BEFORE THE ENVIRONMENTAL APPEALS BOARD
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C.

In re:	)	
	)	
T-Mobile US, Inc.,	)	Docket No. EPCRA-HQ-2013-8004
successor by merger to	)	Docket No. CWA-HQ-2013-8004
MetroPCS Communications, Inc.	)	Docket No. CAA-HQ-2013-8004
2250 Lakeside Blvd.	)	Docket No. RCRA-HQ-2013-8004
Richardson, TX 75082	)	
	)	
Respondent	)	

CONSENT AGREEMENT

I. Preliminary Statement

1. Complainant is the United States Environmental Protection Agency (Complainant or EPA). Respondent, for purposes of this Consent Agreement (Agreement), consists of T-Mobile US, Inc. (T-Mobile US), which formed following the merger of MetroPCS Communications, Inc. (MetroPCS) and T-Mobile USA, Inc. (T-Mobile USA), its affiliates and its subsidiaries (collectively, Respondent). Having consented to the terms of this Consent Agreement, and before the taking of any testimony and without the adjudication of issues of law or fact herein, Complainant and Respondent agree to comply with the terms of this Agreement and attached proposed Final Order hereby incorporated by reference.

2. On December 31, 2009, EPA and MetroPCS entered into a corporate audit agreement pursuant to EPA's policy on *Incentives for Self-Policing: Discovery, Disclosure, Correction and Prevention of Violations* (Audit Policy), 65 Fed. Reg. 19,618 (Apr. 11, 2000), regarding 88 office buildings, warehouses, and Distributed Antenna System (DAS) facilities located in 11 states (first phase). EPA and MetroPCS subsequently amended the audit agreement on November 4, 2010, to add to the audit 11,715 cell site facilities and two switch sites located in 15 states (second phase). Pursuant to the Audit Policy, Respondent submitted voluntary disclosures to EPA regarding potential violations (collectively known as the "violations" and individually as a "violation") of:

   a. Sections 302, 303, 311, and 312 of the Emergency Planning and Community Right-to-Know Act (EPCRA), 42 U.S.C. §§ 11002, 11003, 11021, and 11022, and their implementing regulations at 40 C.F.R. Parts 355 and 370;

b. Section 311(j)(1)(C) of the Clean Water Act (CWA), 33 U.S.C. § 1321(j)(1)(C), and its implementing regulations at 40 C.F.R. Part 112 (Spill Prevention, Control, and Countermeasure Plan requirements);

c. The federally-enforceable state requirements under the Clean Air Act (CAA), 42 U.S.C. §§ 7401–7671q; and

d. Section 3002 of the Resource Conservation and Recovery Act (RCRA), 42 U.S.C. § 6922, and its implementing regulations at 40 C.F.R. Part 273 (universal waste requirements).

3. MetroPCS submitted its first phase final audit report on June 30, 2010, and the second phase final audit report on December 1, 2011. Respondent also provided EPA with additional information on specific sites in letters dated June 14, 2010, and November 10, 2011. MetroPCS provided supplemental information on May 25, 2012, in response to EPA's request dated April 4, 2012.

4. In November 2010, EPA and MetroPCS entered into a tolling agreement and subsequently executed amendments to extend the tolling agreement in order to reach an amicable resolution of this matter. Pursuant to the tolling agreement and extensions, the parties agree that the period of the tolling agreement will not be included in computing the time limited by any potentially applicable federal statute of limitations for the violations described in Paragraph 2 above.

5. MetroPCS's disclosures have resulted in a final list of violations compiled in Attachment A, hereby incorporated by reference as conclusions of law, which are the subject of this Agreement.

6. The disclosures listed in Attachment A have been determined by EPA to satisfy all the conditions set forth in the Audit Policy and therefore qualify for a 100% reduction of the civil penalty's gravity component.

II. Jurisdiction

7. 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 and the Revocation or Suspension of Permits, 40 C.F.R. Part 22, and more specifically by 40 C.F.R. § 22.13(b) and 40 C.F.R. § 22.18(b)(2) and (3).

