

REVISIONS TO THE STATE IMPLEMENTATION PLAN
FOR THE SMALL BUSINESS STATIONARY SOURCE TECHNICAL AND
ENVIRONMENTAL COMPLIANCE ASSISTANCE PROGRAM

TEXAS AIR CONTROL BOARD
12124 PARK 35 CIRCLE
AUSTIN, TEXAS 78753

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I. OTHER CONTROL STRATEGIES (New)

A. SMALL BUSINESS STATIONARY SOURCE TECHNICAL AND ENVIRONMENTAL COMPLIANCE ASSISTANCE PROGRAM

1. Introduction

Section 507 of the Federal Clean Air Act Amendments of 1990 (FCAA) (42 U.S.C. §7661f), requires each state to submit a revision to the State Implementation Plan (SIP) by November 15, 1992 to establish a Small Business Stationary Source Technical and Environmental Compliance Assistance Program (Program). Implementation of the provisions of the FCAA will require the regulation of small businesses in order to attain and maintain National Ambient Air Quality Standards (NAAQS) and control air toxic emissions. Small businesses frequently lack the technical expertise and financial resources necessary to evaluate regulations and to determine the appropriate mechanisms for compliance. The Congress of the United States adopted §7661f of the FCAA for the purpose of ensuring that small businesses would have access to the technical expertise and compliance information necessary to comply with the requirements of the FCAA.

The State of Texas has established this Program and will submit revisions to the SIP by November 15, 1992 in order to comply with the requirements of the FCAA. The Program consists of: 1) the

Small Business Assistance Program (SBAP) that provides the actual assistance to small businesses; 2) the Small Business Ombudsman to serve as a representative for small businesses; and 3) a Compliance Advisory Panel (CAP) that is to render advisory opinions, submit reports to the United States Environmental Protection Agency (EPA) on the Program's effectiveness, and review documentation prepared by the SBAP to ensure that it is understandable by the layperson.

2. General Requirements for State SIP Approval

The EPA guidelines dated January 1992 require states to provide a timely phasing in of the Program elements with the implementation to fully comply with the statutory provisions of the Program by the effective date of the state's Title V, Operating Permit Program, no later than November 15, 1994. In order for the state to receive approval, the state must submit a schedule and commitment to have all operational elements of the Program in place by the effective date. The following Program elements will be fully implemented no later than November 15, 1994 in order to satisfy the requirements of §7661f(a) regarding implementation of the Program:

a) Development, collection, and coordination of information on compliance methods and technologies for small

business stationary sources has begun and will continue in an ongoing function.

b) Assistance will be provided to small business stationary sources on methods of pollution prevention and accidental release prevention and detection, including providing information concerning alternative technologies, process changes, products, and methods of operation that help reduce air pollution.

c) A state office has been designated to serve as Ombudsman for small businesses in implementing the requirements of the FCAA.

d) A SBAP small business stationary source compliance assistance program has been established for determining applicable requirements and providing for permit issuance in a timely and efficient manner.

e) Adequate mechanisms will be provided for notifying small business stationary sources on a timely basis of their rights under the FCAA.

f) Adequate mechanisms will be provided for informing small business stationary sources of their obligations under the FCAA, including a program for referring sources to qualified

auditors or for the state to provide for audits of the operations of such sources to determine compliance with the FCAA.

g) Procedures will be developed to respond to requests from small business stationary sources for modification of: 1) any work practice or technical method of compliance, or 2) a schedule of milestones for implementing such work practice or method of compliance preceding any applicable compliance date, based on technological and financial capability of any such small business stationary source. No such modification may be granted unless it is in compliance with applicable requirements of the FCAA, including the requirements of the SIP.

h) Creation of a Compliance Advisory Panel was authorized by §382.0365(c) of the TCAA, effective September 1, 1991.

3. Components of a State Small Business Stationary Source Technical and Environmental Compliance Assistance Program

a) Designation of a State Office to Serve as Ombuds-
for Small Businesses

1) A state office to represent small business stationary sources that require assistance in air pollution

matters has been designated. The office is located at the central offices of the Texas Air Control Board (TACB) at 12124 Park 35 Circle, Austin, Texas 78753.

