




UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

DEC 20 2007

OFFICE OF
ENFORCEMENT AND
COMPLIANCE ASSURANCE

MEMORANDUM

SUBJECT: Dissemination of EPA's Revised SBREFA Information Sheet to Small Businesses at the Time of an Enforcement or Other Compliance Assurance Activity

FROM: Walker B. Smith, Director 
Office of Civil Enforcement

TO: Addressees

EPA is committed to advising small businesses of their right under the Small Business Regulatory Enforcement Fairness Act (SBREFA) to comment to the SBREFA Ombudsman about the Agency's regulatory enforcement activities.¹ Since 1999, EPA has used its "Information Sheet – Small Business Resources" to notify small businesses of this right and to provide important information that can assist small businesses comply with environmental requirements. The enclosed Information Sheet supercedes all prior versions: it up-dates contact information and includes additional compliance assistance resources.² Please begin to use it immediately in place of any earlier version. We are sending several hundred copies to each Regional enforcement coordinator and each compliance assistance coordinator. Additional copies may be downloaded from:
<http://www.epa.gov/compliance/resources/publications/incentives/smallbusiness/smallbusresources.pdf>

¹ The Small Business Administration's SBREFA Ombudsman is charged with administering § 222 of SBREFA. The section provides small businesses with the right to comment on federal enforcement actions, which it defines as including audits, on-site inspections, compliance assistance efforts, and other enforcement-related communication or contact by an agency. SBA requests that EPA and other federal regulatory agencies assist the SBA Ombudsman carry out this legislative mandate by disseminating information about SBREFA and the right to comment.

² Specifically, this Memorandum supercedes the December 23, 1998, the March 26, 1999, and the August 31, 1999, guidance on dissemination of the SBREFA Information Sheet. The August 2007 Information Sheet now supercedes all earlier versions.

As in past versions, the new Information Sheet reminds readers that SBREFA does not eliminate the responsibility to respond to an enforcement complaint, information request or other enforcement activity within the time allowed, nor does it create any new rights or defenses under law. The sheet also explains that SBREFA does not affect EPA's ability to protect public health or the environment under any of the environmental statutes that EPA enforces, including the right to take remedial or emergency response action when appropriate.

It has been EPA's policy and practice to give the Information Sheet to every small business at the time EPA has *initial enforcement contact* with a small business. Please continue this practice. Activities constituting initial enforcement contact may include:

- Inspection
- Warning letter
- Reminder notice or letter
- Compliance Audit Program or Incentive letter or notice
- Information collection request³
- Subpoena
- Show cause letter
- Administrative search or other warrant
- Stop sale, use and removal order
- Notice of Violation or other notice letter
- Administrative complaint
- Administrative order or administrative penalty order
- Superfund general or special notice
- Cost recovery demand letter.

In general, it should only be necessary to distribute the Information Sheet once, at the time of the first formal enforcement contact. However, a Region may always choose to disseminate the sheet again, at other junctures in an enforcement action or in the context of its compliance assistance efforts.

Because there is not a single definition of what constitutes a small business, a number of EPA Regions simply provide the Information Sheet to *all* businesses at the time of an initial enforcement contact as an effective method of ensuring that every small business receives a copy. SBA's revised criteria for determining whether a business is small varies from industry to industry. Essentially, SBA now defines a small business as an independent business that meets certain standards (expressed in either millions of dollars of annual receipts or average number of employees) that are matched to industries described in the North American Industrial Classification System (NAICS). See, 13 C.F.R. 121. EPA is more restrictive for purposes of its

³ EPA generally considers the initial enforcement contact under the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA or Superfund) to occur at the general notice stage.

Small Business Compliance Policy, defining a small business as a person, corporation, partnership or other entity that employs 100 or fewer individuals across all facilities and operations owned by the small business. If there is any question whether a business is small, the Information Sheet should be given to that business.

As in the past, if a contractor, doing the work of EPA, is the first representative to come in contact with a small business at an inspection or in the context of an enforcement or other such compliance assurance activity, then the contractor should provide the small business with an Information Sheet. Note that it should not be given out in criminal investigations or actions; SBREFA appears to be applicable only to civil judicial or administrative actions.

Thank you for your continued assistance in disseminating the important SBREFA Information Sheet. If you have any questions or concerns regarding this matter, please contact Melissa Marshall, Senior Counsel on my staff, at (202) 564-7971.

Addressees:

Regional Counsel
Regional Enforcement Coordinators
Regional Compliance Assistance Coordinators
Director, Headquarters Office of Site Remediation and Enforcement
Director, Headquarters Office of Compliance
Headquarters Enforcement Division Directors
Headquarters and Regional SBREFA Contacts
OGC SBREFA Contacts
Director, Office of Site Remediation & Restoration, Region I
Director, Office of Environmental Stewardship, Region I
Director, Emergency & Remedial Response Division, Region II
Director, Division of Enforcement and & Compliance Assurance, Region II
Director, Hazardous Site Cleanup Division, Region III
Director, Air Protection Division, Region III
Director, Water Protection Division, Region III
Director, Air Pesticides & Toxics Division, Region IV
Director, Resource Conservation and Recovery Act Division, Region IV
Director, Water Management Division, Region IV
Director, Superfund Divisions, Regions IV, V, VI, VII & IX
Director, Office of Enforcement & Compliance Assurance, Region V
Director, Air & Radiation Division, Region V
Director, Land & Chemicals Division, Region V

Director, Water Divisions, Regions V & IX
Director, Compliance Assurance and Enforcement Division, Region VI
Director, Office of Enforcement Coordination, Region VII
Director, Air, RCRA & Toxics Division, Region VII
Director, Field Services Division, Region VII
Director, Water, Wetlands & Pesticides Division, Region VII
Director, Ecosystems Protection & Remediation Division, Region VIII
Director, Enforcement, Compliance & Environmental Justice Division, Region VIII
Director, Air Division, Region IX
Director, Water Division, Region IV
Director, Waste Management Division, Region IX
Director, Office of Environmental Cleanup, Region X
Director, Office of Waste & Chemical Management, Region X
Director, Office of Compliance and Enforcement, Region X
Director, Office of Air, Waste & Toxics, Region X
Director, Office of Water & Watersheds, Region X

cc: Angela T. Suber, Acting EPA Small Business Ombudsman
Melissa P. Marshall, OCE