

UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY

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WASHINGTON, D.C. 20460

1999 JAN 25 PM 3:49

IN THE MATTER OF)
)
United States Cellular Corporation)
8410 W Bryn Mawr Ave)
Chicago, IL 60631)
Respondent)
_____)

Docket No. EPCRA-HQ-99-001
CWA-HQ-99-001

COMPLAINT AND NOTICE OF
OPPORTUNITY FOR HEARING

COMPLAINT

Jurisdiction

1. This is an administrative action for the assessment of civil penalties instituted pursuant to Section 325 of the Emergency Planning and Community Right to Know Act of 1986 (hereinafter "EPCRA"), 42 U.S.C. § 11045 and Section 311 of the Clean Water Act ("CWA"), 33 U.S.C. § 1321, as amended by the Oil Pollution Act of 1990.
2. This Complaint serves as notice that the United States Environmental Protection Agency (hereinafter "EPA") has reason to believe that Respondent has violated Sections 302(c), 303(d), 311(a) and 312(a) of EPCRA, 42 U.S.C. §§ 11102(c), 11103(d), 11021(a), 11022(a), and the regulations promulgated thereunder and codified at 40 C.F.R. Parts 355 and 370, governing the submission of emergency and hazardous chemical inventory forms, by owners and operators of covered facilities.
3. This Complaint also serves as notice that EPA has reason to believe that Respondent has violated Section 311(j) of the Clean Water Act, 33 U.S.C. § 1321(j), as amended by the Oil Pollution Act of 1990 and the regulations promulgated thereunder at 40 C.F.R. Part 112 "Oil Pollution Prevention," "Requirements for preparation and implementation of the Spill Prevention Countermeasure and Control Plan" ("SPCC").

Parties

4. The Complainant, by delegation from the Administrator of the EPA through the Assistant Administrator for the Office of Enforcement and Compliance Assurance, is the Director of the Multimedia Enforcement Division.
5. The Respondent is United States Cellular Corporation ("U.S. Cellular"). U.S. Cellular, a telecommunications company, is incorporated and registered to do business in the State of Delaware, and located at 8410 W. Bryn Mawr Ave., Chicago, Illinois 60631.

EPCRA Statutory and Regulatory Requirements

6. Section 302(c) of EPCRA, 42 U.S.C. § 11002(c), and the regulations found at 40 C.F.R. Part 355, require owners and operators of facilities at which an extremely hazardous substance is present, at or above stated designated threshold quantities, to notify the State Emergency Response Commission ("SERC") that such facility is subject to the requirements of Section 302(c). Section 303(d) of EPCRA, 42 U.S.C. § 11003(d), and the regulations found at 40 C.F.R. Part 355, require owners and operators of facilities at which an extremely hazardous substance is present, at or above stated designated threshold quantities, to notify the local emergency planning committee ("LEPC") of the facility representative who will participate in the emergency planning process as a facility emergency coordinator.
7. Section 311(a) of EPCRA, 42 U.S.C. § 11021(a), and the regulations found at 40 C.F.R. Part 370, require the owner or operator of a facility, which is required to prepare or have available a material safety data sheet ("MSDS") for a hazardous chemical under the Occupational Safety and Health Act of 1979 (29 U.S.C. Section 651 *et. seq.*) and regulations promulgated under the Act, to submit the MSDS for such chemical to the LEPC, the SERC, and to the fire department with jurisdiction over the facility, by October 17, 1990, or within three months of first becoming subject to the Section 311 requirements.
8. Section 312(a) of EPCRA, 42 U.S.C. § 11022(a), and the regulations found at 40 C.F.R. Part 370, require the owner or operator of a facility which is required to have an MSDS for a hazardous chemical under the Occupational Safety and Health Act of 1979 (29 U.S.C. Section 651 *et. seq.*) and regulations promulgated under the Act, to prepare and submit an emergency and hazardous chemical inventory form (Tier I or Tier II as described in 40 C.F.R. Part 370) containing the required information to the LEPC, SERC, and to the fire department with jurisdiction over the facility, by March 1, 1991 (or March 1 of the first year after the facility first becomes subject to the Section 312 requirements), and annually thereafter.
9. Sulfuric acid is an extremely hazardous substance and diesel fuel and lead are hazardous chemicals as defined under Section 312 of EPCRA and 40 C.F.R. § 370.2.
10. As set forth in 40 C.F.R. § 370.20, the reporting threshold amount for all hazardous chemicals present at a facility at any one time during the preceding calendar year is ten thousand (10,000) pounds. For "extremely hazardous" substances present at the facility, the reporting threshold is five hundred (500) pounds or the threshold planning quantity ("TPQ") as defined in 40 C.F.R. Part 355, whichever is lower. The TPQ for sulfuric acid is one thousand (1,000) pounds. The reporting threshold for sulfuric acid, therefore, is five hundred (500) pounds. The reporting threshold for diesel fuel and lead, therefore, is ten thousand (10,000) pounds.
11. Respondent is a person as defined at Section 329(7) of EPCRA and is the owner or operator of a facility as defined at Section 329(4) of EPCRA, 42 U.S.C. § 11049(7) and (4).

