



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 8

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

2014 SEP 12 PM 1:27

FILED
EPA REGION VIII
HEARING CLERK

SEP 12 2014

Ref: 8ENF-W

CERTIFIED MAIL
RETURN RECEIPT REQUESTED
No. 7009 3410 0000 2596 5173

Mr. Harley E. Nesham
President and Registered Agent
Gratech Company, Ltd.
8201 282nd Street NW
Berthold, North Dakota 58718

Re: Proposed Assessment of Class I Civil Penalty under Section 311 of the Clean Water Act
Docket No. **CWA-08-2014-0030**

Dear Mr. Nesham:

Enclosed is a United States Environmental Protection Agency Region 8 Complaint and Notice of Opportunity for Hearing (Complaint) issued to Gratech Company, Ltd. (Gratech). The Complaint alleges that Gratech has violated the EPA's Spill Prevention, Control, and Countermeasure (SPCC) regulations at a mobile facility in New Town, North Dakota. The Complaint proposes that Gratech be assessed an administrative penalty of \$12,000 for these violations.

By law, Gratech has the right to request a hearing regarding the matters set forth in the Complaint. Please pay particular attention to the parts of the Complaint entitled "Opportunity to Request a Hearing." Please note that if Gratech does not file an answer to the Complaint within 30 days of receipt, a default judgment may be entered and the proposed administrative civil penalty may be assessed without further proceedings. Gratech may request a hearing in its answer. Gratech has the right to be represented by an attorney at any stage of these proceedings.

The EPA encourages all parties against whom it files any complaint proposing a penalty assessment to pursue the possibilities of settlement through an informal conference. If Gratech and the EPA reach a settlement, they would enter into a written consent agreement, which would then be finalized by a final order issued by the Regional Judicial Officer for EPA Region 8.

Whether or not Gratech requests a hearing, its representative(s) may confer informally with the EPA concerning the alleged violations and/or the amount of the proposed penalty. However, an informal settlement conference does **not** substitute for filing a written answer and requesting a hearing. A request for an informal conference also does not extend the 30-day period during which Gratech must submit a written answer and a request for a hearing. Gratech may pursue settlement and participate in informal conferences with the EPA even if it is also litigating this matter.

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

Please be aware that regardless of whether Gratech agrees to settle this matter, Gratech will remain obligated to comply with all applicable SPCC regulations at all other facilities that it owns and operates. Any noncompliance with the SPCC regulations at Gratech's stationary facility in Berthold, North Dakota, or any of Gratech's other mobile operations may result in appropriate EPA enforcement action(s).

For any questions specific to the violations or penalty, the most knowledgeable people at the EPA regarding this matter are Christopher Ajayi, Environmental Engineer, who can be reached at 1-800-227-8917, extension 6320, or 303-312-6320, and, for questions from counsel, if any, Peggy Livingston, Enforcement Attorney, who can be reached at 1-800-227-8917, extension 6858, or 303-312-6858.

We urge your prompt attention to this matter.

Sincerely,



Gwenette C. Campbell, Supervisor
Water Enforcement Program
Office of Enforcement, Compliance,
and Environmental Justice

cc:

The Honorable Tex Hall, Chairman
Three Affiliated Tribes

Enclosures:

1. Complaint and Notice of Opportunity for Hearing
2. Small Business Regulatory Enforcement and Fairness Act Information Sheet

UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION 8

2014 SEP 12 PM 1:27

IN THE MATTER OF:)

Gratech Company, Ltd.,)

Respondent.)

FILED
EPA REGION VIII
COMPLAINT AND NOTICE OF
OPPORTUNITY FOR HEARING

Docket No. CWA-08-2014-0030

In this Complaint and Notice of Opportunity for Hearing (Complaint), the United States Environmental Protection Agency proposes to assess a civil administrative penalty against Gratech Company, Ltd. (Respondent), as described in more detail below. The undersigned EPA officials have been duly authorized to issue this Complaint.

JURISDICTIONAL ALLEGATIONS

1. This Complaint is issued under the authority of section 311(b)(6) of the Clean Water Act (Act), 33 U.S.C. § 1321(b)(6).

