

Via Certified Mail No. 7008 1140 0004 5420 5803
Return Receipt Requested

James Van Trees
P.O. Box 10046
Beverly Hills, CA 90213-3046

Re: **Administrative Order under Section 308 and 309(a) of the Clean Water Act,**
Docket No. CWA-309(a)-10-002

Dear Mr. Van Trees:

The U.S. Environmental Protection Agency, Region 9 (EPA) is in receipt of information indicating that you, or persons acting at your direction, discharged fill material into Sespe Creek and Little Sespe Creek during or before November 2008 without authorization under Section 404 of the Clean Water Act. The Clean Water Act prohibits the discharge of pollutants, including fill material, into waters of the U.S. (waters) without a permit issued by the U.S. Army Corps of Engineers (the Corps), pursuant to Section 404 of the Clean Water Act.

EPA issues the enclosed Findings of Violation (Findings) 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. The Order requires you to prepare and implement a removal and restoration plan (R&R Plan) to remove and legally dispose of unauthorized material and restore affected waters to their pre-disturbance condition. Additionally, the enclosed Order requires you to:

1. Immediately cease discharging additional fill material into waters, except as authorized by a Clean Water Act Section 404 permit issued by the Corps;
2. Within **thirty days** of receipt of this Order, submit to this office a detailed description of fill activities, conducted or authorized by you, or persons acting at your direction, within or adjacent to impacted waters;
3. Within **sixty days** of receipt of this Order, submit to this office for review and approval, a R&R Plan that provides for the legal disposal of unauthorized discharged fill material, the hydrologic and biologic restoration of impacted waters, and erosion control measures in adjacent areas;
4. Implement the approved R&R Plan according to its schedule;

5. Submit a report documenting removal and restoration work within **thirty days** of completion of the R&R Plan; and
6. Submit annual monitoring and maintenance reports that document implementation of the R&R Plan and progress made in meeting the R&R Plan's success criteria for five years.

Also enclosed for your information is an EPA information sheet describing 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 this information sheet without determining whether your business is a small business under SBREFA.

The enclosed Order only addresses the restoration of the affected waters; please be advised that EPA reserves the right to pursue penalties or other administrative or judicial remedies that may be appropriate. Should you have questions regarding this Order, please contact Rebecca Glyn in the Clean Water Act Compliance Office at (415) 972-3507, or Brett Moffatt in the Office of Regional Counsel at (415) 972-3946.

Sincerely,

Alexis Strauss
Director, Water Division

Enclosures

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

cc: Antal Sziggy, U.S. Army Corps of Engineers
Kate M. Neiswender, Esq.
Bill Struble, National Marine Fisheries Service/National Oceanic and Atmospheric Administration – Office of Law Enforcement
Anthony Spina, National Marine Fisheries Service/National Oceanic and Atmospheric Administration – Protected Resources Division
Jeff Humble, California Department of Fish and Game

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION IX**

IN THE MATTER OF:)	Docket No. CWA-309(a)-10-002
)	
James Van Trees,)	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. §§ 1318 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. "Person" includes individuals and other types of entities. CWA section 502(5), 33 U.S.C. § 1362(5).
3. "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).

4. “Pollutant” means, among other things, dredged spoil, solid waste, biological materials, rock and sand, pursuant to 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). “Fill material” includes, but is not limited to, "rock, sand, soil ... and materials used to create any structure or infrastructure in waters of the United States.” 33 C.F.R. § 323.2(e)(1).
5. "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, inter alia: (i) all waters which are currently used, were used in the past, or may be susceptible to use in interstate or foreign commerce, and (ii) tributaries to such waters. 33 C.F.R. § 328.3(a)(1) and (5) (Corps regulations); 40 C.F.R. § 230.3(s)(1) and (5) (EPA regulations).
6. “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).
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. Section 308(a) of the Act, 33 U.S.C. § 1318(a), authorizes EPA to require the submission of any information that EPA may reasonably require to determine if any person is in violation of Sections 301 or 404 of the CWA.
9. James Van Trees (Respondent) is an individual, and therefore a “person” under CWA § 502(5), 33 U.S.C. § 1362(5).

