UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5
77 WEST JACKSON BOULEVARD
CHICAGO, IL 60604-3590

FEB 14 2011

REPLY TO THE ATTENTION OF:

WC-15J

CERTIFIED MAIL 7009 1680 0000 7660 9647
RETURN RECEIPT REQUESTED

American Energy Corporation
c/o
CT Corporation System
Registered Agent
1300 East Ninth Street
Cleveland, Ohio 44114

Subject: Request for Information Pursuant to - Section 308 of the Clean Water Act (33 U.S.C. § 1318) Regarding American Energy Corporation – Century Mine
DOCKET NO: V-W-11-308-11

To Whom It May Concern:

This letter concerns discharges of pollutants into waters of the United States associated with American Energy Corporation – Century Mine.

Section 301 of the Federal Clean Water Act ("Act"), 33 U.S.C. § 1311, prohibits the discharge of pollutants into waters of the United States except as authorized by a permit issued pursuant to Sections 402 or 404 of the Act, 33 U.S.C. §§ 1342, 1344. Each discharge of pollutants from a point source that is not authorized by such a permit constitutes a violation of Section 301(a) of the Act, 33 U.S.C. § 1311(a).

This letter and the enclosures are a request for information issued pursuant to Section 308(a) of the Act, 33 U.S.C. § 1318(a). Section 308 of the Act authorizes the Administrator of EPA to require those subject to the Act to furnish information, conduct monitoring, provide entry to the Administrator or authorized representatives and make reports as may be necessary to carry out the objectives of the Act. Enclosure 1, which is hereby made part of this letter, details the information American Energy Corporation – Century Mine must provide to EPA relating to its coal mining operations and wastewater discharges. Please submit your written responses in accordance with the instructions in Section I of the Information Request, which provides

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response deadlines and the address where information should be submitted.

Pursuant to Section I, all information must be provided in the format requested within 60 days from the date this letter is received. Please provide a signed written confirmation, via fax or email attachment (pdf), to Noel Vargas, Water Enforcement and Compliance Assurance Branch, at the address provided in Enclosure 1, within 48 hours of receipt of this Information Request, of your intention to comply with this request.

Your response to this request must be accompanied by a certificate that is signed and dated by you or the person who is authorized by you to respond to the request. The certification must state that the response is complete and contains all information and documentation available to you pursuant to the request. Enclosure 2 provides a Statement of Certification for this purpose.

Failure to comply with this information request may result in enforcement proceedings under Section 309 of the Act, 33 U.S.C. § 1319, which could result in the judicial imposition of civil or criminal penalties or the administrative imposition of civil penalties. In addition, there is potential criminal liability for the falsification of any response to the requested information.

Although the information requested must be submitted to EPA, you are entitled to assert a business confidentiality claim pursuant to the regulations set forth in 40 C.F.R. Part 2, Subpart B. If EPA determines the information you have designated meets the criteria in 40 C.F.R. § 2.208, the information will be disclosed only to the extent and by means of the procedures specified in Subpart B. Unless a confidentiality claim is asserted at the time the requested information is submitted, EPA may make the information available to the public without further notice to you (see Enclosure 3).

Enclosed is a document entitled *U.S. EPA Small Business Resources-Information Sheet* to assist you in understanding the compliance assistance resources and tools available to you(see Enclosure 4). Any decision to seek compliance assistance at this time, however, does not relieve you of your obligation to EPA nor does it create any new rights or defenses, and will not affect EPA's decision to pursue enforcement action. In addition, the Securities and Exchange Commission requires its registrants to periodically disclose environmental legal proceedings in statements filed with the Commission. To assist you, EPA has also enclosed a document entitled *Notice of Securities and Exchange Commission Registrants' Duty to Disclose Environmental Legal Proceedings* (see Enclosure 5).

If you have questions regarding this notice and information request, please feel free to contact Noel Vargas, of my staff, at (312) 353-3575 or have your legal counsel contact Robert L. Thompson, Associate Regional Counsel, at (312) 353-6700.

Sincerely,

Tinka G. Hyde
Director, Water Division

Enclosures
Information Request
Statement of Certification

cc: R. Klepp, EPA
M. Monson, EPA
M. Raack, EPA
P. Novak, OEPA
James R. Turner, Treasurer,
American Energy Corporation

ENCLOSURE 1
CLEAN WATER ACT (CWA) SECTION 308 INFORMATION REQUEST

I. Instructions

1. American Energy Corporation – Century Mine (Century Mine) must submit all information in response to this Information Request in the format requested within 60 days from the date this letter is received.