8. Respondent agrees that Complainant has jurisdiction to bring an administrative action, based upon the facts which Respondent disclosed, for the violations stated and alleged in Section IV and listed in Attachment A, and for the assessment of civil penalties pursuant to Section 325 of EPCRA, 42 U.S.C. § 11045, Section 311(b)(6) of the CWA, 33 U.S.C. § 1321(b)(6), Section 113(d)(1) of the CAA, 42 U.S.C. § 7413(d)(1), and Section 3008(g) of RCRA, 42 U.S.C. § 6928(g).

9. Respondent hereby waives its right to request a federal 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. Nothing herein shall be construed as a waiver of the right to any administrative proceeding for, or judicial review of, any action taken by EPA to enforce this Agreement, or of any issue of law or fact not set forth in this Agreement.

10. For purposes of this proceeding, Respondent admits that EPA has jurisdiction over the subject matter that is the basis of this Agreement.

11. Respondent neither admits nor denies the violations or the conclusions of law as set forth in this Agreement and nothing contained herein may be considered as an admission of liability or violation of law.

III. Statements of Fact

12. T-Mobile US is a wireless telecommunications company organized under the laws of the State of Delaware. T-Mobile US formed as a result of the May 1, 2013 merger of MetroPCS and T-Mobile USA.

13. Pursuant to EPA's Audit Policy, Respondent hereby certifies as to the accuracy of the following facts upon which this Agreement is based:

    a. The violations were discovered through an audit or through a compliance management system reflecting due diligence;

    b. The violations were discovered voluntarily;

    c. The violations were promptly disclosed to EPA in writing;

    d. The violations were disclosed prior to commencement of an agency inspection or investigation, notice of a citizen suit, filing of a complaint by a third party, reporting of the violations by a "whistle blower" employee, or imminent discovery by a regulatory agency;

    e. The violations were timely corrected and Respondent is, to the best of its knowledge and belief, in full compliance with the provisions listed in Paragraph 2 above and with respect to the violations set forth in Attachment A;

    f. Appropriate steps have been taken to prevent a recurrence of the violations;

    g. The specific violations (or closely related violations) identified in Attachment A have not occurred within three (3) years of the date of

disclosure identified in Paragraphs 2-5 above, at the same facilities that are the subject of this Agreement, and have not occurred within five (5) years of the date of disclosure identified in Paragraphs 2-5 above, as part of a pattern at multiple facilities owned or operated by Respondent. For the purposes of this subparagraph (g), a violation is:

i. Any violation of federal, state, or local environmental law identified in a judicial or administrative order, consent agreement or order, complaint, or notice of violation, conviction or plea agreement; or

ii. Any act or omission for which the regulated entity has previously received penalty mitigation from EPA or a state or local agency;

h. The violations have not resulted in serious actual harm nor presented an imminent and substantial endangerment to human health or the environment and did not violate the specific terms of any judicial or administrative final order or agreement; and

i. Respondent has cooperated as requested by EPA.

IV. Conclusions of Law

EPCRA - Sections 302 and 303

14. Respondent is a "person" as defined by Section 329(7) of EPCRA, 42 U.S.C. § 11049(7), and is the owner or operator of all or a portion of each "facility" listed in Attachment A as defined by Section 329(4) of EPCRA, 42 U.S.C. § 11049(4).

15. Section 302(c) of EPCRA, 42 U.S.C. § 11002(c), and the implementing regulations found at 40 C.F.R. Part 355, require the owner or operator of a facility at which an extremely hazardous substance is located in an amount equal to or greater than the threshold planning quantity (TPQ) to notify the State Emergency Response Commission (SERC) and/or the Local Emergency Planning Committee (LEPC) that such facility is subject to the requirements of Subchapter I of EPCRA, 42 U.S.C. §§ 11001-11005.

16. Section 303(d) of EPCRA, 42 U.S.C. § 11003(d), and the implementing regulations found at 40 C.F.R. Part 355, require the owner or operator of a facility at which an extremely hazardous substance is located in an amount equal to or greater than the TPQ to develop chemical emergency preparedness and response capabilities by providing notice to the LEPC that identifies the facility representative who will participate in the local emergency planning process as an emergency response coordinator.

