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CONGRESSIONAL AND INTERGOVERNMENTAL RELATIONS
ENVIRONMENTAL PROTECTION AGENCY
BEFORE THE
COMMITTEE ON ENVIRONMENT AND PUBLIC WORKS
UNITED STATES SENATE

SEPTEMBER 26, 2000

Mr. Chairman and Members of the Committee:

Good morning, I am Diane Thompson, Associate Administrator for Congressional and Intergovernmental Relations at the Environmental Protection Agency (EPA or the Agency). I want to thank the Committee for the opportunity to appear before you today to discuss several bills which bear upon Agency activities. They are: S. 2800, a bill to streamline environmental reporting; S. 1915 and S. 2296, two bills on small community assistance; and S. 1763, a bill re-authorizing the EPA solid waste ombudsman.

I am accompanied this morning by Margaret Schneider, Principal Deputy Assistant Administrator for Environmental Information, and Michael Shapiro, Principal Deputy Assistant Administrator for Solid Waste and Emergency Response.

Streamlined Reporting

The first bill I would like to address is S. 2800, the "Streamlined Environmental Reporting and Pollution Prevention Act of 2000," which has been introduced by Senators Lautenberg and Crapo. By its emphasis on facility reporting, reducing the burden on States and regulated facilities, ensuring more accurate environmental data, and increasing the

efficiency of EPA's data collection efforts, the goals of S.2800 are consistent with our own on-going efforts in the environmental information field.

Last fall, EPA Administrator Carol M. Browner created the Office of Environmental Information (OEI). This Office has primary responsibility for information management, policy, and technology. Challenged by the Administrator to meet the demand for high-quality environmental information, OEI has begun to implement a number of initiatives to improve the way EPA collects, manages, analyzes, and provides access to environmental information for the American public.

Information Integration

During the collaborative process that was used in creating OEI, the Agency reached out to a wide range of interested parties both inside and outside EPA. We wanted input as to what was needed to ensure that EPA collected and made available to the public high quality information that would enhance environmental decision making.

We heard from many sources, but the message from each was the same: the key to streamlining environmental reporting is improving the integration of environmental information. In response, Administrator Browner directed OEI to design and implement a comprehensive new effort that would enable our data partners, including the States, Tribes, localities, and the regulated community, to more efficiently share and exchange environmental information. This effort -- the creation of a national environmental information exchange network -- is foremost a partnership with the States and others to improve data quality and accuracy, ensure the security of sensitive data, reduce data redundancy, and minimize the burden on those who provide and access information.

There are many components to achieving a successful information integration effort. Among these are:

- making information compatible through common data standards and definitions;
- ensuring that our partners and EPA have the technology to facilitate this integration; and
- positioning EPA to participate in this network through the creation of a centralized data exchange, an electronic reporting capability, an error-correction system, a facility registry system, and other information integration initiatives.

Central Data Exchange

One of the most aggressive efforts we are undertaking to streamline environmental reporting and to promote information integration is the development of a central data exchange (CDX) function. This data exchange will serve as a central point of receipt for most non-confidential environmental reports being sent to EPA. Our CDX is being developed to accommodate a variety of data formats, including electronic, diskette, and the more traditional paper reports. This summer, EPA together with our State partners, began to test some of these electronic formats and functions, including electronic signature protocols. Testing will continue throughout 2001 in anticipation of having our CDX capability fully functional by the end of fiscal year 2002. A major benefit of CDX will be to help eliminate duplication of data entry efforts, a major source of introduced errors in databases.

Electronic Reporting and Error Correction

We have found that a principal source of data error is the manual entry of data. Electronic reporting will reduce the amount of manual entry and enhance quality control procedures. By encouraging electronic reporting, EPA and its community of data users are more likely to have access to more accurate data in the future.

Data quality also is enhanced through the implementation of consistent error detection practices. We have worked closely with our State and Tribal partners and other stakeholders from industry and non-governmental organizations to build and implement an Agency-wide error correction tracking system, creating a single place within EPA where errors found in national data systems can be reported, tracked, and corrected. The error correction process was implemented this past July and now is active in all of the major systems in our Envirofacts electronic data warehouse. The error correction process will be incorporated into additional systems in 2001.

Data Standards and the Facility Registry System (FRS)

We and our data partners have agreed that developing and implementing data standards, common information nomenclature, is a backbone for integrating environmental information. Together we are developing a common approach to specific identifiers for regulated facilities across media-specific environmental information systems. This year we are building and operating a Facility Registry System (FRS) with a single master record of verified facility identification information for each of 50,000 facilities. We are continuing to add authenticated records to the FRS. This registry is a key component of the new integrated system, providing for

more accurate integration of data across EPA systems.

