



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 8

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

2009 DEC 14 AM 9:56

FILED  
EPA REGION VIII  
HEARING CLERK

Ref: 8ENF-L

**CERTIFIED MAIL**  
**RETURN RECEIPT REQUESTED**

DEC 14 2009

Michael Sorensen  
Parry Farms, LLC  
2115 South Dallin Street  
Salt Lake City, UT 84109

Re: Administrative Complaint and Notice of  
Opportunity for Hearing  
Docket No. **CWA-08-2010-0002**

Dear Mr. Sorensen:

Enclosed is an Administrative Complaint and Notice of Opportunity for Hearing (complaint) that the U.S. Environmental Protection Agency, Region 8 (EPA) is issuing to Parry Farms, LLC (Parry Farms) under the authority of § 309(g) of the Clean Water Act (Act), 33 U.S.C. § 1319(g). In the complaint, EPA alleges that Parry Farms violated §§ 301 and 402 of the Act, 33 U.S.C. §§ 1311 and 1342, and their implementing regulations by violating the terms of the State of Utah Storm Water General Permit for Construction Activities. The violations that EPA is alleging are specifically set out in the complaint. The complaint proposes that a penalty of \$28,000.00 be assessed against Parry Farms for these violations.

By law, Parry Farms has the right to request a hearing regarding the violations alleged in the complaint and the appropriateness of the proposed administrative civil penalty. Please pay particular attention to the section of the Complaint entitled "Notice of Opportunity to Request a Hearing." If Parry Farms wishes to request a hearing, it must file, within thirty (30) days of receipt of the enclosed complaint, a written answer with the EPA Regional Hearing Clerk at the address set forth in the complaint. The written request must follow the requirements of the Consolidated Rules of Practice at 40 C.F.R. Part 22, a copy of which is enclosed. Note that should Parry Farms fail to request a hearing within thirty (30) days of receipt of the complaint, the right to such a hearing will be waived and the proposed civil penalty may be assessed against Parry Farms without further proceedings.

If Parry Farms wishes to settle this matter without further legal action, it may waive the right to a hearing and, within thirty days of receipt of this letter, pay the proposed penalty to "Treasurer, United States of America," at the address set forth in the complaint.



Printed on Recycled Paper

Enclosed is a copy of "U.S. EPA Small Business Resources," which can assist in compliance with federal environmental laws. Also enclosed is an SEC Disclosure Notice.

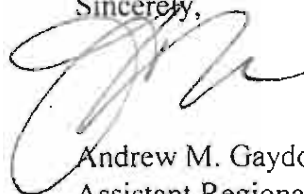
Whether or not Parry Farms requests a hearing, it may confer informally with EPA concerning the alleged violations and the amount of the proposed penalty. EPA encourages all parties against whom it files a complaint proposing assessment of a penalty to pursue the possibility of settlement as a result of an informal conference. If such a mutually satisfactory settlement can be reached, it will be formalized by the issuance of a consent agreement signed by Parry Farms and the delegated official in EPA Region 8. The issuance of such a consent agreement shall constitute a waiver by Parry Farms of its right to a hearing on, and to a judicial appeal of, the agreed-upon civil penalty.

A request for an informal conference with EPA does not extend the thirty-day period within which Parry Farms must request or waive the right to a hearing, and the two procedures can be pursued simultaneously.

Parry Farms has the right to be represented by an attorney at any stage in the proceedings, including any informal discussions with EPA, but it is not required. If Parry Farms wishes to discuss settlement or technical questions, please contact Aaron Urdiales, Acting Unit Chief, NPDES Enforcement Unit, at (303) 312-6844. Legal questions, including any communications from an attorney, should be directed to Wendy Silver, Senior Attorney, at (303) 312-6637.

We urge your prompt attention to this matter.