2. Please provide a signed written confirmation, via fax or email attachment (pdf), to Noel Vargas, Water Enforcement and Compliance Assurance Branch, within 48 hours of receipt of this Information Request of your intention to comply with this request.

3. Identify the person(s) responding to each Information Request.

4. All documents responsive to the Information Request should be provided in electronic format.

5. Respond to all requests using the following formats, as appropriate: MS Word Document, MS Excel Spreadsheet, MS Access Database, Geographic Information System (GIS) data, Adobe Acrobat Reader PDF format, or pictures and images in JPEG format.

6. For data that is requested in tables, the data shall be accumulated and organized into a clearly labeled and annotated MS Excel Spreadsheet. The spreadsheet shall be formatted so that it can be printed on an 8.5" x 11" sheet of paper. The spreadsheet can be formatted to print on an 8.5" x 14" or 11" x 17" sheet of paper if doing so offers additional clarity.

7. All records and documents that you created and/or rely upon in responding to any part of this request must be maintained until EPA informs you in writing that maintenance is no longer required.

8. Provide a separate narrative response to each and every question and subpart of a question set forth in this Information Request. Precede each answer with the text and the number of the Information Request and its subpart to which the answer corresponds.

9. In answering each Information Request, identify all documents and persons consulted, examined, or referred to in the preparation of each response and provide true and accurate copies of all such documents.

10. For each document produced in response to this Information Request, indicate on the document, or in some other reasonable manner, the number of the Information Request and its subpart to which it responds.

11. Where specific information has not been memorialized in a document, but is nonetheless responsive to an Information Request, you must respond to the Information Request with a written response.

12. If information responsive to this Information Request is not in your possession, custody or control, then identify the person from whom such information may be obtained.

13. If you have reason to believe that there may be persons able to provide a more detailed or complete response to any Information Request or who may be able to provide additional responsive documents, identify such persons and the additional information or documents that they may have.

14. If information not known or not available to you as of the date of submission of a response to this Information Request should later become known or available to you, you must supplement your response to EPA. Moreover, should you find at any time after the submission of its response that any portion of the submitted information is false or misleading, you must notify EPA thereof as soon as possible.

15. Your response to this Information Request must be accompanied by a certificate that is signed and dated by you or the person who is authorized by you to respond to the request. The certification must state that the response is complete and contains all information and documentation available to you pursuant to the request. Enclosure 2 provides a Statement of Certification for this purpose.

16. All information submitted pursuant to this Information Request must be submitted to:

U.S. Environmental Protection Agency – Region 5
Attention: Noel Vargas
Water Enforcement and Compliance Assurance Branch, WC-15J
77 West Jackson Boulevard
Chicago, IL 60604
vargas.noel@epa.gov
312-353-3575 (phone)
312-385-5453 (fax)

II. Definitions

All terms used in this Information Request that are not defined below shall be defined as they are defined in Section 502 of the CWA, 33 U.S.C. § 1362, and regulations at 40 CFR § 122.2. Unless otherwise indicated, the following definitions shall apply strictly for the purposes of this Information Request:

1. "Document" includes as any writings, drawings, graphs, charts, photographs, phone records, field records, operation logs/notes/field rounds sheets, electronic mail, facsimile, Supervisory Control and Data Acquisition (SCADA) information, and other data compilations from which information can be obtained and translated, if necessary, through detection devices into reasonably usable form. Documents should be produced as they are kept in the usual course of business.

2. "Identify" means, with respect to a natural person, to set forth the person's name, present or last known business address and business telephone number, present or last known home address and home telephone number, and present or last known job title, position or business.

3. "Identify" means, with respect to a document, to provide its customary business description; its date; its number, if any (invoice or purchase order number); the identity of the author, addressee and/or recipient; and substance of the subject matter.

4. "Identify" means, with respect to a corporation, partnership, business trust or other association or business entity (including a sole proprietorship), to set forth its full name, address, legal form (e.g., corporation, partnership), if any, and a brief description of its business.

5. "Mining operation" shall mean the following: any surface and/or underground mine, a coal processing and preparation plant, a coal transportation facility, and all associated operations.

