UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

MAY 7 2001

OFFICE OF
ENFORCEMENT AND
COMPLIANCE ASSURANCE

MEMORANDUM

SUBJECT: Use of Corporate Auditing Agreements for Audit Policy Disclosures - **Correction**

FROM: Eric Schaeffer
Director of the Office of Regulatory Enforcement

TO: Addressees

EPA encourages companies with multiple facilities to take advantage of the Agency's Audit Policy, especially through use of corporate auditing agreements (for details see the December 1999 *Audit Policy Update* Special Issue, "Corporate-Wide Audit Agreements: An Effective Approach for Companies to Improve Environmental Compliance"). Corporate auditing agreements allow companies to plan a corporate-wide audit with advanced understanding between the company and EPA regarding schedules for correction of violations and other important expections. EPA has entered into corporate auditing agreements under various statutes and with an array of conditions. Based on our experiences, we recommend that audit duration and scope be key considerations in developing such agreements. In addition, injunctive relief should be identified in advance of the audit and incorporated into the agreement. **An earlier version of this memorandum dated March 14, 2001, was issued in error and should be discarded and replaced by this memorandum.**

Normally, the timely disclosure period for violations is twenty-one days from discovery. Companies that audit can continue to take advantage of that disclosure period; however, companies that plan more comprehensive audits and are interested in global resolution of discovered violations can reach agreement with EPA regarding audit, disclosure and correction schedules in advance of the audit.

To avoid situations in which violations are detected but remain undisclosed until the end of a lengthy audit period, an agreement should establish a schedule for interim disclosures at reasonable time intervals (e.g., every four months). In addition, EPA should discuss in advance what injunctive relief is appropriate for the violations contemplated in the audit proposal. Identifying such determinations in either the audit protocol or the auditing agreement will allow

for quicker resolution of the case upon audit completion and, where applicable, may provide for more efficient determinations of economic benefit from noncompliance. Agreements may also establish interim milestones for correction of violations.

An agreement under the Audit Policy may be documented through either an exchange of letters or a bilateral agreement (signed by an appropriate EPA official). Because of the resources required to develop an agreement, we generally recommend that bilateral agreements be used only for the situation in which an audit is not expected to be completed within a six-month period and/or the audit will require complex analysis and review by the company and EPA (e.g., a Clean Air Act New Source Review audit).

In general, for audits that are expected to be completed within six months, an exchange of letters may suffice. To meet the conditions of the Audit Policy, letters should identify (1) the breadth of the audit (i.e., the scope of the suspected violations); (2) the identity and location of affected facilities; and (3) the date by which a final disclosure report containing the violations discovered will be reported to EPA, and when violations will be corrected. Establishing a deadline for the final disclosure report, or interim disclosures where appropriate, clarifies if the 21-day disclosure period has been extended --- a measure that promotes efficiency by eliminating iterative disclosures. A primary consideration in approving a proposed auditing schedule is fairness among competitors (e.g., have similarly situated companies performed the work in less than the proposed time?).

For more lengthy or complex audits, a bilateral agreement should be considered. Such agreements negotiated to date under the policy have generally included the following elements:

Scope of Audit

- Statutory/regulatory scope of the audit.
- Period of time/performance to be covered by audit.
- Facilities covered (number and location).

Violations Not Covered

- Exclusion from waivers of any criminal liability.
- Exclusion for types of violations that will not meet the Audit Policy requirements,

Schedules

- Duration of audit and schedule for deliverables (e.g., periodic disclosure reports due within 30 days of discovery; summary report; etc.).
- Compliance schedule.

Waivers, Defenses, Reservation of Rights

- Waiver of right to a judicial or administrative hearing on any law/fact issue arising with respect to a violation disclosed, corrected and settled under the agreement.
- Reservation of rights to enforce against those violations not properly identified, reported, or mitigated under the agreement.
- Entity neither admits nor denies that reporting and mitigating constitutes a violation.

Implementation and Documentation

- How audit is to be carried out/protocols.
- Certification by corporate officer that final audit/disclosure report is true, accurate and complete.
- Description of correction of noncompliance required.
- Modifications to the agreement.

Penalties

- Mitigation of GBP for violations disclosed in accordance with the agreement and the Audit Policy.
- Penalty payment provisions.
- In some circumstances, penalties may be stipulated for the following:
  - collection of economic benefit, and stipulation to amount, if appropriate;
  - maximum liability for stipulated penalties or total settlement.

Settlement

- Mechanism for final settlement.
- One settlement for all violations disclosed (eligible and ineligible).

Other Parties

- Handling confidentiality claims and the public release of disclosure information.
- Communication and interaction with affected states, if appropriate.

Please be aware that all correspondence and documents related to an auditing agreement may be treated as enforcement sensitive, where appropriate, until case resolution (see EPA's "Confidentiality and Information Received Under Agency's Self-Disclosure Policy" (1997) for additional information).

Attached are three examples (confidentiality waived or not at issue) of auditing agreements. Attachment 1 is an example of a bilateral agreement. Attachment 2 is an example of agreement by exchange of letters. Attachment 3 is an example of a model self-executing agreement under EPA's Storage Tank Emission Reduction Partnership Program.

This memorandum sets forth factors for consideration that will guide the Agency in the exercise of its enforcement discretion. It states the Agency's views as to the proper allocation of its enforcement resources. The memorandum is not final agency action and is intended as

guidance. This memorandum is not intended, nor can it be relied upon, to create any rights enforceable by any party in litigation with the United States. EPA may decide to follow guidance provided in this document or to act at variance with it based on its analysis of the specific facts presented. This memorandum may be revised without public notice to reflect changes in EPA's approach to the use of corporate auditing agreements for audit policy disclosures, or to clarify or update text.

For additional information about corporate auditing agreements or the Audit Policy, please contact Leslie Jones at (202) 564-5123.

United States Environmental Protection Agency
Office Of Enforcement And Compliance Assurance

AGREEMENT FOR TSCA COMPLIANCE AUDIT

The United States Environmental Protection Agency ("EPA") and Arizona Chemical Company ("Arizona") enter into this Agreement for a Toxic Substances Control Act ("TSCA") Compliance Audit ("Audit"), and by consenting to the terms of this Agreement agree to fully comply with its terms.

EPA and Arizona agree to the following:

I. GENERAL PROVISIONS

A. This Agreement, and an appropriate final EPA determination in this matter ("final determination" – for example, a Consent Agreement and Consent Order) shall be the complete settlement of all civil administrative claims and causes of action alleged or which could have been alleged under TSCA for all violations identified in the Final Report described in Paragraph II.F.3 ("Audit Violations"), provided that compliance with this Agreement and the final determination shall not be a defense to any actions subsequently commenced by EPA pursuant to federal law or regulation with respect to any violations that are not Audit Violations, and nothing in this Agreement and the final determination is intended to, nor shall be construed to, operate in any way to resolve any criminal liability of Arizona.

B. For purposes of this Agreement and any subsequent proceeding, without trial or any adjudication of facts, Arizona admits that EPA has jurisdiction over

the subject matter of the terms of this Agreement and any materials submitted to EPA pursuant to this Agreement.

C. Arizona waives its right to request a judicial or administrative hearing, under TSCA Section 16(a)(2)(A), on any issue of law or fact that has arisen or may arise regarding the application of TSCA to any violations which Arizona reports and mitigates pursuant to Section II of this Agreement and which are covered by the final determination in this matter.

D. Arizona neither admits nor denies that reporting and mitigation by Arizona pursuant to Section II of this Agreement constitutes admission of a violation of TSCA, but agrees to pay stipulated civil penalties in accordance with Section III.

II. AUDIT TERMS

A. Arizona commits to conduct an internal compliance audit to review and report on Arizona's compliance with TSCA ("Audit").

B. Scope of Audit

1. Sections Covered. The Audit shall cover TSCA Sections 4, 5, 8, 12(b), 13 and 15 (except insofar as Section 15 pertains to Sections 6 and 7). The Audit shall be conducted on a per-chemical basis.

2. Time Period Covered. Except as stated in Paragraphs II.B.3.(b)(i), (b)(ii) and (c), the time period for activities and violations to be covered by the Audit shall start January 1, 1994 and shall terminate on the Audit Completion Date, as specified in Paragraphs II.D and E, respectively.

3. Chemicals Covered.

(a) Except as stated in Paragraph II.B.3.(b), the Audit shall cover those products (including isolated intermediates, byproducts and impurities associated with such products) which Arizona currently offers for sale. For purposes of this Audit, the term "currently offers for sale" means products which (i) Arizona either (I) holds in inventory as of the Audit Commencement Date or (II) manufactured or processed for non-R&D purposes during the period January 1, 1994 to the Audit Completion Date, and (ii) at any time during the period from the Audit Commencement Date to the Audit Completion Date, Arizona offers for sale or distribution in the U.S. in a current price list, product catalogue, or other similar compilation of commercial products.

(b) For purposes of Sections II and III of this Agreement:

(i) With regard to TSCA Sections 12(b) and 13, the Audit shall cover those products which Arizona imported or exported during the period January 1, 1997 to the Audit Completion Date, and the time period to be covered by the Audit of such products shall be January 1, 1997 to the Audit Completion Date.

