

data availability, and developing more effective regulations).

## II. On what is EPA requesting comment?

EPA's Office of Enforcement and Compliance Assurance is collecting external comment on the current set of national enforcement initiatives and whether there are other new enforcement initiatives or strategic directions of national significance and warranting federal enforcement attention that should be considered. For example, in addition to considering traditional sector-based approaches, EPA is considering broadening the scope of a national enforcement initiative to include innovative programs, such as Next Generation Compliance, where the Agency feels the application of enforcement program resources would help address critical issues. Examples of Next Generation Compliance strategies include moving away from paper reporting to electronic reporting, incorporating compliance drivers into regulations, using advanced environmental monitoring technologies, and increasing transparency by making data more readily accessible. The public is invited to propose any other areas for consideration, keeping in mind the Agency's resource constraints. Please note that some current national enforcement initiatives may be carried forward or refined and continued into FY 2014–2016.

## III. Can the deadline for comments be extended?

No. EPA issues National Program Manager Guidance (NPM Guidance) to enable EPA, states, and federally-recognized Indian tribes (tribes) to effectively align their joint implementation of environmental laws to achieve mutual goals. The NPM guidance must be timely released for state, tribal, and public comment in order to allow the states and tribes with approved programs to consider the NPM Guidance fully in their annual planning processes. These processes direct state and tribal resources according to their fiscal calendars. As a result, EPA must receive public comments by February 27, 2013 in order to make national enforcement initiative selections in keeping with this schedule.

Dated: January 18, 2013.

**Lisa Lund,**

*Director, Office of Compliance.*

[FR Doc. 2013–01706 Filed 1–25–13; 8:45 am]

**BILLING CODE 6560–50–P**

## ENVIRONMENTAL PROTECTION AGENCY

[Docket ID Number EPA–HQ–OECA–2013–0042; FRL–9774–2]

### Clean Water Act Class II: Proposed Administrative Settlement, Penalty Assessment and Opportunity To Comment Regarding AboveNet Communications, Inc.

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice.

**SUMMARY:** EPA has entered into a Consent Agreement with AboveNet Communications, Inc. to resolve violations of the Clean Water Act (CWA) and the Emergency Planning and Community Right-to-Know Act (EPCRA), and their implementing regulations.

The Administrator is hereby providing public notice of this Consent Agreement and proposed Final Order (CAFO), and providing an opportunity for interested persons to comment on the CWA and EPCRA portions of this Consent Agreement, as required by CWA Section 311(b)(6)(C).

**DATES:** Comments are due on or before February 27, 2013.

**ADDRESSES:** Submit your comments, identified by Docket ID No. EPA–HQ–OECA–2013–0042, by one of the following methods:

- *www.regulations.gov:* Follow the on-line instructions for submitting comments.
- *Email:* [doCKET.oeca@epa.gov](mailto:doCKET.oeca@epa.gov), Attention Docket ID No. EPA–HQ–OECA–2013–0042.
- *Fax:* (202) 566–9744, Attention Docket ID No. EPA–HQ–OECA–2013–0042.
- *Mail:* Enforcement and Compliance Docket Information Center, Environmental Protection Agency, Mailcode: 2822T, 1200 Pennsylvania Ave. NW., Washington, DC 20460, Attention Docket ID No. EPA–HQ–OECA–2013–0042.
- *Hand Delivery:* Enforcement and Compliance Docket Information Center in the EPA Docket Center (EPA/DC), EPA West, Room B 3334, 1301 Constitution Avenue NW., Washington, DC. The EPA Docket Center Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Reading Room is (202) 566–1744, and the telephone number for the Enforcement and Compliance Docket is (202) 566–1927. Such deliveries are only accepted during the Docket's normal hours of operation, and

special arrangements should be made for deliveries of boxed information.

*Instructions:* Direct your comments to Docket ID No. EPA–HQ–OECA–2013–0042. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at [www.regulations.gov](http://www.regulations.gov), including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through [www.regulations.gov](http://www.regulations.gov). The [www.regulations.gov](http://www.regulations.gov) Web site is an "anonymous access" system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an email comment directly to EPA without going through [www.regulations.gov](http://www.regulations.gov), your email address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD-ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses. For additional information about EPA's public docket, visit the EPA Docket Center homepage at <http://www.epa.gov/epahome/dockets.htm>.

*Docket:* All documents in the docket are listed in the [www.regulations.gov](http://www.regulations.gov) index. Although listed in the index, some information is not publicly available, e.g., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available either electronically at [www.regulations.gov](http://www.regulations.gov) or in hard copy at the Enforcement and Compliance Docket Information Center in the EPA Docket Center (EPA/DC), EPA West, Room B 3334, 1301 Constitution Avenue NW., Washington, DC. The EPA Docket Center Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Reading Room is (202) 566–1744, and the telephone number for the

Enforcement and Compliance Docket is (202) 566-1927.

**FOR FURTHER INFORMATION CONTACT:**

Sanda Howland, Special Litigation and Projects Division (2248-A), U.S. Environmental Protection Agency, 1200 Pennsylvania Avenue NW., Washington, DC 20460; telephone: (202) 564-5022; fax: (202) 564-9001; email: [howland.sanda@epa.gov](mailto:howland.sanda@epa.gov).

