



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION IX

75 Hawthorne Street
San Francisco, CA 94105-3901

OCT 10 2009

Via Certified Mail (Return Receipt Requested) and electronic mail

Certified Mail #: 7006 0810 0003 9306 3257

Mr. Dennis Wendt
1660 Newburg Road
Fortuna, California 95540

Re: Findings of Violation and Order for Compliance under Sections 308 and 309(a) of the Clean Water Act, 33 U.S.C. §§ 1318 and 1319(a), Docket No. CWA-309(a)-09-001

Dear Mr. Wendt:

We write to inform you that the U.S. Environmental Protection Agency, Region 9 ("EPA") has issued the enclosed Findings of Violation and Order for Compliance ("Order") pursuant to Sections 308 and 309(a) of the Clean Water Act ("CWA" or "the Act") to you and Wendt Construction ("Respondents") regarding violations at your property located in Humboldt County, Fortuna, California, Assessor's Parcels 202-121-078, 202-121-19, and 202-121-06 ("the Property").

EPA has information that beginning in or around September 2007, you and Wendt Construction conducted land clearing, grading and other work, including excavation and installation of sewer lines in the northern portion of the Property, and the construction of a berm along Strongs Creek on the northeastern side of the Property. You and Wendt Construction have also conducted work that includes placement of a culvert and silt fence in the southern portion of the Property. As a result of this work, you have discharged dredged and/or fill material into waters of the United States without a section 404 permit in violation of CWA section 301(a), 33 U.S.C. § 1311(a). The Order requires you to implement a removal and restoration plan ("R/R Plan") to remove and legally dispose of the unauthorized material and restore the affected areas on the Property.

We note that failure to comply with any provision of this Order could subject you to civil action for appropriate relief pursuant to Section 309(b) of the Act, 33 U.S.C. 1319(b), and penalties under Section 309(d) of the Act, 33 U.S.C. 1319(d). Section 309(c) of the Act provides criminal sanctions for negligent or knowing violations, 33 U.S.C. § 1319(c)(1), (c)(2), and specifically provides penalties for knowingly making false statements, 33 U.S.C. § 1319(c)(4).

Enclosed for your information is an EPA information sheet about compliance assistance available to small businesses and the rights of small businesses to comment to the Small Business Regulatory Enforcement Fairness Act ("SBREFA") Ombudsman about EPA's enforcement activity. We provide the information sheet without making a determination whether your business is a small business under SBREFA.

As you know, your attorney has already been in touch with EPA and has conveyed your intention to reach an efficient and prompt resolution to this matter. To that end, EPA has scheduled a conference call for October 17, 2008 at 2:00 p.m. to discuss the requirements of the Order, as well as the preliminary wetlands delineation report prepared by your consultants. In regards to the walkway/berm on the Property, EPA understands that you are concerned about the potential for flooding this winter and we are also willing to discuss your immediate plans for this area. We look forward to reaching an expeditious resolution.

I invite you to work with EPA to resolve this matter. If you have questions, please contact Mr. Wilson Yee of our CWA Compliance Office at (415) 972-3484, Ms. Melissa Scianni of our CWA Wetlands Office at (415) 972-3821, or Ms. Marcela von Vacano of our Office of Regional Counsel at (415) 972-3905.

Sincerely,

ALEXIS STRAUSS
Director, Water Division

Enclosure

cc: Richard Smith, Esq.
The Harland Law Firm LLP
622 H Street
Eureka, California 95501

Jane Hicks
U.S. Army Corps of Engineers
San Francisco District
1455 Market Street, 16th Floor
San Francisco, California 94103

Kelley Reid
U.S. Army Corps of Engineers
San Francisco District, Eureka Field Office
601 Startare Dr, Box 14
Eureka, California, 95501

John Short
California Regional Water Quality Control Board
North Coast Region
5550 Skyline Blvd., Suite A
Santa Rosa, California, 95403

Gordon Leppig
California Department of Fish & Game
Northern Region
619 Second Street
Eureka, CA 95501

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION IX**

IN THE MATTER OF:)	
)	Docket No. CWA-309(a)-09-001
Dennis Wendt and Wendt Construction)	
1660 Newburg Rd.)	FINDINGS OF VIOLATION
Fortuna, CA 95540)	AND ORDER FOR COMPLIANCE
)	
Respondents)	Proceeding under Sections 308 and 309(a)
)	of the Clean Water Act, 33 U.S.C. §§ 1318
)	and 1319(a)
_____)	

Authority

The following Findings are made and Order issued pursuant to the authorities vested in the Administrator of the U.S. Environmental Protection Agency (“EPA”) by sections 308 and 309(a) of the Clean Water Act (“CWA”), 33 U.S.C. §§ 1318 and 1319(a). The Administrator has delegated these authorities to the Regional Administrator of EPA Region IX, who has in turn delegated them to the Director of the Water Division (“Director”) of EPA Region IX.

