

U.S. ENVIRONMENTAL PROTECTION AGENCY ASBESTOS AND SMALL BUSINESS OMBUDSMAN MONITORING AND REPORTING STRATEGY

This Monitoring and Reporting Strategy outlines a plan to implement EPA's Asbestos and Small Business Ombudsman's (ASBO) statutory responsibilities to collect information, generate program reports, and make periodic recommendations for improvements. The focus of this document is to ensure ASBO's statutory responsibilities are carried out with a defined strategy and timeline in how the ASBO will adhere to them. The ASBO is also responsible for other Agency policy and program activities, which are in alignment with the statute requirements, though not expressly required by law. As practicable, this Monitoring and Reporting Strategy will include those additional responsibilities to allow for a more comprehensive approach to the ASBO Program's communication.

BACKGROUND

A. Overview of Program

The ASBO Program, located under the Office of the Administrator's Office of Small and Disadvantaged Business Utilization, serves to advocate for and connect with the public and small business community by providing informal guidance on various environmental and EPA resources. An ombudsman is defined as a representative who investigates, reports on, and helps settle complaints concerning a particular organization, business, or other entity.¹ EPA's ASBO Program encompasses two separate ombudsman roles, each with its own unique statutory responsibilities, to serve two distinct functions: (1) the Asbestos Ombudsman role, and (2) the Small Business Ombudsman (SBO) role. For both roles, the ASBO Program services a toll-free hotline to answer asbestos or small business compliance questions, serving as an informational liaison and advocate for a fair process within the Agency. For a complete overview of the ASBO's mission, purpose and standards go to [ASBO's Program Charter](#) available on EPA's intranet site.

Although the Asbestos Ombudsman and SBO roles have their own unique statutory authority, as defined below, there is an additional Agency policy directive relevant to the ASBO Program. The SBO role is also required to lead the Agency's [Section 213 Program](#), also known as EPA's Ongoing Informal Small Entity Guidance Program. In this Program, EPA's SBO is expected to provide small entity compliance assistance and informal guidance by making technical information on EPA regulations more accessible through its hotline service support.

B. Statutory Requirements

The ASBO Program's statutory requirements are derived from two distinct laws, one for each ombudsman role.

1. Asbestos Ombudsman – The [Asbestos Hazard Emergency Response Act \(AHERA\)](#) directs EPA to promulgate regulations (e.g., the Asbestos-Containing Materials in Schools Rule) requiring local educational agencies to inspect their school buildings for asbestos-containing building material, prepare asbestos management plans and perform asbestos response actions to prevent or reduce asbestos hazards. AHERA also requires EPA to appoint an Asbestos Ombudsman. The specific AHERA provision mandates as follows:

15 U.S.C § 2652. Asbestos Ombudsman

(a) Appointment. The Administrator shall appoint an Asbestos Ombudsman, who shall carry out the duties described in subsection (b) of this section.

(b) Duties. The duties of the Asbestos Ombudsman are— (1) to receive complaints, grievances, and requests for information submitted by any person with respect to any aspect of this subchapter, (2) to render assistance with respect to the complaints, grievances, and requests received, and (3) to make such recommendations to the Administrator as the Ombudsman considers appropriate.

2. Small Business Ombudsman – [Section 507 of the 1990 Clean Air Act \(CAA\) Amendments](#) establishes the Small Business Stationary Source Technical and Environmental Compliance Assistance Program. Section 507(d) text is provided below and defines the entire scope of the EPA's SBO role under the CAA:

42 U.S.C. § 7661f(d) Monitoring

The Administrator shall direct the Agency's Office of Small and Disadvantaged Business Utilization through the Small Business Ombudsman (hereinafter in this section referred to as the "Ombudsman") to monitor the small business stationary source technical and environmental compliance assistance program under this section. In carrying out such monitoring activities, the Ombudsman shall—

(1) render advisory opinions on the overall effectiveness of the Small Business Stationary Source Technical and Environmental Compliance Assistance Program, difficulties encountered, and degree and severity of enforcement;

(2) make periodic reports to the Congress on the compliance of the Small Business Stationary Source Technical and Environmental Compliance Assistance Program with the requirements of the Paperwork Reduction Act,³ the Regulatory Flexibility Act [5 U.S.C. 601 et seq.], and the Equal Access to Justice Act;

(3) review information to be issued by the Small Business Stationary Source Technical and Environmental Compliance Assistance Program for small business stationary sources to ensure that the information is understandable by the layperson; and

(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.

