

WE—VIEW—THE—SUCS—4002

Colorado Department of Regulatory Agencies
Office of Policy, Research and Regulatory Reform

Compliance Advisory Panel



October 15, 2004

STATE OF COLORADO

DEPARTMENT OF REGULATORY AGENCIES

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Bill Owens
Governor

October 15, 2004

Members of the Colorado General Assembly
c/o the Office of Legislative Legal Services
State Capitol Building
Denver, Colorado 80203

Dear Members of the General Assembly:

The Colorado Department of Regulatory Agencies has completed its evaluation of the Colorado Compliance Advisory Panel (CAP). I am pleased to submit this written report, which will be the basis for my office's oral testimony before the 2005 legislative committee of reference. The report is submitted pursuant to section 2-3-1203, of the Colorado Revised Statutes (C.R.S.), which states in part:

The department of regulatory agencies shall conduct an analysis and evaluation of the performance of each division, board, or agency or each function scheduled for termination under this section. The department of regulatory agencies shall submit a report containing such analysis and evaluation to the office of legislative legal services by October 15 of the year preceding the date established for termination.

The report discusses the question of whether there is a need for the CAP provided under Article 7 of Title 25, C.R.S. The report also discusses the effectiveness of the CAP and staff in carrying out the intent of the statutes and makes recommendations for statutory changes in the event this regulatory program is continued by the General Assembly.

Sincerely,

A handwritten signature in cursive script that reads 'Tambor Williams'.

Tambor Williams
Executive Director

Table of Contents

Executive Summary	1
Background	2
<i>The Sunset Process</i>	2
<i>Methodology</i>	2
Legal Framework.....	3
<i>Profile of the Program</i>	3
Advisory Committee Description.....	5
<i>Meetings and Expenditures</i>	5
<i>Advisory Panel Accomplishments</i>	6
<i>Reasons for Continuing the Advisory Panel</i>	8
Analysis and Recommendation	9
<i>Recommendation - The Compliance Advisory Panel should be continued.</i>	9
Appendix A – Compliance Advisory Panel Statute.....	10

2004 Sunset Review **Compliance Advisory Panel**

Department of Regulatory Agencies

Bill Owens
Governor

Tambor Williams
Executive Director



Executive Summary

Quick Facts

Why was the Compliance Advisory Panel (CAP) created? The CAP was created to satisfy section 507 of the federal Clean Air Act of 1990, which directs states to create programs to assist small business stationary sources in complying with increased air pollution regulation.

Has the CAP Fulfilled its Missions? The CAP has rendered advisory opinions concerning the effectiveness of the Small Business Stationary Source Technical and Environmental Compliance Assistance Program (SBTAP); submitted annual reports concerning compliance to the U.S. Environmental Protection Agency; and reviewed information for small business stationary sources to ensure that it is easily understandable by the people.

What Does it Cost? No revenues or appropriations are associated with the CAP.

Where Do I Get the Full Report? The full sunset review can be found on the internet at:
<http://www.dora.state.co.us/opr/oprpublications.htm>

Recommendation

The CAP Should be Continued.

The CAP has achieved its statutorily mandated goals and now engages in outreach efforts to assist small businesses with other environmental issues, such as hazardous waste, solid waste and water quality.

Why are Advisory Committees Reviewed?

Advisory Committees created on or after July 1, 1990 are subject to a systematic review to determine which committees should be continued, which have outlived their usefulness and those that may have failed to perform the functions for which they were created.

Sunset Reviews are Prepared By:
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Background

The Sunset Process

The functions of the Compliance Advisory Panel (CAP) in accordance with Article 7 of Title 25, Colorado Revised Statutes (C.R.S.), shall terminate on July 1, 2005, unless continued by the General Assembly. During the year prior to this date, it is the duty of the Department of Regulatory Agencies (DORA) to conduct an analysis and evaluation of the CAP pursuant to section 2-3-1203, C.R.S.

The purpose of this review is to evaluate the performance of the CAP and to determine whether it should be continued. During this review, the CAP must demonstrate that there is still a need for the CAP and that its activities are consistent with the public interest. DORA's findings and recommendations are submitted via this report to the legislative committee of reference of the Colorado General Assembly.

