

Attachment 1 to the EAB Approval Memorandum

New Cingular Wireless CAFO and Attachments to the CAFO

**UNITED STATES  
ENVIRONMENTAL PROTECTION AGENCY  
BEFORE THE ENVIRONMENTAL APPEALS BOARD**

IN THE MATTER OF	)	
	)	
New Cingular Wireless PCS, LLC, et al.	)	Docket No. EPCRA-HQ-2009-8001
1025 Lenox Park Blvd.	)	CWA-HQ-2009-8001
Atlanta, GA 30319	)	CAA-HQ-2009-8001
	)	
Respondent	)	

**CONSENT AGREEMENT**

**I. Preliminary Statement**

1. Complainant, the United States Environmental Protection Agency (“Complainant” or “EPA”) and Respondent (which, for purposes of this Consent Agreement, consists of New Cingular Wireless PCS, LLC and its subsidiaries and its following affiliates: New Cingular Wireless Services, Inc. and its subsidiaries, AT&T Mobility II LLC and its subsidiaries, Beach Holding Corporation, AT&T Mobility Corporation, and AT&T Services, Inc.), having consented to the terms of this Consent Agreement (“Agreement”), and before the taking of any testimony and without the adjudication of issues of law or fact herein, agree to comply with the terms of this Agreement and attached proposed Final Order hereby incorporated by reference.
2. Respondent, defined above, is a group of affiliated companies that now own or operate the facilities at issue in this Agreement, or for the purpose of this Agreement, are willing to resolve liability for those facilities that the companies no longer own or operate but were discovered to have potential violations pursuant to the investigation that EPA’s Special Litigation and Projects Division (“SLPD”) initiated in 2002, as described below.
3. On December 2, 2002, SLPD issued a detailed multimedia information request to the company, AT&T Wireless Services, Inc. (“AWS”). SLPD investigated AWS for potential violations of: (1) the reporting requirements for sulfuric acid, diesel, and lead pursuant to Sections 311 and 312 of the Emergency Planning and Community Right-To-Know Act (“EPCRA”), 42 U.S.C. §§ 11021 through 1022; (2) the Spill Prevention, Control, and Countermeasure Plan requirements under Section 311 of the Clean Water Act (“CWA”), 33 U.S.C. § 1321(j)(1)(C); and (3) the federal or federally enforceable state requirements under the Clean Air Act (“CAA”), 42 U.S.C. §§ 7401 to 7671q. For the purposes of this Agreement, the facilities that SLPD investigated are collectively referred to as the “Legacy AWS sites.”
4. After SLPD began its investigation, Cingular Wireless LLC (“Cingular Wireless”) acquired AWS on October 26, 2004. AWS had a subsidiary known as AT&T Wireless

PCS, LLC, which, on that date, was renamed New Cingular Wireless PCS, LLC (“New Cingular”), one of the companies included within Respondent, as defined in Paragraph 1. Subsequent to the acquisition, the Legacy AWS sites were either owned or operated by New Cingular or the other members of Respondent, or were sold to unrelated third parties.

5. The violations discovered pursuant to the 2002 information request and being resolved in this Consent Agreement and Final Order occurred at Legacy AWS sites.

## II. Jurisdiction

6. The parties agree to the commencement and conclusion of this cause of action by issuance of this Agreement, as prescribed by EPA’s Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties, 40 C.F.R. Part 22, and more specifically by 40 C.F.R. § 22.18(b).
7. Respondent agrees that Complainant has the jurisdiction to bring an administrative action, based upon the facts which AWS and Respondent provided, for these violations and for the assessment of civil penalties pursuant to CWA Section 311(b)(6)(B), 33 U.S.C. § 1321(b)(6)(B), CAA Section 113(d)(1), 42 U.S.C. § 7413(d)(1), and EPCRA Section 325(c), 42 U.S.C. § 11045(c).
8. Respondent hereby waives its right to request a judicial or administrative hearing on any issue of law or fact set forth in this Agreement and its right to judicial review of the proposed Final Order accompanying this Agreement.
9. For purposes of this proceeding, Respondent admits that EPA has jurisdiction over the subject matter that is the basis of this Agreement.
10. Respondent neither admits nor denies the conclusions of law as set forth in this Agreement.

## III. Statements of Fact

11. New Cingular is a telecommunications company organized under the laws of the state of Delaware.
12. On December 2, 2002, EPA served AWS with a request for information concerning the company’s compliance with various environmental statutes.
13. EPA held discussions with AWS related to the scope of the December 2002 information request. In 2003, AWS provided a substantial amount of information and documents related to the request. In 2006, after receiving EPA’s preliminary evaluation of the information and documents, New Cingular provided additional information related to EPA’s request.