17. Respondent submitted information to EPA which indicates that facilities listed in Attachment A possessed sulfuric acid, an extremely hazardous substance, in amounts equal to or greater than the substance's TPQ for varying lengths of time during the years 2004 to 2011 inclusive, as further detailed in Attachment A. Accordingly, the facilities listed in Attachment A are subject to the requirements of Sections 302(c) and 303(d) of EPCRA, 42 U.S.C. §§ 11002(c) and 11003(d), and the implementing regulations found at 40 C.F.R. Part 355.

18. For purposes of this Agreement, Complainant hereby states and alleges that, based on the information supplied to EPA by Respondent, which is detailed in Attachment A, Respondent violated the following requirements:

    a. Section 302(c) of EPCRA, 42 U.S.C. § 11002(c), and the regulations found at 40 C.F.R. Part 355, at 24 facilities, by failing to provide complete and accurate information to the SERC and/or LEPC with jurisdiction over these facilities and to notify the SERC and/or LEPC about certain facilities' activities subject to those requirements, as identified in Attachment A; and

    b. Section 303(d) of EPCRA, 42 U.S.C. § 11003(d), and the regulations found at 40 C.F.R. Part 355, at the same 24 facilities, by failing to designate a facility representative who will participate in the local emergency planning process as an emergency response coordinator, and notify the LEPC with jurisdiction over these facilities, as identified in Attachment A.

19. Respondent did not obtain any economic benefit as a result of its facilities' noncompliance with Sections 302(c) and 303(d) of EPCRA, 42 U.S.C. §§ 11002(c) and 11003(d), and the implementing regulations found at 40 C.F.R. Part 355.

EPCRA - Sections 311 and 312

20. Respondent is a "person" as defined by Section 329(7) of EPCRA, 42 U.S.C. § 11049(7), and is the owner or operator of all or a portion of each "facility" listed in Attachment A as defined by Section 329(4) of EPCRA, 42 U.S.C. § 11049(4).

21. 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 that is required to prepare or have available a material safety data sheet (MSDS) for a hazardous chemical under the Occupational Safety and Health (OSH) Act of 1970, 29 U.S.C. §§ 651-678, and regulations promulgated under the OSH Act, to submit the MSDS, or in the alternative, a list of such hazardous chemicals to the appropriate LEPC, SERC, and the fire department with jurisdiction over the facility by October 17, 1987, or within three months of first becoming subject to the requirements of Section 311 of EPCRA, 42 U.S.C. § 11021.

22. 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 that 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 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 Section 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.

23. 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.

24. Diesel fuel, lead, lead dioxide, lead oxide, and sulfuric acid are "hazardous chemicals," as defined in Sections 311(e) and 329(5) of EPCRA, 42 U.S.C. §§ 11021(e) and 11049(5), and 40 C.F.R. § 370.66. Sulfuric acid is also 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.

25. 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 thresholds for diesel fuel, lead, lead dioxide, and lead oxide are 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 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.

26. For purposes of this Agreement, Complainant hereby states and alleges that, based on the information supplied to EPA by Respondent, Respondent violated the following requirements:

    a. Section 311(a) of EPCRA, 42 U.S.C. § 11021(a), and the regulations found at 40 C.F.R. Part 370, by failing to submit an MSDS for a hazardous chemical(s) and extremely hazardous chemical(s) for 24 facilities, to the LEPC, SERC, and/or the fire department with jurisdiction over these facilities, as identified in Attachment A; and

    b. Section 312(a) of EPCRA, 42 U.S.C. § 11022(a), and the regulations found at 40 C.F.R. Part 370, at the same 24 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 2005 through 2010, as identified in Attachment A.

CWA - Spill Prevention, Control, and Countermeasure (SPCC) Plan Requirements

27. 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, and is the "owner or operator," as defined by Section 311(a)(6) of the CWA, 33 U.S.C. § 1321(a)(6), and 40 C.F.R. § 112.2, of all or a portion of two (2) facilities described in Attachment A.

28. The regulations at 40 C.F.R. §§ 112.1-112.7, which implement Section 311(j)(1)(C) of the CWA, 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.

