



**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 8**

1595 Wynkoop Street
DENVER, CO 80202-1129
Phone 800-227-8917
<http://www.epa.gov/region08>

Ref: 8ENF-UFO

MAR 28 2011

CERTIFIED MAIL #
RETURN RECEIPT REQUESTED

The Corporation Company
Attn. Farmers New Holland, Inc.
1675 Broadway Ste. 1200
Denver, CO 80202

Re: UNDERGROUND INJECTION
CONTROL PROGRAM (UIC)
Complaint with Notice of Opportunity
for Hearing

Dear Registered Agent:

The enclosed document is a Complaint with Notice of Opportunity for Hearing (Complaint) for violations of the Safe Drinking Water Act (SDWA). We encourage you to carefully read the Complaint soon, since it describes Farmers New Holland's rights and responsibilities in this matter as well as EPA's authority, the factual basis of the violations, and the background for the proposed penalties. Also enclosed is a copy of the Rules of Practice that govern these proceedings, the required Public Notice associated with this Complaint and, in case Farmers New Holland, Inc. meets the criteria, an information sheet about the Small Business Regulatory Enforcement Fairness Act.

Farmers New Holland is required to take action within 30 calendar days of your receipt of this Complaint to avoid the possibility of having a default judgment entered against Farmers New Holland that could impose the penalty amount proposed in the Complaint.

Whether or not Farmers New Holland requests a hearing, we encourage an informal conference with EPA concerning the alleged violations in an effort to negotiate a settlement. Farmers New Holland may wish to appear at an informal conference and/or be represented by legal counsel. To arrange for such a conference, Farmers New Holland should contact Eduardo Quintana, Enforcement Attorney, Legal Enforcement Program, at the number provided below. Request for such a conference does not extend the 30 calendar day period during which a request for hearing must be submitted.

Public Notice of EPA's Complaint and the opportunity to provide written comments on the Complaint is being provided pursuant to section 1423 (c)(3)(B) of the SDWA,

42 U.S.C. § 300h-2(c)(3)(B). Should a hearing be held, any person who comments on the Complaint has a right to participate in the hearing.

On May 19, 2006 EPA authorized Farmers New Holland to operate a Class V Underground Injection Well by issuing a UIC permit, UIC Class V Permit No. CO50978-06142 (Permit). Pursuant to the Permit, Farmers New Holland is required to conduct sampling on a semi-annual basis. See Permit Section II.E., p. 6. Failure to conduct sampling as required by the Permit after the date of the issuance of the attached Complaint may result in future penalties, revocation of the Permit, or both.

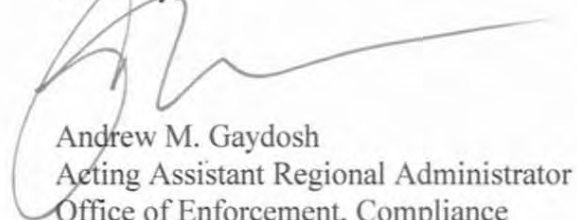
If Farmers New Holland has technical questions relating to this matter, the person most knowledgeable on my staff is Britta Copt, UIC Enforcement Team, Technical Enforcement Program, at 1-800-227-8917 ext. 6229 or (303) 312-6229. For all legal questions, the person most knowledgeable on my staff is Eduardo Quintana at 1-800-227-8917 ext. 6924 or (303) 312-6924. Ms. Copt and Mr. Quintana can also be reached at the following addresses:

Britta Copt (Mail Code 8ENF-UFO)
U.S. EPA Region 8
1595 Wynkoop Street
Denver, Colorado 80202-1129

Eduardo Quintana (Mail Code 8ENF-L)
Enforcement Attorney
U.S. EPA Region 8
1595 Wynkoop Street
Denver, Colorado 80202-1129

We urge Farmers New Holland's prompt attention to this matter.

Sincerely,



Andrew M. Gaydosh
Acting Assistant Regional Administrator
Office of Enforcement, Compliance
and Environmental Justice

Enclosures:

Complaint and Opportunity to Request Hearing
40 C.F.R. Part 22
Public Notice
U.S. EPA Small Business Resources Fact Sheet

UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION 8
Docket No. SDWA-08-2011-0034

2011 MAR 28 PM 1:22

FILED
EPA REGION VIII
HEARING CLERK

In the Matter of:)
Farmers New Holland, Inc.,) **PENALTY COMPLAINT, PROPOSED**
Respondent) **ORDER AND NOTICE OF OPPORTUNITY**
) **FOR HEARING (COMPLAINT)**
)

