

FINAL

State Implementation Plan Amendments
and
Hearing Record
Date of Hearing: October 8, 1992

North Dakota State Department of Health and
Consolidated Laboratories
Air Pollution Control Program
1200 Missouri Avenue
Box 5520
Bismarck, ND 58502-5520

November 1992

FINAL
AMENDMENT TO THE IMPLEMENTATION PLAN
FOR THE CONTROL OF AIR POLLUTION
FOR THE STATE OF NORTH DAKOTA

CHAPTER 12 THE SMALL BUSINESS ASSISTANCE PROGRAM

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- SECTION 12.3, SMALL BUSINESS OMBUDSMAN
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12 The Small Business Assistance Program

12.1 Introduction

Section 507 of the 1990 Clean Air Act Amendments (CAAA) requires each state to submit a revision to their federally-approved State Implementation Plan (SIP) by November 15, 1992, outlining the establishment of a small business stationary source technical and environmental compliance assistance program. This program must include three components; a state ombudsman, a small business assistance program (SBAP), and a state compliance advisory panel. The following eight elements are an essential part of the program:

1. Development, collection, and coordination of information on compliance methods and technologies for small business stationary sources.
2. Assistance 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.
3. Designation of a state office to serve as an ombudsman for small business in implementing the requirements of the Act.
4. Establishment of a small business stationary source compliance assistance program for determining applicable requirements and permit issuance.
5. Adequate mechanisms for notifying small business stationary sources on a timely basis of their rights under the Act.
6. Adequate mechanisms for informing small business stationary sources of their obligations under the Act, 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 this Act.
7. Expedited procedures to respond to requests from small business stationary sources for modification of any work practice or technological method of compliance, or schedule of milestones for implementing such work practice or method of compliance preceding any applicable compliance date, based on the technical 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 Act including the requirements of the SIP.
8. Creation of a Compliance Advisory Panel.

12.2 Scope

One purpose of this SIP revision is to demonstrate the resolve and the ability of the State to implement the eight program elements presented in Section 12.1. Each element will be addressed in a separate section or subsection in this chapter. The State's SBAP will be available to all small business stationary sources as defined by Section 507(c) of the 1990 CAAA and all such eligible sources will not be excluded from the program without prior EPA approval.

12.3 Small Business Ombudsman

The position of Small Business Ombudsman was established in the Office of the Chief of the Environmental Health Section effective April 6, 1992 (see the organizational chart in Chapter 9). Through that office, the Ombudsman will have direct access to the Governor, the State Health Officer, the Head of the Air Pollution Program, and other State agencies and the necessary autonomy to function independently of the air program. The Small Business Ombudsman will perform the following duties:

- Conduct independent evaluations of all aspects of the SBAP;
- Review and provide comments and recommendations to the EPA and State air pollution control authorities regarding the development and implementation of regulations that impact small businesses;
- Facilitate and promote the participation of small businesses in the development of new regulations that impact small businesses;
- Assist in providing reports to higher authorities and the public regarding the applicability of the requirements of the Act to small business;
- Aid in the dissemination of information (i.e., upcoming air regulations, control technologies, etc.) to small businesses and other interested parties;
- Participate in and sponsor meetings and conferences with State/local regulatory officials, industry groups, and small business representatives;
- Aid in investigating and resolving complaints and disputes from small businesses against the State air pollution control authorities;
- Periodically review the work and services provided by the SBAP with trade associations and small business representatives;
- Operate a toll-free telephone hotline to provide confidential help on individual source problems and grievances;

- Refer 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;
- Arrange for and assist in the preparation of guideline documents by the SBAP to ensure that the language is readily understandable by the lay person;
- Work with trade associations and small businesses to bring about voluntary compliance with regulations under the Act;
- Interface with Regional and State offices of the Small Business Administration, the 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;
- Interface with private sector financial institutions to assist small businesses in locating sources of funds to comply with State air pollution control requirements;
- Serve as secretariat to the State Small Business Compliance Advisory Panel.

Sufficient resources will be made available to the Obmudsman's office to enable it to discharge its responsibilities effectively.