Statutory and Regulatory Background

1. Under CWA section 301(a), 33 U.S.C. § 1311(a), it is unlawful for a person to discharge any pollutant from a point source into a navigable water without a permit issued under the CWA.
2. “Pollutant” means, among other things, dredged spoil, solid waste, chemical wastes, biological materials, rock and sand, CWA section 502(6), 33 U.S.C. § 1362(6), and includes “dredged material” and “fill material” as defined by 33 C.F.R. § 323.2.
3. “Discharge of a pollutant” means “any addition of any pollutant to navigable waters from any point source.” CWA section 502(12), 33 U.S.C. § 1362(12).

4. “Discharge of fill material” means the addition of fill material into “waters of the United States” and includes, among others and without limitation, the following activities: placement of fill that is necessary for the construction of any structure in a water of the U.S.; site development fills for commercial, residential and other uses; and road fills. 33 C.F.R. § 323.2(f).
5. “Navigable waters” means “the waters of the United States.” CWA section 502(7), 33 U.S.C. § 1362(7). The U.S. Army Corps of Engineers (“Corps”) and EPA regulations further define “waters of the United States” to include: (i) all waters which are currently used, were used in the past, or may be susceptible to use in interstate or foreign commerce, (ii) tributaries to such waters, and (iii) wetlands adjacent to waters of the U.S other than waters that are wetlands themselves. 33 C.F.R. § 328.3(a)(1), (5) and (7) (Corps regulations); 40 C.F.R. § 230.3(s)(1), (5) and (7) (EPA regulations).
6. The term “wetlands” means those areas that are inundated or saturated by surface or ground water at a frequency and duration sufficient to support, and that under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions. 33 C.F.R. § 328.3(b); 40 C.F.R. § 230.3(t).
7. The term “adjacent” means bordering, contiguous, or neighboring. 33 C.F.R. § 328.3(c); 40 C.F.R. § 230.3(b). Wetlands separated from other waters of the United States by man-made dikes or barriers, natural rivers berms, beach dunes and the like are “adjacent wetlands.” 33 C.F.R. § 328.3(c); 40 C.F.R. § 230.3(b).

8. "Point source" means "any discernible, confined and discrete conveyance . . . from which pollutants are or may be discharged." CWA section 502(14), 33 U.S.C. § 1362(14).
9. "Person" includes an individual and various types of business entities, including corporations. CWA section 502(5), 33 U.S.C. § 1362(5).
10. Under CWA section 404, 33 U.S.C. § 1344, and its implementing regulations at 33 C.F.R. Part 323, the discharge of dredged or fill material into a water of the United States requires a permit ("section 404 permit") issued by the Corps.
11. Section 308(a) of the Act, 33 U.S.C. § 1318(a), authorizes EPA to require the submission of any information that EPA may reasonably require to determine if any person is in violation of, inter alia, CWA sections 301 or 404.

Factual Background

12. Wendt Construction is a California corporation owned and operated by Dennis Wendt, a contractor engaged in construction site preparation, excavating, rough and fine grading, land clearing, land development, and infrastructure installation.
13. Dennis Wendt is an individual who owns property located at Longitude -124.15, Latitude 40.58, WGS84, Assessor's Parcels #202-121-078, 202-121-19, and 202-121-06 in Humboldt County, Fortuna, California, which is also known as the East Littlefield Property ("the Property").
14. The Property is bordered on the north by Strongs Creek, a perennial stream. Strongs Creek flows into the Eel River, a perennial and navigable water. From the Property, Strongs Creek currently flows approximately 1.3 miles to the Eel River,

which has been determined to be a navigable water by the Corps up to 7.1 miles from the Pacific Ocean.

