

GUIDEBOOK

SBAP

Compliance Advisory Panel



Colorado Department
of Public Health
and Environment

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1.0 INTRODUCTION

This guidebook is intended to assist the Compliance Advisory Panel (CAP) members to learn about the functions and responsibilities of the CAP and to serve as a reference document for CAP meeting procedural rules. It is intended to promote participation by all interested persons in a fair and responsible manner.

The goal of Panel meetings is to provide information and produce thoughtful and well-informed opinions and decisions. Accordingly, the procedural rules are intended to promote, rather than obstruct, decision-making. The Panel welcomes public comments and appreciates all participation in its decision-making process.

2.0 SCOPE AND AUTHORITY

Section 507 of the 1990 Clean Air Act Amendments (CAAA) requires each state to establish a Small Business Assistance Program (SBAP) to assist small businesses in understanding the requirements of the Clean Air Act. Section 507 requires states to implement three distinct program elements. Colorado has implemented all three of these components.

- 2.1 A Small Business Stationary Sources Compliance and Technical Assistance Program (SBAP) that provides information and technical assistance to small businesses;
- 2.2 An Ombudsman who acts as an advocate for small businesses; is located separately from the Air Pollution Control Division; and
- 2.3 A Compliance Advisory Panel (the Panel) for determining the overall effectiveness of the SBAP.

Legal authority to implement the Small Business Assistance Program, including the Ombudsman and the Compliance Advisory Panel has been obtained through the Colorado State Legislature (Senate Bill 92-105), and is contained in the Colorado Act (Section 25-7-109.2).

3.0 DEFINITIONS

The definitions of terms used in this guidance shall be in accordance with the Act, the APA, and other applicable regulations of the Panel unless the context requires otherwise. The following terms have the meanings assigned in this section.

- 3.1 Act: The Colorado Air Pollution Prevention and Control Act, § 25-7-101 et seq., C.R.S.

- 3.2 APA, or Administrative Procedures Act: § 24-4-101 et seq., C.R.S.
- 3.3 Panel: The Compliance Advisory Panel created in § 25-7-109.2, C.R.S. The Panel's mailing address is:
- Compliance Advisory Panel
c/o Small Business Ombudsman, Colorado Dept. of Public Health
and Environment, OEIS- B2
4300 Cherry Creek Drive South
Denver, Colorado 80246-1530
- 3.4 Division: The Colorado Air Pollution Control Division that exists within the Division of Administration of the Colorado Department of Public Health and Environment.
- 3.5 Small Business: 100 employees or less; meets definition in 42 USCA 631; not a major source; does not emit 50 tons or more of any regulated pollutant; and emits less than 75 tons per year of all regulated pollutants.
- 3.6 Staff: Means the Small Business Assistance Program under all circumstances, and the Division at the request of the Panel or the Small Business Assistance Program.

4.0 MEMBERSHIP

- 4.1 Section 507(e) requires each State to create a Compliance Advisory Panel consisting of at least seven citizen members that include:
- * Two members who are not owners or representatives of small business stationary sources, appointed by the Governor to represent the general public;
 - * Two members who are owners or who represent owners of small business stationary sources, one appointed by the Speaker of the House of Representatives and one appointed by the Minority Leader of the House of Representatives;
 - * Two members who are owners or who represent owners of small business stationary sources, one appointed by the President of the Senate and one appointed by the Minority Leader of the Senate; and
 - * One member appointed by the Executive Director of the Colorado Department of Public Health and Environment to represent the Department.

The department allows for additional participation on the Panel as Sector Experts. Such Sector Experts shall request consideration of the staff and current CAP members in order to serve on a voluntary basis and their efforts will focus on assisting SBAP staff with outreach needs for their industry sector.

4.2 Terms

4.2.1 Panel members shall serve two years terms.

4.2.2 Panel members may be reappointed.

4.3 Vacancies

4.3.1 A vacancy occurs when a member ceases to meet the qualifications outlined in Sections 4.1 and 7.0, resigns, or is unable to perform the duties of panel membership.

4.3.2 A vacancy shall be filled in the same manner as the original appointment and the replacement will be appointed to fill the unexpired portion of the member's term.

4.3.3 Members who miss one meeting or more in one year may be recommended for removal from the panel unless circumstances warranted missing the meeting. Meeting attendance is vital to the advisory role of the panel.

4.4 Officers

4.4.1 Officers on the panel shall consist of a Chairperson and Vice-chairperson, each of whom is to be elected by the members of the panel.

4.4.2 Each officer shall hold office for a term of two years, with the option of re-election or additional terms of service.