Methodology

As part of this review, DORA staff attended a CAP meeting, interviewed CAP members, reviewed records, reports, interviewed program staff, and reviewed Colorado statutes and rules.

Legal Framework

Section 507 of the federal Clean Air Act Amendments of 1990 (Act) mandates that states create programs to assist small business stationary sources in complying with increased air pollution regulation. To qualify for assistance under the Act, a small business must employ 100 or fewer employees and emit less than 50 tons per year of any single regulated pollutant and less than 75 tons per year of all regulated pollutants.

Profile of the Program

In 1992 the Colorado General Assembly passed Senate Bill 92-097 to implement the requirements of the Act. Section 25-7-109.2, Colorado Revised Statutes (C.R.S.), created the Colorado Small Business Stationary Source Technical and Environmental Compliance Assistance Program (SBTAP) and the Colorado Compliance Advisory Panel (CAP) in the Colorado Department of Public Health and Environment. This section is included in this report as Appendix A.

Senate Bill 92-097 implemented the requirements of the Act by establishing the SBTAP to:

- Collect and coordinate information concerning compliance methods and technologies for small business stationary sources and develop programs to encourage lawful cooperation among such sources and other persons to further comply with the Act;
- Assist small business stationary sources with pollution prevention and accidental release detection and prevention, including providing information concerning alternative technologies, process changes, products and methods of operation that help reduce air pollution;
- Assure that small business stationary sources receive notice of their rights under the Act in a manner and form that assures reasonably adequate time for the sources to evaluate compliance methods and any relevant or applicable proposed or final regulation or standard issued under the Act;
- Inform small business stationary sources of their obligations under the Act, including mechanisms for referring such sources to qualified auditors or, at the option of the state, for providing audits of the operations of such sources to determine compliance with the Act; and
- Assist small business stationary sources in determining applicable requirements and in receiving permits under the Act in a timely and efficient manner.

Section 507(e) of the Act also requires that the states create compliance advisory panels of not less than seven individuals who:

- Render advisory opinions concerning the effectiveness of the small business stationary source environmental and technical assistance program, difficulties encountered, and the degree and severity of enforcement;
- Make periodic reports to the Administrator of the U.S. Environmental Protection Agency concerning the compliance of the small business stationary source environmental and technical assistance program with the requirements of the Paperwork Reduction Act, the Regulatory Flexibility Act and the Equal Access to Justice Act. Colorado's law, section 25-7-109.2, C.R.S., expanded these reporting duties to include making these reports available to the Governor;
- Review information for small business stationary sources to assure such information is understandable by the layperson; and
- Have the small business stationary source environmental and technical assistance program serve as the secretariat for the development and dissemination of such reports and advisory opinions.

Advisory Committee Description

The Colorado Compliance Advisory Panel (CAP) consists of seven members:

- 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 (CDPHE) to represent the CDPHE.

Members serve two years commencing on February 1 of the year of appointment.

Meetings and Expenditures

The CAP does not generate revenue nor has it incurred any expenses. The members are not reimbursed for their expenses. Table 1 lists the meetings and the number of members in attendance.

**Table 1
CAP Meeting Information**

Meeting Date	Number of CAP Members Attending
2003-2004	
4/14/2004	6
2/23/2004	6
11/19/2003	6
7/23/2003	6
2002-2003	
4/23/2003	6
1/14/2003	6
10/8/2002	6
7/9/2002	6
2001-2002	
3/19/2002	6
2000-2001	
6/28/2000	6
1999-2000	
11/18/1999	2
8/11/1999	4

In addition to CAP members, the Small Business Ombudsman, staff of the Air Pollution Control Division (Division) and staff of the Colorado Small Business Stationary Source Technical and Environmental Assistance Program (SBTAP) have regularly attended these meetings.