#### IV. Conclusions of Law

##### EPCRA

14. At the time of the violations addressed in this Agreement, AWS was a person as defined in EPCRA Section 329(7), 42 U.S.C. § 11049(7), and was the owner or operator of the facilities as defined in EPCRA Section 329(4), 42 U.S.C. § 11049(4), which are listed in Attachment A.
15. Section 311(a) of EPCRA, 42 U.S.C. § 11021(a), and the implementing 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 1970, 29 U.S.C. §§ 651-678 (“OSH Act”), and regulations promulgated under the OSH Act, to submit the MSDS, or in the alternative, a list of such hazardous chemicals to the appropriate Local Emergency Planning Committee (“LEPC”), the State Emergency Response Commission (“SERC”), and to the fire department with jurisdiction over the facility by October 17, 1987, or within three months of first becoming subject to EPCRA Section 311 requirements.
16. Section 312(a) of EPCRA, 42 U.S.C. § 11022(a), and the implementing 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 an MSDS for a hazardous chemical under the OSH Act and regulations promulgated under the OSH Act, to prepare and submit an emergency and hazardous chemical inventory form containing the information required by the regulations at 40 C.F.R. Part 370 to the appropriate LEPC, SERC, and to the fire department with jurisdiction over the facility by March 1, 1988 (or March 1 of the first year after the facility first becomes subject to EPCRA § 312 requirements), and annually thereafter. The inventory form contains “Tier I” or “Tier II” information, pursuant to Section 312 of EPCRA, 42 U.S.C. § 11022, and 40 C.F.R. Part 370.
17. The facilities at issue in this Agreement are “facilities” as defined in Section 329(4) of EPCRA, 42 U.S.C. § 11049(4), and 40 C.F.R. § 370.66, and subject to Sections 311 and 312 of EPCRA and regulations promulgated thereunder.
18. Sulfuric acid is listed, in the appendices to 40 C.F.R. Part 355, as an “extremely hazardous substance” (“EHS”), as defined in 40 C.F.R. § 370.66. Diesel fuel is a “hazardous chemical,” as defined in Sections 311(e) and 329(5) of EPCRA, 42 U.S.C. §§ 11021(e), 11049(5), and 40 C.F.R. § 370.66.
19. As set forth in 40 C.F.R. § 370.10(a)(2), the reporting threshold amount for hazardous chemicals present at a facility at any one time during the preceding calendar year is ten thousand (10,000) pounds. Therefore, the reporting threshold for diesel fuel is ten thousand (10,000) pounds. Pursuant to 40 C.F.R. § 370.10(a)(1), the reporting threshold for EHSs present at a facility 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 pounds (1,000). The reporting threshold for sulfuric acid, therefore, is five hundred (500) pounds.

20. The information supplied by AWS and the Respondent indicate that for varying lengths of time during Reporting Years<sup>1</sup> 2001 through 2003, sulfuric acid and/or diesel fuel, in excess of the threshold amounts, were present at the facilities listed in Attachment A, hereby incorporated by reference.
21. For purposes of this Agreement, Complainant hereby states and alleges that, based on the information supplied to EPA by AWS and Respondent, for varying lengths of time between 2000 and 2003, AWS violated EPCRA Section 311(a), 42 U.S.C. § 11021(a), and the regulations found at 40 C.F.R. Part 370, when it failed to submit an MSDS for a hazardous chemical(s) and extremely hazardous chemical(s) for 51 facilities, to the LEPC, SERC, and/or the fire department with jurisdiction over these facilities, as identified in Attachment A; and violated EPCRA Section 312(a), 42 U.S.C. § 11022(a), and the regulations found at 40 C.F.R. Part 370 at 314 facilities, by failing to prepare and submit emergency and chemical inventory forms to the LEPC, the SERC and/or the fire department with jurisdiction over each facility for Reporting Years 2001 through 2003, as identified in Attachment A.

#### CWA

22. At the time of the violations addressed in this Agreement, AWS and Respondent were persons within the meaning of CWA Section 311(a)(7), 33 U.S.C. § 1321(a)(7), and 40 C.F.R. § 112.2, and were the owners or operators, as defined by CWA Section 311(a)(6), 33 U.S.C. § 1321(a)(6), and 40 C.F.R. § 112.2, of the fourteen (14) facilities described in Attachment B.
23. The regulations at 40 C.F.R. § 112.3 through § 112.7, which implement CWA Section 311(j)(1)(c), 33 U.S.C. § 1321(j)(1)(C), set 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.
24. 40 C.F.R. § 112.3(a) requires owners and operators of onshore and offshore facilities that have discharged or, due to their location, could reasonably be expected to discharge oil in harmful quantities into or upon the navigable waters of the United States or adjoining

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<sup>1</sup> "Reporting Year" is the calendar year for which the chemical inventory information is submitted under Section 312, and not the year during which the information is submitted. For example, an EPCRA Section 312 chemical inventory report for Reporting Year 2009 concerns chemicals stored on-site during calendar year 2009, although the report is required to be submitted by March 1, 2010.

shorelines, to prepare a Spill Prevention, Control, and Countermeasure Plan (“SPCC Plan”).

25. AWS and Respondent were engaged in storing or consuming oil or oil products at the fourteen (14) facilities, described in Attachment B, in quantities that “may be harmful,” as defined by 40 C.F.R. § 110.3.
26. The facilities described in Attachment B are onshore facilities within the meaning of Section 311(a)(10) of the CWA, 33 U.S.C. § 1321(a)(10), and 40 C.F.R. § 112.2, which, due to their location, could reasonably be expected to discharge oil to a navigable water of the United States (as defined by Section 502(7) of the CWA, 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.
27. Based on the above, and pursuant to CWA Section 311(j)(1)(C) and its implementing regulations, AWS and Respondent were subject to the requirements of 40 C.F.R. § 112.3 through § 112.7 at the fourteen (14) facilities listed in Attachment B, hereby incorporated by reference.
28. EPA hereby states and alleges that, based on the information supplied by AWS and Respondent to EPA, for varying lengths of time prior to 2008, AWS and Respondent violated the CWA at fourteen (14) facilities identified in Attachment B by failing to prepare an SPCC Plan as required by CWA Section 311(j)(1)(C), 33 U.S.C. § 1321(j)(1)(C), and the regulations found at 40 C.F.R. § 112.3 through § 112.7. These violations were corrected between 2002 and 2008.

