

Telecommunications Companies Face Potential Government Investigations Related to Lead-Sheathed Cables

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Concerns about potential widespread lead contamination of residential neighborhoods, schools and drinking water supplies from lead sheathing in telecommunications wires, fueled by a series of recent articles in the *Wall Street Journal* (*WSJ*), have prompted governmental investigations that soon may be coming to your neighborhood if you are a telecommunications company or other entity that owns or operates old or abandoned copper lines with lead sheathing.

The *WSJ* published a series of articles from July 9, 2023 to July 12, 2023 concerning the potential for widespread contamination of soil, groundwater, surface water, and sediment by lead from lead-sheathing in copper cable systems. The articles identified approximately 2,000 wires that were laid in the 1800s through the 1960s by American Telephone & Telegraph (AT&T) and other telecommunications companies.

Data regarding the potential impact of these lead wires is currently limited, as is data as to the cost of removal or replacement. According to Raymond James analysts, AT&T's expenses for removing lead-covered cables could range from \$264 million to \$1.2 billion spread over 15-25 years, resulting in an annual cost of roughly \$84 million. Analysts from Goldman Sachs and Morgan Stanley have estimated the removal cost for AT&T's lead-sheathed cables to fall between \$2 and \$4 billion, based on a network of approximately 60,000 miles of cables, with varying costs per mile, ranging from \$34,000 to \$69,000. Where access to the cables is more challenging, such as underwater wires, the cost is greater.

At the Federal level, the U.S. Department of Justice (DOJ) is in the preliminary stages of an investigation through its Southern District of New York office, seeking to determine whether telecom companies were aware of the potential risks related to lead-sheathed cables concerning their workers and the environment.

Additionally, the U.S. Environmental Protection Agency (EPA) has sent letters to some telecommunications firms under its authority granted by the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), requesting existing sampling data and future testing plans concerning lead-sheathed cables to be provided within 10 days.

At the state level, New York Governor Hochul and the Department of Public Service have directed telecommunications companies within the state to provide a comprehensive inventory of lead-covered wiring to assess the extent of its usage. Furthermore, soil sampling has been ordered to understand the potential impact on surface soils.

If your company owns or operates older copper telephone cables or conduit carrying them, you should proactively address these significant concerns. EPA and State regulators will be actively evaluating potential for contamination to surface soils, groundwater, surface water and sediments. Companies that receive formal information requests, typically issued under EPA's authority pursuant to Section 103 of CERCLA or similar provisions under other federal environmental laws, and/or similar state investigation requests should consult with qualified counsel in preparing responses to such inquiries. Environmental counsel versed in advising clients on such information requests can help ensure that all information provided is correct and crafted so as to minimize the risk of additional follow-up inquiries.

It is prudent for companies to consider such governmental requests as akin to formal discovery requests, since responses to them may be deemed admissions in any subsequent enforcement actions and subject to penalties for providing incorrect or misleading information. Specific objections may also be appropriate if requests are worded in a vague or overbroad manner, effectively requiring the responder to guess as to the intent of the request.

To the extent that the information conveyed in the *WSJ's* news coverage is indicative of significant potential future liabilities for companies with holdings involving lead-sheathed cables, it may also behoove the company's management to conduct an inquiry into any environmental insurance coverage they may have pursuant to specific environmental coverages or old Comprehensive General Liability (CGL) insurance policies issued prior to the mid-1980s, which insurers adopted absolute pollution exclusion clauses into CGL policies. If so, notice letters should be sent to the respective carriers as soon as possible so as to minimize any potential late notice defense.