

Certified Mail: 7001 0320 0002 4541 0922
Return Receipt Requested

Patrick Richiutti
1970 E. Birkhead Avenue
Fresno, CA 93720

Re: Findings of Violation and Order for Compliance under sections 308 and 309(a) of the Clean Water Act, EPA Docket No. CWA-404-309(a)-09-005

Dear Mr. Richiutti,

The U.S. Environmental Protection Agency, Region 9 (“EPA”) has information that, between at least January 2006 and January 2009, you or persons at your direction discharged dredged and/or fill material into the reach of the Fresno River that forms the southern boundary of your property, shown on the Assessor’s Parcel Map as Assessor’s Parcel Nos. 033-160-001 and 033-160-002, without authorization under section 404 of the Clean Water Act. This reach of the Fresno River is an integral part the Federal Flood Control Project designated as the Hidden Lake and Fresno River Project.

EPA issues the enclosed Findings of Violation and Order for Compliance (“Order”) pursuant to sections 308 and 309(a) of the Clean Water Act. The Findings describe the nature of the violations and the Order requires you to implement a removal and restoration plan (“R/R Plan”) to remove and legally dispose of the unauthorized material and restore the affected area of the Fresno River to its previous channel dimensions and configuration.

The R/R Plan must be submitted to EPA for approval and must, at the minimum, include the following components:

- Removal of all unauthorized dredged and fill material from the Fresno River;
- Disposal of all removed material at appropriate upland locations, in compliance with all local, state and federal requirements;
- Restoration of the pre-existing levee according to specifications and requirements set forth by federal, state, and local governmental entities with responsibility for or authority over the design, construction, maintenance or operation of the Fresno River flood control project

- Installation of erosion and sedimentation control measures to minimize erosion from the river bank and all other disturbed areas during and after the required removal efforts; and
- A schedule for implementing the R/R Plan.

Also enclosed for your information is an EPA information sheet about compliance assistance available to small businesses and the rights of small businesses to comment to the Small Business Regulatory Enforcement Fairness Act (“SBREFA”) Ombudsman about EPA’s enforcement activity. We provide the information sheet without making a determination whether you qualify as a small business under SBREFA.

I invite you to work with EPA to resolve this matter. If you have questions, please contact Amy C. Miller of our CWA Compliance Office at (415) 947-4198, or Jessica Kao of our Office of Regional Counsel at (415) 972-3922.

Sincerely Yours,

Alexis Strauss
Director, Water Division

Enclosures

1. Findings of Violation and Order for Compliance
2. SBREFA Information Sheet

cc: Mike Jewel, U.S. Army Corps of Engineers
Erin Hanlon, U.S. Army Corps of Engineers
Dale Harvey, Central Valley Regional Water Quality Control Board

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION IX**

IN THE MATTER OF:)	
)	Docket No. CWA-309(a)-09-005
Patrick V. Ricchiuti,)	
)	FINDINGS OF VIOLATION
)	AND ORDER FOR COMPLIANCE
)	
Respondent.)	Proceeding under Sections 308 and 309(a)
)	of the Clean Water Act, 33 U.S.C. §§ 1318
)	and 1319(a)
)	
)	
_____)	

AUTHORITY

The following Findings are made and Order issued pursuant to the authorities vested in the Administrator of the U.S. Environmental Protection Agency (“EPA”) by sections 308 and 309(a) of the Clean Water Act (“CWA”), 33 U.S.C. §§ 308 and 1319(a). The Administrator has delegated these authorities to the Regional Administrator of EPA Region IX, who has in turn delegated them to the Director of the Water Division of EPA Region IX.

FINDINGS OF VIOLATION

1. Under CWA section 301(a), 33 U.S.C. §§ 1311(a), it is unlawful for a person to discharge any pollutant from a point source into a navigable water without a permit issued under the CWA.
2. “Discharge of a pollutant” means “any addition of any pollutant to navigable waters from any point source.” CWA section 502(12), 33 U.S.C. § 1362(12).
3. "Navigable waters" means "the waters of the United States." CWA section 502(7), 33 U.S.C. § 1362(7). The U.S. Army Corps of Engineers (“Corps”) and EPA regulations

further define “waters of the United States” to include, among others, all waters which are currently used, were used in the past, or may be susceptible to use in interstate or foreign commerce and their tributaries. 33 C.F.R. § 328.3(a) (1) and (5)(Corps regulations); 40 C.F.R. § 230.3(s)(1) and (5)(EPA regulations).