15. On the south, the Property is bordered by a perennial, spring-fed unnamed tributary to Strongs Creek. The unnamed tributary historically flowed directly into Strongs Creek. However, due to development and agricultural activities in the area, the tributary now flows through culverts into Strongs Creek. Ponding occurs in various locations throughout the Property, especially in the south along the unnamed tributary.
16. The Eel River has beneficial uses as designated in the California Water Quality Control Plan for the North Coast Region (“Basin Plan”) that include navigation; groundwater recharge; water contact recreation; commercial and sport fishing; warm freshwater habitat; cold freshwater habitat; rare, threatened or endangered species; wildlife habitat; migration of aquatic organisms; spawning, reproduction and early development; estuarine habitat; and aquaculture.
17. Strongs Creek provides habitat for coho salmon (*Oncorhynchus kisutch*), a state- and federally-threatened species; coastal cutthroat trout (*Oncorhynchus clarki clarki*), a California species of special concern; and steelhead trout (*Oncorhynchus mykiss*) a federally-threatened species and a California species of special concern. Chinook salmon (*Oncorhynchus tshawytscha*), a federally-threatened species, occurs downstream in the lower Eel River and reports indicate it was historically present in Strongs Creek and its tributaries. Strongs Creek also has one of the southern-most documented populations of coastal cutthroat trout. The Strongs

Creek reach adjacent to the Property currently has salmonid rearing and foraging habitat and restorable spawning habitat.

18. The lower main stem Eel River and its tributaries, such as Strongs Creek, are listed under section 303(d) of the CWA as impaired for sediment, which in excess amounts impacts beneficial uses of water.
19. Beginning in or around September 2007, Wendt and Wendt Construction (“Respondents”) conducted land clearing, grading and other work, including excavation and installation of sewer lines and the construction of a berm along Strongs Creek on the north side of the Property. Respondents began work, using an excavator, dozer, scraper, grader and backhoe, on Phase I of a proposed subdivision development comprising 63 housing units. In the southern portion of the Property, Respondents conducted work that included placement of a culvert and silt fence. As a result of this work and associated activities, Respondents have placed fill in various areas of the Property.
20. On September 27, 2007, the Corps inspected the Property and observed filling and grading of wetlands.
21. On October 5, 2007, the Corps issued a Cease and Desist Order to Dennis Wendt. In the Order, the Corps directed Wendt to cease unauthorized activity in waters of the U.S. and remove the unauthorized fill material by May 31, 2008. The Order also required Wendt to provide the Corps information and responses to a questionnaire. Wendt did not comply with either of these requirements in the Corps’ Order.

22. EPA issued an information request under the authority of CWA section 308, 33 U.S.C. § 1318, to Respondents regarding filling and grading activities at the Property, which was received by Respondents on December 24, 2007. A response was due within thirty (30) days of receipt of the request. Respondents submitted a late and incomplete response to the section 308 request on February 1, 2008, which included the required certification statement but was not signed.
23. On January 16 and 17, 2008, staff from the EPA, the Corps and the Regional Board conducted an inspection and investigation of the Property, including interviews with Dennis Wendt and his associates.
24. During the January 2008 inspection EPA inspectors investigated, observed and documented evidence of the following work on the Property: excavation (cutting) to sub-grade for the main street entrance; placement and compaction of fill alongside the cut areas to bring lots to a higher elevation; trenching for sewer lines, which were tied into existing sewer lines for Strongs Creek Plaza, and backfilling these trenches; installation of a drop inlet and culvert to collect surface water from the unnamed tributary on the southern part of the property; and placement of fill material on the northeast portion of the property to build a berm to be used as a pedestrian walkway along Strongs Creek.
25. During the January 2008 inspection, EPA inspectors also observed significantly disturbed vegetation and soil surfaces throughout the Property and saw that some areas appeared to consist of recently placed fill material rather than native soils. The activities observed by EPA included placement of earthen and other fill material within what appeared to be wetlands.