Sincerely,



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

Enclosures:

1. Administrative Complaint and Notice of Opportunity for Hearing
2. Consolidated Rules of Civil Practice (40 C.F.R. Part 22)
3. U.S. EPA Small Business Resources Information Sheet
4. SEC Disclosure Notice

cc: Amanda Smith, Executive Director, Utah Department of Environmental Quality  
Tim R. Pack, Esq., Nielsen, Nielsen, Webber & Pack, LLC

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

2009 DECEMBER 189: 56

IN THE MATTER OF:

Parry Farms, LLC  
1257 Margaret View Circle  
Riverton, Utah 84065-4017

Respondent.

FILED ADMINISTRATIVE COMPLAINT  
EPA REGION 8 AND NOTICE OF OPPORTUNITY  
HEARING OFFICE FOR HEARING

) Proceeding to Assess Class II  
) Administrative Penalty Under  
) Clean Water Act, Section 309(g)  
)  
) Docket No. CWA-08-2010-0002

1. This Administrative Complaint and Notice of Opportunity for Hearing (Complaint) is issued pursuant to § 309(g) of the Clean Water Act (CWA or the Act), 33 U.S.C. § 1319(g), and 40 C.F.R. § 22.13. Section 309(g) of the Act authorizes the Administrator of the United States Environmental Protection Agency (EPA) to make findings and to assess civil penalties for violations of § 301 of the CWA, 33 U.S.C. § 1311. This proceeding is subject to the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties, Issuance of Compliance or Corrective Action Orders, and the Revocation or Suspension of Permits (Consolidated Rules), 40 C.F.R. Part 22, a copy of which accompanies this Complaint.

2. The undersigned EPA official has been properly delegated the authority to issue this Complaint.

**STATUTORY AND REGULATORY FRAMEWORK**

3. Section 301(a) of the Act, 33 U.S.C. § 1311(a), among other things, prohibits the discharge of any pollutant into waters of the United States except as in compliance with a permit issued pursuant to § 402 of the Act, 33 U.S.C. § 1342.

4. Section 402 of the Act, 33 U.S.C. § 1342, establishes a National Pollutant Discharge Elimination System (NPDES) program, under which EPA and, upon receiving authorization from EPA, states may permit discharges of pollutants into navigable waters, subject to specific terms and conditions.

5. Section 402(p) of the Act, 33 U.S.C. § 1342(p), requires a permit for storm water discharges associated with industrial activity.

6. 40 C.F.R. § 122.26(b)(14)(x) defines the term "storm water discharge associated with industrial activity" to include storm water discharges from construction activities, including clearing, grading, and excavation activities, that result in a disturbance of five or more acres of total land area. Construction activity also includes the disturbance of less than five acres of total land area that is part of a larger common plan of development or sale if the larger plan will ultimately disturb five acres or more. Id.

7. EPA regulations also define the term “storm water discharge associated with small construction activity” to include storm water discharges from construction activities, including clearing, grading, and excavation activities, that result in a disturbance of equal to or greater than one acre and less than five acres. 40 C.F.R. § 122.26(b)(15)(i). Small construction activity also includes the disturbance of less than one acre that is part of a larger common plan of development or sale if the larger common plan will ultimately disturb equal to or greater than one acre and less than five acres. Id.

8. EPA has approved the State of Utah’s (State) NPDES program pursuant to § 402(b) of the Act, 42 U.S.C. § 1342(b).

9. The State has issued a Storm Water General Permit for Construction Activities, Permit No. UTR100000 (the Permit).

10. Part III of the Permit requires development of a storm water pollution prevention plan (SWPPP) which sets forth a plan to control and reduce pollutants in storm water discharges from construction activities.

11. Parts I.D. and III.A. of the Permit require that the SWPPP be completed prior to submittal of a notice of intent to be covered by the Permit.

12. Part III.D. of the Permit sets forth the requirements for the SWPPP, including, but not limited to, a description of the project and the selection of controls and measures, also known as best management practices (BMPs), to prevent or reduce the pollution of waters of the State. See also Part VII.A.2. of the Permit.