12. The information supplied by the Respondent revealed that for varying lengths of time during calendar years 1993, 1994, 1995, 1996 and 1997, Respondent had hazardous chemicals and/or extremely hazardous substances present in excess of the threshold amounts at each of 46 facilities. Respondent had present at thirty-six (36) of these facilities, sulfuric acid contained in batteries in excess of five hundred (500) pounds at one time; at nine (9) of these facilities, Respondent had present sulfuric acid contained in batteries in excess of five hundred (500) pounds at one time and also had present lead in quantities in excess of ten thousand (10,000) pounds at one time; and, at one (1) of these facilities, Respondent had present diesel fuel in quantities in excess of ten thousand (10,000) pounds at one time. The facility sites are described more particularly in Attachment A, incorporated by reference herein.

13. For the foregoing reasons, Respondent is subject to the requirements of EPCRA Sections 302, 303, 311 and 312.

Clean Water Act Statutory and Regulatory Requirements

14. The Respondent is a person within the meaning of Section 311(a)(7) of the CWA, 33 U.S.C. § 1321(a)(7) and 40 C.F.R. § 112.2

15. The respondent is the owner and operator within the meaning of Section 311(a) of the CWA, 33 U.S.C. § 1321(a) and 40 C.F.R. § 112.2, of a telecommunications facility located at 1206 S. Detroit Street, Tulsa, OK 74120.

16. Section 311(j)(1)(C) of the CWA, 33 U.S.C. § 1321(j)(1)(C), provides that the President shall issue regulations "establishing procedures, methods, and equipment and other requirements for equipment to prevent discharges of oil...from vessels and from onshore and offshore facilities, and to contain such discharges"

17. 40 C.F.R. Part 112 ("Oil Pollution Prevention Regulations") which implements Section 311(j) of the CWA, 33 U.S.C. § 1321(j), sets forth procedures, methods and requirements to prevent the discharge of oil from non-transportation-related facilities into or upon the navigable waters of the United States and adjoining shorelines in such quantities that by regulation have been determined may be harmful to the public health or welfare or environment of the United States by owners or operators who are engaged in drilling, producing, gathering, storing, processing, refining, transferring, distributing or consuming oil or oil products.

18. The facility is an on-shore facility within the meaning of Section 311(a)(10) of the CWA, 33 U.S.C. § 1321(a)(10) and 40 C.F.R. Part 112, which, due to its location, could reasonably be expected to discharge oil to a navigable water of the United States (as defined by Section 502(7) of the Act, 33 U.S.C. § 1362(7), and 40 C.F.R. § 110.1) or its adjoining shoreline that may either (1) violate applicable water quality standards or (2) cause a film or sheen or discoloration of the surface of the water or adjoining shorelines or cause a sludge or emulsion to be deposited beneath the surface of the water or upon adjoining shorelines.