2. The rules governing this proceeding are the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties, Issuance of Compliance or Corrective Action Orders and the Revocation, Termination or Suspension of Permits, 40 Code of Federal Regulations (C.F.R.) part 22. A copy of 40 C.F.R. part 22 is being provided to the Respondent with this Complaint.

STATUTORY AND REGULATORY BACKGROUND

3. Section 311(j)(1)(C) of the Act, 33 U.S.C. § 1321(j)(1)(C), directed the President to issue regulations “establishing procedures, methods, and equipment and other requirements for equipment to prevent discharges of oil . . . from vessels and from onshore and offshore facilities, and to contain such discharges” The President delegated the authority to make this determination for non-transportation related onshore facilities to the Administrator of the EPA by section 2(b)(1) of Executive Order

No. 12777 (56 Fed. Reg. 54757, October 21, 1991), which superseded Executive Order No. 11735 (38 Fed. Reg. 21243, August 7, 1973).

4. In response to the directive referenced in paragraph 3, above, the EPA promulgated 40 C.F.R. part 112.

5. A facility subject to 40 C.F.R. part 112 is required to prepare a written Spill Prevention, Control, and Countermeasure (SPCC) plan and to adhere to the discharge prevention and containment practices specified in that regulation.

ALLEGATIONS

The following allegations apply at all times relevant to this Complaint:

6. The Respondent is a North Dakota corporation.

7. The Respondent is a “person” as that term is defined in section 311(a)(7) of the Act, 33 U.S.C. § 1321(a)(7).

8. On June 22 and 23, 2011, the EPA conducted inspections of a mobile field fueling maintenance site (the Facility) at 92nd Avenue NW and 33rd Lane NW, in New Town, North Dakota, on the Fort Berthold Indian Reservation.

9. At the time of the inspections referenced in paragraph 8, above, the Facility had a total aggregate aboveground storage capacity of approximately 9,030 gallons.

10. At the time of the inspections referenced in paragraph 8, above, the Respondent was an “owner or operator” as defined in section 311(a)(6) of the Act, 33 U.S.C. § 1321(a)(6), of the Facility.

11. The Facility was an “onshore facility” as defined in section 311(a)(10) of the Act, 33 U.S.C. § 1321(a)(10).

12. The Facility was a “non-transportation related” facility as defined in 40 C.F.R. § 112.2.

13. The Facility was located approximately 250 meters, or approximately 273 yards, from an unnamed stream that is a tributary to Reunion Bay, in Lake Sakakawea.

14. Due to its location, the Facility could reasonably be expected to discharge oil and/or other pollutants to Lake Sakakawea and/or its tributaries and/or adjoining shorelines in quantities that would (a) violate applicable water quality standards or (b) cause a film or sheen upon or discoloration of the surface of the navigable waters of the United States or adjoining shorelines or cause a sludge or emulsion to be deposited beneath the surface of such water or adjoining shorelines.

15. Lake Sakakawea is a navigable-in-fact water and an impoundment of the Missouri River.

16. Lake Sakakawea is a “navigable water” as that term is defined in section 502(7) of the Act, 33 U.S.C. § 1362(7), and 40 C.F.R. §§ 110.1 and 112.2.

17. The Missouri River is a navigable-in-fact, interstate water.

18. The Missouri River is a “navigable water” as that term is defined in section 502(7) of the Act, 33 U.S.C. § 1362(7), and 40 C.F.R. §§ 110.1 and 112.2.

19. The Respondent was required to prepare an SPCC plan for the Facility in accordance with the requirements of 40 C.F.R. part 112.

20. The Respondent was required to maintain a complete copy of the plan at the Facility. 40 C.F.R. § 112.3(e)(1).

21. As of the time of the EPA’s inspections referenced in paragraph 8, above, the Respondent had not prepared an SPCC plan for the Facility.

22. During their June 23, 2011, inspection, the EPA inspectors informed the Respondent that an SPCC plan was required for the Facility and requested that the Respondent submit an SPCC plan to the EPA.

23. At the time of the inspections referenced in paragraph 8, above, the EPA inspectors provided the preliminary list of deficiencies to a representative of Respondent present at the Facility.

24. On August 2, 2011, the EPA again asked the Respondent to provide an SPCC plan for the Facility.

25. On at least February 27, 2012, May 24, 2012, and June 15, 2012, the EPA again requested a copy of an SPCC plan for the Facility.