13. Parts III and III.D.3. of the Permit require implementation of the SWPPP and proper operation and maintenance of the BMPs, respectively.

14. Part III.B.1. of the Permit states that the signed SWPPP must be retained onsite at the facility unless the site is inactive or does not have an onsite location adequate to store the SWPPP, in which case the location of the plan and a contact phone number must be posted onsite.

15. Part III.D.4. of the Permit requires, in part, that qualified personnel provided by the permittee inspect disturbed areas of the construction site that have not finally stabilized, areas used for storage of materials that are exposed to precipitation, structural control measures, and locations where vehicles enter or exit the site, at least once every fourteen (14) calendar days and within 24 hours of the end of a storm that is 0.5 inches or greater.

16. Part III.D.4.c. of the Permit requires that inspection reports be made summarizing the scope of the inspection, the date(s) of the inspection, major observations relating to

implementation of the SWPPP, and actions taken, and that the inspection reports be retained as part of the SWPPP for at least three (3) years from the date the site is finally stabilized.

17. Section 309(g)(2)(B) of the Act, 33 U.S.C. § 1319(g)(2)(B), authorizes the assessment of a Class II civil penalty of up to \$11,000.00 per day per violation of § 301 of the Act, 33 U.S.C. § 1311, and per day per violation of any condition or limitation in a permit issued pursuant to § 402 of the Act, 33 U.S.C. § 1342, up to a maximum for all violations of \$157,500.00 for violations occurring from March 15, 2004, through January 12, 2009.

### GENERAL ALLEGATIONS

18. All general allegations set forth in this Complaint are specifically incorporated into each count by this reference.

19. Respondent Parry Farms, LLC (Parry Farms or Respondent) is and was at all relevant times a Utah limited liability company having a registered office address of 1257 Margaret View Circle, Riverton, Utah, 84065-4017.

20. At all times relevant to this action, Respondent engaged in construction activities at the Parry Farms development in Bluffdale, Utah (the Site). The Site is a residential housing development with single-family lots.

21. On May 6, 2005, Respondent submitted a notice of intent (NOI) to the State requesting authorization to discharge stormwater at the Site pursuant to the Permit.

22. Coverage for the Site under the Permit, UTR104357, was obtained on May 6, 2005.

23. Respondent commenced construction activities at the Site during the Spring of 2005.

24. Respondent's construction activities at the Site resulted in the disturbance of at least five acres of land.

25. On May 25, 2006, an inspector from the Utah Division of Water Quality (DWQ) inspected the Site and observed, among other things, the following:

- a. A copy of the signed SWPPP for the Site was not available onsite;
- b. BMPs to protect the stormwater inlets were either missing or inadequate;
- c. Sediment was built up in the streets;
- d. There was no designated concrete washout area;
- e. Site inspections had not been performed;
- f. Inspection reports had not been prepared; and
- g. Inspection reports were not retained as part of the SWPPP.