4. “Pollutant” means, among other things, “dredged spoil, solid waste, biological materials, rock and sand,” CWA section 502(6), 33 U.S.C. § 1362(6), and includes “dredged material” and “fill material” regulated under CWA section 404, 33 U.S.C § 1344 and further defined under 33 C.F.R. § 323.2(e) (Corps regulations) and 40 C.F.R. § 230.2 (EPA regulations).
5. “Point source” means “any discernible, confined and discrete conveyance ... from which pollutants are or may be discharged.” CWA section 502(14), 33 U.S.C. § 1362(14).
6. “Person” includes individuals and various types of entities. CWA section 502(5), 33 U.S.C. § 1362(5).
7. Under CWA section 404, 33 U.S.C. § 1344, and its implementing regulations at 33 C.F.R. Part 323, the discharge of dredged or fill material into a water of the United States requires a permit (“section 404 permit”) issued by the Corps.
8. Patrick Ricchiuti (“Respondent”) owns Assessor’s Parcel Numbers 033-160-001 and 033-160-002 (collectively the “Property”), Section 18, Township 11 South, Range 17 East, near Avenue 16 and Road 21 in Madera County, California. The Fresno River forms the southern boundary of the Property.
9. The Fresno River, which is approximately 68 miles long, is a major tributary of the San Joaquin River. Flows in the reach of the Fresno River along the Property are regulated by releases, typically in spring and summer, from Hidden Dam and augmented by storm

events between October and March and periodic agricultural return flow. The Fresno River flows either directly or via the Chowchilla Canal Bypass to the San Joaquin River, which flows to the Sacramento-San Joaquin River Delta and then San Francisco Bay and the Pacific Ocean.

10. The reach of the Fresno River that forms the southern boundary of the Property is an integral part of the Federal Flood Control Project designated as the Hidden Lake and Fresno River Project. The Project was constructed by the Corps in 1977, protected by an easement held by the State of California, and maintained by the Madera County Flood Control and Water Conservation Agency (“Madera County”).
11. On September 19, 2008, inspectors from the California Central Valley Regional Water Quality Control Board (“Regional Board”) and Madera County inspected the Fresno River bordering the Property. The inspection was prompted in part by a complaint received by Madera County that the property owner had used earthmoving equipment to place fill in the bed and bank of the Fresno River. During the inspection, the inspectors observed that earthen material had been placed within the Fresno River to create a new levee and fill area along the northern bank of the River, and that an asphalt road and an orchard had been placed on top of the fill area.
12. On October 1, 2008, Madera County issued a Notice of Violation citing Respondent for conducting grading work and encroaching into the Fresno River with imported material without County and State permits and necessary hydrologic and hydraulic calculations to demonstrate that the grading and encroachment would not adversely impact the existing flow condition of the river channel. The Notice required Respondent to cease the cited activities and hire an appropriate professional to address the grading violations within 30 days of receipt of the Notice.