C. Background of ASBO's Previous Monitoring and Reporting Activities

The Asbestos Ombudsman role and the SBO role both have statutory requirements extending over 30 years. In reviewing historical documentation for both roles, there is a lack of clarity and consistency in how the combined roles reported programmatic information or made recommendations. For example, in the past, the ASBO Program only reported on the activities under Section 507 of the 1990 Clean Air Act Amendments. There are no previous ASBO reports to address or evaluate asbestos concerns, as managed under the Asbestos Ombudsman hotline, nor did previous reports cover small business inquiries that the SBO role manages through the ASBO hotline, as required under EPA's 213 Program. This document seeks to provide a more comprehensive strategy in reporting out on all of the ASBO Program's statutory and policy responsibilities, as required by law and EPA guidance.

Another limitation in previous ASBO reporting was the use of an Information Collection Request (ICR), to collect data from the states, which was not only time consuming and cumbersome to collect, but limiting in scope. The most recent 507 Program report, published in 2012, was based on information gathered through a static and inflexible standardized questionnaire to the Small Business Stationary Source Technical and Environmental Compliance Assistance Programs (aka Small Business Environmental Assistance Program (SBEAP)) for each state, the utility of which was quite limited because it did not speak to the entirety of the 507 Program. Previous SBO reports were missing a key component which is the effectiveness of the *Federal* portion of the 507 Program i.e., EPA's role(s).

In April 2021, EPA's Office of General Counsel (OGC) provided a preliminary legal analysis to review the SBO role under the Clean Air Act, Section 507. This advice was sought to help define SBO's legal responsibilities and clarify the scope of the role as defined under the law. Based on OGC's preliminary legal analysis, it was found that the 507 Program statute requires the SBO to monitor and report on the Small Business Stationary Source Technical and Environmental Compliance Assistance Program, which OGC refers to as the Federal Small Business Assistance Program (aka Federal SBAP) as defined in Section 507(b) "Program". As mentioned, this is a departure from the monitoring and reporting activities historically managed by the SBO, which only monitored and reported on the 507 Program activities in the states.

With this current legal interpretation provided, the SBO shall apply a more holistic and comprehensive monitor and review of the 507 Program. This requires continuing to take into consideration the needs of the State Programs within the 507 Program, while also renewing a focus on the effectiveness of the Federal SBAP. Significantly, this new SBO focus on EPA's activities, rather than primarily on the activities of external (state) entities, aligns more closely with the traditional scope and standards of a federal ombudsman roleⁱⁱ. A federal ombudsman's role within their agency is meant to support problem solving, addressing issues or complaints from outside the organization, and serve as an alternative to resolve disputes. EPA's SBO role, with regards to the 507 Program, is meant to address issues within EPA, by monitoring the effectiveness of the Federal portion of the Program and how that may trickle down and impact the State Programs.

Based on previous limitations of the 507 Program's reporting, the intent of ASBO's Monitoring and Reporting Strategy is to provide a reporting approach that addresses both EPA's Asbestos

Ombudsman role, and the specific 507 Program reporting requirements for EPA's SBO role under the 1990 CAA Amendments. To best meet the needs of both Ombudsman roles, the ASBO is recommending the development of **two distinct suites of ASBO reporting**, 1) ASBO Hotline and Informal Guidance Program Reports, focused on activities managed through the ASBO Hotline, and 2) ASBO 507 Advisory Opinions and Program Reports, focused on responsibilities and activities as required in Section 507 of the CAA. As defined below, the following is a framework of how ASBO will manage its intake and data collection process, as well as draft reports and advisory opinions as defined by statute, or as appropriate, to achieve programmatic policies and goals.

REPORT 1

ASBO HOTLINE AND INFORMAL GUIDANCE PROGRAM REPORTS

Monitoring and Reporting Framework

A. ASBO Hotline and Informal Guidance Data Collection

The ASBO Program manages an intake process to capture data from the ASBO hotline, email, and direct inquiries from the public on asbestos issues and environmental regulations impacting small businesses. ASBO will continue to log inquiry information into the ASBO hotline database, which tracks basic information of the inquiries and general program assistance provided. Contacting the ASBO is voluntary, free of charge, and the caller is not required to identify themselves to receive assistance. Basic information about the nature of the call is captured in the ASBO database to help the program examine and report on general activities, trends, or ongoing issues that may benefit the Agency for awareness and further consideration.

ASBO offers two levels of program support depending on the complexity or request of the inquiry:

1. General Hotline Referrals – Inquiries (via telephone, email, or letter) are managed by ASBO hotline staff to serve as informational liaisons in answering basic questions and directing more complex inquiries to technical experts within EPA or to various state programs.
2. Direct Ombudsman Support – Inquiries that go beyond general hotline questions or are not addressed through other technical channels within EPA are elevated to the ASBO Ombudsman for more one-on-one assistance. Direct Ombudsman support may include problem assessment and exploring potential options to manage disputes which are not addressed elsewhere at EPA.