26. On July 3, 2012, the Respondent submitted an SPCC plan (the 2012 Plan) for the Facility to the EPA.

27. The 2012 Plan followed the Tier 1 qualified facility format set forth in 40 C.F.R. part 112, appendix G.

28. The 2012 Plan indicated that the Facility had a total aboveground storage capacity of 8,350 gallons and that one of the tanks at the Facility had a capacity of 7,400 gallons.

29. A facility that has any aboveground oil storage container with a capacity of more than 5,000 gallons does not meet the criteria for being a Tier 1 qualified facility, according to 40 C.F.R. § 112.3(g)(1).

30. On at least August 7, 2012, the EPA notified the Respondent that the Facility did not meet the Tier 1 qualified facility criteria, because the Facility had a tank with a capacity of more than 5,000 gallons.

31. On August 7, 2012, the EPA notified the Respondent of various other deficiencies in the 2012 Plan, including the following, among other things:

- a. failure to provide sized secondary containment for all containers, as required by 40 C.F.R. § 112.8(c)(2);
- b. failure to provide information about discharge notification, as required by 40 C.F.R. § 112.7(a)(4) and (a)(5);
- c. failure to provide information about how a berm constructed on site would be emptied of rainwater expected to accumulate, as required by 40 C.F.R. § 112.8(c)(3);
- d. no description of overfill protection, as required by 40 C.F.R. § 112.8(c)(8); and
- e. no information on integrity testing for tanks, as required by 40 C.F.R. § 112.8(c)(6).

32. During their June 22, 2011, inspection, the EPA inspectors observed that the Facility did not have secondary containment.

33. Between the EPA's June 22, 2011, and June 23, 2011, inspections, the Respondent constructed a dirt berm wall around two tanks at the Facility. However, even after this berm was built, the Facility did not have adequate general secondary containment for loading and unloading areas.

34. The inadequate general secondary containment at the Facility was in violation of 40 C.F.R. § 112.7(c).

35. On February 1, 2013, the Respondent notified the EPA that it would submit an SPCC plan to the EPA by February 15, 2013.

36. On March 4, 2013, the Respondent notified the EPA that it had hired an engineering consulting firm to assist in meeting SPCC requirements.

37. On November 26, 2013, the Respondent's consultant submitted a draft SPCC plan to the EPA. This draft, however, did not cover or specifically reference the Facility. Instead, it referenced a different, fixed facility at 8201 282nd Street NW, Berthold, North Dakota.

38. On December 3, 2013, the EPA provided comments to the Respondent's consultant on the draft SPCC plan referenced in paragraph 37, above.

39. On April 18, 2014, the Respondent's consultant submitted a revised SPCC plan to the EPA. Again, this plan mentioned off-site facilities generally but did not specifically reference the Facility.

40. The plan referenced in paragraph 39, above, included the following deficiencies, which applied to both the Berthold facility referenced in paragraph 37, above, and to off-site or mobile facilities:

- a. no certification of a licensed Professional Engineer, in violation of 40 C.F.R. § 112.3(d);
- b. no indication of management approval, in violation of 40 C.F.R. § 112.7;

- c. no designation on a facility diagram of transfer areas and buried connection pipes, in violation of 40 C.F.R. § 112.7(a)(3);
- d. inadequate designation of locations and contents and types of tanks (e.g., no indication of whether tanks labeled as “tanks not in use” had been properly closed), in violation of 40 C.F.R. § 112.7(a)(3);
- e. no written procedures for conducting inspections and tests, in violation of 40 C.F.R. § 112.7(e);
- f. inadequate description of testing and inspection schedule, in violation of 40 C.F.R. § 112.8(c)(6);
- g. inadequate discussion of portable or mobile containers, in violation of 40 C.F.R. § 112.8(c)(11); and
- h. no signature on the Certification of Substantial Harm Certification, in violation of 40 C.F.R. § 112.20(e).

41. In May of 2014, the EPA notified the Respondent’s consultant by telephone of the deficiencies cited in the preceding paragraph. The consultant indicated that the plan would be promptly corrected.

