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February 13, 2009

VIA HAND-DELIVERY

Ms. Wanda Santiago
Regional Hearing Clerk
U.S. Environmental Protection Agency
Region I
1 Congress Street, Suite 1100 (RAA)
Boston, MA 02114-2023

Re: **In the Matter of Roberts Chemical Company, Docket No. CAA-01-2009-0038**

Dear Ms. Santiago:

Enclosed for filing please find a Notice of Violation, Administrative Order, and Reporting Requirement in the above-captioned matter.

Sincerely,

Catherine Smith
Senior Enforcement Counsel
U.S. Environmental Protection Agency
Region I

Enclosure

cc: Robert McIntyre, Jr., Roberts Chemical Co.

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 1 -NEW ENGLAND**

IN THE MATTER OF)
)
)
 Roberts Chemical Co., Inc.)
 258 Pine Street)
 Pawtucket, RI 02860-2934)
)
)
)
)
 Proceeding under Sections)
 113 and 114 of the Clean Air Act)
 _____)

Docket No. CAA-01-2009-0038

**NOTICE OF VIOLATION,
ADMINISTRATIVE ORDER,
AND
REPORTING REQUIREMENT**

INTRODUCTION

1. The United States Environmental Protection Agency Region I (“EPA”) issues this Notice of Violation, Administrative Order, and Reporting Requirement (“NOV, AO, and RR”) to Roberts Chemical Co., Inc. for failure to (a) identify, evaluate and control hazards and (b) develop and submit a Risk Management Plan, in violation of Section 112(r) of the Clean Air Act, 42 U.S.C. § 7412(r), and implementing regulations set forth at 40 C.F.R. Part 68.
2. The NOV and AO are issued under the authority of Section 113 of the Clean Air Act (“CAA” or “the Act”), 42 U.S.C. § 7413. The RR is issued under the authority of Section 114 of the CAA, 42 U.S.C. § 7414. Section 113(a)(3) of the Act provides that EPA may issue an order requiring compliance with the requirements or prohibitions of Subchapter I of the Act (which,

among other things, includes the requirements of Section 112(r)). Section 114(a) (1) of the CAA gives EPA the authority to require a company to submit such information as EPA may reasonably require to determine its compliance with the CAA.

STATUTORY AND REGULATORY AUTHORITY

3. Pursuant to Section 112(r)(1) of the Clean Air Act, 42 U.S.C. § 7412(r)(1), owners and operators of stationary sources producing, processing, handling or storing substances listed pursuant to Section 112(r)(3) of the Clean Air Act, 42 U.S.C. § 7412(r)(3), or any other extremely hazardous substance, have a general duty to (a) identify hazards which may result from accidental releases of such substances using appropriate hazard assessment techniques; (b) design and maintain a safe facility taking such steps as are necessary to prevent releases; and (c) minimize the consequences of accidental releases that do occur. This section of the Clean Air Act is referred to as “the General Duty Clause.”

4. Section 112(r) of the Act, 42 U.S.C. § 7412(r), also authorizes EPA to promulgate regulations and programs to prevent, and minimize the consequences of, the accidental release of certain regulated substances. In particular, Section 112(r)(3), 42 U.S.C. § 7412(r)(3), requires EPA to promulgate a list of substances that are known to cause or may reasonably be anticipated to cause death, injury, or serious adverse effects to human health or the environment if accidentally released, and Section 112(r)(5), 42 U.S.C § 7412(r)(5), requires EPA to establish for each such substance a threshold quantity over which accidental release is known to cause or may reasonably be anticipated to cause death, injury, or serious adverse effects to human health. Section 112(r)(7) of the Act, 42 U.S.C. § 7412(r)(7), requires EPA to promulgate requirements

for the prevention, detection, and correction of accidental releases of certain regulated substances, including a requirement that an owner or operator of certain stationary sources prepare and implement a risk management plan (“RMP”).

5. Pursuant to Section 112(r) of the Act, 42 U.S.C. § 7412(r), EPA promulgated 40 C.F.R. §§ 68.1-68.220 (“Part 68”).

6. 40 C.F.R. § 68.130 lists the substances, and their associated threshold quantities, regulated under Part 68 (“RMP chemicals” or “regulated substances”).

