



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

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

2010 AUG 31 AM 10:17

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EPA REGION VIII  
HEARING CLERK

Ref: 8ENF-L

AUG 30 2010

**SENT VIA CERTIFIED MAIL**  
**RETURN RECEIPT REQUESTED**

Don D. Brause, Manager  
Nova Energy Inc.  
401 E. 1<sup>st</sup> Street  
Casper, WY 82601-2558

Re: In the Matter of Nova Energy, Inc.,  
Docket No. CWA-08-2010-0024  
Administrative Complaint and Opportunity  
to Request a Hearing

Dear Mr. Brause:

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 §§ 309(g) and 311(b)(6)(B) of the Clean Water Act (Act), 33 U.S.C. §§ 1319(g) and 1321(b)(6)(B). The Complaint is based on alleged violations of §§ 308(a) and 311(j) of the Act.

The Complaint cites Nova Energy, Inc. (Nova), for failing to prepare and implement a Spill Prevention Control and Countermeasure (SPCC) plan for the Wood B-1 facility located in Crook County, Wyoming, in accordance with the oil pollution prevention regulations set forth at 40 C.F.R. § 112.7 and 112.9 as required by 40 C.F.R. § 112.3 for a duration of seven and a half (7.5) months. The Complaint also cites Nova for failing to timely respond to a Request for Information issued pursuant to Section 308(a) of the Act. Section 309(a)(3) of the Act, 1319(a)(3), authorizes the Administrator of EPA to issue an order requiring compliance with a Section 308 Request for Information. EPA also is authorized by section 309(g) of the Act, 33 U.S.C. § 1319(g), to assess civil penalties for violations of Section 308 of the Act.

The Complaint proposes the assessment of administrative penalties against Nova 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 nature, extent, and degree of success of any efforts to minimize or mitigate the effects of the discharge; the economic impact of the penalty on the violator; and any other factors as justice may require.

Nova 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 Nova 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 Nova 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 Nova 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.** Nova has the right to be represented by an attorney at any stage of the proceedings, including any informal discussions with EPA, but it is not required.

If Nova 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 to request an informal settlement conference or if Nova'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  
Notice of SEC Disclosure



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 Nova Energy, Inc. (Respondent) is a corporation organized under the laws of and doing business within the State of Wyoming. 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 an oil production facility, the Wood B-1 facility (facility) located in SENE Section 14, Township 14, Township 51 North, Range 68 West, Crook County, Wyoming. Drainage from the facility flows overland in a south southeast direction approximately one third of a mile to Miller Creek, an intermittent stream, approximately 5.3 miles to the Belle Fourche River, an interstate perennial river.

9 The facility includes, but is not limited to, crude oil production well(s), flowlines, a heater treater (capacity approximately 100-150 barrels), evaporation pits, a produced water tank (approximately 300 barrels), and two 500 barrel crude oil tanks. The total oil storage capacity at the facility is at least 1,400 barrels (58,800 gallons).

10. Crude oil and oily produced water are oils 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. Miller Creek and the Belle Fourche River are navigable waters 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 producing, gathering, storing, 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,<sup>1</sup> 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 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 has been operating the facility at least since 1993. After transferring the facility to Trinity Energy Resources, Inc., in 2000, the ownership of the facility transferred back to Nova Energy Inc. in 2005.

**COUNT 1**  
**(Failure to Properly Prepare and 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 onshore oil production facility must prepare a written SPCC plan in accordance with Part 112, including but not limited to, Sections 112.7, 112.9 and 112.10.

21. On October 27, 2009, EPA conducted an unannounced SPCC inspection at the facility.

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<sup>1</sup> 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.

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

- a. Inadequate training for personnel (40 C.F.R. § 112.7(f)); and
- b. Inadequate procedures for facility drainage (40 C.F.R. §112.9(b)).

23. In a letter following the inspection, dated November 24, 2009, EPA notified the facility representative of the inspection and findings of deficiency, and requested within thirty (30) days a certified copy of the written SPCC plan for the facility in accordance with 40 C.F.R. § 112.7 and any other applicable section of 40 C.F.R. Part 112 as required by 40 C.F.R. § 112.3.