42. To date, the EPA has not received a corrected SPCC plan from the Respondent for the Facility.

43. The Respondent has informed the EPA that as of June 9, 2014, the Facility was closed.

44. Other than what is described above, the Respondent has not submitted any SPCC plan for the Facility to the EPA.

Count I

45. The Respondent's failure to prepare an adequate SPCC plan for the Facility is a violation of 40 C.F.R. § 112.3. Alternatively, the Respondent's failure to keep a copy of any SPCC plan at the Facility is a violation of 40 C.F.R. § 112.3(e)(1).

Count II

46. The Respondent's failure to provide adequate secondary containment for the Facility is a violation of 40 C.F.R. §§ 112.8(c)(2) and 112.12(c)(2).

ENFORCEMENT

47. Any person who fails or refuses to comply with any regulation issued under section 311(j) of the Act, 33 U.S.C. § 1321(j), may be assessed an administrative penalty by the EPA, according to section 311(b)(6)(A)(ii) of the Act, 33 U.S.C. § 1321(b)(6)(A)(ii). As adjusted for inflation pursuant to 40 C.F.R. part 19, the maximum Class I penalty pursuant to section 311(b)(6)(B)(i) of the Act, 33 U.S.C. § 1321(b)(6)(B)(i), is \$16,000 per violation after January 12, 2009, up to a total of \$37,500.

PROPOSED PENALTY

The EPA proposes to assess an administrative penalty of **\$12,000** against the Respondent for the violations cited in this Complaint. In proposing this penalty amount, the EPA has considered the applicable statutory penalty factors. Based on section 311(b)(8) of the Act, 33 U.S.C. § 1321(b)(8), the factors are 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, the economic impact of the penalty on the violator, and any other factors as justice may require.

QUICK RESOLUTION

The Respondent may resolve this administrative penalty action by paying the proposed penalty in full pursuant to 40 C.F.R. § 22.18. If such payment is made within thirty (30) days of receipt of this Complaint, the Respondent need not file an answer. Alternatively, as allowed by 40 C.F.R. § 22.18(b), the Respondent may file a statement with the Regional Hearing Clerk within thirty (30) days of receipt of this Complaint agreeing to pay the full assessed penalty and may make the penalty payment within sixty (60) days of receiving this Complaint. (Note: In this Complaint, the number of days in a time period is computed according to 40 C.F.R. § 22.7(a).)

Payment of the penalty is to be in a single payment referencing the “Oil Spill Liability Trust Fund-311.”

If sent by regular U.S. mail:

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

If sent by any overnight commercial carrier:

U.S. Bank
Government Lockbox No. 979077
1005 Convention Plaza
Mail Station SL-MO-C2GL
St. Louis, Missouri 63101

Contact: Craig Steffen, 513-487-2091, steffen.craig@epa.gov

If sent by wire transfer: Any wire transfer must be sent directly to the Federal Reserve Bank in New York City with the following information:

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

Automated Clearinghouse (ACH) for receiving US currency:

U.S. Treasury REX / Cashlink ACH Receiver
ABA: 051036706
Account Number: 310006, Environmental Protection Agency
CTX Format Transaction Code 22 -- checking

Physical location of U.S. Treasury facility:
5700 Rivertech Court
Riverdale, Maryland 20737

Contacts: John Schmid (202-874-7026) and REX (Remittance Express)
1-866-234-5681

On-line Debit and Credit Card payment: There is now an On-Line Payment Option available through the Dept. of Treasury. This payment option can be accessed from the information below:

WWW.PAY.GOV
Enter sfo 1.1 in the search field / Open form and complete required fields.

For additional information on making payments to the EPA: Please see please see <http://www.2.epa.gov/financial/makepayment>.

At the time of payment, a copy of the check (or notification of other type of payment) shall also be sent to:

Christopher Ajayi
Environmental Engineer (8ENF-W)
U.S. EPA Region 8
1595 Wynkoop Street
Denver, Colorado 80202-1129

and

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

Payment of the penalty in this manner does not relieve the Respondent of its obligation to comply with the requirements of the Act and its implementing regulations. Payment of the penalty pursuant to 40 C.F.R. § 22.18 shall constitute consent by the Respondent to the assessment of the

proposed penalty and a waiver of the Respondent's rights to participate in a hearing on this matter and to appeal the assessment of the penalty.