19. Respondent is engaged in drilling, producing, gathering, storing, processing, refining, transferring, distributing or consuming oil or oil products located at the Tulsa facility.

20. Respondent's Tulsa facility is non-transportation-related facility under the definition incorporated by reference at 40 C.F.R. § 112.2 and 40 C.F.R. Part 112 Appendix A.

21. Based on the above, and pursuant to Section 311(j) and its implementing regulations, the Respondent is subject to the Oil Pollution Prevention requirements of 40 C.F.R. Part 112.

EPCRA Violations

22. Respondent failed to notify the SERC, for the state in which the facility is located, of the presence of sulfuric acid (an extremely hazardous substance) present at the facility in excess of the TPQ of one thousand (1,000) pounds at six (6) facilities in violation of EPCRA Section 302 and failed to notify the local emergency planning committee of a facility representative who will participate in the emergency planning process as a facility emergency coordinator as required by EPCRA Section 303.

23. Respondent has failed to file required MSDS forms with the LEPC, SERC, and appropriate fire department for the 46 facilities and chemicals described in Appendix A, during the years 1993 through 1997, in violation of EPCRA Section 311.

24. Respondent has failed to submit chemical inventory forms with the LEPC, SERC and appropriate fire department for the 46 facilities described in Appendix A, during the years 1993 through 1997, in violation of EPCRA Section 312.

CWA Violations

25. Respondent failed to fulfill the requirements for preparation and implementation of Spill Prevention Countermeasure and Control Plans of the Oil Pollution Prevention regulations at 40 C.F.R. Part 112 at the Tulsa facility, and therefore has violated CWA Section 311(j).

Relief

EPCRA Penalty

26. Pursuant to Section 325 of EPCRA, and based upon the facts stated in Paragraphs 6 through 13 above, it is proposed that a civil penalty of seven hundred and fifty-three thousand eight hundred and sixty (\$ 753,860) dollars be assessed against Respondent for violations alleged in Paragraphs 22, 23 and 24.

27. Section 325(c) of EPCRA, as amended by the Debt Collection Improvement Act of 1996 ("DCIA"), authorizes a civil penalty of up to \$27,500 per day for each violation of the Act. The

penalty proposed in paragraph 26 is based upon the facts stated in this Complaint, and on the nature, circumstances, extent, and gravity of the above cited violations, as well as the Respondent's history of prior violations and degree of culpability, in accordance with the EPCRA Enforcement Response Policy.

CWA Penalty

28. Section 311(b)(6) of the CWA, as amended by the Debt Collection Improvement Act of 1996 ("DCIA"), authorizes a civil administrative, class II, penalty of up to \$137,500 in an action alleging violations of the Act. The penalty proposed in this complaint is based upon the facts stated in this Complaint, and on the nature, circumstances, extent, and gravity of the above cited violations, as well as the Respondent's history of prior violations and degree of culpability, in accordance with the Civil Penalty Policy for Section 311(b)(3) and Section 311(j) of the CWA.

29. Pursuant to Section 311 (b)(6) of the CWA, and based upon the facts stated in paragraphs 14 through 21 above, it is proposed that a civil penalty of fourteen thousand one-hundred and twenty seven (\$ 14,127) dollars be assessed against Respondent for violations alleged in Paragraph 25.

Settlement

30. If Respondent does not contest any material fact of this EPCRA matter or the amount of the EPCRA proposed penalty, Respondent may make payment of the penalty, by cashier's or certified check made payable to "Treasurer of the United States" in the amount of \$ 753,860 and send to:

United States Environmental Protection Agency
Headquarters Hearing Clerk
PO Box 360277M
Pittsburgh, PA 15251

(Note that payment of the proposed penalty alone does not satisfy Respondent's legal obligation to file complete and accurate notifications and reports as required by Sections 311 and 312 of EPCRA and 40 C.F.R. Parts 355 and 370. Failure or refusal to file said notifications and reports may subject Respondent to additional civil penalties of up to \$27,500 per day of violation.)