26. On June 27, 2006, an inspector from the DWQ inspected the Site and observed, among other things, the following:
  - a. A copy of the signed SWPPP for the Site was not available onsite;
  - b. BMPs to protect the stormwater inlets were either missing or inadequate;
  - c. Sediment was built up in the streets;
  - d. Site inspections had not been performed;
  - e. Inspection reports had not been prepared; and
  - f. Inspection reports were not retained as part of the SWPPP.
27. On November 8, 2006, Respondent submitted to DWQ a copy of a SWPPP for the Site, dated November 6, 2006 and marked "Revision 1."
28. On September 11, 2008, Respondent's consultant submitted to EPA a copy of a SWPPP for the Site dated May, 2005.
29. On or about December 31, 2006, Respondent completed construction activity at the Site.
30. On May 14, 2008, and June 12, 2008, EPA issued a request for information (Request) to Respondent pursuant to § 308 of the Act, 33 U.S.C. § 1318. Among other things, the Request required Respondent to provide to EPA copies of all storm water self-inspections conducted at the Site or, if a self-inspection report was not available for any storm water self-inspections conducted, the dates of the self-inspections.
31. EPA received a response to the Request from James Pack on behalf of Respondent, dated July 18, 2008. The response states that certain information, including, but not limited to, the self-inspection reports and dates of the self-inspections, would be forwarded to EPA.
32. To date, EPA has not received copies of any self-inspection reports or the dates on which self-inspections were conducted at the Site.
33. At all times relevant to this action, water entering storm drains at the Site flowed through the Site's stormwater infrastructure into a detention pond and ultimately into the Jordan River.
34. The Jordan River is a "water of the United States" within the meaning of 33 C.F.R. § 328.3(a), and therefore a "navigable water" within the meaning of the definition set forth in § 502(7) of the Act, 33 U.S.C. § 1362(7).
35. Respondent is, and was at all relevant times, a "person" within the meaning of the definition set forth in § 502(5) of the Act, 33 U.S.C. § 1362(5).
36. Runoff and drainage from the Site is "storm water" as defined in 40 C.F.R. § 122.26(b)(13).

37. Storm water contains "pollutants" as defined in § 502(6) of the Act, 33 U.S.C. § 1362(6).

38. The storm water discharge from the Site is a "discharge of a pollutant" as defined in § 502(12) of the Act, 33 U.S.C. § 1362(12) and 40 C.F.R. § 122.2.

39. The Site, as well as the storm drains and other conveyances referenced above, constitute "point source[s]" within the meaning of § 502(14) of the Act, 33 U.S.C. § 1362(14) and 40 C.F.R. § 122.2.

40. Pursuant to § 309(g) of the Act, 33 U.S.C. § 1319(g), EPA has consulted with Amanda Smith, Executive Director, Utah Department of Environmental Quality, regarding assessment of this administrative penalty by furnishing a copy of this complaint and inviting her to comment on behalf of the State of Utah.

### COUNT I

41. As described in paragraphs 25.a. and 26.a., above, on May 25 and June 27, 2006, Respondent did not retain the signed SWPPP at the Site as required by Part III.B.1. of the Permit.

42. Respondent's failures to retain the signed SWPPP onsite in compliance with Part III.B.1. of the Permit constitute violations of the Permit.

### COUNT II

43. As described in paragraphs 25.b. - d. and 26.b. and c., above, on May 25 and June 27, 2006, Respondent failed to properly select, operate, and maintain BMPs as required by Parts III and III.D. of the Permit.

44. Respondent's failures to comply with the terms and conditions of Parts III and III.D. of Permit constitute violations of the Permit.

### COUNT III

45. From July 1, 2005, through December 31, 2006, Respondent failed to conduct Site inspections, prepare inspection reports, and retain inspection reports as part of the SWPPP as required by Parts III.D.4. and III.D.4.c. of the Permit.

46. Respondent's failures to comply with the terms and conditions of Parts III.D.4. and III.D.4.c. of the Permit constitute violations of the Permit.

## NOTICE OF PROPOSED ORDER ASSESSING A CIVIL PENALTY

47. Based on the foregoing allegations and pursuant to the authority of § 309(g) of the Act, 33 U.S.C. §1319(g), EPA Region 8 hereby proposes that a penalty of \$28,000.00 be assessed against Respondent for the violations alleged above, as explained below:

### Nature, Circumstances, Extent, and Gravity of Violations

In May 2006, DWQ inspected the Site and found that Respondent had failed to implement and maintain appropriate BMPs and had failed to retain the SWPPP and records of inspections at the Site, in violation of the Permit. The inspector also cited significant sediment buildup and concrete washout in the streets. A follow-up inspection in June 2006 found similar violations. Water entering the storm drains at the Site flows to the development's storm water infrastructure which ultimately flows to the Jordan River, a water of the U.S. Sediment loading into the Jordan River from the Site would have been minimized or prevented if the SWPPP had been retained onsite and appropriately followed, had BMPs been properly implemented and maintained, and had inspections been performed and documented, as required by the Permit. Thus, the observed Permit violations led to a higher potential for sediment laden runoff to discharge from the Site to the Jordan River. In 2006, the Site received approximately 21 inches of precipitation.