OPPORTUNITY TO REQUEST A HEARING

The Respondent has the right to a public hearing before an EPA judicial officer to disagree with any allegation the EPA has made in this Complaint and/or the appropriateness of the penalty the EPA has proposed. To assert its right to a hearing, the Respondent must file a written answer (an original and one copy) with the Regional Hearing Clerk of EPA Region 8 (1595 Wynkoop Street, Mail Code 8RC, Denver, Colorado 80202) within 30 days of receiving this Complaint.

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

A copy of the answer must also be sent to the following attorney:

Peggy Livingston, Enforcement Attorney (8ENF-L)
U.S. EPA Region 8, Legal Enforcement Program
1595 Wynkoop Street
Denver, Colorado 80202-1129
Telephone: (303) 312-6858, or 1-800-227-8917, ext. 6858

The answer must clearly admit, deny or explain the factual allegations of this Complaint, the grounds for any defense, the facts the Respondent disputes, and whether it requests a public hearing. Please see 40 C.F.R. § 22.15 for more information on what must be in the answer.

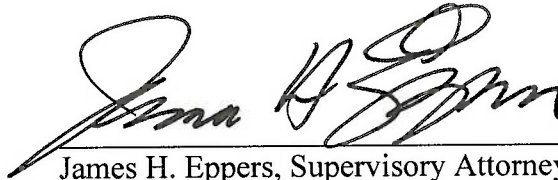
If the Respondent fails to file an answer, it will waive its right to contest any of the allegations set forth in this Complaint. If the Respondent fails to file an answer or pay the full proposed penalty, a default judgment may be entered against the Respondent pursuant to 40 C.F.R. § 22.17. This judgment may impose the full penalty amount proposed in this Complaint.

SETTLEMENT CONFERENCE

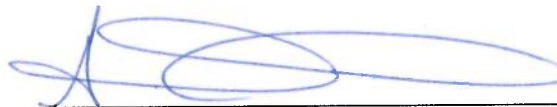
The EPA encourages settlement of a proceeding at any time if the settlement is consistent with the provisions and objectives of the Act and applicable regulations. If the Respondent wishes to pursue the possibility of settling this matter, or it has any other questions, the Respondent (or its counsel) should contact Peggy Livingston, Enforcement Attorney, at the address and/or telephone number given above. **Contacting this attorney or requesting a settlement conference does NOT substitute for the requirement to file an answer. Nor does it extend the 30-day period for filing an answer and requesting a hearing.**

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

Issued: September 12, 2014.



James H. Eppers, Supervisory Attorney
Legal Enforcement Program
Office of Enforcement, Compliance
and Environmental Justice
U.S. Environmental Protection Agency
1595 Wynkoop Street
Denver, Colorado 80202



Gwenette C. Campbell, Supervisor
Water Enforcement Program
Office of Enforcement, Compliance,
and Environmental Justice
U.S. Environmental Protection Agency
1595 Wynkoop Street
Denver, Colorado 80202

CERTIFICATE OF SERVICE

The undersigned hereby certifies that the original and one copy of the foregoing Complaint and Notice of Opportunity for Hearing (without 40 C.F.R. part 22) were hand-carried to the Regional Hearing Clerk, EPA Region 8, 1595 Wynkoop Street, Denver, Colorado, 80202, and that a true copy of the same (including 40 C.F.R. part 22) was sent via certified mail to:

Harley Nesham, President and Registered Agent
Gratech Company, Ltd.
8201 282 Street NW
Berthoud, North Dakota 58718-9602
Certified Mail No. 7009 3410 0000 2596 5173

SEP 12 2014

Date

By:

Rayle Aldinger

U.S. EPA Small Business Resources Information Sheet

The United States Environmental Protection Agency provides an array of resources, including workshops, training sessions, hotlines, websites and guides, to help small businesses understand and comply with federal and state environmental laws. In addition to helping small businesses understand their environmental obligations and improve compliance, these resources will also help such businesses find cost-effective ways to comply through pollution prevention techniques and innovative technologies.

EPA's Small Business Websites

Small Business Environmental Homepage - www.smallbiz-enviroweb.org

Small Business Gateway - www.epa.gov/smallbusiness

EPA's Small Business Ombudsman - www.epa.gov/sbo or 1-800-368-5888

EPA's Compliance Assistance Homepage

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

This page is a gateway to industry and statute-specific environmental resources, from extensive web-based information to hotlines and compliance assistance specialists.