#### CAA

29. Section 110(a)(1) of the CAA, 42 U.S.C. § 7410(a)(1), requires states to submit to EPA implementation plans to implement, maintain, and enforce the National Ambient Air Quality Standards. Section 110(a)(2)(C) of the CAA, 42 U.S.C. § 7410(a)(2)(C), requires states to include in their implementation plans regulation of the modification and construction of any stationary source covered by the plan.
30. The California State Implementation Plan (“California SIP”) includes requirements from local California Air Quality Control Districts. Those requirements are federally enforceable after EPA approves them under Section 110 of the CAA, 42 U.S.C. § 7410. The California Air Quality Control District rules for the jurisdictions set forth below include regulations requiring construction and/or operating permits for certain stationary sources of air pollution. As detailed below, each of these regulations was incorporated into the California SIP, and then approved by EPA under CAA Section 110, making the regulations federally enforceable at the time of the events set forth in this Agreement.

31. In the State of California, AWS and Respondent operated diesel-fuel-powered electric generators that were stationary sources within the meaning of CAA Section 302(z), 42 U.S.C. § 7602(z).
32. Bay Area Air Quality Management District (“BAAQMD”): At the time of the violations described in this paragraph, the California SIP included 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. Regulation 2, Rule 1 also required any person who obtains an authorization to construct to obtain an authorization to operate. This provision was federally approved and became federally enforceable on January 26, 1999 (64 Fed. Reg. 3850). AWS and Respondent owned or operated a facility (2 miles off Lynch Road, Suisun, CA) in the BAAQMD that installed and operated a pollution-emitting diesel-powered electric generating unit without written authorizations from BAAQMD in violation of Regulation 2, Rule 1.
33. San Joaquin Valley Unified Air Pollution Control District (“SJVUAPCD”): At the time of the violations described in this paragraph, the California SIP included a provision, Section 3.0 in SJVUAPCD Rule 2010, stating that any person installing and operating any equipment, the use of which may cause the issuance of air contaminants, must first obtain authorizations for such construction and operation. This provision was federally approved and became federally enforceable on July 23, 1999 (64 Fed. Reg. 39,920). AWS and Respondent owned or operated a facility (6855 West Eight Mile Road, Stockton, CA) in the SJVUAPCD that installed and operated two pollution-emitting, diesel-powered electric generating units without written authorizations from SJVUAPCD in violation of Rule 2010.
34. EPA hereby states and alleges, based upon the information supplied to EPA, that AWS and Respondent violated the California SIP regulations at the two (2) facilities identified in Paragraphs 32 and 33 for varying lengths of time between 1999 and 2007. EPA approved these regulations pursuant to CAA Section 110(a). These violations are therefore subject to federal enforcement under CAA Section 113, 42 U.S.C. § 7413. The violations were corrected in 2005 and 2007 for the facilities in SJVUAPCD and BAAQMD, respectively.

#### V. Terms of Settlement

35. As further defined in Paragraphs 36 and 37 below, Respondent agrees to pay a civil penalty in the sum of **SEVEN HUNDRED FIFTY THOUSAND DOLLARS (\$750,000.00)** for the violations alleged herein within thirty (30) calendar days of issuance of the Final Order (i.e., the effective date of this Consent Agreement and attached Final Order) by the Environmental Appeals Board (“EAB”). See 40 C.F.R. § 22.31(c).

36. For payment of the civil penalties related to the CAA and EPCRA violations, Respondent shall pay the amount of **SIX HUNDRED EIGHTY-ONE THOUSAND SEVEN HUNDRED AND THREE DOLLARS (\$681,703.00)** using one of the following instructions:

A. Via U.S Postal Service regular mail of a certified or cashier's check, made payable to the "United States Treasury," sent to the following address:

United States Environmental Protection Agency  
Fines and Penalties  
Cincinnati Finance Center  
Post Office Box 979077  
St. Louis, MO 63197-9000

B. Via overnight delivery of a certified or cashier's check, made payable to the "United States Treasury," sent to the following address:

United States Environmental Protection Agency  
Fines and Penalties  
U.S. Bank  
1005 Convention Plaza  
Mail Station SL-MO-C2-GL  
St. Louis, MO 63101

The U.S. Bank customer service contact for both regular mail and overnight delivery is Natalie Pearson, who may be reached at 314-418-4087.

C. Via electronic funds transfer (EFT) to the following account:

Federal Reserve Bank of New York  
Account Number: 68010727  
ABA Number: 021030004  
SWIFT address = FRNYUS33  
33 Liberty Street  
New York, NY 10045  
Field Tag 4200 of the Fedwire message should read "D 68010727 Environmental Protection Agency-New Cingular Wireless PCS, LLC, Docket No. EPCRA-HQ-2009-8001 and CAA-HQ-2009-8001."

The Federal Reserve customer service contact may be reached at 212-720-5000.