7. Under 40 C.F.R. § 68.10, an owner or operator of a stationary source that has more than a threshold quantity of a regulated substance in a process must comply with the requirements of Part 68 by no later than the latest of the following dates: (a) June 21, 1999; (b) three years after the date on which a regulated substance is first listed under 40 C.F.R. § 68.130; or (c) the date on which a regulated substance is first present above a threshold quantity in a process.

8. In particular, each process in which a regulated substance is present in more than a threshold quantity (“covered process”) is subject to one of three risk management programs. Under 40 C.F.R. § 68.12(b), a covered process is subject to Program 1 if, among other things, the distance to a toxic or flammable endpoint for a worst-case release assessment is less than the distance to any public receptor. Under 40 C.F.R. § 68.12(d), a covered process is subject to Program 3 if the process does not meet the eligibility requirements for Program 1 and is either in certain NAICS codes or subject to the OSHA process safety management standard at 29 C.F.R. § 1910.119. Under 40 C.F.R. § 68.10(c), a covered process meeting neither Program 1 nor Program 3 eligibility requirements is subject to Program 2.

9. Under Section 112(r)(7)(e) of the Act, 42 U.S.C. § 7412(r)(7)(E), it is unlawful for any person to operate any stationary source subject to regulations promulgated pursuant to Section 112(r) in violation of such regulation or requirement.

10. Sections 113(a)(3) of the Act, 42 U.S.C. §§ 7413(a)(3), authorizes EPA to issue compliance orders for violations of the Act, including violations of Section 112(r) of the Act, 42 U.S.C. § 7412(r).

GENERAL ALLEGATIONS

11. Roberts Chemical Co., Inc. (“Roberts”) is the owner and operator of a chemical distribution, repackaging, reformulating and chemical storage company (the “Facility”) located at 258 Pine Street, Pawtucket, Rhode Island. Roberts has owned and operated the Facility since 1976.

12. Roberts is a corporation organized under the laws of the State of Rhode Island. As a corporation, Roberts is a “person” within the meaning of Section 302(e) of the Act, 42 U.S.C. § 302(e), to whom a compliance order may be issued under Section 113(a)(3) of the Act, 42 U.S.C. § 7413(a)(3).

13. The Facility is a “stationary source,” as that term is defined at 40 C.F.R. § 68.3.

14. Since 1976, Roberts has stored a range of chemicals at the Facility.

15. On November 20, 2008, EPA conducted a Clean Air Act 112(r) and Emergency Planning Community Right-to-Know Act (EPCRA) inspection at Roberts. EPA conducted a followup inspection on December 9, 2008 and an inspection pursuant to the Resource Conservation and Recovery Act (“RCRA”) on February 4, 2009.

16. The Facility had approximately 100 chemicals on site at the time of the inspections, including several extremely hazardous substances, such as chloroform, ethyl ether, hexane, heptane, nitric acid, sulfuric acid, cyanides, pentane, and a solution containing at least 37% hydrochloric acid ("hydrochloric acid 37%).

17. EPA inspectors observed several examples of dangerous chemical storage practices at the Facility including, but not limited to, the following:

a. *Co-location of incompatible chemicals*: Inspectors observed incompatible chemicals stored sufficiently close together such that a spill or release of one chemical could result in a chemical reaction with the other chemical, creating toxic gases and/or causing a fire or explosion. For example, EPCRA inspectors observed containers of pentane stacked immediately beside a 250-gallon tote of hydrochloric acid. The chemical reaction resulting from a mixture of pentane and hydrochloric acid could generate toxic and highly corrosive gasses. Inspectors saw pallets of nitric acid, a highly reactive chemical, stored right next to numerous drums of benzyl alcohol, which is flammable. Reaction of nitric acid with benzyl alcohol would be exothermic and would initiate a fire and/or explosion. The RCRA inspectors observed containers of waste sodium cyanide, nitric acid, sulfuric acid, phosphoric acid, ammonium hydroxide and potassium hydroxide stored in the same area without any means to segregate or separate the containers. Sodium cyanide if mixed with nitric acid, sulfuric acid or phosphoric acid will generate toxic and flammable gasses. Any of the acids mixed with either of the hydroxides could result in heat generation.

b. *Unsafe container storage*: Inspectors observed several instances where the lack of aisle space between storage containers could impede the unobstructed movement of personnel,

fire protection equipment, spill control equipment, and decontamination equipment to the chemicals or people. The inspectors observed some containers of flammable chemicals stacked directly on the floor where they could be subject to damage by forklift operators. They also observed instances of drums of flammable and corrosive chemicals stacked four-high and overhanging the pallets, which increases the likelihood that the containers could fall, thus causing them to rupture or leak.