The Jordan River upstream and downstream of the Parry Farms development is listed as class 3A and 4. The quality of the waters in class 3A streams shall be protected for cold water species of game fish and other cold water aquatic life, including the necessary aquatic organisms in their food chain. The quality of the waters in class 4 streams shall be protected for agricultural uses including irrigation of crops and stock watering. Presently, the Jordan River in this area is listed on the 2008 Utah 303(d) list of impaired waters for temperature and total dissolved solids.

Storm water that runs off of large construction sites can carry sediment, debris, and other pollutants into surrounding waterways. Polluted runoff can harm or damage aquatic habitat. High volumes of storm water runoff can erode stream banks.

### Prior Compliance History

This is the first enforcement action EPA Region 8 has issued to the Respondent requiring compliance with the applicable storm water regulations.

### Degree of Culpability

Respondent could have minimized the discharge of pollutants into the Jordan River if the SWPPP had been retained onsite and appropriately followed, had BMPs been properly implemented and maintained, and had inspections been performed and documented to ensure compliance with the permit. The fact that Respondent did not take steps to address the majority of the violations identified during DWQ's inspections increases Respondent's degree of culpability.



### Economic Benefit

Respondent received an economic benefit by failing to meet all of the requirements of the storm water program. Based on the observed violations of the Permit, the economic benefit to Respondent was determined to include the cost savings associated with the failure to implement and maintain BMPs and the failure to perform and document Site inspections to ensure the continuing proper implementation of the required BMPs.

### Ability to Pay

The proposed penalty was not reduced based upon the statutory factor of an inability to pay. However, EPA will consider any new information that Respondent may present regarding its inability to pay the penalty proposed in this complaint.

### Other Matters That Justice May Require

At this time, EPA has not made any adjustment to the proposed penalty based on this statutory factor.

48. As required by § 309(g)(4) of the Act, 33 U.S.C. § 1319(g)(4), prior to assessing a civil penalty, EPA will provide public notice of the proposed penalty and a reasonable opportunity for the public to comment on the matter and, if a hearing is held, to be heard and present evidence.

49. EPA may issue the Final Order Assessing Administrative Penalties thirty days after Respondent's receipt of this Notice, unless Respondent, within that time, requests a hearing on this Notice pursuant to the following section.

### **NOTICE OF OPPORTUNITY TO REQUEST A HEARING**

50. As provided in § 309(g)(2)(A) of the Act, 33 U.S.C. § 1319(g)(2)(A), and 40 C.F.R. § 22.15(c), Respondent has the right to request a hearing in this matter. If Respondent (1) contests any material fact upon which the Complaint is based, (2) contends that the amount of penalty proposed in the Complaint is inappropriate, or (3) contends that it is entitled to judgment as a matter of law, it must file a written answer in accordance with 40 C.F.R. § 22.15 within thirty days after service of the Complaint.

51. Respondent's answer must (1) clearly and directly admit, deny, or explain each of the factual allegations contained in the Complaint, (2) state the circumstances or arguments which are alleged to constitute grounds of any defense, (3) state the facts which Respondent disputes, (4) state the basis for opposing any proposed relief, and (5) specifically request a hearing, if desired.

40 C.F.R. § 22.15(b). Failure to admit, deny, or explain any factual allegation contained in the Complaint constitutes an admission of the allegation. 40 C.F.R. § 22.15(d).