6. "NPDES" or "NPDES Permit" shall mean National Pollutant Discharge Elimination System permit or any state permit issued pursuant to the NPDES program that Ohio is authorized to administer.

7. "Process water" means water (including storm water) that comes in contact with coal preparation plants and associated areas and active and post mining areas, and includes pre-existing discharges resulting from mining activities that have been abandoned prior to the time of a remining permit application.

8. "Point source" means any discernable, confined, and discrete conveyance, including but not limited to, any pipe, ditch, channel, tunnel, conduit, well, discrete fissure, or container.

9. "Section 404 permit" shall mean a permit for dredge or fill activity issued by the Army Corps of Engineers.

10. "SMCRA" or "SMCRA Permit" shall mean any permit issued by Federal or State entities pursuant to the Surface Mining Control and Reclamation Act.

11. "State" means the State of Ohio.

12. "Wetlands" shall mean those areas that are inundated or saturated by surface or groundwater at a frequency and duration sufficient to support, and that under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions. Wetlands generally include swamps, marshes, bogs, and similar areas.

13. "You" and "your" shall mean American Energy Corporation – Century Mine and/or any company, entity, or corporation that has directed work at an American Energy Corporation – Century Mine mining operation.

III. Information Requests

1. Identify the full legal name (s) of you or your company. Identify the state of incorporation, the principal place of business and provide the name and mailing address of the registered agent for each state in which the company does business. If there is a parent company, please list the name and address of the parent.

2. Provide a list of all mining or related operations owned or operated by your company, including the name, address, and contact information for each.

3. Provide a list of all mining or related operations that are owned or operated by a subsidiary of your company, including the name, address, and contact information for each facility.

4. Provide a diagram of the corporate and management structure of your company and each of its subsidiaries. Within this diagram, or in separate description, clearly identify the individual(s)/branch(es)/division(s) responsible for environmental compliance.

5. Provide the following information for Century Mine:

   A. Provide the date that mining operations began.

   B. Provide the primary Standard Industrial Classification (SIC) code(s).

   C. Provide a list of permits, including SMCRA, NPDES and Section 404 permits, in effect at any time during the five-year period preceding the date of receipt of this letter, and include the permit number, date of coverage, and receiving water(s).

   D. Provide a copy of all NPDES permits in effect at any time during the five-year period preceding the date of receipt of this letter. Include copies of all related permit renewals, modifications or revisions, permit authorization notices and associated Notices of Intent (NOIs) or permit applications.

   E. Provide a map which identifies all process water discharge locations and, where applicable, associated outfall numbers and all biological and water chemistry sampling locations.

F. Provide a table that lists all process water discharge locations in item 5.E, above, and identify:

i. Outfall number,
ii. If the discharge location is intended for coverage under the NPDES permit(s) submitted in response to item 5.D.,
iii. Date range of operation,
iv. Description (e.g. dry weather discharge for pond #, etc.),
v. Latitude/longitude of discharge location,
vi. Name of receiving water,
vii. How the discharge is conveyed to receiving water (e.g. ditch or other manmade conveyance, overland flow, etc.), and
viii. Whether the discharge location is within 500 yards upstream of a water supply intake.

G. Provide a narrative and flow map/diagram that identifies the below listed areas where process water is generated and describes/illustrates how the water is conveyed (e.g. pipe, overland flow) and managed (e.g. pond/impoundment, discharged through outfall number, overland flow to surface water/wetland, infiltration, etc.):

i. Underground workings of underground mine,
ii. Coal preparation plant areas and coal preparation plant associated areas (excluding coal refuse piles),
iii. Active mine area with a pH greater than 6 prior to treatment,
iv. Active mine area with a pH less than 6 prior to treatment,
v. Wastewater from coal refuse pile,
vi. Controlled surface mine drainage wastewater,
vii. Non-controlled surface mine drainage wastewater,
viii. Steep slope and mountaintop removal areas,
ix. Reclamation areas, and
x. Pre-existing discharges that are within or hydrologically connected to a pollution abatement area.

