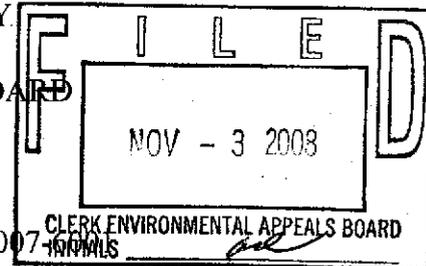


UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
BEFORE THE ENVIRONMENTAL APPEALS BOARD



IN THE MATTER OF)
)
American Tower Corporation)
116 Huntington Ave., 11th Floor)
Boston, MA 02116)
Respondent)

Docket No. EPCRA-HQ-2007-107015

CONSENT AGREEMENT

I. Preliminary Statement

A. Complainant, the United States Environmental Protection Agency (“EPA”) and Respondent, American Tower Corporation (“ATC”), having agreed to settle this matter, consent 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.

B. On March 22, 2004, pursuant to EPA’s Policy on Incentives for Self-Policing: Discovery, Disclosure, Correction and Prevention of Violations, 65 Fed. Reg. 19,618 (April 11, 2000) (“Audit Policy”), ATC submitted a voluntary disclosure to EPA regarding potential violations of:

1. Emergency Planning and Community Right-to-Know Act (“EPCRA”) §§ 302-303, 42 U.S.C. §§ 11002-11003;
2. EPCRA § 311, 42 U.S.C. § 11021;
3. EPCRA § 312, 42 U.S.C. § 11022.

C. Between March 22, 2004 and November 21, 2005, ATC continued to submit additional reports with further disclosures under EPCRA. On November 21, 2005, ATC and EPA entered into a Facility Audit Agreement. Pursuant to the Facility Audit Agreement, ATC submitted monthly disclosure reports under EPCRA until February 20, 2007. From March 2004 until February 20, 2007, ATC audited approximately 12,860 of its tower compounds across 49 states and the District of Columbia. On March 15, 2007, ATC submitted a Final Audit Report. Such disclosures have resulted in a final list of disclosed potential violations found in Attachment A, hereby incorporated by reference, which are the subject of this Agreement.

II. Jurisdiction

A. 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).

B. ATC agrees that EPA has the jurisdiction to bring an administrative action, based upon the facts which ATC disclosed, for these potential violations disclosed in Attachment A and for the assessment of civil penalties pursuant to EPCRA § 325, 42 U.S.C. § 11045.

C. ATC 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 appeal the proposed Final Order accompanying this Agreement upon issuance of the Final Order substantially in the form attached hereto.

D. For purposes of this proceeding, ATC admits that EPA has jurisdiction over the subject matter which is the basis of this Agreement.

E. Except with respect to those facts required to demonstrate compliance with the requirements of the Audit Policy, ATC neither admits nor denies the statements of fact or conclusions of law as set forth in this Agreement.

III. Statements of Fact

A. Respondent, American Tower Corporation, is a wireless and broadcast infrastructure company, incorporated in the state of Delaware.

B. Pursuant to the EPA's Audit Policy, ATC's initial March 22, 2004 voluntary disclosure, correspondence between EPA and ATC dated April 22, 2004; April 30, 2004; June 17, 2004; July 6, 2004; July 12, 2004; and July 16, 2004, and the Facility Audit Agreement, ATC hereby certifies and warrants as true only the facts referenced in this Section III(B) upon which this Agreement is based. ATC specifically certifies to the following facts upon which this Agreement is based:

1. Violations were discovered through an audit or through a compliance management system reflecting due diligence in preventing, detecting and correcting violations;
2. The violations were discovered voluntarily;
3. The initial violations were disclosed to EPA within 21 days of discovery, and in writing; subsequent disclosures were also prompt and in writing;
4. 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;

