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Environmental Compliance Issues for the Telecommunications Industry

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Firms acquiring telecommunications companies often decline to perform environmental due diligence because they assume that these business do not have many environmental compliance issues. However, according to a recent issue of the EPA's Enforcement Alert, telecommunication companies may have significant environmental requirements. These requirements can be triggered by the use of lead-acid or sulfuric acid batteries, valve-regulated or "gel cell" batteries as well as diesel, lead, halon, and propane. In addition, many facilities use diesel-powered backup generators that provide uninterrupted power to telecommunications facilities.

For example, telecommunications facilities (central offices, mobile telephone switching offices, and garages) storing fuel oil for back-up generators or vehicle fleets may have to prepare written Spill Prevention Control and Countermeasure Plans ("SPCC") under Section 311 of the Clean Water Act.

Under the CAA, facilities constructing emission sources such as a backup generator must obtain permits before constructing or installing the emission source. The regulatory requirements for installing and operating backup generators vary among the states. Some states exempt smaller stationary sources such as backup generators from these permitting requirements. In Ohio, for example, generators with more than 50 horsepower, operate less than 500 hours per year and burn gasoline, natural gas, and low-sulfur distillate oil or liquid petroleum gas are exempted. This exemption is valid so long as the owner or operator maintains records for each exempt air contaminant source and retains these monthly records for at least five years. 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 electrical equipment. EPA recently fined a number of telecommunications company for allowing ozone-depleting substances to vent into the atmosphere from leaking equipment.

Telephone operations may also result in the generation of hazardous wastes and may also have regulated underground storage tanks ("USTs") that may have leaked or may have to be upgraded to meet the 1998 UST standards. Also, telecommunications facilities that disposed of hazardous waste at off-site disposal facilities could become liable under CERCLA for the cleanup of contamination at

those facilities.

Under its Audit Policy, EPA has reached settlements year with 17 telecommunications companies that voluntarily disclosed and promptly corrected more than 2,000 environmental violations that occurred at more than 600 of their facilities. The telecommunications companies received a 100% waiver of the gravity-based penalties totaling more than \$6 million. These 17 companies combined paid only \$178,727 in penalties which represented the amount of the economic benefit realized through delayed compliance. In exchange for the penalty waiver, the 17 telecommunications companies implemented SPCC plans for 156 facilities, and filed EPCRA TRI reports for 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.

For example, earlier this year EPA entered into a settlement with MCI WorldCom Inc. for failing to submit TRI reports for sulfuric acid, diesel fuel and/or ethylene glycol at 47 facilities in 17 states, failing to obtain permits or submit late permit applications to construct or install standby generators at 67 facilities in seven states and not complying with SPCC requirements at 46 facilities in 25 states and the District of Columbia. The company agreed to conduct environmental compliance audits at its facilities 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 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, Inc. facilities which merged with MCI in September 1999 and became known thereafter as "MCI WorldCom, Inc.

Commentary: Users of computer-related equipment can also incur environmental cleanup liability if the equipment is improperly disposed. Computers and computer screens have electronic components that contain hazardous constituents such as lead, mercury, and cadmium. According to a study by the National Safety Council, more than 20 million computers have become obsolete in this nation and that by 2005, 55 million computers a year could be discarded in landfills.

EPA is trying to encourage the development of Extended Producer Responsibility ("EPR") programs where manufacturers will create products with less toxic content, greater recycled components and assume responsibility for taking back products at the end of their useful life.

Until EPR becomes more widespread, users of computers and other electronic equipment can turn to computer asset recovery facilities who recycle computer components. Computer asset recovery facilities have processed more than 120 million pounds of scrap material. More than 95% of those materials, by weight, have been reused or recycled. However, one of the more difficult components to recycle are the circuit boards where components worth hundreds of dollars apiece are soldered in place then further secured with a protective adhesive such as an epoxy compound. The epoxy compound is used to form a hermetic seal to isolate components and connections from the environment and prevent corrosion and contamination. It is also used as electrical insulator and can act as a shock absorber to protect components from stress. While the solder can be easily removed with heat, the presence of nearly indestructible epoxy adhesives around the components and their soldered connections has made disassembly so difficult that an estimated 77 percent of printed wire circuit boards cannot be reused.



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