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HEARINGS CLERK
EPA -- REGION 10

BEFORE THE
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

In the Matter of:)
)
New Cingular Wireless PCS, LLC) DOCKET NO. CWA-10-2010-0042
Bothell, Washington,)
) CONSENT AGREEMENT
Respondent.)
) FINAL ORDER
)

1. AUTHORITIES

1.1. This Consent Agreement and Final Order (CAFO) is issued under the authority vested in the Administrator of the U.S. Environmental Protection Agency (EPA) by Section 311(b)(6)(B)(ii) of the Clean Water Act (Act), 33 U.S.C. § 1321(b)(6)(B)(ii), as amended by the Oil Pollution Act of 1990. The Administrator has delegated the authority to issue the Final Order contained in Part 5 of this CAFO to the Regional Administrator of EPA Region 10, who in turn has delegated this authority to the Regional Judicial Officer.

1.2. In accordance with Section 22.18 of the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties, 40 C.F.R. Part 22, EPA hereby issues, and Respondent, as defined below, hereby agrees to issuance of, the Final Order contained in Part 5 of this CAFO.

1.3. Section 311(b)(3) of the Act, 33 U.S.C. § 1321(b)(3), prohibits the discharge of oil or a hazardous substance into or upon the navigable waters of the United States or adjoining shorelines in such quantities that have been determined may be harmful to the public health or welfare or environment of the United States.

1.4. “Navigable waters” are defined in Section 502(7) of the Act, 33 U.S.C. § 1362(7), and 40 C.F.R. § 110.1.

1.5. Pursuant to Section 311(b)(4) of the Act, 33 U.S.C. § 1321(b)(4), EPA, acting through its delegated authority under Executive Order No. 11735, 38 Fed. Reg. 21243 (Aug. 7, 1973), has determined by regulation that the quantities of oil that may be harmful to the public health or welfare or the environment of the United States include discharges of oil that cause a film or sheen upon 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. 40 C.F.R. § 110.3.

2. PRELIMINARY STATEMENT

2.1. In accordance with 40 C.F.R. §§ 22.13(b) and 22.45(b), issuance of this CAFO commences this proceeding, which will conclude when the Final Order contained in Part 5 of this CAFO becomes effective.

2.2. A concise statement of the factual bases for alleging violations of the Act, together with specific references to the provisions of the Act and implementing regulations Respondent is alleged to have violated, appears in Part 3 of this CAFO.

3. ALLEGATIONS

3.1. Respondent shall mean New Cingular Wireless PCS, LLC, a limited liability company formed under the laws of the state of Delaware, together with its following affiliates: AT&T Services, Inc., a corporation organized under the laws of the state of Delaware; AT&T Mobility Services LLC, a limited liability company formed under the laws of the state of Delaware; AT&T Mobility Corporation, a corporation organized under the laws of the state of Delaware; and the parents and subsidiaries of each.

Each of these entities is a person within the meaning of Section 311(a)(7) of the Act, 33 U.S.C. § 1321(a)(7).

3.2 Respondent is the “owner or operator,” within the meaning of Section 311(a)(6) of the Act, 33 U.S.C. § 1321(a)(6), a data center located at 20307 North Creek Parkway, in Bothell, Washington (Facility).

3.3 The Facility is an “onshore facility” within the meaning of Section 311(a)(10) of the Act, 33 U.S.C. § 1321(a)(10).

3.4 Respondent’s Facility is located adjacent to a wetland that abuts Par Creek, a tributary of the Sammamish River. The wetland, Par Creek and the Sammamish River are navigable waters.

3.5 On August 1, 2008, Respondent spilled approximately 296 barrels of diesel from an above-ground storage tank at the Facility. The spilled diesel traveled across an asphalt area and into a storm drain that empties to a wetland pond adjacent to Par Creek.

3.6 Respondent’s August 2008 discharge of oil from the Facility caused a sheen upon the adjoining shoreline of the wetland and Par Creek.

3.7 Cleanup of the August 2008 diesel spill was completed in early September 2008.

3.8 Respondent’s August 2008 discharge of oil from the Facility upon the adjoining shoreline of waters of the United States in a quantity that has been determined may be harmful under 40 C.F.R. § 110.3 violated Section 311(b)(3) of the Act, 33 U.S.C. §1321(b)(3).