2) The Ombudsman's Office has an adequate staff that includes appropriate personnel to assist in all phases of air pollution. Current and future staffing is indicated in Appendix C.

3) The Ombudsman's Office has been and will be provided adequate funding to maintain the office.

4) The Ombudsman's Office shall be charged with the following duties:

(i) Conducting independent evaluations of all aspects of the SBAP;

(ii) Reviewing and providing comments and recommendations to EPA, the state, and the local air pollution control authorities regarding the development and implementation of regulations that impact small businesses;

(iii) Facilitating and promoting the participation of small businesses in the development of new regulations that impact small businesses;

(iv) Assisting in providing to higher authorities and the public information regarding the applicability of the requirements of the FCAA to small businesses;

(v) Aiding in the dissemination of information (i.e., upcoming regulations, control technologies, etc.) to small businesses and other interested parties;

(vi) Participating in and sponsoring meetings and conferences with state/local air pollution control authorities, industry groups, and small business representatives;

(vii) Periodically reviewing the work and services provided by the SBAP with trade associations and small business representatives;

(viii) Operating a telephone hot line to provide confidential help on individual source problems and grievances;

(ix) Referring small businesses to the appropriate specialists in the SBAP where they may obtain information and assistance on affordable alternative technologies, process changes, products, and operational methods to help reduce air pollution and accidental releases;

(x) Arranging for and assisting in the preparation of guideline documents by the SBAP to ensure that the language is readily understandable by the layperson;

(xi) Working with trade associations and small businesses to bring about voluntary compliance with regulations under the FCAA;

(xii) Interfacing with regional and state offices of the Small Business Administration (SBA), the Department of Commerce (DOC), and/or other state and federal agencies that may have programs to financially assist small businesses in need of funds to comply with environmental regulations;

(xiii) Interfacing with private sector financial institutions to assist small businesses in locating sources of funds to comply with state/local air pollution control requirements; and

(xiv) Conducting studies to evaluate the impacts of the FCAA on the state's economy, local economies, and small businesses. Copies of studies will be available upon request to the Ombudsman's Office.

5) Summary of the requirements of §7661f(a)(3)
of the FCAA:

(i) Provisions are provided to ensure that the Ombudsman has direct access to governmental agencies and officials necessary to ensure that a fair hearing of small business concerns is granted.

(ii) A description of the authority provided to the Ombudsman by the state is identified in the Texas Clean Air Act, TEXAS HEALTH AND SAFETY CODE ANN. (TCAA) §382.0365(a)(3) (Vernon 1992), a copy of which is contained in Appendix A. The Ombudsman has the authority to request information from other state agencies that assist small businesses and has the ability to testify before the Legislature.

(iii) A financial commitment that ensures adequate funding of the Ombudsman's office has been made.

b) Establishment of a State Compliance Advisory
Panel (CAP)

1) To determine the overall effectiveness of the Program, the TACB will assist in the formation of a seven-member CAP. Pursuant to §7661f(e)(2) of the FCAA and consistent with the structure of the government of the State of Texas,

§382.0365(c) of the TCAA requires the selection of panel members by the following method:

(i) The Governor of Texas shall select two members who are not owners or representatives of owners of small business stationary sources to represent the general public;

(ii) The Chairman of the TACB shall select one member to represent the TACB; and

(iii) The Texas Legislature shall select four members who are owners or representatives of owners of small business stationary sources. Texas has a bicameral Legislature. There are constitutional provisions providing for leadership of the House and Senate in the Office of the Lieutenant Governor and in the Office of the Speaker of the House. However, there are no positions in the Texas Legislature which equate to majority and minority leaders, as in the national Congress. Therefore, two members shall be selected by each the Lieutenant Governor and the Speaker of the House, who are the equivalent Texas entities for purposes of legislative selection of CAP members. Appendix D more fully states the position of the TACB with regard to the composition of the CAP.

2) Three appointments to the CAP have been made, two by the Speaker of the House and one by the Chairman of the

TACB. Four appointments remain to be made, two by the Governor and two by the Lieutenant Governor, and will be made in accordance with the schedule contained in Appendix C.