As we work to create a national environmental information exchange network we are committed to building a secure network that will ensure the integrity of the data holdings. We believe this network also must serve the public, providing access to high quality environmental information. Information security and enhancing the public's right to know are both obtainable and necessary components of our information integration effort.

STREAMLINED ENVIRONMENTAL REPORTING AND POLLUTION PREVENTION ACT OF 2000

S. 2800 would explicitly authorize much of the work EPA already has begun. The bill would establish one EPA point of contact for reporting, provide for uniform data standards, allow a single annual data submission, establish a national environmental data model for use as a framework for collecting the reported information and an electronic commerce service center for technical assistance. S. 2800 also would provide for protection of confidential business information, authorize the provision of free software to reporting persons and entities, and provide access to information on pollution prevention technologies and practices.

EPA generally supports S. 2800. Our work on creating a national information exchange network is intended to maximize public access to environmental information in the most cost-effective manner possible, improve data flows between EPA and our State and Tribal partners, and is intended to improve environmental decision-making at all levels. Our experience this past year on our information integration and streamlining initiatives has shown us that these tasks are complicated and require time to achieve. We have tried to be flexible in our approach and are continually evolving in the ways that we work with our State partners. These efforts also cost a

lot of money. We believe strongly, however, that adequate up-front investment ultimately will save the Agency, the States, and the reporting community time, money, and effort.

S. 2800 provides a framework for continued progress toward data integration. As the bill moves forward, we hope to work with Senators Lautenberg and Crapo to resolve some remaining concerns with this legislation. Of particular note, it is critical that any legislation in this area afford the Agency flexibility to respond to very rapidly changing technology. In addition, such legislation also should recognize and affirm that the primary Federal role in streamlining the reporting process should be that of standards setting in partnership with our various data partners, and not software development or licensing. It is also important that any integrated reporting system be as reliable and enforceable as current reporting systems. Finally, it is important to recognize the very significant role that the States play in all of this work and the partnership that already has been established.

With the support of this Committee and the Congress, we believe we can continue to enhance the Agency's data collection efforts, while at the same time, continue to maintain environmental protection and improve the health and safety of the public.

SMALL COMMUNITY ENVIRONMENTAL PROTECTION

Let me turn now to S. 1915, the proposed "Small Community Assistance Act of 1999" and S. 2296, the proposed "Project SEARCH Act of 2000." These two bills deal with assistance to small communities.

First, I would like briefly to describe the Agency's approach to small town environmental protection. One of Administrator Browner's key goals has been to strengthen EPA's relationships with its State and local government partners. We have long understood that small

town governments face special challenges when it comes to environmental protection.

Small town governments are responsible for managing the same range of environmental services as other size governments. They manage drinking water systems, incinerators, storm water systems, and landfills. They own underground storage tanks, chemical and pesticide storage sites, and gravel pits. Some small communities own and operate electric utility plants. Not all small governments lack the resources to provide the environmental protections included in our national environmental laws, such as the Clean Water and Clear Air Acts. It is probably fair to say, however, that all small communities face significant challenges in doing so. In particular, lack of adequate financial, managerial, and technical expertise is a recurring problem.

What constitutes a small town? In 1992, EPA's first advisory group for small towns asked that EPA focus on small communities with fewer than 2,500 residents. S. 1915 defines a small community as a county, parish, borough, or municipality with fewer than 7,500 residents. A number of our environmental statutes define small communities differently. For example, the Safe Drinking Water Act uses two different population thresholds to address the needs of small towns. The Regulatory Flexibility Act defines small communities as having fewer than 50,000 inhabitants.

What EPA Has Done to Address the Needs of Small Towns

The Small Town Environmental Planning Program (STEP), authorized by Section 109 of the Federal Facility Compliance Act of 1992 (PL 102-386), initiated a comprehensive small town environmental planning program at EPA. The key element of STEP was the creation of the Small Town Task Force (STTF). The STTF analyzed our existing small community environmental planning effort and produced a comprehensive set of recommendations for

improving it. Based on those recommendations, EPA is pursuing a strategy for assisting small communities with their environmental protection responsibilities in three ways. These are: small town policy consultation, compliance assistance, and regulatory consultation. These three elements reflect the demand we heard from the STTF for a comprehensive and effective approach.