(ii) With regard to TSCA Section 5, the Audit shall cover those products which Arizona manufactured for research and development (R&D) purposes during the period January 1, 1997 to the Audit Completion Date, and the time period to be covered by the Audit of such products shall be January 1, 1997 to the Audit Completion Date.

(iii) With regard to TSCA Section 5, the chemicals covered pursuant to Paragraph II.B.3.(a) shall include those chemicals and products which are manufactured in a tolling arrangement for Arizona by persons other than Arizona, in such a manner that Arizona would be responsible for submitting any required notices to EPA pursuant to 40 C.F.R. § 720.22(a)(2).

(c) At its discretion, Arizona also may include in the Audit any other TSCA violations (within the scope of Paragraph II.B.1) or products which Arizona (or any of Arizona's predecessors or successors) manufactured, processed, distributed in commerce and/or used at any time prior to the Audit Completion Date.

4. Facilities Covered. The Audit shall cover the facilities listed in Appendix A to this Agreement.

C. Independent Third Party Auditor

1. Requirement of Third Party Auditor. The Audit shall be directed by an Independent Third Party Auditor. Arizona agrees to hire an independent Auditor, expert in chemistry and the performance of TSCA compliance audits, to plan, supervise and assist in the conduct of the Audit, in consultation with Arizona's employees and in coordination with and through Arizona's counsel. Arizona shall have the independent Auditor: (a) supervise the preparation of, and (b) sign, all Audit reports required under Paragraph II.F of this Consent Agreement.

2. Recordkeeping Requirement. Arizona shall include in its written agreement with the Auditor a provision requiring the Auditor to prepare and maintain contemporaneous records when supervising or assisting in the conduct of the Audit.

3. Approval of Auditor. No later than thirty (30) calendar days following the date of Arizona's receipt of this fully-executed Agreement, Arizona shall notify EPA in writing of Arizona's choice of the independent third-party Auditor. Arizona agrees to provide EPA with sufficient information to allow EPA to judge the

adequacy of the Auditor's expertise in chemistry and the performance of TSCA compliance audits. At its sole discretion, EPA may approve or disapprove Arizona's choice of the independent third-party Auditor, but such approval shall not be unreasonably withheld. Within forty-five (45) calendar days of EPA's receipt of Arizona's notice of its choice of an Auditor, EPA will respond in writing to Arizona's nomination. If EPA notifies Arizona that Arizona's choice of an Auditor is unacceptable, Arizona shall have an additional thirty (30) calendar days in which to nominate a different Auditor, and to provide the information required by this Paragraph.

D. Audit Commencement Date. The Audit Commencement Date shall be within thirty (30) calendar days after the date on which Arizona receives EPA's written approval of the independent third-party Auditor.

E. Audit Completion Date. The Audit Completion Date shall be 12 months after the Audit Commencement Date.

F. Audit Reports. Arizona shall submit to EPA (to the person and address specified in Paragraph IV.B of this Agreement) the following reports during the course of the Audit:

1. Initial Report. The Initial Report shall be submitted within 30 calendar days after the Audit Commencement Date. The Initial Report shall state the Audit Commencement Date; describe the records being audited and the procedures employed to audit such records; and confirm that such audit procedures will encompass the records necessary to comply with this Agreement.

2. Midcourse Report. The Midcourse Report shall be submitted no earlier than 150 calendar days and no later than 210 calendar days after the Audit Commencement Date. The Midcourse Report shall provide a status report of the Audit's progress to date; a list of the products reviewed for TSCA §§ 4, 5, 8, 12(b), 13 and 15 compliance; and a summary of the violations discovered and the actions taken to remedy and mitigate the violations.

3. Final Report. The Final Report shall be submitted no later than 60 days after the Audit Completion Date. The Final Report shall provide, in a cumulative fashion, a list of the products reviewed for TSCA compliance, and a summary of all violations discovered (including Immediately Reportable Events) and the actions taken to mitigate the violations. The Final Report also shall include a statement signed by a responsible corporate official certifying that the Audit has been conducted and is complete. A "responsible corporate official" means a president, corporate secretary or treasurer, or vice-president in charge of a principal relevant business function of Arizona, or any other official who performs similar level policy or decisionmaking functions for Arizona.

G. Mitigation of Violations. Arizona shall mitigate violations discovered within the scope of the Audit, as follows. When mitigating violations, Arizona shall submit required documents and information to the appropriate EPA office (as defined in applicable EPA regulations or guidance), and shall submit a written notice of such activity to the person and address listed in Paragraph IV.B of this Agreement.

1. PMN violations for substances that Arizona is currently manufacturing (for non-R&D purposes): Within 30 days of discovery, submit either a PMN or a LVE or LoREX application, or file appropriate polymer exemption documents, in accordance with regulations in effect at the time of the discovery; and notify EPA of the first date of non-exempt commercial manufacture, in accordance with 40 C.F.R. § 720.102.

2. PMN violations for substances that Arizona is not currently manufacturing (for non-R&D purposes): Within 60 days of discovery, submit either a real or mock[1] PMN, or a real or mock[1] LVE or LoREX application, or file appropriate polymer exemption documents, in accordance with regulations in effect at the time of the discovery; and notify EPA of the first date of non-exempt commercial manufacture, in accordance with 40 C.F.R. § 720.102.

3. PMN violations for substances which Arizona is currently marketing or distributing: Upon discovery, Arizona shall immediately cease manufacture, import, processing, distribution, and use, and shall quarantine all existing stocks, of such substances. Arizona shall provide EPA with an inventory of quarantined

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[1] Persons submit "mock" PMNs, low volume exemption applications ("LVEs"), or low release and exposure applications ("LoREXs") to U.S. EPA when they in the past have made a chemical not on the TSCA Inventory for a non-exempt commercial TSCA purpose, but no longer make the chemical and have no future plans to do so. The purpose of these submissions is to allow U.S. EPA to review these chemicals and evaluate their potential risk as U.S. EPA would normally. U.S. EPA can then determine whether it would have regulated the particular chemical, for example by requiring a TSCA § 5(e) order placing restrictions on manufacture, processing, distribution, use and/or disposal of the chemical.

existing stocks of such substances within thirty (30) days of discovery, and shall continue to report the inventory of quarantined existing stocks to EPA every thirty (30) days until PMN/LVE/LoREX review is completed, or until appropriate polymer exemption documents have been filed.

4. PMN violations for substances for which EPA determines, based upon EPA's review of Arizona's submittal under Paragraphs II.G.1 and II.G.2 of this Agreement, that a TSCA § 5(e) or § 5(f) order or rule would be appropriate: Within thirty (30) days of Arizona's receipt of EPA's notice to Arizona that a TSCA § 5(e) or § 5(f) order is or would be appropriate, Arizona shall (a) provide EPA with a list of the recipients of the PMN substance over the preceding twelve (12) months and the quantity of the PMN substance sent to each location, and (b) notify each of the recipients of the PMN substance that the substance is or could be subject to a TSCA § 5(e) or § 5(f) order or rule.

5. TSCA § 5(e) or § 5(f) violations: Within 15 days of discovery, take steps to enter into compliance and to ensure future compliance.

6. TSCA § 8(e) violations: Within 15 days of discovery, submit a TSCA § 8(e) report.

7. TSCA § 12(b) violations: Within 30 days of discovery, submit the required export notice(s) on a per-chemical, per-receiving nation basis, unless EPA informs Arizona that it need not submit notice(s) for a particular chemical(s).

8. Any other violation: Within 45 days of discovery, submit required documents or take other required actions, as applicable, reasonable and appropriate.

H. Immediately Reportable Events. Certain of the TSCA violations referenced in Paragraph II.G are considered, due to their time-sensitive nature, to be Immediately Reportable Events, of which Arizona must notify EPA (to the person and address listed in Paragraph IV.B of this Agreement) within 15 calendar days of discovery and must take immediate steps to remedy or mitigate. The notice shall describe the nature and extent of the Event, and shall indicate the steps taken or that will be taken by Arizona in order to remedy or mitigate the violation. The following acts or omissions by Arizona, discovered during the period covered by the Audit, shall constitute Immediately Reportable Events:

1. A PMN violation for a substance which (a) does not qualify as an exempt polymer under 40 C.F.R. § 723.250, and (b) Arizona currently offers for sale for other than non-R&D purposes.

2. Initial report of inventory of quarantined existing stocks under Paragraph II.G.3 of this Agreement.

3. Violation of a TSCA § 5(e) or § 5(f) order or rule for a substance which Arizona currently manufactures.

4. Failure to submit a TSCA § 8(e) report.

I. Stipulated Penalties. The stipulated penalties set forth in Paragraph III.A of this Agreement shall apply to violations which Arizona reports under this Audit. Once Arizona reports and mitigates a particular violation, the stipulated penalty shall establish the limit of Arizona's TSCA liability for all civil administrative claims and causes of action which arise or could arise for that particular violation.

J. Other Enforcement Actions. EPA reserves the right to take appropriate enforcement actions for those TSCA violations which Arizona does not properly report or mitigate under the Audit.

