



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 8
1595 WYNKOOP STREET
DENVER, CO 80202-1129
Phone 800-227-8917
<http://www.epa.gov/region08>

JUL 26 2010

Ref: 8ENF-L

SENT VIA CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Ellis L. Pierce, President
Pierce Oil Company
332 W. Railroad Avenue
Pierce, UT 84501

Re: In the Matter of Pierce Oil Company, Inc. ,
Docket No. **CWA-08-2010-0020**
Administrative Complaint and Opportunity
to Request a Hearing

Dear Mr. Pierce:

Enclosed please find an Administrative Complaint and Opportunity to Request a Hearing (Complaint) issued by the U.S. Environmental Protection Agency (EPA) pursuant to its authority under § 311(b)(6)(B) of the Clean Water Act (Act), 33 U.S.C. § 1321(b)(6)(B). The Complaint is based on alleged violations of § 311(j) of the Act.

The Complaint cites Pierce Oil Company, Inc. (Pierce Oil), for failing to prepare and implement a Spill Prevention Control and Countermeasure (SPCC) plan for the Pierce Oil bulk distributor facility located at 332 W. Railroad Avenue in Price, Utah, in accordance with the oil pollution prevention regulations set forth at 40 C.F.R. §§ 112.7 and 112.8 as required by 40 C.F.R. § 112.3 for a duration of nine and a half (9.5) months.

The Complaint proposes the assessment of administrative penalties against Pierce Oil in the amount of \$37,500. EPA proposed this penalty amount after considering the applicable statutory penalty factors in § 311(b)(8) of the Act, 33 U.S.C. § 1321(b)(8): the seriousness of the violations; the economic benefit to the violator resulting from the violations; the degree of culpability involved; any other penalty for the same incident; any history of prior violations; the economic impact of the penalty on the violator; and any other factors as justice may require.

Pierce Oil has the right to a hearing to contest the factual allegations in the Complaint. A copy of the procedures for such a hearing is enclosed for review. Please note the requirements for an answer set forth in 40 C.F.R. §§ 22.15 and 22.38. **If Pierce Oil wishes to contest the allegations or the penalties proposed in the Complaint, it must file a written answer within thirty (30) days of**

receipt of the enclosed Complaint with the EPA Regional Hearing Clerk at the following address:

Ms. Tina Artemis, Regional Hearing Clerk (8RC)
U.S. EPA, Region 8
1595 Wynkoop Street
Denver, CO 80202-1129

If Pierce Oil does not file an answer by the applicable deadline, it may be found in default. A default judgment may impose the full penalty proposed in the complaint.

Whether or not Pierce Oil requests a hearing, it may confer informally with EPA concerning the alleged violations or the proposed penalty amount. However, please note that a request for an informal conference does **not** extend the thirty (30) day period for filing an answer and/or requesting a hearing. Pierce Oil has the right to be represented by an attorney at any stage of the proceedings, including any informal discussions with EPA, but this is not required.

The Small Business Regulatory Enforcement and Fairness Act (SBREFA) may apply to this situation. Enclosed is a small business information sheet, relating to the Small Business Regulatory Enforcement and Fairness Act (SBREFA), outlining compliance assistance resources available to small businesses and small governments in case these are relevant. SBREFA does not eliminate the responsibility to comply with the Act.

If Pierce Oil has any questions, the most knowledgeable people on my staff regarding this matter are Amy Swanson and Jane Nakad. Ms. Swanson is in our Legal Enforcement Program and can be reached at (303) 312-6906 if Pierce Oil wishes to request an informal settlement conference or if Pierce Oil's attorney has questions. Ms. Nakad is in our Oil Pollution Act Technical Enforcement Program and can be reached for technical questions at (303) 312-6202.

