



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 8

1595 WYNKOOP STREET

DENVER, CO 80202-1129

Phone 800-227-8917

<http://www.epa.gov/region08>

Ref: 8ENF-L

SEP 30 2009

SENT VIA CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Avista Corporation, Registered Agent for
Avista Utilities, Inc.
1411 East Mission Avenue-MS C 23
Spokane, WA 99202-1902

Re: In the Matter of Avista Utilities, Inc.,
Noxon Rapids Hydroelectric Facility,
Docket Nos. CWA-08-20090035
Administrative Complaint and Notice of
Opportunity for Hearing

Dear Avista Corporation:

Enclosed please find an Administrative Complaint and Notice of Opportunity for Hearing (Complaint) issued by the U.S. Environmental Protection Agency (EPA) pursuant to its authority under § 311(b)(6)(B) of the Clean Water Act (Act), 33 U.S.C. § 1321(b)(6)(B). The Complaint is based on alleged violations of §§ 311(b)(3) and (j) of the Act.

Specifically, the Complaint cites Avista Utilities, Inc. (Avista), for discharging oil into a water of the U.S. from its Noxon Rapids Hydroelectric Development Facility (facility) in Sanders County, Montana, on or about February 27, 2009, for a duration of six days in violation of § 311(b)(3) of the Act, 33 U.S.C. § 1311(b)(3). The Complaint also cites Avista for failure to prepare and implement a Spill Prevention Control and Countermeasure (SPCC) plan for the facility in accordance with the oil pollution prevention regulations set forth at 40 C.F.R. §§ 112.7 and 112.8 as required by 40 C.F.R. § 112.3 for a duration of three months.

The Complaint proposes the assessment of administrative penalties against Avista in the amount of \$42,600. EPA calculated a penalty of \$21,048 based on the alleged violation of § 311(b)(3) of the Act (oil spill violation), and a penalty of \$21,552 for the alleged violation of § 311(j) of the Act (SPCC violation). 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.

Avista has the right to a hearing to contest the factual allegations in the Complaint. If Avista admits the allegations, or the allegations are found to be true after it has an opportunity for a hearing, Avista has the right to contest the penalty proposed in the Complaint. A copy of EPA's administrative procedures is enclosed for review. Please note the requirements for an answer set forth in 40 C.F.R. §§ 22.15 and 22.38. If Avista 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 Avista does not file an answer by the applicable deadline, it will have defaulted and each allegation in the Complaint will be deemed to be admitted as true. Avista will have waived its right to appear in these actions for any purpose and will also have waived its right to be notified of any Agency proceedings that occur before a civil penalty may be imposed. Provided that the Complaint is legally sufficient, EPA may file a motion for default for the amount proposed in the Complaint.

Whether or not Avista 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. Avista 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 Avista has any questions, the most knowledgeable people on my staff regarding this matter are Amy Swanson and Donna Inman. Ms. Swanson is in our Legal Enforcement Program and can be reached at (303) 312-6906 to request an informal settlement conference or for legal questions. Ms. Inman is in our Oil Pollution Act Technical Enforcement Program and can be reached for technical questions at (303) 312-6201.

Sincerely,



Eddie A. Sierra
Acting Assistant Regional Administrator
Office of Enforcement, Compliance
and Environmental Justice

Enc Complaint and Notice of Opportunity for Hearing
Consolidated Rules of Practice, 40 C.F.R. Part 22
SBREFA Information Sheet
Notice of SEC Disclosure

cc: Bruce F. Howard, Avista Environmental Affairs Director

UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY 2009 SEP 30 PM 12: 55
REGION 8