Advisory Panel Accomplishments

Among the CAP's accomplishments are:

- *Division Web Site* – The CAP has reviewed and commented on the Division's web site, providing comments and suggestions to make the site more effective and useful for small businesses.
- *Division Guidance Document Reviews* – The CAP performs quarterly reviews of these guidance documents to ensure that they are comprehensible and useful to small businesses. Some of the documents reviewed include:
 - "Simple Guide to Calculating VOC's¹ & HAP's²"
 - "Gasoline Dispensing Facilities"
 - "Guide to Environmental Regulations for Commercial Food Establishments"
 - "Reporting Air Emissions & Applying for Air Permits Step-by-Step"
- *Compliance Information* – The SBTAP provides spreadsheets to small businesses to assist them in calculating their emissions and ensuring compliance with the regulations. The CAP reviews these spreadsheets to ensure that the instructions and outputs are easily understood.

Examples of compliance spreadsheets include:

- "VOC & HAP's for Printers"
- "Woodworking Operations"
- *EPA Annual Report* – The CAP reviews the compliance report for the SBTAP to be submitted to the Administrator of the U.S. Environmental Protection Agency (EPA).
- *Air Quality Control Commission (AQCC) Meeting* – The CAP made a presentation to the July 2004 AQCC meeting outlining the history of the CAP and its role in the SBTAP. In addition, the CAP suggested a partnership with the AQCC in which a liaison from the AQCC works to keep CAP updated on issues coming before the AQCC and providing opportunities for the CAP to offer opinions and suggestions on those issues specifically affecting small businesses.

¹ Volatile Organic Compounds

² Hazardous Air Pollutants

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- *Regulatory Improvements* – The CAP participated in the review of the AQCC regulation No. 3, “Air Contaminant Emission Notice,” by submitting a letter of comment and suggestion in November 2003. In July 2004, the CAP reviewed and submitted a letter regarding regulation No. 7, “Emissions of Volatile Organic Compounds.” In both cases, the CAP made suggestions to aid small business owners in the interpretation of, and compliance with, these regulations.
 - *Advisory Role in SBTAP* – The CAP plays an advisory role to the SBTAP by providing information and industry news on different sectors of the regulated community. It also provides input on small business communities who should be targeted for assistance by the SBTAP. In addition, the CAP also assists with grant projects and reviews and comments on SBTAP brochures and power point presentations.
 - *Pollution Prevention Advisory Board* – The CAP works with the Pollution Prevention Advisory Board to ensure that the goals and objectives of the two groups work to further the compliance of small businesses. The CAP is currently involved in an outreach effort to other pollution divisions within CDPHE and entities regulated by the Pollution Prevention Advisory Board, including water quality, solid waste, hazardous waste, etc., to streamline pollution regulations among all media.
 - *The Compass Project* – The Compass Project was designed to measure the benefits of sector-specific, comprehensive, cross-media compliance assistance (as opposed to strictly enforcement) efforts. The CAP has supported the Compass Project by reviewing outreach documents, fact sheets, and checklists for the asphalt industry, and reviewing and commenting on project reports.
 - *Surface Coating Sector Project* – The CAP and the SBTAP have also selected this group to target with specific industry information and they are developing informational materials to help these businesses comply with both federal and state air quality regulations. The SBTAP will target these businesses statewide through individual outreach and regional workshops.
 - *Additional Outreach Programs* – The CAP has begun an outreach effort to the state legislature and trade associations in order to make them aware of SBTAP activities and to help them provide information to their respective constituents about where to find assistance.

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- *Conferences* – The CAP encourages its members to attend the annual EPA-sponsored Small Business Assistance Program Conference. However, this must be at the members' own expense. Several members were able to attend the 2004 conference – participating in the technical courses offered and making important networking contacts with the small business stationary source environmental and technical assistance programs in other states. At the time of this writing, the CAP members who attended the 2004 conference were in the process of composing a letter of feedback to the conference organizers with suggestions for improvement for future conferences. In addition, the CAP is considering applying to the EPA to become a future host for this conference, perhaps in 2006.

Reasons for Continuing the Advisory Panel

The SBTAP gave the following reasons why the CAP should be continued:

The Small Business Assistance Program (SBAP), including the Compliance Advisory Panel, was created by the 1990 Clean Air Act Amendments to help small businesses understand new, unfamiliar and often complicated regulations. Section 507 (e) of the Clean Air Act requires that a Compliance Advisory Panel be created on the state level. More specifically, the SBAP was established to assist small businesses in determining applicable requirements and in obtaining permits under the Clean Air Act in a timely and efficient manner.

