



November 6, 2009

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USEPA, Office of Enforcement and Compliance Assurance

SUBJECT: Comments on USEPA Draft Area Source Implementation Guidance

The following comments are submitted on behalf of the states Small Business Ombudsman/Small Business Environmental Assistance Programs (SBO/SBEAP), created under s. 507 of the Clean Air Act Amendments of 1990. The SBO/SBEAPs have been providing compliance assistance to small sources for over 15 years.

Because regulation of area sources, predominantly small businesses, was the explicit reason for the creation of the Small Business Stationary Source Technical and Environmental Compliance Assistance Program (also known as "507 Program and/or Small Business Environmental Assistance Program (SBEAP) mandate," we feel the formal role of the program should be recognized in the implementation guidance provided to the states or regions.

Comments on the Introduction section:

- We suggest the following language, or something substantially similar, should be inserted as a bullet on page two (before the PRIORITIZATION section) to recognize the mandated role and value of the 507 program:

"EPA does recognize that Section 507 of the 1990 Clean Air Act Amendments (CAAA) requires each state to establish and fund from Title V fees, a Small Business Stationary Source Technical and Environmental Compliance Assistance Program (also known as "507 Program and/or Small Business Environmental Assistance Program (SBEAP) " to assist many of the sources regulated under the area source program. Strategies and technical assistance approaches implemented under these programs can be effective means to achieving environmental goals and have potential to reduce implementation costs for government agencies through improved efficiency and are a compliment to enforcement programs."

- Page two, last sentence of first bullet, we suggest: *State/local/tribal agencies have expressed concern and requested guidance from the EPA on issues relating to the adequate implementation of the program.*
- In addition, the introductory comment/bullet regarding the role of the EPA regions where states are not taking delegation might want to explore or highlight the role of and/or coordination with the USEPA Regional Small Business Liaison or OECA's Regional Compliance Assistance Coordinator. OECA is currently working on a Regional Compliance Assistance Framework that could be a complimentary component or supplement to the area source implementation guidance. Efforts should be made to insure consistency in message in guidance from headquarters to the regions in area source implementation.
- Suggested modification to last introductory bullet:

In recognition that a successful implementation of a comprehensive compliance and enforcement program includes a variety of tools such as compliance monitoring, compliance assistance, compliance incentives, auditing, targeting, and enforcement to both address and promote

increased compliance, this guidance is structured to advance the use of these tools in an integrated manner to maximize efficiencies. Depending upon the challenges that need to be met and the specific rule that is being implemented, delegated agencies/implementing regions should determine how best to direct their efforts and which tool(s) would be most useful-appropriate and effective in achieving environmental goals.~~and appropriate~~.

- Other General Introductory Comments:
 - Given the predominance of small businesses regulated under the area source program, it seems implementation guidance should include references or suggestions for incorporation or consideration of the Small Business Compliance Policy, Enforcement Response Policy and Audit Policy.

Comments on Prioritization section:

- The implementation guidance refers to website for up-to-date listing of the three groups. The list could not be found on www.epa.gov/ttn/atw/area/arearules.html.
- If the list is not available, it would be helpful to have a full listing of the categories included in each group within the guidance document.
- EPA is correct to prioritize largest emissions sources first.

Comments on Implementation section:

Group 1 Rules -

- In the first paragraph under Group 1, regarding the highlighted language:

“ For the Group One rules, delegated agencies/implementing regions should focus on compliance monitoring to address non-compliance. The tool of compliance monitoring for the facilities subject to Group One rules is crucial because of the overall HAP emissions associated with these facilities, the greater impact these facilities have on the environment, and their effect on the health of communities. Thus, there is the potential for significant emission reductions and increased environmental benefit with the appropriate use of compliance monitoring. While delegated agencies/implementing regions may supplement their strategy in addressing facilities subject to the Group One rules with the tool of compliance assistance as appropriate, agencies should primarily use compliance monitoring in order to bring about the greatest deterrent effect and increase overall compliance.”

- Although we are in agreement that Group 1 industries would be the most appropriate to target the use of limited inspection resources, the logic presented in this paragraph perhaps conveys an unintended message. Group 1 Rules were identified as the top priority because of their greater potential for emission reductions and impact or risk to the environment. The language of this paragraph inadvertently makes non compliance the primary focus of a state’s area source *implementation* strategy for Group 1 facilities. Far more companies comply with environmental regulation through proactive regulatory implementation approaches. Compliance monitoring is an industry reinforcement tool and an effective negative incentive to drive additional industry compliance. Perhaps inadvertently the stated focus is one for an enforcement strategy and not a broader focus more suitable for an implementation strategy.
- Perhaps the agency should suggest design of an integrated strategy coordinating the industry appropriate or practical compliance tools discussed in the introduction. The agency should then stress that targeting of limited compliance monitoring/inspection resources should be focused on Group 1 sources due to the greater impact on the

environment and the nature of the industries would warrant further compliance assurance and monitoring.

- References to compliance assistance as a supplement to an implementation strategy discredits its role in emissions reductions and is contradictory to the goal of integrated strategies.
- The comment on page 6 related to used of Environmental Results Programs (ERP) seems to limit the application of that program in EPA's perception. Using ERP with Group 1 Rules, each with smaller affected populations than Groups 2 and 3, ignores the cost-effectiveness built into the ERP structure, which gets more cost-effective as the affected population increases.
- Page 4, first bullet: It may be helpful to define what is meant by "compliance monitoring" and provide examples.
- Page 5, agree with and commend EPA on not having group one sources report in ATW and AFS.
- Page 7, first paragraph under the heading *Rationale* - delete the second use of the word "for" from the sentence.