29. 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 shorelines, must prepare and implement an SPCC Plan as required by 40 C.F.R. § 112.3(a).

30. Respondent is engaged in storing or consuming oil or oil products located at two (2) facilities described in Attachment A, in quantities such that discharges "may be harmful," as defined by 40 C.F.R. § 110.3.

31. Respondent's two (2) facilities described in Attachment A 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.

32. Based on the above, and pursuant to Section 311(j)(1)(C) of the CWA, 33 U.S.C. § 1321(j)(1)(C), and its implementing regulations, Respondent is subject to the requirements of 40 C.F.R. §§ 112.1-112.7, at two (2) facilities listed in Attachment A.

33. Complainant hereby states and alleges that, based on the information supplied to EPA by Respondent, Respondent violated the CWA at two (2) facilities identified in Attachment A by failing to prepare and implement an SPCC Plan, as required by Section 311(j)(1)(C) of the CWA, 33 U.S.C. § 1321(j)(1)(C), and the regulations found at 40 C.F.R. §§ 112.1-112.7.

CAA – State Implementation Plan Requirements

34. Pursuant to Section 110(a)(1) of the CAA, 42 U.S.C. § 7410(a)(1), states are required to submit to EPA implementation plans that 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.

35. Both the New Jersey and Pennsylvania State Implementation Plans (SIPs) include requirements governing emergency generators. Those requirements are federally-enforceable after EPA approves them under Section 110 of the CAA, 42 U.S.C. § 7410. As detailed below, each of these regulations was incorporated into the respective SIP, and then approved by EPA under Section 110 of the CAA, making the regulations federally-enforceable at the time of the events set forth in this Agreement.

36. For purposes of this Agreement, in both New Jersey and Pennsylvania, Respondent is a "person" within the meaning of Section 302(e) of the CAA, 42 U.S.C. § 7602(e), and operated "stationary sources" within the meaning of CAA Section 302(z), 42 U.S.C. § 7602(z), which were also potential air contaminant sources.

37. At the time of the violations listed in Attachment A, the New Jersey SIP included a provision, N.J.A.C. 7:27 § 19.11, stating that emergency generators are subject to specific on-site recordkeeping requirements, effective March 7, 2007. This provision was federally approved on July 31, 2007, and became federally-enforceable on August 30, 2007 (72 Fed. Reg. 41626). MetroPCS owned or operated a facility in Pennsauken, New Jersey that failed to keep on-site operating records for its emergency generator in accordance with N.J.A.C. 7:27 § 19.11.

38. At the time of the violations listed in Attachment A, the Pennsylvania SIP included a provision, City of Philadelphia Air Management Regulation I, Section II, stating that air contaminant sources must apply for an installation permit and operating license. This provision was federally approved and became federally-enforceable on May 4, 1974 (40 Fed. Reg. 41787). MetroPCS owned or operated all or a portion of four (4) facilities in Philadelphia, Pennsylvania that failed to apply for an installation permit and operating license as required by the City of Philadelphia Air Management Regulation I, Section II.

39. Complainant hereby states and alleges, based upon the information supplied to EPA, that Respondent violated the federally approved New Jersey and Pennsylvania SIP requirements at five (5) facilities identified in Attachment A and Paragraphs 34-38. EPA approved these requirements pursuant to Section 110(a) of the CAA, 42 U.S.C. § 7410. Therefore, these violations are subject to federal enforcement under Section 113 of the CAA, 42 U.S.C. § 7413.

RCRA - Universal Waste Requirements

40. Pursuant to Section 3006(b) of RCRA, 42 U.S.C. § 6926(b), on May 29, 1986, the State of New York received final authorization from EPA to carry out certain portions of its hazardous waste program in lieu of the federal program set forth in RCRA. The requirements of New York's authorized program are found in Title 9 of Article 27 of the Environmental Conservation Law and the regulations set forth in Parts 370-374 and Part 376 of Title 6 of the New York Codes, Rules, and Regulations (NYCRR).

