



OSP – SBEAP – G-0 – CAP Policy – 051624

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SIGNATURES:

Division Director

Dr. Ronne Adkins

Preparer

Donovan Grimwood

Preparer

Crystal Warren

Preparer

Matthew Taylor

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Tennessee Compliance Advisory Panel (CAP) Policy Manual

Small Business Environmental Assistance Program

<https://www.tn.gov/environment/sbeap.html>

Davy Crockett Tower, 5th Floor
500 James Robertson Parkway
Nashville, TN 37243

TABLE OF CONTENTS

1.0	INTRODUCTION
2.0	SCOPE AND AUTHORITY
3.0	DEFINITIONS
4.0	MEMBERSHIP
5.0	ROLE AND MISSION OF THE SMALL BUSINESS ENVIRONMENTAL ASSISTANCE PROGRAM (SBEAP)
6.0	ROLE OF THE SMALL BUSINESS OMBUDSMAN (SBO)
7.0	ROLE OF THE COMPLIANCE ADVISORY PANEL (CAP)
8.0	PROCEDURES FOR CONDUCTING CAP MEETINGS
9.0	PUBLIC INFORMATION AND CONFIDENTIAL INFORMATION

1.0 INTRODUCTION

This policy is intended to establish guidelines for the Tennessee Department of Environment and Conservation's (TDEC) Compliance Advisory Panel (CAP). These guidelines relate to the composition of the CAP, attendance and other expectations, and the benefits of serving on the CAP.

This policy is also intended to assist the CAP members to learn about the functions and responsibilities of the CAP and to serve as a reference document for CAP meeting procedures. It is intended to promote participation by all interested persons in a fair and responsible manner.

The goal of CAP meetings is to provide information and produce thoughtful and well-informed discussions and decisions. Accordingly, these procedures are intended to promote, rather than obstruct, decision-making. CAP welcomes public comments and appreciates all participation in its decision-making process.

2.0 SCOPE AND AUTHORITY

CAA section 507, codified at 42 U.S.C. section §7661f., requires each state to establish a Small Business Environmental Assistance Program (SBEAP) to assist small businesses in understanding the requirements of the Clean Air Act. Section 507 requires states to implement three distinct program elements. Tennessee has implemented all three of these components.

- 2.1 A Small Business Stationary Sources Compliance and Technical Assistance Program that provides information and technical assistance to small businesses;
- 2.2 An Ombudsman who acts as an advocate for small businesses; is located separately from the Air Pollution Control Division; and
- 2.3 A Compliance Advisory Panel for determining the overall effectiveness of the SBEAP.

Authority to implement the SBEAP, including the Ombudsman and the CAP is contained in Tennessee's CAA State Implementation Plan, as published in the Federal Register at 60 Fed. Reg. 22,515 (May 8, 1995). The CAP is not an "agency" as defined by Tennessee Code Annotated section 4-5-102(2), nor is it a "governing body" subject to the Tennessee Open Meetings Act, Tenn. Code Ann. §§ 8-44-101 to -112.

3.0 DEFINITIONS

Terms used in this policy shall have the meanings established by the Clean Air Act, the Tennessee Air Quality Act, and applicable regulations unless the context requires otherwise. The following terms have the meanings assigned in this section.

- 3.1 CAA: The Clean Air Act, as amended, codified at 42 U.S.C. §§ 7401–7675.
- 3.2 CAP or Panel: The Compliance Advisory Panel.
- 3.3 Commissioner: The Commissioner of the Department of Environment and Conservation.
- 3.4 Division: The Division of Air Pollution Control of the Department of Environment and Conservation.
- 3.5 SBEAP: The Small Business Environmental Assistance Program.
- 3.6 Small Business: Generally, any business with 100 or fewer employees that is not a major stationary source as defined in Titles I and III of the CAA; does not emit 50 tons or more of any regulated pollutant; and emits less than 75 tons per year of all regulated pollutants.
- 3.7 Staff: Employees of the Small Business Environmental Assistance Program under all circumstances, and the Division at the request of the Panel or the Small Business Environmental Assistance Program.
- 3.8 Tennessee Air Quality Act: Tennessee Code Annotated Title 68, Chapter 201, Part 1.
- 3.9 Tennessee Public Records Act: Tennessee Code Annotated Title 68, Chapter 7.