EPA's Compliance Assistance Centers

www.assistancecenters.net

EPA's Compliance Assistance Centers provide information targeted to industries with many small businesses. They were developed in partnership with industry, universities and other federal and state agencies.

Agriculture

www.epa.gov/agriculture/

Automotive Recycling

www.ecarcenter.org

Automotive Service and Repair

www.ccar-greenlink.org or 1-888-GRN-LINK

Chemical Manufacturing

www.chemalliance.org

Construction

www.cicacenter.org or 1-734-995-4911

Education

www.campuserc.org

Food Processing

www.fpeac.org

Healthcare

www.hercenter.org

Local Government

www.lgean.org

Metal Finishing

www.nmfrc.org

Paints and Coatings

www.paintcenter.org

Printed Wiring Board Manufacturing

www.pwbrc.org

Printing

www.pneac.org

Ports

www.portcompliance.org

U.S. Border Compliance and Import/Export Issues

www.bordercenter.org

Hotlines, Helplines and Clearinghouses

www.epa.gov/epahome/hotline.htm

EPA sponsors many free hotlines and clearinghouses that provide convenient assistance regarding environmental requirements. Some examples are:

Antimicrobial Information Hotline

info-antimicrobial@epa.gov or
1-703-308-6411

Clean Air Technology Center (CATC) Info-line

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](http://www.epa.gov/superfund/resources/infocenter/epcra.htm) or 1-800-424-9346

EPA Imported Vehicles and Engines Public Helpline

www.epa.gov/otaq/imports or
734-214-4100

National Pesticide Information Center

www.npic.orst.edu/ or 1-800-858-7378

National Response Center Hotline -

to report oil and hazardous substance spills
www.nrc.uscg.mil or 1-800-424-8802

Pollution Prevention Information Clearinghouse (PPIC)

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 Protection Hotline

www.epa.gov/ozone or 1-800-296-1996

Toxic Substances Control Act (TSCA) Hotline

tsc hotline@epa.gov or 1-202-554-1404

Wetlands Information Helpline

www.epa.gov/owow/wetlands/wetline.html or 1-800-832-7828

State and Tribal Web-Based Resources

State Resource Locators

www.envcap.org/statetools

The Locators provide state-specific contacts, regulations and resources covering the major environmental laws.

State Small Business Environmental Assistance Programs (SBEAPs)

www.smallbiz-enviroweb.org

State SBEAPs help small businesses and assistance providers understand environmental requirements and sustainable business practices through workshops, trainings and site visits. The website is a central point for sharing resources between EPA and states.

EPA's Tribal Compliance Assistance Center

www.epa.gov/tribalcompliance/index.html

The Center provides material to Tribes on environmental stewardship and regulations that might apply to tribal government operations.

EPA's Tribal Portal

www.epa.gov/tribalportal/

The Portal helps users locate tribal-related information within EPA and other federal agencies.

EPA 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 such policies that may apply to small businesses:

EPA's Small Business Compliance Policy

www.epa.gov/compliance/incentives/smallbusiness/index.html

This Policy offers small businesses special incentives to come into compliance voluntarily.

EPA's Audit Policy

www.epa.gov/compliance/incentives/auditing/auditpolicy.html

The Policy provides incentives to all businesses that voluntarily discover, promptly disclose and expeditiously correct their noncompliance.

Commenting on Federal Enforcement Actions and Compliance Activities

The Small Business Regulatory Enforcement Fairness Act (SBREFA) established a SBREFA 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 designation, number of employees or annual receipts, as 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), or go to their website at www.sba.gov/ombudsman.

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 a comment 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.

**PART 22—CONSOLIDATED RULES
OF PRACTICE GOVERNING THE
ADMINISTRATIVE ASSESSMENT OF
CIVIL PENALTIES AND THE REV-
OCATION/TERMINATION OR SUS-
PENSION 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 Environ-
mental Appeals Board, Regional Judicial
Officer and Presiding Officer; disquali-
fication, 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; alter-
native dispute resolution.
- 22.19 Prehearing information exchange; pre-
hearing conference; other discovery.
- 22.20 Accelerated decision; decision to dis-
miss.

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 per-
suasion; 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.