c. *Lack of temperature control/protection from elements:* The inspectors observed that pentane was being stored in ambient temperatures without protection from temperature extremes. The Material Data Safety Sheet for pentane recommends protecting pentane from heat (i.e., temperatures greater than 36°C) because storage under hot conditions can cause buildup of flammable vapors due to pentane's low boiling point. The inspectors observed several holes in the roof of the Facility, which could make it difficult to control temperature and protect chemicals from the elements. For example, several inspectors observed cyanides stored in a room that had holes in the roof, although cyanides could generate flammable and highly toxic cyanide gas upon contact with rain water.

18. Roberts's 2008 chemical inventory report, submitted pursuant to the Emergency Planning and Community Right to Know Act ("EPCRA Tier II report"), states that, on the average day in 2008, Roberts stored 34,545 lbs of hydrochloric acid 37% at the Facility.

19. Roberts's 2007 and 2008 EPCRA Tier II reports state that, on the average day in 2007, Roberts stored 15,000 pounds of pentane at the Facility, and on the average day in 2008, Roberts stored 20,000 lbs of pentane at the Facility.

20. Roberts's 2008 EPCRA Tier II report states that, in 2008, Roberts stored a maximum

daily amount of 22,645 lbs of chloroform at the Facility.

21. Roberts's 2007 and 2008 EPCRA Tier II reports state that, on the average day in 2007, Roberts stored 56,350 lbs of ethyl ether at the Facility, and on the average day in 2008, Roberts stored 14,905 lbs of ethyl ether at the Facility.

22. Pentane is a regulated substance listed at 40 C.F.R. § 68.130 and has a threshold quantity of 10,000 pounds. Forty C.F.R. § 68.130 states that pentane is a regulated substance because it is a volatile flammable liquid. Pentane has a high vapor pressure even at room temperature.

23. Hydrochloric acid 37% is a regulated substance listed at 40 C.F.R. § 68.130 and has a threshold quantity of 15,000 pounds. Forty C.F.R. § 68.130 states that hydrochloric acid 37% is a regulated substance because it can form a toxic gas.

24. Chloroform is a is a regulated substance listed at 40 C.F.R. § 68.130 and has a threshold quantity of 20,000 pounds. Chloroform is highly toxic.

25. Ethyl ether is a regulated substance listed at 40 C.F.R. § 68.130 and has a threshold quantity of 10,000 pounds. Forty C.F.R. § 68.130 states that ethyl ether is a regulated substance because it is a volatile flammable liquid.

26. During at least 2007 and 2008, Roberts stored more than the threshold amount of pentane in a "covered process," as that term is defined at 40 C.F.R. § 68.3.

27. During at least 2008, Roberts stored more than the threshold amount of hydrochloric acid 37% in a "covered process," as that term is defined at 40 C.F.R. § 68.3.

28. During at least 2008, Roberts stored more than the threshold amount of chloroform in a "covered process," as that term is defined at 40 C.F.R. § 68.3.

29. During at least 2008, Roberts stored more than the threshold amount of ethyl ether in a "covered process," as that term is defined at 40 C.F.R. § 68.3

30. As the owner and operator of a stationary source having more than the threshold amount of a regulated substance in a covered process, Roberts is subject to Part 68. In particular, Roberts's covered processes are subject to the requirements of Program 3 because the distance to a toxic or flammable endpoint for a worst-case release is greater than the distance to a public receptor and because at least one of the processes is subject to the OSHA process safety management standard found at 29 C.F.R. § 1910.119.

VIOLATIONS

FAILURE TO IDENTIFY, EVALUATE, AND CONTROL HAZARDS

31. The allegations in paragraphs 11 to 30 are hereby incorporated by reference.

22. Forty C.F.R. § 68.67 requires the owner or operator of a Program 3 facility to perform an initial process hazard analysis (hazard evaluation) on covered processes. Pursuant to C.F.R. § 68.67, the owner or operator must identify and evaluate the hazards of the process being analyzed, using a qualified team of people with expertise in engineering and process operations; control the hazards identified; establish a system to address and implement the team's recommendations; update the process hazard analysis every five years; and comply with the documentation retention requirements of 40 C.F.R. § 68.67.