52. Respondent's answer, an original and one copy, must be filed with:

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

A copy of the answer and all other documents filed in this action must be served on:

Wendy Silver  
Senior Attorney  
U.S. EPA, Region 8 (8ENF-L)  
1595 Wynkoop Street  
Denver, CO 80202-1129

53. Be aware that should Respondent request a hearing on this proposed penalty assessment, members of the public, to whom EPA is obligated to give notice of this proposed action, will have a right under § 309(g)(4)(B) of the Act, 33 U.S.C. §1319(g)(4)(B), to be heard and to present evidence on the appropriateness of the penalty assessment.

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

**IF RESPONDENT FAILS TO FILE A WRITTEN ANSWER WITHIN THE THIRTY (30) DAY LIMIT, A DEFAULT JUDGMENT MAY BE ENTERED**

**PURSUANT TO 40 C.F.R. § 22.17, THIS JUDGMENT MAY IMPOSE THE FULL PENALTY PROPOSED IN THE COMPLAINT.**

54. Should Respondent not request a hearing, EPA will issue a Final Order Assessing Administrative Penalties, and only members of the public who submit timely comments on this proposal will have an additional 30 days to petition EPA to set aside the Final Order Assessing Administrative Penalties and to hold a hearing thereon. EPA will grant the petition and will hold a hearing only if the petitioner's evidence is material and was not considered by EPA in the issuance of the Final Order Assessing Administrative Penalties.

#### **TERMS OF PAYMENT FOR QUICK RESOLUTION**

55. If Respondent does not contest the findings and assessments 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. For

more time for payment, Respondent may file a statement agreeing to pay the penalty within thirty (30) days of receipt of the Complaint, then pay the money within sixty (60) days of such receipt. Penalty payment must be made by certified or cashier's check payable to "Treasurer, the United States of America," and remitted to:

U.S. Environmental Protection Agency  
Fines and Penalties  
Cincinnati Finance Center  
P.O. Box 979077  
St. Louis, MO 63197-9000

Copies of the check shall be sent to:

Aaron Urdiales  
U.S. Environmental Protection Agency (8ENF-W-NP)  
1595 Wynkoop Street  
Denver, CO 80202-1129

and

Wendy Silver  
U.S. Environmental Protection Agency (8ENF-L)  
1595 Wynkoop Street  
Denver, CO 80202-1129

A transmittal letter identifying the case title and docket number must accompany the remittance and copies of the check.

56. 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 in this matter.

57. Neither assessment nor payment of an administrative civil penalty pursuant to § 309 of the Act, 33 U.S.C. § 1319, shall affect Respondent's continuing obligation to comply with the Clean Water Act or any other federal, state, or local law or regulations and any separate Compliance Order issued under § 309(a) of the Act, 33 U.S.C. §1319(a), for the violations alleged herein.


### SETTLEMENT CONFERENCE

58. EPA encourages the exploration of settlement possibilities through an informal settlement conference. 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.

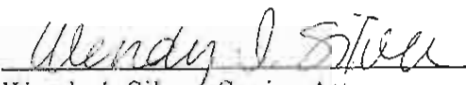
The settlement process, however, may be pursued simultaneously with the administrative litigation process. If a settlement can be reached, its terms will be expressed in a written consent agreement signed by the parties and incorporated into a final order signed by the Regional Judicial Officer, 40 C.F.R. § 22.18. To explore the possibility of settlement in this matter, contact Wendy Silver, Senior Attorney, at the address below. Ms. Silver can also be reached at (303) 312-6637.