D. Via automatic clearinghouse (ACH), also known as Remittance Express (REX), to the following account:

US Treasury/Cashlink ACH Receiver  
ABA No. 051036706  
Account 310006, Environmental Protection Agency  
CTX Format Transaction Code 22 – checking  
808 17th Street NW  
Washington DC 20074

The Finance Center customer service contact, Jesse White, may be reached at 301-887-6548.

E. Via on-line payment (from bank account, credit card, debit card):

Website: [www.pay.gov](http://www.pay.gov)

Enter "SFO 1.1" in the search field.

Open the form and complete the required fields (marked with an asterisk).

Under "Type of Payment," choose "Civil Penalty." Under "Invoice#" type "New Cingular Wireless PCS, LLC, Docket No. HQ-2009-8001" into the "Court # or Bill #" subfield.

Leave the other subfields blank. Under "Installments?" choose "No."

Under "Region," type "HQ."

Payment by check or wire transfer shall bear the case docket number "New Cingular Wireless PCS, LLC, Docket No. CAA-HQ-2009-8001 and EPCRA-HQ-2009-8001."

37. In payment of the civil penalty related to the CWA SPCC violations, Respondent shall, within thirty (30) days of the issuance of the Final Order, forward a cashier's or certified check, in the amount of **SIXTY-EIGHT THOUSAND TWO HUNDRED AND NINETY-SEVEN DOLLARS (\$68,297.00)** made payable to the "Environmental Protection Agency," and bearing the notation "OSLTF-311" to:

United States Environmental Protection Agency  
Fines and Penalties  
Cincinnati Finance Center  
Post Office Box 979077  
St. Louis, MO 63197-9000

The check shall indicate that it is for In the Matter of New Cingular Wireless, Docket No. CWA-HQ-2009-8001.

Alternatively, Respondent shall pay **SIXTY-EIGHT THOUSAND TWO HUNDRED AND NINETY-SEVEN DOLLARS (\$68,297.00)** via wire transfer with a notation of "In the Matter of New Cingular Wireless, Docket No. CWA-HQ-2009-8001" to the Federal Reserve Bank of New York using the following instructions:

Federal Reserve Bank of New York  
ABA Number: 021030004  
Account Number: 68010727  
SWIFT address: FRNYUS33  
33 Liberty Street  
New York, NY 10045

Field Tag 4200 of the wire transfer shall read "D 68010727 Environmental Protection Agency."

38. Respondent shall forward evidence of the checks, wire transfers, and/or internet-based payments to EPA, within five (5) days of payment, to the following personnel/addresses below or send a PDF copy of such documentation to [Calhoun.Michael@epa.gov](mailto:Calhoun.Michael@epa.gov) and [Durr.Eurika@epa.gov](mailto:Durr.Eurika@epa.gov).

Mike Calhoun  
Special Litigation and Projects Division (2248-A)  
Office of Enforcement and Compliance Assurance  
U.S. Environmental Protection Agency  
1200 Pennsylvania Ave, N.W.  
Ariel Rios Building, Room 3119C  
Washington, DC 20460

And

U.S. Environmental Protection Agency  
Clerk of the Board  
Environmental Appeals Board, 1103B  
Ariel Rios Building  
1200 Pennsylvania Avenue, N.W.  
Washington, D.C. 20460-0001

39. Pursuant to 31 U.S.C. § 3717, EPA is entitled to assess interest and penalties on debts owed to the United States and a charge to cover the cost of processing and handling a delinquent claim. Interest will therefore begin to accrue on the civil penalty from the date that the EAB issues the Final Order, if the penalty is not paid by the date required. Interest will be assessed at the rate of the United States Treasury tax and loan rate in accordance with 40 C.F.R. § 13.11. A charge will be assessed to cover the costs of debt collection, including processing and handling costs and attorney fees. In addition, a penalty charge of 12 percent (12%) per year compounded annually will be assessed on any portion of the debt that remains delinquent more than ninety (90) days after payment is due.
40. For the purposes of state and federal income taxation, Respondent shall not be entitled, and agrees not to attempt, to claim a deduction for any civil penalty payment made

pursuant to the Final Order. Any attempt by Respondent to deduct any such payments shall constitute a violation of the Agreement.

41. By no later than 120 calendar days of issuance of the Final Order by the EAB, Respondent will spend at least **SIX HUNDRED TWENTY-FIVE THOUSAND DOLLARS (\$625,000.00)** to implement the following Supplemental Environmental Projects (“SEPs”). Respondent will purchase and/or upgrade emergency response resources such as the training and associated reference materials and equipment, thermal imaging cameras, wild fire and hazardous materials fire fighting vehicles, equipment to identify unknown gases, vapors, radiation and potential biological or chemical warfare agents, enhanced mobile communications equipment such as radios and hybrid/satellite phones, and communication, computer and support equipment for a mobile disaster command center as described in Attachment C for the following emergency management agencies:

Palm Beach County (Florida) Fire Rescue;  
Georges Lake Volunteer Fire Department, Putnam County, Florida;  
New York City Fire Department, Brooklyn, New York;  
Yancey, Texas Volunteer Fire Department;  
San Diego, California Office of Emergency Services;  
Bodega Bay, California Fire Protection District; and  
Los Angeles, California Police Department.