13. On January 16, 2009, inspectors from EPA, the Regional Board, and Madera County inspected the Fresno River bordering the Property. The inspection confirmed that earthen material had been placed in the Fresno River to create a new levee and fill area along the northern bank of the River, and that an asphalt road and an orchard had been placed on top of the fill area.. The soil in the fill area was of a different color than the surrounding upland area soils and consisted mostly of soft and un-compacted sand. The new levee sloped steeply into the river and was eroding in several places.
14. Based on evidence gathered during the above-referenced inspections and a review of documents, including field and aerial photographs and engineer drawings of the flood control system, as of the date of EPA’s January 16, 2009 inspection, Respondent had filled an area that was approximately 2,300 feet long and 45 to 250 feet wide, totaling more than seven acres of encroachment into the Fresno River. Exhibit A, which shows the encroachment (hereinafter referred to as the “Fill Area”), is incorporated by reference and made part of this Findings of Violation and Order for Compliance.
15. Respondent is a person under CWA section 502(5), 33 U.S.C. § 1362(5).
16. The Fresno River is a water of the United States under CWA section 502(7), 33 U.S.C. § 1362(7), and its implementing regulations at 33 C.F.R. § 328.3(a) and 40 C.F.R. § 230.3(s).
17. The earthen material placed or caused to be placed in the Fresno River is a “dredged material” and/or a “fill material” under CWA section 404, 33 U.S.C. § 1344, and its implementing regulations at 33 C.F.R. § 323.2(e) and 40 C.F.R. § 230.2, and a “pollutant” under CWA section 502(6), 33 U.S.C. § 1362(6).

18. The placement of dredged and/or fill material in the Fresno River constitutes the “discharge of a pollutant” under CWA section 502(12), 33 U.S.C. § 1362(12).
19. The earthmoving equipment used by Respondent to place dredged and/or fill material in the Fresno River is a point source under CWA section 502(14), 33 U.S.C. § 1362(14).
20. The above-described discharges were not authorized by a section 404 permit.
21. By discharging dredged and/or fill material into waters of the United States without a section 404 permit, Respondent has violated CWA section 301(a), 33 U.S.C. § 1311(a).

ORDER

Based on the foregoing FINDINGS OF VIOLATION and pursuant to the authorities of CWA sections 308 and 309(a), 33 U.S.C. §§ 1318 and 1319 (a), it is hereby ORDERED:

22. Respondent shall not discharge any dredged or fill material into any waters of the United States except in compliance with a section 404 permit.
23. Within **thirty (30) days** of receipt of this Order, Respondent shall submit to EPA the following information:
 - a. A detailed description of each earthmoving activity, including but not limited to any grading, leveling, back-filling, and bank modification, that was undertaken, caused or authorized to be undertaken, or undertaken with knowledge or consent, in part or in whole, by Respondent or Respondent’s agent or representative, in the Fill Area between January 1, 2005 and present. For each earthmoving activity, the description shall, at a minimum, include the following:
 - i. the start and end dates of the activity;
 - ii. the number and type of equipment used;
 - iii. the type of material discharged;

- iv. the volume of the material discharged;
 - v. the location of the activity;
 - vi. the person who authorized or consented to the activity;
 - vii. the person who designed the activity;
 - viii. the person who oversaw the activity; and
 - ix. the person who performed the activity.
- b. Copies of all documents that concern or relate to any of the earthmoving activities described in subparagraph a, above, including but not limited to: all photographs, videotapes, plans, drawings, surveys, design documents, technical calculations, maps, invoices, payment records, material costs, purchase records, federal, state or local permits or permit applications, and records of correspondence with any federal, state, and local agencies.
24. Within **sixty (60) days** of receipt of this Order, Respondent shall submit to EPA for approval a Removal and Restoration Plan (“R&R Plan” or “Plan”) for removing the unauthorized discharges from the Fill Area and restoring the Fresno River to its pre-filled dimensions and configuration. It is advisable that the R&R Plan be prepared by a qualified professional(s) with the requisite expertise in hydrology and engineering.
25. The R&R Plan shall, at the minimum, include the following components:
- a. Removal of all unauthorized dredged and fill material from the Fill Area;
 - b. Disposal of all removed material at appropriate upland locations, in compliance with all applicable federal, state and local requirements;
 - c. Restoration of the levee to its pre-filled dimensions and configuration according to specifications and requirements set forth by federal, state, and local governmental

- entities with responsibility for or authority over the design, construction, maintenance or operation of the Fresno River flood control project;
- e. Installation of erosion and sedimentation control measures to minimize erosion from the river bank and all other disturbed areas during and after the required removal efforts;
 - f. A schedule for implementing the R&R Plan, which shall take into account the need to obtain and comply with any and all authorizations required by applicable federal, state and local laws to carry out the R&R Plan.
26. Upon approval by EPA, the R&R Plan shall be deemed incorporated by reference as part of this Order and shall be implemented by Respondent.
27. Immediately upon receipt of EPA approval of the R&R Plan, Respondent shall contact the Corps to determine the need for section 404 authorization for any discharges of dredged or fill material associated with implementation of the Plan. The Corps contact is:

