



ENVIRONMENTAL PROTECTION AGENCY

[Docket ID Number EPA-HQ-OECA-2009-0562]

Clean Water Act Class II: Proposed Administrative Settlement, Penalty Assessment and Opportunity to Comment Regarding New Cingular Wireless PCS, LLC

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has entered into a Consent Agreement with New Cingular Wireless PCS, LLC to resolve violations of the Clean Water Act (CWA), the Emergency Planning and Community Right-to-Know Act (EPCRA), and the Clean Air Act (CAA) and their implementing regulations.

The Administrator is hereby providing public notice of this Consent Agreement and proposed Final Order (CAFO), and providing an opportunity for interested persons to comment on the CWA, EPCRA, and CAA portions of this Consent Agreement, pursuant to CWA section 311(b)(6)(C), 33 U.S.C. 1321(b)(6)(C).

DATES: Comments are due on or before *[insert date 30 days from date of publication in the Federal Register]*.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA-HQ-OECA-2009-0562, by one of the following methods:

- www.regulations.gov: Follow the on-line instructions for submitting comments.
- Email: docket.oeca@epa.gov, Attention Docket ID No. EPA-HQ-OECA-2009-0562.
- Fax: (202) 566-9744, Attention Docket ID No. EPA-HQ-OECA-2009-0562.

- Mail: Enforcement and Compliance Docket Information Center, Environmental Protection Agency, Mailcode: 2822T, 1200 Pennsylvania Ave., NW, Washington, DC, 20460, Attention Docket ID No. EPA-HQ-OECA-2009-0562.
- Hand Delivery: Enforcement and Compliance Docket Information Center in the EPA Docket Center (EPA/DC), EPA West, Room B 3334, 1301 Constitution Avenue, NW, Washington, DC. The EPA Docket Center Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Reading Room is (202) 566-1744, and the telephone number for the Enforcement and Compliance Docket is (202) 566-1927. Such deliveries are only accepted during the Docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to Docket ID No. EPA-HQ-OECA-2009-0562.

EPA's policy is that all comments received will be included in the public docket without change and may be made available online at www.regulations.gov, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through www.regulations.gov. The www.regulations.gov website is an "anonymous access" system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through www.regulations.gov, your e-mail address will be automatically captured and included as part of the comment that is placed

in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD-ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses. For additional information about EPA's public docket, visit the EPA Docket Center homepage at <http://www.epa.gov/epahome/dockets.htm>.

Docket: All documents in the docket are listed in the www.regulations.gov index.

Although listed in the index, some information is not publicly available, e.g., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available either electronically at www.regulations.gov or in hard copy at the Enforcement and Compliance Docket Information Center in the EPA Docket Center (EPA/DC), EPA West, Room B 3334, 1301 Constitution Avenue, NW, Washington, DC. The EPA Docket Center Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Reading Room is (202) 566-1744, and the telephone number for the Enforcement and Compliance Docket is (202) 566-1927.

FOR FURTHER INFORMATION CONTACT: Michael Calhoun, Special Litigation and Projects Division (2248-A), U.S. Environmental Protection Agency, 1200 Pennsylvania Avenue, N.W., Washington, D.C. 20460; telephone (202) 564-6031; fax: (202) 564-9001; e-mail: calhoun.michael@epa.gov.

II. Background

This settlement agreement is the result of an investigation by the Special Litigation and Projects Division (SLPD) in the Office of Civil Enforcement of AT&T Wireless (AWS) for potential EPCRA Section 311 and 312 reporting violations, CWA violations related to Spill Prevention, Control, and Countermeasure (SPCC) Plan requirements and CAA violations related to the permitting of backup generators under State Implementation Plan (SIP) rules. On October 26, 2004, AWS was purchased by Cingular Wireless PCS, LLC (CW). CW was subsequently renamed New Cingular Wireless PCS, LLC (NCW). The scope of this settlement agreement is limited to legacy AWS-owned facilities that were subject to SLPD's investigation from 2001 to 2003.

Pursuant to the settlement agreement, NCW will pay a civil penalty of \$750,000, will expend an additional \$625,000 for Supplemental Environmental Projects and will conduct CAA and SPCC compliance audits at legacy AWS sites. EPA and NCW negotiated an administrative Consent Agreement in accordance with the Consolidated Rules of Practice, 40 CFR 22.13(b) (In Re: New Cingular Wireless PCS, LLC, Docket Nos. CWA-HQ-2009-8001, CAA-HQ-2009-8001, EPCRA-HQ-2009-8001). This Consent Agreement is subject to public notice and comment under CWA section 311(b)(6)(C), 33 U.S.C. 1321(b)(6)(C).

CWA

NCW violated CWA section 311(j) and 40 CFR Part 112, because it inadequately prepared and/or failed to prepare and implement SPCC plans for the 14 facilities listed below between 2001 and 2008. As authorized by CWA section 311(b)(6), 33 U.S.C. 1321(b)(6), EPA has assessed a civil penalty for these violations.