Respondent shall use all reasonable efforts to provide emergency response resources to the above agencies as described in Attachment C, but may substitute emergency response resources of a similar type and total cost to those described in Attachment C, with the consent of the recipient emergency management agency. Such adjustments may change the total amount spent for one or more such agencies.

Within 60 days of publication of this agreement in the Federal Register, Respondent will certify in writing to EPA that it is not a party to any open federal financial assistance transaction that is funding or could be used to fund the same activity as the SEP. Defendant/Respondent will further certify that, to the best of its knowledge and belief after reasonable inquiry, there is no such open federal financial transaction that is funding or could be used to fund the same activity as the SEP, nor has the same activity been described in an unsuccessful federal financial assistance transaction proposal submitted to EPA within two years of the date of this settlement (unless the project was barred from funding as statutorily ineligible). For the purposes of this certification, the term “open federal financial assistance transaction” refers to a grant, cooperative agreement, loan, federally-guaranteed loan guarantee or other mechanism for providing federal financial assistance whose performance period has not yet expired. Respondent may request an extension of the 60-day deadline to address delays caused by circumstances beyond its control, and EPA will not unreasonably condition or withhold its agreement to such request.

42. In the event that Respondent is unable to make the certification required in Paragraph 41 with respect to one or more of the emergency management agencies listed therein, Respondent will instead provide additional emergency response resources to any one or more of those emergency management agencies for which it could make the certification. The dollar amount expended on such additional resources shall equal or exceed the amount that would have been provided to the agency(ies) for which certification could not be made. If, despite all reasonable efforts, Respondent is unable to spend a total of \$625,000 consistent with the requirements of Paragraph 41 and this Paragraph, Respondent shall notify EPA and shall pay an additional civil penalty in an amount equal to one hundred and ten percent (110%) of the unexpended balance to EPA following the instructions set out in Paragraph 36 and within the time frame set forth in Paragraph 41.
43. Respondent shall submit to EPA a report upon its completion of the SEPs required under this Agreement. The report shall contain the following information with respect to the SEPs:
- a. A detailed description of each such SEP as completed;
  - b. Certification that the project has been fully completed pursuant to the provisions of this Agreement; and
  - c. A brief, narrative description of the environmental and public health benefits resulting or anticipated from completion of the project (including the benefits and pollutant reductions, if determination is feasible).
44. For federal income tax purposes, Respondent agrees that it will neither capitalize into inventory or basis nor deduct any costs or expenditures incurred in performing the SEPs required by this Agreement.
45. Respondent shall be liable for stipulated penalties to the EPA, as specified below, for failure to complete the SEPs within the time frame set forth in Paragraph 41, unless excused by EPA, in its sole discretion. Respondent shall be deemed to have completed the SEPs when, in accordance with Paragraphs 41 and 42, it has either (a) spent at least \$625,000 on the emergency response resource purchases, or (b) notified EPA that the Company will spend less than that amount and paid one hundred and ten percent (110%) of the remaining balance of the \$625,000 as a civil penalty using one of the instructions set out in Paragraph 36 above. Upon demand by EPA, Respondent shall pay stipulated penalties in the following amounts for each day the SEPs are not complete after the time frame set forth in Paragraph 41 has run:

<u>Period of Noncompliance</u>	<u>Penalty Per Violation Per Day</u>
1 <sup>st</sup> through 7 <sup>th</sup> day	\$100.00
8 <sup>th</sup> through 21 <sup>st</sup> day	\$250.00

22 <sup>nd</sup> through 30 <sup>th</sup> day	\$500.00
Greater than 30 days	\$1,000.00

46. EPCRA Compliance Certification

Respondent completed an equipment inventory data validation exercise at the end of the second quarter of 2007 of approximately sixty-thousand (60,000) facilities and identified 1,356 facilities that were subject to the annual chemical inventory reporting obligations of EPCRA Section 312, 42 U.S.C. § 11022, and its implementing regulations. Respondent has listed these facilities in Attachment D. For the facilities listed in Attachment D, Respondent is, to the best of its knowledge and belief, in full compliance with EPCRA Section 312, 42 U.S.C. § 11022, and the implementing regulations, for Reporting Year 2009.

47. New Cingular CAA and CWA/SPCC Compliance Audits

- a. As a condition of this Agreement, Respondent has agreed to conduct detailed CAA compliance audits at over 1,300 sites and detailed CWA/SPCC compliance audits at 41 facilities listed in Attachments E-1 and E-2, respectively, to this Agreement. The scope, timing, and protocols of the audits are included as Attachment E to this Agreement and are hereby incorporated by reference. In accordance with the terms of the protocols, Respondent shall complete the CAA audit in eighteen (18) months and the CWA/SPCC audit in six (6) months. The audit periods begin on the first day of the month immediately following the month during which the EAB issues the Final Order. Respondent will provide a final CAA audit report to EPA no later than ninety (90) calendar days after the end of the 18-month audit period, and a final CWA/SPCC audit report no later than forty-five (45) calendar days after the end of the 6-month audit period.
- b. Except as provided for in subparagraphs 47.b.i and 47.b.ii, transfer of any facility or equipment subject to the audit requirement will not relieve Respondent of its audit and corrective action obligations with respect to that facility or equipment. Upon successful completion of the applicable requirements of subparagraphs 47.b.i and 47.b.ii, Respondent shall have no future obligation to comply with any term of this Agreement, with respect to such transferred facility or equipment.
  - i. In the event Respondent transfers a facility or equipment that has completed the audit process, but any corrective action has not been completed as required by Paragraph 48 below, Respondent shall disclose the noncompliance in the final audit reports and either: (a) correct the noncompliance in accordance with Paragraph 48, or (b) ensure that the person accepting transfer corrects the noncompliance in accordance with the requirements of Paragraph 48, and identify in the final audit report the facility or equipment and the contact information for the person accepting transfer. Any such noncompliance shall be subject to the

negotiated penalty provisions set forth in Paragraphs 49, 50, and 51 below. In the event a transfer takes place in the manner described in clause (b) of this subparagraph (i), Respondent shall provide a copy of this Agreement to the person accepting transfer.