FILED
EPA REGION VIII
HEARING CLERK

| | | |
|-----------------------------|---|---|
| IN THE MATTER OF: |) | Docket No. CWA-08-2009-0035 |
| |) | |
| Avista Utilities, Inc. |) | ADMINISTRATIVE COMPLAINT AND |
| 1411 East Mission |) | OPPORTUNITY TO REQUEST HEARING |
| Spokane, WA 99202-3727, |) | |
| |) | |
| (Noxon Rapids Hydroelectric |) | |
| Development Facility |) | |
| Sanders County, Montana), |) | Proceeding to Assess Class II Civil Penalty |
| |) | Under Section 311 of the Clean Water Act |
| Respondent. |) | |

AUTHORITY

1. This is a civil administrative action issued under the authority vested in the Administrator of the Environmental Protection Agency (EPA) by § 311(b)(6)(B)(ii) of the Clean Water Act ("CWA" or "the Act"), 33 U.S.C. § 1321(b)(6)(B)(ii), as amended by the Oil Pollution Act of 1990. The Administrator has properly delegated this authority to the undersigned EPA official. This proceeding is governed by 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 (Consolidated Rules) set forth at 40 C.F.R. Part 22, a copy of which is enclosed.

GENERAL ALLEGATIONS

2. Respondent Avista Utilities, Inc. (Respondent), is a corporation organized under the laws of Idaho and authorized to do business in the State of Montana.

3. Respondent is a "person" within the meaning of the Act §§ 311(a)(7) and 502(5), 33 U.S.C. §§ 1321(a)(7) and 1362(5).

4. Respondent owns and operates the Noxon Rapids Hydroelectric Development facility (facility) which consists of a storage dam and associated hydroelectric power plant located on the Clark Fork River at River Mile 170 in Sanders County, Montana. The facility, consisting of a switchyard, transformer deck, generator floor, oil storage room, and warehouse and surrounding area, includes a variety of tanks, transformers, containers, drums, and other equipment that use or store oil. The facility has a total oil storage capacity of 129,678 gallons.

5. The facility uses and stores various types of oil including, but not limited to, a lightweight mineral oil for cooling the transformer systems, lubrication oil for the turbines, transil oil, and numerous 55-gallon drums of different types of lubrication oil.

6. Mineral oil known as a hydrotreated naphthenic petroleum oil, lubrication oil, transil oil, and the other oils are within the meaning of “oil” defined at § 311(a)(1) of the Act, 33 U.S.C. § 1321(a)(1).

7. Respondent stores, uses or consumes oil or oil products at the facility.

8. Respondent is an “owner or operator” of an “onshore facility” within the meaning of the Act §§ 311(a)(6) and (10), 33 U.S.C. §§ 1321(a)(6) and (10).

9. The facility is a “non-transportation related” “onshore facility” within the meaning of 40 C.F.R. § 112.2.

10. The Clark Fork River is located adjacent to, and with regard to the transformer deck and oil storage room, approximately fifteen (15) feet below, the facility.

11. The Clark Fork River is a “navigable water” and “water of the United States” within the meaning of the Act § 502(7), 33 U.S.C. § 1362(7), and 40 C.F.R. § 110.1.

12. Section 311(b)(6)(A) of the Act, 33 U.S.C. § 1321(b)(6)(A), states in pertinent part that any owner, operator, or person in charge of any vessel, onshore facility or offshore

facility (i) from which oil or a hazardous substance is discharged in violation of paragraph (3), or (ii) who fails or refuses to comply with any regulation issued under subsection (j) of this section to which that owner, operator, or person in charge is subject, may be assessed a class I or class II civil penalty by the Administrator.

13. As alleged herein and pursuant to § 311(b)(6)(B)(ii) of the Act, 33 U.S.C. § 1321(b)(6)(B)(ii), and 40 C.F.R. § 19.4, Respondent is liable for civil penalties up to \$16,000 per day during which the violation continues, up to a maximum total of \$177,500 for the violation.

COUNT 1

14. Section 311(b)(3) of the Act, 33 U.S.C. § 1321(b)(3), prohibits the discharge of oil into or upon the navigable waters of the United States and adjoining shorelines in such quantities as may be harmful to the public health or welfare or the environment.

