

ENVIRONMENTAL

A man in a dark suit, light blue shirt, and yellow and blue striped tie is looking down with a serious expression. He is surrounded by thick red caution tape that crisscrosses over him, forming a large 'X' shape. The background is a plain, light-colored wall.

HELP FROM THE EPA

by Kathy Danforth

"Hi. I'm from the government and I'm here to help you," may not just be a fairy tale. The EPA has information sources, an audit policy, and a small business compliance policy to encourage voluntary self-policing to reduce pollution without incurring penalties. Before you dismiss voluntarily reporting an event that you suspect or discover is banned as just asking for trouble, consider the following portion of a recent news release:

"Wanted List" Website Aims to Track Down Environmental Fugitives (Washington, D.C.—Dec. 10, 2008) A new web tool is available to enlist the public and other law enforcement agencies in tracking down fugitives accused of violating environmental laws and evading arrest.

"Putting this information on the EPA's website will increase the number of 'eyes' looking for environmental fugitives," said Granta Y. Nakayama, assistant administrator for EPA's Office of Enforcement and Compliance Assurance. "Two EPA fugitives were captured this year, and this website could help us find more fugitives in the future."

The website includes photos of the accused, summaries of their alleged environmental violations, and information on each fugitive's last known whereabouts. The alleged violations include smuggling of ozone-depleting substances, illegally disposing of hazardous waste, discharging pollutants into the air and water, laundering money, and making criminally false statements.

Honesty Is the Cheapest Policy: EPA's Audit Policy

Admittedly the stringency of regulations and enforcement varies in different areas, partly depending on other polluting activities in the area, but there are benefits to working with agencies to minimize hazards to health and the environment. EPA's audit policy provides incentives for regulated parties to voluntarily comply with environmental regulations if they voluntarily discover, promptly disclose, quickly correct, and prevent a recurrence of the prohibited action. *The incentives EPA provides are:*

- 1) No gravity-based (based on severity) penalties will be levied if all nine of the audit policy's conditions are met. Penalties based on economic benefit that was realized may apply.
- 2) Gravity-based penalties will be reduced by 75 percent if all the conditions were met except discovery of the violation through a systematic audit or discovery process.
- 3) No recommendations for criminal prosecutions will be made.
- 4) No routine requests for audit reports will be made.

The conditions for these benefits are as follows:

- 1) Systematic discovery through an environmental audit or compliance management program (Note that if this is not met there is still a 75 percent reduction in gravity penalties);

- 2) Voluntary discovery—does not cover monitoring being done for a permit or court order;
- 3) Prompt disclosure—Twenty-one days unless other laws dictate sooner, as in a hazardous substance release which must be reported immediately under 42 USC 9603;
- 4) Discovery made independent of government or third party complaint;
- 5) Correction and remediation within 60 days, or as negotiated;
- 6) Prevention of recurrence;

With the variety of situations and environmental laws that a manufacturer, distributor, or pressure washer may encounter, it is prudent to know your rights and options if you find out that through lack of knowledge or an unexpected event you are out of compliance.

- 7) No repeat violations, generally regarded as a similar violation within three years;
- 8) No coverage of other violations, such as those causing serious harm or endangerment or a violation of a prior decree;
- 9) Cooperation with EPA's investigation.

The Small Business Policy is slightly more lenient. To be a small business, there may not be over 100 employees in the total organization, including sister or parent organizations. *Points of difference which benefit small businesses include:*

- 1) The entire gravity penalty can be waived even if the violation was not discovered through an environmental management procedure.
- 2) A small business has 90 days to correct a violation, with extensions possible.
- 3) Violations that may involve criminal conduct can only be addressed under the audit policy.
- 4) EPA may collect a penalty equaling economic benefit gained by non-compliance, but has not done so to any small business making a voluntary disclosure under the Small Business Policy.

In a survey of companies taking advantage of EPA's audit policy, the majority had violated EPCRA, the Emergency Planning and Community Right-to-Know Act. This covers all companies that are required by OSHA to use a Material Safety Data Sheet for a chemical; if the chemical is above the threshold amount, there are filing and reporting requirements. Some of the businesses which benefited from the audit policy were not aware of it when they self-reported a violation. However, knowledge of the conditions (especially the time limit on reporting) is an advantage in planning how to deal with discovery of a violation of environmental laws. With

the variety of situations and environmental laws that a manufacturer, distributor, or pressure washer may encounter, it is prudent to know your rights and options if you find out that through lack of knowledge or an unexpected event you are out of compliance.

Small Business Services

The EPA is especially concerned with small businesses and has dedicated a Small Business Division and Small Business Ombudsman to serving this group. These assist with meeting

special needs and providing compliance assistance that small businesses may uniquely require. Regulations require that the EPA take into account the burden placed on small businesses in learning and complying with environmental regulations that may be directed at a different scenario than the small business encounters. The Small Business Regulatory Enforcement Fairness Act amended the Regulatory Flexibility Act and requires regulatory compliance simplification (which

is not overly evident), small business advocacy review panels, and 10 regional regulatory fairness boards to provide small businesses a way to provide Congress with input on the impact of federal regulations. It is to the pressure washing/waterjetting industry's advantage to be involved and provide input if regulations will have a significant detrimental impact. Businesses affected may challenge EPA's compliance with the requirement that they review proposed rules which will have a substantial impact on a substantial number of small businesses.

One service provided is a Resource Directory of Small Business Environmental Assistance, provided at epa.gov/sbo/pdfs/sba-directory.pdf. It lists federal, state, and private sources of environmental information. The private sources include many industry or trade groups, which may be a beneficial contact if you are called in to clean and/or provide wastewater treatment for cleaning an unfamiliar industry situation.

Ten Compliance Assistance Centers have been established for specific industrial activities. Of particular interest may be the Transportation Center (www.transource.org) and the Paints and Coating Resource Center (www.paintcenter.org). Additional areas covered are agriculture, auto service industry, chemicals, local government, metal finishing, printed wiring boards, and printing. Their experience with the treatment of wastes generated in these activities is available.

A variety of hotlines are available to direct small businesses to sources of information to enable regulatory compliance and pollution prevention. The Small Business Ombudsman Hotline (1-800-368-5888) is a gateway to many other sources. For information on lead, as in lead-based paints, the National Lead Information Center Hotline is 1-800-424-LEAD. The National Response Center Hotline for spills or releases of hazardous substances or oil is 1-800-424-8802. The Water Efficiency Clearinghouse, or Waterwiser, may be reached at 1-800-926-7337. *cr*



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