4.4.3 Any panel member can nominate other members as candidates for officer positions. All nominations must be initiated with a motion, supported and carried by at least one additional panel member in order for the motion to be recognized for vote.

4.4.4 Both the Chair and Vice-chair positions must be elected by a majority vote of the panel members present during the election process.

4.4.5 Duties

4.4.5.1 Chair

Oversees and coordinates the content of panel meetings with the assistance of the Secretariat, or other designated panel member; and oversees the decision making process, work products generated, or any follow-up made by the panel.

4.4.5.2 Vice-chair

In the absence of the Chair, conducts the duties of the Chair.

4.4.5.3 Active CAP Members

Actively participate in all assignments and activities to support the Small Business Assistance Program. Provide comments, reviews, opinions required by the SBO/SBAP in a timely manner (regularly meets scheduled deadlines). Participates in the CAP role as outlined in the Clean Air Act. One of the most important responsibilities of panel membership member is to attend the meetings. Important issues are discussed and participation providing advice and opinions from all members is expected.

- 4.5 As specified in Section 507, the SBAP acts as secretariat for the Panel. In this capacity, the SBAP records the minutes, sets up the meeting rooms, and performs other secretarial duties as required. The secretariat may assist the Panel Chairperson with the Panel agenda and activities. The secretariat for the Panel is currently the Small Business Ombudsman.

5.0 ROLE AND MISSION OF THE SMALL BUSINESS ASSISTANCE PROGRAM (SBAP)

The SBAP is coordinated directly through or under the direction of the State Air Pollution Control Division at the Colorado Department of Public Health and Environment. The primary role of the SBAP is to provide assistance to small business stationary sources in determining applicable requirements and in receiving permits under the CAA in a timely and efficient manner; to assure that small business stationary sources receive notice of their rights under the CAA in a manner and form that assures reasonably adequate time for the sources to evaluate compliance methods and relevant or applicable proposed or final regulations or standards issued under the CAA; to collect and disseminate information on compliance methods and technologies for small business stationary sources and programs to encourage lawful cooperation among the sources, including providing audits or referrals to qualified auditors to determine a source's compliance with the CAA; and to assist small business stationary sources with pollution prevention and accidental release detection and prevention.

SBAP MISSION:

Our mission is to serve small businesses in Colorado with a focus on understanding, achieving, and maintaining environmental compliance and assisting small businesses move towards a more sustainable business environment. We do this by providing free compliance support, education, outreach and advocacy.

6.0 ROLE OF THE SMALL BUSINESS OMBUDSMAN (SBO)

The Small Business Ombudsman (SBO) is under the direction of the Office of Environmental Integration and Sustainability at the Colorado Department of Public Health and Environment, outside of the Air Pollution Control Division. One of the primary roles of the SBO is to represent small businesses to the appropriate government organizations. The SBO also reviews environmental programs and renders advisory opinions as to whether regulations, policies, and guidance appropriately considers the concerns of small businesses; aids in the dissemination of information to small businesses; facilitates and promotes the participation of small businesses in the development of new regulations that impact small businesses; participates in and sponsors meetings and conferences with State/local regulatory officials, industry groups, and small business representatives; aids in investigating and resolving complaints and disputes from small businesses against the State/local air pollution authorities; reviews the work and services provided by the SBAP with trade associations and small business representatives, and refers small businesses to the SBAP for technical assistance.

7.0 ROLE OF THE COMPLIANCE ADVISORY PANEL (CAP)

The primary role of the Panel is to render advisory opinions concerning the effectiveness of the small business stationary source technical and environmental compliance assistance program, difficulties encountered, degree of enforcement, and severity of penalties; review information for small business stationary sources to assure such information is understandable by the layperson; and oversee the small business stationary source technical and environmental compliance assistance program, which shall serve as the secretariat for the development and dissemination of such reports and advisory opinions.

The Panel also listens to concerns from the regulated community and the general public regarding the regulation of small businesses in Colorado. The general public and the regulated community may bring concerns about the regulation of small businesses to the Panel so that the Panel can work with the Department to resolve any concerns.

8.0 PROCEDURES FOR GENERAL MEETINGS

8.1 General Meetings

8.1.1 General meetings of the Panel are typically held once a quarter. General meetings are held for the Panel to conduct business, which might include, for example, briefings, reports, or decision-making on upcoming rules or regulations.

8.1.2 Meetings of the panel are open to the public, with the exception of instances when the Panel is allowed by law to meet in executive session. The Panel encourages public participation to its fullest extent.

8.2 Frequency

Meeting dates are set by decision of the Panel. The chairperson, vice chairperson, or other designated member for the Panel may as necessary call special meetings of the Panel. Meeting dates will be determined by a majority vote of the Panel.