15. To implement § 311(b)(3) of the Act, 33 U.S.C. § 1321(b)(3), EPA promulgated a regulation set forth at 40 C.F.R. § 110.3 specifying what quantities of oil may be harmful to public health or welfare or the environment. That regulation provides that such quantities of oil include discharges that either violate applicable water quality standards, or cause a film or sheen upon or discoloration of the surface of the water or adjoining shorelines, or cause a sludge or emulsion to be deposited beneath the surface of the water or upon the adjoining shorelines.

16. At approximately 12:15 p.m. on Thursday, February 26, 2009, Respondent discovered that an estimated release of 1,145 gallons of lightweight transformer cooling oil (aka mineral oil) containing approximately 3.7 parts per million of polychlorinated biphenyls (PCBs) had discharged from a transformer with a total oil storage capacity of 6,300 gallons located on the transformer deck the night before. The transformer deck spans the Clark Fork River at the

bottom of the hydroelectric dam on the discharge side. A piece of ice fell on and broke a relief valve on a ¼- inch pipe used to circulate a lightweight mineral oil used for cooling the transformer systems. The oil spilled onto the deck, flowed into the deck drain, and an estimated 1,023 gallons spilled directly into the Clark Fork River located approximately fifteen (15) feet below the transformer deck. The remaining 122 gallons of oil were recovered from the piping. Due to a failed alarm, the spill was not detected until the following morning during a visual inspection of the facility.

17. An oil sheen was observed at approximately 11:00 p.m. on February 27, 2009, at the Noxon Bridge located approximately three miles downstream. Oil sheen had been scattered and migrated to Heron Bridge located approximately 15 miles from the facility at 2:30 p.m. that same day.

18. On February 27, 2009, Respondent began conducting aerial and river reconnaissance surveys between the facility and the Cabinet Gorge Dam, located approximately twenty (20) miles downstream just prior to the Montana/Idaho border. Two sets of booms were deployed at the Cabinet Gorge Dam's Boat Ramp.

19. EPA's Emergency Response Unit, dispatched to the scene to provide cleanup oversight and coordinate with other federal, state, and local agencies to evaluate the environmental/human health fate and transport of the oil spill, issued Respondent an administrative order (EPA Docket No. CWA-08-2009-0008) under § 311(c) of the Act on February 28, 2009, as a result of the oil spill into the Clark Fork River.

20. Oil sheens were observed downstream from the facility by facility representatives on March 2 and 3, 2009.

21. Respondent's discharge of 1,145 gallons of mineral oil from the facility on or about February 26, 2009, caused a release of PCBs and a film or sheen of oil upon or discoloration of the Clark Fork River and its adjoining shorelines in a quantity that has been determined may be harmful under 40 C.F.R. § 110.3, in violation of § 311(b)(3) of the Act, 33 U.S.C. § 1321(b)(3).

COUNT II

22. 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 vessels and from onshore and offshore facilities, and to contain such discharges"

23. EPA promulgated the oil pollution prevention regulations, set forth at 40 C.F.R. Part 112. 40 C.F.R. § 112.1(b) states that the requirements of Part 112 apply:

to owners or operators of non-transportation related onshore and offshore facilities engaged in drilling, producing, gathering, storing, processing, refining, transferring, distributing, using, or consuming oil or oil products, and which, due to their location, could reasonably be expected to discharge oil in harmful quantities, as defined in part 110 of this chapter, into or upon the navigable waters of the United States or adjoining shorelines..."

24. The facility is a non-transportation onshore facility with a total oil storage capacity greater than 1,320 gallons which, due to its location, could reasonably be expected to discharge oil to a navigable water of the United States (as defined by § 502(7) of the Act, 33 U.S.C. § 1362(7), and 40 C.F.R. § 110.1) or its adjoining shoreline in harmful quantities as defined at 40 C.F.R. § 110.3.