31. If Respondent does not contest any material fact of this CWA matter or the amount of the CWA proposed penalty, Respondent may make payment of the penalty, by cashier's or certified check in the amount of \$ 14,127 and made payable to "Oil Spill Liability Trust Fund" and send to:

Commander, National Pollution Funds Center
United States Coast Guard
Ballston Common Office Building, Suite 1000
4200 Wilson Boulevard
Arlington, VA 22203

(Note that payment of the proposed penalty alone does not satisfy Respondent's legal obligation to prepare, and implement a SPCC plan as required by CWA Section 311(j) and 40 C.F.R. 112.3(b).)

32. The Respondent shall note on each penalty payment check the title and docket number of this case. The Respondent shall also submit copies of the checks to the following persons:

Hearing Clerk
Environmental Appeals Board
U.S. Environmental Protection Agency
401 M Street, SW
Washington, DC 20460

Philip L. Milton, MED
U.S. Environmental Protection Agency (2248-A)
401 M Street, SW
Washington, DC 20460

Answer and Request for Hearing

33. Respondent has the right to request a hearing to contest any material fact contained in this Complaint above or to contest the appropriateness of the proposed penalty set forth herein. Such a hearing will be held and conducted in accordance with the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation or Suspension of Permits, 40 C.F.R. Part 22, one copy of which is enclosed herewith.

34. To avoid being found in default, which constitutes an admission of all facts alleged in this Complaint and a waiver of the right to hearing, Respondent must file a written answer and request for hearing within twenty (20) days of service of this Complaint and Notice of Opportunity for Hearing. The answer shall clearly and directly admit, deny, or explain each of the factual allegations contained in this Complaint with respect to which Respondent has any knowledge, or shall clearly state that Respondent has no knowledge as to particular factual allegations in this Complaint. The answer shall also state: a) the circumstances or arguments which are alleged to constitute the grounds of defense; b) the facts that Respondent intends to place at issue; and c) whether a hearing is requested.

35. The denial of any material fact or the raising of any affirmative defense shall be construed as a request for hearing. Failure to deny any of the factual allegations in the Complaint constitutes an admission of the undenied allegations. The answer shall be filed with the Headquarters Hearing Clerk, at the following address:

Headquarters Hearing Clerk
Mail Code 1900
U.S. Environmental Protection Agency
401 M Street, SW
Washington, DC 20460

36. If Respondent fails to file a written answer and request for a hearing within twenty (20) days of service of this Complaint and Notice of Opportunity for Hearing, such failure will constitute a binding admission of all allegations made in this Complaint and a waiver of Respondent's right to a hearing under EPCRA or the CWA. A Default Order may thereafter be issued and the civil penalties proposed herein shall become due and payable without further proceedings.

Informal Settlement Conference

37. Whether or not Respondent requests a hearing, an informal conference may be requested in order to discuss the facts of this case, the proposed penalty, and the possibility of settlement. To request a settlement conference, please contact:

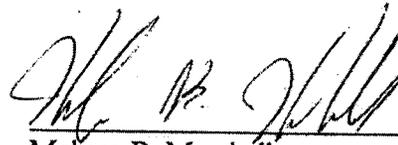
Philip L. Milton, MED
U.S. Environmental Protection Agency (2248-A)
401 M Street, SW
Washington, DC 20460
Telephone: 202-564-5029

38. Please note that a request for an informal settlement conference does not extend the twenty (20) day period during which a written answer and request for a hearing must be submitted.

39. EPA encourages all parties against whom a civil penalty is proposed to pursue the possibilities of settlement as a result of informal conference. Any settlement which may be reached as a result of such a conference shall be embodied in a written Consent Agreement and Consent Order. The issuance of such a Consent Agreement and Consent Order shall constitute a waiver of Respondent's right to request a hearing on any matter stipulated therein.