A Standing Small Community Advisory Panel

Perhaps the most important of the STTF recommendations called for the establishment of a standing advisory panel focused on small community issues. The Administrator responded by creating the Small Community Advisory Subcommittee (SCAS) of the Local Government Advisory Committee (LGAC). The LGAC had been created by Administrator Browner in December 1993 to advise the Administrator on the implementation of Federal environmental requirements by local governments. SCAS was charged with monitoring the implementation of the STTF recommendations. Today, SCAS continues to advise the Agency on its development and implementation of efforts to obtain and enhance small town participation and involvement in Federal environmental planning and decision-making.

After completing an inventory of EPA's small town outreach activities, the first review undertaken by SCAS addressed EPA's implementation of the relevant small community sections of the Unfunded Mandates Reform Act and the Regulatory Flexibility Act. The Subcommittee also reviewed EPA's proposed implementation of the recent Executive Order 13132 on Federalism. We are considering those comments as we prepare to issue the internal guidance on implementing the order. In a similar fashion, SCAS reviewed implementation of the small town ombudsman provisions of the Small Town Environmental Planning Program. SCAS also

commented on EPA's proposed national primary drinking water standard for arsenic. Finally, SCAS also is working with the Agency to produce an inventory of EPA funding sources for small communities. We expect SCAS will take up a review of EPA's technical and compliance assistance efforts to small communities. As you can see, SCAS is actively engaged in representing the "small town point of view" across a wide array of environmental decision-making within EPA.

Compliance Assistance

Ensuring that the Agency fully understands the environmental concerns of small communities is but one element of EPA's small town environmental planning program. Equally important is ensuring that small towns accurately understand environmental requirements. As an important element of EPA's small town initiative, the Agency's program offices provide continuing compliance assistance to small communities. At program offices in Washington and in the Regional offices, we have dedicated staff working to assist small communities. We also have:

- established and supported the Local Government Environmental Assistance Network (LGEAN), a "first-stop shop" to handle Internet and toll-free telephone requests for compliance assistance from small communities;
- established a Small Community Enforcement Flexibility Policy that encourages States to offer small towns compliance assistance as an alternative to traditional enforcement actions;
- published the *Profile of Local Government Operations*, which identifies environmental requirements applicable to local government on an operation-by-operation basis;

- established a unique self-help program – the Drinking Water Peer Review Program – that helps small towns assess the state of each town's environmental compliance. The Drinking Water Peer Review Program will expand to help small towns with other environmental problems;
- established a Small Community Coordinator in Headquarters and small community contacts in each Regional Office.
- convened the ECOS (Environmental Council of the States) Local Government Forum to encourage State environmental commissioners to become more knowledgeable about local governments and small communities.

Early Involvement in Regulatory Process

The third element of our small community environmental planning effort involves finding ways to ensure the early involvement of small towns in the regulatory development process. The goal of early involvement in the regulatory process is to ensure that environmental regulations are developed with an accurate understanding of the unique circumstances and implementation challenges facing small towns. One part of this effort is the rigorous implementation of the small community provisions under the Unfunded Mandates Reform Act and the Regulatory Flexibility Act as amended by the Small Business Regulatory Enforcement Fairness Act (SBREFA). Our efforts here include such practical things as the development of internal guidance documents and training for regulation development managers.

Meaningful consultation depends upon several things: potential stakeholders' awareness and interest in specific regulatory actions, their commitment to fair and effective representation of their perspectives, and their ability to participate in the process. As you are well aware,

resource constraints facing small governments, both in terms of personnel time/availability and fiscal resources, challenge small government officials' ability to participate fully in federal regulatory processes. Fully appreciating these and other concerns facing small entities, EPA has developed, piloted and implemented several outreach activities in an effort to improve its approach to consultation with small governments.

One way EPA continues to improve its approach to small government consultation is by ensuring that regulatory program offices are able to engage small entity representatives in meaningful dialogue during rule development. For example, a centrally-managed process for outreach to small governments, currently under development, will help provide EPA program offices access qualified, knowledgeable small government officials. These officials, in turn, will have the ability to effectively inform the process for developing the entire range of regulations affecting small governments. EPA also makes regulatory information, proposed regulations, and regulatory calendars available to local governments directly through LGEAN.

Concerns About Proposed Legislation

S. 1915 would require the Environmental Protection Agency to take a number of specific actions intended to assist small communities that are attempting to comply with national, State, and local environmental regulations. These actions include establishment of an independent advisory committee and regional small town ombudsman offices to serve as advocates and facilitators for small communities.