24. Respondent did not submit the facility's SPCC plan to EPA.

25. Respondent's failure to prepare and implement an SPCC plan for the facility in accordance with 40 C.F.R. § 112.7 constitutes a violation of 40 C.F.R. § 112.3 and Sections 311(b)(6)(A) and 311(j)(1)(C) of the Act, 33 U.S.C. §§ 1321(b)(6)(A) and 1321(j)(1)(C). On information and belief, Respondent has violated these requirements for each day beginning October 27, 2009, for a total period of seven and a half months in violation of 40 C.F.R. § 112.3.

26. As alleged in the preceding Paragraph, and pursuant to Section 311(b)(6)(B)(ii) of the Act and 40 C.F.R. § 19.4, the Respondent is liable for civil penalties of up to \$16,000 per day for each day during which the violation continues, up to a maximum of \$137,500.

**COUNT II**  
**(Failure to Respond to Information Request)**

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

28. Section 308(a)(2)(A) of the Act, 33 U.S.C. § 1318(a)(2)(A), authorizes the Administrator of the EPA to require an owner or operator to provide information as necessary to determine whether any person is in violation of any effluent limit or other limitation, prohibition

or effluent standard, pretreatment standard, or standard of performance, or to carry out Section 311 of the Act, 33 U.S.C. § 1321.

29. Section 309(g)(2)(B) of the Act, 33 U.S.C. § 1319(g)(2)(B), authorizes the EPA Administrator to assess a Class II civil administrative penalty of up to \$16,000 per day per violation of Section 308 of the Act occurring after January 12, 2009, up to a maximum of \$137,500.

30. On November 24, 2009, EPA issued the Respondent a Notice of Violation and Information Request pursuant to Section 308 of the CWA. The Information Request required the Respondent to respond within thirty days of receipt of the letter. The Respondent received the Information Request on December 3, 2009, but did not submit a timely response.

31. Section 309(a)(3) of the Act authorizes EPA to issue an order requiring compliance with a Section 308 Request for Information following notice to the person to whom the order has been issued of the opportunity to confer with EPA regarding the alleged violation of Section 308 of the Act. EPA issued Respondent a Notice of Opportunity to Confer on June 23, 2010.

32. Respondent's failure to respond to the Information Request within the specified timeframe of thirty days constitutes a violation of Section 308(a)(2)(A) of the Act, 33 U.S.C. § 1318(a)(2)(A).

33. As alleged in the preceding Paragraph, and pursuant to Section 309(g)(2)(B) of the Act and 40 C.F.R. § 19.4, the Respondent is liable for civil penalties of up to \$16,000 per day for each day during which the violation continues, up to a maximum of \$137,500.



**PROPOSED PENALTY**

Based on the forgoing Allegations, and pursuant to the authority of Sections 309(g)(2)(B) and 311(b)(6)(B)(ii) 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 determining the amount appropriate for the failure to respond to the Information Request in accordance with Section 309(g)(3) of the Act, 33 U.S.C. § 1319(g)(3); and considering the following applicable statutory penalty factors for the alleged SPCC violation set forth in Section 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 nature, extent, and degree of success of any efforts of the violator to minimize or mitigate the effects of the discharge, 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 potential for moderate environmental impact for a duration of at least seven and a half (7.5) months. Specifically, the total penalty is based on the following:

COUNT	VIOLATION	PROPOSED PENALTY
Count I	Failure to prepare and implement a written SPCC plan, in accordance with 40 C.F.R. § 112.7, in violation of 40 C.F.R. § 112.3 and CWA §§ 311(b)(6)(A) and (j)(1)(C)	\$31,619
Count II	Failure to respond to an Information Request, in violation of CWA § 308(a)(2)(A)	\$5,881

**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 C.F.R. § 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 \$31,619 proposed for the SPCC violation (CWA § 311) 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

**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

Respondent shall pay the amount of \$5,881 proposed for the Information Request (CWA § 309) violation in the same manner as described except separately, made payable to the Treasurer, United States of America, without referencing the “Oil Spill Liability Trust Fund-311.”

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.