4. CONSENT AGREEMENT

4.1. Respondent admits the jurisdictional allegations contained in Part 3 of this CAFO.

4.2. Respondent neither admits nor denies the specific factual allegations contained in Part 3 of this CAFO.

4.3. Respondent expressly waives any rights to contest the allegations and to appeal the Final Order contained herein.

4.4. The provisions of this CAFO shall bind and inure to the benefit of Respondent and its agents, servants, employees, successors and assigns.

4.5. Except as provided in Paragraph 4.11 below, each party shall bear its own costs in bringing or defending this action.

4.6. Pursuant to Section 311(b) of the Act, 33 U.S.C. § 1321(b), EPA has determined and Respondent agrees that an appropriate penalty to settle this action is FIFTY-SEVEN THOUSAND TWO-HUNDRED-FIFTY-FIVE DOLLARS (\$57,255). This penalty amount has been agreed upon in consideration of statutory penalty factors identified in Section 311(b)(8) of the Act, 33 U.S.C. § 1321(b)(8).

4.7. Respondent consents to the issuance of the attached Final Order and to payment of the civil penalty cited in the foregoing paragraph within thirty (30) days of the effective date of the Final Order.

4.8. Payment under this CAFO shall be made by cashier's check or certified check, payable to "Environmental Protection Agency," and bearing the notation "OSLTF-311." Payment sent by the U.S. Postal Service shall be addressed to:

U.S. Environmental Protection Agency
Fines and Penalties
Cincinnati Finance Center
P.O. Box 979077
St. Louis, Missouri 63197-9000

Payment sent by express mail via a non-U.S. Postal Service carrier, the payment shall be addressed to:

U.S. Bank
Government Lockbox 979077
U.S. E.P.A. Fines and Penalties
1005 Convention Plaza
SL-MO-C2-GL
St. Louis, MO 63101

Respondent shall note on the check the title and docket number as they appear in the caption of this CAFO.

4.9. Respondent shall serve photocopies of the check described above on the Regional Hearing Clerk and EPA at the following two addresses:

Regional Hearing Clerk
U.S. Environmental Protection Agency
1200 Sixth Avenue, Suite 900
Mail Stop ORC-158
Seattle, Washington 98101

Ms Kimberly Ogle
Unit Manager, NPDES Compliance Unit
1200 Sixth Avenue, Suite 900
Mail Stop OCE-133
Seattle, Washington 98101

4.10. If Respondent fails to pay the penalty assessed by paragraph 4.6 of this CAFO in full by its due date, the entire unpaid balance of penalty and accrued interest shall become immediately due and owing. Such a failure may subject Respondent to a civil action to collect the assessed penalty under the Act. In any collection action, the validity,

amount, and appropriateness of the penalty set out in paragraph 4.6 shall not be subject to review.

4.10.1. Interest. Pursuant to Section 311(b)(6)(H) of the Act, 33 U.S.C. § 1321 (b)(6)(H), any unpaid portion of the assessed penalty shall bear interest at the rate established by the Secretary of the Treasury pursuant to 31 U.S.C. § 3717(a)(1) from the effective date of the Final Order contained herein.

4.10.2. Attorneys Fees, Collection Costs, Nonpayment Penalty. Pursuant to Section 311(b)(6)(H) of the Act, 33 U.S.C. § 1321(b)(6)(H), should Respondent fail to pay on a timely basis the amount of the penalty assessed by the Final Order contained herein, Respondent shall pay (in addition to any assessed penalty and interest), attorneys' fees and costs for collection proceedings, and a quarterly nonpayment penalty for each quarter during which such failure to pay persists. Such nonpayment penalty shall be in an amount equal to twenty percent (20%) of the aggregate amount of Respondent's penalties and nonpayment penalties that are unpaid as of the beginning of such quarter.

4.11. Complainant reserves the right, pursuant to 40 C.F.R. § 22.45(c)(4)(iii), to withdraw this Consent Agreement and proposed Final Order within 15 days of receipt of a commenter's petition requesting, pursuant to 40 C.F.R. § 22.45(c)(4)(ii), that the Regional Administrator set aside the Consent Agreement and proposed Final Order on the basis that material evidence was not considered.

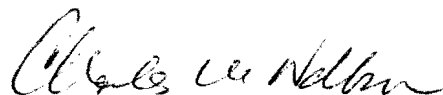
4.12. Respondent represents that it is authorized to execute this CAFO and that the party signing this CAFO on its behalf is authorized to bind Respondent to the terms of this CAFO. This CAFO may be executed in multiple counterparts, each of which shall be deemed to have the same force and effect as an original. A facsimile signature shall be treated as an original.

