



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 8

1595 WYNKOOP STREET
DENVER, COLORADO 80202-1129

Phone 800-227-8917

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

Ref: 8ENF-L

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

AUG 29 2012

Nelcon, Inc., c/o
Samuel Weyers, Registered Agent
PO Box 5370
304 Jellison Road
Kalispell, MT 59903

Re: Administrative Complaint and Notice of
Opportunity for Hearing

Dear Mr. Weyers:

Enclosed is an Administrative Complaint and Notice of Opportunity for Hearing (Complaint) filed against Nelcon, Inc. (Nelcon) under section 309 of the Clean Water Act (CWA), 33 U.S.C. § 1319. In the Complaint the U.S. Environmental Protection Agency Region 8 (EPA) alleges that Nelcon has discharged pollutants into the Two Medicine River without a permit, in violation of section 301(a) of the CWA, 33 U.S.C. § 1311(a). The violations are specifically set out in the Complaint.

Nelcon has the right to request a hearing regarding the matters set forth in the Complaint. Please pay particular attention to those parts of the complaint under the heading "Notice of Opportunity to Request a Hearing." If Nelcon does not file an answer to the Complaint within thirty (30) days of receipt, a default judgment may be entered and the proposed civil penalty may be assessed without further proceedings. In its answer Nelcon may request a hearing. Nelcon has the right to be represented by an attorney at any stage of these proceedings.

EPA encourages all parties against whom it files a complaint proposing assessment of a penalty to pursue the possibilities of settlement through an informal conference. Any such settlement shall be finalized by the issuance of a final order by the Regional Judicial Officer, EPA Region 8. The issuance of a consent agreement shall constitute a waiver of the right to request a hearing on any matter to which Nelcon has stipulated in that agreement.

Whether or not Nelcon requests a hearing, its representative(s) may confer informally with EPA concerning the alleged violations 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



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UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 8

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Docket No. CWA-08-2012-0025

FILED
EPA REGION VIII
MONTANA DEPT

_____))
IN THE MATTER OF:))
))
)) ADMINISTRATIVE COMPLAINT AND
Nelcon, Inc.)) NOTICE OF OPPORTUNITY FOR HEARING
304 Jellison Road))
Kalispell, Mt. 59903,))
)) Proceeding to Assess Class II Administrative
)) Penalty Under Clean Water Act, Section 309(g)
Respondent.))
_____))

INTRODUCTION

1. This Administrative Complaint and Notice of Opportunity for Hearing (Complaint) is issued pursuant to section 309(g) of the Clean Water Act (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 section 301 of the Act, 33 U.S.C. § 1311, and for violations of any limitation or condition in a permit issued under section 402 of the Act, 33 U.S.C. § 1342 (Section 402).
2. This proceeding is subject to the *Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits*, 40 C.F.R. Part 22 (Consolidated Rules), a copy of which accompanies this Complaint.
3. The undersigned EPA official has been properly delegated the authority to issue this Complaint.

GENERAL ALLEGATIONS

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

4. Nelcon, Inc. (Respondent) is a corporation incorporated under the laws of the State of Montana, with its principal place of business at 304 Jellison Road, and a mailing address of PO Box 5370, Kalispell, Montana 59903.
5. Respondent is a "person" as that term is defined in section 502(5) of the Act, 33 U.S.C. § 1362(5).

6. Respondent is constructing a drinking water pipeline from the new Blackfeet Community Water Treatment Plant near East Glacier, Montana, to the Town of Browning. The pipeline crosses Montana Highway 49 and the Two Medicine River just south of the MT Highway 49 bridge, which runs across the Two Medicine River.
7. For the purposes of this Complaint, Respondent's construction activities in the vicinity of the MT Highway 49 bridge and the Two Medicine River, comprise the construction site (Site).
8. Respondent's construction activity at the Site is a "point source" as defined in section 502(14) of the Act, 33 U.S.C. § 1362(14), and 40 C.F.R. § 122.2.
9. The Two Medicine River joins with Cut Bank Creek southeast of the Town of Cut Bank, Montana, to form the Marias River, which is a tributary to the Missouri River, a navigable water and as such is a water of the United States as defined at 40 C.F.R. § 122.2.
10. The Site is located within the exterior boundary of the Blackfeet Reservation and, thus, is within Indian Country.
11. 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 in compliance with a permit issued pursuant to section 402 of the Act.
12. Section 402 of the Act establishes the 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.
13. Section 402(p) of the Act, 33 U.S.C. § 1342(p), requires a permit for storm water discharges associated with industrial activity.
14. The Federal NPDES program is effective in Indian Country.
15. 40 C.F.R. § 122.26(b)(15)(I) defines the term "storm water discharge associated with small construction activity" to include storm water discharges from construction activities (such as clearing, grading, and excavation) that result in a disturbance of equal to or greater than one acre and less than five acres. 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.
16. 40 C.F.R. § 122.26(c)(1) requires dischargers of storm water associated with small construction activity to apply for an individual NPDES permit, or seek coverage under a promulgated storm water general permit.