K. Actionable Violations. Any particular violation which Arizona could have identified but did not identify pursuant to the Audit shall not be considered a violation of either this Agreement or the final determination, but will be an actionable violation of TSCA for which EPA may bring a claim or cause of action in accordance with TSCA §§ 15 and 16. In any action regarding such a particular violation, however, EPA may use Arizona's failure to identify the particular violation during the Audit as a factor in determining the appropriate penalty for the particular violation.

L. Extensions of Audit Completion Date. If Arizona believes that it will be unable to complete the Audit before the Audit Completion Date as specified in Paragraph II.E of this Agreement, Arizona shall promptly notify EPA in writing of such fact and the reasons therefore no later than 90 days before the Audit Completion Date. If EPA determines that Arizona cannot reasonably complete the Audit before the Audit Completion Date, EPA, in its discretion, may allow an extension.

III. STIPULATED PENALTIES UNDER THE TSCA COMPLIANCE AUDIT

A. Except as provided in Paragraph III.G, Arizona agrees to pay the following stipulated penalties for violations reported by Arizona during the Audit

described in Section II of this Agreement; unless otherwise specified below, violations are to be calculated per chemical and as "one day" rather than "per day" violations:

1. Except as specified in Paragraphs III.A.2, III.A.3 and III.A.4 below, violations of TSCA §§ 4, 5, 8(a), 8(c), 8(d), and 15(2) shall be assessed a $10,000 penalty per chemical.

2. Violations of TSCA §§ 5(e) and 5(f) shall be assessed a $25,000 penalty per chemical for each of the following violation categories in the applicable § 5(e) or § 5(f) order or rule: Testing; Worker Protection; Disposal/Environmental Release; Hazard Communication; Distribution; Recordkeeping; and any Other. (These stipulated penalties for violations of §§ 5(e) and 5(f) are not subject to the maximum limit stated in Paragraph III.C.)

3. Violations of TSCA § 5 for substances for which EPA determines, based upon EPA's review of Arizona's submittals under Paragraphs II.G.1 and II.G.2 of this Agreement, that a TSCA § 5(e) or § 5(f) order or rule would be appropriate, shall be assessed a penalty of $15,000 per chemical.

4. Violations of the TSCA § 5 PMN requirements for research and development chemicals, 40 C.F.R. §§ 720.36 and 720.78(b), shall be assessed a $2,000 penalty per chemical.

5. Violations of TSCA § 8(e) shall be assessed as a single-day violation per study or reportable event in the following manner: $15,000 per study or report involving effects in humans, and $6,000 per other study or report. (These

stipulated penalties for violations of § 8(e) are not subject to the maximum limit stated in Paragraph III.C.)

6. Violations of TSCA § 12(b) which occur after the date of this Agreement shall be assessed a penalty in the amount of $4,000 per chemical per receiving nation. TSCA § 12(b) violations which occurred on or prior to the date of this Agreement shall not be assessed a penalty.

7. Violations of TSCA § 13 import certification requirements shall be assessed on a per-chemical basis. The assessed penalty shall be: (a) $1,000 for each chemical substance where (i) Arizona took delivery of the chemical directly from either the U.S. Postal Service or a commercial delivery service (e.g., Federal Express, UPS), (ii) no commercial broker or other independent agent acting on Arizona's behalf was involved with the transaction, and (iii) the chemical is in compliance with all other TSCA provisions as specified in the TSCA § 13 regulation; (b) $6,000 for each chemical substance which was (i) formally brokered by Arizona, a commercial broker, or other independent agent acting on Arizona's behalf, and (ii) the chemical is in compliance with all other TSCA provisions as specified in the TSCA § 13 regulation; and (c) $10,000 for each chemical substance where the chemical does not comply with other TSCA provisions.

B. Upon receipt of a real or mock document submitted under Paragraph II.G.1 or II.G.2 above, EPA will provide to Arizona a written certification of the substance's Inventory and § 5(e) or § 5(f) status as a precondition to imposing the appropriate stipulated penalty under Paragraph III.A.

C. Arizona's maximum liability for those stipulated penalties arising specifically from violations discovered during the Audit described in Section II of this Agreement (as calculated according to Paragraph III.A, but excluding penalties for § 5(e) or § 5(f) violations pursuant to Paragraph III.A.2, excluding penalties for § 8(e) violations pursuant to Paragraph III.A.5, and excluding penalties stipulated in this Agreement outside of Paragraph III.A) shall in no event exceed $1,000,000, even if the total stipulated penalties arising from violations discovered during the Audit would otherwise exceed that amount.

D. Following completion of the Audit and Arizona's submittal of the Audit Final Report required by Paragraph II.F.3, if the Final Report identifies any Audit Violations for which Respondent must pay civil penalties:

1. EPA will present Arizona with a draft civil Complaint and a Consent Agreement and Consent Order ("CACO") covering those Audit Violations (as identified in the Final Report) for which Respondent must pay stipulated penalties.

2. Arizona shall sign and return the Consent Agreement within 20 calendar days. If Arizona does not return the signed Consent Agreement within 20 calendar days, EPA reserves its rights under TSCA § 16 to take an enforcement action for violations reported by Arizona during the Audit.

3. Upon receipt of the signed Consent Agreement, EPA will file the Complaint, will forward the CACO to the Agency's Environmental Appeals Board ("EAB"), and will send a copy of the completed CACO signature page to Arizona.

4. The Complaint and final CACO will be similar to the model

Complaint and CACO in Appendices B and C to this Agreement, except that the final Complaint and CACO shall specify the Audit Violations for which Respondent must pay stipulated penalties, with the stipulated penalties to be calculated in accordance with Section III of this Agreement.

5. Upon execution of the CACO by the EAB (or its delegatee), Arizona will have 30 calendar days from its receipt of a copy of the executed CACO to pay any stipulated civil penalties.

E. The settlement of civil claims and civil causes of action under the Audit in Section II of this Agreement shall include only those violations of TSCA which Arizona properly, in accordance with Sections II and III of this Agreement:

1. reports to EPA,

2. mitigates, and

3. pays the stipulated penalty due (as adjusted pursuant to Paragraph III.C, if applicable).

F. Arizona's failure, without good cause, to submit any report or notification required by this Agreement shall (notwithstanding Paragraph III.C) result in an additional stipulated penalty of $200 per day per report or notification due, unless EPA, at its discretion and in writing, excuses or mitigates the stipulated penalty. EPA will submit to Arizona a demand letter which specifies the stipulated penalties required to be paid under this paragraph. Within thirty (30) calendar days following Arizona's receipt of such demand letter, Arizona shall pay the stipulated penalties in the manner specified in the demand letter.

G. Notwithstanding Paragraph III.A, Arizona shall not pay any gravity-based penalty for any particular violation of TSCA which meets all of the following conditions. However, subject to Paragraphs II.I and III.A, for any particular violation which meets all of the following conditions, EPA may require Arizona to pay an "economic-benefits" penalty, provided such penalty is calculated in accordance with then-established EPA policies and procedures for calculating the economic benefits of that type of TSCA violation. Any submissions made pursuant to this Agreement will be viewed by EPA as "prior such violations" under TSCA Section 16 for future violations of TSCA.

1. Arizona discovers the violation pursuant to the TSCA Compliance Audit.

2. Arizona fully discloses the violation in writing to EPA within ten days after Arizona discovers that the violation has occurred, or may have occurred.

3. Arizona mitigates the violation in accordance with Paragraph II.G.

4. Arizona reports the violation to EPA prior to:
   (a) the commencement of a federal, state or local agency TSCA inspection or investigation, or the issuance by such agency of a TSCA information request to Arizona;

   (b) notice of a TSCA citizen suit;

   (c) the filing of a complaint by a third party involving the TSCA violation;

   (d) the reporting of the TSCA violation to EPA (or other government agency) by a "whistleblower" employee, rather than by one authorized to speak on behalf of Arizona; or

(e) imminent discovery of the TSCA violation by a regulatory agency.

5. Arizona takes appropriate measures within 60 days, as determined by EPA, to remedy an environmental or human harm due to the violation, including measures pursuant to Paragraphs II.G and H.

6. Arizona agrees in writing to take steps to prevent a recurrence of the violation.

7. The specific violation (or closely related violation) has not previously been the subject of any judicial or administrative order, consent agreement or order, complaint, or notice of violation, conviction or plea agreement, and Arizona has not previously received penalty mitigation from EPA for the act or omission which gave rise to the violation.

8. The violation is not one which (a) resulted in serious actual harm, or may have presented an imminent and substantial endangerment to human health or the environment, or (b) violates the specific terms of any judicial or administrative order, or consent agreement (it being understood and agreed by the Parties that a violation discovered pursuant to the TSCA Audit does not violate the terms of this Agreement or the final determination in this matter).

9. Arizona cooperates as requested by EPA and provides such information as is necessary and requested by EPA to determine compliance with these conditions 1-9.

IV. NOTIFICATIONS

A. Except for required documents and information that are submitted to the appropriate EPA office in mitigation of a violation discovered within the scope of the Audit in Section II of this Agreement (see Paragraph II.G), any notice, report, certification, data presentation or other document submitted by Arizona hereunder which discusses, describes, demonstrates, or supports any statement or document submitted by Arizona in connection with any matter under this Agreement shall be certified by a

responsible corporate official of Arizona. The certification of the responsible official shall be in the following form:

> To the best of my knowledge and belief after due inquiry, under penalty of law, I certify that the information contained in or accompanying this (fill in type of submission) is true, accurate and complete.

and shall contain the date, the official's signature and the official's title.