Erin Hanlon
Project Manager
Regulatory Branch
U.S. Army Corps of Engineers, Sacramento District
Sacramento Valley Office
1325 J Street, Room 1480
Sacramento, CA 95814-2922

28. All submittals made pursuant to this Order shall be mailed to the following address:

Amy C. Miller
U.S. Environmental Protection Agency
Region IX
CWA Compliance Office (WTR-7)
75 Hawthorne Street
San Francisco, CA 94105

29. All submittals required under this Order shall include the following certification signed by Respondent or Respondent's duly authorized representative:

I certify under penalty of law that this document and all attachments were prepared by me or under my direct supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of those who manage the system or are directly responsible for gathering the information, I certify that the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations.

30. This Order is not a permit under the CWA or any other laws or regulations. This Order does not waive or modify Respondent's obligation and responsibility to ascertain and comply with all applicable federal, state or local laws, regulations, ordinances, permits, licenses or orders.
31. EPA has promulgated regulations to protect the confidentiality of the business information it receives at 40 C.F.R. Part 2, Subpart B. A claim of business confidentiality may be asserted in the manner specified by 40 C.F.R. § 2.203(b) for all or part of the information requested. EPA will disclose business information covered by such a claim only as authorized under 40 C.F.R. Part 2, Subpart B. If no claim accompanies the business information at the time EPA receives it, EPA may make it available to the public without further notice. Respondent may not withhold from EPA any information on the grounds that it is confidential business information.
32. This requirement of information is not subject to review by the Office of Management and Budget under the Paperwork Reduction Act because it is not a "collection of information" within the meaning of 44 U.S.C. § 3502(3). It is directed to fewer than ten persons and is an exempt investigation under 44 U.S.C. § 3518(c)(1) and 5 C.F.R. § 1320.4(a)(2).
33. This Order shall be binding upon Respondent, and Respondent's agents, servants, employees, heirs, successors and assigns.