INTRODUCTION

1. This civil administrative enforcement action is authorized by Congress in section 1423(c) of the Public Health Service Act, also known as the Safe Drinking Water Act (SDWA or the Act). 42 U.S.C. § 300h-2(c). The Environmental Protection Agency (EPA) has promulgated regulations to implement the statute, 40 CFR part 144, and violations of the statute, permits or regulations constitute violations of the Act. The rules for this proceeding are the "Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties, Issuance of Compliance or Corrective Action Orders and the Revocation, Termination or Suspension of Permits (Rules of Practice)," 40 CFR part 22, a copy of which is enclosed.
2. The regulations at 40 CFR part 22, subpart I, apply to this complaint.
3. The undersigned EPA official has been properly delegated the authority to issue this complaint.
4. EPA alleges that Farmers New Holland, Inc. (Respondent) has violated the Act by failing to conduct required sampling and proposes the assessment of a civil penalty, as more fully explained below.

NOTICE OF OPPORTUNITY FOR A HEARING

5. Respondent has the right to a public hearing before an administrative law judge to disagree with any factual allegation made by EPA in the complaint or the appropriateness of the proposed penalty, or to present the grounds for any legal defense it may have. To disagree with the complaint and assert your right to a hearing, Respondent must file a written answer (and one copy) with the Regional Hearing Clerk (8RC), 1595 Wynkoop Street, Denver, Colorado 80202 within 30 calendar days of receipt of this complaint. 40 CFR §22.15 (a). The answer must clearly admit, deny or explain the factual allegations of the complaint, state the grounds for any defense, the facts you may dispute, and your specific request for a public hearing. Please see section 22.15 of the Rules of Practice for a complete description of what must be in the answer.

FAILURE TO FILE AN ANSWER AND REQUEST FOR HEARING WITHIN 30 CALENDAR DAYS MAY WAIVE RESPONDENT'S RIGHT TO DISAGREE WITH THE ALLEGATIONS OR PROPOSED PENALTY, AND RESULT IN A DEFAULT JUDGMENT AND ASSESSMENT OF THE PENALTY PROPOSED IN THE COMPLAINT, OR UP TO THE MAXIMUM AUTHORIZED BY THE ACT.

QUICK RESOLUTION

6. Respondent may resolve this proceeding at any time by paying the amount proposed in the complaint. Such payment need not contain any response to, or admission of, the allegations in the complaint, and it constitutes a waiver of Respondent's right to contest the allegations and to appeal the final order. See section 22.18 of the Rules of Practice for a full explanation of the quick resolution process, including the method for seeking an extension of the time to file an answer.

SETTLEMENT NEGOTIATIONS

7. EPA encourages discussing whether cases can be settled through informal settlement conferences. If you want to pursue the possibility of settling this matter, or have any other questions, contact Eduardo Quintana, Enforcement Attorney, at 303.312.6924 or quintana.eduardo@epa.gov. **Please note that contacting EPA or requesting a settlement conference does NOT delay the running of the 30 day period for filing an answer and requesting a hearing.**

GENERAL ALLEGATIONS

The following general allegations apply to all times relevant to this action, and to each count of this complaint:

8. EPA has the authority to enforce the requirements of the underground injection control (UIC) program, found at 40 CFR parts 124, 144, 146, 147, and 148, for the well referred to in this complaint.
9. For Class V underground injection wells operators are required to comply with all permit conditions, as defined in the regulations. 40 CFR §144.51.
10. Respondent operated a Class V underground injection well in violation of certain conditions in its UIC permit, EPA permit number CO 50978-06142.
11. Respondent, Farmers New Holland, Inc., is a corporation and therefore a "person" within the meaning of the Act. 42 U.S.C. § 300f(12).
12. Respondent is the operator of the well identified in this complaint. This well is a Class V underground injection well, as defined by EPA regulations. 40 CFR § 144.6(e).

13. Respondent is authorized to operate the well identified in this complaint pursuant to the terms of the EPA permit. Citations below are to the regulations applicable and to the corresponding regulation that is included in the permitted well.
14. The well is located at 46485 W. Highway 24, Burlington, Colorado. The well is referred to by its EPA permit number CO 50978-06142.

Counts 1-8

15. For well number CO 50978-06142, Respondent failed to collect waste fluid samples on a semi-annual basis, as required in Part II, E of the permit beginning in July of 2007, and remains out of compliance.
16. Respondent failed to collect semi-annual waste fluid samples and has not submitted semi-annual sampling reports that were due on or before the first day of (1) July 2007, (2) January 2008, (3) July 2008, (4) January 2009, (5) July 2009, (6) January 2010, (7) July 2010, and (8) January 2011.
17. Respondent's failure to collect waste fluid samples for this well, as required by 40 CFR §144.51(a), constitutes 8 violations of section 1423 of the Act, 42 U.S.C. § 300h-2.