The Compliance Advisory Panel is tasked with several duties under the Federal Clean Air Act including:

- Rendering advisory opinions concerning the effectiveness of the Small Business Assistance program
- Reviewing information prepared for small businesses to assure that it is understandable by the layperson
- Serving as the secretariat for the development and dissemination of reports and advisory opinions

The Colorado Compliance Advisory Panel has met each of the requirements established in the Federal Clean Air Act and should be continued.

Analysis and Recommendation

According to the report from Colorado Compliance Advisory Panel (CAP) members attending the 2004 EPA Small Business Assistance Program Conference, the Colorado CAP is one of the most active in the nation. Many states have let their compliance advisory panels lapse, and of the approximately 18 active compliance advisory panels in the nation, Colorado is a leader in providing services to small businesses.

The primary duty assigned to the CAP by the federal Clean Air Act Amendments of 1990 is to ensure that small businesses throughout the state both understand the federal and state air quality regulations that apply to them and are able to obtain the required permits in a timely and efficient manner. The CAP has furthered this goal by volunteering its services to review and comment on the Air Quality Control Commission's regulation Nos. 3 and 7 in an effort to make the language more understandable to the lay business owner. In addition, the CAP has been moving ahead in its efforts to target different industry sectors of the regulated community (see above Asphalt and Surface Coating projects) by developing information, workshops and outreach programs specifically tailored to these industries.

It is worthy of note that the SBTAP and CAP programs have both advanced to the point where they are able to reach out beyond just the community they were created to serve, to other statewide pollution prevention programs, such as those targeting hazardous waste, solid waste and water quality, in an effort to further assist small businesses. In partnering with these programs the SBTAP and CAP hope to streamline all environmental regulatory programs with the goal of increasing compliance for the small business community.

Recommendation - The Compliance Advisory Panel should be continued.

Appendix A – Compliance Advisory Panel Statute

25-7-109.2. Small business stationary source technical and environmental compliance assistance program - repeal.

(1) The commission shall promulgate such rules, regulations, and procedures as are necessary to establish and administer the Colorado small business stationary source technical and environmental compliance assistance program consistent with the requirements of the federal act.

(2) There is hereby created a compliance advisory panel which shall:

(a) 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;

(b) Make periodic reports to the governor and the administrator of the United States environmental protection agency;

(c) Review information for small business stationary sources to assure such information is understandable by the layperson; and

(d) 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.

(3) The panel shall consist of:

(a) Two members who are not owners or representatives of owners of small business stationary sources, appointed by the governor to represent the general public;

(b) 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;

(c) 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

(d) One member appointed by the executive director of the department of public health and environment to represent such department.

(4) The terms of those members of the panel initially appointed by the governor, the speaker of the house of representatives, and the minority leader of the house of representatives shall expire on January 31, 1994. The terms of those members initially appointed by the president of the senate, the minority leader of the senate, and the executive director of the department of public health and environment shall expire on January 31, 1995. Thereafter, members of the panel shall serve for terms of two years, such terms to commence on February 1 of the year of appointment. Vacancies occurring during the term of office of any member of the panel shall be filled for the unexpired portion of the regular term in the same manner as for the original appointment.

(5) In furtherance of the small business stationary source technical and environmental compliance assistance program established as provided in subsection (1) of this section, the department of public health and environment shall serve as ombudsman for small business stationary sources. The department shall carry out the ombudsman duties using personnel outside of the air pollution control division.

(6) The general assembly finds, determines, and declares that this section is enacted for purposes of compliance with the provisions of section 507 of the federal act. Subsections (2), (3), and (4) of this section and this subsection (6) are repealed, effective July 1, 2007. Prior to said repeal, the compliance advisory panel shall be reviewed by a legislative committee of reference, designated pursuant to section 2-3-1201, C.R.S., to conduct the review pursuant to section 24-34-104, C.R.S.