41. Pursuant to Section 3006(b) of RCRA, 42 U.S.C. § 6926(b), on February 12, 1985, the State of Florida received final authorization from EPA to carry out certain portions of its hazardous waste management program in lieu of the federal program set forth in RCRA. The requirements of Florida's authorized program are found in Sections 403.701-403.7895 of the Florida Statutes and Chapter 62-730 of the Florida Administrative Code Annotated Rules.

42. Pursuant to Section 3006(b) of RCRA, 42 U.S.C. § 6926(b), on August 21, 1984, the State of Georgia received final authorization from EPA to carry out certain portions of its hazardous waste program in lieu of the federal program set forth in RCRA. The requirements of Georgia's authorized program are found in the Georgia Hazardous Waste Management Act (GHWMA), § 12-8-6 – § 12-8-83, and the regulations set forth in Chapter 391-3-11 of the Georgia Hazardous Waste Management Rules (GHWMR).

43. Although EPA has granted these States the authority to enforce their own hazardous waste programs, EPA retains jurisdiction and authority to initiate an independent enforcement action pursuant to Section 3008(a) of RCRA, 42 U.S.C. § 6928(a). EPA exercises this authority in the manner set forth in the Memorandum of Agreement between EPA and each respective State. Since the States' authorized hazardous waste programs operate in lieu of the federal RCRA program, the States' citations follow in parentheses after the federal citations for purposes of this Agreement.

44. Respondent is a "person" as that term is defined in Section 1004(15) of RCRA, 42 U.S.C. § 6903(15), and 40 C.F.R. § 260.10 (6 NYCRR § 370.2(b), and as incorporated by reference in Fla. Admin. Code Ann. R. 62-730.020 and Section 391-3-11.02 of the GHWMR).

45. Respondent was the "owner" and/or "operator" of, or is otherwise liable for, all or a portion of each "facility" listed in Attachment A, as those terms are defined in 40 C.F.R. § 260.10 (6 NYCRR § 370.2(b), and as incorporated by reference in Fla. Admin. Code Ann. R. 62-730.020 and Section 391-3-11.02 of the GHWMR).

46. At all times relevant to this Agreement and in the course of conducting normal business operations, Respondent was a "generator" as defined in 40 C.F.R. § 260.10 (6 NYCRR § 370.2(b)(83), and as incorporated by reference in Fla. Admin. Code Ann. R. 62-730.020 and Section 391-3-11.02 of the GHWMR) who generated "solid waste," within the meaning of 40 C.F.R. § 261.2 (6 NYCRR § 371.1(c), and as incorporated by reference in Fla. Admin. Code Ann. R. 62-730.030(1) and Chapter 391-3-11 of the GHWMR), "hazardous waste" within the meaning of 40 C.F.R. § 261.3 (6 NYCRR § 371.1(d), and as incorporated by reference in Fla. Admin. Code Ann. R. 62-730.030(1) and Chapter 391-3-11 of the GHWMR), and "universal waste" within the meaning of 40 C.F.R. Part 273 (6 NYCRR Part 374-3, and as incorporated by reference in Fla. Admin. Code Ann. R. 62-730.185 and Section 391-3-11.18 of the GHWMR).

47. Pursuant to 40 C.F.R. § 273.9 (6 NYCRR § 374-3.1(i)(9), and as incorporated by reference in Fla. Admin. Code Ann. R. 62-730.185 and Section 391-3-11.18 of the GHWMR), a "small quantity handler of universal waste" is a universal waste handler who accumulates 5,000 kg or less of universal waste (batteries, pesticides, mercury-containing equipment, or lamps, calculated collectively) at any time.

48. At all times relevant to this Agreement, Respondent is a generator and a small quantity handler who stored universal waste in the form of spent fluorescent lamps and batteries at certain facilities listed in Attachment A.

49. The regulations at 40 C.F.R. Part 273 set forth the standards for universal waste management (6 NYCRR Part 374-3; Fla. Admin. Code Ann. R. 62-730.185 and Section 391-3-11.18 of the GHWMR incorporate 40 C.F.R. Part 273 by reference).