B. ASBO Hotline and Informal Guidance Program Report

The ASBO Hotline and Informal Guidance Program Report will broadly cover how the ASBO responds to hotline and direct Ombudsman inquiries, covering both asbestos and general regulatory small business concerns. *All 507 Program specific issues will be covered in the 507 Program Report.* Based on the hotline and ombudsman data collection process, the ASBO shall report specific findings and recommendations on hotline calls, inquiries and emails as follows:

1. Timeline – The ASBO Hotline and Informal Guidance Program Report will be published every three (3) years to cover the previous 3 fiscal years of hotline data.
2. Contents – The ASBO Hotline General Program Report will identify inquiry trends, common questions or concerns, general themes, and the referral services captured in ASBO's hotline support. No specific names, companies or programs that contact the ASBO Program will be provided in this report. The report will identify ombudsman assistance, covering both asbestos and informal guidance to small businesses on regulatory compliance per the EPA's Section 213 Informal Guidance Program policy. *Small business compliance assistance issues related to the 507 Program will be covered under the separate ASBO 507 Program Report Framework defined below.*
3. Recommendations – Based on trends or issues raised, the ASBO may provide high-level programmatic recommendations to help bring awareness and attention to concerns heard by the ASBO Program.
4. Agency Stakeholder Review – Before publication, and as applicable, the ASBO will offer EPA programs (that may be specifically mentioned within an ASBO Hotline and Informal Guidance Program Report) the opportunity to review and respond in writing to draft reports. Responses will be included within the report when appropriate.
- Publication process – The ASBO Hotline and Informal Guidance Program Reports will be posted to EPA's intranet site and shared with EPA's Chief of Staff and Senior Resource Official for the Office of the Administrator, along with other key ASBO stakeholders as noted at the end of this document. Reports may also be made publicly available on ASBO's website and announced in its monthly newsletter, *SmallBiz@EPA*, as appropriate to further the traditional ombudsman role in supporting openness and transparency.

REPORT 2

ASBO 507 ADVISORY OPINIONS & PROGRAM REPORTS

Monitoring and Reporting Framework

A. ASBO 507 Program Monitoring and Data Collection

ASBO will obtain data and information to meet the CAA's Section 507 advisory opinion and reporting requirements through the following three mechanisms:

1. Agency Consultation – The ASBO will ensure there is ongoing discussion and collaboration with EPA's Federal Small Business Assistance Program (SBAP), along with other relevant EPA program offices, which are determined to have Agency responsibilities within Section 507 of

the CAA. Specifically, the ASBO will work closely with EPA's Office of Air and Radiation (OAR), and its Office of Air Quality Planning and Standards (OAQPS) staff whenever possible. Ongoing communication and information sharing will be necessary in developing ASBO's 507 Program Reports and Advisory Opinions.

2. *Independent Research* – The ASBO may collect data regarding the Federal SBAP and State 507 Programs through research and publicly available information or by independent inquiry. The ASBO will work with EPA staff to access information and data already collected and managed within EPA systems or databases to learn more about Federal SBAP responsibilities and State SBEAP program activities under Section 507 of the Clean Air Act.
3. *Ongoing Communications and Dialogue* – As a discretionary matter, ASBO may be contacted by (or request ad hoc interviews with) 507 Program stakeholders, which include both the Federal SBAP and state SBEAP staff, to learn more about their roles or programs and how they may impact small business environmental assistance as required by the 507 statute. This interview process will provide an opportunity for candid and open communication about specific challenges and setbacks that may limit program effectiveness.

B. ASBO 507 Program Advisory Opinions and Reports

Section 507 of the Clean Air Act requires the SBO to develop both advisory opinions and periodic reports to Congress.

- **507 Program Advisory Opinions** shall be developed and disseminated, primarily as an internal communication document, to assist the Agency in addressing the overall effectiveness of the Small Business Stationary Source Technical and Environmental Compliance Assistance Program (Federal SBAP). Advisory opinion documents shall be used to address administrative issues, difficulties or inconsistencies encountered within the Federal SBAP, and degree or severity of the Federal SBAP in adhering to the requirements of the 507 Program.
- **507 Program Reports** shall broadly monitor and address the Federal SBAP in adhering to the Paperwork Reduction Act (PRA)ⁱⁱⁱ, Regulatory Flexibility Act (RFA)^{iv} and the Equal Access to Justice Act (EAJA)^v, as indicated in Section 507. Section 507 does not specifically prescribe which requirements of these statutes must be reviewed or reported. As a result, the SBO has broad flexibility and discretion in monitoring Federal SBAP compliance with those statutes.