8.3 Notice and Agenda

An agenda will be distributed to Panel members prior to each meeting. A typical agenda will include reports from the SBAP and SBO and topics of discussion for the upcoming meeting. Meetings may include visits from trade organizations, representatives of a particular business sector, and/or individual small business owners. Any person seeking to place an item on the Panel's agenda must file the relevant materials in the Office of the Panel fourteen (14) days prior to the general meeting during which that person desires the matter to be addressed. Materials filed less than fourteen (14) days in advance will generally result in the matter being placed on the agenda for the following quarter's general meeting, unless the Panel or the chairperson determines for good cause shown that the matter should be addressed at that quarter's general meeting. Amendments to the agenda may be made at any time.

8.4 Conduct of general meetings

The chairperson, presiding Panel member, secretariat, other panel member will conduct general meetings as delegated by the chairperson. General meetings may proceed under Robert's Rules of Order, although the Panel typically acts on a more informal basis.

8.5 Recording proceedings

The Secretariat or other designated panel member will record the proceedings of all general meetings. Copies of such information will be available to the public upon request at cost.

8.6 Minutes

The Secretariat or other designated panel member shall prepare the minutes of the general meeting as promptly as possible and mail them to the Panel members for their comment, modification, and approval.

8.7 Executive session

The Panel may with respect to particular matters approved under the Colorado Open Meetings Law call for an executive session, upon affirmative vote of at least five Panel members and announcement to the public of the topic for discussion during the executive session, where only the Panel, its counsel, appropriate staff (which includes the Secretariat and, when appropriate, relevant Division personnel), and other pertinent or necessary persons may be present. § 24-6-402(3), C.R.S.

8.8 Decisions by Motion

The panel shall make decisions by consensus whenever possible. If consensus does not appear possible, decisions shall be made by a majority vote.

Five Panel members shall constitute a quorum, and at least four panel members must vote in favor of a motion on a matter within the powers and duties of the Panel for that motion to pass. Decisions of the Panel on motions presented by parties during a meeting shall be required a first and second motion by a Panel member.

8.9 Subcommittees

At its discretion, the Panel may convene a subcommittee and appoint a Panel member to chair the subcommittee to evaluate an issue that may come before the Panel, including new regulations, policies, or procedures that may affect small business stationary sources. A subcommittee consists of one or more Panel members. SBAP, SBO, and other relevant persons as recommended by the Panel, may participate. Members of the public may participate to assist the Panel, but are not part of the subcommittee. Subcommittees will generally endeavor to identify an issue that needs to be resolved, and where possible, reach consensus on potential solutions that address the issues of concern. Subcommittee members will present the issue and potential solutions to the Panel during a regularly scheduled or special meeting.

9.0 PUBLIC INFORMATION AND CONFIDENTIAL INFORMATION

9.1 Distribution of notices, agendas, and other information by the Panel

The Panel shall maintain a mailing list. Any person may request to be added to the mailing list. A reasonable annual charge to cover the cost of printing and mailing may be collected before a person is added to the mailing list and charged annually to be maintained on the mailing list.

9.2 Availability of records

Records of the Panel and Division shall be available to any person pursuant to and consistent with the provisions of the Public Records Act, §§ 24-72-101 et seq., C.R.S. Records will be presumed to be open to public inspection at all times during normal business hours, unless confidentiality for specified material has been secured under provision of law. Securing confidentiality of any materials submitted to the Panel will require clearly marked segregation of the materials from all other non-confidential materials, and a written document justifying the assertion of confidentiality consistent with any applicable provision of law. Notwithstanding any other provisions of law or regulation, all emission data records shall be available to the public to the extent required by the federal Clean Air Act.

9.3 Confidential information

Any information relating to secret processes or methods of manufacture or production which may be required, ascertained, or discovered, or any other information confidential under the Public Records Act, §§ 24-72-101 et seq., C.R.S., shall not be publicly disclosed in public hearings or otherwise and shall be kept confidential by any Panel member and staff. Any person seeking to invoke the protection of this subsection in any hearing shall bear the burden of proving its applicability. This provision is subject to the requirements for securing the confidentiality of any material, and the availability of emission data records, in

10.0 AMENDMENTS TO THE COMPLIANCE ADVISORY PANEL GUIDEBOOK

This Guidebook may be amended, repealed, or suspended at any meeting of the panel, provided that members are provided written notice of proposed changes at least two weeks prior to said meeting. The notice shall contain the proposed changes, an explanation for the proposed changes, and notice of who authorized the proposed changes.