33. Forty C.F.R. § 68.67 requires the process hazard analysis to be completed by June 21, 1999.

34. As discussed in paragraph 17, above, EPA's inspectors observed several deficient chemical storage practices that constitute a failure to identify and control hazards associated with

the storage of regulated substances. For example, the storage of pentane and hydrochloric acid in close proximity could result in a release of toxic gas to the environment, potentially harming employees, first responders, area residents, infrastructure and private property.

35. Accordingly, Roberts violated 40 C.F.R. § 68.67.

FAILURE TO SUBMIT A RISK MANAGEMENT PLAN

36. Allegations numbered 11 to 35 are hereby incorporated by reference.

37. Under 40 C.F.R. §§ 68.10(a) and 68.12(a), an owner or operator of a stationary source subject to Part 68 must submit a RMP no later than the latest of the following dates: (a) June 21, 1999; (b) three years after the date on which a regulated substance is first listed under 40 C.F.R. § 68.130; or (c) the date on which a regulated substance is first present above a threshold quantity in a process. Forty C.F.R. §§ 68.150-68.185 specify the required elements of the RMP. The RMP for a Program 3 facility documents compliance with the elements of a Program 3 Risk Management Program, including 40 C.F.R. §§ 68.15 (Management System to Oversee Implementation of RMP); 40 C.F.R. Part 68, Subpart B (hazard assessment to determine off-site consequences of a release); 40 C.F.R. Part 68, Subpart D (Program 3 Prevention Program); and 40 C.F.R. Part 68, Subpart E (Emergency Response Program).

38. Roberts never has submitted an RMP documenting compliance with the elements of a Program 3 Risk Management Program.

39. By failing to submit a RMP, Roberts has been in violation of 40 C.F.R. §§ 68.10(a) and 68.12(a) and Section 112(r)(7)(e) of the Act, 42 U.S.C. § 7412(r)(7)(e), from at least 2007 to the present.

ADMINISTRATIVE ORDER

40. **As soon as possible, but within no later than seven days** from the effective date of this order, Roberts shall begin to comply with 40 C.F.R. § 68.67(e) by:

(a) establishing and implementing a system to separate incompatible materials, following generally-accepted standards, such as the National Fire Protection Association Code 30, 9.17.1;

(b) documenting that incompatible chemicals at the Facility have been properly separated;

(c) developing and submitting a schedule to complete the entire process hazard analysis required by 40 C.F.R. § 68.67; and

(d) mailing a copy of the documentation and schedule required by paragraph 40(b) and (c) to:

Len Wallace
Environmental Scientist
EPA Region 1,
Mailcode: SER
1 Congress St. Suite 1101
Boston, MA 02114.

41. If Roberts currently stores or plans to continue storing RMP chemicals at the Facility in amounts that exceed the regulatory threshold, **as soon as possible but within no later than 30 days** from the effective date of this order, Roberts shall:

(a) comply with all of the Program 3 risk management planning requirements found in 40

C.F.R. Part 68 including, but not limited to, 40 C.F.R. §§ 68.15 (Management System to Oversee Implementation of RMP); 40 C.F.R. Part 68, Subpart B (Hazard Assessment); 40 C.F.R. Part 68, Subpart D (Program 3 Prevention Program); and 40 C.F.R. Part 68, Subpart E (Emergency Response Program).

(b) complete and submit an electronic RMP that documents compliance with the Program 3 requirements, in accordance with the requirements for such plans found in 40 C.F.R. §§ 68.150-68.185;

(c) submit the RMP electronically, in accordance with the submittal directions found at www.epa.gov/emergencies/content/rmp/index.htm#submitting; and

(d) mail a copy of the RMP and supporting documentation (which documentation is further described in paragraph 42(a) below) to:

Len Wallace
Environmental Scientist
EPA Region 1,
Mailcode: SER
1 Congress St. Suite 1101
Boston, MA 02114.