17. In 1992, EPA promulgated a Final NPDES General Permit for Storm Water Discharges for Construction Activities (Federal CGP). 57 Fed. Reg. 41176 (Sept. 9, 1992). EPA has modified and repromulgated the Federal CGP a number of times. *See* 63 Fed. Reg. 7858 (Feb. 17, 1998); 63 Fed. Reg. 36490 (July 6, 1998); 65 Fed. Reg. 25122 (Apr. 28, 2000); 68 Fed. Reg. 39087 (July 1, 2003); 73 Fed. Reg. 40338 (July 14, 2008) and 77 Fed. Reg. 12286 (February 29, 2012).

18. The storm water permit requirements applicable to Respondent's construction activities at the Site prior to February 16, 2012, are set forth in detail in the Federal CGP effective June 30, 2008. (73 FR 40338, July 14, 2008) The storm water permit requirements for Respondent's construction activities at the Site after February 15, 2012, are set forth in detail in the Federal CGP effective February 16, 2012 (77 Fed. Reg. 12286, February 29, 2012).

19. Respondent did not apply for, or obtain, a NPDES permit prior to initiating construction activities at the Site.

20. 40 C.F.R. § 122.28(b)(2) requires dischargers to submit a written notice of intent to be covered by a general permit.

21. As late as May 29, 2012, Respondent had not submitted a notice of intent to be covered under the 2008 Federal CGP. As late as June 8, 2012, Respondent had not submitted a notice of intent to be covered under the 2012 Federal CGP.

22. Pursuant to the both the 2008 and 2012 versions of the Federal CGP, permittees are required, among other things, to develop a storm water pollution prevention plan (SWPPP).

23. The SWPPP must describe, among other things all best management practices (BMPs) to be used to meet the effluent limits set forth in the Federal CGP. Federal CGP Parts 5.1 and 5.3.A.

24. BMPs must be installed and maintained in effective operating condition, Federal CGP Part 3.6, and in accordance with good engineering practices, Federal CGP Part 3.

25. On May 24, 2011, EPA received a copy of a letter dated May 23, 2011 (May 23rd letter), from the Montana Department of Transportation (MDT) to the Respondent, regarding construction by the Respondent at the Site.

26. The May 23rd letter confirmed that verbal permission had been granted to the Respondent for encroachment within the MDT Right-of-Way for the pipeline work at the Site.

27. The May 23rd letter informed the Respondent that erosion and sediment control at the Site were inadequate, and that Federal CGP coverage for work at the Site could not be found on the EPA website. In the letter, MDT informed the Respondent that MDT encroachment permits require all applicable authorizations, including the "NPDES Construction Stormwater General Permit" be obtained.