12.4 Small Business Compliance Advisory Panel

Section 507(e) of the 1990 CAAA requires the creation of a Small Business Compliance Advisory Panel with the following specific functions:

1. Render advisory opinions on the effectiveness of the small business technical and environmental compliance assistance program, difficulties encountered, and degree and severity of enforcement.
2. Prepare periodic reports to the EPA on the compliance status of the small business technical and environmental compliance assistance program following the intent of the provisions of the Paperwork Reduction Act, the Regulatory Flexibility Act, and the Equal Access to Justice Act.
3. Review information for small business stationary sources to assure such information is understandable to the layperson.

The Panel shall consist of at least seven members selected by the following method:

1. The Governor of the State shall select two members who are not owners or representatives of owners of small business stationary sources to represent the general public.
2. The State Health Officer shall select one member to represent the State Department of Health and Consolidated Laboratories.
3. The State legislature shall select four members who are owners or representatives of owners of small business stationary sources. The majority and minority leadership in both the house and the senate shall each appoint one member of the panel.

The Panel was established by the Governor on May 21, 1992, under Executive Order 1992-5 (see Attachment 1). A current list of the members of the panel is available from the Department.

Funding for the Panel will be provided by the Department and sufficient resources will be made available to the Panel to conduct its business.

12.5 Small Business Assistance Program (SBAP)

The heart of the State small business technical and environmental compliance assistance program is the SBAP which will reside within the North Dakota Department of Health and Consolidated Laboratories. The SBAP will act as an information clearinghouse by referring small businesses to State technical experts within the Department who are trained to handle specific questions relevant to achieving compliance with the 1990 CAAA. In addition, the SBAP will collect and disseminate information to small businesses on determining applicable requirements under the CAAA, permit issuance, small business' rights and obligations under the CAAA, compliance methods, acceptable control technologies, pollution prevention, accidental release prevention and detection, audit programs and procedures, and other matters deemed useful or necessary by the Department. The SBAP also will consider requests from small business stationary sources for modifications of work practices, technological methods of compliance, or compliance procedures and provide guidance as necessary.

12.5.1 Dissemination of Technical and Compliance Information to Small Businesses

One of the most important aspects of the SBAP is the dissemination of technical and compliance information to small businesses. This flow of information generally involves two components; a proactive component and a reactive component. The proactive component is in some ways the more important component because it involves the active advertisement of the program. The regulated community must become aware of their obligations under the CAAA. The reactive component is also important, but it comes into play only after the regulated community has recognized that there is or could be some obligation on their part to comply with the CAAA.

The Department is committed to adequately funding the proactive component of the program. Expenditures will be mainly in the form of advertising in the newspapers and on radio and TV. Public service announcements will be used to the maximum extent possible. Informational packets will be distributed as they become available. Other avenues for disseminating information would be through the Secretary of State's office, the Department of Economic Development and Finance, the Air Pollution Control Advisory Council, the State Ombudsman's office, the Federal Small Business Assistance Office, local Chambers of Commerce, the Department's Occupational Safety and Health Program, public hearings, and by the identification of potentially affected sources by the Department.

Reactive components of the program would include the installation of a toll-free hotline to facilitate contacting the Department and the designation of a point-of-contact on the Department staff to handle inquiries. It is anticipated that we will not need to devote a special staff to this component because of the limited number of sources in the State; rather, the point-of-contact would direct the calls to knowledgeable members in the permitting section that would be able to answer the questions. The State Ombudsman also will be involved in the information dissemination process and will be able to refer small business inquiries to the proper source of information. Other sources of information available to small businesses include the following:

- public hearings on rule changes that affect small businesses
- control technology guidelines (CTG's) provided by EPA
- EPA's Control Technology Center
- the Emissions Measurement Technical Information Center (EMTIC)
- the Emergency Planning and Community Right-to-Know hotline
- EPA Regional Offices
- other states' air programs
- industry/trade groups

12.5.2 Methods of Pollution Prevention and Accidental Release Prevention and Detection

Pollution prevention is obviously preferable to having to deal with the consequences of pollution; however, not all pollution can be prevented. Pollution that cannot be prevented should be recycled, treated in an environmentally safe manner, or released to the environment in an environmentally safe manner. Pollution prevention must be dealt with in a multi-media manner. The SBAP

will work within established Department pollution prevention programs and will promote the goals of all State pollution prevention programs. The development and sponsorship of pollution prevention training programs, workshops, and seminars will be a Department goal.