5. The violations have been corrected, and ATC is, to the best of its knowledge and belief, in full compliance with EPCRA §§ 302, 303, 311, 312, 42 U.S.C. §§ 11002, 11003, 11021, 11022, and the implementing regulations with respect to the violations set forth in this Agreement;
6. Appropriate steps have been taken to prevent a recurrence of the violations;
7. The specific violations (or closely related violations) identified in Attachment A for a particular facility have not occurred within three years of the date of disclosure of such violations at each such facility, and have not occurred within five years of the date of such disclosure, as part of a pattern at multiple facilities owned or operated by ATC. For the purposes of subparagraph 7, a violation is:
 - (a) any violation of federal, state, or local environmental law identified in a judicial or administrative order, consent agreement or order, complaint, notice of violation, conviction or plea agreement; or
 - (b) any act or omission for which the regulated entity has previously received penalty mitigation from EPA or a state or local agency;
8. The violations have not resulted in serious actual harm nor presented an imminent and substantial endangerment to human health or the environment, and they did not violate the specific terms of any judicial or administrative Final Order or Agreement; and
9. ATC has cooperated as requested by EPA.

IV. Conclusions of Law

A. For purposes of this Agreement, ATC is a person as defined in EPCRA § 329(7), 42 U.S.C. § 11049(7), and is the owner or operator of facilities as defined in EPCRA § 329(4), 42 U.S.C. § 11049(4).

B. Section 302(c) of EPCRA, 42 U.S.C. § 11002(c), and the regulations found at 40 C.F.R. Part 355, require owners and operators of facilities at which an extremely hazardous substance is present, at or above stated designated threshold quantities, to notify the State Emergency Response Commission ("SERC") that such facility is subject to the requirements of § 302(c).

C. Section 303(d) of EPCRA, 42 U.S.C. § 11003(d), and the regulations found at 40 C.F.R. Part 355, require owners and operators of facilities at which an extremely hazardous substance is present, at or above stated designated threshold quantities, to notify the Local

Emergency Planning Committee ("LEPC") of the facility representative who will participate in the emergency planning process as a facility emergency coordinator.

D. Section 311(a) of EPCRA, 42 U.S.C. § 11021(a), and the regulations found at 40 C.F.R. Part 370, require the owner or operator of a facility, which is required to prepare or have available a material safety data sheet ("MSDS") for a hazardous chemical under the Occupational Safety and Health Act of 1979, 29 U.S.C.A. § 651 et. seq., ("OSHA") and regulations promulgated under the Act, to submit the MSDS, or in the alternative, a list of chemicals to the LEPC, the SERC, and to the fire department with jurisdiction over the facility by October 17, 1987, or within three months of first becoming subject to the § 311 requirements.

E. Section 312(a) of EPCRA, 42 U.S.C. § 11022(a), and the regulations found at 40 C.F.R. Part 370, require the owner or operator of a facility which is required to have an MSDS for a hazardous chemical under OSHA and regulations promulgated thereunder, to prepare and submit an emergency and hazardous chemical inventory form (Tier I or Tier II as described in 40 C.F.R. Part 370) containing the information required by those sections to the 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 the § 312 requirements), and annually thereafter.

F. Sulfuric acid is an extremely hazardous substance, and lead, diesel, propane, and ethylene glycol are hazardous chemicals, as defined under § 312 of EPCRA and 40 C.F.R. § 370.2.

G. As set forth in 40 C.F.R. § 370.20, 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. The reporting threshold, therefore, for lead, diesel, propane and ethylene glycol is ten thousand (10,000) pounds. For "extremely hazardous" substances present at the facility, the reporting threshold is five hundred (500) pounds or the threshold planning quantity ("TPQ") as defined in 40 C.F.R. Part 355, whichever is lower. The TPQ for sulfuric acid is one thousand (1,000) pounds. The reporting threshold for sulfuric acid, therefore, is five hundred (500) pounds.

H. The information supplied by ATC in its March 22, 2004 self-disclosure, its subsequent submissions identified in Section III(B) of this Agreement, and pursuant to the Facility Audit Agreement indicated that for varying lengths of time during calendar years 1999-2005, ATC had the extremely hazardous substance sulfuric acid (within batteries), and/or hazardous chemicals lead, diesel fuel, propane, or ethylene glycol, in excess of the threshold amounts, present at its facilities listed in Attachment A.

