

## Client Alert

# Environmental Enforcement Against Telecom Companies

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On October 2, 2003, the U.S. Department of Justice and the Environmental Protection Agency (“EPA”) announced that ALLTEL Corporation (“ALLTEL”), a leading provider of communications and information services, had agreed to pay over \$1 million to settle allegations that ALLTEL had violated the Clean Air Act (CAA), the Clean Water Act (CWA), and/or the Emergency Planning and Community Right-to-Know Act (EPCRA) at 205 facilities in 18 states. Pursuant to the settlement, ALLTEL also agreed to conduct environmental compliance audits at over 7,500 of its facilities nationwide.

The lessons to be learned from the ALLTEL settlement are threefold: (1) despite the non-environmental nature of their business, telecommunications companies can and do run afoul of U.S. environmental laws; (2) EPA does in fact enforce these laws against telecommunications companies that are not in compliance; and (3) telecommunications companies that voluntarily disclose their environmental violations to EPA in accordance with EPA’s Audit Policy can substantially reduce their penalties for those violations (something that ALLTEL failed to do).

Telecommunications companies are certainly not immune to the application of environmental laws. On the contrary, U.S. environmental laws have extensive reach, affecting a broad range of industries and operations, both large and small. For example, ALLTEL, which provides wireless, local telephone, long-distance, Internet, and high-speed data services to residential and business customers in 26 states, was charged with the following environmental violations: applying late or failing to obtain the necessary air permits to construct or install standby generators; failing to prepare spill prevention, control, and countermeasure plans for facilities storing diesel fuel; and reporting late or failing to report the presence of sulfuric acid (e.g., sulfuric acid-filled batteries) and/or diesel fuel at various ALLTEL facilities. U.S. environmental laws can even reach into basic office operations. For example, the management of common office waste such as computer monitors, fluorescent lights, and paint can trigger extensive hazardous waste requirements under the Resource Conservation and Recovery Act (RCRA).

ALLTEL is not the first telecommunications company to be investigated by EPA, nor is it likely to be the last. In 1999, following a 15-month investigation, EPA reached a settlement with MCI WorldCom Inc. (“MCI”) that required MCI to conduct environmental compliance audits at all of its facilities nationwide and to pay a penalty of \$625,000 to resolve 216 violations of the CAA, CWA, and EPCRA at 153 facilities in 29 states and the District of Columbia. EPA is aware that telecommunications companies can and do violate environmental laws and has demonstrated a willingness to target telecommunications companies for enforcement.

### Self Compliance is Good Business

In order to encourage self compliance with the environmental laws, EPA promulgated its Audit Policy in 1995. Under the Audit Policy, companies that discover environmental violations through a voluntary environmental audit or a compliance management system, promptly disclose such violations to EPA, and expeditiously correct such environmental noncompliance receive substantially reduced penalties in return. Since 1995, approximately 25 telecommunications companies have voluntarily disclosed violations of the CAA, CWA, EPCRA, and RCRA, resulting in the waiver of \$45.23 million in potential penalties (as compared to the \$2.72 million spent by these companies to achieve environmental compliance at their facilities and the \$1.11 million collected from these companies as the economic benefit gained by delaying compliance). In contrast, ALLTEL and MCI failed to self disclose their violations; instead, these violations were discovered in governmental investigations, and as a consequence, ALLTEL and MCI did not receive the penalty reductions that the Audit Policy provides.

In light of the recent ALLTEL settlement, which demonstrates that EPA will continue to enforce environmental laws against the telecommunications industry, all telecommunications companies should take a moment to assess their environmental compliance and consider whether they can avail themselves of the Audit Policy’s penalty reduction benefits, if they have not already done so.

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If you would like to find out more about EPA’s Audit Policy and protecting against comprehensive environmental audits, please contact Andrew Giaccia at (202) 974-5652 ([agiaccia@chadbourne.com](mailto:agiaccia@chadbourne.com)) or Toby Chun at (202) 974-5693 ([tchun@chadbourne.com](mailto:tchun@chadbourne.com)).