



Enforcement Alert

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EPA's 'Audit Policy' Offers Opportunity for Telecommunications Industry to Remedy Violations

The U.S. Environmental Protection Agency's (EPA) revised "Audit Policy" now makes it easier for telecommunications companies to disclose violations of federal environmental

regulations. Among other significant changes, the policy now lengthens the discovery period to 21 days from 10 days.

The revised Audit Policy, published in the *Federal Register* April 11, 2000, was developed as an incentive to companies, including telecommunications companies, to implement self-audits for compliance with all environmental laws. The policy substantially reduces, and in some cases eliminates, penalties for violations discovered, disclosed and promptly corrected by a company. The policy does not cover criminal violations by a company or violations that resulted in actual significant harm to public health or the environment (see revised policy at <http://www.epa.gov/oeca/ore/apolguid.html>).

companies that recently took advantage of EPA's Audit Policy;

- A recent enforcement action involving MCI WorldCom, Inc.; and
- Federal environmental requirements that may apply to telecommunications companies.

Responsible Telecommunications Companies Turn to the Audit Policy to Return to Compliance

EPA reached settlements under its Audit Policy last year with 17 telecommunications companies that voluntarily disclosed and promptly corrected

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 4 for useful compliance assistance resources.

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In This Issue

Telecommunications companies are obligated to comply with a number of environmental requirements under the Emergency Planning and Community Right-to-Know Act (EPCRA), Clean Water Act (CWA), Clean Air Act (CAA), and Resource Conservation and Recovery Act (RCRA). These requirements are triggered by the use of lead-acid batteries and diesel-powered backup generators that provide uninterrupted power to telecommunications facilities. EPA has found widespread compliance problems associated with the use of these backup power sources at many telecommunications facilities.

In this issue of *Enforcement Alert*, EPA highlights:

- Several telecommunications

In their efforts to return to compliance, 17 telecommunications companies have ensured 156 facilities now have Spill Prevention, Control, and Countermeasure plans in place, and have reported to emergency responders and planners more than 1,000,000 pounds of diesel fuel, 482,000 pounds of sulfuric acid, and 410,000 pounds of lead present at their facilities.

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more than 2,000 environmental violations that occurred at more than 600 of their facilities.

These companies included Cincinnati Bell Telephone Co., Cincinnati Bell Long Distance, Convergys Customer Management Group, Dallas MTA L.P., Houston MTA L.P., PrimeCo Personal Communications, San Antonio MTA L.P., Cellco Partnership and its affiliates doing business as Bell Atlantic Mobile or Cellular One, Southwestern Bell Telephone Company, United States Cellular Corp., US West Communications Inc., AirTouch Communications, Paging Network, Inc., BellSouth Corp., Western Wireless Corp., VoiceStream Wireless Corp., and the Bell Atlantic Companies.

Because of their voluntary audit, prompt disclosure and correction of violations, and cooperative efforts to resolve matters with EPA, the telecommunications companies received a 100 percent waiver of the gravity-based penalties, totaling more than \$6 million, that otherwise could have been assessed. These 17 companies combined paid only \$178,727 in penalties—the amount of the economic benefit they realized through delayed compliance. These penalties capture economic benefit, ensuring that violators do not obtain an unfair advantage over their competitors.

In their efforts to return to compliance, these responsible companies have ensured 156 facilities now have Spill Prevention, Control, and Countermeasure (SPCC) plans in place and have reported to emergency responders and planners more than one million

pounds of diesel fuel, 482,000 pounds of sulfuric acid, and 410,000 pounds of lead present at their facilities.

EPA's Enforcement Action Against MCI WorldCom, Inc.

On March 7, 2000, under a settlement finalized with EPA, MCI WorldCom, Inc., agreed to conduct environmental compliance audits of its facilities nationwide and pay a penalty of \$625,000 to resolve 216 violations of the EPCRA, CWA, and CAA at 153 of its facilities in 29 states and the District of Columbia.