I. For purposes of this Agreement, EPA hereby states and alleges that, based on the information supplied by ATC to EPA, ATC has disclosed the following potential violations:

1. EPCRA § 302(c), 42 U.S.C. § 11002(c), and the regulations found at 40 C.F.R. Part 355, when ATC failed to notify the SERC of the presence of sulfuric acid in excess of the TPQ for one hundred twelve (112) facilities, identified in Attachment A;

2. EPCRA § 303(d), 42 U.S.C. § 11003(d), and the regulations found at 40 C.F.R. Part 355, when ATC failed to notify the LEPC of the identity of the emergency coordinator who would participate in the emergency planning process at one hundred twelve (112) facilities, identified in Attachment A;
3. EPCRA § 311(a), 42 U.S.C. § 11021(a) and the regulations found at 40 C.F.R. Part 370, when ATC failed to submit an MSDS for a hazardous chemical(s) or, in the alternative, a list of such chemicals, for two hundred thirty-one (231) facilities, to the LEPC, SERC, and the fire department with jurisdiction over these distribution centers, identified in Attachment A;
4. EPCRA § 312(a), 42 U.S.C. § 11022(a) and the regulations found at 40 C.F.R. Part 370, for two hundred thirty-one (231) facilities, when ATC failed to prepare and submit emergency and chemical inventory forms to the LEPC, SERC, and the fire department with jurisdiction over these distribution centers, identified in Attachment A.

V. Civil Penalty

A. EPA agrees, based upon the facts and information submitted by ATC and upon ATC's certification herein to the veracity of this information, that ATC 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. Complainant alleges that the gravity component of the civil penalty is \$5,552,290. EPA alleges that this gravity component is assessable against Respondent for the violations that are the basis of this Agreement.

B. Under the Audit Policy, EPA has discretion to assess a penalty equivalent to the economic benefit ATC gained as a result of its noncompliance. Based on information provided by ATC, and use of the Economic Benefit ("BEN") computer model, EPA has determined that ATC obtained an economic benefit of \$34,849 as a result of its noncompliance in this matter. Accordingly, the civil penalty agreed upon by the parties is \$34,849.

VI. Terms of Settlement

A. ATC agrees to pay THIRTY-FOUR THOUSAND EIGHT HUNDRED AND FORTY-NINE DOLLARS (\$34,849), in satisfaction of the civil penalty.

B. For payment of the civil penalties, ATC shall remit the full penalty, THIRTY-FOUR THOUSAND EIGHT HUNDRED AND FORTY-NINE DOLLARS (\$34,849) within thirty (30) days of the issuance of the Final Order via one of the following methods:

- i. 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:

US Environmental Protection Agency
Fines and Penalties
Cincinnati Finance Center
PO Box 979077
St. Louis, MO 63197-9000

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

US Environmental Protection Agency
Fines and Penalties
U.S. Bank
1005 Convention Plaza
Mail Station SL-MO-C2GL
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.

- iii. Via electronic funds transfer ("EFT") to the following account:

Federal Reserve Bank of New York
ABA No. 021030004
Account No. 68010727
SWIFT address = FRNYUS33
33 Liberty Street
New York NY 10045
Field Tag 4200 of the Fedwire message should read "D 68010727
Environmental Protection Agency"

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

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

PNC Bank
ABA No. 05136706
Environmental Protection Agency
Account 310006
CTX Format
Transaction Code 22 - checking
808 17th Street NW
Washington, D.C. 20074.

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

v. Via on-line payment (from bank account, credit card, debit card), access "www.pay.gov" and enter "sfo 1.1" in the search field. Open the form and complete the required fields.

C. All payments by ATC shall include ATC's full name and address and the EPA Docket Number of this Consent Agreement (EPCRA-HQ-2007-6001).

D. ATC shall forward copies of these checks or wire transfers to EPA, within five (5) days of payment, to the attention of:

Danielle C. Fidler
Special Litigation and Projects Division (MC 2248-A)
Office of Enforcement and Compliance Assurance
U.S. Environmental Protection Agency
1200 Pennsylvania Ave, N.W.
Ariel Rios Building, Room 4150F
Washington, DC 20460

and

Clerk, Environmental Appeals Board
U.S. Environmental Protection Agency
MC 1103B
1200 Pennsylvania Avenue, N.W.
Washington, DC 20460

E. ATC's obligations under this Agreement shall end when it has paid the civil penalty as required by this Agreement and the Final Order, and in accordance with Section VI(B), and complied with its obligations under Section VI(C) of this Agreement.