H. Provide a table that identifies by name all ponds/impoundments that are used to manage process water. For each pond, include the following below listed areas that contribute process water. Also, identify and note the following below listed areas that contribute process wastewater(s) from mine sites other than Century Mine.

i. Underground workings of underground mine,
ii. Coal preparation plant areas and coal preparation plant associated areas (excluding coal refuse piles),
iii. Active mine area with a pH greater than 6 prior to treatment,
iv. Active mine area with a pH less than 6 prior to treatment,
v. Wastewater from coal refuse pile,

vi. Controlled surface mine drainage wastewater,
vii. Non-controlled surface mine drainage wastewater,
viii. Steep slope and mountaintop removal areas,
ix. Reclamation areas, and
x. Pre-existing discharges that are within or hydrologically connected to a pollution abatement area.

I. For each pond/impoundment identified in response to request 5.H. above, provide:

i. Design plan, cross section, and basis for design that also includes:
   a. A water balance to account for flows entering and exiting the pond/impoundment during dry weather as well as wet weather events,
   b. Each permitted (by number) and unpermitted outflow location, and
   c. Sampling locations during dry and/or wet weather conditions.
ii. A narrative describing each outflow location and associated sampling point and also identifies how water flows out of each location identified in item i, above (e.g. pipe(s), porous material, overflow, etc.)
iii. A description of how the pond/impoundment will function during dry weather and wet weather including the 1-yr, 24-hr; 2-yr, 24 hr; or 10-yr, 24 hour storm events, if applicable.

J. Provide a copy of any SMCRA permit(s) in effect at any time during the five-year period preceding the date of receipt of this letter. Include copies of all related permit authorization notices.

K. Provide the following portions of the Ohio DNR SMCRA permit application(s):

i. Cover Sheet.
ii. The following Sections from Part 1. Legal, Financial, Compliance and related Information:
   Section A (Identification of Interests).
   Section B (Compliance Information).
   Section E (Permit Term and Related Information).
iii. The following Sections from Part 2. Environmental Resource Information:
   Section C (Ground Water Information).
   Section D (Surface Water Information).
iv. The following Sections from Part 3. Reclamation and Operation Plans:
   Section A (General Requirements).
   Section B (Reclamation Plan – General Requirements).
   Section C. (Reclamation Plan – Protecting Hydrologic Balance).
   Section D (Ground Water and Surface Monitoring Plan) – SUBMIT ONLY SURFACE MONITORING PLAN.
v. Part 4. Underground Mining Plan (Sections A and B).
vi. Part 5. Format and Content.
vii. Provide a copy of the Surface Water Inventory Form (DNR-744-9084).

L. Provide a copy of the Environmental Resource Map.

M. Identify any discharge(s) events from locations other than those covered under an NPDES permit, as identified in item 5.F.ii.above, that have occurred at any time during the five-year period preceding the date of receipt of this letter. Identify each discharge, including the location of the discharge and name of the receiving water, the approximate amount of flow, duration of discharge and the amount of precipitation that occurred at the time of the discharge event, if any.

N. Provide copies of any Administrative Orders, Modifications, Show Cause Orders, Notices of Noncompliance or other state or local agency enforcement-related documents in effect at any time during the five-year period preceding the date of receipt of this letter including those associated with the discharges identified in your response to 5.N., above.

O. Indicate the final disposition of the alleged violation for each enforcement-related document identified in your response to the 5.O., above.

P. Provide all analytical results, including sampling results generated by any laboratory under contract to American Energy Corporation – Century Mine, or by its employees, for any monitoring of any of the discharges in the last five years from the date of receipt of this letter, to the present, including monitoring for NPDES and/or SMCRA permits. Include all effluent sampling results completed by or on behalf of American Energy Corporation – Century Mine, regardless of whether or not the data was submitted to any regulatory agency.

Q. Provide copies of any best management practice plans or waste management plans developed and/or used by the company.

R. Provide copies of all discharge monitoring reports (DMRs) submitted to any regulatory agency covering the period of the last five years from the date of receipt of this letter, performed under any permit or otherwise and keyed to the map and table required in items 5.E. and 5.F., above.

S. Provide a copy of all biological and water chemistry monitoring results other than sampling results provided under 5.Q., above, prepared by you or on your behalf and keyed to the map required in item 5.E., above.

T. Provide a copy of all CWA Section 401 certifications and documents generated to comply with conditions of the certifications.

6. Identify any Environmental Management System (EMS) and compliance audit program(s) currently used and identify who developed the EMS and any audit program(s). Provide copies of any environmental audit protocols.

7. State whether American Energy Corporation has ever been granted or told by a permitting authority (local, state or federal) that Century Mine is entitled to a waiver or variance of any permitting requirement, emissions limitation, or other environmental requirement that could otherwise be applicable. If so, provide a copy of all documents describing or containing the waiver or variance, any application for it, the granting of it, and the reason it was approved or granted.