In addition, the company has paid \$50,000 in stipulated penalties for EPCRA Section 312 violations found at 100 out of 233 facilities audited. The company must still audit its WorldCom facilities.

The settlement came after a 15-month investigation of MCI Communications Corp. (WorldCom, Inc. merged with MCI in September 1998 and became known thereafter as "MCI WorldCom, Inc.").

Telecommunications Companies Recently Self-Disclosing Violations to EPA Under the 'Audit Policy': *Cincinnati Bell Telephone Co., Cincinnati Bell Long Distance, Convergys Customer Management Group, Dallas MTA L.P., Houston MTA L.P., PrimeCo Personal Communications, San Antonio MTA L.P., Cellco Partnership and its affiliates doing business as Bell Atlantic Mobile or Cellular One, Southwestern Bell Telephone Company, United States Cellular Corp., US West Communications Inc., AirTouch Communications, Paging Network, Inc., BellSouth Corp., Western Wireless Corp., VoiceStream Wireless Corp., and the Bell Atlantic Companies.*

The government charged that MCI WorldCom, Inc., failed to submit reports to states informing them of the presence of sulfuric acid, diesel fuel and/or ethylene glycol, as required by EPCRA, at 47 facilities in 17 states; applied late or failed to obtain permits to construct or install standby generators at 67 facilities in seven states as required by CAA State Implementation Plans; and violated SPCC plan requirements at 46 facilities in 25 states and the District of Columbia by failing to prepare plans as required by the CWA.

Environmental Laws Applicable to Telecom Industry

Telecommunications companies should be aware of the following federal environmental requirements:

Emergency Planning and Community Right-to-Know Act:

EPCRA Sections 302-303 and 311-312 require businesses to notify state agencies and local fire departments of certain chemicals at their facilities. This information is critical to state and local planning and response authorities to protect communities and firefighters in case of a chemical spill or release, and enhances community awareness of chemical hazards in the local area. Telecommunications operations may have sulfuric acid-filled batteries, as well as other chemicals such as diesel, lead, halon, and propane.

All forms of lead-acid batteries are reportable. These include the newer technology of valve-regulated or "gel cell" batteries.

Under **EPCRA Sections 302-303**, the Emergency Planning and Notification

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regulations, published at 40 CFR Part 355, facilities that produce, use, or store any of the 356 extremely hazardous substances (EHS) in quantities above the threshold planning quantity (TPQ) are required to notify the appropriate State Emergency Response Commission (SERC) and the Local Emergency Planning Committee (LEPC) within 60 days of becoming subject to this requirement. The facility must designate an emergency planning representative and an emergency coordinator.

The information provided by the facility allows the LEPC or other designated local agencies to prepare an emergency plan. The plan includes procedures to be followed in the case of any release of a hazardous substance.

To find out whether the chemical(s) and quantities that facilities have on site meet the criteria, contact the EPCRA hotline at 1-800-424-9346.

Under **EPCRA Sections 311-312**, the Hazard Chemical Reporting, Community Right-to-Know regulations, published at 40 CFR Part 370, facilities that produce, use, or store hazardous chemicals (as defined by the Occupational Safety and Health Act of 1970 (OSHA) in the Hazard Communication Standard (HCS), at 29 CFR Section 1910.1200) in threshold quantities (for EHSs 500 pounds or the substances' TPQ, whichever is less, and 10,000 pounds for all other hazardous chemicals) are required to submit a Material Safety Data Sheet (MSDS) for each chemical (one time) and an emergency and hazardous chemical inventory form (annually).

The owner or operator is required under EPCRA Section 311 to submit a MSDS to the SERC, LEPC and fire department that has jurisdiction over the facility for each covered chemical, or a list of such chemicals, within three

months of becoming subject to these requirements, or within three months of discovery of significant new information concerning an aspect of a hazardous chemical for which a MSDS was previously submitted.