B. Except where otherwise provided in this Agreement, whenever this Agreement requires Arizona to give notice or submit reports, information, certifications, or documents, such information shall be submitted to the following person and address:

Tony R. Ellis
Toxics and Pesticides Enforcement
Division [2245A]
Office of Enforcement and
Compliance Assurance
U.S. Environmental Protection Agency
401 M Street, S.W.
Washington, D.C. 20460

By written notice to Arizona, EPA may change the person and/or address listed above.

C. Unless otherwise provided in this Agreement, whenever this Agreement requires EPA to give Arizona notice or submit reports, information, certifications, or documents, such information shall be submitted to the following persons and addresses:

William G. Lowe
Global Manager – Quality, Environment, Health & Safety
Arizona Chemical Company
1001 East Business Highway 98
Panama City, FL 32401

Blake A. Biles
Arnold & Porter
555 12th Street, N.W.
Washington, D.C. 20004

By written notice to EPA, Arizona may change the person(s) and/or address(es) listed above.

V. OTHER MATTERS

A. Nothing in this Agreement and the final determination in this matter shall relieve Arizona of the duty to comply with all applicable provisions of TSCA, and with other Federal, state and local laws and regulations.

B. This Agreement shall not affect EPA's right to bring a claim or cause of action for a TSCA violation that is not settled by this Agreement and the final determination, including a claim or cause of action for a TSCA violation that could have been, but was not, reported, mitigated and paid pursuant to this Agreement and the final determination.

C. This Agreement shall be binding upon all Parties to this action, their officers, directors, employees, successors, and assigns. The undersigned representative of each Party to this Agreement certifies that he or she is duly authorized by the Party whom he or she represents to enter into the terms and bind that Party to it.

D. This Agreement shall end when Arizona has performed all of its obligations under this Agreement and the final determination (e.g., Consent Order).

E. A Consent Order shall have the same force and effect as a final order as defined in 40 C.F.R. § 22.03.

F. If an event beyond the control of Arizona causes a delay in any of Arizona's duties under this Agreement, Arizona shall promptly notify EPA by telephone, and shall within seven (7) days of such event notify EPA in writing of the delay, the anticipated length of the delay and the cause of the delay, the measures taken by Arizona to prevent or minimize the delay, and the timetable by which Arizona agrees to complete the delayed duties. If EPA agrees that the delay is caused by circumstances beyond the control of Arizona, EPA, in its discretion, may extend the time for performance of the affected duties hereunder for a reasonable period.

G. This Agreement may be modified by mutual written approval of both EPA and Arizona. Extensions of the Audit Completion Date in Paragraph II.E may be requested and authorized pursuant to Paragraph II.L.

H. Both parties agree to bear their own costs and attorney fees in this matter.

I. This Agreement shall be binding upon the parties, and shall be in full effect upon its having been signed by all of the persons identified below.

J. Arizona is aware of the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties, 40 C.F.R. Part 22, and waives its right to receive a copy of these rules with the Complaint.

K. All of the terms and conditions of this Agreement together comprise one agreement, and each of the terms and conditions is in consideration for all of the other terms and conditions. In the event that this Agreement (or one or more of its terms and

conditions) is held invalid, or is not executed by all of the signatory parties in identical form, then the entire Agreement shall be null and void.

L. Arizona may assert claims of confidentiality under TSCA § 14 for submissions under this Agreement. All such assertions must be made in strict accordance with TSCA § 14 and applicable EPA regulations.

WE AGREE TO THIS:

For U.S. EPA:

Jesse Baskerville, Director
Toxics and Pesticides
Enforcement Division

Date: 12/17/98

Geraldine Gardner
Counsel for U.S.
Environmental Protection
Agency

Date: 12/17/98

For Arizona Chemical Company:

James A. Cederna
Arizona Chemical Company
President

DDS

Date: 8/26/98

Blake A. Biles
Arnold & Porter
Counsel for Arizona
Chemical Company

Date: 8-30-98

APPENDIX A

Agreement for TSCA Compliance Audit
Between U.S. EPA and Arizona Chemical Company

FACILITIES TO BE INCLUDED
IN THE TSCA COMPLIANCE AUDIT

Oakdale, Louisiana

Panama City, Florida

Pensacola, Florida

Picayune, Mississippi

Port St. Joe, Florida

Springhill, Louisiana

ATTACHMENT 2

Paul E. Shorb, III
Senior Attorney

Room 1019
Headquarters Plaza
1 Speedwell Avenue-East Tower
Morristown, NJ 07960
973 898-2201
FAX 973 898-0958
EMAIL pshorb@lga.att.com

April 16, 1999

VIA FEDERAL EXPRESS
Philip L. Milton
Multimedia Enforcement Division
U.S. Environmental Protection Agency
401 M St., S.W. (2248-A)
Washington, D.C. 20460

Dear Phil:

As you recall, on October 30, 1998, several of us from AT&T Corp. ("AT&T") met with you and several other representatives of USEPA to discuss AT&T's possible participation in USEPA's voluntary disclosure program ("VDP"). At that meeting, I said that AT&T was interested in participating, assuming that various details could be worked out with USEPA. You and I have spoken on the phone a number of times since then, and AT&T has been making preparations to begin the work. The purpose of this letter is to confirm AT&T's desire to participate, and to seek USEPA's approval of our proposal described below.

I. Summary of the AT&T Proposal

In brief, AT&T proposes to assess approximately 8,000 facilities within one year or less from the date of USEPA approval of this proposal. The assessment would focus on those facilities' compliance with EPCRA and SPCC requirements, as USEPA has suggested. It would also collect other information to support AT&T's ongoing compliance efforts regarding certain other environmental requirements.

AT&T proposes to promptly correct any EPCRA noncompliance that is detected. Depending on the nature and extent of the SPCC noncompliance detected, AT&T may propose to develop and implement a corrective action strategy on a regional or nationwide basis, pursuant to a schedule to be developed with USEPA that would extend more than 60 days after the first discovery of noncompliance. AT&T recognizes that it would have the burden of persuading USEPA that a period greater than 60 days was reasonably necessary to correct SPCC or other types of violations discovered.

Below I lay out additional details regarding the scope of this proposal, the rationale behind it and the time period requested, and the application of USEPA's Audit Policy.

II. Facilities Covered

As we have discussed, AT&T proposes to perform a special assessment for VDP purposes of the three most recent major telecommunications additions to the company.[1] These business units are known as AT&T Wireless Services ("AWS", acquired in 1993 as McCaw Cellular); the Alaska long-distance business known as Alascom (acquired in 1995); and AT&T Local Services ("ALS", acquired in 1998 as Teleport Communications Group). We would be working from several facility lists: one each for ALS and Alascom, and one for each of the seven Field Service Areas ("FSAs") that are responsible for maintaining AWS sites. I will forward the lists to you as soon as they are finalized. I understand that USEPA needs final lists before a large-scale project such as this can be conducted without requiring reports of each finding within 10 days. However, as we finalize the lists, I wanted to give USEPA time to review this proposal and thus facilitate a quicker start.

I understand that if any facility on the initial lists is sold or otherwise leaves AT&T's control before the VDP process is complete, that will necessarily take the facility out of the VDP process. If AT&T wants to add any facilities to the VDP process while it is in progress, such as facilities brought into AT&T through acquisition, I understand that we could discuss that possibility with USEPA at that time.

III. Subject Matter Covered

As USEPA has suggested, our special compliance assessment for VDP purposes will focus on compliance with (1) EPCRA reporting requirements and (2) SPCC requirements under the Clean Water Act. In addition, we plan to evaluate other issues in our assessment of compliance with certain other environmental requirements that may apply, depending on the facility. Therefore, we propose that the VDP program apply equally to any other noncompliance with federal environmental requirements that we find and report through this process.

---

[1] This proposal does not embrace the even more-recently acquired cable business, formerly known as TCI and now known as AT&T Broadband & Internet Services. That business generally does not use the type of back-up power equipment that triggers EPCRA or SPCC requirements. Further, I understand that the former TCI has separately received a VDP invitation letter from USEPA and is responding separately.

IV. Time to Complete the Assessment

As I indicated when we met, AT&T has been developing its strategy for how to timely assess this large a number of facilities for VDP purposes. The time frame that I preliminarily suggested then, one year, is what we formally propose now. Assuming USEPA agreement, we would consider the one year to start as soon as USEPA confirms that this letter proposal is acceptable and our understanding stated herein of the VDP process is correct.

I would like to give you some background on why we have proposed one year to complete the assessment phase. Because of the approximately 7,000 AWS facilities that may trigger EPCRA or SPCC requirements due to the presence of batteries and/or tanks, that business unit will take the most time, and essentially controls our completion date.

