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EPA HQ-99-002
JAN 1999

UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY

In the Matter of)
)
)
PrimeCo Personal Communications, L.P.)
6 Campus Circle)
Westlake, TX 76262;)
)
Dallas MTA, L.P.)
6 Campus Circle)
Westlake, TX 76262;)
)
Houston MTA, L.P.)
6 Campus Circle)
Westlake, TX 76262;)
)
and)
)
San Antonio MTA, L.P.)
6 Campus Circle)
Westlake, TX 76262)
)
Respondents.)
_____)

Docket No. EPCRA-HQ-99-002

COMPLAINT

Jurisdiction

1. This is an administrative action for the assessment of civil penalties instituted pursuant to Section 325 of the Emergency Planning and Community Right to Know Act of 1986 (hereinafter "EPCRA"), 42 U.S.C. § 11045.
2. This Complaint serves as notice that the United States Environmental Protection Agency (hereinafter "EPA") has reason to believe that Respondents have violated Sections 302(c), 303(d), 311(a) and 312(a) of EPCRA, 42 U.S.C. §§ 11102(c), 11103(d), 11021(a), 11022(a), and the regulations promulgated thereunder and codified at 40 C.F.R. Parts 355 and 370, governing the submission of emergency and hazardous chemical inventory forms, by owners and operators of covered facilities.

Parties

3. The Complainant, by delegation from the Administrator of the EPA through the Assistant Administrator for the Office of Enforcement and Compliance Assurance, is the Director of the Multimedia Enforcement Division.

4. The Respondents are PrimeCo Personal Communications, L.P., Dallas MTA, L.P., Houston MTA, L.P. and San Antonio MTA, L.P. PrimeCo Personal Communications, L.P. is the sole general partner in the other L.P.'s listed above. Respondents are limited partnerships in the business of wireless communications (SIC 4812) and are located at 6 Campus Circle, Westlake, TX 76262.

EPCRA Statutory and Regulatory Requirements

5. Section 302(c) of EPCRA, 42 U.S.C. § 11002(c), and the regulations found at 40 C.F.R. Part 355, require owners and operators of facilities at which an extremely hazardous substance is present, at or above stated designated threshold quantities, to notify the State Emergency Response Commission ("SERC") that such facility is subject to the requirements of Section 302(c). Section 303(d) of EPCRA, 42 U.S.C. § 11003(d), and the regulations found at 40 C.F.R. Part 355, require owners and operators of facilities at which an extremely hazardous substance is present, at or above stated designated threshold quantities, to notify the local emergency planning committee ("LEPC") of the facility representative who will participate in the emergency planning process as a facility emergency coordinator.

6. Section 311(a) of EPCRA, 42 U.S.C. § 11021(a), and the regulations found at 40 C.F.R. Part 370, require the owner or operator of a facility, which is required to prepare or have available a material safety data sheet ("MSDS") for a hazardous chemical under the Occupational Safety and Health Act of 1979 (29 U.S.C. Section 651 *et. seq.*) and regulations promulgated under the Act, to submit the MSDS for such chemical to the LEPC, the SERC, and to the local fire department with jurisdiction over the facility, by October 17, 1991, or within three months of first becoming subject to the Section 311 requirements.

7. Section 312(a) of EPCRA, 42 U.S.C. § 11022(a), and the regulations found at 40 C.F.R. Part 370, require the owner or operator of a facility which is required to have an MSDS for a hazardous chemical under the Occupational Safety and Health Act of 1979 (29 U.S.C. Section 651 *et. seq.*) and regulations promulgated under the Act, to prepare and submit an emergency and hazardous chemical inventory form (Tier I or Tier II as described in 40 C.F.R. Part 370) containing the required information to the LEPC, SERC, and to the fire department with jurisdiction over the facility, by March 1, 1991 (or March 1 of the first year after the facility first becomes subject to the Section 312 requirements), and annually thereafter.

8. Sulfuric acid is an extremely hazardous substance and lead is a hazardous chemical as defined under Section 312 of EPCRA and 40 C.F.R. § 370.2.

9. As set forth at 40 C.F.R. § 370.20, the reporting threshold amount for all hazardous chemicals present at a facility at any one time during the preceding calendar year is ten thousand (10,000) pounds. For "extremely hazardous" substances present at the facility, the reporting threshold is five hundred (500) pounds or the threshold planning quantity ("TPQ") as defined in 40 C.F.R. Part 355, whichever is lower. The TPQ for sulfuric acid is one thousand (1,000) pounds. The reporting threshold for sulfuric acid, therefore, is 500 pounds.

10. Respondents are persons as defined at Section 329(7) of EPCRA and are the owners or operators of facilities as defined at Section 329(4) of EPCRA, 42 U.S.C. § 11049(7) and (4).

11. The information supplied by the Respondents revealed that for varying lengths of time during calendar years 1995, 1996 and 1997, Respondents had hazardous chemicals and/or extremely hazardous substances present in excess of the threshold amounts at each of 14 facilities. Respondents had present at thirteen (13) of these facilities, sulfuric acid contained in batteries in excess of five hundred (500) pounds at one time; at one (1) of these facilities, Respondents had present sulfuric acid contained in batteries in excess of five hundred (500) pounds at one time and also had present lead in quantities in excess of ten thousand (10,000) pounds at one time. The facility sites are described more particularly in Attachment A, incorporated by reference herein.