25. The facility is subject to the oil pollution prevention requirements of 40 C.F.R. Part 112 and its implementing regulations, pursuant to § 311(j) of the Act, 33 U.S.C. § 1321(j).

26. 40 C.F.R. § 112.3 requires that owners or operators of onshore and offshore facilities prepare a Spill Prevention, Control, and Countermeasure (SPCC) plan in writing, and in accordance with applicable sections of Part 112 including, but not limited to, sections 112.7 and 112.8.

27. Section 311(b)(6)(A) of the Act, 33 U.S.C. § 1321(b)(6)(A), states in pertinent part that any owner, operator, or person in charge of any vessel, onshore facility or offshore facility (ii) who fails or refuses to comply with any regulation issued under subsection (j) of this section to which that owner, operator, or person in charge is subject, may be assessed a class I or class II civil penalty by the Administrator.

28. The facility has a total oil storage capacity of approximately 129,678 gallons.

29. Respondent prepared a revised SPCC Plan for the facility in May 2009, ultimately signed by Respondent's representative and submitted to EPA in July 2009.

30. On August 24, 2009, EPA reviewed Respondent's revised facility SPCC plan and found it to be inadequate as follows:

- a. Does not follow sequence of 40 C.F.R. § 112, or contain a cross-reference, as required by 40 C.F.R. § 112.7;
- b. Inadequate facility diagram, as required by 40 C.F.R. § 112.7(a)(3);
- c. Inadequate discharge notification form, as required by 40 C.F.R. § 112.7(a)(4);
- d. Inadequate written procedures for conducting inspections, no discussion of records of inspections and tests (signature required), and no discussion of inspection records kept for 3 years, as required by 40 C.F.R. § 112.7(e);
- e. No provision for master flow and drain valves to have security measures to keep them in the closed position when in a non-operating or non-standby mode, as required by 40 C.F.R. § 112.7(g)(2).
- f. No procedures to lock the starter controls on oil pumps in the off position or to locate them in a site accessible only to authorized personnel when the pump is in a non-operating or non-standby status, as required by 40 C.F.R. § 112.7(g)(3);
- g. No procedure to cap or blank-flange the loading/unloading connections of piping when not in service or in standby service for an extended time as required by 40 C.F.R. § 112.7(g)(4);

- h. No discussion of facility drainage, as required by 40 C.F.R. § 112.8(b);
- i. Inadequate description of secondary containment for bulk storage containers, in violation of 40 C.F.R. § 112.8(c)(2);
- j. No provision to keep bypass valve of diked area sealed closed, as required by 40 C.F.R. § 112.8(c)(3)(i);
- k. No inspection procedures to ensure discharged rainwater has no sheen, as required by 40 C.F.R. § 112.8(c)(3)(ii);
- l. No procedure to ensure bypass valves are opened and resealed under supervision, as required by 40 C.F.R. § 112.8(c)(3)(iii);
- m. No procedure to keep adequate records of drainage events, as required by 40 C.F.R. § 112.8(c)(3)(iv);
- n. No discussion of internal heating coils, as required by 40 C.F.R. § 112.8(c)(7);
- o. No procedures to observe effluent treatment facilities to detect upsets, as required by 40 C.F.R. § 112.8(c)(9); and
- p. No discussion of transfer operations, pumping, and facility process, as required by 40 C.F.R. § 112.8(d).

31. Respondent failed to prepare and implement an SPCC plan in accordance with the regulations at 40 C.F.R. §§ 112.7 and 112.8 as required by 40 C.F.R. § 112.3 for a duration of three months.

32. Respondent's failure to prepare and implement an SPCC plan for the facility in accordance with the regulations at 40 C.F.R. §§ 112.7 and 112.8 constitutes a violation of 40 C.F.R. § 112.3 and § 311(j)(1)(C) of the Act, 33 U.S.C. § 1321(j)(1)(C).