United States Environmental Protection Agency, Region 8  
Office of Enforcement, Compliance, and  
Environmental Justice, Complainant.  
1595 Wynkoop Street  
Denver, CO 80202-1129

Date: 12/8/09

By:   
\_\_\_\_\_  
Andrew M. Gaydosh  
Assistant Regional Administrator

Date: 12/10/09

By:   
\_\_\_\_\_  
Wendy I. Silver, Senior Attorney  
Legal Enforcement Program

CERTIFICATE OF SERVICE

I certify that on the date noted below, I sent by certified mail, return receipt requested, a copy of the foregoing ADMINISTRATIVE COMPLAINT AND NOTICE OF OPPORTUNITY FOR HEARING, and a copy of the Consolidated Rules of Practices Governing the Administrative Assessment of Civil Penalties and the Revocation or Suspension of Permits, 40 C.F.R. Part 22, to:

Michael Sorensen  
Parry Farms, LLC  
2115 South Dallin Street  
Salt Lake City, UT 84109

Certified Return Receipt No. 7008 3230 0003 0726 8753

I further certify that on the same date below I sent by certified mail, return receipt requested, a copy of this document to:

Amanda Smith  
Executive Director  
Utah Department of Environmental Quality  
168 North 1950 West  
P.O. Box 144810  
Salt Lake City, UT 84114-4810

Certified Return Receipt No. 7008 3230 0003 0730 0064

The original and one copy were hand-delivered to:

Tina Artemis  
Regional Hearing Clerk  
U.S. Environmental Protection Agency (8RC)  
1595 Wynkoop Street  
Denver, CO 80202-1129

Date: 12/14/09 Judith M. McTernan

develop an effective process permitting elected officials and other representatives of State, local and tribal governments "to provide meaningful and timely input to the development of regulatory proposals containing significant unfunded mandates."

Today's rule does not create a mandate on State, local or tribal governments. This rule does not impose any enforceable duties on these entities. Instead, it merely revises the procedural rules governing EPA's administrative enforcement proceedings.

#### F. Executive Order 13045

Executive Order 13045: "Protection of Children from Environmental Health Risks and Safety Risks" (62 FR 19885, April 23, 1997) applies to any rule that: (1) is determined to be "economically significant" as defined under E.O. 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

This final rule is not subject to the E.O. 13045 because it is not "economically significant" as defined in E.O. 12866, and because it does not involve decisions based on environmental health or safety risks.

#### G. Executive Order 13084

Under Executive Order 13084, EPA may not issue a regulation that is not required by statute, that significantly or uniquely affects the communities of Indian tribal governments, and that imposes substantial direct compliance costs on those communities, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by the tribal governments, or EPA consults with those governments. If EPA complies by consulting, Executive Order 13084 requires EPA to provide to the Office of Management and Budget, in a separately identified section of the preamble to the rule, a description of the extent of EPA's prior consultation with representatives of affected tribal governments, a summary of the nature of their concerns, and a statement supporting the need to issue the regulation. In addition, Executive Order 13084 requires EPA to develop an effective process permitting elected and other representatives of Indian tribal governments "to provide meaningful and timely input in the

development of regulatory policies on matters that significantly or uniquely affect their communities."

Today's rule does not significantly or uniquely affect the communities of Indian tribal governments. Accordingly, the requirements of section 3(b) of Executive Order 13084 do not apply to this rule.

#### H. National Technology Transfer and Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 ("NTTAA"), Public Law 104-113, section 12(d) (15 U.S.C. 272 note), directs EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., materials specifications, test methods, sampling procedures, business practices) that are developed or adopted by voluntary consensus standards bodies. The NTTAA requires EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable voluntary consensus standards.

This action does not involve technical standards. Therefore, EPA did not consider the use of any voluntary consensus standards.

#### I. Submission to Congress and the Comptroller General

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. The EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the Federal Register. This rule is not a "major rule" as defined by 5 U.S.C. 804(2).

#### List of Subjects in 40 CFR Part 22

Environment protection, Administrative practice and procedure, Air pollution control, Hazardous substances, Hazardous waste, Penalties, Pesticides and pests, Poison prevention, Superfund, Waste treatment and disposal, Water pollution control, Water supply.

Dated: June 30, 1999.