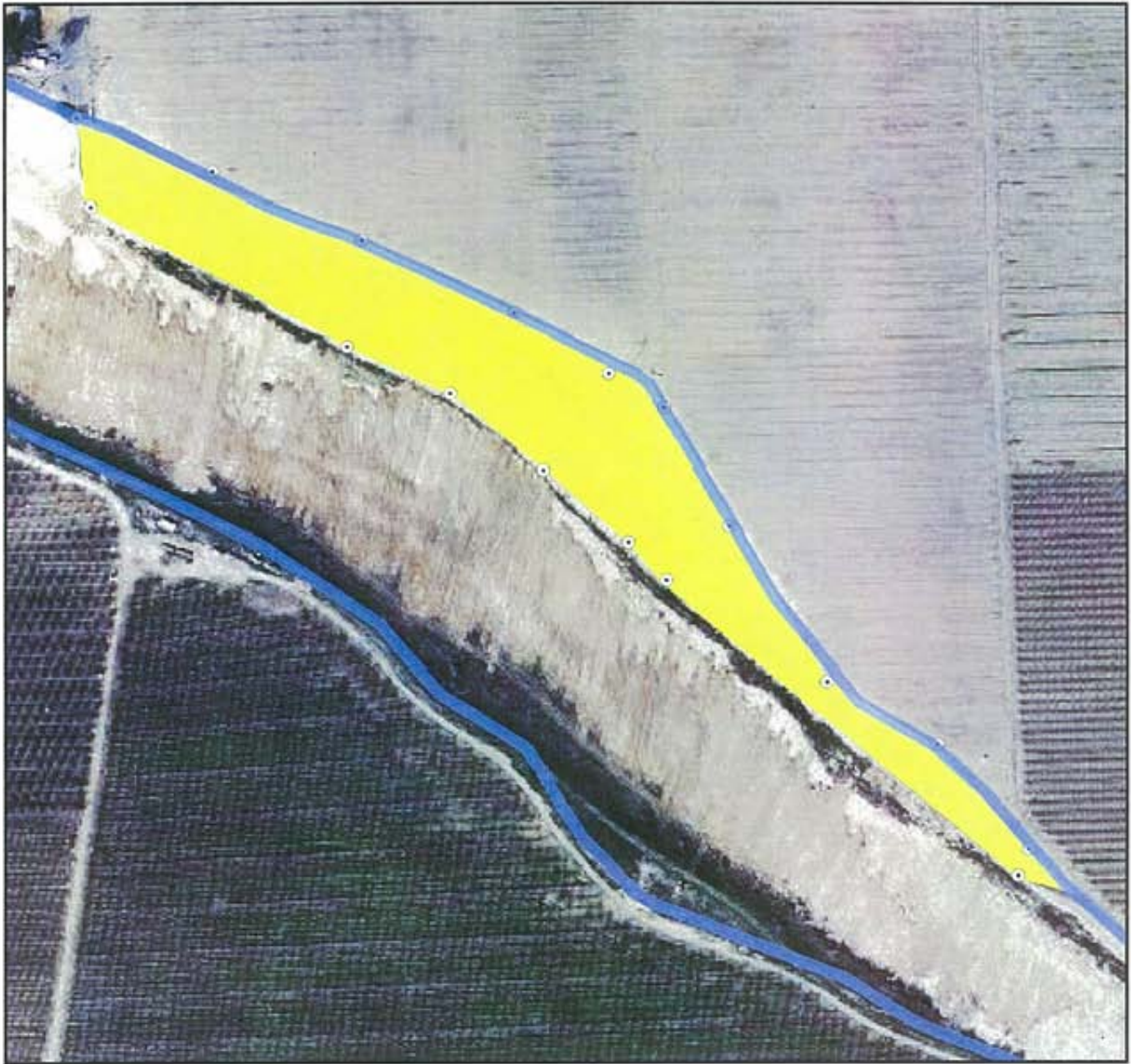
34. Issuance of this Order shall not be deemed an election by EPA to forego any remedies available to it under the law, including without limitation any administrative, civil, or criminal action to seek penalties, fines, or other appropriate relief under the Act. EPA reserves all rights and remedies, legal and equitable, available to enforce any violation cited in this Order and to enforce this Order.
35. CWA Section 309(a), (b), (d) and (g), 33 U.S.C. § 1319(a), (b), (d) and (g), provides administrative and/or civil judicial relief for failure to comply with the CWA. In addition, CWA section 309(c), 33 U.S.C. § 1319(c), provides criminal sanctions for negligent or knowing violations of the CWA, and for knowingly making false statements.
36. This Order shall become effective upon the date of receipt by Respondent.

Date: _____

Alexis Strauss, Director
Water Division
U.S. Environmental Protection Agency
Region IX

Attachment A

In the matter of Patrick Richiutti
Map of fill area in the Fresno River



Aerial Photo: 2007-02-01, "DigitalGlobe", 1:4000, 0.3m, "Color"



Legend

-  Fresno River
-  Fresno Fill

⊙ EPA GPS Data Points Taken on 1/16/2009



Map created February 27, 2009 by Rick Sakow



Office of Enforcement and Compliance Assurance
INFORMATION SHEET

U. S. EPA Small Business Resources

If you own a small business, the United States Environmental Protection Agency (EPA) offers a variety of compliance assistance resources such as workshops, training sessions, hotlines, websites, and guides to assist you in complying with federal and state environmental laws. These resources can help you understand your environmental obligations, improve compliance, and find cost-effective ways to comply through the use of pollution prevention and other innovative technologies.

Compliance Assistance Centers

(www.assistancecenters.net)

In partnership with industry, universities, and other federal and state agencies, EPA has established Compliance Assistance Centers that provide information targeted to industries with many small businesses.