10. Respondent owns Assessor's Parcel Number 041-0-040-130 (the Property), at 3301 Goodenough Road near Fillmore, Ventura County, California.
11. Sespe Creek is a major tributary of the Santa Clara River, flowing 60 miles from its headwaters to its confluence with the Santa Clara River near the City of Fillmore. In its lower reach, Sespe Creek flows either directly, or via the Sespe Creek Overflow Channel, to the Santa Clara River, which flows to the Pacific Ocean.
12. Sespe Creek, historically and currently, provides habitat for the southern California steelhead (*Oncorhynchus mykiss*)¹. This stream is one of the southernmost anadromous fishery habitats in California. The southern California steelhead is designated as an endangered species under the federal Endangered Species Act.
13. Little Sespe Creek is a significant tributary of Sespe Creek which enters Sespe Creek on the Property.
14. Respondent applied to the Corps for authorization to build a crossing through Sespe Creek in 2002, but the Corps withdrew the application after learning that Respondent had already constructed the crossing without authorization and was subject to a state court order to remove the fill material.
15. On February 4, 2009, an inspector from the Corps, Los Angeles District, conducted an offsite field inspection of the Property, viewing the property from a downstream location. During the inspection, the Corps observed that earthen fill and rock had been placed within Sespe Creek to create a crossing.

¹ Becker, Gordon S. and Isabella J. Reining. *Steelhead/Rainbow Trout (Oncorhynchus mykiss) Resources South of the Golden Gate, California*. October 2008.

16. On February 9, 2009 the Corps issued Mr. Van Trees a Cease and Desist Order requiring Respondent to immediately cease discharging any additional dredged and fill material into Sespe Creek.
17. On May 21, 2009, inspectors from EPA, Corps, California Department of Fish and Game and the U.S. Fish and Wildlife Service, accompanied by Respondent's attorney and environmental consultant, inspected portions of Sespe Creek and Little Sespe Creek traversing the Property. EPA inspectors observed and documented dredged and fill material that had been placed in waters of the United States, without authorization, at three locations identified in Attachment A: 1) near the suspension bridge in Sespe Creek (Fill Area A); 2) at the Swallow's Nest Road crossing in Sespe Creek (Fill Area B); and 3) at a debris pile in Little Sespe Creek (Fill Area C). These discharges of dredged or fill material obstruct the migration of southern California steelhead and other fish.
18. Based on evidence gathered during the above-referenced inspections and a review of documents, including field and aerial photographs, EPA estimates that Respondent discharged fill material into approximately 0.53 acres in Fill Area A, 0.17 acres in Fill Area B, and 0.02 acres in Fill Area C as of May 21, 2009. Together, these discharges (the Fill Areas) represent approximately 0.72 total acres of unauthorized discharges in Sespe Creek and Little Sespe Creek, as shown in Attachment A.
19. Little Sespe Creek and Sespe Creek are waters 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).
20. The earthen material placed or caused to be placed in Little Sespe Creek and Sespe Creek 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).

21. The placement of dredged and/or fill material in Little Sespe Creek and Sespe Creek constitutes the “discharge of a pollutant” under CWA section 502(12), 33 U.S.C. § 1362(12).
22. The earthmoving equipment used to place dredged and/or fill material in Little Sespe Creek and Sespe Creek is a point source under CWA section 502(14), 33 U.S.C. § 1362(14).
23. The discharges described above were not authorized by a section 404 permit.
24. 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:

25. Respondent shall not discharge any dredged or fill material into any waters of the United States except in compliance with a section 404 permit.
26. 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 that was conducted or authorized by Respondent or Respondent’s representative within or adjacent to Sespe Creek and Little Sespe Creek. These earthmoving activities include, but are not limited to, any grading, leveling, vegetation removal, excavation, dredging, filling, channelization, bank modification, and construction or repair of any structures 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 equipment used;
- iii. the type of material moved or discharged;
- iv. the volume of the material moved or discharged;
- v. the location and areal extent of the activity;
- vi. the person(s) who authorized the activity;
- vii. the person(s) who designed the activity;
- viii. the person(s) who oversaw the activity; and
- ix. the person(s) who performed the activity.

b. Copies of all documents (including electronic messages and records) that relate to each 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.