40. If Respondent has neither achieved a settlement by informal conference nor filed an answer within the twenty (20) day time period allowed by this Notice, the penalties proposed above may be assessed by the entry of a Default Order.

Date 1-25-99



Melissa P. Marshall
Director
Multimedia Enforcement Division
Office of Regulatory Enforcement

Enclosures: Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties 40 C.F.R. Part 22
Enforcement Response Policy for Sections 304, 311 and 312 of the EPCRA
Civil Penalty Policy for Section 311(b)(3) and Section 311(j) of the CWA

Attachment A

Facility List of EPCRA Violations (all facilities violated §311 requirements)

Name	Address	Chemical(s)	Year(s) for Chemical Inventory Forms (§312)
Dublin MTSO	New Harrisville Road Dublin, VA 24084	Sulfuric Acid	1997
Martinsburg	North Mountain Martinsburg, WV 25401	Sulfuric Acid	1993 - 1997
Piketon MTSO	301 Market Street Piketon, OH 45611	Sulfuric Acid	1993 - 1997
South Boston	1035 Farm Road South Boston, VA 24592	Sulfuric Acid	1993 - 1997
West Lebanon	Crafts Hill West Lebanon, NH 03784	Sulfuric Acid	1993 - 1997
Ashton	2080 Stone Road Ashton, IL 61006	Sulfuric Acid	1993 - 1997
Columbia	1804 Vandiver Dr Columbia, MO 65202	Sulfuric Acid	1993 - 1997
CR MTSO	1131 26 th Ave, SW Cedar Rapids, IA 52404	Sulfuric Acid	1993 - 1997
Frankfort MTSO	3065 S.R. 28 East Frankfort, IN 46041	Sulfuric Acid	1993 - 1997
Grandad's Bluff MTSO	N2625 County Hwy FA Lacrosse, WI 64601	Sulfuric Acid	1993 - 1997
Iowa City East ¹	3860 Rochester Ave Iowa City, IA 52240	Sulfuric Acid	1993 - 1997
Jerseyville	1871 Sunderland Road Jerseyville, IL 62052	Sulfuric Acid	1997
Lowden	2220 142 nd Street Lowden, IA 52255	Sulfuric Acid	1994 - 1997
Market MTSO	232 SW 11 th Des Moines, IA 50309	Sulfuric Acid	1993 - 1997

Name	Address	Chemical(s)	Year(s) for Chemical Inventory Forms (§312)
Mason City	16380 34 th Street Mason City, IA 50401	Sulfuric Acid	1993 - 1997
MCI MTSO ¹	5230 Devils Glenn Road Bettendorf, IA 52722	Sulfuric Acid Lead	1996 - 1997
Oregon	Follow Rt. 64 E, 3 mi. N on Daysville Road Oregon, IL 61061	Diesel	1994 - 1997
Peoria MTSO	5713 N. Humboldt Ave. Peoria, IL 61614	Sulfuric Acid	1993 - 1997
Wausau DT MTSO	2220 Grand Ave. Wausau, WI 54401	Sulfuric Acid	1993 - 1997
Brookfield ¹	3545 N. 124 th Street Brookfield, WI 53005	Sulfuric Acid Lead	1997
New Berlin ¹	2885 S. 166 th Street New Berlin, WI 53151	Sulfuric Acid Lead	1997
Madison ¹	4417 Helgeson Drive Madison, WI 53718	Sulfuric Acid Lead	1997
Appleton	101 W. Edison St. Appleton, WI 54915	Sulfuric Acid Lead	1997
Rockford	1130 E. State St. Rockford, IL 61104	Sulfuric Acid Lead	1997
Asheville MTSO	63 Resovior Road Asheville, NC 28801	Sulfuric Acid	1993 - 1997
Bennettsville	2035 Ridgeway Drive Bennettsville, SC 29512	Sulfuric Acid	1994 - 1997
FT. Pierce MTSO	2140 SW Hayworth Ave Ft. Pierce, FL 34953	Sulfuric Acid	1993 - 1997
Gainesville MTSO	2430 NW 73 rd Pl. Gainesville, FL 32605	Sulfuric Acid Lead	1994 - 1997
Greenville MTSO	752 Packilus road Greenville, NC 27934	Sulfuric Acid	1993 - 1997