- ii. In the event Respondent transfers a facility or equipment that has not completed the audit process, Respondent shall either: (a) ensure that the audit process is completed within the applicable time frame, the noncompliance is disclosed in the final audit report, and the noncompliance is corrected in accordance with Paragraph 48, or (b) pay a negotiated penalty of \$1,150 for failure to audit the transferred facility or equipment. In the event a transfer takes place in the manner described in clause (a) of this subparagraph (ii), Respondent shall provide a copy of the audit protocol and this Agreement to the person accepting transfer and agreeing to complete the audit and implement the required corrective action. Clause (b) of this subparagraph (ii) shall apply only to transfers to persons that are not affiliates of Respondent. Any noncompliance disclosed to EPA pursuant to this subparagraph (ii) shall be subject to the negotiated penalty provisions set forth in Paragraphs 49, 50, and 51 below.

48. Respondent shall ensure correction of any instance of CAA and CWA/SPCC noncompliance discovered during the audits within seventy-five (75) calendar days from the date of discovery of noncompliance. The date of discovery of noncompliance shall be the later of: (1) the date upon which the activity, conducted in accordance with the protocol and giving rise to the discovery of noncompliance, is completed; or (2) the date of any site visit, if conducted. For purposes of this paragraph, the date of discovery shall be construed to be not earlier than the date of issuance of the Final Order pursuant to this Consent Agreement. Further, for purposes of this paragraph, the term "activity" shall mean the specific activity that identifies a specific violation at a specific site and shall not be construed to mean completion of the audit in its entirety. For corrective action that is prospective and company-wide as required by Section I.B.3 of the Audit Protocol regarding recordkeeping and monitoring requirements, the relevant activity shall be deemed completed, and the seventy-five (75) day period shall begin to run, when all relevant sites have been visited or otherwise evaluated. Respondent may seek an extended compliance schedule for good cause shown for any instance of noncompliance which Respondent believes cannot be reasonably be corrected within the seventy-five (75) day period. Respondent shall submit any request for an extended compliance schedule to EPA for its approval prior to the expiration of the seventy-five (75) day time period above along with a justification and a proposed implementation schedule to obtain compliance. For purposes of this paragraph, where correction under the CAA or the CWA requires a response by a State or local agency to a submission by Respondent, Respondent shall be deemed to have met the seventy-five (75) day requirement upon timely and complete submission to the appropriate agency.
49. As set forth in this paragraph and Paragraph 51, below, Respondent shall pay certain penalties, negotiated and agreed to by EPA and Respondent, for CAA noncompliance

discovered and disclosed to EPA pursuant to the compliance audit required by Paragraph 47. With respect to CAA noncompliance, the parties have agreed to classify potential violations according to two “Tiers” and to assign a negotiated penalty to each facility accordingly. The failure to obtain a permit is a Tier 1 violation. Violations of other substantive federally approved SIP requirements and violations of requirements of NSPS Subparts IIII and JJJJ are Tier 2 violations. EPA shall assess \$1,150 per facility for Tier 1 violations and \$700 per facility for Tier 2 violations. Except as described below, the penalty assigned to Tier 1 violations will serve as a cap for the facility with no additional penalties imposed even where Tier 2 violations have occurred. Where Tier 2 violations have occurred in the absence of Tier 1 violations, the penalty per facility is capped at the Tier 2 amount, except as described below. The above negotiated penalties are deemed to include an economic benefit component, except for violations involving the failure to install air pollution controls or make equipment changes to meet emission limits. If, and to the extent, Respondent failed to install such controls or equipment at a facility, EPA shall collect an additional penalty for the economic benefit associated with Respondent’s delayed and avoided costs of compliance with those requirements.

50. As set forth in this paragraph and Paragraph 51, below, Respondent shall pay certain penalties, negotiated and agreed to by EPA and Respondent, for CWA/SPCC noncompliance discovered and disclosed to EPA pursuant to the compliance audit required by Paragraph 47. The negotiated penalty under the CWA/SPCC audit is \$1,500 per facility for all CWA/SPCC violations at a facility. This penalty is deemed to include an economic benefit component, except for violations involving the failure to make required physical improvements (e.g., the installation of secondary containment). If, and to the extent, Respondent failed to make such improvements at a facility, EPA shall collect an additional penalty for the economic benefit associated with Respondent’s delayed and avoided costs of compliance with those requirements.
51. Payment of Penalties Associated with the Audits: Within fourteen (14) calendar days following EPA’s receipt of each of Respondent’s final audit reports, Respondent will be given the opportunity to meet in person with EPA to discuss the respective audit findings. Subsequent to each meeting, EPA shall submit to Respondent a demand letter that specifies the penalties due and owed by Respondent. Within thirty (30) calendar days following Respondent’s receipt of such demand letter, Respondent shall pay the penalties in the manner specified in the letter.
52. CAA and CWA/SPCC Compliance Certifications: After completing the CAA and CWA/SPCC Compliance Audits in accordance with Paragraph 47, including correction of noncompliance in accordance with Paragraph 48, Respondent shall provide the following compliance certifications for those Legacy AWS sites that it continues to own or operate:
  - For generators located at those facilities listed in the updated Attachment E-1 included in the Final CAA Audit Report, Respondent certifies, to the best of its knowledge and belief, after completing the compliance audit described therein, that Respondent is in compliance with (1) the federally-enforceable requirements of the