26. EPA issued a second information request under CWA section 308, 33 U.S.C. § 1318, to Respondents on February 29, 2008. On April 8, 2008, Respondents submitted an incomplete response to this request. The response was inadequate as follows: (a) it did not contain the required certification statement; (b) the response contained information in regards to Phase I only, not all areas where Respondents conducted work, including omitting construction of the berm in and around wetlands adjacent to Strongs Creek; (c) the start and end dates for the work on Phase I are different from the dates provided for the same work in response to the first section 308 request; and (d) the names of certain individuals involved with the work were omitted in the second response and their contact information was not provided.
27. On March 14, 2008, Wendt submitted to EPA a preliminary wetlands delineation report prepared by his consultants Winzler & Kelly (“W & K”), which identified wetlands in the eastern, western and southern sections of the Property.
28. On March 17-20, 2008, EPA inspectors conducted another site inspection, including preliminary evaluation of the findings in W & K’s wetlands delineation report and collection of additional data regarding the presence of waters of the U.S., including wetlands, at the site. EPA inspectors observed and documented foreign material on the surface and in the soil profile in the form of gravels, concrete, and asphalt debris.
29. During the March 2008 inspection, EPA dug a soil pit in the Phase 1 area to examine hydrology and soils. Native soil was not reached after digging two feet deep and it was determined that a backhoe would have been necessary to more fully

characterize wetlands in this disturbed area. Therefore, EPA did not dig any other pits in the Phase 1 area, and instead, EPA examined W & K's existing open pits for indicators of hydrology. Discrepancies between W & K findings and the conditions present at the time of the EPA inspection were recorded and photo documented.

30. EPA inspector Wilson Yee spoke with Wendt on March 20, 2008. Wendt stated that the source of all construction debris observed by EPA within and beyond the Phase 1 footprint was from the Strongs Creek Plaza construction project. When Yee asked how the debris came to be spread over so great an area of the Property, Wendt stated that his scrapers likely distributed the debris in preparing the site for the Phase 1 work.
31. Based on the January and March 2008 visits and additional investigations, including review of aerial photographs and other documents, EPA inspectors identified wetlands on the Property, including a wetland that directly abuts the unnamed tributary to Strongs Creek. The adjacent wetlands, Strongs Creek and the unnamed tributary to Strongs Creek are generally identified on the attached aerial map (Attachment 1), which shows that there are at least 10.64 acres of jurisdictional wetlands on the Property. The map also generally identifies the areas where fill was placed on at least 2.89 acres of jurisdictional wetlands.
32. Based on information provided to EPA, Respondents did not apply for Corps authorization to discharge dredged or fill material to waters of the United States at the Property.

Findings of Violation

33. Strongs Creek, the unnamed tributary to Strongs Creek, and the adjacent and abutting wetlands are “waters of the United States” under CWA section 502(7), 33 U.S.C. § 1362(7). See also 33 C.F.R. § 328.3(a) and 40 C.F.R. § 230.3(s).
34. The fill and construction material placed or caused to be placed in wetlands adjacent to Strongs Creek, the unnamed tributary and its abutting wetlands are “dredged material(s)” and/or “fill material(s)” under CWA section 404, 33 U.S.C. § 1344, and 33 C.F.R. § 323.2(e), and “pollutant(s)” under CWA section 502(6), 33 U.S.C. § 1362(6).
35. The placement of dredged and/or fill material in wetlands adjacent to Strongs Creek, the unnamed tributary and its abutting wetlands constitutes the “discharge of pollutants” under CWA section 502(12), 33 U.S.C. § 1362(12).
36. The earthmoving equipment used by Respondent to place dredged and/or fill material in wetlands adjacent to Strongs Creek, the unnamed tributary and its abutting wetlands is a “point source” under CWA section 502(14), 33 U.S.C. § 1362(14).
37. Respondents are “persons” under CWA section 502(5), 33 U.S.C. § 1362(5).
38. Respondents did not obtain authorization under a section 404 permit for the above described discharges.
39. Respondents’ discharges adversely impacted waters of the U.S. and surrounding habitat. Secondary impacts to Strongs Creek, resulting from the fill placed in wetlands and the unnamed tributary, include increased flood peaks and increased sediment delivery, which affects water quality and wildlife habitat.

40. By discharging dredged and/or fill material into waters of the United States without a section 404 permit, Respondents have violated CWA section 301(a), 33 U.S.C. § 1311(a).
41. By failing to respond to the December 6, 2007 and February 29, 2008 information requests issued by EPA in a complete and timely manner, Respondents have violated CWA section 308(a), 33 U.S.C. § 1318(a).