Sincerely,



Philip S. Strobel, Acting Director
Technical Enforcement Program
Office of Enforcement, Compliance
and Environmental Justice

Enclosures: Complaint and Notice of Opportunity for Hearing
Consolidated Rules of Practice, 40 C.F.R. Part 22
SBREFA Information Sheet

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 8

2010 JUL 26 AM 9:02

IN THE MATTER OF:)	ADMINISTRATIVE COMPLAINT AND
)	OPPORTUNITY TO REQUEST A HEARING
Pierce Oil Company, Inc.)	
332 West Railroad Avenue)	Proceeding to Assess Class I Civil Penalty
Price, UT 84501,)	Under Clean Water Act Section 311 for SPCC Violations
)	
Respondent.)	Docket No. CWA-08-2010-0020

FILLED
EPA REGION VIII
HEARING CLERK

LEGAL AUTHORITY

1. This Administrative Complaint is issued under the authority vested in the Administrator of the U.S. Environmental Protection Agency (EPA) by Section 311(b)(6)(B)(i) of the Clean Water Act (Act), 33 U.S.C. §1321(b)(6)(B)(i), as amended by the Oil Pollution Act of 1990. The Administrator has delegated this authority to the Regional Administrator of EPA, Region 8, who in turn has delegated it to the undersigned EPA officials (Complainant).

2. Pursuant to Section 311(b)(6)(B)(i) of the Act, and in accordance with the "Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits," codified at 40 C.F.R. Part 22 (Part 22), Complainant hereby provides notice of its proposal that the Administrator assess a civil penalty against Pierce Oil Company (Respondent) for failing to comply with Spill Prevention Control and Countermeasure regulations set forth at 40 C.F.R. Part 112 under the authority of Section 311(j) and other provisions of the Clean Water Act, 33 U.S.C., §§ 1251 *et seq.* (SPCC regulations), and notice of Respondent's opportunity to file an Answer to this Complaint and to request a hearing on the proposed penalty assessment. Subpart I of Part 22 applies to this proceeding.

ALLEGATIONS

3. Section 311(j)(1)(C) of the Act, 33 U.S.C. § 1321(j)(1)(C), provides that the President shall issue regulations “establishing procedures, methods, and equipment and other requirements for equipment to prevent discharges of oil . . . from onshore . . . facilities, and to contain such discharges . . .”

4. Initially by Executive Order 11548 (July 20, 1970), 35 Fed. Reg. 11677 (July 22, 1970), and most recently by Section 2(b)(1) of Executive Order 12777 (October 18, 1991), 56 Fed. Reg. 54757 (October 22, 1991), the President delegated to EPA his Section 311(j)(1)(C) authority to issue the regulations referenced in the preceding Paragraph for non-transportation-related onshore facilities.

5. EPA subsequently promulgated the SPCC regulations pursuant to these delegated statutory authorities, and pursuant to its authorities under the Act, 33 U.S.C. § 1251 *et seq.*, which established certain procedures, methods and requirements upon each owner and operator of a non-transportation-related onshore facility if such facility, due to its location, could reasonably be expected to discharge oil into or upon the navigable waters of the United States and their adjoining shorelines in such quantity as EPA has determined in 40 C.F.R. § 110.3 may be harmful to the public health or welfare or the environment of the United States (harmful quantity).

6. In promulgating 40 C.F.R. § 110.3, which implements Section 311(b)(4) of the Act, 33 U.S.C. § 1321(b)(4), EPA has determined that discharges of harmful quantities include oil discharges that cause either (1) a violation of applicable water quality standards or (2) a film, sheen upon, or discoloration of the surface of the water or adjoining shorelines, or (3) a sludge or emulsion to be deposited beneath the surface of the water or upon adjoining shorelines.

7. Respondent Pierce Oil Company (Respondent) is a corporation organized under the laws of and doing business within the State of Utah. Respondent is a “person” within the meaning of Sections 311(a)(7) and 502(5) of the Act, 33 U.S.C. §§ 1321(a)(7) and 1362(5), and 40 C.F.R. § 112.2.

