data Sheets (MSDS) and inventory forms with SERCs, LEPCs and local fire departments. When the Occupational Safety and Health Act and related regulations require regulated entities to prepare or have available an MSDS, and the use or storage of a chemical meets a designated threshold, **EPCRA Sections 311 and 312** may require the submission an MSDS or list of chemicals and an annual emergency and hazardous

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chemical inventory form (referred to as a "Tier I" or "Tier II" form). These requirements allow emergency responders to plan for an accident and have the necessary protective equipment and training should an accident occur.

Airlines may also be liable under the **Clean Water Act** for any unpermitted discharge, or discharge in violation of any permit, into waters of the United States. This includes discharges via separate storm sewer systems and may include discharges from de-icing, fueling and maintenance activities. Failure to comply with stormwater and other CWA permitting obligations, including monitoring and reporting, could subject facilities to substantial penalties.

Section 311 of the Clean Water Act also prohibits the discharge of oil or petroleum and hazardous substances into waters of the United States and adjoining shorelines, unless the discharge is in compliance with a CWA permit. Spills of oil or hazardous substances may not qualify under the Audit Policy for a variety of reasons (e.g., accidental spills are likely to be discovered immediately and not as the result of a voluntary audit).

Regulations under Section 311(j) of the CWA, published at 40 CFR 112, may require a facility to have and implement a Spill Prevention Control and Countermeasure (SPCC) Plan and Facility Response Plan (FRP). The SPCC and FRP regulations apply to owners or operators of non-transportation related facilities that have discharged or, due to their location or size, could reasonably be expected to discharge oil in harmful quantities into or upon the navigable waters of the United States or adjoining shorelines.

Some transportation-related facilities or activities may have non-transportation-related components that must comply with SPCC and FRP require-

ments. Some examples of fixed components that require SPCC and FRP compliance include oil storage facilities such as fixed bulk plant storage, terminal storage facilities, consumer storage, pumps and drainage systems used in the storage of oil. Airlines must operate their oil storage facilities in compliance with any required plans and permits. EPA has concluded a number of settlements under the Audit Policy that greatly reduce penalties for companies that voluntarily disclose and correct their failure to have adequate SPCC plans.

In addition to the requirements highlighted in this issue, airlines also may be subject to other environmental requirements, such as the Resource Conservation and Recovery Act (RCRA) hazardous waste regulations and underground storage tank regulations.

For more information, contact J.L. Adair, Office of Regulatory Enforcement (ORE), Air Enforcement Division, (202) 564-1011, Email: adair.jocelyn@epa.gov; Cheryl Rose, ORE, Water Enforcement Division, (202) 564-4136, Email: rose.cheryl@epa.gov; Leslie Jones, ORE, National Audit Policy Coordinator, (202) 564-5123, Email: jones.leslie@epa.gov.

EPA'S Y2K Enforcement Policy

EPA's "Y2K Enforcement Policy is designed to encourage the expeditious testing of computer associated hardware and software that may be potentially vulnerable to Y2K problems.

Under this policy, which was published in the Federal Register on March 10, 1999, EPA intends to waive 100 percent of the civil penalties and recommend against criminal prosecution for environmental violations resulting from Y2K testing designed to identify and eliminate Y2K-related malfunctions. To receive the policy's benefits (e.g., waiver of penalties due to testing), regu-

lated entities must address specific criteria and conditions identified in the policy. For more information about EPA's Y2K Enforcement Policy, contact **Gary Jonesi, Office of Regulatory Enforcement, (202) 564-4002 or E-mail: jonesi.gary@epa.gov.**

Useful Compliance Assistance Resources

EPA Website:
<http://www.epa.gov>

Office of Enforcement and Compliance Assurance:
<http://www.epa.gov/oeca>

Office of Regulatory Enforcement
<http://www.epa.gov/oeca/ore.html>

EPA Compliance Assistance Centers:
<http://www.epa.gov/oeca/mfcac.html>

Small Business Gateway:
<http://www.epa.gov/smallbusiness>

EPA's Year 2000 website:
<http://www.epa.gov/year2000>

EPA's Y2K Enforcement Policy:
<http://www.epa.gov/fedrgstr/EPA-GENERAL/1999/March/Day-10/g5958.htm>

EPA Audit Policy:
<http://www.epa.gov/oeca/ore/apolguid.html>

Audit Policy Update:
<http://www.epa.gov/oeca/ore/apolguid.html>

EPA's Small Business Policy:
<http://www.epa.gov/oeca/smbusi.html>

EPCRA Hotline: 1-800-424-9346. For callers in the DC area, please call (703) 412-9810. Also, the TDD is (800) 553-7672

Transportation Environmental Resource Center:
<http://www.transource.org>

Stratospheric Ozone Information Hotline: (800) 296-1996

Air Risk Information Support Center Hotline: (919) 541-0888

Enforcement Alert



**United States
Environmental Protection Agency
Office of Regulatory Enforcement
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**Official Business
Penalty for Private Use \$300**

EPA Sources for Air Transportation Information

- **Self Audit Policy and Disclosures: CAA: J. L. Adair, Air Enforcement Division, (202) 564-0011; CWA, EPCRA/ CERCLA: Cheryl Rose, Water Enforcement Division, (202) 564-4136; Audit Policy: Leslie Jones, Office of Regulatory Enforcement, (202) 564-5123**
- **Effluent Guideline on Metal Products and Machinery: Steve Geil, Office of Water, (202) 260-9817**
- **RCRA Manifest Rule: Rich Lashier, Office of Solid Waste & Emergency Response, (703) 308-8796**
- **Storm Water Program: George Utting, (202) 260-9530**
- **Transportation Compliance Assistance Center: Virginia Lathrop, Office of Compliance, (202) 564-7057**
- **Vehicle Repair Shop Checklist: Julie Tankersley, Office of Compliance, (202) 564-7002**
- **Letter of Explanation to Airline Industry on De-icing: Virginia Lathrop, Office of Compliance, (202) 564-7057**
- **Fuel for Thought (Pamphlet for vehicle maintenance shops): Elson Lim, (202) 564-7006**
- **Assistance on Environmental Compliance Issues for Auto Repair Shops: Everett Bishop, (202) 564-7032**