Name	Address	Chemical(s)	Year(s) for Chemical Inventory Forms (§312)
Smithfield Cell/MTSO	2432 Packing Plant Rd. Smithfield, NC 27577	Sulfuric Acid	1993 - 1997
Valdosta MTSO	1640 River St. Valdosta, GA 31602	Sulfuric Acid	1993 - 1997
Beeville MTSO	2425 Jones Rd. Beeville, TX 78102	Sulfuric Acid	1993 - 1997
Del Rio	Located S.E. out of Del Rio approx. 4.5 miles on left on Rt. 277	Sulfuric Acid	1994 - 1997
East Gore Blvd	3702 E. Gore Blvd. Lawton, OK 73501	Sulfuric Acid	1993 - 1997
Joplin	4500 Reinmiller Joplin, MO 64804	Sulfuric Acid	1993 - 1997
Mansfield Cell/MTSO	1631 Shores Dr. Norwood, MO 65717	Sulfuric Acid	1993 - 1997
Royal MTSO	13475 Port Drive Laredo, TX 78041	Sulfuric Acid	1993 - 1997
Tulsa ¹	1206 S. Detroit Tulsa, OK 74120	Sulfuric Acid Lead	1993 - 1997
Eureka MTSO	1020 W. Del Norte Ave Eureka, CA 95501	Sulfuric Acid	1997
Hilo MTSO	16-212A Wiliama Place Hilo, HI 96749	Sulfuric Acid Lead	1994 - 1997
Longview MTSO	3710 Mt. Brynion Rd. Kelso, WA 98632	Sulfuric Acid	1993 - 1997
Medford MTSO	450 Industrial Circle White City, OR 97503	Sulfuric Acid	1993 - 1997
Pocatello MTSO	1750 N. First Ave Pocatello, ID 83201	Sulfuric Acid	1993 - 1997
Twin Falls MTSO	3228 E. 3700 N. Twin Falls, ID 83301	Sulfuric Acid	1995 - 1997

Name	Address	Chemical(s)	Year(s) for Chemical Inventory Forms (§312)
Ukiah MTSO	2030 D. Industry Rd. Ukiah, CA 95482	Sulfuric Acid	1994 - 1997
Yakima MTSO	215 N. 3 rd Ave, Suite F Yakima, WA 98902	Sulfuric Acid	1993 - 1997

1. These facilities are also in violation of EPCRA §302 and §303.

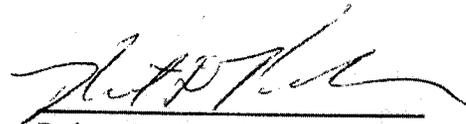
CERTIFICATE OF SERVICE

I hereby certify that the original and one copy of the foregoing Complaint and Notice of Opportunity for Hearing in In the Matter of United States Cellular Corporation, Docket Nos. EPCRA-HQ-99-001 and CWA-HQ-99-001 has been filed with the Headquarters Hearing Clerk, and that a true and correct copy was sent by Certified Mail to:

John M. Heyde, Esquire
Sidley & Austin
One First National Plaza
Chicago, IL 60603

Counsel and recipient of service designate for United States Cellular Corporation

1/25/99
Date



Robert D. Parrish (2248A)
Multimedia Enforcement Division
Office of Regulatory Enforcement
U.S. Environmental Protection Agency
401 M Street, S.W.
Washington, D.C. 20460
202-564-6946