4.0 MEMBERSHIP

- 4.1 CAA section 507(e)(2) requires Tennessee to create a Compliance Advisory Panel consisting of at least seven citizen members that include:
 - 4.1.1 Two members who are not owners or representatives of small business stationary sources, appointed by the Governor to represent the general public;

- 4.1.2 Two members who are owners or who represent owners of small business stationary sources, one appointed by the Speaker of the TN House of Representatives and one appointed by the minority leader of the TN House of Representatives;
- 4.1.3 Two members who are owners or who represent owners of small business stationary sources, one appointed by the majority leader of the TN Senate and one appointed by the minority leader of the TN Senate; and
- 4.1.4 One member appointed by the Commissioner to represent the Department of Environment and Conservation.

4.2 **Composition**

In making appointments to the CAP, the appointing authorities should strive to ensure that as best as possible, the composition of the CAP reflect the demographics of the state. In the event of a vacancy on the CAP, the SBEAP may produce a brief summary detailing current CAP diversity, gaps in CAP diversity, and diversity-focused recommendations for CAP recruitment for the appointing authorities to take into consideration. CAP diversity includes considerations around the demographic composition of the CAP, professional and sector-based backgrounds of the CAP members, and all other aspects that play into the CAP representing the broadest cross section of Tennesseans.

4.3 **Term**

The term of each member shall be until the resignation of that member, contingent upon meeting the attendance requirements explained in Section 4.5 of this manual. Newly appointed members are encouraged to serve at least two years, commencing on July 1 immediately following the member's appointment.

4.4 **No Compensation**

Participation on the CAP is voluntary and members will not receive monetary compensation.

4.5 **Vacancies & Attendance**

- 4.5.1 A vacancy occurs when a member ceases to meet the qualifications outlined in Sections 4.1 and 7.0, resigns, or is unable to perform the duties of CAP membership.

4.5.2 A vacancy should be filled in the same manner as the original appointment and the replacement will be appointed to fill the unexpired portion of the member's term.

4.5.3 Meeting attendance is vital to the advisory role of the CAP. Therefore, any CAP member who misses more than 50% of the scheduled meetings in a calendar year may be recommended for replacement. The Commissioner, or Commissioner's designee, will promptly notify the appointing authority of any member who fails to satisfy this attendance requirement.

4.6 **Expectations**

4.6.1 Regularly attend meetings as set forth in Section 4.5.3.

4.6.2 Possess the desire to serve the small business community through support and advocacy by providing expertise and professional knowledge.

4.6.3 Support SBEAP staff to promote internal (the CAP members and SBEAP) and external (interested stakeholders) information exchange.

4.6.4 Serve in an advisory capacity regarding new and emerging pollutants of concern and areas of interest to the regulated community. Review and provide input on outreach materials.

4.6.5 Investigate, review, and provide input on education and outreach participation and materials.

4.7 **Officers**

4.7.1 Officers on the Panel consist of a Chairperson and Vice-chairperson, each of whom is to be elected by the members of the Panel.

4.7.2 Each officer will hold office for a term of approximately two years, with the option of re-election or additional terms of service.

4.7.3 Any Panel member can nominate other members as candidates for officer positions. All nominations should be initiated with a motion, supported, and carried by at least one additional Panel member for the motion to be recognized for vote.

- 4.7.4 Both the Chair and Vice-chair positions will be elected by a majority vote of the Panel members present during the election process.

4.7.5 **Duties of CAP Officers**

4.7.5.1 Chair

Oversees and coordinates the content of Panel meetings with the assistance of the SBEAP Staff, or other designated Panel member; and oversees the decision making process, work products generated, or any follow-up made by the Panel.

4.7.5.2 Vice-chair

In the absence of the Chair, conducts the duties of the Chair.

4.7.5.3 Active CAP Members

Actively participate in all assignments and activities to support the Small Business Assistance Program. Provide comments, reviews, opinions required by the SBO/SBEAP in a timely manner (regularly meets scheduled deadlines). Participates in the CAP role as outlined in the Clean Air Act. One of the most important responsibilities of Panel membership is to attend the meetings. Important issues are discussed and participation providing advice and opinions from all members is expected.

- 4.8 As specified in CAA section 507(e), the SBEAP provides administrative support for the CAP. In this capacity, the SBEAP records the minutes, sets up the meeting rooms, and performs other administrative duties as required. The SBEAP may assist the CAP Chair with the meeting agendas and activities.

5.0 PURPOSE OF THE SMALL BUSINESS ENVIRONMENTAL ASSISTANCE PROGRAM (SBEAP)

The Small Business Environmental Assistance Program (SBEAP) provides assistance to help Tennessee small businesses understand and comply with environmental regulations. It is important to note the following about SBEAP assistance:

- 5.1 **Non-Regulatory** – SBEAP staff are not regulators and do not have regulatory authority. Therefore, small businesses will not be penalized for reporting relevant environmental information to SBEAP staff when requesting assistance.