While the pollution prevention program mainly deals with preventing pollution resulting from the normal operation of a business or facility, a closely related concern is the prevention and detection of accidental releases. Much of the information needed by small businesses in this area will be generated by EPA's Chemical Emergency Preparedness and Prevention Office (CEPPO). As this information becomes available, it will be made available through the SBAP to the State's small businesses. Prevention information should include information on chemical process safety management. Specific questions not answerable at the local level will be directed to the EPA Region VIII Pollution Prevention Contact, or the EPA Region VIII Accidental Release Prevention and Detection Preparedness Contact.

12.5.3 Compliance Assistance for Determining Small Business Stationary Source Applicability Requirements and Permitting

The SBAP will provide direct and timely, one-on-one assistance to small businesses in the areas of needed technical and compliance assistance. Such assistance would include identifying applicable rules, determining the need for a permit, and identifying alternative methods or procedures for achieving compliance with the applicable rules. Assistance would also be provided in areas such as fee explanations, application procedures, expected processing times, potential consequences of noncompliance, and appeal processes.

12.5.4 Notifying Small Businesses of Their Rights

It is important that small business stationary sources know their legal rights under the CAAA, and that this information be disseminated in a timely fashion. This is especially true if a small business stationary source is being notified of a violation. However, it is also important for these sources to have this information with sufficient lead time to evaluate compliance methods and the applicable requirements. Some methods for disseminating this information would be through the distribution of pamphlets, public service announcements, word-of-mouth from field inspectors, and making presentations at trade or chamber of commerce meetings. The Department intends to use any or all of these methods to disseminate the information in a timely manner and in the case of a violation would provide specific information as to the rights of the violator under the CAAA.

12.5.5 Small Business Stationary Source Audit Program

In order to ensure that small business stationary sources are operating in compliance with the CAAA, it is necessary to conduct audits of those sources. The Department will maintain a list of environmental consulting companies and that list will be available upon request. For those sources that cannot afford to hire a consultant, the Department will conduct a consultation audit to assess the need for control measures and/or a Permit to Operate. A source must request this service in writing and state that they do not have the resources to hire an independent consultant.

The Department will conduct an audit in conjunction with the initial inspection for those sources required to obtain a Permit to Operate to ensure that the source is in compliance. Additional audits on a recurring basis may be necessary depending on the amount and type of pollutant emitted. A primary tenet of the Small Business Assistance Program is pollution prevention, and pollution prevention procedures and policies will be stressed by State inspectors during all State-conducted audits.

12.5.6 Modification of Work Practices or Technological Methods of Compliance

The Department anticipates that requests for modification of work practices or alternate control methods will be forthcoming from small business stationary sources. Such requests should be submitted, in writing, and be addressed to:

North Dakota Department of Health
and Consolidated Laboratories
Division of Environmental Engineering/SBAP
Box 5520
Bismarck, ND 58502-5520

Each request will clearly describe the standard work practice or control method and the proposed modification to that practice or method. The Department will note the date and time of receipt and conduct an initial evaluation of the request. The State Small Business Ombudsman's office will be given a copy of the request for review. Within 30 days, the Department will either approve the request, or for those requests which are determined to be beyond the purview of this Department, either technically or procedurally, the request will be forwarded to EPA for evaluation with a request that a determination be made and we be advised of that determination within 60 days. A copy of the letter referring the request to EPA will be sent to the source. In no case will a Federally-approved SIP be affected by the Department's action without formal approval of the EPA. Upon receipt of EPA's determination, the source will be advised of the decision. If the request is approved, the source will be required to establish a schedule for completing the modification and provide a copy of that schedule to the Department. Upon notice that the modification is complete, the Department will inspect the source to determine that

the modification was completed as specified and that the source is in compliance. If source testing is required to show compliance, such testing will be the responsibility of the source. In those cases where a public hearing is deemed necessary, the Department's established procedures for public hearings will be followed.