PROPOSED ORDER WITH ADMINISTRATIVE CIVIL PENALTY

18. The Act, as amended, authorizes the assessment of a civil penalty of up to \$37,500.00 per day per violation, 42 U.S.C. § 300h-2(b). The Act requires EPA to take into account the following factors in assessing a civil penalty: the nature, circumstances, extent and gravity of the violations; any economic benefit or savings gained resulting from the violations; Respondent's history of such violations; Respondent's culpability for the violations; Respondent's good-faith efforts to comply with applicable requirements; the economic impact of the penalty on the Respondent; and other factors that justice may require. 42 U.S.C. § 300h-2(c)(4)(B).
19. In light of the statutory factors and the specific facts of this case, EPA proposes a penalty of **\$11,473** for the violations alleged in this complaint. However, the administrative law judge is not bound by EPA's penalty policy or the penalty proposed by EPA, and may assess a penalty different from the proposed amount, up to \$37,500.00, per day for each violation, as authorized in the Act.
20. EPA, in proposing this penalty, considered the following: (a) there are underground sources of drinking water contained in the geologic formations in the area where these wells are located; (b) wells in these types of violation pose elevated risk to underground sources of drinking water; (c) Respondent has had continuous ability to address the alleged violations; and (d) Respondent's delayed expenditure of funds to address these alleged violations resulted in economic benefit.

EPA considered the following in calculating the penalty:

Base Gravity

Considering the nature, circumstances, extent and gravity of the violations, the economic impact to the Respondent, and the number and duration of violations, EPA calculated a base penalty as follows:

for failure to collect
waste fluid samples: \$1,134 (x 8 failures to conduct sampling); totaling **\$9,072.**

Economic Benefit

For these violations Respondent enjoyed an economic benefit by not committing expenditures to be in compliance. EPA calculated an economic benefit as follows:

for failure to collect
waste fluid samples: \$300.13 (x 8); totaling **\$2,401.**

Other Adjustments:

Prior Compliance History

EPA has made no adjustments to the penalty due to this factor.

Good-Faith Efforts to Comply

EPA has made no adjustments to the penalty due to this factor.

Degree of Culpability

Respondent had knowledge of these violations and has always had control over correcting them. EPA has no knowledge that anyone is interfering with this control. The base gravity portion of the penalty associated with the failure to collect waste fluid samples violations was adjusted upward by 60%, resulting in an increase of **\$3,402**, which is included in the \$9,072 “base gravity” amount above.

Ability to Pay

EPA did not reduce the proposed penalty due to this factor, but will consider any new information Respondent may present regarding Respondent’s ability to pay the penalty proposed in this complaint.

Other Matters that Justice may Require

EPA has made no adjustments to the penalty due to this factor.

21. Respondent's payment of the penalty shall be payable to "Treasurer, United States of America" and submitted according to instructions in the enclosed "Collection Information" sheet.

A copy of said check shall be mailed to the following addresses:

Eduardo Quintana (8ENF-L)
Enforcement Attorney
U.S. EPA - Region 8
1595 Wynkoop Street
Denver, CO 80202-1129, and


Britta Copt (8ENF-UFO)
Environmental Protection Specialist
U.S. EPA - Region 8
1595 Wynkoop Street
Denver, CO 80202-1129.

22. As required by the Act, prior to the final assessment of a civil penalty, EPA will provide public notice of the proposed penalty, and reasonable opportunity for people to comment on the matter, and present evidence in the event a hearing is held.
42 U.S.C. § 300h-2(c)(3)(B).
23. This complaint does not constitute a waiver, suspension, or modification of the requirements of any applicable provision of the Act or the UIC regulations implementing the Act, which remain in full force and effect. Issuance of this complaint is not an election by the EPA to forego any civil or any criminal action otherwise authorized under the Act.