Inspecting these AWS facilities presents a special logistical challenge not only because of their number, but also because of their nature and location. Many of the AWS facilities are "cell towers" that receive and transmit the radio frequency ("RF") signals that provide wireless telephone service. The RF antennae also are often attached to facilities other than towers, including AT&T and non-AT&T facilities. The antennae generally are linked to independent, back-up power sources to help ensure uninterrupted phone service. These power sources generally include a battery or batteries, and sometimes fuel stored in an aboveground storage tank. It is primarily these backup power sources that trigger our EPCRA and SPCC obligations at these facilities (as well as at the Alascom and ALS facilities).

The nature of a nationwide cellular telephone service requires that these facilities be spread over wide areas, and causes the great majority of them to be unstaffed. The unstaffed facilities are visited as often as necessary for repairs and preventative maintenance. Some are in sparsely settled areas, requiring several hours drive or more just to reach them.

To perform the quality assurance process that USEPA desires for the VDP process, we anticipate having to physically visit most of the facilities in question. To the extent we can positively determine without visiting that a facility has no EPCRA or SPCC triggers present, such as if back-up power is provided by a non-AT&T entity, we will not need to visit the facility. We have already invested substantial effort towards eliminating sites that can be determined to have no EPCRA or SPCC triggers. Our current estimate is that even after completing such screening, we will have to visit at least 6,000 AWS facilities across the country, most of them unstaffed. This presents a substantial logistical challenge.

In brief outline, this is how we plan to meet that challenge. First, we have prepared, beta-tested, and revised a computer-based questionnaire to assist AT&T personnel in collecting the information necessary for VDP purposes. This questionnaire is designed both to guide technical personnel who are not environmental compliance specialists to collect accurate information, and to facilitate the centralized compilation and analysis of that information.

Second, each of the seven Field Service Areas that are responsible for maintaining AWS facilities will develop its own schedule for completing the questionnaire, within an internal deadline that AT&T will establish for the entire effort. We are developing an overall project schedule for what we call the assessment phase, whose major steps will include: training of relevant personnel; site visits and other data collection efforts; data-quality review; correcting EPCRA non-compliance discovered on a rolling basis and correcting SPCC noncompliance on a schedule to be determined with USEPA; and preparation of interim and final reports to USEPA. We are far enough along to have the confidence to say that, although we have not worked out all the implementation details, we can complete the assessment phase within a year from USEPA's approval of this letter.

V. Time to Complete Corrective Action

As noted above, AT&T proposes to promptly correct any EPCRA noncompliance that is detected. However, if for example correcting an SPCC violation at a facility requires preparing an SPCC plan or installing additional SPCC equipment or both, generally more than 60 days will be reasonably necessary to complete such corrective action. In addition, AT&T may propose to develop and implement an SPCC corrective action strategy on a regional or nationwide basis, pursuant to a schedule to be developed with USEPA. AT&T recognizes that it would have the burden of persuading USEPA that a period greater than 60 days was reasonably necessary to correct SPCC or other types of violations discovered.

We understand that in not defining a corrective action time period now, we are putting ourselves in a potentially vulnerable position, if USEPA later disagreed with our view regarding what would be a reasonable modification of that default assumption. However, we do not now have sufficient information to make a reasoned projection of how long it will take to complete certain types of corrective action, if needed, at a large number of facilities. Therefore, we are relying on USEPA's representations at our October 30 meeting that it will allow as much time to complete the corrective action as AT&T can demonstrate is reasonably necessary. If my understanding is incorrect, please let me know.

VI. Application of Audit Policy

Below is our proposal regarding how certain aspects of the USEPA Audit Policy would apply the assessment and correction process that we are proposing. Most of these points are based on my understanding from our prior conversations, but I filled in some other details. Our proposal is conditioned on USEPA's agreement to these terms, which we believe are reasonable as applied to this particular project. Therefore, if USEPA disagrees with any of these elements, please let me know as soon as possible.

A. Systematic Discovery

The self-assessment process we have proposed here would be considered an environmental audit, thus satisfying Condition #1 of the Audit Policy.

With regard to any violations that had been discovered prior to this assessment effort yet not disclosed within 10 days, if they are disclosed and corrected in conformance with the VDP process proposed here, USEPA will waive the gravity component of the penalty so long as the violation had no impact on the environment or human health (i.e., no release to the environment).

B. Voluntary Discovery

The fact of AT&T's agreement to participate in this VDP process would not disqualify AT&T from satisfying Condition #2.

C. Prompt Disclosure

In lieu of the 10-day deadline articulated in the Audit Policy, AT&T will have satisfied Condition #3 to the extent it both (1) discloses violations discovered through this assessment process on or before the date one year after USEPA notifies AT&T that this proposal is approved and (2) provides USEPA with reports at least quarterly summarizing EPCRA findings and corrective action taken that quarter.

D. Independent Discovery and Disclosure

The fact of AT&T's agreement to participate in this VDP process would not disqualify AT&T from satisfying Condition #4.

E. Correction and Remediation

With regard to any noncompliance found with EPCRA requirements, AT&T does not anticipate seeking an extension from the presumptive 60-day guideline articulated by

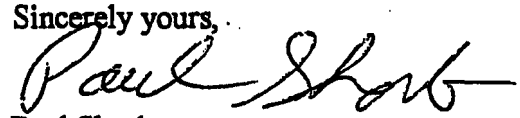
USEPA in Condition #5. For noncompliance with SPCC and possibly other federal requirements that may be found, AT&T may at the end of 60 days propose that AT&T have until the end of the assessment period before proposing a specific corrective plan and schedule. USEPA will grant such extension that is reasonably necessary.

VII. Industry Awareness

As we have discussed, AT&T would be glad to help publicize the VDP initiative and its advantages for telecommunications companies. I understand that Alice Borrelli of AT&T already has been in contact with you and your public affairs personnel. We are willing to continue and accelerate such efforts.

If you have any questions or comments, please give me a call.

Sincerely yours,



Paul Shorb

cc: Hossein Eslambolchi
Brad Allenby
Mark Rosenblum
Tim Porter
Greg Landis
Wally Hyer
Terry Wingfield
Kathy Carroll

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

MAY - 6 1999

OFFICE OF
ENFORCEMENT AND
COMPLIANCE ASSURANCE

Via Facsimile and U.S. Mail

Paul E. Shorb, III, Senior Attorney
AT&T
Room 1019
Headquarters Plaza
1 Speedwell Avenue - East Tower
Morristown, NJ 07960

Dear Mr. Shorb:

This letter responds to your letter dated April 16, 1999, in which you outline AT&T's proposal to conduct a compliance assessment focused on Emergency Planning and Community Right to Know Act ("EPCRA") and Spill Prevention, Control and Countermeasures ("SPCC") requirements at approximately 8,000 facilities, and in which you request the U.S. Environmental Protection Agency's ("EPA") approval of your proposal. EPA encourages the conduct of intensive company-wide or multi-facility audits, and appreciates AT&T's willingness to undertake this effort. Your proposal will be acceptable to EPA with some minor adjustments. We are asking you to adjust your target completion of the assessment to March 1, 2000 and to provide monthly status reports.

The remainder of this letter responds to certain points you made in your letter that we have determined need clarification and provides the detailed information that we will be requiring at the conclusion of this process.

A. Clarifications to Letter dated April 16, 1999

1. Summary of the AT&T Proposal

In your letter you state that AT&T proposes to conduct a compliance assessment focused on EPCRA and SPCC requirements. While our recent experience with the telecommunications industry has suggested the EPCRA and SPCC noncompliance issues are the most prevalent, Resource Conservation and Recovery Act ("RCRA") hazardous waste and underground storage tank, and Clean Air Act ("CAA") permitting requirements could also apply.

2. Facilities Covered

As your letter indicates, AT&T plans to submit a list of facilities that it plans to audit. While the Audit Policy requires companies to disclose within 10 days of finding potential violations, we recognize that a consolidated reporting framework would be more appropriate in this circumstance. The Agency's interpretive guidance document ("Audit Policy Interpretive Guidance," dated January 15, 1997) allows AT&T to submit a list of all facilities that AT&T intends to evaluate, instead of disclosing each violation within 10 days, provided the information is submitted as soon as possible. This list may be submitted in electronic format to ease your burden and facilitate our distribution to our regional offices. During the course of your evaluation, any changes to the facility list should be noted in a monthly status report to EPA.

3. Time to Complete the Assessment

Although the Agency recognizes that evaluating 8,000 facilities represents a considerable effort on the part of AT&T, we are concerned with your proposal of one year to complete your assessment. The SPCC and EPCRA requirements that are the subject of this audit are provisions designed to prevent injury to human health and the environment. SPCC plans are required to help prevent or mitigate spills and keep hazardous chemicals from polluting streams, rivers, and other bodies of water. Industry compliance with EPCRA, and in particular the requirement to notify LEPCs, is critical for state and local response authorities, so that they can protect communities and firefighters in the event of a chemical spill or release. In light of the importance of these requirements and the next reporting deadline for EPCRA Tier II Reports, which is March 1, 2000, we request that the company's assessment be completed by that time.

4. Time to Complete Corrective Action

The Agency recognizes the difficulty in defining the corrective action period in advance of knowing the extent of the potential violations to be corrected. While the Audit Policy guidelines require correction within 60 days, we understand that flexibility may be required in this circumstance. We ask that AT&T provide EPA with advance notice if correction will take more than 60 days. This can occur through a monthly status report on AT&T's progress toward completing its evaluation.