applicable State Implementation Plans (SIPs) that were in effect on June 1, 2009 and (2) the requirements of the Compression-Ignition and Spark-Ignition Internal Combustion Engine New Source Performance Standards (40 C.F.R. Part 60, Subpart IIII and Subpart JJJJ) that were enforceable on June 1, 2009, except with respect to those facilities listed in updated Attachment E-1 for which there are outstanding corrective action obligations, approved by EPA, that Respondent will complete in accordance with the separate schedule(s) that the parties negotiate.

- For those facilities listed in the updated Attachment E-2 included in the Final SPCC Audit Report, Respondent certifies, to the best of its knowledge and belief, after completing the compliance audit described therein, that Respondent is in compliance with the Spill Prevention, Control, and Countermeasure (SPCC) planning requirements of Clean Water Act (CWA) Section 311(j), 33 U.S.C. § 1321(j), and the implementing regulations, except with respect to those facilities listed in updated Attachment E-2 for which there are outstanding corrective action obligations, approved by EPA, that Respondent will complete in accordance with the separate schedule(s) that the parties negotiate.

#### VI. State and Public Notice

53. The parties acknowledge that the settlement portions of this Agreement which pertain to the CWA violations are, pursuant to CWA Section 311(b)(6)(C)(i), 33 U.S.C. § 1321(b)(6)(C)(i), subject to public notice and comment requirements. Furthermore, the parties acknowledge and agree that EPA will also provide public notice of the CAA and EPCRA portions of this Agreement. Should EPA receive comments regarding the issuance of the proposed Final Order assessing the civil penalty agreed to in Section V, EPA shall forward such comments to Respondent within ten (10) days of the receipt of the public comments.
54. This Agreement serves as the Notice of Violation to the Respondent as required by Section 113(a)(1) of the CAA, 42 U.S.C. § 7413(a)(1). On November 16, 2009, EPA notified the SJVUAPCD that EPA proposed to resolve potential violations of the CAA Section 110 and the California SIP in a settlement with Respondent. On April 2, 2010, EPA notified the BAAQMD that EPA proposed to resolve potential violations of Section 110 of the CAA and the California SIP in a settlement with Respondent. Such notice was given pursuant to CAA Section 113(a)(1), 42 U.S.C. § 7413(a)(1), which requires EPA to notify the person found to be in violation of any requirement of a SIP and the State in which the plan applies of such finding no less than 30 days prior to taking action.
55. Respondent has been afforded the opportunity to confer with EPA as provided for by Section 113(a)(4) of the CAA, 42 U.S.C. § 7413(a)(4). Pursuant to Section 113(d)(1) of the CAA, 42 U.S.C. § 7413(d)(1), administrative settlements where the first alleged date of violation occurred more than 12 months prior to the initiation of the action requires a joint determination by the Attorney General of the United States and the Administrator that it is appropriate to administratively settle claims older than 12 months. On February

28, 2008, the Administrator and the Attorney General, through their duly authorized representatives, jointly determined pursuant to Section 113(d)(1) that violations preexisting commencement of this action by more than 12 months are appropriately settled in this Consent Agreement.

#### VII. Reservation of Rights and Settlement

56. This Agreement and the Final Order, when issued by the EAB, and upon payment by Respondent of civil penalties as required by Paragraphs 35 through 37, completion of SEPs in accordance with Paragraphs 41 through 43, and completion of the CAA and CWA/SPCC Compliance Audits in accordance with Paragraph 47, including correction of noncompliance in accordance with Paragraph 48, and payment of all penalties pursuant to Paragraphs 49 through 51, shall resolve only the civil and administrative claims specified in Paragraphs 21, 28, and 34.
57. This Agreement and the Final Order, when issued by the EAB, and upon completion of the CAA and CWA/SPCC Compliance Audits in accordance with Paragraph 47, including correction of noncompliance in accordance with Paragraph 48, and payment of all penalties pursuant to Paragraphs 49 through 51, shall resolve any civil and administrative liability for noncompliance disclosed pursuant to the CAA and CWA/SPCC Compliance Audits. However, if Respondent fails to ensure completion of the CAA and CWA/SPCC Compliance Audits described in Paragraph 47, including correction of noncompliance in accordance with Paragraph 48 and payment of all penalties pursuant to Paragraphs 49 through 51, EPA reserves its right to seek full penalties, and not be subject to the negotiated penalty amounts or procedures set forth in Paragraphs 49 through 51, with respect to any disclosed violations that are not corrected timely and any violations that EPA discovers during the audits.
58. Nothing in this Agreement and the Final Order shall be construed to limit the authority of EPA and/or the United States to undertake any action against Respondent, in response to any condition which EPA or the United States determines may present an imminent and substantial endangerment to the public health, welfare, or the environment. Furthermore, issuance of the Final Order does not constitute a waiver by EPA and/or the United States of its right to bring an enforcement action, either civil or criminal, against Respondent for any other violation of any federal or state statute, regulation or permit.