PROPOSED CIVIL PENALTY

33. As alleged in the preceding paragraphs, and pursuant to § 311(b)(6)(B)(ii) of the Act, 33 U.S.C. § 1321(b)(6)(B)(ii), and 40 C.F.R. § 19.4, for violations occurring after January 12, 2009, Respondent is liable for civil penalties of up to \$16,000 per violation, up to a maximum of \$177,500. Complainant proposes the assessment of administrative penalties against the Respondent in the amount of \$42,600 as set forth below.

Count 1. A penalty of \$21,048 is proposed for Respondent's discharge of approximately 1,145 gallons of oil into waters of the U.S. from the facility in violation of CWA

§ 311(b)(3), 33 U.S.C. § 1321(b)(3), for a minimum number of six (6) days; and
Count II. A penalty of \$21,552 is proposed for Respondent's failure to properly
implement an SPCC Plan at the facility in violation of 40 C.F.R. § 112.3 and CWA
§ 311(b)(3), 33 U.S.C. § 1321(b)(3), for a duration of three (3) months.

34. Complainant proposes 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 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.

With regard to the alleged CWA § 311(b)(3) violation, the proposed penalty amount is
based on a moderate degree of environmental impact for a duration of six (6) days. The penalty
for the alleged 311(j) violation is based on Respondent's moderate non-compliance and moderate
environmental impact for a duration of three (3) months. With regard to the penalty assessments
for both violations, the Respondent did not qualify for any penalty reduction based on mitigation
factors or gravity adjustments. No additions were made to the proposed penalty amount for
either violation based on a history of violations or economic benefit.

TERMS OF PAYMENT FOR QUICK RESOLUTION

35. If 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. 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. 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:

Donna K. Inman (8ENF-UFO)
U.S. EPA Region 8
1595 Wynkoop Street
Denver, CO 80202-1129

36. 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.

OPPORTUNITY TO REQUEST A HEARING

37. As provided in the Act, a Respondent has the right to a public hearing to contest this Complaint. If you (1) contest the factual claims made in this Complaint; (2) contest the appropriateness of the proposed penalty; and/or (3) assert that you are entitled to judgment as a matter of law, you must file a written Answer in accordance with §§ 22.15 and 22.38 of the Consolidated Rules within thirty (30) calendar days after receipt of this Complaint. Your Answer must (1) clearly and directly admit, deny, or explain each of the factual allegations contained in the Complaint with regard to which you have knowledge; (2) state circumstances or arguments which are alleged to constitute grounds for defense; (3) state the facts you dispute; (4) 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 YOU FAIL TO REQUEST A HEARING, YOU WILL WAIVE YOUR
RIGHT TO FORMALLY CONTEST ANY OF THE ALLEGATIONS SET
FORTH IN THE COMPLAINT.**

IF YOU FAIL 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.

PUBLIC NOTICE

38. Pursuant to § 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 the Act § 311(b)(6)(C), 33 U.S.C. § 1321(b)(6)(C), to be heard and present evidence at the hearing.

SETTLEMENT CONFERENCE

39. 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: 9/30/2009

Eddie A. Sierra
Eddie A. Sierra
Acting Assistant Regional Administrator
Office of Enforcement, Compliance
and Environmental Justice

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:

Avista Corporation, Registered Agent for
Avista Utilities, Inc.
1411 East Mission-MS C 23
Spokane, WA 99202-1902

9/30/09

Date

Judith M. McTernan

Signature

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.



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 and tools 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.

Hotlines, Helplines and Clearinghouses

EPA sponsors approximately 89 free hotlines and clearinghouses that provide convenient assistance regarding environmental requirements.