5. Application of Audit Policy

a. Systematic Discovery

Based on the information provided in your letter the self-assessment process proposed appears to be consistent with condition one of the Audit Policy.

Violations that were previously known to the company but not disclosed are not eligible for penalty mitigation under the Audit Policy. The Agency, however, does have the discretion to

waive the gravity component of the penalty that it normally would assess for violations that AT&T may have detected in the past, but did not disclose within 10 days. We have determined that waiving the gravity component is appropriate in this situation where the violations had no impact on the environment (i.e., no release to the environment). Such a penalty waiver is predicated on prompt disclosure and correction of any violations previously found.

b. Prompt Disclosure

As discussed in A. 2. above, the Agency recognizes that a consolidated reporting framework would be appropriate in lieu of the 10 day deadline articulated in the Audit Policy. To satisfy the prompt disclosure criteria of Audit Policy, we expect to receive the list of all facilities that AT&T intends to evaluate, as soon as possible. In light of the importance of the environmental requirements that are to be evaluated at each facility, we request that a brief report on the status of AT&T's efforts to return to compliance be provided to EPA on or about the 15th of each month, until the completion of this process.

c. Correction and Remediation

As previously mentioned, the Agency understands that flexibility may be required in meeting the 60 day guideline for correcting some violations. The Agency asks that AT&T provide advance notice if correction of violations will take more than 60 days. This can occur through a monthly status report on AT&T's progress toward completing its evaluation. While it is not our preference, the Agency understands that AT&T may request until the end of the assessment period to commence some corrective actions. Review of the status reports should give an indication if this approach is appropriate, and we will work with AT&T to resolve any issues that may arise.

B. Information Required at Conclusion of Assessment and Correction

1. Audit Policy Criteria

To determine whether AT&T has met the criteria in the Audit Policy, EPA will need additional factual information specific to each of the criteria in the Audit Policy. Please provide us with all available factual information which addresses' conditions one through nine of the Audit Policy as soon as possible, but no later than May 15, 2000. Enclosed is a copy of a questionnaire indicating the information needed by the Agency. If you believe you have already provided sufficient information in response to a specific condition, please advise the agency.

2. Facility Compliance

In addition, pursuant to the Audit Policy, we request the following information so that the Agency has complete information on the violations that may have occurred and on each facility's compliance record:

EPCRA Reporting Requirements (You may submit the requested information in tabular form to facilitate your response and our review)

Facility name,
Facility type (if appropriate),
Facility address (street, city, state, zip code),
Date facility began operations,
Nature of potential violation(s) (e.g., failure to submit annually to the SERC, LEPC, and the fire department, a completed chemical inventory form (as required by EPCRA §312)),
Years of possible non-compliance (e.g., 1991 - present),
Chemical(s) involved,
Quantity of materials (lbs.),
Date audit team discovered possible noncompliance,
Date EPA notified of possible noncompliance,
Date facility returned to compliance,
Actions taken to return to compliance (e.g., Tier II form submitted to LEPC, SERC, and fire department).

SPCC Plan Requirements (You may submit the requested information in tabular form to facilitate your response and our review)

Facility name,
Facility type (if appropriate),
Facility address (street, city, state, zip code),
Date facility began operations,
Nature of potential violation(s) (e.g., failure to prepare and implement an SPCC Plan),
In-service date of tank(s),
Capacity of tank(s),
Storage contents,
Date audit team discovered possible noncompliance,
Date EPA notified of possible noncompliance,
Date facility returned to compliance,
Actions taken to return to compliance (e.g., development of an SPCC plan, and specific steps for implementation).

Cost of Compliance (You may submit the requested information in tabular form to facilitate your response and our review)

For each facility, determine the cost to return to compliance. Such costs may include internal staff or outside consultants' time to become familiar with the regulations, determining which chemicals meet/exceed reporting thresholds, preparing forms/plans, submitting forms to appropriate agencies, and equipment or start-up costs for plan implementation.

C. Conclusion

After we have received your response, we will determine the specific violations which occurred, a proposed penalty, and whether the Audit Policy applies. It is our goal to attempt to resolve this matter as expeditiously as possible with your cooperation. As previously mentioned, we ask that you send us the requested information, as soon as possible, but no later than May 15, 2000. If, at any time, you determine that the company will need more time to provide the requested data and to come into compliance, please submit a proposed schedule and your justification for an extension of time.

EPA appreciates AT&T's willingness to timely self-police, disclose, and correct violations at its facilities. Philip Milton, of my staff, will serve as your primary contact. Please send your submissions directly to him. If you have any questions concerning this matter, please contact me at (202) 564-4001 or Phil at (202) 564-5029.

Sincerely,

Mark Pollins
Associate Director
Multimedia Enforcement Division (2248A)
Office of Regulatory Enforcement

Enclosures

cc (w/o enclosures):

Eric Schaeffer
Leslie Jones
Ann Pontius
Betsy Devlin
Rosemarie Kelley
Philip Milton

SELF-DISCLOSURE QUESTIONNAIRE

Provide the following information for each potential violation at all of the facilities disclosed by AT&T. Please correlate each answer to the specific violation.

1 Describe the violation and state the specific regulatory or statutory provision violated.

2. Explain how the violation was discovered. Please be as detailed as possible.

3 State whether the violation of a federal, state, or local regulation was discovered by means of a systematic, internal, environmental audit or through due diligence.

If AT&T believes that the violation was discovered through "due diligence," as defined in EPA's Audit Policy, explain, in detail, how the company's practices and procedures leading to the discovery of the violation constitute such due diligence.

If the violation was discovered by means of an environmental audit, provide the following information:

A. State the date(s) on which the environmental audit or systematic procedure or practice that identified the violation was being conducted.

B. State the frequency of environmental audits of the AT&T facilities involved. State the date(s) on which the last environmental audit was conducted at each facility prior to your disclosure.

C. State whether the facilities have a written policy or directive to follow up on audit findings to correct identified problems and prevent their recurrence.

Provide the Multimedia Enforcement Division (MED) with a copy of this written policy or directive.

D. Describe the relationship between the involved facilities and the person(s) responsible for conducting environmental audits. Explain how AT&T ensures the auditor's tasks or inquiries are carried out in an objective and unobstructed manner. Include in your answer a discussion of the manner in which personnel, financial, or other potential conflicts of interest are avoided between employees of the facility and the individuals conducting an audit.

E. Provide a copy of written audit policies and procedures for the facility. The requested policies and procedures should indicate the scope of the audit, the process for examining audit findings, the protocol for communicating audit results to AT&T management, auditor conflict of interest policy, auditor education and training requirements, and follow-up measures.

4. Was the violation identified through an activity which AT&T was legally required to perform, such as under a State or Federal statute, regulation or permit, or under the terms of a judicial or administrative order or consent agreement? If so, identify the authority under which the activity was required.

5. Is the violation required to be reported under any Federal or State statute, regulation or permit? If so, identify each such statute, regulation or permit.

6. State the date on which the violation was discovered. If AT&T believed additional analysis or information was needed after the audit/systematic procedure or practice to determine whether a violation existed, state the reasons for the additional analysis.

7. If disclosure of the violation was not within ten days of the date of discovery, or such shorter period as may be provided by law, please explain, in detail, the reasons that the violation was not disclosed within ten days of discovery.

8. Identify the name, title, and employer of each individual who discovered the violation.

9. If the violation was discovered by an independent auditor, (that is, by a person not employed by AT&T), provide the date and the manner in which AT&T was made aware of the violation.

10. Explain in detail all measures taken to correct or remediate the violation. Provide an estimate of the length of time it took or will take to complete these measures. If AT&T estimates that more than 60 days will be needed to correct the violation, please explain fully and provide the opinion of any technical or engineering expert relied upon to arrive at that estimate.

11 Explain in detail all measures taken or to be taken to ensure that the violation disclosed will not be repeated. Include in your discussion any improvements made to AT&T's environmental auditing or due diligence efforts in an attempt to prevent recurrence of the violation.

12. Did the violation result in any serious actual harm to human health or the environment? Provide a full explanation of how this conclusion was reached.

13 Did the violation present or may it present, any form of endangerment to public health or the environment? Provide a full explanation of how this conclusion was reached.

14. Did the violation violate the specific terms of a judicial or administrative order or consent agreement? If so, please identify the order or agreement.

STORAGE TANK EMISSION REDUCTION PARTNERSHIP AGREEMENT

The United States Environmental Protection Agency ("EPA") and _____ ("Participating Company"), the parties herein, desire to enter into and be bound by the terms of this Storage Tank Emission Reduction Partnership Agreement ("Partnership Agreement" or "Agreement").

WHEREAS Participating Company recognizes that reducing emissions from tanks and other storage vessels with slotted guidepoles [1] can improve air quality while reducing evaporative product losses.

WHEREAS Participating Company is committed to environmental improvement and the cost-effective reduction of emissions.

WHEREAS EPA recognizes the value of cooperative emission reduction programs with industry.