F. For the purposes of state and federal income taxation, ATC 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 ATC to deduct any such payments shall constitute a violation of the Agreement.

G. 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 12 percent 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.

H. As part of this Agreement, and in satisfaction of the requirements of the Audit Policy, ATC has certified to certain facts. In entering into this Agreement, EPA has reasonably relied on such certification, which forms a material part of this Agreement. The parties agree that should EPA receive information that proves or demonstrates that these facts are false or other than as certified by ATC, the portion of this Agreement pertaining to the affected facility or facilities, including mitigation of the proposed penalty, may be voided, or this entire agreement may be declared null and void at EPA's election, and EPA may proceed with an enforcement action, subject to ATC's rights under the applicable laws and rules to contest any such action and to assert any and all available legal, factual and equitable defenses thereto, which rights ATC expressly reserves.

I. The parties agree that ATC preserves all of its rights should this Agreement be voided in whole or in part. The parties further agree that ATC'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 Environmental Appeals Board ("EAB"); provided, however, that in the event that the EAB expresses any objections to, or its intent to reject, this Agreement, the parties agree that they shall exercise their mutual best efforts to address and resolve the EAB's objections.

VII. Reservation of Rights and Settlement

A. Upon payment by ATC of the civil penalty in accordance with Section VI, this Agreement and Final Order shall resolve only the federal civil and administrative claims specified 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 ATC, 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 ATC for any other violation of any federal or state statute, regulation or permit.

VIII. Other Matters

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

B. The provisions of this Agreement and the Final Order, when issued by the EAB, shall apply to and be binding on the EPA and ATC, as well as ATC's officers, agents, successors, and assigns. Any change in ownership or corporate status of ATC including, but not limited to, any transfer of assets or real or personal property shall not alter ATC's responsibilities under this Agreement, including the obligation to pay the civil penalty referred to in Paragraph V(B).

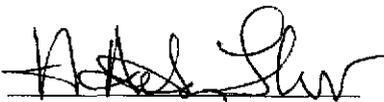
C. Nothing in this Agreement shall relieve ATC of the duty to comply with all applicable provisions of EPCRA or other applicable federal, state or local environmental laws or statutes, nor shall it restrict EPA's authority to seek compliance with any applicable environmental laws, nor shall it be construed to be a ruling on, or a determination of, any issue related to any federal, state or local permit.

D. Except as provided in Section VI(H), ATC waives any rights it may have to contest the allegations contained herein and their right to appeal the proposed Final Order accompanying this Agreement by reference.

E. EPA is not requiring submission of inventory forms for previous reporting cycles, (i.e., before reporting year 2005), in order to settle this matter. In the course of its audit activities under the Facility Audit Agreement, Respondent has communicated with the LEPCs or SERC, or the equivalent entity delegated the authority specified in EPCRA § 301, 42 U.S.C. § 11001, for each State in which a facility is alleged to be in violation for purposes of determining the appropriate measures for correcting such alleged violations. This Agreement does not preclude or limit any state action regarding filing fees which may be owed or any other state action regarding ATC's obligations under state law.

F. 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 Respondent:


H. Anthony Lehy
Senior Vice President,
Associate General Counsel and
Chief Compliance Officer
American Tower Corporation

8/25/08
Date

FOR Complainant:


Bernadette Rappold
Director,
Special Litigation and Projects Division
U. S. Environmental Protection Agency

9/17/08
Date

CERTIFICATE OF SERVICE

I hereby certify that copies of the Final Order in the *Matter of American Tower Corporation*, Docket No. EPCRA-HQ-2007-6001, was sent to the following persons in the manner indicated:

By Certified Mail:

J. Barton Seitz
Baker Botts L.L.P.
1299 Pennsylvania Ave., NW
The Warner
Washington, DC 20004-2400

By Inter-Office Mail

Bernadette Rappold, Director
Special Litigation and Projects Division (2248A)
1200 Pennsylvania Avenue, NW
Washington, DC 20460

Dated:
Signature



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