

**MEETING THE ENVIRONMENTAL COMPLIANCE NEEDS
OF SMALL BUSINESSES: EXPANDING SECTION 507 PROGRAMS**

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October 3, 2007

Prepared by:

**Multimedia Subcommittee of the
SBO/SBEAP National Steering Committee**

BACKGROUND

Section 507 of the Clean Air Act

Congress, in anticipation of the regulatory burden that would be placed on small business as a result of the passage of the 1990 Clean Air Act Amendments (CAAA), added Section 507 to Title V of the CAAA requiring each state to provide compliance assistance to small businesses. The program (which had to be incorporated into each state's State Implementation Plan (SIP) and required state legislation) consists of three components: a small business ombudsman (SBO), an assistance program (SBEAP), and a compliance advisory panel (CAP) that provides oversight of the SBO and SBEAP.

The funding mechanism for the SBO and SBEAP is a portion of the Title V fees collected by state air regulatory programs. Businesses that fall under the definition of a "major source" are required to pay annual fees to administer the states' Title V Renewable Operating Permit programs.

Most states' SBOs and SBEAPs have been in operation since 1995. Close to 90% of the SBEAPs are housed within the state's environmental agency. The majority of the SBOs are located either in the state's environmental agency or commerce/economic development agency. The CAPs are comprised of small business owners and representatives of small businesses, and are appointed by the legislature, governor, and director of the state's environmental agency. For a complete listing of the SBOs and SBEAPs, go to www.smallbiz-enviroweb.org/sba/sbap.html.

National Steering Committee

The SBO/SBEAP National Steering Committee (NSC) was created in 1995 to represent the interests of the Section 507 programs and also to provide a networking and communications tool between the programs and the EPA's Small Business Ombudsman (SBO) and Office of Air Quality Planning and Standards (OAQPS). One representative from each EPA region serves on the NSC, along with an alternate from that region. The NSC representative participates in monthly conference calls, serves as a conduit for information to other assistance providers in the region, and acts as a focal point of contact to disseminate information to and from the SBO/SBEAP service providers. The NSC provides a vehicle for identifying and resolving problems faced by the SBO/SBEAP service providers and, through partnership with the SBO and OAQPS, works towards mutually effective solutions.

For more information about the NSC and its six subcommittees, one of which pertains to multimedia compliance assistance, go to www.smallbiz-enviroweb.org/sba/steering_committee.html.

National CAP

The CAAA required the creation of Compliance Advisory Panels (CAPs) in all U.S. states and territories as part of a three-tiered national program to help small business comply with Clean Air Act requirements. Each CAP is responsible for determining the overall effectiveness of its own state SBO and SBEAP and to provide guidance on priorities and approaches to help small businesses.

During the 2001 annual national conference of state SBO/SBEAP Programs, state CAP representatives voted to create a national "steering" committee. Thus the National Compliance Advisory Panel (NCAP) was created in 2001 to represent the interests of state CAPs and also to provide a networking and communications tool between the NSC of state programs and the EPA SBO. The NCAP is supported by the EPA SBO.

For more information about the NCAP, go to www.smallbiz-enviroweb.org/cap/programs_cap.html.

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EPA Small Business Ombudsman

The EPA Small Business Ombudsman (SBO) serves as an effective conduit for small businesses to access the EPA and facilitate communications between the small business community and the Agency. The SBO reviews and resolves disputes with the EPA and works with EPA personnel to increase their understanding of small businesses in the development and enforcement of environmental regulations. The SBO function was established in 1982 and is currently a part of the EPA's Office of Small and Disadvantaged Business Utilization located within the Office of the Administrator.

Ms. Angela Suber is the Acting SBO. Ms. Suber and her staff work closely with the SBOs, SBEAPs and CAPs. Specifically they oversee and prepare the Report to Congress on the status of Section 507 Programs, provide support to strengthen Small Business Environmental Assistance Programs (SBEAPs) and sponsor the annual SBO/SBEAP National Conference.

The EPA Small Business Ombudsman's Web site is www.epa.gov/sbo/.

EPA SBEAP

According to Section 507 of the Clean Air Act Amendments, the EPA shall establish a compliance assistance program to assist the states in the development of their SBEAPs, and issue guidance to the states in the implementation of their programs.

ACCOMPLISHMENTS OF SBEAPs

The SBEAPs have been providing air-only compliance assistance to small businesses for over 10 years. Using average budgets of \$300,000 and average staffs of 4 full-time employees, the SBEAPs helped over 5.7 million small businesses in 2004-2005. Workshops, educational materials, guidebooks, fact sheets, Web sites, help lines, newsletters, record keeping tools, one-on-one permitting assistance, and on-site visits are some of the compliance tools utilized by these programs.