12.5.7 Fee Schedule

A permit fee schedule applicable to small business stationary sources is included in Chapter 33-15-14 of the Air Pollution Control Rules. The waiver or reduction of these fees can be requested by a small business stationary source. Fees can be waived or reduced if a source is determined not to have sufficient financial resources to pay such fees. Sufficient documentation must be submitted with the request to allow the Department to evaluate the request. A decision will be made by the Department within 60 days of receipt of a written request, and the source will be promptly notified of the decision. Requests for waiver or reduction of fees should be sent to the North Dakota Health Department, Division of Environmental Engineering.



GEORGE A. SINNER
GOVERNOR

State of North Dakota

OFFICE OF THE GOVERNOR
600 E. BOULEVARD — GROUND FLOOR
BISMARCK, NORTH DAKOTA 58505-0001
(701) 224-2200

EXECUTIVE ORDER 1992-5

I, GEORGE A. SINNER, GOVERNOR OF THE STATE OF NORTH DAKOTA, BY THE AUTHORITY VESTED IN ME, DO HEREBY ESTABLISH A SMALL BUSINESS COMPLIANCE ADVISORY PANEL, TO CONSIST OF SEVEN MEMBERS TO BE DETERMINED AS FOLLOWS:

1. TWO MEMBERS WHO ARE NOT OWNERS OR REPRESENTATIVES OF OWNERS OF SMALL BUSINESS STATIONARY AIR POLLUTION SOURCES TO REPRESENT THE GENERAL PUBLIC AND BE APPOINTED BY THE GOVERNOR.
2. ONE MEMBER TO REPRESENT THE STATE AIR POLLUTION PERMITTING AUTHORITY TO BE APPOINTED BY THE STATE HEALTH OFFICER.
3. FOUR MEMBERS WHO ARE EITHER OWNERS OR REPRESENTATIVES OF SMALL BUSINESS STATIONARY AIR POLLUTION SOURCES TO BE APPOINTED BY THE MAJORITY AND MINORITY LEADERSHIP (1 EACH) IN BOTH THE STATE SENATE AND HOUSE.

ALL MEMBERS OF THE PANEL WILL SERVE ON THE COUNCIL AT THE PLEASURE OF THE APPOINTING AUTHORITY WITHOUT COMPENSATION; HOWEVER, REIMBURSEMENT FOR TRAVEL AND LODGING WILL BE AUTHORIZED AT STATE RATES AND PAID BY THE DEPARTMENT OF HEALTH AND CONSOLIDATED LABORATORIES. THE TERMS OF APPOINTMENT WILL BE FOR A PERIOD OF FOUR YEARS EXCEPT THAT ONE OF THE INITIAL GOVERNOR'S APPOINTEES AND THE INITIAL STATE HOUSE LEADERSHIP APPOINTEES WILL BE FOR A TERM OF TWO YEARS. SUBSEQUENT APPOINTMENTS ALL WILL BE FOR A TERM OF FOUR YEARS.

THE PURPOSE OF THE PANEL IS TO ASSIST SMALL BUSINESSES IN COMPLYING WITH REQUIREMENTS OF THE FEDERAL CLEAN AIR ACT AMENDMENTS OF 1990. THE PANEL INDEPENDENTLY WILL OVERSEE THE STATE SMALL BUSINESS ASSISTANCE PROGRAM AND THE STATE SMALL BUSINESS OMBUDSMAN TO DETERMINE THEIR EFFECTIVENESS, AND WILL EXAMINE INFORMATION DISSEMINATED TO SMALL BUSINESSES TO ENSURE THAT IT IS UNDERSTANDABLE FOR NONTECHNICAL PERSONS.

A CHAIR OF THE PANEL WILL BE ELECTED BY THE MEMBERS.

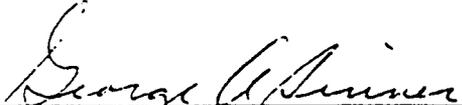
This order is issued upon the following bases and for the following reasons:

1. The Governor is vested with the executive authority pursuant to Article V, Section 1 of the North Dakota Constitution.



2. Small businesses in the State will require assistance in complying with the Federal Clean Air Act Amendments of 1990.
3. The establishment of such a panel is required by Section 507(e) of the Federal Clean Air Act Amendments of 1990.

Executed at Bismarck, North Dakota, this 21st day of May, 1992.