ENCLOSURE 2

STATEMENT OF CERTIFICATION

I certify that the information contained in or accompanying this submission is true, accurate, and complete.

As to the identified portion(s) of this submission for which I cannot personally verify its truth and accuracy, I certify as the company official having supervisory responsibility for the person(s) who, acting under my direct instructions, made the verification that this information is true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fines and imprisonment.

By_____
(Signature)

_____
(Title)

_____
(Date)

ENCLOSURE 3

Confidential Business Information (CBI)
Assertion and Substantiation Requirements

Assertion Requirements

You may assert a business confidentiality claim covering all or part of the information requested in the attached letter, as provided in 40 C.F.R. § 2.203(b). To make a confidentiality claim, submit the requested information and indicate that you are making a claim of confidentiality. Any document over which you make a claim of confidentiality should be marked by placing on or attaching to the information, at the time it is submitted to EPA, a cover sheet, stamped or typed legend, or other suitable form of notice employing language such as "trade secret" or "proprietary" or "company confidential" and a date, if any, when the information should no longer be treated as confidential. Information covered by such a claim will be disclosed by the EPA only to the extent permitted and by means of the procedures set forth by Section 308 of the CWA, and 40 C.F.R. Part 2. Allegedly confidential portions of otherwise non-confidential documents should be clearly identified. EPA will construe the failure to furnish a confidentiality claim with your response to the attached letter as a waiver of that claim, and the information may be made available to the public without further notice to you.

Please segregate personnel, medical and similar files from your responses and include that information on separate sheet(s) marked as "Personal Privacy Information," given that disclosure of such information to the general public may constitute an invasion of privacy.

Substantiation Requirements

All confidentiality claims are subject to EPA verification and must be made in accordance with 40 C.F.R. § 2.208, which provides in part that you satisfactorily show that you have taken reasonable measures to protect the confidentiality of the information and that you intend to continue to do so; and that the information is not and has not been reasonably obtainable by legitimate means without your consent.

Pursuant to 40 C.F.R. Part 2, Subpart B, EPA may at any time send you a letter asking you to substantiate fully your CBI claim. You must provide EPA with a response within the number of days set forth in the EPA request letter. Failure to submit your comments within that time will be regarded as a waiver of your confidentiality claim or claims, and EPA may release the information. EPA will ask you to specify which portions of the information you consider confidential. **You must be specific by page, paragraph, and sentence when identifying the information subject to your claim.** Any information not specifically identified as subject to a confidentiality claim may be disclosed to the requestor without further notice to you. For each item or class of information that you identify as being subject to CBI, EPA will ask you to answer the following questions, giving as much detail as possible:

1. For what period of time do you request that the information be maintained as confidential, e.g., until a certain date, until the occurrence of a specified event, or permanently? If the

occurrence of a specific event will eliminate the need for confidentiality, please specify that event.

2. Information submitted to EPA becomes stale over time. Why should the information you claim as confidential be protected for the time period specified in your answer to question 1 above?

   A. What measures have you taken to protect the information claimed as confidential? Have you disclosed the information to anyone other than a governmental body or someone who is bound by an agreement not to disclose the information further? If so, why should the information still be considered confidential?

   B. Is the information contained in any publicly available material such as the Internet, publicly available databases, promotional publications, annual reports, or articles? Is there any means by which a member of the public could obtain access to the information? Is the information of a kind that you would customarily not release to the public?

   C. Has any governmental body made a determination as to the confidentiality of the information? If so, please attach a copy of the determination.

   D. For each category of information claimed as confidential, <u>explain with specificity</u> why release of the information is likely to cause substantial harm to your competitive position. Explain the specific nature of those harmful effects, why they should be viewed as substantial, and the causal relationship between disclosure and such harmful effects. How could your competitors make use of this information to your detriment?

ENCLOSURE 4

United States Environmental Protection Agency

Office of Enforcement and Compliance Assurance (2201A)
EPA 300-F-07-003 October 2007

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

Recycled/Recyclable
Printed with Soy/Canola Ink on paper that contains at least 30% post consumer fiber

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.

ENCLOSURE 5

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 29.103(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 SEC Office of the Special Senior Counsel for Disclosure Operations at (202) 942-1888.