Agriculture

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

Automotive Recycling Industry

(www.ecarcenter.org)

Automotive Service and Repair

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

Chemical Industry

(www.chemalliance.org)

Construction Industry

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

Education

(www.campuserc.org)

Healthcare Industry

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

Metal Finishing

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

Paints and Coatings

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

Printed Wiring Board Manufacturing

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

Printing

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

Transportation Industry

(www.transource.org)

Tribal Governments and Indian Country

(www.epa.gov/tribal/compliance or 202--564-2516)

US Border Environmental Issues

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

The Centers also provide State Resource Locators (www.envcap.org/statetools/index.cfm) for a wide range of topics to help you find important environmental compliance information specific to your state.

EPA Websites

EPA has several Internet sites that provide useful compliance assistance information and materials for small businesses. If you don't have access to the Internet at your business, many public libraries provide access to the Internet at minimal or no cost.

EPA's Home Page

www.epa.gov

Small Business Gateway

www.epa.gov/smallbusiness

Compliance Assistance Home Page

www.epa.gov/compliance/assistance

Office of Enforcement and Compliance Assurance

www.epa.gov/compliance

Voluntary Partnership Programs

www.epa.gov/partners



U.S. EPA SMALL BUSINESS RESOURCES

Hotlines, Helplines & Clearinghouses

(www.epa.gov/epahome/hotline.htm)

EPA sponsors many free hotlines and clearinghouses that provide convenient assistance regarding environmental requirements. A few examples are listed below:

Clean Air Technology Center

(www.epa.gov/ttn/catc or 1-919-541-0800)

Emergency Planning and Community Right-To-Know Act

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

EPA's Small Business Ombudsman Hotline provides regulatory and technical assistance information.

(www.epa.gov/sbo or 1-800-368-5888)

The National Environmental Compliance Assistance

Clearinghouse provides quick access to compliance assistance tools, contacts, and planned activities from the U.S. EPA, states, and other compliance assistance providers (www.epa.gov/clearinghouse)

National Response Center to report oil and hazardous substance spills.

(www.nrc.uscg.mil or 1-800-424-8802)

Pollution Prevention Information Clearinghouse

(www.epa.gov/opptintr/ppic or 1-202-566-0799)

Safe Drinking Water Hotline

(www.epa.gov/safewater/hotline/index.html or 1-800-426-4791)

Stratospheric Ozone Refrigerants Information

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

Toxics Assistance Information Service also includes asbestos inquiries.

(1-202-554-1404)

Wetlands Helpline

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

State Agencies

Many state agencies have established compliance assistance programs that provide on-site and other types of assistance. Contact your local state environmental agency for more information or the following two resources:

EPA's Small Business Ombudsman

(www.epa.gov/sbo or 1-800-368-5888)

Small Business Environmental Homepage

(www.smallbiz-enviroweb.org or 1-724-452-4722)

Compliance Incentives

EPA provides incentives for environmental compliance. By participating in compliance assistance programs or voluntarily disclosing and promptly correcting violations before an enforcement action has been initiated,

businesses may be eligible for penalty waivers or reductions. EPA has two policies that potentially apply to small businesses:

The Small Business Compliance Policy

(www.epa.gov/compliance/incentives/smallbusiness)

Audit Policy

(www.epa.gov/compliance/incentives/auditing)

Commenting on Federal Enforcement Actions and Compliance Activities

The Small Business Regulatory Enforcement Fairness Act (SBREFA) established an SBA Ombudsman and 10 Regional Fairness Boards to receive comments from small businesses about federal agency enforcement actions. If you believe that you fall within the Small Business Administration's definition of a small business (based on your North American Industry Classification System (NAICS) designation, number of employees, or annual receipts, defined at 13 C.F.R. 121.201; in most cases, this means a business with 500 or fewer employees), and wish to comment on federal enforcement and compliance activities, call the SBREFA Ombudsman's toll-free number at 1-888-REG-FAIR (1-888-734-3247).

Every small business that is the subject of an enforcement or compliance action is entitled to comment on the Agency's actions without fear of retaliation. EPA employees are prohibited from using enforcement or any other means of retaliation against any member of the regulated community in response to comments made under SBREFA.

Your Duty to Comply

If you receive compliance assistance or submit 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 or related provisions.