GEORGE A. SINNER
Governor

ATTEST:

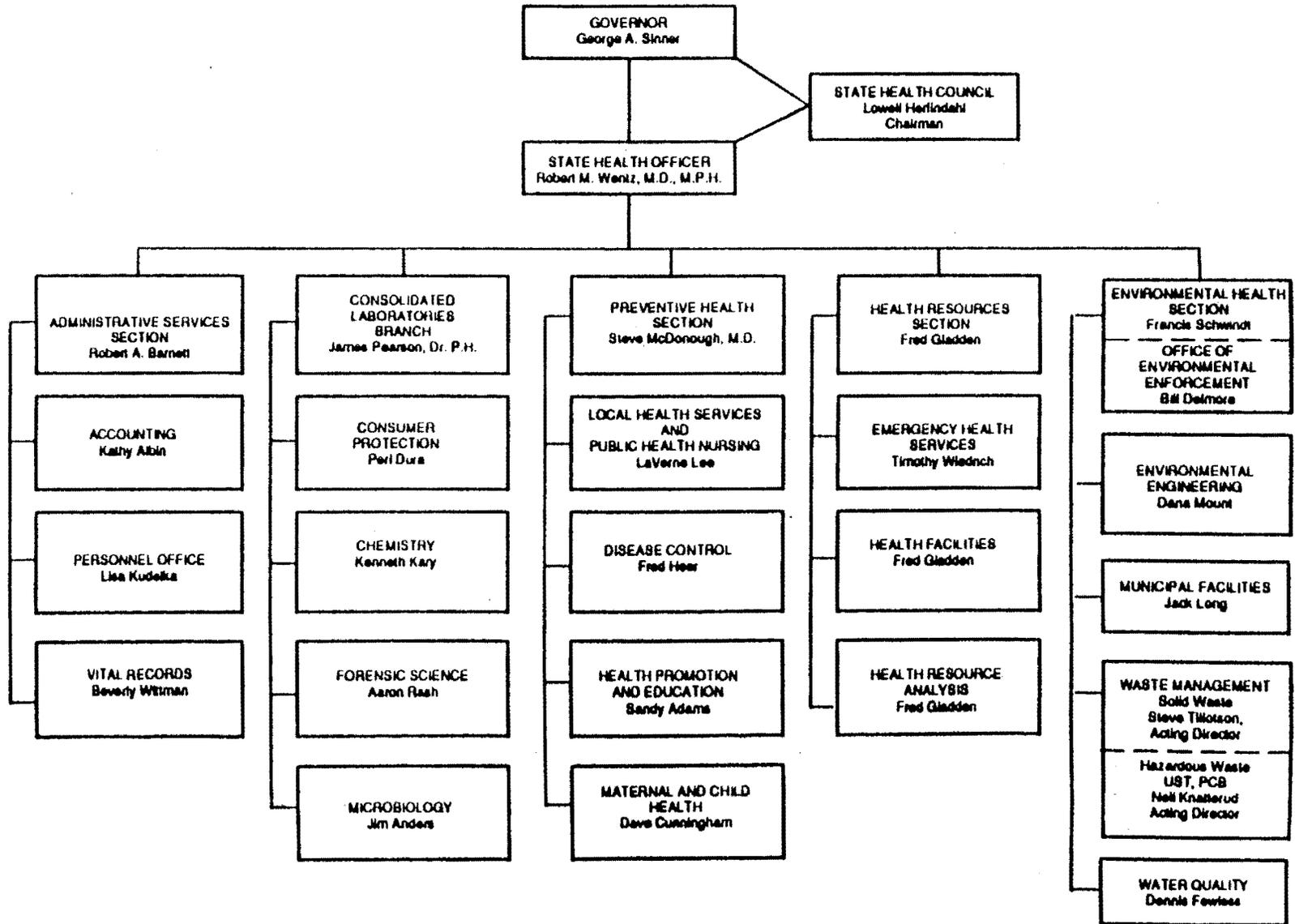


Secretary of State

Deputy

**NORTH DAKOTA STATE DEPARTMENT OF HEALTH
AND CONSOLIDATED LABORATORIES**

July 1, 1991



NORTH DAKOTA STATE DEPARTMENT OF HEALTH & CONSOLIDATED LABORATORIES
ENVIRONMENTAL HEALTH SECTION