8. Respondent is the owner and/or operator within the meaning of Section 311(a)(6) of the Act, 33 U.S.C. § 1321(a)(6), and 40 C.F.R. § 112.2, of a bulk distributor facility (facility) located at 332 W. Railroad Avenue in Price, Utah. Drainage from the facility flows southwest approximately 30 yards to a storm drain that discharges to the Price River.

9. The facility includes, but is not limited to, three (3) diesel fuel storage tanks with capacities, respectively, of 20,314 gallons, 19,624 gallons, and 6,273 gallons; three (3) tanks containing hydraulic oil with storage capacities, respectively, of 19,900 gallons, and 14,500 and 1,500 gallons; six (6) tanks containing lubricating oil of 7,200 gallons each; one (1) 1,500 gallon tank containing motor oil; one (1) 1,500 gallon tank containing transmission oil; and one (1) 500 gallon tank containing kerosene. Miscellaneous drums and totes containing oil are also stored at the facility. The total oil storage capacity at the facility is at least 128,951 gallons.

10. Lubricating oil, diesel fuel, kerosene, hydraulic oil, motor oil and transmission oil are all oil within the meaning of “oil” as defined at Section 311(a)(1) of the Act, 33 U.S.C. § 1321(a)(1).

11. The facility has an aggregate above-ground storage capacity greater than 1,320 gallons of oil in containers that each have a shell capacity of at least 55 gallons.

12. The Price River is a navigable water of the United States within the meaning of 40 C.F.R. § 112.2 and Section 502(7) of the Act, 33 U.S.C. § 1362(7).

13. Respondent is engaged in storing, distributing, transferring, using, or consuming oil or oil products located at the facility.

14. The facility is a non-transportation-related facility within the meaning of 40 C.F.R.

§ 112.2 Appendix A,¹ as incorporated by reference within 40 C.F.R. § 112.2.

15. The facility is an onshore facility within the meaning of Section 311(a)(10) of the Act, 33 U.S.C. § 1321(a)(10), and 40 C.F.R. § 112.2.

16. The facility is therefore a non-transportation-related onshore facility which, due to its location, could reasonably be expected to discharge oil to a navigable water of the United States or its adjoining shorelines in a harmful quantity (“an SPCC-regulated facility”).

17. Pursuant to the Act, E.O. 12777, and 40 C.F.R. § 112.1, Respondent, as the owner and/or operator of an SPCC-regulated facility, is subject to the SPCC regulations.

18. Respondent began operating the facility in 1972.

**COUNT 1
FAILURE TO PROPERLY PREPARE/IMPLEMENT PLAN**

19. Paragraphs 3 through 18 above are hereby incorporated by reference.

20. 40 C.F.R. § 112.3 requires that the owner or operator of an SPCC-regulated facility must prepare a written SPCC plan in accordance with 40 C.F.R. § 112.7 and any other applicable section of 40 C.F.R. Part 112.

21. On September 1, 2009, EPA inspected the facility accompanied by a facility representative.

22. EPA determined that the Respondent had prepared an SPCC plan that was not in accordance with 40 C.F.R. § 112.7 and other applicable sections of 40 C.F.R. Part 112. Specifically, EPA found the following inadequacies:

- a. No or incomplete discussion of secondary containment for all areas from which a discharge of oil could occur, such as the loading area for the railcars, drums, totes and one tank.

¹ Appendix A excerpts a portion of an EPA/CG MOU that defines “non-transportation-related” for purposes of Executive Order 11548 (July 20, 1970). EO 12777, cited above, is the successor to EO 11548.

- b. No prediction of potential discharges, including the type of equipment failure, direction, rate of flow and total quantity of oil which could be discharged.
- c. No records of inspections maintained.
- d. Inadequate or inaccurate discussion of rainwater drainage procedures.
- e. Inadequate procedures for integrity testing of bulk containers.