The owner or operator is required under EPCRA Section 312 to submit an emergency and hazardous chemical inventory form by March 1 of each year for the preceding calendar year to the SERC, LEPC, and fire department that has jurisdiction over the facility. States and designated local agencies may require an earlier filing period. In addition, states may impose filing fees for reporting.

New reporters should contact their local SERC and LEPC, or other designated agencies to determine what reporting form to use under this section.

Clean Water Act:

Section 311 of the Clean Water Act requires businesses that handle, transport or store oil or petroleum to prepare and update written SPCC Plans. Such plans are required to help prevent or contain spills and keep hazardous chemicals from polluting streams, rivers and other bodies of water. Larger telecommunications facilities (central offices, mobile telephone switching offices, and garages) may store fuel oil for back-up generators or vehicle fleets.

The SPCC regulation, published at 40 CFR Part 112, applies to owners or operators of non-transportation related facilities if:

- The capacity of any above-ground tank is in excess of 660 gallons; or
- The total above-ground storage is greater than 1,320 gallons; or

- The below-ground storage is greater than 42,000 gallons; and

Due to its location, the facility could reasonably be expected to dischar-

All forms of lead-acid batteries are reportable. These include the newer technology of valve-regulated or "gel cell" batteries.

ge oil into the navigable waters of the United States or adjoining shorelines.

Clean Air Act:

CAA Section 110 requires states to submit implementation plans to implement, maintain, and enforce ambient air quality standards and to include in their implementation plans, regulation of the modification and construction of any stationary source within the area covered by the plan.

States regulate construction by requiring sources to obtain permits before constructing or installing any source of pollution. Some states, however, have exempted smaller stationary sources, such as backup generators, from these permitting requirements. In Ohio, for example, generators of greater than 50 horsepower that operate no more than 500 hours per year, and burn gasoline, natural gas, distillate oil (with less than or equal to 0.5 percent by weight sulfur) or liquid petroleum gas, are exempted by permit-by-rule. This exemption is valid only as long as the owner or operator collects and maintains records described for each air contaminant source exempted under this rule and these monthly records are retained in the files for a period of no less than five years. The regulatory re-

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'Enforcement Alert' newsletter

Useful Compliance Assistance Resources

OECA Homepage:

<http://www.epa.gov/oeca>

Office of Regulatory Enforcement:

<http://www.epa.gov/oeca/ore>

Multimedia Enforcement Division:

<http://www.epa.gov/oeca/ore/med/index.html>

Audit Policy Information:

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

Policy on Compliance Incentives For Small Businesses:

<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

Compliance Assistance Centers:

<http://www.epa.gov/oeca/mfcac.html>

Small Business Gateway:

<http://www.epa.gov/smallbusiness>

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quirements for installing and operating generators vary considerably by state.

Companies should check with their state environmental department to determine whether air permitting requirements apply.

In addition, the CAA regulates refrigerants such as chlorofluorocarbons (CFCs) and hydrochlorofluorocarbons (HCFCs). These refrigerants may be found in air conditioning units used to cool sensitive equipment. Companies should review their compliance with these requirements found in Section 608 of the CAA and 40 CFR Part 82, Subpart F.

Resource Conservation and Recovery Act:

Under RCRA, Subtitle C, telephone operations may result in the generation of hazardous waste streams. Generators of hazardous waste are responsible for properly identifying and managing their hazardous waste program under RCRA.

Telephone facilities that have un-

derground storage tanks may be subject to RCRA, Subtitle I. Leaking underground storage tanks (UST) can cause contamination of ground water supplies and possible fires, explosions and vapor hazards. Owners and operators of underground storage tanks must upgrade, replace or close existing substandard underground storage tank systems by Dec. 22, 1998. Upgrading may involve adding spill, overfill and corrosion protection to the UST.

For more information, contact Philip L. Milton, Office of Regulatory Enforcement, Multimedia Enforcement Division, at (202) 564-5029, Email: milton.philip@epa.gov.