12. For the foregoing reasons, Respondents are subject to the requirements of EPCRA Sections 302, 303, 311 and 312.

EPCRA Violations

13. At fourteen (14) facilities, Respondents failed to notify the State emergency response commission of the presence of sulfuric acid (an extremely hazardous substance) present at the facilities in excess of the TPQ of one thousand (1,000) pounds in violation of EPCRA Section 302 and failed to identify to the emergency planning commission a facility representative who will participate in the emergency planning process as a facility emergency coordinator as required by EPCRA Section 303.

14. Respondents have failed to file required MSDS forms with the LEPC, SERC, and appropriate fire department for the 14 facilities and chemicals described in Appendix A, during the years 1995 through 1997, in violation of EPCRA Section 311.

15. Respondents have failed to submit chemical inventory forms with the LEPC, SERC and appropriate fire department for the 14 facilities described in Appendix A, for the years 1995 through 1997, in violation of EPCRA Section 312.

Relief

EPCRA Penalty

16. Pursuant to Section 325 of EPCRA, and based upon the facts stated in Paragraphs 5 through 12 above, it is proposed that a civil penalty of two hundred and fifty-eight thousand two hundred and eighty (\$ 258,280) dollars be assessed against Respondents for violations alleged in Paragraphs 13, 14 and 15.

17. Section 325(c) of EPCRA authorizes a civil penalty of up to \$25,000 per day for each violation of the Act. The penalty proposed in paragraph 16 is based upon the facts stated in this Complaint, and on the nature, circumstances, extent, and gravity of the above cited violations, as well as the Respondents' history of prior violations and degree of culpability, in accordance with the EPCRA Enforcement Response Policy.

Settlement

18. If Respondents do not contest any material fact of this EPCRA matter or the amount of the EPCRA proposed penalty, Respondents may make payment of the penalty, by cashier's or certified check made payable to "Treasurer of the United States" in the amount of \$ 258,280 and send to:

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

(Note that payment of the proposed penalty alone does not satisfy Respondents' legal obligation to file complete and accurate notifications and reports as required by Sections 311 and 312 of EPCRA and 40 C.F.R. Parts 355 and 370. Failure or refusal to file said notifications and reports may subject Respondents to additional civil penalties of up to \$25,000 per day of violation.)

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

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

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

Answer and Request for Hearing

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

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

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

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

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

Informal Settlement Conference

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

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

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

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

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

Date 1-25-99



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

Enclosures: Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties 40 C.F.R. Part 22
Enforcement Response Policy for Sections 304, 311 and 312 of the EPCRA

Attachment A

Facility List of EPCRA Violations (all facilities violated the requirements of §§ 302, 303, 311, 312)

Name	Address	Chemical(s)	Year(s) for Chemical Inventory Forms (§312)
Plant City Switch(1)	4160 Beauchamp Rd. Plant City, FL 33566	Sulfuric Acid	1995 - 1997
Orlando Switch(1)	1101 N. Keller Rd. Orlando, FL 32810	Sulfuric Acid	1996 - 1997
Jacksonville Switch(1)	3728 Phillips Hwy. Ste. 360 Jacksonville, FL 32207	Sulfuric Acid	1995 - 1997
Fort Lauderdale Switch(1)	1691 NW 31 st Avenue Fort Lauderdale, FL 33311	Sulfuric Acid	1995 - 1997
Riviera Beach Switch(1)	4881 Dyer Blvd. Riviera Beach, FL 33407	Sulfuric Acid	1996 - 1997
Lombard Switch(1)	220 Eisenhower Lane, North Lombard, IL 60148	Sulfuric Acid	1995 - 1997
Louisiana Switch(1)	900 L&A Road Metairie, LA 70001	Sulfuric Acid Lead	1996 - 1997
Arlington Switch(2)	808 110 th Street Arlington, TX 76011	Sulfuric Acid	1997
Houston Switch(3)	5959 Corporate Drive Houston, TX 77036	Sulfuric Acid	1995 - 1997
Lone Star Switch(2)	2170 Lone Star Drive Dallas, TX 75212	Sulfuric Acid	1996 - 1997
San Antonio Switch(4)	8415 Datapoint Drive Ste. B-100 San Antonio, TX 78229	Sulfuric Acid	1995 - 1997
Norfolk Switch(1)	945 Norfolk Square Norfolk, VA 23502	Sulfuric Acid	1995 - 1997
Richmond Switch(1)	2413 Ownby Lane Richmond, VA 23220	Sulfuric Acid	1996 - 1997
New Berlin Switch(1)	15725 W. Ryerson Rd. New Berlin, WI 53151	Sulfuric Acid	1995 - 1997

(1) PrimeCo Personal Communications, L.P.; (2) Dallas MTA, L.P.; (3) Houston MTA, L.P.; (4) San Antonio MTA, L.P.

CERTIFICATE OF SERVICE

I hereby certify that the original and one copy of the foregoing Complaint and Notice of Opportunity for Hearing in In the Matter of PrimeCo Personal Communications, L.P., Dallas MTA, L.P., Houston MTA, L.P., and San Antonio MTA, L.P. Docket No. EPCRA-HQ-99-002 has been filed with the Headquarters Hearing Clerk, and that a true and correct copy was sent by Certified Mail to:

Charles V. Sweeney, Esquire
Michael Best & Friedrich, LLP
One South Pinckney St.
P.O. Box 1806
Madison, WI 53701-1806

Counsel and recipient of service designate for PrimeCo Personal Communications, L.P., Dallas MTA, L.P., Houston MTA, L.P., and San Antonio MTA, L.P.

1/25/99
Date



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