United States Environmental Protection
Agency, Region 8, Complainant

Date: March 28, 2011

By:


Andrew M. Gaydosh
Assistant Regional Administrator
Office of Enforcement, Compliance &
Environmental Justice

In the Matter of: **Farmers New Holland, Inc.**
Docket No.:

CERTIFICATE OF SERVICE

The undersigned hereby certifies that the original and one copy of the PROPOSED COMPLIANCE ORDER, PENALTY COMPLAINT, AND NOTICE OF OPPORTUNITY FOR HEARING with the Consolidated Rules of Practice (40 C.F.R. Part 22), a Public Notice, and the U.S. EPA Small Business Resources Fact Sheet were hand-carried to the Regional Hearing Clerk, EPA Region 8, 1595 Wynkoop Street; Denver, Colorado 80202-1129, and that a true copy of the same was sent via Certified Mail to:

The Corporation Company
Attn. Farmers New Holland, Inc.
1675 Broadway Ste. 1200
Denver, CO 80202

3/28/2011
Date

Judith M. McTernan

**U.S. ENVIRONMENTAL PROTECTION AGENCY
PUBLIC NOTICE
OPPORTUNITY FOR PUBLIC COMMENT ON
PROPOSED PENALTY COMPLAINT
AND
NOTICE OF OPPORTUNITY FOR HEARING
AGAINST
FARMERS NEW HOLLAND, INC.
FOR FAILURE TO COMPLY WITH
UNDERGROUND INJECTION CONTROL REQUIREMENTS**

PURPOSE OF PUBLIC NOTICE

The purpose of this notice is to solicit written comments on a Proposed Penalty Complaint and Notice of Opportunity for Hearing (complaint), Docket # SDWA-08-2011-0034 that Region 8 of the United States Environmental Protection Agency (EPA) proposes to issue to Farmers New Holland, Inc. for alleged violations at the facility located in Burlington, Colorado. The complaint alleges violations of the Safe Drinking Water Act (SDWA) and the regulations detailing the requirements of the SDWA's Underground Injection Control (UIC) program. These regulations govern the injection of fluids that may endanger an underground source of drinking water (USDW). The complaint proposes the assessment of a monetary penalty in the amount of \$11,473.

The EPA desires to receive written comments from any interested party having knowledge of the alleged violations or who can provide any information useful to ensure that the complaint is appropriate. EPA will review and consider all comments received, and will thereafter determine whether to modify or withdraw the complaint.

BACKGROUND

Part C of the SDWA (40 U.S.C. §300h *et seq*) requires the EPA to regulate underground injection of fluid through wells to assure that underground sources of drinking water (USDWs) are not endangered. Section 1421 of the SDWA (40 U.S.C. §300h) requires EPA to administer UIC programs in States that do not have approved State UIC programs. Regulation of the UIC Class V Program has not been delegated to the State of Colorado; therefore, EPA administers the program in accordance with title 40 of the Code of Federal regulations (40 C.F.R.), Parts 124, 144, 146, 147, and 148.

The Class V disposal system which is the subject of this complaint is located at 46485 W. Highway 24, Burlington, Colorado. A Class V injection well, pursuant to 40 C.F.R. 144.6 and 146.5, is a shallow injection well that injects fluids into or above a USDW.

The complaint alleges that Farmers New Holland is in violation of UIC requirements, and is subject to appropriate penalties and fines for failing to prevent movement of fluids into a USDW that may cause a violation of a permit or otherwise adversely affect the health of persons. The complaint cites that EPA may assess an administrative civil penalty of up to \$16,000 per day, for each violation of the Act, up to a maximum of \$177,500.

PUBLIC COMMENTS

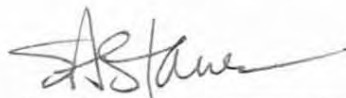
Written comments on the complaint are encouraged and will be accepted at the address listed below for a period of thirty (30) calendar days after the publication of this notice. Written comments submitted by the public as well as information submitted by Farmers New Holland will be available for public review as part of the Administrative Record, subject to the provisions of law restricting the disclosure of confidential information. Farmers New Holland may request a hearing. Any person submitting written comments will be notified of and has a right to participate in such a hearing. The complaint and the Administrative Record are available for review between 9:00 a.m. and 4:00 p.m. at the address listed below. It is recommended that those wishing to view the Administrative Record call Eduardo Quintana, Enforcement Attorney, Legal Enforcement Program, EPA Region 8, at (303) 312-6924 before visiting the EPA Region 8 offices. Please submit written comments to:

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

Any person interested in receiving their own copy of this or any future public notice of a UIC administrative action can call Britta Copt in the UIC program, EPA Region 8, at (303) 312-6229.

THE DECISION

EPA will review and consider all public comments received on the public notice and will thereafter determine whether to modify or withdraw the complaint. If the complaint is revised, copies shall be provided to all parties and to all members of the public who have commented.



Sandra A. Stavnes, Director
UIC/FIFRA/OPA Technical Enforcement Program
U.S. EPA, Region 8
1595 Wynkoop Street
Denver, CO 80202

§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.



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



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.