Much of the emphasis of S. 1915 appears to be aimed at improving the access of small communities to regulation development. We agree that such involvement is important. However, we believe this is being addressed by SCAS, EPA's policies on consultation, our full

and complete implementation of statutory and executive order requirements for small community involvement in the regulatory process, and ongoing efforts to expand and improve our consultation process. Specifically with respect to a small community advisory committee, we are committed to maintaining an advisory committee as a way of ensuring small town involvement in Federal environmental decision-making. We see the special circumstances of smaller local governments within the context of local government environmental protection generally. Thus, we think the current arrangement, a LGAC subcommittee focused on small town issues, is exactly right. Of note, the Agency's existing Small Community Advisory Subcommittee will meet three times in 2000. Thus, we do not believe that S. 1915 is necessary nor will it significantly improve environmental planning or quality in the Nation's small towns.

Turning now to S. 2296, introduced by Senator Crapo, this measure would establish a grant program for communities of no more than 2,500 inhabitants for special environmental assistance for the regulation of communities and habitat (SEARCH). The proposed grant program would direct the EPA Administrator to transfer $1 million annually to the governor of each State for use by an independent citizens council appointed by each governor. These funds would be for use in those small communities which (1) are unable to secure funding or are underfunded for environmental projects, (2) have incurred unexpected expenses during construction of environmental projects, or (3) need funds for initial feasibility or environmental studies before applying to tradition funding sources.

We have several concerns with S. 2296 and we do not support this legislation in its current form. First, we are concerned that the bill could divert scarce resources from EPA's budget for State revolving funds and from other grants supporting critical State programs. These funds are specifically targeted to the highest priority public health and environmental needs in

each State. Since 1988, the Clean Water Act revolving fund has made available $2.7 billion to small communities for sewage treatment. Since Congress passed the 1996 amendments to the Safe Drinking Water Act, EPA has provided $ 772 million through the new Drinking Water State Revolving Fund to help small communities provide safe drinking water to their residents.

Likewise, S. 2296 could divert scarce resources from high priority State grant programs. The sums envisioned under this bill are significant in the context of EPA's budget. For example, $50 million represents nearly half the national annual funding EPA provides to States to implement core State water quality programs required under the Clean Water Act. Fifty million dollars is three times the national funding EPA provides to States for wetlands protection.

We also are concerned that the formula for distribution of $50 million annually under S.2296 fails to recognize variation in the environmental and public health protection needs across the States. The needs for large, rural States could be several times the need in smaller States.

Finally, we are concerned that project eligibilities under S. 2296 may be overly broad, resulting in the use of scarce Federal dollars for projects that may not appreciably improve local public health and environmental protection. In addition, after the Federal funds are provided to each governor, there is no mechanism to ensure that projects meet environmental priorities and no means for the Congress, EPA, or the State environmental agency to identify the use of the funds or to ensure accountability. For these reasons, we believe the bill would establish a funding mechanism that may be at odds with the Federal Grant and Cooperative Agreement Act of 1977 (PL 95-224).

We appreciate the Committee's interest in assisting small communities and we are committed to using existing mechanisms to meet their needs. We would ask to continue a dialogue with you and Senator Crapo about how to best achieve our common goals in this area.

OMBUDSMAN REAUTHORIZATION ACT OF 1999

Now I would like to address S. 1763, introduced by Senator Allard, which would amend the Solid Waste Disposal Act to reauthorize the Office of Ombudsman of the Environmental Protection Agency.

Historical Background of Ombudsman

The hazardous and solid waste management laws passed by Congress created some of the most complex programs administered by EPA and the States. Recognizing this, Congress established a National Ombudsman function in 1984 as part of amendments to the Resource Conservation and Recovery Act (RCRA). Establishing an Ombudsman provided the public with someone to contact with questions and concerns about the RCRA program. When the statutory authority for the National Ombudsman program expired in 1989, EPA's Office of Solid Waste & Emergency Response (OSWER) retained the function as a matter of policy. In 1991, OSWER broadened the National Ombudsman's scope of activity to include other programs administered by OSWER, particularly the Superfund program. The National Ombudsman is located at EPA Headquarters and reports directly to the Assistant Administrator for Solid Waste and Emergency Response.