3) The Texas CAP is required to monitor the state's SBAP program for compliance with the Paperwork Reduction Act, the Regulatory Flexibility Act, and the Equal Access to Justice Act, and to carry out the same duties required by the EPA Small Business Ombudsman. The CAP has the following specific functions:

(i) Render advisory opinions on the effectiveness of the program, difficulties encountered, and degree and severity of enforcement;

(ii) Prepare periodic reports to EPA on the compliance status of the SBAP following the intent of the provisions of the Paperwork Reduction Act, the Regulatory Flexibility Act, and the Equal Access to Justice Act;

(iii) Review information for small business stationary sources to ensure such information is understandable to the layperson; and

(iv) The Ombudsman shall serve as the Secretariat for the development and dissemination of panel reports and

advisory opinions and will provide administrative and logistical support to the CAP.

4) Summary of the requirements of §7661f(e) of the FCAA:

(i) The CAP has the authority to render advisory opinions on the effectiveness of the Program as outlined in §382.0365(d)(1) of the TCAA, a copy of which is contained in Appendix A.

(ii) The CAP has the authority to make periodic reports to the Administrator of EPA on the compliance of the Program with applicable laws, such as the Paperwork Reduction Act, the Regulatory Flexibility Act, and the Equal Access to Justice Act, through the enabling authority contained in §382.0365(d)(2) of the TCAA, a copy of which is contained in Appendix A.

(iii) The CAP has the authority to review and recommend changes to information for small business stationary sources to ensure that it can be understood by the layperson, and to distribute any information developed by the panel as outlined in §382.0365(d)(3) and (4) of the TCAA, a copy of which is contained in Appendix A.

c) Establishment of a Small Business Assistance
Program (SBAP)

The SBAP will provide sufficient services to small businesses through the development, collection, and dissemination of information to small businesses on matters of (1) determining applicable requirements under the FCAA and permit issuance; (2) the rights and obligations of small businesses under the FCAA; (3) compliance methods and acceptable control technologies; (4) pollution prevention and accidental release prevention and detection; and (5) audit programs.

1) The SBAP is charged with the following:

(i) Conducting independent evaluations of all aspects of the SBAP to determine program effectiveness and continuously improving the program design;

(ii) Reviewing and providing comments and recommendations to the Ombudsman's Office, the CAP, EPA, the state, and the local air pollution control authorities regarding the development and implementation of regulations that impact small businesses;

(iii) Facilitating and promoting the early participation of small businesses in the development of new or modified regulations and policies that impact small businesses;

(iv) Assisting in providing to other state and local authorities, associations, educational institutions, environmental groups, and the general public information regarding the applicability of the requirements of the FCAA to small businesses;

(v) Actively promoting and assisting in the dissemination of information (i.e., upcoming regulations, control technologies, etc.) to small businesses and other interested parties;

(vi) Participating in and sponsoring meetings and conferences with state/local air pollution control authorities, industry groups, and small business representatives;

(vii) Periodically surveying small businesses and other customers of the SBAP to determine if the work and services provided by the SBAP to trade associations and small business representatives are adequate;

(viii) Operating a telephone hot line to provide technical and compliance help on individual source problems;

(ix) Referring small businesses to the appropriate technical specialists in the community where they may obtain information and assistance on affordable alternative technologies, process changes, products, and operational methods to help reduce air pollution and accidental releases;

(x) Arranging for and assisting in the preparation of guideline documents to ensure that the technical and compliance information is available and is readily understandable by the layperson;

(xi) Working with trade associations and small businesses to bring about voluntary compliance with regulations under the TCAA and the FCAA;

(xii) Interfacing with regional and state offices of the SBA, Department of Commerce, and/or other state and federal agencies that may have programs to financially assist small businesses in need of funds to comply with environmental regulations and develop information so that it is readily available to the small business community;

(xiii) Interfacing with private sector financial institutions to assist small businesses in locating sources of funds to comply with state/local air pollution control requirements; and

(xiv) Conducting studies to evaluate the impacts of the TCAA and the FCAA on the state's economy, local economies, and small businesses, and supporting similar studies conducted by the Ombudsman's Office.