23. The following SPCC implementation measures were found to be deficient at the facility at the time of the inspection:

- a. Inadequate secondary containment for loading areas.
- b. Inadequate secondary containment for one tank and some drums and totes.
- c. Procedures, such as corrosion testing of bulk containers and rainwater drainage, stated in SPCC Plan are not being implemented.

24. Respondent's failure to prepare and implement an SPCC plan for the facility in accordance with 40 C.F.R. §§ 112.7 and 112.8 constitutes a violation of 40 C.F.R. § 112.3. On information and belief, Respondent has violated these requirements for each day beginning September 1, 2009, for a total period of nine and a half months in violation of 40 C.F.R. § 112.3.

25. As alleged in the preceding Paragraph, and pursuant to Section 311(b)(6)(B)(i) of the Act and 40 C.F.R. § 19.4, the Respondent is liable for civil penalties of up to \$16,000 per violation, up to a maximum of \$37,500.

PROPOSED PENALTY

Based on the forgoing Allegations, and pursuant to the authority of Section 311(b)(6)(B)(i) of the Act and 40 C.F.R. § 19.4, the Complainant proposes that the Administrator issue a Final Order assessing administrative penalties in the amount of **\$37,500**. The Complainant bases this proposal after considering the applicable statutory penalty factors in section 311(b)(8) of the Act,

§ 1321(b)(8): the seriousness of the violations, the economic benefit to the violator resulting from the violations, the degree of culpability involved, any other penalty for the same incident, any history of prior violations, the economic impact of the penalty on the violator, and any other factors as justice may require. Specifically, the proposed penalty amount is based on Respondent's moderate noncompliance and moderate environmental impact for duration of at least nine and a half (9.5) months. An additional amount was added to the proposed penalty amount based on a history of violations and for economic benefit derived from failure to comply with the SPCC regulations.

OPPORTUNITY TO REQUEST A HEARING

As provided in the Act, Respondent has the right to a public hearing to contest this Complaint. If Respondent (1) contests the factual claims made in this Complaint; (2) contests the appropriateness of the proposed penalty; and/or (3) asserts that it is entitled to judgment as a matter of law, it must file a written Answer in accordance with sections 22.15 and 22.38 of the Consolidated Rules within thirty (30) calendar days after receipt of this Complaint. The Answer must (1) clearly and directly admit, deny, or explain each of the factual allegations contained in the Complaint with regard to which Respondent has knowledge; (2) state circumstances or arguments which are alleged to constitute grounds for defense; (3) state the facts Respondent disputes; (4) state the basis for opposing the proposed relief; and (5) specifically request an administrative hearing, if desired. Failure to admit, deny or explain any material factual allegation in this Complaint will constitute an admission of the allegation.

The Answer and one copy must be sent to:

Tina Artemis, Regional Hearing Clerk (8RC)
U.S. EPA Region 8
1595 Wynkoop Street
Denver, Colorado 80202-1129

and a copy must be sent to the following attorney:

Amy Swanson, Enforcement Attorney (8ENF-L)

U.S. EPA Region 8, Legal Enforcement Program
1595 Wynkoop Street
Denver, CO 80202-1129
Telephone: (303) 312-6906

IF RESPONDENT FAILS TO REQUEST A HEARING, IT WILL WAIVE ITS RIGHT TO FORMALLY CONTEST ANY OF THE ALLEGATIONS SET FORTH IN THE COMPLAINT.

IF RESPONDENT FAILS TO FILE A WRITTEN ANSWER OR PAY THE PROPOSED PENALTY WITHIN THE THIRTY (30) CALENDAR DAY TIME LIMIT, A DEFAULT JUDGMENT MAY BE ENTERED PURSUANT TO 40 CFR § 22.17. THIS JUDGMENT MAY IMPOSE THE PENALTY PROPOSED IN THE COMPLAINT.