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: <http://www.epa.gov/clearinghouse>

Pollution Prevention Clearinghouse
<http://www.epa.gov/opptintr/library/ppicindex.htm>

EPA's Small Business Ombudsman Hotline can provide a list of all the hot lines and assist in determining the hotline best meeting your needs:
(800) 368-5888

Emergency Planning and Community Right-To-Know Act
(800) 424-9346

National Response Center (to report oil and hazardous substance spills)
(800) 424-8802

Toxics Substances and Asbestos Information
(202) 554-1404

Safe Drinking Water
(800) 426-4791

Stratospheric Ozone and Refrigerants Information
(800) 296-1996

Clean Air Technology Center
(919) 541-0800

Wetlands Helpline
(800) 832-7828

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
<http://www.epa.gov>

Small Business Assistance Program
<http://www.epa.gov/ttn/sbap>

Office of Enforcement and Compliance Assurance
<http://www.epa.gov/compliance>

Compliance Assistance Home Page
<http://www.epa.gov/compliance/assistance>

Office of Regulatory Enforcement
<http://www.epa.gov/compliance/civil/index.html>

Office of Site Remediation Enforcement
<http://www.epa.gov/compliance/cleanup>

Innovative Programs for Environmental Performance
<http://www.epa.gov/partners>

Small Business Ombudsman
www.sba.gov/ombudsman

Compliance Assistance Centers

In partnership with industry, universities, and other federal and state agencies, EPA has established national Compliance Assistance Centers that provide Internet and "faxback" assistance services for several industries with many small businesses. The following Compliance Assistance Centers can be accessed through the Center's gateway at <http://www.assistancecenters.net> or by calling the phone numbers below and at their respective websites:

Metal Finishing

(1-800-AT-NMFRC or www.nmfrc.org)

Printing

(1-888-USPNEAC or www.pneac.org)

Automotive Service and Repair

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

Agriculture

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

Printed Wiring Board Manufacturing

(1-734-995-4911 or www.pwbrc.org)

The Chemical Industry

(1-800-672-6048 or www.chemalliance.org)

The Transportation Industry

(1-888-459-0656 or www.transource.org)

The Paints and Coatings Center

(1-800-286-6372 or www.paintcenter.org)

Three new centers are under development for the auto salvage sector, the construction industry, and U.S. Mexican border waste issues.

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. For assistance in reaching state agencies, call EPA's Small Business Ombudsman at (800)-368-5888 or visit the Small Business Environmental Homepage at <http://www.smallbiz-enviroweb.org/state.html>.

Compliance Incentives

EPA provides incentives for environmental compliance. By participating in compliance assistance programs or voluntarily disclosing and promptly correcting violations, businesses may be eligible for penalty waivers or reductions. EPA has two policies that potentially apply to small businesses: The Audit Policy (<http://www.epa.gov/compliance/incentives/auditing>) and the Small Business Policy (<http://www.epa.gov/compliance/incentives/smallbusiness>).

These do not apply if an enforcement action has already been initiated.

Commenting on Federal Enforcement Actions and Compliance Activities

The Small Business Regulatory Enforcement Fairness Act (SBREFA) established an ombudsman ("SBREFA Ombudsman") and 10 Regional Fairness Boards to receive comments from small businesses about federal agency enforcement actions. The SBREFA Ombudsman will annually rate each agency's responsiveness to small businesses. 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 because the regulated community previously commented on its activities.

Your Duty to Comply

If you receive compliance assistance or submit comments to the SBREFA Ombudsman or Regional Fairness Boards, you still have the duty to comply with the law, including providing timely responses to EPA information requests, administrative or civil complaints, other enforcement actions or communications. The assistance information and comment processes do not give you any new rights or defenses in any enforcement action. These processes also do not affect EPA's obligation to protect public health or the environment under any of the environmental statutes it enforces, including the right to take emergency remedial or emergency response actions when appropriate. Those decisions will be based on the facts in each situation. The SBREFA Ombudsman and Fairness Boards do not participate in resolving EPA's enforcement actions. Also, remember that to preserve your rights, you need to comply with all rules governing the enforcement process.

EPA is disseminating this information to you without making a determination that your business or organization is a small business as defined by Section 222 of the Small Business Regulatory Enforcement Fairness Act (SBREFA) or related provisions.

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.