**I. Background**

This settlement agreement is the result of voluntary disclosures by AboveNet Communications, Inc., (AboveNet) to the Special Litigation and Projects Division (SLPD) in the Office of Civil Enforcement of potential EPCRA Sections 311 and 312 reporting violations and CWA violations related to Spill Prevention, Control, and Countermeasure (SPCC) Plan

requirements. AboveNet, a telecommunications company organized under the laws of the state of Delaware and located at 360 Hamilton Avenue, White Plains, NY 10601, disclosed these potential violations pursuant to EPA's *Incentives for Self-Policing: Discovery, Disclosure, Correction and Prevention of Violations* (Audit Policy), 65 FR 19,618 (April 11, 2000).

EPA determined that AboveNet's disclosures satisfied all the conditions set forth in the Audit Policy, and therefore qualify for a 100% reduction of the civil penalty's gravity component. Pursuant to the settlement agreement, EPA proposes to waive the gravity based penalty. AboveNet will pay a civil penalty in the amount of \$19,024.00, which is the amount of the economic benefit gained by AboveNet attributable to its delayed compliance with the CWA

and EPCRA. EPA and AboveNet negotiated an administrative Consent Agreement in accordance with EPA's Consolidated Rules of Practice, 40 CFR part 22, specifically 40 CFR 22.13(b) and 22.18(b) (*In the Matter of AboveNet Communications, Inc.*, Docket Nos. CWA-HQ-2012-8000, EPCRA-HQ-2012-8000). This Consent Agreement is subject to public notice and comment under CWA Section 311(b)(6)(C), 33 U.S.C. 1321(b)(6)(C).

AboveNet violated CWA Section 311(j), 33 U.S.C. 1321(j), and the regulations found at 40 CFR part 112, because it failed to prepare and implement SPCC plans for the 4 facilities listed below. As authorized by CWA Section 311(b)(6), 33 U.S.C. 1321(b)(6), EPA has assessed a civil penalty for these violations.

	Site/building code	Address	City	State
1	DC-21M	2100 M Street NW., Suite P110	Washington	DC.
2	IL-52R	5201 Rose Street	Chicago	IL.
3	MA-SUM	1 Summer Street	Boston	MA.
4	PA-401	401 N. Broad Street, Suites 240 & 323	Philadelphia	PA.

Under CWA Section 311(b)(6)(A), 33 U.S.C. 1321(b)(6)(A), any owner, operator, or person in charge of a vessel, onshore facility, or offshore facility from which oil is discharged in violation of CWA Section 311(b)(3), 33 U.S.C. 1321(b)(3), or who fails or refuses to comply with any regulations that have been issued under CWA Section 311(j), 33 U.S.C. 1321(j), may be assessed an administrative civil penalty of up to \$177,500 by EPA. Class II proceedings under CWA Section 311(b)(6) are conducted in accordance with 40 CFR part 22.

AboveNet also violated EPCRA Section 311, 42 U.S.C. 11021, and the regulations found at 40 CFR part 370, when it failed to submit a Material Safety Data Sheet (MSDS) for a hazardous chemical(s) or, in the alternative, a list of such chemicals, at 48 facilities for varying lengths of time between 2007 and 2011. EPA, as authorized by EPCRA Section 325, 42 U.S.C. 11045, has assessed a civil penalty for these violations.

AboveNet also violated EPCRA Section 312, 42 U.S.C. 11022, and the regulations found at 40 CFR part 370, when it failed to prepare and submit emergency and chemical inventory forms to the Local Emergency Planning Commission (LEPC), the State Emergency Response Commission (SERC), and/or the fire department with jurisdiction over 48 facilities listed in Attachment A for varying lengths of

time between 2007 and 2011. EPA, as authorized by EPCRA Section 325, 42 U.S.C. 11045, has assessed a civil penalty for these violations. Attachment A to the proposed CAFO lists the 48 telecommunications facilities in violation of EPCRA Sections 311 and 312.

Under EPCRA Section 325, 42 U.S.C. 11045, the Administrator may issue an administrative order assessing a civil penalty against any person who has violated applicable emergency planning or right-to-know requirements, or any other requirement of EPCRA. Proceedings under EPCRA Section 325 are conducted in accordance with 40 CFR part 22.

The procedures by which the public may comment on a proposed Class II penalty order, or participate in a CWA Class II penalty proceeding, are set forth in 40 CFR 22.45. The deadline for submitting public comment on this proposed final order is February 27, 2013. All comments will be transferred to the Environmental Appeals Board (EAB) of EPA for consideration. The powers and duties of the EAB are outlined in 40 CFR 22.4(a).

Pursuant to CWA Section 311(b)(6)(C), 33 U.S.C. 1321(b)(6)(C), EPA will not issue an order in this proceeding prior to the close of the public comment period.

**List of Subjects**

Environmental protection.

Dated: December 14, 2012.

**Andrew Stewart,**

*Acting Division Director, Special Litigation and Projects Division, Office of Enforcement and Compliance Assurance.*

[FR Doc. 2013-01708 Filed 1-25-13; 8:45 am]

**BILLING CODE 6560-50-P**

**ENVIRONMENTAL PROTECTION AGENCY**

[FRL-9773-7]

**Operating Industries, Inc. Superfund Site, Monterey Park, CA; Notice of Proposed CERCLA Administrative De Minimis Settlement**

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice; request for comment.

**SUMMARY:** In accordance with Section 122(i)(1) of the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended (CERCLA), 42 U.S.C. 9622(i) and Section 7003(d) of the Resource Conservation and Recovery Act, as amended (RCRA), 42 U.S.C. 6973, notice is hereby given of a proposed administrative settlement with 47 *de minimis* settling parties for recovery of response costs concerning the Operating Industries, Inc. Superfund Site in Monterey Park, California. The settlement is entered into pursuant to Section 122(g) of CERCLA, 42 U.S.C.