

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

Date: September 21, 2004

OFFICE OF
ENFORCEMENT AND
COMPLIANCE ASSURANCE

MEMORANDUM

SUBJECT: Reaffirming EPA's Policy and Practice Against Using Enforcement as Retaliation

FROM: Thomas V. Skinner
Acting Assistant Administrator

TO: Regional Administrators, Regions I-X
Regional Enforcement Offices
Office of Enforcement and Compliance Assurance

The Small Business Administration's Regulatory Enforcement Fairness Ombudsman recommends that all federal agencies formally address a very important issue: ensuring that members of the regulated community, and in particular small businesses, do not face retaliation by a regulatory agency because they have criticized that agency's activities. EPA has had a longstanding policy and practice of not retaliating against any member of the regulated community; it was last reiterated in 1999. In response to the Ombudsman's request, I would like to reaffirm that policy once again and remind all EPA employees engaged in any enforcement activities to make every effort to avoid even the appearance of retaliatory action.

Any regulated entity should be free to comment to EPA or to the Small Business Administration without fear of retaliation regarding any on-site inspection, compliance assistance effort, enforcement action, or other enforcement-related communication or contact by this Agency. "Retaliation" includes threats meant to prevent comments by a regulated entity, adverse actions taken in revenge for comments that were made, or actions designed to impose more rigorous compliance standards than are imposed by law or regulation. Any retaliatory action by an EPA employee may result in disciplinary action.

I am proud of the professionalism exhibited by EPA's compliance monitoring and enforcement personnel and do not believe that there has ever been an instance of retaliation in the history of EPA's enforcement program. This memorandum simply confirms our longstanding policy and practice. Please ensure that it reaches all enforcement and compliance assistance personnel.

If you have questions about this policy, or have a specific concern relating to issues of retaliation, please contact Walker Smith, Director of the Office of Regulatory Enforcement, at 202-564-2220.