2) Summary of the specific program elements required for SIP approval by the EPA:

(i) Methods for disseminating technical and compliance information to small businesses: The SBAP will act as an information clearinghouse by referring small businesses to state technical experts, specifically trained to handle specific questions relevant to achieving compliance with the FCAA. The state has installed and is operating a toll-free telephone hot line to respond to inquiries from small businesses. Services provided by the SBAP are to be publicized through an electronic bulletin board, association newsletters, industry groups, trade associations, and community roundtables. The flow of information includes two types of components: a proactive component and a reactive component. The proactive component involves adequate communication with and information outreach to small businesses in the form of easily discernable information which specifically details their obligations under the FCAA. The reactive component involves the establishment of a clearinghouse for handling incoming inquiries from small businesses regarding methods for achieving compliance with air pollution control requirements

under the FCAA. A more detailed description of the SBAP elements follows.

(ii) Information dissemination methods available to qualified small businesses are as follows:

(-a-) An electronic bulletin board will be available 24 hours a day, seven days a week to provide guidance on applicable rules and regulations, a calendar of events, a listing of public hearings and workshops, and a menu of directories that include federal, state, and private environmental hot lines and technology centers. The electronic bulletin board will also provide a mechanism that allows users to evaluate the system and provide anonymous comments on the program and information provided; the user can make suggestions. Application forms, instructions, brochures, and other technical and compliance information can be requested through the electronic bulletin board. Up-to-date state and federal regulations for all media will be available with search capability for review and selection by qualified small businesses. The electronic bulletin board is available via computer modem (phone line) directly on the small business site or at a variety of locations within the state.

(-b-) The SBAP will mail, upon request, information outlining the rights of small businesses and how those rights can be exercised.

(-c-) Personal visits to small businesses may be made by the SBAP personnel.

(-d-) Public service announcements by mass media methods such as newspapers, radio, and television are available. Videos are also available upon request.

(-e-) Area seminars will be conducted by the TACB on a periodic basis, including seminars at the Austin, Texas office.

(-f-) A toll-free hot line to receive technical and compliance information will be implemented through the SBAP office.

(-g-) A clearinghouse will be established that will handle incoming inquiries from small businesses. Access to the electronic bulletin board, facsimile machine, printer, and other information tools will be available to staff to respond to the inquiries. Walk-in service will be provided, as well as electronic, written, and telephone contacts. All information developed by the SBAP will be available through the clearinghouse, as well as any appropriate reference materials needed to comply.

3) Mechanisms to assist small businesses with pollution prevention and accidental release detection and prevention.

The SBAP will assist small business stationary sources on methods of pollution prevention and accidental release prevention and detection, including information concerning different technologies, process changes, products, and methods of operation that help reduce air pollution. Technical personnel from the TACB will be available to provide pertinent information from the regional offices or from the Austin office. Circumstances and specific emissions will dictate the required procedure to be followed by the small business stationary sources. Mechanisms to provide assistance will include the following:

(i) The SBAP will coordinate information relating to pollution prevention and accidental release prevention and detection with all federal, state, and local agencies with environmental jurisdiction;

(ii) The SBAP clearinghouse and electronic bulletin board will include information on pollution prevention, accidental release prevention, and detection; and

(iii) A directory of contacts will be developed and made available of technical experts in the areas of

pollution prevention, accidental release prevention, detection, and familiarity with pollution prevention technologies and alternatives to reduce pollution.

4) Mechanisms to provide compliance assistance to small businesses in applicability requirements and providing for permit issuance in a timely and efficient manner.

Establish a small business stationary source compliance assistance program for determining applicable requirements and permit issuance, including the following:

(i) Industry-specific information packets will be developed and made available to small businesses and staff that include information on rules, regulations, permit requirements, testing, recordkeeping, and compliance information, as well as self-audit procedures and pollution prevention methods.

(ii) Inspectors will be provided training on how to educate small business owners on conducting self-inspections and understanding the compliance requirements they must meet; and

(iii) Whenever a new policy or rule is promulgated, workshops will be conducted to inform and educate the

specific small business community on appropriate compliance methods and procedures.