The SBEAPs serve as an effective and necessary link between businesses and the air regulatory programs. Below is a summary of the key functions of SBEAPs.

Coordinator - SBEAPs act as a one-stop shop for questions and permit coordination. Upon answering air related questions, the SBEAP can direct the business to the other environmental programs they need to consult.

Liaison – SBEAPs serve as the voice of small business during the development of new regulations. Most small business owners cannot take the time to attend technical advisory group meetings or other rule development meetings to provide input on rules being developed, but they can work through the SBEAP to make sure their concerns are addressed. It is difficult for regulatory agencies to truly assess impact of new environmental regulations on small businesses without input from the SBEAPs.

Partner - SBEAPs work together with trade associations, chambers of commerce, and other business groups to market and sponsor workshops and conferences, to distribute information to the business community about environmental regulations, and to identify concerns of the industry.

Pioneers - SBEAPs often provide outreach to and improve compliance of business not traditionally seen by the regulators. For example, auto body and printing shops are often quite low on the priority list for inspections but do have the potential to impact public health and the environment.

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Supporter of Regulatory Programs - Much of what the SBEAP does supports and benefits the state environmental regulatory programs.

- Outreach is a proactive approach to compliance assistance. It reduces the amount of staff time and resources required to resolve violations.
- Outreach strengthens the enforcement position of regulatory programs. Business cannot use the excuse they were not aware of the regulation when they were given the opportunity to attend training or receive publications explaining the requirements.
- Environmental regulatory staff have more time to issue permits and conduct inspections because requests for general information can be handled by the SBEAP in a more efficient and coordinated manner.

Translator – SBEAPs convert environmental regulations into terms that small businesses can understand. Most small businesses just want to know what they need to do.

THE PROBLEM: AIR ASSISTANCE IS NOT ENVIRONMENTAL ASSISTANCE

Small businesses do not compartmentalize their environmental regulatory requirements into the bureaucratic structure or division of air, land, and water. Small businesses must meet obligations under each of these programs and the need for assistance with each is equally important in reaching and maintaining compliance with these complex regulations.

Current Title V funding mechanisms preclude the programs from providing assistance with land and water issues: major components of small business environmental compliance. No minimum funding levels are required and funding is not consistent from state to state. The SBEAPs are currently operating with shoestring budgets/staffing and often are the first program to be cut by regulatory agencies. *Zero* dollars of the requested \$7.2 billion EPA FY 2008 budget is directed to the SBEAPs.

State regulatory agencies often choose to invest their limited resources in enforcement of rules after a violation has occurred rather than providing the necessary training and education to small businesses who want to comply. By this practice, regulatory agencies are investing in measuring their failures to protect the environment rather than actively protecting the environment and preventing noncompliance.

Federal mandates to provide assistance and educate companies in meeting compliance requirements should be viewed equally as important as mandates to enforce regulations and insure compliance. Adequate funding for assistance mandates should not be optional.

MAKING THE CASE FOR ENVIRONMENTAL COMPLIANCE ASSISTANCE

Meeting the Needs of Small Businesses

- Small business owners, a vital economic engine, consistently rank regulatory issues among their highest concerns as they try to grow their business and remain competitive.
- Small Business represents 99.7 percent of all the nation's employer businesses. 2005 Small Business Administration (SBA) data also show that small businesses employed 57.4 million Americans or 50.6 percent of the non-farm private sector workforce.

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- Studies have shown that small businesses pay a disproportionate amount for regulatory compliance and expend an average of \$3,296 per employee per year to meet just their federal environmental regulatory burdens.
- According to a 2005 SBA study, environmental and tax compliance regulations appear to be the main cost drivers in determining the severity of the disproportionate impact on small firms. *Compliance with **environmental regulations costs 364 percent more in small firms than in large firms.***
- Small businesses cannot afford to invest limited resources to hire environmental staff or teams of environmental consultants and attorneys to assist them in understanding their environmental regulatory burdens.
- One study of a state SBEAP showed that the benefits received by its clients on air regulations were on average three times the cost of administering the program: a 3 to 1 return on the investment.

Meeting the Needs of State and Federal Regulatory Programs

- The EPA is under court order to promulgate 50 new area source rules potentially impacting small businesses by June 2009. Some states have already refused delegation of enforcement of these new rules due to lack of funding and staff to effectively administer the program. The need for assistance will be great.
- Brownfield sites are a constant challenge for communities of all sizes and typical Brownfield sites affecting most people are not the remnants of large corporations with sprawling grounds of contaminated properties. Many Brownfield sites are the small abandoned gasoline station dotting corners around the country, the empty store fronts that once contained the local dry cleaner or printing operation of the past, as well as small manufacturers. These types of businesses do not garner the attention of the larger manufacturing sites but they have great impact on communities and the landscape of our country.