27. 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 Areas and restoring Little Sespe Creek and Sespe Creek to their undisturbed configuration. The restored configuration must be passable to aquatic species inhabiting the creek, including southern California steelhead. The R&R

Plan should be prepared by a qualified professional(s) with the requisite expertise in hydrology, engineering, and stream restoration.

28. The R&R Plan shall, at the minimum, include the following components:
 - a. Removal of all unauthorized dredged and fill material from the Fill Areas identified in Attachment A;
 - b. Disposal of all removed material at appropriate upland locations, in compliance with all applicable federal, state and local requirements;
 - c. Restoration of the Creeks to their pre-filled dimensions, providing for full restoration of the hydrologic functions of the affected areas;
 - d. Restoration of the biological functions of the Creeks, including specific measures to restore the creek substrate to its pre-existing condition and revegetate riparian areas with native riparian plant species;
 - e. Restoration of the fish passage function of the Creeks in accordance with recommendations from National Oceanic and Atmospheric Administration Fisheries and the California Department of Fish and Game;
 - f. Installation of erosion and sediment control measures to minimize erosion from stream banks and all areas disturbed during and after removal and restoration work;
 - g. A schedule for implementing each component of 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; and
 - h. A monitoring and maintenance program that includes specific measures to ensure the success of the removal and restoration components within five years, and provides for maintenance as needed. Monitoring reports documenting work performed and

progress made in meeting the success criteria shall be submitted annually to EPA and the Corps.

29. 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. Within **thirty (30) days** of completion of the R&R Plan, Respondent shall submit a completion report documenting the work performed.
30. Immediately upon receipt of EPA approval of the R&R Plan, Respondent shall contact the Corps to determine the need for CWA section 404 authorization for any discharges of dredged or fill material associated with implementation of the Plan. The Corps contact is:

Antal Szijj
Project Manager
Regulatory Branch
U.S. Army Corps of Engineers, Los Angeles District
Ventura Field Office
2151 Alessandro Drive, Suite 110
Ventura, California 93001

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

Rebecca Glyn
U.S. Environmental Protection Agency, Region IX
Clean Water Act Compliance Office (WTR-7)
75 Hawthorne Street
San Francisco, California 94105

32. 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.

33. 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 obtain and comply with all applicable federal, state or local laws, regulations, ordinances, permits, licenses or orders.
34. 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.
35. 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).
36. This Order shall be binding upon Respondent, and Respondent's agents, servants, employees, heirs, successors and assigns.
37. 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