28. The May 23rd letter informed the Respondent that the Site had been discharging stormwater runoff to the Two Medicine River from the disturbed MDT Right-of-Way.
29. The May 23rd letter informed the Respondent that Respondent must immediately implement proper erosion and sediment controls to minimize the discharge of pollutants to surface waters, and that such corrective actions must be completed by May 27, 2011.
30. On August 30, 2011, an EPA inspector went to the Site to view and document the site conditions. During this inspection, the EPA inspector observed that erosion controls consisted of straw rolls along both banks of the Two Medicine River, at the bottoms of bare, disturbed slopes. The inspector also observed a discharge of pollutants from the disturbed area of the Site which clearly was of sediment flowing over the straw roll erosion controls into the Two Medicine River.
31. On August 30, 2011, the EPA inspector followed the pipeline route north from the Site to the top of a fairly steep hill. The portion of the pipeline route observed by the EPA inspector consisted of bare, disturbed ground with no erosion controls in place.
32. On October 28, 2011, EPA received additional photos of the Site by email from MDT (October 2011 MDT photos).
33. The October 2011 MDT photos showed no additional erosion controls had been installed at the Site and that the existing erosion controls had not prevented sediment from eroding from the bare slope on the north side of the Two Medicine River and entering the Two Medicine River.
34. On March 29, 2012, an EPA inspector went to the Site to view and document the site conditions. During this inspection, the EPA inspector observed that no additional erosion controls had been installed at the Site and a discharge of sediment laden water into the Two Medicine River. The discharge caused a visible sediment plume along the north bank.
35. The EPA has not issued an NPDES permit nor issued an authorization for coverage under either the 2008 Federal CGP or the 2012 Federal CGP for Respondent's construction activities at the Site.
36. On at least one date in 2011, prior to the May 23rd letter, MDT personnel observed a discharge to the Two Medicine River from Respondent's construction activities at the Site.
37. On March 29, 2012, EPA personnel observed a discharge to the Two Medicine River from Respondent's construction activities at the Site.
38. On June 7 and 9, 2011, July 21, 2011, September 3, 2011, October 8 and 25, 2011, April 5, 2012, and June 6, 2012, the National Weather Service's East Glacier, Montana Cooperative Weather Station rain gauge recorded that more than one half inch of rain fell in the vicinity of the Site.

COUNT I

39. On at least the ten dates described in paragraphs 36-38 above, Respondent discharged pollutants to a waters of the United States without a permit.

40. Respondent's discharge of pollutants to a waters of the United States without a permit on the ten dates described in paragraphs 36-38 above constitute 10 violations of section 301(a) of the Act, 33 U.S.C. § 1311(a).

NOTICE OF PROPOSED ORDER ASSESSING A CIVIL PENALTY

41. Section 309(g) of the Act, 33 U.S.C. § 1319(g), as adjusted pursuant to the Federal Civil Penalties Inflation Adjustment Act of 1990, and 40 C.F.R. parts 19 and 27, authorizes the EPA to assess a civil penalty of up to \$37,500 per day, for each violation of the Act occurring after January 12, 2009. Section 309(g)(3) of the Act requires EPA to take into account the following factors in assessing a civil penalty: the nature, circumstances, extent and gravity of the violation(s) and, with respect to the violator, ability to pay, any prior history of such violations, degree of culpability, any economic benefit or savings gained from the violation, and such other factors that justice may require.

In light of the statutory factors and the specific facts of this case, EPA proposes that a penalty of \$160,000.00 be assessed against Respondent for the violations alleged above, as explained below.

Nature, Circumstances, Extent, and Gravity of Violations

The discharge of sediment (pollutants) to a water of the United States could have been avoided, or at least minimized, if Respondent had developed a SWPPP and implemented and maintained BMPs. SWPPP, BMP and other requirements are detailed in both the 2008 Federal CGP and the 2012 Federal CGP. MDT notified the Respondent of sediment runoff and the federal CGP requirement by letter. The Two Medicine River drains from Lower Two Medicine Lake and is considered high quality water under the Blackfoot Tribe's draft Water Quality Standards. This water is suitable for drinking water, culinary, and food processing after conventional drinking water treatment; all life stages of salmonids, including growth and propagation; all life stages of non-salmonid fishes, including growth and propagation; human bathing, swimming, wading, and other recreation with full body contact; wildlife growth and propagation; agriculture uses; navigation and industrial uses; and cultural uses.

Storm water that runs off 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 complaint is the first enforcement action that EPA Region 8 has pursued against Respondent Nelcon, Inc. for non-compliance with the Act.

Degree of Culpability

Respondent was informed of the requirement to obtain coverage under the Federal CGP by MDT in the May 23, 2011, letter yet did not submit a notice of intent for coverage under either the 2008 Federal CGP or the 2012 Federal CGP. Respondent could have avoided, or minimized the discharge of pollutants into the Two Medicine River if a SWPPP had been developed and maintained to identify the appropriate BMPs to be implemented, and if the Respondent had properly implemented, maintained, and replaced the BMPs as required by both the 2008 Federal CGP and 2012 CGP.