Comprehensive Compliance Assistance Works in Other Agencies

- Similar assistance with Occupational Safety and Health Administration (OSHA) regulations has been provided to small businesses by the popular On-Site Safety and Health Consultation Program for over 30 years. The OSHA FY 2008 requested budget provides *\$54.5 million* of its *\$490.3 million* agency budget to support small business assistance through the state consultation programs. Thirty years of success have shown that assistance and education work.

Why SBEAPs Should Deliver Environmental Compliance Assistance

Some states have expanded their SBEAPs to help small businesses' understanding of all of their environmental responsibilities. These include state and federal regulations pertaining to air, waste, water, land, storage tanks, and emergency response. These programs are achieving remarkable results by offering innovative, comprehensive, and effective compliance assistance tools (see Appendix A). With stable funding sources and authorization, more states could be providing their businesses these valuable compliance assistance tools.

APPROACHES TO EXPANDING SBEAPs

There are two approaches currently underway to expand states' SBEAPs to meet the compliance assistance needs of small businesses. The following is a brief summary of each approach and its status as of the date of this report.

ECOS Opening Up Dialog with EPA

Steven Chester, Director of the Michigan Department of Environmental Quality, sponsored a multimedia initiative that was brought before the Cross-Media Committee of the Environmental Council of the States (ECOS) at the Spring ECOS Meeting on March 19, 2007. The Committee approved sending a letter to Steve Johnson, EPA Administrator, and Ken Legler, Chair of the National Compliance Advisory Panel, requesting a dialogue to develop a comprehensive small business environmental assistance initiative for the states. Talks would include representatives from ECOS' Cross-Media Committee, the SBO/SBEAP National Steering Committee, NCAP and EPA. See Appendix B for a copy of the April 17, 2007, letter.

In response to the ECOS letter, Jeanette Brown, Director of the EPA's Office of Small and Disadvantaged Business Utilization (OSDBU) sent a letter dated June 11, 2007, to Steve Brown, ECOS Director, notifying him that her office will serve as the point of contact for coordinating this effort. The EPA Small Business Ombudsman is located within OSDBU. Ms Angela Suber is the Acting Small Business Ombudsman and is very knowledgeable of the states' SBEAPs and their desire to go multimedia. See Appendix C for a copy of this letter.

The first conference call that initiated discussion of comprehensive Small Business Environmental Assistance Programs occurred on September 26, 2007. The individuals that participated in that call were: Mark McDermid, representing the ECOS Cross-Media Committee; Angela Suber and Jeanette Brown, EPA OSDBU; Francis Hartwell, Vice Chair of the NCAP; Ken Legler, Chair of the NCAP; Debbie Thomas and Beverly Updike, EPA, Office of Enforcement and Compliance Assistance; Dave Fiedler, Michigan SBEAP; Annette Fulgenzi, Illinois SBEAP, and Renee Lesjak-Bashel, Wisconsin SBEAP.

The SBEAP's and NCAP's expectations for the dialogue included:

- Vibrant comprehensive small business assistance that is equipped to address issues from all areas of environmental concern. This includes:
 - Federal funding to SBEAPs to provide compliance assistance on water, waste and land issues.
 - Ability to use existing Title V funding to address the full range of environmental compliance issues.
- Clear, formal authorization (preferably by law) for comprehensive small business compliance assistance.
- Strengthen relationship between EPA offices providing assistance and revitalized role for the SBEAPs providing such assistance.
- Strengthened relationship between states, EPA offices, and other offices/agencies dealing with key environmental issues (e.g., OSHA).
- Discuss and perhaps address emerging issues that could have significant value for and/or impact on small business (e.g., area source rules).

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NCAP Legislative Initiative

The NCAP, in an effort to help SBEAPs expand their outreach capabilities has developed a Comprehensive Small Business Environmental Assistance Legislative Initiative. They are asking members of Congress for the following:

- Legislation authorizing the Small Business Environmental Assistance Programs to assist small businesses with their comprehensive environmental needs: air, land and water regulations. Millions of small businesses are reaching out to these programs for assistance with their air issues. Air is only one of three major environmental impacts on their business. By expanding these existing programs businesses will have more resources and time to concentrate on building their business and our economy.
- Funding to be dispersed by the EPA Small Business Ombudsman's Office to the state Small Business Environmental Assistance Programs in the amount of \$55 million.
- Full funding and allocation of the EPA Small Business Ombudsman's Office budget at \$3.2 million dollars and 10 full time employees.

To date, the states of Michigan, Texas, and Illinois have sent letters to their respective congressional delegations asking for support of the NCAP Initiative. See Appendix D for copies of the three letters.