50. Pursuant to 40 C.F.R. § 273.13(d)(1) (6 NYCRR § 374-3.2(d)(4)), a small quantity handler of universal waste "must contain any lamp in containers or packages that are structurally sound, adequate to prevent breakage, and compatible with the contents of the lamps," and "such containers and packages must remain closed and must lack evidence of leakage, spillage, or damage that could cause leakage under reasonably foreseeable conditions." Similarly for the handling of waste batteries, a small quantity handler "must contain any battery that shows evidence of leakage, spillage, or damage that could cause leakage under reasonably foreseeable conditions in a container," and "the container must be closed, structurally sound, compatible with the contents of the battery, and must lack evidence of leakage, spillage, or damage that could cause leakage under reasonably foreseeable conditions" as specified in 40 C.F.R. § 273.13(a)(1) (as

incorporated by reference in Fla. Admin. Code Ann. R. 62-730.185 and Section 391-3-11.18 of the GHWMR).

51. A small quantity handler of universal waste must label or mark the universal waste to identify the type of universal waste as specified in 40 C.F.R. § 273.14 (6 NYCRR § 374-3.2(e), and as incorporated by reference in Fla. Admin. Code Ann. R. 62-730.185 and Section 391-3-11.18 of the GHWMR). Pursuant to 40 C.F.R. § 273.14(e) (6 NYCRR § 374-3.2(e)(5)), each lamp or a container or package in which such lamps are contained must be labeled or marked clearly with one of the following phrases: "Universal Waste-Lamp(s)," or "Waste Lamp(s)," or "Used Lamp(s)." According to 40 C.F.R. § 273.14(a) (as incorporated by reference in Fla. Admin. Code Ann. R. 62-730.185 and Section 391-3-11.18 of the GHWMR), universal waste batteries (*i.e.*, each battery), or a container in which the batteries are contained, must be labeled or marked clearly with any one of the following phrases: "Universal Waste-Battery(ies)," or "Waste Battery(ies)," or "Used Battery(ies)."

52. As specified in 40 C.F.R. § 273.15(a) (6 NYCRR § 374-3.2(f)(1), and as incorporated by reference in Fla. Admin. Code Ann. R. 62-730.185 and Section 391-3-11.18 of the GHWMR), a facility may accumulate universal waste for no longer than one year from the date the universal waste was generated. Pursuant to 40 C.F.R. § 273.15(c) (6 NYCRR § 374-3.2(f)(3), and as incorporated by reference in Fla. Admin. Code Ann. R. 62-730.185 and Section 391-3-11.18 of the GHWMR), a facility is required to demonstrate the length of time that the universal waste has been accumulated from the date it becomes a waste or is received. As set forth in 40 C.F.R. §§ 273.15(c)(1)-(6) (6 NYCRR § 374-3.2(f)(3)(i)-(vi), and as incorporated by reference in Fla. Admin. Code Ann. R. 62-730.185 and Section 391-3-11.18 of the GHWMR), this demonstration can be accomplished by a variety of means, including, among others: placing the universal waste in a container and marking or labeling the container with the earliest date that any universal waste in the container became a waste or was received; marking or labeling each individual universal waste item with the date it became a waste or was received; or maintaining an inventory system.

53. Pursuant to 40 C.F.R. § 273.16 (as incorporated by reference in Fla. Admin. Code Ann. R. 62-730.185 and Section 391-3-11.18 of the GHWMR), a small quantity handler of universal waste must inform all employees who handle or have responsibility for managing universal waste of proper handling and emergency procedures appropriate to the type(s) of universal waste handled at the facility.

54. For purposes of this Agreement, Complainant hereby states and alleges that, based on the information supplied to EPA by Respondent, Respondent violated the following universal waste requirements:

    a. Section 3002 of RCRA, 42 U.S.C. § 6922, and the regulations found at 40 C.F.R. §§ 273.13(d)(1), 273.14(e), and 273.15(c) (6 NYCRR §§ 374-