#### VIII. Force Majeure

59. If any event occurs which causes or may cause delays in the completion of the tasks required under this Agreement and the Final Order, Respondent shall notify EPA in writing within fourteen (14) days of such event or within 14 days of Respondent's knowledge of the anticipated delay, whichever is earlier. Respondent shall implement all reasonable measures to avoid or minimize any such delay. Notice under this paragraph shall include a detailed description of: the actual or anticipated length of the delay; the precise cause(s) of the delay; any measures already taken and/or to be taken by Respondent to prevent or minimize the delay; and a timetable for implementation of such

measures. Failure by Respondent to comply with the notice requirements of this Section shall render this Section void and of no effect as to the particular event involved and constitute a waiver of Respondent's right to request an extension of its obligation under this Agreement and Final Order based on such incident.

60. If Respondent and EPA agree that the delay or anticipated delay in complying with this Agreement and Final Order has been or will be caused by circumstances beyond the control of Respondent that could not or cannot be overcome by due diligence (i.e., a "force majeure"), the time for performance hereunder may be extended for a period no longer than the delay resulting from such circumstances. In such event, Respondent and EPA shall stipulate in writing to such extension of time.
61. In the event that EPA does not agree that a delay in achieving compliance with the requirements of this Agreement and Final Order has been or will be caused by a force majeure, EPA will notify Respondent in writing of its decision. Such delays shall not be the basis for any extension of time for the performance of Respondent's obligations under this Agreement and Final Order.
62. The burden of proving that any delay is caused by a force majeure shall rest with Respondent. Increased costs or expenses associated with the implementation of actions required by this Agreement and Final Order shall not, in any event, be a basis for changes in this Agreement or Final Order or extensions of time, hereunder.

#### IX. Other Matters

63. Each party shall bear its own costs and attorney fees in this matter.
64. The provisions of this Agreement and the Final Order, when issued by the EAB, shall apply to and be binding on the Complainant, and Respondent, as well as Respondent's officers (acting in their official capacity), agents, successors and assigns. Except as provided for in Paragraph 47, any change in ownership or corporate status of Respondent including, but not limited to, any transfer of assets or real or personal property shall not alter Respondent's responsibilities under this Agreement, including the obligation to pay the civil penalty referred to in Section V. The obligation to pay civil penalties cannot be transferred under Paragraph 47.
65. Nothing in this Agreement shall relieve Respondent of the duty to comply with all applicable provisions of the CWA, CAA and EPCRA, or other federal state or local laws or statutes, nor shall it restrict EPA's authority to seek compliance with any applicable laws, nor shall it be construed to be a ruling on, or a determination of, any issue related to any federal, state or local permit.
66. The undersigned representatives of each party to this Agreement certify that each is duly authorized by the party whom he represents to enter into these terms and bind that party to it.

FOR Complainant:

Cynthia Giles 8/22/12  
Date

Cynthia Giles, Assistant Administrator  
Office of Enforcement and Compliance Assurance  
U.S. Environmental Protection Agency

FOR Respondent:

New Cingular Wireless PCS, LLC  
By: AT&T Mobility Corporation  
It's Manager

Michelle M. Blaylock May 11, 2012  
Assistant Secretary Date

New Cingular Wireless Services, Inc.

Michelle M. Blaylock May 11, 2012  
Assistant Secretary Date

AT&T Mobility II LLC  
By: AT&T Mobility Corporation  
It's Manager

Michelle M. Blaylock May 11, 2012  
Assistant Secretary Date

Beach Holding Corporation

Michelle M. Blaylock May 11, 2012  
Assistant Secretary Date

AT&T Mobility Corporation

Michelle M. Blaylock May 11, 2012  
Assistant Secretary Date

AT&T Services, Inc.

Michelle M. Blaylock May 11, 2012  
Assistant Secretary Date

**UNITED STATES  
ENVIRONMENTAL PROTECTION AGENCY  
BEFORE THE ENVIRONMENTAL APPEALS BOARD**

IN re:	)	
	)	
New Cingular Wireless PCS, LLC, et al.	)	Docket No. EPCRA-HQ-2009-8001
1025 Lenox Park Blvd	)	CWA-HQ-2009-8001
Atlanta, GA 30319	)	CAA-HQ-2009-8001
	)	
Respondent	)	

**FINAL ORDER**

Pursuant to 40 C.F.R. § 22.18(c) of EPA's Consolidated Rules of Practice, the attached Consent Agreement resolving this matter is incorporated by reference into this Final Order and is hereby ratified.

Whereas EPA caused a Notice for Public Comment on the proposed issuance of this Final Order to be published in the Federal Register on September 19, 2012, as required by Section 311(b)(6) of the Clean Water Act, 33 U.S.C. § 1321(b)(6). The public notice and comment period required has closed and no comments were received.

The Respondent is ORDERED to comply with all terms of the Consent Agreement, effective immediately.

So Ordered.

Date:

\_\_\_\_\_  
Judge, Environmental Appeals Board