

EPA's Local Government Advisory Committee's Report on

ISSUES OF IMPORTANCE

FOR

LOCAL GOVERNMENTS

Compiled by the
EPA's Local Government Advisory Committee
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Clean Renewable Domestic Electricity Production

Issue: America faces daunting challenges to meet growing demand for clean, renewable electricity from domestic sources.

Background: It is in our national security and economic interest to move in a deliberate, coordinated and proactive way to generate opportunities such as wind and solar energy, geothermal, biomass, and emerging renewable electrical technologies.

LGAC Position: The LGAC strongly recommends that the EPA utilize and leverage its statutory authority and incentive approaches to coordinate with other agencies such as: Energy, Interior, Agriculture, Transportation, and Defense “in collaboration with state and local governments” to achieve these important national goals.

Climate Change

Issue: The effects of climate change pose serious threats to our nation. Some of the noticeable effects include shoreline erosion, flooding, and the incidence of more high-intensity storm events. As a result, natural disaster responses are more costly in terms of both human life and reconstruction, whole communities must be sometimes moved, and droughts are longer and more intense. Thus, action must be taken immediately to reduce the negative effects of climate change.

Background: As the lead federal agency for the environment, EPA should articulate a clear, definitive approach and EPA should take action immediately to address climate change concerns. By acting now, our nation can become the leader in the development of new climate change related technologies and allow our manufacturing sector to reap the benefits of such leadership. We have the opportunity to achieve a competitive advantage in the field of climate change technologies by acting now or we can condemn ourselves to playing catch-up. Moreover, if our nation is able to demonstrate that greenhouse gases can be reduced without major economic disruptions it is very likely that other countries will follow our lead.

Position: EPA should take the leadership role in the development and execution of climate change policy for our nation. Actions need to be taken today by using relevant statutory authorities such as the Clean Air Act (CAA), the Clean Water Act (CWA), Safe Drinking Water Act (SDWA), and National Environmental Policy Act (NEPA) to address climate change. For example, under the Clean Air Act, EPA should use fuel economy standards for mobile sources and establish longer planning horizons and more flexibility for vehicle manufacturers to develop and deploy new technologies. Other aspects of the CAA that address fuels should also be used to create additional incentives for biofuels that are clearly beneficial in reducing greenhouse gas emissions. The CAA should be amended to enhance its relevance to the challenges of greenhouse gas emissions. One first amendment that should be considered is to state that greenhouse gases are not criteria pollutants and thus not covered by the NAAQS program. This amendment is needed because the NAAQS is not designed for the challenges that greenhouse gas emissions present and it is doubtful that EPA would prevail in such an interpretation. The second amendment that should be considered is to increase the Prevention of Significant Deterioration thresholds for greenhouse gases but not other air pollutants. This amendment is needed to address large sources of greenhouse gases that the CAA is ill-equipped to handle. Lastly, EPA should promote new legislation which is needed to provide a comprehensive and nimble approach to reduce greenhouse gas emissions.

Promoting Green Buildings

Issue: Land use and enforcement of construction codes are key functions of local governments. EPA can aid local governments by providing technical support regarding appropriate codes and ordinances that support “green” development that will provide environmental and public health benefits.

Background: With the nation's growing recognition of the need to conserve our natural resources, particularly energy, water, and air, and with the recognition of the impact of buildings and development on human health and the environment, EPA's Green Building Program will provide a roadmap to developing and advancing effective practices through research, incentives, programs, and policies. Such actions will provide the kind of collaboration and assistance that will enable local officials to provide leadership in this important undertaking.

LGAC Position: Model ordinances and best available practices can accelerate the development and implementation of policies that support green buildings and the goals of the EPA's Green Building Program. Collaborative partnerships between EPA, local officials, and advisory groups such as the LGAC can accomplish five key recommendations which will likely accelerate the adoption of green development and design:

- 1) Provide ongoing consultation and recommendations to the Agency to strengthen EPA's organizational capacity to ensure that EPA programs and the implementation of these programs are best designed to promote the adoption of green buildings and smart growth designs.
- 2) Identify key themes around green building and development that resonate with the public and inspire action in local leaders.
- 3) Work with EPA's Green Building and Smart Growth initiatives to identify best practices, including model ordinances and codes that will aid local governments in removing obstacles to building “green”;
- 4) Create, through an interactive stakeholder process, a set of model green land use principles that can become a guide to local decision making.
- 5) Assist EPA in identifying programs that provide funds to spur green infrastructure, such as the \$2 billion for the Energy Efficiency and Conservation Block Grant Program in the Energy Independence and Security Act of 2007. We encourage the Agency to fully support funding for local government initiatives that provide funds for green retro-fits of existing buildings.

Environmental Protection and Small Communities

Issue: Small Communities have unique challenges with respect to administrative and fiscal capacity. Despite these limitations, small communities have the same requirements as larger cities to comply with federal and state environmental rules and regulations.

Background: The Subcommittee on Small Communities has developed a "Small Communities Report" that highlights specific environmental challenges that impact small communities differently, and provides links to existing resources within the EPA and Environmental Finance Centers. Both provide useful technical information as well as highlight potential fiscal capacity sources to help solve environmental challenges.