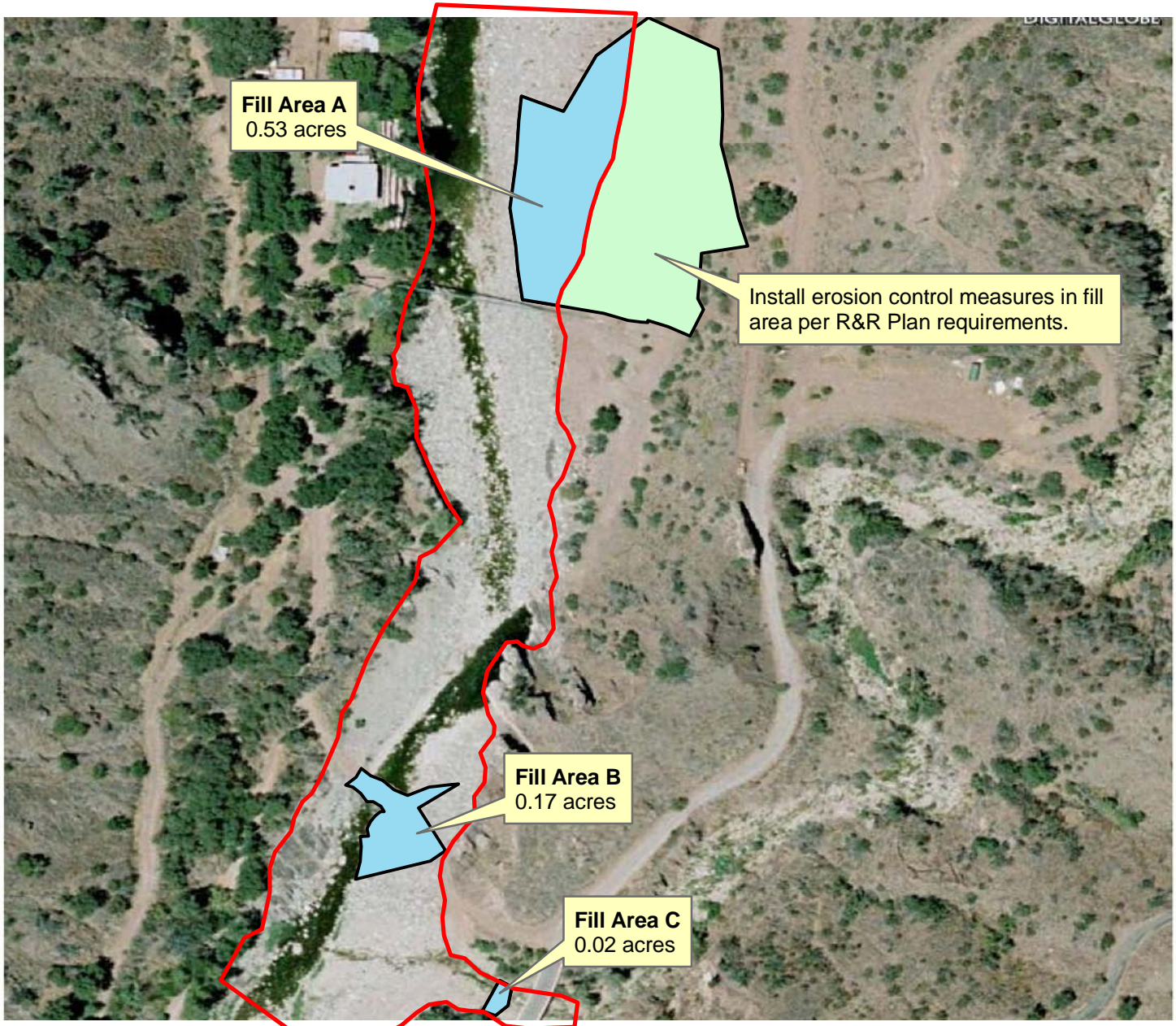
reserves all rights and remedies, legal and equitable, available to enforce any violation cited in this Order and to enforce this Order.

38. 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.
39. 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 James Van Trees
 Estimated fill area in Sespe Creek and Little Sespe Creek, Ventura County, California



Aerial photo: July 2007 Digital Globe Image
 Approximate outline of Sespe Creek and Little Sespe Creek based on aerial photo: February 2005 Digital Globe Image
 Approximate fill area in Sespe Creek and Little Sespe Creek based on EPA GPS points taken on 5/21/2009

Legend

- Approximate outline of Sespe Creek and Little Sespe Creek
- Approximate fill area in Sespe Creek and Little Sespe Creek
- Approximate fill area beyond Sespe Creek and Little Sespe Creek

Estimated fill area in Sespe Creek		Acres
Fill Area A	0.53	
Fill Area B	0.17	
Fill Area C	0.02	
Total	0.72	



Map created January 20, 2010
 by Rebecca Glyn





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.