4.13. Compliance with all terms and conditions of this CAFO shall result in full settlement and satisfaction of all claims for penalties alleged in Section 3 above.

STIPULATED AND AGREED:

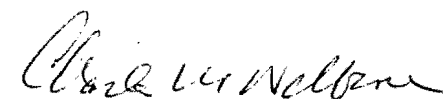
FOR RESPONDENT

New Cingular Wireless PCS, LLC
By: AT&T Mobility Corporation
Its Manager


Name: CHARLES M. NARDONE
Title: ASST. SECRETARY

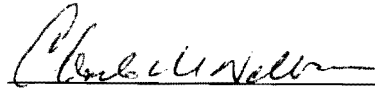
Dated: 3/1/10

AT&T Mobility Services LLC
By: AT&T Mobility Corporation
Its Manager


Name: CHARLES M. NARDONE
Title: ASST. SECRETARY

Dated: 3/1/10

AT&T Mobility Corporation



Name: CHARLES M. NALBONE
Title: ASST SECRETARY

Dated: 3/1/10

AT&T Services, Inc.

Name: Ross Bawcum
Title: Assistant Vice President, IT

Dated: _____

FOR COMPLAINANT

Edward J. Kowalski, Director
Office of Enforcement and Compliance
U. S. Environmental Protection Agency Region 10

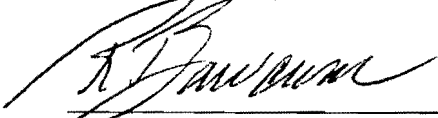
Dated: _____

AT&T Mobility Corporation

Name:
Title:

Dated: _____

AT&T Services, Inc.



Name: Ross Bawcum
Title: Assistant Vice President, IT

Dated: 2/24/2010

FOR COMPLAINANT

Edward J. Kowalski, Director
Office of Enforcement and Compliance
U. S. Environmental Protection Agency Region 10

Dated: _____

AT&T Mobility Corporation

Name:

Title:

Dated: _____

AT&T Services, Inc.

Name: Ross Bawcum

Title: Assistant Vice President, IT

Dated: _____

FOR COMPLAINANT:



Edward J. Kowalski, Director
Office of Compliance and Enforcement
U.S. Environmental Protection Agency Region 10

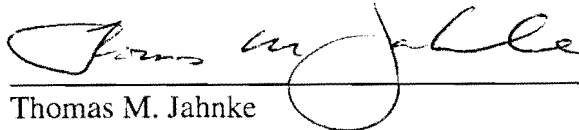
5. FINAL ORDER

5.1. The terms of the foregoing Consent Agreement are hereby ratified and incorporated by reference into this Final Order. Respondent is hereby ordered to comply with the terms of settlement contained in the Consent Agreement.

5.2. This CAFO constitutes a settlement by EPA of all claims for civil penalties pursuant to the Clean Water Act for the particular violations alleged in Part 3 above. In accordance with 40 C.F.R. § 22.31(a), nothing in this CAFO shall affect the right of EPA or the United States to pursue appropriate injunctive relief or other equitable relief or criminal sanctions for any violations of law. This CAFO does not waive, extinguish or otherwise affect Respondent's obligations to comply with all applicable provisions of the Act and regulations and permits there under.

5.3. This Final Order shall become effective upon filing.

SO ORDERED this 6th day of May, [date]. 2010.



Thomas M. Jahnke
Regional Judicial Officer
U.S. Environmental Protection Agency Region 10

CERTIFICATE OF SERVICE

The undersigned certifies that the original of the attached **CONSENT AGREEMENT AND FINAL ORDER** in **In the Matter of: New Cingular Wireless PCS, LLC., DOCKET NO.: CWA-10-2010-0042** was filed with the Regional Hearing Clerk on May 7, 2010.


On May 7, 2010 the undersigned certifies that a true and correct copy of the document was delivered to:

Stephanie Mairs, Esquire
U.S. Environmental Protection Agency
1200 Sixth Avenue, Suite 900
Seattle, WA 98101

Further, the undersigned certifies that a true and correct copy of the aforementioned document was placed in the United States mail certified/return receipt on May 7, 2010, to:

Lynn Manolopoulos
David Wright Tremaine LLP
Suite 2300
777 108th Avenue NE
Bellevue, WA 98004

DATED this 7th day of May 2010.



Carol Kennedy
Regional Hearing Clerk
EPA Region 10