Position: The Small Community Advisory Subcommittee would suggest that advisory committees such as SCAS and the LGAC are not only a congressional mandate but has an essential role to play in terms of providing viewpoints that are not easily represented in the decision making process. These viewpoints and perspectives are essential in order to ensure more effective outcomes in terms of environmental protection and compliance. The appointment and funding of a Small Communities office within EPA can facilitate and coordinate the regulatory, policy and financing needs of small communities, especially in regard to equitable standing in administering the provisions of the proposed Economic Stimulus funding provisions for small communities.

Solid Waste Reduction and Product Stewardship

Issue: Effective product stewardship programs and policies are needed to address products that are hard to recycle, contain toxic components or have low recovery rates. This will compliment programs to collect typical recyclables and recycle construction and demolition debris and organic materials and will result in high recovery rates and reduced toxicity across the nation.

Product stewardship is a product-centered approach to environmental protection that places responsibility on those in the product lifecycle—manufacturers, retailers, users, and disposers—for minimizing the environmental impacts of their products. Product stewardship links product design with disposal impacts so that producers take end-of-life impacts into account during the design phase.

Background: Solid waste programs in the United States are primarily managed at the state and local level, though the waste being managed is the result of manufacturing from around the globe. A century ago, garbage was mostly coal ash and food waste with a small amount of simple manufactured products, like paper and glass. Now, product waste makes up 75% of per capita waste. Many of these products -- like children's toys, paint, electronic products and fluorescent light bulbs -- are multi-material, hard to recycle and contain toxic components. Local governments have been increasingly responsible for providing disposal of these products, though they have no control over the design of the products regarding recyclability or toxicity. Costs to local governments are increasing and most do not have adequate budgets to finance the special collection systems needed for these complicated products. Manufacturers and retailers, who do have control over product and packaging design and material content, are in unique capacities to make design changes and provide effective collection programs. A growing number of progressive states are incorporating product stewardship objectives into their solid waste master plans, and are establishing programs with manufacturers, retailers and others to increase recycling of discarded products, including legislating take-back mandates for selected products (especially electronics and mercury-containing products, but other products are under consideration as well). State and local procurement officials are also encouraging product stewardship innovations through their purchasing programs.

LGAC Position: The Local Government Advisory Committee recommends EPA to leverage all of their statutory authorities- rules, regulations and policies to promote development of product stewardship programs and policies and to assist states and locals toward establishing comprehensive approaches to protect of human health and the environment.

Unused Pharmaceutical Disposal

Issue: Unwanted and unreturned medicines pose significant public health risks for poisoning and abuse and contamination to the environment. State and local officials are on the frontline receiving these concerns and are being called upon to take quick, decisive actions to address this issue.

Background: Public awareness of significant levels of pharmaceuticals found in drinking water and in our nation's surface and groundwater have galvanized a growing public concern about public health and environmental impact for convenient, safe and secure disposal options. With regard to unused pharmaceuticals in the environment: 80% of 139 streams assessed by the U.S. Geological Survey contained one or more of 95 different chemicals. Of these 95 identified chemicals, thirty-three (33) are suspected to have hormonal effects and pose significant human health risks and risks to the environment.

LGAC Position: The Local Government Advisory Committee urges EPA to leverage its influence with Department of Justice Drug Enforcement Program (DEA) on any potential rule-making regarding disposal of unused pharmaceuticals. Existing DEA rules create barriers to establishing practical, economic and secure product stewardship and take-back programs, if it requires cataloging of each returned pill or other impractical measures. Rule revisions are under consideration, but without early involvement by states and locals. Without this involvement, innovative and environmentally-friendly solutions to promote product stewardship and unwanted drug return programs, such as efforts underway in the states of California, Maine, Minnesota, Oregon, and Washington, will be significantly hindered. Furthermore, state and local governments should be consulted and involved early in the process.

National Pollutant Discharge and Elimination System (NPDES) Permit Fee Rule

Issue: On September 10, 2008, EPA published a final rule which establishes incentives for states to increase fees for National Pollutant Discharge Elimination System (NPDES) permits to implement a new NPDES permit fee incentive allotment formula starting in fiscal year (FY) 2009.

Background: The Rule is intended to drive states to fully fund their NPDES Permit programs through permit fees or run the risk of having their Clean Water Act (CWA) Section 106 grant funds cut. Specifically, the Rule, would provide a certain amount of "incentive" funds from the Section 106 program to states that fund at least 75 percent of their NPDES permit program costs through user fees, with the highest incentives going to those states that fund 100 percent of their programs through fees.

LGAC Position: These new permit fees will place a significant financial load on all clean water agencies – small, midsize, and large – and further burden their ratepayers. As it is, these agencies are struggling to meet unfunded federal environmental mandates: a new federal rule mandating that their limited funding shall be spent to support permitting exercises rather than to promote important water quality programs is therefore particularly inappropriate. Moreover, we respectfully contend that EPA has over stepped its authority in moving forward with this rule by ignoring the will of Congress: a congressional directive inserted into report language accompanying the Fiscal Year (FY) 2008 omnibus budget (which included EPA's funding) bars the agency from moving forward with this permit fee proposal.