WHEREAS Participating Company desires to participate in the Storage Tank Emission Reduction Partnership Program announced by EPA at 66 Fed. Reg. _____ (April ___, 2000) (hereinafter referred to as "Program notice").

NOW, THEREFORE, in consideration of the above and the mutual undertakings of each to the other, EPA and Participating Company agree as follows:

APPLICABILITY

1. The provisions of this Partnership Agreement shall apply to and be binding upon EPA and upon Participating Company, its officers, directors, agents, servants, employees, successors and assigns. Participating Company shall give notice of this Agreement to any successor in interest prior to the transfer of any ownership interest in any tank identified in Annex A.

REPRESENTATIONS

[1] A guidepole (also referred to as a gaugepole, gauge pipe or stilling well) is a vertically oriented pipe or tube that is affixed to a tank and that passes through its floating roof. Slotted guidepoles are guidepoles with slots or holes that allow stored liquids to flow into the pole, thereby enabling representative samples to be collected from within the slotted guidepole.

2(a). Participating Company represents that:

a. It notified EPA of its intent to participate in the Storage Tank Emission Reduction Partnership Program within 60 days of the Program notice.

b. It assessed and evaluated all of its NSPS Subpart Ka and Kb affected facilities [2] that are subject to equipment design requirements [3] and that have slotted guidepoles [4] (hereinafter referred to as "Tanks") at each facility/location identified in Annex A.

c. It is submitting this executed Partnership Agreement to EPA within 240 days of the Program notice.

d. Annex A (attached hereto and incorporated by reference herein) is a true, accurate and complete identification of:

i. each Tank;
ii the date(s) by which controls were or will be installed at each Tank, provided that if controls were installed before January 14, 2000, the year of installation may be used; and
iii. predicted emission reductions at each Tank that will instal controls hereunder.

e. The controls identified in Annex A were either specified in APPENDIX I to the Program notice (Acceptable Controls for Tanks with Slotted Guidepoles Under the Storage Tank Emission Reduction Partnership Program), attached hereto and incorporated by reference herein, or expressly determined by EPA to be acceptable for purposes of the Storage Tank Emission Reduction Partnership Program under APPENDIX I - 2.

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[2] NSPS Subpart Ka affected facilities are petroleum liquid storage vessels with a capacity of greater than 40,000 gallons that were constructed, reconstructed or modified after May 18, 1978, 40 CFR 60.110a; NSPS Subpart Kb affected facilities are volatile organic liquid storage vessels with a capacity of greater than 40 cubic meters that were constructed, reconstructed or modified after July 23, 1984, 40 CFR 60.110b.

[3] The equipment design requirements for floating roof tanks apply only to certain NSPS Subpart Ka and Kb affected facilities. *See* 40 CFR 60.112a and 60.112b.

[4] A slotted guidepole is a guidepole (or gaugepole) that has slots or holes through the wall of the pole. The slots or holes allow the stored liquid to flow into the pole at liquid levels above the lowest operating level.

f. The predicted emission reductions reflected in Annex A were calculated and derived through the proper use of either EPA's TANKS software (version 3.1 or later) or an alternative methodology expressly determined to be acceptable for this purpose by EPA.

g. The undersigned is a duly authorized representative of Participating Company, with full powers to make these representations, enter into this Agreement and bind Participating Company to the terms hereof.

(b). The undersigned EPA representative is authorized to enter into this Agreement and bind EPA to the terms hereof.

PARTICIPATING COMPANY UNDERTAKINGS

3. Participating Company shall install slotted guidepole controls on Tanks identified in Annex A as expeditiously as possible (e.g., when the Tank is next taken out of service) but not later than:

a. Twenty-six (26) months after issuance of the Program notice; or

b. One hundred and twenty months (120) of the Program notice if a Tank must be taken out of service in order to instal such controls, provided Annex A describes why such Tank(s) must be taken out of service and either identifies the date(s) by which appropriate interim controls will be installed (i.e., a self-aligning float equipped with at least one wiper seal gasket that is maintained at or above the height of the pole wiper) or describes why such Tank(s) must be taken out of service in order to instal interim controls.

4. Participating Company shall properly operate and maintain all slotted guidepole controls required under Paragraph 3 in the manner specified in Attachment 1 and shall include such controls and this requirement in federally enforceable permits issued by appropriate permitting authorities.

5. Participating Company shall not seek or obtain emission reduction credits for emission reductions that result from installing slotted guidepole controls under Paragraph 3 or from the work required under Paragraph 4 of this section, nor shall it use such reductions to offset or net against other emission increases in any permitting or enforcement action required by or taken pursuant to state or federal law.

6. Participating Company agrees and by entering into this Agreement consents to EPA's issuance of an order under and as specified in Paragraph 9.

EPA UNDERTAKINGS

7. Compliance with the requirements set forth herein, including Paragraphs 3 - 6, shall be deemed and will, therefore, constitute full settlement and satisfaction by EPA of those violations of the Standards of Performance for New Sources, Subparts Ka and Kb, that could be or could have been alleged in civil actions or proceedings brought by EPA or the United States concerning Participating Company's use of slotted guidepoles at Tanks identified in Annex A.

8. Within sixty (60) days of its receipt of this Partnership Agreement, EPA will promptly review and either sign and return a fully executed copy of that Agreement to Participating Company or identify deficiencies in Annex A. If deficiencies identified by EPA are not corrected and a revised Annex A is not submitted within thirty (30) days of Participating Company's receipt of such identification by EPA, Participating Company's opportunity to participate under the Storage Tank Emission Reduction Partnership Program shall then cease and all its rights, expectations, obligations and undertakings (if any) under that program and this Agreement shall terminate and be deemed a nullity.

9. If and after EPA executes this Agreement as specified in Paragraph 8, it will issue an order to Participating Company in the form provided at Attachment 2.

PUBLICITY

10. Participating Company may publicize that it is partnering with EPA under the Storage Tank Emission Reduction Partnership Program.

11. Upon request, EPA will recognize and acknowledge Participating Company's participation under this Partnership Program and/or industry's leadership and assistance in identifying controls for slotted guidepoles.

ACCESS AND INSPECTION

12. Without prior notice, any authorized representative of EPA (including a designated contractor), upon presentation of credentials where Tanks are located, may enter such location(s) at reasonable times to determine compliance with the requirements, terms and conditions of this Agreement. To make such a determination, EPA's authorized representative(s) shall have full and complete access to inspect, photograph, or videotape any Tank and to copy such records related to Participating Company's undertakings under this Agreement that EPA's representative(s) may deem necessary, provided such is consistent with EPA's authority under applicable laws, permits and regulations. Access under this Paragraph is subject to the normal health and safety requirements in effect at such locations. This Paragraph is in addition to, and not in limitation of, EPA's authority to investigate, inspect or enter premises pursuant to applicable laws, permits and regulations.

FORCE MAJEURE

13. If any event occurs that causes or may cause a delay in Participating Company's compliance with Paragraphs 3 or 4 of this Agreement, Participating Company shall notify EPA within thirty (30) days after Participating Company becomes aware of such event. This notice shall reasonably describe the anticipated length of the delay, the reason(s) for the delay, measures Participating Company has taken and will take to prevent or minimize the delay, and the timetable by which these measures have been or will be implemented. Increased costs or expenses associated with the implementation of this Agreement shall not be the sole or primary basis for a change in its terms or an extension of time. Participating Company shall adopt reasonable measures to avoid or minimize any such delay.

14. If the parties agree that the delay or anticipated delay in compliance with Paragraph 3 of this Agreement has been or will be caused by circumstances beyond the reasonable control of Participating Company and its contractors as under Paragraph 20, the time for performance hereunder shall be extended for a period no longer than the length of the delay caused by such circumstances. The parties shall also then seek to agree on the period of such extension as under Paragraph 20, but if they cannot so agree, the determination by EPA shall control unless Participating Company invokes the formal Dispute Resolution provisions of Paragraph 21.

15. If EPA determines that such delay, anticipated delay or any identified portion thereof was caused by circumstances within the reasonable control of Participating Company and its contractors, Participating Company shall be in breach of this Agreement and subject to stipulated noncompliance penalties as set forth in Paragraph 16 unless Participating Company invokes the Dispute Resolution provisions of this Agreement (Paragraphs 20 - 21).

STIPULATED NONCOMPLIANCE PENALTIES

16. If Participating Company fails to comply with the requirements of Paragraphs 3 (including Annex A), 4 or 5, it shall pay up to $1,000 per day for the first thirty (30) days of noncompliance and up to $2,500 per day for each day of noncompliance thereafter until compliance is demonstrated. Stipulated penalties are to be determined for each Tank, provided that stipulated penalties for all noncompliance occurring on the same day shall not exceed $10,000 per facility at which such noncompliance exists or occurs and $25,000 per participating company. Payment of stipulated penalties shall be by cashier's check, certified check or wire transfer, payable to "Treasurer, United States of America" and delivered to EPA.

17(a). If any noncompliance with Paragraphs 3, 4 or 5 is discovered by Participating Company, it shall so notify EPA and provide a written statement describing such noncompliance by the last day of the month following the month in which such noncompliance was identified by Participating Company.

(b). If any noncompliance with Paragraphs 3, 4 or 5 is discovered by EPA, it shall so notify Participating Company and there describe such noncompliance.