- 5.2 **Confidential** – While the SBEAP serves as a liaison between the regulatory agencies and small businesses, to the maximum extent allowed under applicable state and federal law, no details about the company working with SBEAP is provided to regulators unless permission is provided by the client company.
- 5.3 **Assistance** – SBEAP develops outreach opportunities and materials – training programs, brochures, webinars, site visits – to help small businesses under the state and federal environmental regulations that affect them.
- 5.4 **Multi-Media** – While most of the assistance provided is related to air regulations, staff also provides assistance related to water and land regulations.

The SBEAP provides assistance to businesses that contact them directly, to businesses referred to them by regulatory inspectors or permit writers, and to businesses the SBEAP identifies may be impacted by a new EPA or state regulation.

6.0 ROLE OF THE OMBUDSMAN

The Small Business Ombudsman (SBO) is under the direction of TDEC's Division of Stakeholder Engagement, 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 SBEAP with trade associations and small business representatives, and refers small businesses to the SBEAP for technical assistance.

7.0 PURPOSE OF THE COMPLIANCE ADVISORY PANEL (CAP)

Pursuant to Tennessee Code Annotated sections 4-3-503, 68-201-103, and 68-201-105 and as required by CAA section 507(e)(1), a compliance advisory Panel in the Department of Environment and Conservation composed of seven individuals exists to do the following:

- 7.1 Render advisory opinions concerning the effectiveness of the small business stationary source technical and environmental compliance assistance program, difficulties encountered, and degree and severity of enforcement;

- 7.2 Make periodic reports to the administrator of the United States Environmental Protection Agency concerning compliance of the small business stationary source technical and environmental compliance assistance program with the requirements of the Federal Paperwork Reduction Act, the Regulatory Flexibility Act, and the Equal Access to Justice Act;
- 7.3 Review information for small business stationary sources to assure such information is understandable by the layperson; and
- 7.4 Have the small business stationary source technical and environmental compliance assistance program serve as the secretariat for the development and dissemination of such reports and advisory opinions.

8.0 PROCEDURES FOR CONDUCTING MEETINGS

8.1 General Meetings

- 8.1.1 General meetings of the CAP are typically held once a quarter. General meetings are held for the CAP to conduct business, which might include briefings, reports, or discussion of upcoming rules or regulations.
- 8.1.2 Meetings of the CAP are open to the public, with the exception of instances when the CAP chooses to meet in executive session. The CAP encourages public participation to its fullest extent.

8.2 Frequency

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

8.3 Notice and Agenda

An agenda will be distributed to Panel members prior to each meeting. A typical agenda will include reports from the SBEAP 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 should file the relevant materials with SBEAP staff 14 days prior to the general meeting during which that person desires the matter to be addressed. Materials filed less than 14 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.

8.4 Conduct of general meetings

The Chair, presiding CAP member, other CAP members, and staff will conduct general meetings as delegated by the Chair. General meetings should typically be conducted under Robert's Rules of Order.

8.5 Recording proceedings

SBEAP staff or a designated CAP member may record the proceedings of all general meetings, which may then be posted on the TDEC Boards and Commissions website.

8.6 Minutes

SBEAP (acting as CAP secretariat) or other designated CAP member shall prepare the minutes of the general meeting as promptly as possible and transmit them to the Panel members for their comment, modification, and approval at the following CAP meeting.

8.7 Decisions by Motion

The Panel shall make decisions by unanimous consent whenever possible. If unanimous consent does not appear possible, decisions shall be made by a majority vote.

Fifty percent (50%) of the members shall constitute a quorum, and at least fifty percent (50%) of the present CAP members must vote in favor of a motion on a matter within the powers and duties of the CAP for that motion to pass. Decisions of the CAP on motions presented by parties during a meeting shall require a first and second motion by a CAP member.

8.8 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. SBEAP, 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.

9.0 PUBLIC INFORMATION AND CONFIDENTIAL INFORMATION**9.1 Distribution of notices, agendas, and other information by CAP**

The SBEAP shall maintain an email listserv on behalf of CAP. Any person may request to be added to the listserv.

9.2 Availability of records

Records of the CAP will be presumed to be subject to public disclosure under the Tennessee Public Records Act, Tenn. Code Ann. Title 10, Chapter 7, unless confidentiality for specified material has been established under Tennessee law. Requesting confidentiality of any materials submitted to the CAP 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.

9.3 Confidential information

Any confidential information provided to the CAP in the manner described in section 9.2 of this manual that can be treated as confidential under the Tennessee Public Records Act shall be kept confidential.