Nonpoint Source Pollution Reduction

Issue: Nonpoint source pollution is the number one source of water quality impairment of our Nation's waters.

Background: The Clean Water Act (CWA) has addressed most of the point sources of water quality problems. However, the CWA has focused mainly on reducing pollutants from a variety of industrial process wastewater and municipal sewage discharges regulated by 'end of pipe' types of management approaches. According to the National Water Quality inventory in 2000, 40% of streams, 45% of lakes and 50% of estuaries that were assessed were not clean enough to support uses such as fishing and swimming. Sources of pollution remain in run-off from urban sprawl, runoff from agricultural fields, and runoff from lawns, industrial facilities, parking lots, and other sources. Additionally, nonpoint source pollution remains underreported by most states and communities in reflecting the needs to address these sources of impairment. The current regulatory framework does not address these nonpoint sources of pollution; therefore, more voluntary approaches must be implemented to adequately address these pollution sources.

Position: The Local Government Advisory Committee (LGAC) believes that USEPA should provide more resources (technical and financial) to states and local governments to assist them in addressing this number one impairment of the nation's waters. The LGAC also recommends that USEPA coordinate with other federal agencies to leverage multiple sources of funds to achieve nonpoint source pollution reduction.

Watersheds and Coastlines

Issue: The Southeast Watershed Forum is an excellent example of the good work that the EPA has done in terms of capacity building to produce environmental results. With EPA's support, this non profit has expanded research collaborative opportunities, convening stakeholders and protecting watersheds and ecosystems in the Southeast.

Background: As financial resources become scarce, leveraging resources becomes more and more important. Coordinating private, public, grassroots type, and nonprofit organizations could be a more effective way to educate, mitigate and implement the increasingly complicated challenges that arise for those whose responsibility it is to protect human health and the environment.

Position: The Watersheds and Coastlines workgroup, of the Local Government Advisory Committee believes that it is most important for the Environmental Protection Agency to consider the Watershed Approach to environmental protection in the issuance of all aspects of the agencies, rules, regulations and policies. The watershed approach promotes full participation and collaboration of all involved stakeholders to consider a comprehensive approach to the protection of human health and the environment. In the watershed approach, there are many involved stakeholders at the national, state and local level. It is imperative that all stakeholders participate in the decision and implementation process to ensure successful outcomes. The Environmental Protection Agency should consider duplicating this success, and continuing to support this type of organization.

Environmental Indicators

Issue: The EPA has developed national environmental indicators to measure progress towards reducing air, water, and other forms of pollution. The EPA has also developed a Strategic Plan that lays out a path for EPA to achieve the reduction of air, water, and other forms of pollution.

Background: Environmental contamination affects the regions of our nation differently and thus, some regions are more concerned with reducing particular pollutants than others. Sets of regional indicators, in addition to national indicators would greatly enhance measures of environmental progress. Effective strategic plans contain agreed upon goals and objectives plus action steps with clearly identified criteria to measure success or failure.

LGAC Position: The EPA should establish sets of regional indicators for the nation. When doing so, it may be necessary to establish regional boundaries that rely upon natural features such as watersheds in order to maximize relevancy. In addition, EPA's Strategic Plan should provide clear goals, objectives, and action steps with quantifiable measures and timelines so that progress, or the lack thereof, can be easily measured.

Coordination with Local Governments on Formerly Used Defense Sites

Issue: There are numerous Formerly Used Defense Sites (FUDS) throughout the Nation that are contaminated by hazardous materials, including munitions. In addition, real property has, and continues to be, transferred from the Department of Defense (DoD) to local and state governments and the private sector that is later found to contaminate with hazardous waste and munitions. DoD has taken the position that their responsibility to clean-up contaminated sites ends once real property is formally transferred.

Background: Presently, EPA is not involved with the prioritization of FUDS found to contain pollutants or unexploded ordinance. Yet EPA is one of the first federal agencies that are contacted by local governments and the private sector who are confronted with contaminated real property transferred by DoD or FUDS. Moreover, DoD has been reticent (and sometimes unengaged) with local governments and private sector parties once real property has been formally transferred and hazardous materials or unexploded ammunitions are determined. There are many FUDS throughout the nation that are contaminated yet are not found on DoD's list of prioritized sites awaiting clean-up. Besides the continual contamination of the environment, these sites reduce property values and many have become attractive nuisances.

Position: EPA should be designated as a formal party to the listing and prioritization of clean-ups of sites contaminated by munitions and other hazardous materials. The EPA is the first point of contact for local governments. Yet, it is the private sector that must deal with contaminated real property transferred by the DoD on formerly used defense sites (FUDS). Local governments and private sector parties are ill-equipped to handle contaminated FUDS. The DoD should remain a responsible party and work jointly with the EPA on all real property transfers that are subsequently assessed to be contaminated.