TERMS OF PAYMENT FOR QUICK RESOLUTION

If the Respondent does not contest the findings and penalty proposal set out above, this action may be resolved by paying the proposed penalty in full pursuant to 40 C.F.R. § 22.18. If such payment is made within thirty (30) calendar days of receipt of this Complaint, no Answer need be filed. No later than thirty (30) days after the effective date of the Final Order, the Respondent shall pay the amount of [insert] by means of a cashier's or certified check, or by electronic funds transfer (EFT). The payment shall be made by remitting a cashier's or certified check, including the name and docket number of the case, referencing "Oil Spill Liability Trust Fund-311," for the amount, payable to the: "**Environmental Protection Agency,**" to:

**US checks by regular
US postal service mail:**

US Environmental Protection Agency
Fines and Penalties
Cincinnati Finance Center
PO Box 979077
St. Louis, MO 63197-9000

**Federal Express, Airborne,
Or other commercial carrier:**

U.S. Bank
1005 Convention Plaza
Mail Station SL-MO-C2GL
St. Louis, MO 63101

**Federal Express, Airborne,
Or other commercial carrier:**

U.S. Bank
1005 Convention Plaza
Mail Station SL-MO-C2GL
St. Louis, MO 63101

Wire transfers:

Federal Reserve Bank of New York
ABA = 021030004
Account = 68010727
SWIFT address = FRNYUS33
33 Liberty Street
New York NY 10045
Field Tag 4200 of the Fedwire message should read "D
68010727 Environmental Protection Agency "

On Line Payment:

WWW.PAY.GOV
Enter sfo 1.1 in the search field

Open form and complete required fields.

A copy of the check or wire transfer shall be simultaneously sent to:

Jane Nakad (8ENF-UFO)
U.S. EPA Region 8
1595 Wynkoop Street
Denver, CO 80202-1129

Payment of the penalty in this manner does not relieve Respondent of its obligation to comply with the requirements of the statute and regulations. Payment of the penalty in this manner shall constitute consent by Respondent to the assessment of the proposed penalty and a waiver of Respondent's right to a hearing on this matter.

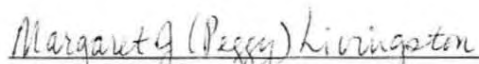
SETTLEMENT CONFERENCE

The EPA encourages settlement of a proceeding at any time if the settlement is consistent with the provisions and objectives of the Act and applicable regulations and is willing to explore this possibility in an informal settlement conference. If you or your attorney, if you choose to be represented by one, have any questions or wish to have an informal settlement conference with EPA, please call


Senior Enforcement Attorney Amy Swanson at (303) 312-6906. Please note that a request for, scheduling of, or participation in a settlement conference does not extend the period for filing an answer and request for hearing as set out above. The settlement process, however, may be pursued simultaneously with the administrative litigation procedures found in the Consolidated Rules. If a settlement can be reached, its terms must be expressed in a written consent agreement, signed by the parties and incorporated into a final order signed by the Regional Judicial Officer.

**UNITED STATES ENVIRONMENTAL
PROTECTION AGENCY, REGION 8**
Complainant.


Date: 7.23.10


Michael T. Risner, Director
David Rochlin, Acting REU Supervisory Attorney
Legal Enforcement Program
Office of Enforcement, Compliance
and Environmental Justice

Date: 7/17/10


Philip S. Stroebel, Acting Director
Technical Enforcement Program
Office of Enforcement, Compliance
and Environmental Justice

Date: 7.1.10


Amy Swanson, Enforcement Attorney
U.S. EPA, Region 8
1595 Wynkoop Street (8ENF-L)
Denver, CO 80202-1149
Colorado Atty. Reg. No. 26488
Telephone: 303/312-6906
Facsimile: 303/312-6953

CERTIFICATE OF SERVICE

The undersigned hereby certifies that the original and one copy of the ADMINISTRATIVE COMPLAINT AND OPPORTUNITY TO REQUEST HEARING was hand-carried to the Regional Hearing Clerk, EPA Region 8, 1595 Wynkoop Street, Denver, Colorado, and that a true copy of the same was sent via certified mail to:

Ellis L. Pierce, President
Pierce Oil Company
332 W. Railroad Avenue
Pierce, UT 84501

7/26/10
Date

Judith M. McTernan
Signature



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.nmfr.org or 1-734-995-4911)

Paints and Coatings

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

Printed Wiring Board Manufacturing

(www.pwbr.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



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.