Based on the common purposes of these three statutes, which is to ensure that agencies consider their overall impacts on small businesses^{vi}, the ASBO will assess and report on the Federal SBAP's small business engagement, communication, and oversight activities. This report will be conducted and developed in close coordination with the Federal SBAP and used as an opportunity to work together on possible areas of improvement.

Based on the data and information collected through Agency consultation, independent research, and ongoing communication/dialog, the ASBO shall generate 507 Program reports and advisory opinions of specific findings and recommendations as follows:

1. Timeline – The ASBO will generate an ASBO 507 Program Report at least every five (5) years once the first report is published upon approval of this strategy. The reports will be based on the fiscal year. ASBO 507 Program Advisory Opinions will be developed on an ad hoc, or as needed/requested, to aid in internal Agency decision-making.
2. Contents – The ASBO 507 Program Report, as defined in 507(d)(2), shall address the Federal SBAP's adherence to small business consideration requirements, as defined under the RFA, PRA and EAJA. 507 Reports may seek to highlight larger, overarching small business assistance issues tied to these statutes, including activities or trends that impact the overall effectiveness of the 507 Program within the states in small businesses environmental compliance assistance.

The ASBO's Advisory Opinions, as defined in 507(d)(1) shall focus on assisting the Agency with decision-making of more sensitive, internal, or administrative issues within EPA, which may impact the overall effectiveness of the 507 Program and related small business assistance provided throughout the country in the states.

3. Recommendations – The ASBO shall make recommendations within its reports and advisory opinions, which aim to improve awareness and effectiveness to the 507 Program, in providing technical environmental compliance assistance to small businesses.
4. Agency Stakeholder Review – Before 507 Program Reports or Advisory Opinions are finalized, the ASBO will offer an opportunity for stakeholder review and response to those Programs or AAsip which are specifically mentioned. Agency stakeholder responses will be included within the report as appropriate.
5. Publication – The ASBO shall make the ASBO 507 Program Reports available on the ASBO website, announced in the *SmallBiz@EPA* newsletter, and made available as a report to the U.S. Congress per Section 507(d)(2).

Unless requested by EPA Leadership, the ASBO Advisory Opinions shall not be made publicly available online, but rather, will serve as an internal Agency document for administrative, deliberative, and planning purposes in monitoring the Federal SBAP.

Additionally, consistent with Section 507(d)(4) requirements, the Federal SBAP will serve as the "secretariat" in supporting the ASBO in the development and dissemination of 507 Program Reports by sharing regulatory and programmatic actions and engagement efforts that have been developed for or may impact small businesses. The Ombudsman will work closely with the Federal SBAP for input, assistance, and resources in the development and

dissemination of ASBO's 507 Program Reports through the Federal SBAP contacts, website, and/or other outreach resources, as appropriate.

ACKNOWLEDGEMENTS: ASBO STAKEHOLDER FEEDBACK

Many thanks to the following ASBO stakeholders who have provided comments and feedback to improve and fully vet the ASBO's Monitoring and Reporting Strategy document.

EPA Headquarters Feedback:

Provided review, started August 2021, full HQ review in December 2021

- EPA's Office of Air and Radiation, Office of Air Quality Planning and Standards (OAQPS)
- EPA's Office of Chemical Safety and Pollution Prevention (OCSPP), Office of Pollution Prevention and Toxics (OPPT) Asbestos Program
- Office of Congressional and Intergovernmental Relations (OCIR)
- EPA's Office of Policy's Regulatory Management Division, to include the Regulatory Steering Committee (RSC)
- EPA's Office of Enforcement and Compliance Assurance (OECA)
- Office of General Counsel (OGC)
- EPA's Administrator's Front Office (AO)

EPA Regional Feedback:

Provided review, January 2022

- Regional Air Toxics Committee (RATC)
- Regional Air Small Business Liaisons (RASBLs)
- EPA Regional Offices – through the Lead Region, EPA Region 10

Non-EPA Feedback:

Provided review, March 2022

- State Small Business Environmental Assistance Programs (SBEAPs)

ⁱ <https://www.merriam-webster.com/dictionary/ombudsman>

ⁱⁱ See the Administrative Conference of the United States (ACUS) Recommendation 2016-5: The Use of Ombuds in Federal Agencies: <https://www.acus.gov/research-projects/use-ombuds-federal-agencies>. Extensive report and recommendations for agencies to use in establishing and maintaining ombuds offices

ⁱⁱⁱ <https://www.epa.gov/laws-regulations/summary-paperwork-reduction-act>

^{iv} <https://www.epa.gov/laws-regulations/summary-regulatory-flexibility-act-amended-small-business-regulatory-enforcement>

^v <https://www.acus.gov/sites/default/files/documents/13%20EAJA%20Basics.pdf>

^{vi} <https://www.acus.gov/recommendation/regulatory-analysis-requirements>