Economic Benefit

For storm water cases, the cost of developing and updating a SWPPP and implementing and maintaining BMPs is minimal when compared to the overall project costs. Though relatively small, the economic benefit of not developing and maintaining a SWPPP and BMPs is included in the proposed penalty amount.

Ability to Pay

The proposed penalty was not reduced based upon the statutory factor of an inability to pay. However, EPA will consider reliable information that Respondent may timely present regarding Respondent's 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.

As required by section 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.

NOTICE OF OPPORTUNITY TO REQUEST A HEARING

As provided in section 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.

Respondent's answer must (1) clearly 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 defense, (3) state the facts intended to be placed at issue, (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(c).

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 mailed to:

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

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 section 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, RESPONDENT WILL WAIVE THE 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.

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

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 and 22.45. Section 22.18(b) specifies that the penalty cannot be paid any earlier than ten (10) days after the close of the thirty (30) day public comment period on this Complaint required by 40 C.F.R. § 22.45. Please see the EPA Region 8 website at <http://www.epa.gov/region8/compliance/publicnotice/> for the date the public comment period on this Complaint begins. 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:

David Rise, NPDES Program
EPA Region 8, Montana Office
10 W 15th ST, STE 3200
Helena, MT 59626

the Regional Hearing Clerk, and Mr. Figur at the addresses in the Notice of Opportunity to Request a Hearing section of this Complaint.

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

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.

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

SETTLEMENT CONFERENCE

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 Chuck Figur, Senior Attorney, at the address above. Mr. Figur can also be reached at (303) 312-6915.

United States Environmental Protection Agency Region 8
Complainant.

Date: 08/28/2012

By:

Eddie Q. Sierra

for

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

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:

Nelcon, Inc. c/o
Samuel Weyers, Registered Agent
P.O. Box 5370
304 Jellison Road
Kalispell, MT 59903

Certified Return Receipt No. 7009-3410-0000-2594-8930

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

Blackfeet Nation
The Honorable Willie A. Sharp, Chairman
Blackfeet Tribal Business Council
P.O. Box 850
Browning, MT 59417

Richard Opper, Director
Montana Department of Environmental
Quality
P.O. Box 200901
Helena, MT 59620-0901

Certified Return Receipt Nos.

7009-3410-0000-2594-8954

7009-3410-0000-2594-8947

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

Signature: Judith M. McTiernan
Name:

Date: 8/29/2012

§ 21.13

approve or disapprove the State issued statement, in accordance with the requirements of § 21.5.

(2) The Regional Administrator will periodically review State program performance. In the event of State program deficiencies the Regional Administrator will notify the State of such deficiencies.

(3) During that period that any State's program is classified as deficient, statements issued by a State shall also be sent to the Regional Administrator for review. The Regional Administrator shall notify the State, the applicant, and the SBA of any determination subsequently made, in accordance with § 21.5, on any such statement.

(i) If within 60 days after notice of such deficiencies has been provided, the State has not taken corrective efforts, and if the deficiencies significantly affect the conduct of the program, the Regional Administrator, after sufficient notice has been provided to the Regional Director of SBA, shall withdraw the approval of the State program.

(ii) Any State whose program is withdrawn and whose deficiencies have been corrected may later reapply as provided in § 21.12(a).

(g) Funds appropriated under section 106 of the Act may be utilized by a State agency authorized to receive such funds in conducting this program.

§ 21.13 Effect of certification upon authority to enforce applicable standards.

The certification by EPA or a State for SBA Loan purposes in no way constitutes a determination by EPA or the State that the facilities certified (a) will be constructed within the time specified by an applicable standard or (b) will be constructed and installed in accordance with the plans and specifications submitted in the application, will be operated and maintained properly, or will be applied to process wastes which are the same as described in the application. The certification in no way constitutes a waiver by EPA or a State of its authority to take appropriate enforcement action against the owner or operator of such facilities for violations of an applicable standard.