§21.13

approve or disapprove the State issued statement, in accordance with the requirements of §21.5.

(2) The Regional Administrator will periodically review State program performance. In the event of State program deficiencies the Regional Administrator will notify the State of such deficiencies.

(3) During that period that any State's program is classified as deficient, statements issued by a State shall also be sent to the Regional Administrator for review. The Regional Administrator shall notify the State, the applicant, and the SBA of any determination subsequently made, in accordance with §21.5, on any such statement.

(i) If within 60 days after notice of such deficiencies has been provided, the State has not taken corrective efforts, and if the deficiencies significantly affect the conduct of the program, the Regional Administrator, after sufficient notice has been provided to the Regional Director of SBA, shall withdraw the approval of the State program.

(ii) Any State whose program is withdrawn and whose deficiencies have been corrected may later reapply as provided in §21.12(a).

(g) Funds appropriated under section 106 of the Act may be utilized by a State agency authorized to receive such funds in conducting this program.

§21.13 Effect of certification upon authority to enforce applicable standards.

The certification by EPA or a State for SBA Loan purposes in no way constitutes a determination by EPA or the State that the facilities certified (a) will be constructed within the time specified by an applicable standard or (b) will be constructed and installed in accordance with the plans and specifications submitted in the application, will be operated and maintained properly, or will be applied to process wastes which are the same as described in the application. The certification in no way constitutes a waiver by EPA or a State of its authority to take appropriate enforcement action against the owner or operator of such facilities for violations of an applicable standard.

PART 22—CONSOLIDATED RULES OF PRACTICE GOVERNING THE ADMINISTRATIVE ASSESSMENT OF CIVIL PENALTIES AND THE REVOCATION/TERMINATION OR SUSPENSION OF PERMITS

Subpart A—General

- Sec.
- 22.1 Scope of this part.
 - 22.2 Use of number and gender.
 - 22.3 Definitions.
 - 22.4 Powers and duties of the Environmental Appeals Board, Regional Judicial Officer and Presiding Officer; disqualification, withdrawal, and reassignment.
 - 22.5 Filing, service, and form of all filed documents; business confidentiality claims.
 - 22.6 Filing and service of rulings, orders and decisions.
 - 22.7 Computation and extension of time.
 - 22.8 *Ex parte* discussion of proceeding.
 - 22.9 Examination of documents filed.

Subpart B—Parties and Appearances

- 22.10 Appearances.
- 22.11 Intervention and non-party briefs.
- 22.12 Consolidation and severance.

Subpart C—Prehearing Procedures

- 22.13 Commencement of a proceeding.
- 22.14 Complaint.
- 22.15 Answer to the complaint.
- 22.16 Motions.
- 22.17 Default.
- 22.18 Quick resolution; settlement; alternative dispute resolution.
- 22.19 Prehearing information exchange; prehearing conference; other discovery.
- 22.20 Accelerated decision; decision to dismiss.

Subpart D—Hearing Procedures

- 22.21 Assignment of Presiding Officer; scheduling the hearing.
- 22.22 Evidence.
- 22.23 Objections and offers of proof.
- 22.24 Burden of presentation; burden of persuasion; preponderance of the evidence standard.
- 22.25 Filing the transcript.
- 22.26 Proposed findings, conclusions, and order.

Subpart E—Initial Decision and Motion to Reopen a Hearing

- 22.27 Initial decision.
- 22.28 Motion to reopen a hearing.