	Site	Address	City	State
1	Little Rock	900 S. Shackelford Rd.	Little Rock	AR
2	Signal Peak	I-80 & Rattlesnake Rd.	Soda Springs	CA
3	Paauiilo	Kukaiiau Ranch	Paauiilo	HI
4	Urbandale	4157 109th St.	Urbandale	IA
5	Evansville	4510 O'Hara Dr.	Evansville	IN
6	St. Rose	160 James Dr.	St. Rose	LA
7	Southborough	155 Northborough Dr.	Southborough	MA
8	Albany	2 Kross Key Dr.	Albany	NY
9	New Hyde Park	198 Armstrong Rd.	New Hyde Park	NY
10	Oklahoma City	3201 Quail Springs Parkway	Oklahoma City	OK
11	Wilkes Barre	485 Lasley Ave.	Wilkes Barre	PA
12	Allen	800 Venture Dr.	Allen	TX
13	Austin	4400 Staggerbrush Rd.	Austin	TX
14	Milwaukee	5825 99 th St.	Milwaukee	WI

Under CWA section 311(b)(6)(A), 33 U.S.C. 1321(b)(6)(A), based on the time period in which the violations occurred, any owner, operator, or person in charge of a vessel, onshore facility, or offshore facility from which oil is discharged in violation of 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 \$157,500 by EPA for violations occurring after March 15, 2004, and up to \$137,500 for violations up to and including that date. Class II proceedings under CWA section 311(b)(6) 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 CWA Class II penalty proceeding, are set forth in 40 CFR 22.45. The deadline for submitting public comment on this proposed final order is [*insert date 30 days from date of publication in the Federal Register*]. 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), 33 U.S.C. 1321(b)(6)(C), EPA will not issue an order in this proceeding prior to the close of the public comment period.

EPCRA

NCW also violated EPCRA section 311, 42 U.S.C. 11021, and the regulations found at 40 CFR Part 370.21, when it failed to submit a Material Safety Data Sheet (“MSDS”) for a hazardous chemical(s) or, in the alternative, a list of such chemicals, at 51 facilities for varying lengths of time between 2001 and 2003. EPA, as authorized by EPCRA section 325, 42 U.S.C. 11045, has assessed a civil penalty for these violations.

NCW also violated EPCRA section 312, 42 U.S.C. 11022, and the regulations found at 40 CFR Part 370.25, when it failed to prepare and submit emergency and chemical inventory forms to the LEPC, the SERC and/or the fire department with jurisdiction over 314 facilities listed in Attachment A for varying lengths of time between 2001 and 2003. EPA, as authorized by EPCRA section 325, 42 U.S.C. 11045, has assessed a civil penalty for these violations. Attachment A to the proposed CAFO lists the 325 EPCRA sites in violation of EPCRA sections 311 and 312.

Under EPCRA section 325, 42 U.S.C. 11045, 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 EPCRA. Proceedings under EPCRA section 325 are conducted in accordance with 40 CFR Part 22.

CAA

NCW also violated regulations promulgated pursuant to the California SIP involving the two facilities described in the paragraphs below at varying lengths of time between 2001 and 2007. Section 110(a)(1) of the CAA, 42 U.S.C. 7410(a)(2), requires states to submit implementation plans to implement, maintain, and enforce ambient air quality standards. Section 110(a)(2)(C) of the CAA, 42 U.S.C. 7410(a)(2), requires states to include in their implementation plans regulation of the modification and construction of any stationary source covered by the plan. The California State Implementation Plan (SIP) includes requirements from local governments. The California SIP, including the requirements specific to the local governments, was approved by EPA under section 110 of the Act, 42 U.S.C. 7410.

The California air quality control districts' rules for the jurisdictions set forth below include regulations that require construction and/or operating permits for certain stationary sources of air pollution. As detailed below, each of these provisions was incorporated into the California SIP and is therefore federally enforceable.

In the State of California, NCW operates diesel fuel-powered electric generators that are stationary sources within the meaning of CAA section 302(z), 42 U.S.C. 7602(z).

A. Bay Area Air Quality Management District (BAAQMD) - The California SIP includes a provision, Regulation 2, Rule 1 BAAQMD Rules, stating that any person installing any equipment, the use of which may cause the issuance of air contaminants, must first obtain authorization for such construction and subsequent operation. This provision was federally approved and became federally enforceable on January 26, 1999 (64 Fed. Reg. 3850). NCW owns or operates a facility (2 miles off Lynch Road, Suisun, CA) in the BAAQMD that installed a pollution-emitting diesel-powered electric

generating unit without written authorization from BAAQMD in violation of Regulation 2, Rule 1.

B. San Joaquin Valley Unified Air Pollution Control District (SJVUAPCD) - The California SIP includes a provision, section 3.0 in SJVUAPCD Rule 2010, stating that any person installing any equipment, the use of which may cause the issuance of air contaminants, must first obtain authorization for such construction and subsequent operation. This provision was federally approved and became federally enforceable on July 23, 1999 (64 Fed. Reg. 39,920). NCW owns or operates a facility (6855 West Eight Mile Road, Stockton, CA) in the SJVUAPCD that installed two pollution-emitting diesel-powered electric generating units without written authorization from SJVUAPCD in violation of Rule 2010.

NCW violated regulations promulgated pursuant to the California SIP involving the two facilities described in the paragraphs above and is therefore subject to federal enforcement under CAA section 110(a). EPA, as authorized by CAA section 113(d), 42 U.S.C. 7413(d), has assessed a civil penalty for these violations. Under CAA section 113(d), 42 U.S.C. 7413(d), the Administrator may issue an administrative order assessing a civil penalty against any person who has violated an applicable requirement of the CAA, including any rule, order, waiver, permit or plan. Proceedings under CAA section 113(d) are conducted in accordance with 40 CFR Part 22.

EPA will not issue an order in this proceeding prior to the close of the public comment period.

List of Subjects

Environmental Protection

Dated: September 10, 2012.

*Bernadette Rappold, Director,
Special Litigation and Projects Division,
Office of Enforcement and Compliance Assurance.*

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