

An Example of the Importance of Regulatory Flexibility for Small Business

Safe Tanks in Rural Oregon

The Oregon Department of Environmental Quality has an underground storage tank program which registers tanks containing petroleum products, and ensures that they are operated in a safe manner. This regulatory program is intended to prevent the large-scale problems of leaking tanks and cleanup efforts required to correct the leakage of several years past. Part of this program requires tank operators to participate in an educational program about proper tank maintenance and operation.

Under Oregon's Administrative Procedures Act, the Department was encouraged to use a broad-based Advisory Committee to help draft the rules for tank operation and safety. Included in this committee were representatives of small service stations and other operators in remote locations or with few employees. These small business stakeholders raised the issue that attending training at locations away from their businesses would result in significant impacts on their businesses, including the need to close down while the owner attended the classes.

Based on the input received from this Advisory Committee, DEQ designed a hardship waiver option so that an education program could be delivered to small tank operators in rural locations. Options include the use of on-line, workbook, or video tape instruction providing a flexible means of compliance without compromising the safety of tank operation. After receiving the training, the small service station operators were able to properly operate their storage tanks in compliance with the law, without the burden of closing their businesses or traveling long distances to attend class.

Although Oregon's Administrative Procedures Act did not require DEQ to get the input of the small business community, DEQ decided to do so as a matter of good government. Other agencies would benefit greatly by implementing a similar process. The end result was a victory for these small businesses and did not jeopardize the objective of the agency.

During the 2005 legislative session, the Oregon Legislature, recognizing the need to codify this process, strengthened its regulatory flexibility statute to provide further incentives for agencies to use advisory committees like this one. Since the passage of HB 3238, over 300 staff of regulatory agencies participated in training sessions to learn the requirements of the new law and how to develop effective regulations that meet the unique needs of small businesses while at the same time accomplishing the agency objective.

This example demonstrates the importance of strong regulatory flexibility legislation. Under Oregon law, agencies are required to consider the impact of regulations on small business and to consider less costly methods for achieving the purpose of the proposed rule. Giving small employers a voice early in the process is key to reducing the negative impact of regulations on small businesses, increasing the level of regulatory compliance, and passing on cost savings to state economies.