Carol M. Browner,  
Administrator.

Therefore, 40 CFR part 22 is revised to read as follows:

### PART 22—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

#### 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.

#### Subpart F—Appeals and Administrative Review

- 22.29 Appeal from or review of interlocutory orders or rulings.
- 22.30 Appeal from or review of initial decision.

## 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.



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

#### Automotive Recycling Industry

([www.ecarcenter.org](http://www.ecarcenter.org))

#### Automotive Service and Repair

([www.ccar-greenlink.org](http://www.ccar-greenlink.org) or 1-888-GRN-LINK)

#### Chemical Industry

([www.chemalliance.org](http://www.chemalliance.org))

#### Construction Industry

([www.cicacenter.org](http://www.cicacenter.org) or 1-734-995-4911)

#### Education

([www.campuserc.org](http://www.campuserc.org))

#### Healthcare Industry

([www.hercenter.org](http://www.hercenter.org) or 1-734-995-4911)

#### Metal Finishing

([www.nmfrc.org](http://www.nmfrc.org) or 1-734-995-4911)

#### Paints and Coatings

([www.paintcenter.org](http://www.paintcenter.org) or 1-734-995-4911)

#### Printed Wiring Board Manufacturing

([www.pwbrc.org](http://www.pwbrc.org) or 1-734-995-4911)

#### Printing

([www.pneac.org](http://www.pneac.org) or 1-888-USPNEAC)

#### Transportation Industry

([www.transource.org](http://www.transource.org))

#### Tribal Governments and Indian Country

([www.epa.gov/tribal/compliance](http://www.epa.gov/tribal/compliance) or 202-564-2516)

#### US Border Environmental Issues

([www.bordercenter.org](http://www.bordercenter.org) or 1-734-995-4911)

The Centers also provide State Resource Locators ([www.envcap.org/statetools/index.cfm](http://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](http://www.epa.gov)

#### Small Business Gateway

[www.epa.gov/smallbusiness](http://www.epa.gov/smallbusiness)

#### Compliance Assistance Home Page

[www.epa.gov/compliance/assistance](http://www.epa.gov/compliance/assistance)

#### Office of Enforcement and Compliance Assurance

[www.epa.gov/compliance](http://www.epa.gov/compliance)

#### Voluntary Partnership Programs

[www.epa.gov/partners](http://www.epa.gov/partners)



## Hotlines, Helplines & Clearinghouses

([www.epa.gov/epahome/hotline.htm](http://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/caic](http://www.epa.gov/ttn/caic) or 1-919-541-0800)

Emergency Planning and Community Right-To-Know Act  
([www.epa.gov/superfund/resources/infocenter/epcra.htm](http://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](http://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](http://www.epa.gov/clearinghouse))

National Response Center to report oil and hazardous substance spills.  
([www.nrc.uscg.mil](http://www.nrc.uscg.mil) or 1-800-424-8802)

Pollution Prevention Information Clearinghouse  
([www.epa.gov/opptintr/ppic](http://www.epa.gov/opptintr/ppic) or 1-202-566-0799)

Safe Drinking Water Hotline  
([www.epa.gov/safewater/hotline/index.html](http://www.epa.gov/safewater/hotline/index.html) or 1-800-426-4791)

Stratospheric Ozone Refrigerants Information  
([www.epa.gov/ozone](http://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](http://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](http://www.epa.gov/sbo) or 1-800-368-5888)

Small Business Environmental Homepage  
([www.smallbiz-enviroweb.org](http://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 reduction. EPA has two policies that potentially apply to small businesses:

The Small Business Compliance Policy  
([www.epa.gov/compliance/incentives/smallbusiness](http://www.epa.gov/compliance/incentives/smallbusiness))

Audit Policy  
([www.epa.gov/compliance/incentives/auditing](http://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 comment to the SBREFA Ombudsman or Regional Fairness Board, 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.*