ORDER

Based on the foregoing FINDINGS OF VIOLATION and pursuant to the authorities of CWA sections 308 and 309(a), 33 U.S.C. §§ 1318 and 1319 (a), it is hereby ORDERED:

1. Respondents shall not discharge any dredged or fill material into any waters of the United States at the Property except in compliance with a section 404 permit.
2. No later than thirty **(30) days** after receipt of this Order, Respondents shall submit to EPA a Removal and Restoration Plan (“R/R Plan”) for removing the unauthorized discharges as specified in paragraph 3 below, and a Mitigation Project Plan (“Mitigation Plan”) as specified in paragraphs 5 and 6 below. The Plans shall be prepared by qualified professionals with the requisite expertise in wetland science. Upon approval by EPA, these Plans shall be deemed incorporated by reference into this Order, and the Respondents shall implement the Plans.
3. The R/R Plan shall include at a minimum the following:
 - (a) a removal component that provides for removal of the unauthorized discharges in the area marked as “Fill Area in EPA Wetlands” and shaded in light blue in Attachment 1. The removal component shall provide that the impacted area will be

re-contoured to reflect pre-disturbed conditions and shall require disposal of all removed material at appropriate upland locations in compliance with all local, state and federal requirements;

(b) a restoration component that 1) provides for restoration of the hydrologic and biological functions of the wetlands affected by the unauthorized discharges; 2) sets forth specific measures to ensure that impacted wetland areas will be revegetated with native wetland plant species; and 3) specifies erosion and sedimentation control measures to curtail excessive erosion of bank areas that shall then be implemented during and after the required removal efforts;

(c) a schedule for implementing each component of the R/R Plan; and

(d) a five-year monitoring program that includes specific measures of physical and biological parameters and criteria to evaluate the success of the removal and restoration components. Monitoring reports documenting the status of these success criteria shall be submitted annually to EPA.

4. Immediately upon approval of the R/R Plan by EPA, Respondent shall contact the Corps to determine the need for section 404 authorization for any discharges of dredged or fill material associated with implementation of the R/R Plan. The Corps contact is:

Kelley Reid
U.S. Army Corps of Engineers
Eureka Field Office
601 Startare Dr, Box 14
Eureka, CA 95501

5. The Mitigation Plan shall provide for appropriate mitigation to account for the permanent loss of any areas that cannot be restored and for the temporal loss for

those areas that can be restored. If Respondents identify areas that cannot be restored, the Mitigation Plan shall include the reasons why on-site removal and restoration is not feasible. The Mitigation Plan shall propose a specific geographic location for mitigation on the Property if feasible and in no event beyond the Eel River watershed. The Mitigation Plan shall also identify the aquatic habitat type that will serve as mitigation for the waters impacted by the unauthorized activities.

6. The Mitigation Plan shall include at a minimum the following:
 - (a) a detailed description of the existing and, if appropriate, proposed physical, biological and chemical conditions of the proposed mitigation project site. The description must include topographic, hydrogeomorphic, and biological resource-related maps associated with the mitigation project site. The description must also discuss in detail the historic and existing land-use activities that pertain to the mitigation project site;
 - (b) a schedule for implementing and completing each step of the Mitigation Plan; and
 - (c) a five-year monitoring program, including specific measures of physical and biological parameters and criteria to evaluate the success of the Mitigation Plan. Monitoring reports documenting the status of these success criteria shall be submitted annually to EPA.

7. All submittals made pursuant to this Order shall be mailed to the following address:

Wilson Yee
U.S. Environmental Protection Agency
CWA Compliance Office (WTR-7)
75 Hawthorne Street
San Francisco, CA 94105

8. All submittals required under this Order shall include the following certification signed by Respondents or Respondents' duly authorized representative:

I certify under penalty of law that this document and all attachments were prepared by direct supervision or in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of those who manage the system or are directly responsible for gathering the information, I certify that the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations.