18. After an opportunity to informally resolve issues under Paragraph 20, EPA will demand payment of such stipulated penalties as it determines are appropriate under the circumstance and permitted under Paragraph 16. Stipulated penalties shall be paid by the last day of the month following the month in which such demand is made unless Participating Company invokes the formal Dispute Resolution provisions of Paragraph 21.

19. For any noncompliance that is or could be subject to stipulated noncompliance penalties hereunder, EPA expressly reserves the right to seek any other relief to which it may be entitled under law, including but not limited to specific performance of this Agreement, injunctive relief under the Act and such other relief as may be available under any federal statute or the common law.

DISPUTE RESOLUTION

20. Informal If Participating Company disputes any determination made by EPA pursuant to Paragraphs 14 - 15 (Force Majeure), Paragraph 18 (Stipulated Noncompliance Penalties), Paragraphs 32 - 33 (Termination) or Appendix I (Alternate Control Technologies) but only if such alternate was requested by Participating Company, it shall send a written notice to EPA outlining the nature of the dispute/disagreement and requesting informal negotiations to resolve the dispute. Such period of informal negotiations shall not extend beyond thirty (30) days from the date when the notice was received unless the parties expressly agree otherwise in writing.

21. Formal If informal negotiations are unsuccessful, either party may request and both parties shall then attempt to reach agreement on a process and procedure for resolving the dispute by formal means using a neutral third party. Such process and procedures may include, but need not be limited to, mediation, nonbinding arbitration and binding arbitration (but only if and to the extent binding arbitration is then authorized and expressly permitted by EPA policy and the Administrative Dispute Resolution Act of 1996). If an agreement on process and procedure is not reached within sixty (60) days from the date notice was received under Paragraph 20 or as otherwise provided in this Agreement, either party may then assert whatever rights they may have hereunder in an appropriate federal court.

NOTIFICATION

22. All notices, records and submissions required under this Agreement shall be

maintained where each Tank is located or where such Tank's records are normally maintained, provided they can be made available by facsimile (or otherwise) upon request during an inspection under Paragraph 12.

23. All notices, submissions and certifications required of Participating Company under this Agreement shall be in writing and postmarked or hand delivered to:

U.S. Environmental Protection Agency
Storage Tank Emission Reduction Partnership Program
Air Enforcement Division - Station Source Enforcement Branch
Mail Code 2242A
Washington, DC 20460

All notices required of EPA and all EPA determinations under this Agreement shall be in writing and postmarked or hand delivered to:

_____
_____
_____

24. Upon completion of its obligations and undertakings under this Agreement, Participating Company shall provide a written certification of its compliance with this Agreement to EPA, including a description of the work performed under Paragraph 3, the date such work was completed and an identification of such permit(s) that were or will be issued under Paragraph 4. Such certification shall be signed by a responsible official and contain the following language:

> I certify under penalty of law that the information contained in and accompanying this document (if applicable) is true, accurate, and complete to the best of my knowledge, information and belief after reasonable inquiry.

For purposes of this Paragraph, a "responsible official" means the president, secretary, treasurer, or a vice-president of Participating Company, its senior management representative(s) where such Tanks are located, or any person who performs similar policy or decision-making functions for Participating Company.

MISCELLANEOUS PROVISIONS

25. Participating Company agrees to accept service from EPA by mail with respect to all matters relating to or arising under this Agreement at the address listed below (if different from Paragraph 23):

_____

EPA agrees to accept service from Participating by mail with respect to all matters relating to or arising under this Agreement at the address listed below (if different from Paragraph 23):

26. Annex A of this Participation Agreement may be modified only if EPA and Participating Company agree and consent to such modification in writing.

27. This Agreement does not modify or affect in any way Participating Company's responsibility to achieve and maintain compliance with all other applicable federal, state and local laws, regulations and permits.

28. Each party shall bear its own costs, attorney's fees and disbursements in this matter.

29. This document, including its attached Annex A, Appendix I and Attachments 1 and 2, encompasses the entire agreement of the parties with respect to the subject matter hereof and totally supersedes all prior agreements and understandings, whether oral or in writing.

TERMINATION

30. When Participating Company has complied with Paragraph 3, is in compliance with Paragraph 4 and has certified compliance under Paragraph 24, Participating Company may notify EPA of its intent to terminate this Agreement. EPA may object to such termination only on the grounds that Participating Company has not complied with this Agreement.

31. If EPA does not object to Participating Company's notice of intent to terminate, this Agreement will terminate ninety (90) days after the date of EPA's receipt of such notice of intent to terminate. Notwithstanding such termination of this Participation Agreement, the obligations of Paragraphs 3, 4, 5 and 7 shall continue indefinitely.

32. If EPA objects to Participating Company's notice of intent to terminate, it must do so in writing within sixty (60) days of its receipt of such notice. If EPA objects to Participating Company's notice of intent to terminate, Participating Company may invoke the Dispute Resolution provisions of this Agreement (Paragraphs 20 - 21). In resolving any dispute regarding termination of this Agreement, Participating Company shall have the burden of proving that it is, was and has been in compliance with this Agreement.

33. If EPA determines that Participating Company is in material breach of this Agreement (e.g., evinces a pattern and practice of noncompliance with its terms and conditions), it shall give notice of such breach and may give notice of its intent to terminate this Agreement. If Participating Company objects to EPA's determination and/or notice of intent to terminate, Participating Company may invoke the Dispute Resolution provisions of this Agreement (Paragraphs 20 - 21). If then terminated, Participating Company's opportunity to participate under the Storage Tank Emission Reduction Partnership Program shall then cease and all its rights, expectations, obligations and undertakings (if any) under that program and this Agreement shall terminate and be deemed a nullity.

RESERVATION OF RIGHTS

34. By entering into the Agreement, EPA understands that Participating Company neither agrees nor concedes that its use of slotted guidepoles without the controls specified in Appendix I violate or violated any Clean Air Act requirement. Similarly, Participating Company understands that EPA neither agrees nor concedes that Participating Company's prior use of slotted guidepoles without such controls was acceptable or excused in any way or on any basis whatsoever. With respect to any tank(s) other than a Tank identified in Annex A, each party reserves all rights they may have to contest or otherwise litigate any issue arising out of any use of slotted guidepoles.

EFFECTIVE DATE

35. This Participation Agreement shall be effective when signed by both Participating Company and EPA.

BY:_____

[PARTICIPATING COMPANY]

DATE:_____

BY:_____

U.S. ENVIRONMENTAL PROTECTION AGENCY

DATE:_____

Attachment 1: Operating and Maintenance Requirements for Slotted Guidepole Controls Under the Storage Tank Emissions Reduction Partnership Program

The sliding cover shall be in place over the slotted-guidepole opening through the floating roof at all times except when the sliding cover must be removed for access. If the control technology used includes a guidepole float, the float shall be floating within the guidepole at all times except when it must be removed for access to the stored liquid or when the tank is empty.

Visually inspect the deck fitting for the slotted guidepole at least once every 10 years and each time the vessel is emptied and degassed. If the slotted guidepole deck fitting or control devices have defects, or if a gap of more than 0.32 centimeters (1/8 inch) exists between any gasket required for control of the slotted guidepole deck fitting and any surface that it is intended to seal, such items shall be repaired before filling or refilling the storage vessel with regulated material.

Tanks taken out of hydrocarbon service, for any reason, do not have to have any controls in place during the time they are out of service.

Attachment 2: Form Compliance Order

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

IN THE MATTER OF:	)	
	)	Storage Tank Emission Reduction
	)	Partnership Program
[PARTICIPATING	)	
	)	Agreement No. _____
COMPANY]	)	
	)	FINDINGS and ORDER.
Respondent.	)	
	)	

Pursuant to Section 113(a)(3) of the Clean Air Act ("CAA"), consistent with the Storage Tank Emission Reduction Partnership Agreement identified above and entered into between the United States Environmental Protection Agency ("EPA") and Respondent, and based upon available information, EPA hereby makes and issues the following Findings and Order:

FINDINGS

1. Respondent is a Participating Company under above-identified Storage Tank Emission Reduction Partnership Agreement.
2. EPA promulgated New Source Performance Standards ("NSPS") for Petroleum Liquid Storage Vessels and for Volatile Organic Liquid Storage Vessels, appearing in 40 CFR Part 60, Subparts Ka and Kb.
3. Respondent owns or operates certain "affected facilities" under NSPS Subpart Ka and/or Kb that have or had floating roofs with slotted guidepoles, as identified in Annex A.

ORDER

4. Respondent shall install, maintain and operate properly those controls specified in Annex A by the date(s) there indicated and shall include or seek to include such controls and this requirement in federally enforceable permits issued by appropriate permitting authorities.
5. Respondent shall not seek or obtain emission reduction credits for emission reductions that result from its compliance with this order, nor shall it use such reductions to offset or net against other emission increases in any permitting or enforcement action required by or taken pursuant to state or federal law.
6. Pursuant to Section 113(a) of the CAA, failure to comply with this Order may lead to a civil action to obtain compliance or an action for civil or criminal penalties.

Issued this _____ day of _____, 2000

_____