

GUIDEBOOK
SBAAP
Compliance Advisory Panel



Colorado Department
of Public Health
and Environment

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1.0 PURPOSE

1.1 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 produce thoughtful and well-informed decisions. Accordingly, the procedural rules are intended to promote, rather than obstruct, decision-making. Small business concerns are often complicated and difficult to understand. The Panel makes every effort to simplify the process. Persons appearing before the Panel are encouraged to make well-planned presentations that use clear, concise, common sense language to explain their points of view. Abusive tactics, misrepresentations, and personal attacks on the motivation of others will not be tolerated. Persons appearing before the Panel are attempting to assist their fellow citizens in reaching decisions that may have significant social and economic impacts in the state. The Panel welcomes and appreciates all participation in its decision-making process.

1.2 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.

- 1.2.1 A Small Business Stationary Sources Compliance and Technical Assistance Program (SBAP) that provides information and technical assistance to small businesses;
- 1.2.2 An Ombudsman who acts as an advocate for small businesses; and
- 1.2.3 A Compliance Advisory Panel (the Panel) for determining the overall effectiveness of the SBAP.

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.

Members serve two years terms commencing on February 1 of the year of appointment. Members reflect a wide variety of professional backgrounds and individual interests.

The activities of the Compliance Assistance 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. The procedures set forth herein are designed to promote open, fair, and effective proceedings such that the general public can participate readily.

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).

1.3 ROLE OF THE 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.

1.4 ROLE OF THE SMALL BUSINESS OMBUDSMAN (SBO)

The Small Business Ombudsman (SBO) is under the direction of the Sustainability Program 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.

1.5 ROLE OF THE 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.

2.0 DEFINITIONS

The definitions of terms used in these regulations 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.

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

2.2 APA, or Administrative Procedures Act: § 24-4-101 et seq., C.R.S.

- 2.3 Panel: The Compliance Advisory Panel created in § 25-7-109.2, C.R.S. The Panel's address is:

Compliance Advisory Panel
c/o Joni Canterbury Colorado Dept. of Public Health and
Environment, APCD-SS-B1
4300 Cherry Creek Drive South
Denver, Colorado 80246-1530

- 2.4 Division: The Colorado Air Pollution Control Division that exists within the Division of Administration of the Colorado Department of Public Health and Environment.
- 2.5 File or filed: Means received in the Office of the Panel and date-stamped by staff as received on that day.
- 2.6 Good cause: Means a rational explanation justifying why a requirement in these procedural rules was not met or need not be complied with in the particular circumstance.
- 2.7 Small Business: 100 employees or less; meets definition in 42 USCA 631; not 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.
- 2.8 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.

3.0 PROCEDURES FOR GENERAL MEETINGS

- 3.1 General meetings:

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.

- 1.2 Frequency:

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

3.3 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 thirty days prior to the general meeting during which that person desires the matter to be addressed. Materials filed less than thirty 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.

3.4 Conduct of general meetings:

The chairperson, or presiding Panel member will conduct general meetings if the chairperson is absent. General meetings may proceed under Robert's Rules of Order, although the Panel typically acts on a more informal basis. 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.

One of the most important responsibilities of a Panel member is to attend the meetings. Important issues are discussed and participation from all members is expected.

3.5 Planning:

Among other agenda topics, the Panel may periodically set aside time on its agenda for general discussions regarding planning of its business or discussions of policy related to air quality.

3.6 Recording proceedings:

The Technical Secretary will record the proceedings of all general meetings. Copies of such information will be available to the public upon request at cost.

3.7 Minutes:

The Technical Secretary 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.

3.8 Public participation encouraged:

All general meetings are open to the public. The Panel strongly encourages public participation. The chairperson or presiding Panel member will provide an opportunity at each general meeting for the Panel to accept public comments, and the public may be allowed to participate at other appropriate times during the general meeting in the discretion of the chairperson or presiding Panel member. Public participation and comment may be reasonably limited as the chairperson or presiding Panel member deems necessary.

3.9 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 Technical Secretary and, when appropriate, relevant Division personnel), and other pertinent or necessary persons may be present. § 24-6-402(3), C.R.S.

3.10 Decisions by Motion:

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.

3.11 Informal hearings:

Informal hearings are held in the discretion of the Panel to gather information or receive comment on a matter under preliminary consideration by the Panel or staff. They are typically held during the Panel's general meetings. Informal hearings generally do not require compliance with the APA and are therefore conducted as deemed appropriate by the Panel.

3.12 Statements of policy and interpretive rules:

The Panel may from time to time adopt statements of policy and interpretive rules to guide the work of the Panel and the implementation of its programs. Their adoption does not require compliance with the APA and therefore will be conducted as deemed appropriate by the Panel.

4.0 PUBLIC INFORMATION AND CONFIDENTIAL INFORMATION

4.1 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 shall be collected before a person is added to the mailing list, and charged annually to be maintained on the mailing list.

4.2 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.

4.3 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

5.0 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.

6.0 CONFLICTS OF INTEREST

The following rule encourages the timely disclosure of conflicts of interest, including actual, apparent and potential conflicts of interest, and provides guidance on the standards that should be applied for the disqualification of a Panel member based on a conflict of interest.

5.1 Definitions

5.1.1 Actual conflict of interest means:

In an action of general applicability, an inability of a Panel member to objectively participate in the matter before the Panel because the Panel member has an unalterably closed mind on a matter critical to the disposition of the proceeding. An official act that affects a group of industries or businesses does not, in and of itself, constitute an actual conflict of interest even though the Panel member may work for or otherwise have an interest in one of the industries or businesses impacted by the official act.

6.1.2 An apparent conflict of interest means a personal or financial interest which could reasonably be perceived as an interest that may influence the Panel member's decision.

6.1.3 A potential conflict of interest means an apparent or actual conflict of interest that may come about due to reasonably foreseeable events.

6.2 Disclosure of a Conflict of Interest:

If a Panel member perceives that he or she may have an actual, apparent or potential conflict of interest, the Panel member shall disclose the basis of the possible actual, apparent or potential conflict of interest to the Panel and others in attendance before the discussion begins, or as soon thereafter as the Panel member perceives the possible actual, apparent or potential conflict of interest.

6.3 Disqualification of a Panel member for a Conflict of Interest

6.3.1 If a Panel member perceives that he or she has an actual conflict of interest regarding any matter before the Panel, the Panel member shall recuse himself/herself from any further participation or voting on the matter at hand.

6.3.2 Members of the public, parties, the Division, or other Panel members may bring to the Panel's attention circumstances that they believe constitute a conflict of interest for a Panel member with respect to the proceeding.

6.4 Advisory Opinions:

The Small Business Assistance Program shall maintain a log of Advisory Opinions approved by the Panel to assist the Panel in interpreting these Conflict of Interest provisions. This Section is to be interpreted to implement fully the goal of the General Assembly to have a citizen-based Panel with a minority business vote.

6.5 Rule of Necessity:

The foregoing notwithstanding, if recusal of the Panel member or Panel members in question would prevent Panel action because fewer than five Panel members would be available to participate and vote on the matter at hand, the Panel member or Panel members may participate, in spite of an actual conflict of interest, if they have complied with the disclosure requirements applicable to an actual, apparent or potential conflict of interest prior to acting.