#### **PUBLIC NOTICE**

Pursuant to section 311(b)(6)(C) of the Act, 33 U.S.C. § 1321(b)(6)(C), the Complainant is providing public notice of and reasonable opportunity to comment on this proposed issuance of a complaint assessing administrative penalties against you. If a hearing is held on this matter, members of the public who submitted timely comments on this proceeding have the right under section 311(b)(6)(C) of the Act, 33 U.S.C. § 1321(b)(6)(C), to be heard and present evidence at the hearing.

#### **SETTLEMENT CONFERENCE**

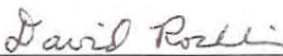
The EPA encourages settlement of a proceeding at any time if the settlement is consistent with the provisions and objectives of the Act and applicable regulations and is willing to explore this possibility in an informal settlement conference. If you or your attorney, if you choose to be




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: August 30, 2010

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

Date: 8-27-10

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

Date: 8/30/2010

  
\_\_\_\_\_  
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:

Don D. Brause, Registered Agent  
Nova Energy, Inc.  
401 East 1<sup>st</sup> Street  
Casper, WY 82601-2558

8/31/2010

Date

Judith M. McTernan

Signature

**§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.

## NOTICE OF SECURITIES AND EXCHANGE COMMISSION REGISTRANTS' DUTY TO DISCLOSE ENVIRONMENTAL LEGAL PROCEEDINGS

Securities and Exchange Commission regulations require companies registered with the SEC (e.g., publicly traded companies) to disclose, on at least a quarterly basis, the existence of certain administrative or judicial proceedings taken against them arising under Federal, State or local provisions that have the primary purpose of protecting the environment. Instruction 5 to Item 103 of the SEC's Regulation S-K (17 CFR 229.103) requires disclosure of these environmental legal proceedings. For those SEC registrants that use the SEC's "small business issuer" reporting system, Instructions 1-4 to Item 103 of the SEC's Regulation S-B (17 CFR 228.103) requires disclosure of these environmental legal proceedings.

If you are an SEC registrant, you have a duty to disclose the existence of pending or known to be contemplated environmental legal proceedings that meet any of the following criteria (17 CFR 229.103(5)(A)-(C)):

- A. Such proceeding is material to the business or financial condition of the registrant;
- B. Such proceeding involves primarily a claim for damages, or involves potential monetary sanctions, capital expenditures, deferred charges or charges to income and the amount involved, exclusive of interest and costs, exceeds 10 percent of the current assets of the registrant and its subsidiaries on a consolidated basis; or
- C. A governmental authority is a party to such proceeding and such proceeding involves potential monetary sanctions, unless the registrant reasonably believes that such proceeding will result in no monetary sanctions, or in monetary sanctions, exclusive of interest and costs, of less than \$100,000; provided, however, that such proceedings which are similar in nature may be grouped and described generically.

Specific information regarding the environmental legal proceedings that must be disclosed is set forth in Item 103 of Regulation S-K or, for registrants using the "small business issuer" reporting system, Item 103(a)-(b) of Regulation S-B. If disclosure is required, it must briefly describe the proceeding, "including the name of the court or agency in which the proceedings are pending, the date instituted, the principal parties thereto, a description of the factual basis alleged to underlie the proceedings and the relief sought."

You have been identified as a party to an environmental legal proceeding to which the United States government is, or was, a party. If you are an SEC registrant, this environmental legal proceeding may trigger, or may already have triggered, the disclosure obligation under the SEC regulations described above.

This notice is being provided to inform you of SEC registrants' duty to disclose any relevant environmental legal proceedings to the SEC. This notice does not create, modify or interpret any existing legal obligations, it is not intended to be an exhaustive description of the legally applicable requirements and it is not a substitute for regulations published in the Code of Federal Regulations. This notice has been issued to you for information purposes only. No determination of the applicability of this reporting requirement to your company has been made by any governmental entity. You should seek competent counsel in determining the applicability of these and other SEC requirements to the environmental legal proceeding at issue, as well as any other proceedings known to be contemplated by governmental authorities.

If you have any questions about the SEC's environmental disclosure requirements, please contact the Office of Chief Counsel in the SEC's Division of Corporation Finance. The phone number is (202) 942-2900.