The Ombudsman is authorized to provide information and investigate complaints and grievances related to OSWER's administration of the hazardous substance and hazardous and solid waste programs implemented under the following authorities:

- Comprehensive Environmental Response, Compensation and Liability Act (CERCLA) or Superfund
- RCRA, including UST

- Emergency Planning and Community Right-To-Know Act (EPCRA) or Superfund Amendments and Reauthorization Act, Title III
- Oil Pollution Act
- Clean Air Act, Section 112(r)

In 1995, a Regional Ombudsman position was created in each EPA Regional Office as part of the Superfund Administrative Reforms effort. On June 4, 1996, Administrator Browner formally announced the appointments of the Regional Ombudsmen. The Regional Ombudsman program, at a minimum, operates in support of the Superfund program. Depending on the Region, however, it also may provide support to other OSWER programs, including RCRA, Underground Storage Tanks (UST), and chemical emergency prevention and preparedness.

The Role of the Ombudsman

The Ombudsman is the Agency official designated to receive inquiries and complaints about the administration of an OSWER program and may be called upon to serve in a number of capacities: 1) providing information and facilitating informal contact with EPA staff, 2) conducting informal fact finding inquiries and developing options to deal with difficult problems, 3) helping to mediate disputes, and 4) making recommendations to Agency senior management regarding procedural and policy changes that will improve the program. The goal of the Ombudsman is to respond to requests in an appropriate and objective manner as promptly, informally, and privately as possible.

It is important to note, however, that the role the Ombudsman is not that of decision-maker nor of a substantive expert for the Agency. The Ombudsman's role is primarily to focus on the Agency's procedures and how citizens and other interested parties have been treated under

those procedures.

Concerns About Ombudsman As Authorized in Proposed Legislation

We fully support the National Ombudsman program under the jurisdiction of the Assistant Administrator for Solid Waste and Emergency Response. We believe that the Ombudsman function is a very important one for the Agency and the public. That is why when the statutory authorization for the Hazardous Waste Ombudsman function expired, EPA chose administratively to maintain the function as a matter of policy.

S.1763, however, goes beyond the provisions of the original authorization. Section 2(c) requires that the structure of the Office of the Ombudsman conform, to the maximum extent practicable, to the structure of the Model Ombudsman Statute developed by the American Bar Association (ABA). Models or guidelines for ombudsmen have been developed by a variety of organizations, including the ABA, the U.S. Ombudsman Association, and others. Some aspects of these models, and particularly of the Model Ombudsman Statute for State Governments, conflict with requirements for Federal employees and the Freedom of Information Act requirements for Federal agencies. Specifically, the ABA State Government Model envisions complete independence, confidentially, and impartiality for ombudsmen. These are laudable goals. As Federal employees reporting to Agency managers, however, the ombudsmen are unlikely to fully meet these goals. The Ombudsman cannot be completely independent in the normal course of relations between supervisors and their employees, for example.

The basic problem with using the ABA Model Statute in this context is that it was designed for States that wish to establish a separate and independent office within the State government, where the Ombudsman would be elected by the State legislature or appointed by the

governor and would operate independently of other Executive branch agencies. The Model Statute therefore recommends vesting the Ombudsman with certain missions and authorities that would be inappropriate for an Ombudsman Office that is established within a single Federal government agency. For example, the Model Statute contemplates that the Ombudsman would have independent litigating authority, as well as independent authority to promulgate regulations, both of which would go beyond the authorities of individual EPA employees.

It is also worth noting that the ABA Model Statute is inconsistent in important respects with the ABA's recently proposed (July 2000) Standards for the Establishment and Operation of Ombudsman Offices. These new standards are specifically contemplated to apply among other things, to Ombudsman Offices established within Federal agencies. Further, the ABA Model Statute is also inconsistent with the Recommendations of the Administrative Conference of the United States, which provide that "the ombudsman should refrain from involvement in the merits of individual matters that are the subject of ongoing adjudication or litigation or investigations incidents thereto."

In addition, the Freedom of Information Act obligations for Federal agencies and the confidentiality guidelines of the Model Ombudsman Statute are inconsistent, and the proposed legislation does not provide authority necessary to reconcile this inconsistency. We are concerned that the establishment of the ABA model as the appropriate Ombudsman structure may create both unreasonable expectations and inappropriate opportunities for litigation.

In order to provide for effective and fair implementation of OSWER's Ombudsman policy, the Agency developed the Hazardous Waste Ombudsman Handbook. We are now in the process of developing guidance for the program, taking the best aspects of various external models and combining them into a model that works within the Federal structure. The draft

guidance will be made available through the Federal Register publication for comment prior to being finalized.

Thank you for the opportunity to appear before you this morning. My colleagues and I would be pleased to answer any questions that you may have.