REPORTING REQUIREMENT

42. Pursuant to Section 114(a)(1) of the CAA, Roberts shall submit the following information to EPA as soon as possible but within no more than (30) days of receipt of this NOV, AO, and RR:

- a. All documentation supporting the RMP, including:
 - I. Documentation required by 40 C.F.R. § 68.39 to support the assessment of the off-site consequences of a release;

- ii. Process safety information required by 40 C.F.R. § 68.65;
- iii. Process hazard analysis required by 40 C.F.R. § 68.67;
- iv. Written operating procedures required by 40 C.F.R. § 68.69;
- v. Training documentation required by 40 C.F.R. § 68.73(e);
- vi. Mechanical integrity documentation (including inspection, training and testing documents) required by 40 C.F.R. § 68.73;
- vii. Incident investigation reports required by 40 C.F.R. § 68.81;
- viii. Employee participation documents required by 40 C.F.R. § 68.83;
- ix. Documentation of contractor training required by 40 C.F.R. § 68.87 (if Roberts employs contractors); and
- x. Documentation of compliance with the emergency response provisions of 40 C.F.R. § 68.90.

If Roberts has limited its inventory of RMP chemicals such that it no longer has or plans to have RMP chemicals present at the Facility in amounts that exceed the RMP threshold, instead of submitting the information requested in paragraph 42(a)(I)-(x) above, Roberts shall submit documentation proving that Roberts has used appropriate hazard assessment techniques to identify hazards that may result from accidental releases of any extremely hazardous substance at the Facility, in compliance with the General Duty Clause of the Clean Air Act, 42 U.S.C.

§ 7412(r)(1). Roberts's 2008 EPCRA Tier II report indicates that Roberts stores many extremely hazardous substances at the facility, including but not limited to hydrochloric acid, chloroform, ethyl ether, pentane, nitric acid, formaldehyde,

heptane, and cyanides.

- b. Provide EPA with an estimate of the cost savings realized, if any, by failing to comply with the Program 3 RMP requirements from February 15, 2004 to the present. Provide EPA with the dates when any RMP expenditures took place and the actual costs of complying with the Program 3 requirements, including, but not limited to completion of a RMP.
- c. From February 15, 2004 to the present, indicate whether Roberts has had on site any of the substances listed under 40 CFR § 68.130 (including but not limited to pentane, chloroform, and hydrochloric acid 37%). If yes, list the substances, the years in which they were present, the amount present in each year; and where on the Facility such substances were stored. Provide documentation that substantiates your response (for example, inventory reports, invoices, sales receipts, etc.).

ENFORCEMENT

43. At any time after the issuance of this AO, EPA may take any or all of the following actions: issue a further order requiring compliance with the Act; issue an administrative penalty order for up to \$37,500 per day for each violation; or bring a civil judicial action seeking an injunction and civil penalties. See Sections 113(a), (b), and (d) of the Act, 42 U.S.C. §§ 7413(a), (b), and (d); 40 C.F.R Part 19; and 73 Fed. Reg. 75340-75346 (December 11, 2008) (Clean Air Act penalties raised from \$25,000 to \$32,500 for violations occurring between March 15, 2004 and January 11, 2009, and to \$37,500 for violations occurring after January 11, 2009). Be

advised that Section 113(e)(2) of the Act, 42 U.S.C. § 7413(e)(2), contains provisions that affect the burden of proof with respect to violations which continue following issuance of a notice of violation.

44. If Roberts has knowingly violated the requirements of the Act, the company and responsible personnel may be subject to criminal penalties under relevant federal statutes.

45. Be advised that issuance of this NOV and AO does not preclude EPA from electing to pursue any other remedies or sanctions authorized by law that are available to address these and other violations. This NOV and AO do not resolve Roberts's liability for past violations of the Act or for any violations that continue from the date of this NOV and AO up to the date of compliance.

EFFECTIVE DATE AND APPLICABILITY

46. This AO shall take effect within immediately. The AO shall apply to Roberts, its officers, agents, servants, employees, successors, and assigns, and to all persons, firms, and corporations acting under, through, or for Roberts. This action is not subject to Office of Management and Budget review under the Paperwork Reduction Act, 44 U.S.C. Chapter 35.

47. If Roberts has any questions regarding this NOV, AO, and RR, please contact Len Wallace at (617) 918-1835, or have your legal counsel contact Catherine Smith, Senior Enforcement Counsel, at (617) 918-1777. Roberts may request an opportunity to confer with

EPA within seven days of issuance of this NOV, AO, and RR by contacting Len Wallace or Catherine Smith at the phone numbers listed above.

Susan Studlien
Susan Studlien, Director
Office of Environmental Stewardship
U.S. Environmental Protection Agency
Region I – New England

02/13/09
Date



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.