



NEW MEXICO ENVIRONMENT DEPARTMENT



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Air Quality Bureau Small Business Compliance Assistance Policy May 2017

The U.S. Environmental Protection Agency (EPA) allows for the following interaction between Enforcement, Compliance and small businesses based on EPA's Small Business Compliance Policy¹ and the Small Business Regulatory Enforcement Fairness Act (SBREFA) of 1996.²

New Mexico small businesses, except for those located in Bernalillo County or on tribal lands, may be offered a limited period to correct certain violations discovered by means such as, but not limited to, receiving compliance assistance, conducting an environmental audit, or participating in mentoring programs. Additional requirements of this policy include voluntary disclosure of the violation(s), and correction within a specified timeframe.

Once the small business discovers that a violation has, or may have, occurred they must voluntarily disclose the specific violation(s) fully within 21 calendar days in writing to the Air Quality Bureau Compliance and Enforcement Section. This policy may waive or reduce the gravity component of the civil penalties to which a small business might otherwise be subject. However, the Air Quality Bureau retains discretion to recover any significant economic benefit gained as a result of the violation(s). Small businesses may have up to 180 days to correct a violation to qualify for a penalty reduction. After that time, violations will be addressed pursuant to the current Air Quality Bureau Civil Penalty Policy.

A small business is a person, corporation, partnership, or other entity that employs 100 or fewer individuals across all facilities and operations owned by the small business. Those small businesses who also meet the following requirements are eligible to receive assistance from the Air Quality Bureau's Small Business Environmental Assistance Program (SBEAP).

In accordance with Section 507 of the Clean Air Act, a small business

- is not a major stationary source,
- does not emit more than 50 tons per year of any regulated pollutant, and
- emits less than 75 tons per year of all pollutants.

The number of employees should be considered as full-time equivalents on an annual basis, including contract employees. Full-time equivalents means 2,000 hours per year of employment.

¹ U.S. Environmental Protection Agency Small Business Compliance Policy, 65 Fed. Reg. 19630.

² P.L. 104-121, March 29, 1996 (As Amended by P.L. 110-28, May 25, 2007)

Entities under the SBREFA include small governments³ and small organizations⁴. Facilities that are disclosing violations involving multiple facilities should refer to that section in EPA's Audit Policy⁵. An entity shall self-certify, in writing, that they qualify as a small business when they access compliance assistance through the Air Quality Bureau's SBEAP.

In order to align with EPA's Small Business Compliance Policy, the Air Quality Bureau has established the following policy to assist small businesses:

1. A small business may only use this policy if they make a good faith effort by complying with the following:
 - A. Voluntarily discovering a violation;
 - B. Promptly disclosing the violation in writing to the Air Quality Bureau SBEAP within the required 21 calendar day time period. SBEAP will forward the disclosure to the Air Quality Bureau Compliance and Enforcement (AQB C&E) Section. When aware of violations, the SBEAP will report the violations to the AQB C&E Section if the small business declines to disclose violation(s) within the required 21 calendar day time period;
 - C. Correcting the violation within the specified timeframe;
 - D. Cooperating with the Air Quality Bureau or the SBEAP (if receiving assistance from them) in a timely manner by taking appropriate action to correct noncompliance issues such as, but not limited to, providing recordkeeping, conducting compliance tests; and
 - E. Meeting criteria on violation history, lack of harm, and criminal conduct as outlined below.
2. This Policy does not apply if the facility has the following noncompliance history:
 - A. It has previously received a warning letter, notice of violation (NOV), field citation or been subject to a citizen suit or other enforcement action by a government agency for a violation of the same requirement within the past three years.
 - B. It has been granted penalty reduction under this policy (or a similar State policy) for a violation of the same or a similar requirement within the past three years.
 - C. It has been subject to two or more enforcement actions for violations of environmental requirements in the past 5 years even if this is the first violation of this particular requirement.
3. This Policy does not apply if any of the following apply:
 - A. The violation was discovered through an information request, inspections, or field citation; reported to a federal, state, or local agency by a member of the public or

³ The Regulatory Flexibility Act defines "small governmental jurisdiction" as "...governments of cities, counties, towns, townships, villages, school districts, or special districts, with a population of less than fifty thousand..."

⁴ The Regulatory Flexibility Act defines "small organization" as "...any not-for-profit enterprise which is independently owned and operated and is not dominant in its field..."

⁵ U.S. Environmental Protection Agency, Incentives for Self-Policing: Discovery, Disclosure, Correction and Prevention of Violations, 65 Fed. Reg. 19618.

“whistle blower” employee identified in notices for citizen suits; previously reported to an agency; or discovered through an investigation unless the facility can demonstrate that it did not know that the agency had initiated the investigation and has disclosed the violation in good faith.

- B. The violation has caused actual serious harm to public health, safety, or the environment.
 - C. The violation is one that may present an imminent and substantial endangerment to public health, safety or the environment.
 - D. The violation involves criminal conduct.
4. Once a violation or suspected violation has been reported in writing to the Air Quality Bureau’s Compliance and Enforcement Section, a small business may be allowed up to 60 days to correct any violations identified. SBEAP personnel will work with small businesses who are eligible to receive assistance and offer guidance on what is needed to come into compliance.
 5. For any violation that cannot be corrected within 60 calendar days of its discovery⁶ the small business must submit a written schedule prior to the 60th day of the initial 60-day period to request an additional 120 days for compliance, or the agency may, at its sole discretion, elect to issue a compliance order with a schedule, as appropriate. The small business must correct any violations within 180 calendar⁷ days of the date that they were discovered.
 6. If Air Quality Bureau Compliance Section staff inspect a source that is receiving assistance from the SBEAP during the period allowed for correcting the violation(s), any additional violations discovered will not be turned over to the SBEAP for resolution during this time period, but will be addressed by the bureau’s Compliance and Enforcement Section.

If the Air Quality Bureau determines, as a result of an inspection, that there is an imminent threat to public health or the environment, that actual serious harm to public health, safety, or the environment has occurred, or that the violation involves criminal conduct, then the initial disclosure made by the small business using the Small Business Compliance Assistance Policy will immediately be void, according to paragraph 3 above.
 7. If a small business fails to correct the violation(s) in the allotted time, as allowed by this Small Business Compliance Assistance Policy, then an enforcement action may be issued and penalties may be assessed in accordance with the Air Quality Bureau’s Civil Penalty Policy.
 8. After all corrections have been made, the small business shall provide a Corrective Action Verification (CAV), signed by the responsible official, to the SBEAP. SBEAP will

⁶ For purposes of this policy, the time at which a small business discovers that a violation has or may have occurred begins the 60-day violation correction timeframe.

⁷ If a small business intends to correct the violation by putting into place pollution prevention measures, the business may take an additional period of up to 180 calendar days (up to a period of 360 calendar days) from the date the violation is discovered

forward the CAV to the Air Quality Bureau Compliance and Enforcement Section for evaluation. The business shall identify in the CAV all corrective action taken to bring the facility into compliance and prevent reoccurrence of the specific violations. SBEAP will verify that the Air Quality Bureau Small Business Compliance Assistance Policy conditions have been met.


RICHARD L. GOODYEAR
AIR QUALITY BUREAU CHIEF

DATE: 5 May 2017