PART 22—CONSOLIDATED RULES OF PRACTICE GOVERNING THE ADMINISTRATIVE ASSESSMENT OF CIVIL PENALTIES AND THE REVOCATION/TERMINATION OR SUSPENSION OF PERMITS

Subpart A—General

- Sec.
- 22.1 Scope of this part.
 - 22.2 Use of number and gender.
 - 22.3 Definitions.
 - 22.4 Powers and duties of the Environmental Appeals Board, Regional Judicial Officer and Presiding Officer; disqualification, withdrawal, and reassignment.
 - 22.5 Filing, service, and form of all filed documents; business confidentiality claims.
 - 22.6 Filing and service of rulings, orders and decisions.
 - 22.7 Computation and extension of time.
 - 22.8 *Ex parte* discussion of proceeding.
 - 22.9 Examination of documents filed.

Subpart B—Parties and Appearances

- 22.10 Appearances.
- 22.11 Intervention and non-party briefs.
- 22.12 Consolidation and severance.

Subpart C—Prehearing Procedures

- 22.13 Commencement of a proceeding.
- 22.14 Complaint.
- 22.15 Answer to the complaint.
- 22.16 Motions.
- 22.17 Default.
- 22.18 Quick resolution; settlement; alternative dispute resolution.
- 22.19 Prehearing information exchange; prehearing conference; other discovery.
- 22.20 Accelerated decision; decision to dismiss.

Subpart D—Hearing Procedures

- 22.21 Assignment of Presiding Officer; scheduling the hearing.
- 22.22 Evidence.
- 22.23 Objections and offers of proof.
- 22.24 Burden of presentation; burden of persuasion; preponderance of the evidence standard.
- 22.25 Filing the transcript.
- 22.26 Proposed findings, conclusions, and order.

Subpart E—Initial Decision and Motion to Reopen a Hearing

- 22.27 Initial decision.
- 22.28 Motion to reopen a hearing.

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 action 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 comment 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.

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY REGION 8
1595 Wynkoop Street, Denver, CO 80202-1129**

**PUBLIC NOTICE OF PROPOSED PENALTY COMPLAINT AND
OPPORTUNITY TO COMMENT**

Action: The United States Environmental Protection Agency Region 8 (EPA) is providing notice to the public of the opportunity for any member of the public to comment on an administrative complaint for penalties (Complaint) being issued by EPA for alleged violations of the Clean Water Act (CWA) by Nelcon, Inc. (Nelcon). The corporate address of Nelcon is 304 Jellison Road, Kalispell, Montana 59903.

Summary: The EPA is authorized by section 309(g)(2) of the CWA, 33 U.S.C. § 1319(g)(2), to issue an order assessing a civil administrative penalty for violations of certain CWA requirements, after providing (1) an opportunity for the person to be assessed the penalty (the respondent) to request a hearing to contest the penalty, and (2) notification to the public of the right of the public to submit written comments and to participate in any hearing. The deadline for the public to submit comments for the Complaint is thirty (30) days after first issuance of this notice. Please see the following EPA Region 8 website for the date the public comment period on this Complaint begins: <http://www.epa.gov/region8/compliance/publicnotice/>.

The EPA Docket Number for Complaint is CWA-08-2012-0025.

In the Complaint, EPA alleges that Nelcon has discharged pollutants into waters of the United States without authorization on at least ten (10) specific dates at its construction site adjacent to Montana Highway 49 where it crosses the Two Medicine River, near Browning, Montana.

The Complaint proposes that a total penalty of \$160,000.00 be imposed for the ten alleged violations.

PUBLIC COMMENTS

Written comments on the Complaint are encouraged and will be accepted at the address listed below for a period of thirty (30) days after the first publication of this notice. Written comments submitted by the public as well as information submitted by Nelcon will be available for public review, subject to the provisions of law restricting the disclosure of confidential information. Any person submitting written comments has a right to participate in a hearing, if one is held. The complaint is available for review between 9:00 a.m. and 4:00 p.m. at the address listed below and on the internet at: <http://yosemite.epa.gov/oa/rhc/epaadmin.nsf> by searching for the company name or Docket Number.

Please submit written comments to:

Tina Artemis (8RC)
Regional Hearing Clerk
U.S. EPA, Region 8
1595 Wynkoop Street
Denver, CO 80202-1129
Telephone: (303) 312-6765

FOR FURTHER INFORMATION: Persons wishing to receive a copy of the Complaint or other documents in, or relating to, this proceeding (such as the regulations at 40 C.F.R. Part 22, which set out the administrative hearing process), or to comment upon the proposed penalty assessment or upon any other aspect of this matter, should contact the Regional Hearing Clerk identified above.