3.2(d)(4), 374-3.2(e)(5), and 374-3.2(f)(3)), at one facility in New York, NY, by failing to properly store, label, or inventory spent fluorescent lamps and tubes, as identified in Attachment A;

b. Section 3002 of RCRA, 42 U.S.C. § 6922, and the regulations found at 40 C.F.R. §§ 273.13(a)(1), 273.14(a), and 273.15(c) (as incorporated by reference in Fla. Admin. Code Ann. R. 62-730.185 and Section 391-3-11.18 of the GHWMR), at one facility in Orlando, FL and one facility in Austell, GA, by failing to properly store, label, or inventory used lead-acid batteries, as identified in Attachment A; and

c. Section 3002 of RCRA, 42 U.S.C. § 6922, and the regulations found at 40 C.F.R. § 273.16 (as incorporated by reference in Fla. Admin. Code Ann. R. 62-730.185 and Section 391-3-11.18 of the GHWMR), at one facility in Orlando, FL and one facility in Austell, GA, by failing to train employees in proper identification and management of universal waste.

V. Civil Penalty

55. EPA agrees, based upon the facts and information submitted by Respondent and upon Respondent's certification herein to the veracity of this information, that Respondent has satisfied all of the conditions set forth in the Audit Policy and thereby qualifies for a 100% reduction of the gravity component of the civil penalty that otherwise would apply for the violations at 29 facilities listed in Attachment A. Complainant alleges that the gravity component of the unadjusted civil penalty for violations described in Attachment A ordinarily would have been $1,367,740. Of that potential penalty, $627,237 is attributable to EPCRA violations, $9,360 is attributable to CWA violations, $730,133 is attributable to CAA violations, and $1,010 is attributable to RCRA violations. EPA alleges that this gravity component is potentially assessable against Respondent for these violations. However, pursuant to the Audit Policy, EPA will waive 100% of the gravity-based penalties that could have been assessed for violations at the 29 facilities listed in Attachment A.

56. Under the Audit Policy, EPA has discretion to assess a penalty equivalent to the economic benefit Respondent gained as a result of its noncompliance. Based on information provided by Respondent and use of the Economic Benefit (BEN) computer model, EPA has determined that Respondent obtained an economic benefit of $16,913 as a result of its noncompliance in this matter for all the violations at the facilities listed in Attachment A. Of this amount, $11,441 is attributable to EPCRA violations, $3,777 is attributable to CWA violations, $1,543 is attributable to CAA violations, and $152 is attributable to RCRA violations. Pursuant to the Audit Policy, EPA will assess a penalty equivalent to the economic benefit for the violations listed in Attachment A.

VI. Terms of Settlement

57. Without admitting the conclusions of law or the violations, Respondent agrees to pay a civil penalty in the total sum of **SIXTEEN THOUSAND, NINE HUNDRED AND THIRTEEN dollars ($16,913.00)**, in the manner set forth in the following paragraphs, 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).

58. For payment of the civil penalty related to the EPCRA, CAA, and RCRA violations alleged herein, Respondent shall pay the amount of **THIRTEEN THOUSAND, ONE-HUNDRED AND THIRTY-SIX dollars ($13,136.00)** 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-T-Mobile US, Inc., Docket No. EPCRA-HQ-2013-8004, CAA-HQ-2013-8004, and RCRA-HQ-2013-8004."

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 REX/Cashlink ACH Receiver
ABA No.: 051036706
Account Number 310006, Environmental Protection Agency
CTX Format Transaction Code 22 – Checking

Physical location of the United States Treasury facility:

5700 Rivertech Court
Riverdale, MD 20737

The US Treasury customer service contact, John Schmid, may be reached at 202-874-7026. The REX customer service contact may be reached at 866-234-5681.

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

Website: 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 "T-Mobile US, Inc., Docket No. HQ-2013-8004" 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 have a notation of "In re: T-Mobile US, Inc., Docket No. EPCRA-HQ-2013-8004, CAA-HQ-2013-8004, and RCRA-HQ-2013-8004.

59. Without admitting the conclusions of law or the violations, for payment of the civil penalty related to the CWA SPCC violations alleged herein, Respondent shall, within thirty (30) days of the filing of the Final Order, forward a cashier's or certified check, in the amount of **THREE-THOUSAND, SEVEN-HUNDRED AND SEVENTY-SEVEN dollars ($3,777.00)** 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 re: T-Mobile US, Inc., Docket No. CWA-HQ-2013-8004."