9. This Order is not a permit under the CWA, and does not waive or modify Respondents' obligations and responsibilities to ascertain and comply with all applicable federal, state or local laws, regulations, ordinances, permits, licenses or orders.
10. EPA has promulgated regulations to protect the confidentiality of the business information it receives at 40 C.F.R. Part 2, Subpart B. A claim of business confidentiality may be asserted in the manner specified by 40 C.F.R. § 2.203(b) for all or part of the information requested. EPA will disclose business information covered by such a claim only as authorized under 40 C.F.R. Part 2, Subpart B. If no claim accompanies the business information at the time EPA receives it, EPA may make it available to the public without further notice. Respondents may not withhold from EPA any information on the grounds that it is confidential business information.

11. This requirement of information is not subject to review by the Office of Management and Budget under the Paperwork Reduction Act because it is not a “collection of information” within the meaning of 44 U.S.C. § 3502(3). It is directed to fewer than ten persons and is an exempt investigation under 44 U.S.C. § 3518(c)(1) and 5 C.F.R. § 1320.4(a)(2).
12. This Order shall be binding upon Respondents, and Respondents’ agents, servants, employees, heirs, successors and assigns.
13. Issuance of this Order shall not be deemed an election by EPA to forego any remedies available to it under the law, including without limitation any administrative, civil, or criminal action to seek penalties, fines, or other appropriate relief under the Act. EPA reserves all rights and remedies, legal and equitable, to enforce any violation cited in this Order and to enforce this Order.
14. CWA section 309(a), (b), (d) and (g), 33 U.S.C. § 1319(a), (b), (d) and (g), provides administrative and/or civil judicial relief for failure to comply with the CWA. In addition, CWA section 309(c), 33 U.S.C. § 1319(c), provides criminal sanctions for negligent or knowing violations of the CWA, and for knowingly making false statements.
15. This Order shall become effective upon the date of receipt by Respondents.

Alexis Strauss, Director
Water Division
U.S. Environmental Protection Agency



Strong's Creek

Unnamed Tributary

1.571454 acres

0.396541 acres

0.096582 acres

10.64 approximate acres of wetlands

2.89 estimated filled acres

0.227197 acres



EPA site visit 3/18 to 3/20/08

- debris_area
- silt_fence
- Phase 1 footprint
- EPA_wetlands
- Fill Area in Wetlands
- Berm

Aerial photo: Airphoto USA, 2005-05-01 Contour lines provided by Wendt 1/1/08
 Map created by Wilson Yee 5/1/08





Office of Enforcement and Compliance Assurance
INFORMATION SHEET

U. S. EPA Small Business Resources

If you own a small business, the United States Environmental Protection Agency (EPA) offers a variety of compliance assistance resources such as workshops, training sessions, hotlines, websites, and guides to assist you in complying with federal and state environmental laws. These resources can help you understand your environmental obligations, improve compliance, and find cost-effective ways to comply through the use of pollution prevention and other innovative technologies.

Compliance Assistance Centers

(www.assistancecenters.net)

In partnership with industry, universities, and other federal and state agencies, EPA has established Compliance Assistance Centers that provide information targeted to industries with many small businesses.

Agriculture

(www.epa.gov/agriculture or 1-888-663-2155)

Automotive Recycling Industry

(www.ecarcenter.org)

Automotive Service and Repair

(www.ccar-greenlink.org or 1-888-GRN-LINK)

Chemical Industry

(www.chemalliance.org)

Construction Industry

(www.cicacenter.org or 1-734-995-4911)

Education

(www.campuserc.org)

Healthcare Industry

(www.hercenter.org or 1-734-995-4911)

Metal Finishing

(www.nmfrc.org or 1-734-995-4911)

Paints and Coatings

(www.paintcenter.org or 1-734-995-4911)

Printed Wiring Board Manufacturing

(www.pwbrc.org or 1-734-995-4911)

Printing

(www.pneac.org or 1-888-USPNEAC)

Transportation Industry

(www.transource.org)

Tribal Governments and Indian Country

(www.epa.gov/tribal/compliance or 202-564-2516)

US Border Environmental Issues

(www.bordercenter.org or 1-734-995-4911)

The Centers also provide State Resource Locators (www.envcap.org/statetools/index.cfm) for a wide range of topics to help you find important environmental compliance information specific to your state.

EPA Websites

EPA has several Internet sites that provide useful compliance assistance information and materials for small businesses. If you don't have access to the Internet at your business, many public libraries provide access to the Internet at minimal or no cost.