Group 2 and 3 Rules -

- As mentioned above, regarding use of ERP for Group 1 Rules, by not including a recommendation to use ERP for Groups 2 and 3 EPA is ignoring the strong compliance assistance component of the ERP structure. Use of ERPs can be very beneficial to states with limited resources to both gauge the level of compliance with a rule at any point in time and also measure where gaps in knowledge exist regarding the elements of the area source rule requirements. EPA should strongly consider adding language to encourage use of ERP wherever they can for area source implementation.
- The idea described in the first bullet on page 9 would be a duplication of what the SBO/SBEAP Environmental Home Page has collected over the past few years: <http://www.smallbiz-enviroweb.org/Compliance/NewRules.aspx>. As this web page is maintained under contract through the USEPA ASBO, this would also represent doubling the cost spent by EPA to compile the same information.
- There is a concern that the way the document describes "small business assistance programs" may drive states to create something that duplicates their existing SBO/SBEAP program. One suggestion to highlight the existing resources is to change the second bullet on page 9 to begin:

"In implementing the Group Two and Group Three rules, EPA encourages delegated agencies/implementing regions to collaborate and partner with the Small Business Stationary Source Technical and Environmental Compliance Assistance Programs established under Section 507 of the Clean Air Act in their state or regions (see list of contacts at <http://www.smallbiz-enviroweb.org/Contacts/sbosbeap.aspx>). Delegated agencies/implementing regions can also partner and collaborate with trade associations, non-profits organizations, academia, chambers of commerce, and better business bureaus.[...]"

- Compliance assistance collaboration should also include references to the Regional Compliance Assistance Coordinators and Small Business Liaisons and coordinated approaches between these USEPA resources and state SBO/SBEAP resources.
- The agency appears to skip over the creation of formalized implementation strategies for Groups 2 and 3 and instead suggests the offering of assistance tools is the entire

implementation process. This seems to place less value on compliance assistance as an implementation strategy.

- States should be encouraged to explore creative integrated approaches and several examples or options used in Group 1 Rules could also be offered as possible tools or solutions as they entail the core compliance assistance elements.
- States could choose different options to design their strategies dependant upon resource constraints and priorities. It seems that as a guidance document, EPA should convey what the agency considers appropriate implementation options while allowing states to choose an option that is practical to their resource constraints.
- Page 11, first bullet, delete "should"

Reporting of Compliance Activities and Implementation Accountability -

- States should at a minimum report compliance assistance activities in the annual 507 Program report to the Office of the Small Business Ombudsman.
- We recommend that the OECA Compliance Assistance group provide comments on this document to ensure this guidance and regional compliance assistance strategies/framework are consistent in message.

General Comments:

- In order for the SBEAPs to provide effective compliance assistance on the Group 2 and 3 rules, there needs to be a formal process of quickly responding to questions and interpretations of the final rules. Going to the Regions with these questions is not working largely because it takes too long and there may be inconsistencies of how each Region is interpreting the rule. Once an official interpretation is made, it should be posted in a location for all to view. That posting should be reviewed before a new request is made for an interpretation.
- OAQPS needs to develop a more in-depth plain English fact sheet on each newly promulgated Area Source NESHAP. We would find plenty of SBEAPs that would volunteer to work with the rule writer to compose the fact sheet. This would eliminate all of the current inefficiencies of each state trying to compose its own and the varying interpretations of the final rule.
- Resources for the SBO/SBEAP are as limited as the resources available to the air regulatory programs, and even more so in some cases. Without additional funding the compliance assistance activities of the SBO/SBEAP in some states are being severely limited as well.

We would also like to share an experience of state SBO/SBEAP that may be helpful to the process outlined in the guidance.

- Some of the area source NESHAPs are generating complaints from small business that are complying with the NESHAP. The complaints are related to competitors that are not in compliance with the NESHAP, which allows them to operate at an economic advantage.

Since our state is not taking delegation of the area source NESHAPs, I am making it known to the industry that they can send complaints to the Enforcement and Compliance Docket Information Center (<http://www.epa.gov/oecaerth/complaints/index.html>). These complaints are then sent to the respective EPA Region for action. I have asked the Region to inform the

alleged violator to contact our Small Business Environmental Assistance Program (SBEAP) for assistance. Noncompliant businesses are more likely to seek compliance assistance and make the appropriate changes when it is "recommended" by the enforcing agency.

- Some states immediately refer a small source that is out of compliance to their state SBO/SBEAP. EPA, where ever they remain the enforcing agency, might consider offering the same referral to area sources in place of their traditional compliance assistance provided (as described in a USPEA Policy Memo dated June 25, 2008 from John Peter Suarez) following an inspection.

Thank you for the opportunity to participate in providing comments on the draft Area Source Implementation Guidance. If you have any questions on these comments you can contact me at (217) 524-5199, or our SBO/SBEAP National Steering Committee Vice Chair, Renee Bashel at 608-264-6153 or renee.bashel@wi.gov.

Sincerely,

A handwritten signature in black ink that reads "Annette Fulgenzi". The signature is written in a cursive, flowing style.

Annette Fulgenzi
Chair, SBO/SBEAP National Steering Committee