Alternatively, Respondent shall pay **THREE-THOUSAND, SEVEN-HUNDRED AND SEVENTY-SEVEN dollars ($3,777.00)** via wire transfer with a notation of "In re: T-Mobile US, Inc., Docket No. CWA-HQ-2013-8004" to the Federal Reserve Bank of New York using the following instructions:

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 wire transfer shall read "D 68010727 Environmental Protection Agency."

60. Respondent shall forward evidence of the checks, wire transfers, and/or internet-based payments to EPA, within five (5) days of payment, to the attention of:

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

Clerk, Environmental Appeals Board
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue, N.W.
Mail Code 1103M
EPA East Building
Washington, D.C. 20460

61. Respondent's obligations under this Agreement shall end when it has paid the civil penalties in accordance with this Section of the Agreement.

62. 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 of entry of 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 6% 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.

63. 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.

64. As part of this Agreement, and in satisfaction of the requirements of the Audit Policy, Respondent has certified to certain facts, as delineated in Section III, Paragraph 13 of this Agreement. The parties agree that, should EPA receive information that proves or demonstrates that these facts are other than as certified by Respondent, the portion of this Agreement pertaining to the affected facility or facilities, including the downward adjustment of the proposed penalty, may be voided, and EPA may proceed with an enforcement action related to such affected facility or facilities.

65. The parties agree that Respondent preserves all of its rights should this Agreement be voided in whole or in part. The parties further agree that Respondent's obligations, agreements and waivers under this Agreement will cease, and be null and void with no effect, should this Agreement be rejected by the EAB.

VII. State and Public Notice

66. The parties acknowledge that the settlement portions of this Agreement which pertain to the CWA violations are, pursuant to Section 311(b)(6)(C)(i) of the CWA, 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 EPCRA, CAA, and RCRA portions of this Agreement. Should EPA receive comments regarding the issuance of the proposed Final Order assessing the civil penalty agreed to in Section VI, Paragraph 57, EPA shall forward such comments to Respondent within ten (10) days of the receipt of the public comments.

67. This Agreement serves as the Notice of Violation to Respondent as required by Section 113(a)(1) of the CAA, 42 U.S.C. § 7413(a)(1). On March 22, 2013, EPA notified the New Jersey Department of Environmental Protection that EPA proposed to resolve potential violations of Section 110 of the CAA and the New Jersey SIP in a settlement with Respondent. On March 22, 2013, EPA notified

the Pennsylvania Department of Environmental Protection that EPA proposed to resolve potential violations of Section 110 of the CAA and the Pennsylvania SIP in a settlement with Respondent. The City of Philadelphia was subsequently notified of the potential violations. Such notice was given pursuant to Section 113(a)(1) of the CAA, 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.

68. 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 1, 2013, 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 Agreement.

69. Pursuant to Section 3008(a)(2) of RCRA, 42 U.S.C. § 6928(a), EPA has given notice of this action to the States of New York, Florida, and Georgia.

VIII. Reservation of Rights and Settlement

70. This Agreement and the Final Order, when ratified and issued by the EAB, and upon payment by Respondent of civil penalties in accordance with Section VI shall resolve only the civil and administrative claims specified in Section IV, and found in Attachment A. 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.

IX. Other Matters

71. Each party shall bear its own costs and attorney fees in this matter.

72. 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, agents, successors and assigns. 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 VI.

73. Nothing in this Agreement shall relieve Respondent of the duty to comply with all applicable provisions of EPCRA, the CWA, the CAA, and RCRA, 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 or state or local regulation other than as specifically noted herein.

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 the Agreement.

For Respondent:

T-Mobile US, Inc., successor by merger to MetroPCS Communications, Inc.

6/19/13
Date

T-Mobile Legal Approval By:
J. CHRISTOPHER LUNA
06-18-2013

For Complainant:

U.S. Environmental Protection Agency

6/6/13
Date

Andrew R. Stewart
Acting Director
Special Litigation and Projects Division
Office of Civil Enforcement