EPA's Home Page

www.epa.gov

Small Business Gateway

www.epa.gov/smallbusiness

Compliance Assistance Home Page

www.epa.gov/compliance/assistance

Office of Enforcement and Compliance Assurance

www.epa.gov/compliance

Voluntary Partnership Programs

www.epa.gov/partners



U.S. EPA SMALL BUSINESS RESOURCES

Hotlines, Helplines & Clearinghouses

(www.epa.gov/epahome/hotline.htm)

EPA sponsors many free hotlines and clearinghouses that provide convenient assistance regarding environmental requirements. A few examples are listed below:

Clean Air Technology Center

(www.epa.gov/ttn/catc or 1-919-541-0800)

Emergency Planning and Community Right-To-Know Act

(www.epa.gov/superfund/resources/infocenter/epcra.htm or 1-800-424-9346)

EPA's Small Business Ombudsman Hotline provides regulatory and technical assistance information. (www.epa.gov/sbo or 1-800-368-5888)

The National Environmental Compliance Assistance Clearinghouse provides quick access to compliance assistance tools, contacts, and planned activities from the U.S. EPA, states, and other compliance assistance providers (www.epa.gov/clearinghouse)

National Response Center to report oil and hazardous substance spills.

(www.nrc.uscg.mil or 1-800-424-8802)

Pollution Prevention Information Clearinghouse

(www.epa.gov/opptintr/ppic or 1-202-566-0799)

Safe Drinking Water Hotline

(www.epa.gov/safewater/hotline/index.html or 1-800-426-4791)

Stratospheric Ozone Refrigerants Information

(www.epa.gov/ozone or 1-800-296-1996)

Toxics Assistance Information Service also includes asbestos inquiries. (1-202-554-1404)

Wetlands Helpline

(www.epa.gov/owow/wetlands/wetline.html or 1-800-832-7828)

State Agencies

Many state agencies have established compliance assistance programs that provide on-site and other types of assistance. Contact your local state environmental agency for more information or the following two resources:

EPA's Small Business Ombudsman

(www.epa.gov/sbo or 1-800-368-5888)

Small Business Environmental Homepage

(www.smallbiz-enviroweb.org or 1-724-452-4722)

Compliance Incentives

EPA provides incentives for environmental compliance. By participating in compliance assistance programs or voluntarily disclosing and promptly correcting violations before an enforcement action has been initiated,

businesses may be eligible for penalty waivers or reductions. EPA has two policies that potentially apply to small businesses:

The Small Business Compliance Policy

(www.epa.gov/compliance/incentives/smallbusiness)

Audit Policy

(www.epa.gov/compliance/incentives/auditing)

Commenting on Federal Enforcement Actions and Compliance Activities

The Small Business Regulatory Enforcement Fairness Act (SBREFA) established an SBA Ombudsman and 10 Regional Fairness Boards to receive comments from small businesses about federal agency enforcement actions. If you believe that you fall within the Small Business Administration's definition of a small business (based on your North American Industry Classification System (NAICS) designation, number of employees, or annual receipts, defined at 13 C.F.R. 121.201; in most cases, this means a business with 500 or fewer employees), and wish to comment on federal enforcement and compliance activities, call the SBREFA Ombudsman's toll-free number at 1-888-REG-FAIR (1-888-734-3247).

Every small business that is the subject of an enforcement or compliance action is entitled to comment on the Agency's actions without fear of retaliation. EPA employees are prohibited from using enforcement or any other means of retaliation against any member of the regulated community in response to comments made under SBREFA.

Your Duty to Comply

If you receive compliance assistance or submit comments to the SBREFA Ombudsman or Regional Fairness Boards, you still have the duty to comply with the law, including providing timely responses to EPA information requests, administrative or civil complaints, other enforcement actions or communications. The assistance information and comment processes do not give you any new rights or defenses in any enforcement action. These processes also do not affect EPA's obligation to protect public health or the environment under any of the environmental statutes it enforces, including the right to take emergency remedial or emergency response actions when appropriate. Those decisions will be based on the facts in each situation. The SBREFA Ombudsman and Fairness Boards do not participate in resolving EPA's enforcement actions. Also, remember that to preserve your rights, you need to comply with all rules governing the enforcement process.

EPA is disseminating this information to you without making a determination that your business or organization is a small business as defined by Section 222 of the Small Business Regulatory Enforcement Fairness Act or related provisions.