5) Methods for notifying small businesses of their rights on a timely basis.

Provide methods for notifying small business stationary sources on a timely basis of their rights under the FCAA, including the following:

(i) The SBAP will develop a data base that includes all small business stationary sources and associations, and will coordinate with appropriate agency staff to notify affected sources of potential changes or rules that affect them;

(ii) Formal public notification procedures will be developed and implemented agencywide that insure timely notice of small businesses of their rights and obligations under the FCAA; and

(iii) The SBAP will work with trade associations, local agencies, educational facilities, and community leaders to establish environmental partnerships to bring about voluntary compliance with regulations under the FCAA through participation and educational activities.

6) Establishment of an Audit Program

Methods that are identified in paragraph (c)(2)(ii) above shall be utilized to inform small business stationary sources of their obligations under the FCAA, including a program for referring sources to qualified auditors or for the state to provide for audits of the operations of such sources to determine if they are within the rules of the FCAA. The state will use EPA-approved procedures and criteria to establish a program to provide qualified auditing services to small businesses in accordance with the schedule contained in Appendix C.

7) Procedures for consideration of requests from small business stationary sources for modifications of work practices or technological methods of compliance.

(i) Provide a system for collecting and coordinating information on compliance methods and technologies. Data bases and experts in different areas will provide definitive guidance information.

(ii) Develop procedures to respond to requests from small business stationary sources for modification of any work practice or technical methods of compliance, schedule of milestones for implementing such work practice, or method of compliance preceding any applicable compliance date, based on the

technological and financial capability of any such small business stationary source. No such modification may be granted unless it is in compliance with the applicable requirements of the FCAA.

(iii) The TACB will establish approved procedures to provide review of requests from small businesses for modification of work practice or technical methods of compliance based on financial and technological capability in accordance with the schedule contained in Appendix C.

4. Source Eligibility

a) Sources eligible for inclusion in the small business technical and environmental compliance program include any business that is:

1) owned or operated by a person employing less than or equal to 100 employees;

2) defined as a small business by the SBA; the SBA defines small business [defined in 13 CFR Part 121 and are listed by Standard Industrial Code (SIC) categories] as any business which is independently owned or operated and not dominant in its field;

3) emitting less than 50 tons per year (TPY) of any regulated pollutant; [regulated pollutants are Volatile Organic Compounds (VOC), Nitrogen Oxides (NO_x), Carbon Monoxide (CO), Sulfur Dioxide (SO₂), Lead (Pb), and Particulate Matter Less Than 10 Microns in Diameter (PM₁₀), or any hazardous air pollutants identified in 112(b)(1) of the FCAA, a copy of which is contained in Appendix B];

4) emitting less than 75 TPY (total) of all regulated pollutants as identified in subsection c above; and

b) In consultation with the administrator of EPA, and the administrator of SBA, and upon notice and opportunity for public hearing, Texas may exclude from eligibility those categories of small businesses that the state has determined to have sufficient technical and financial capabilities to comply with requirements of the FCAA. Procedures will be developed as indicated in Appendix C.

c) The TACB will develop procedures to, upon petition, notice, and opportunity for public hearing, include in the Program those sources that do not meet all requirements of 7661f(c)(1)(C-E) of the FCAA, but that do not emit in excess of 100 tons per year of any regulated pollutant.

5. Fee Reduction Authority

Section 42 U.S.C. 7661f(f) allows the state the flexibility to reduce any fees required under the FCAA for small business stationary sources by considering their available financial resources. The intent is to remove or diminish the burdens imposed on small business stationary sources to assist in complying with the provisions of the FCAA. Fee reduction authority will be proposed by the State of Texas in accordance with the schedule in Appendix C and will not affect the effectiveness of the Program.

6. Revisions to the Texas Air Control Board (TACB) Rules and Regulations

Revisions to the TACB Rules and Regulations will be developed as needed and promulgated no later than November 15, 1994.

7. Legal Authority

The State of Texas has the legal authority necessary to implement the control strategies for the Program under the provisions of the TCAA, §382.017.