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LOCAL GOVERNMENT
ADVISORY COMMITTEE

Administrator Carol M. Browner
U. S. Environmental Protection Agency
1200 Pennsylvania Avenue, NW (1101)
Washington, DC 20460

Dear Administrator Browner:

At their September meeting, the Local Government Advisory Committee (LGAC) approved forwarding the enclosed recommendations to you. These recommendations, entitled "Guiding Principles for the Establishment of the Office of the Small Town Advocate," are a direct result of a two-year effort by the Small Community Advisory Subcommittee. The LGAC transmits them with the following comments.

The LGAC believes that the attached recommendations should be more general and broad-based. EPA should direct and support Regional Offices to develop and enhance current efforts to increase communication between local governments of all sizes, the States, and EPA Regional Offices. Special consideration should be made for the fact that small communities often do not have the resources necessary to respond to policies and policy-making at the State, regional and national level.

We look forward to receiving your response to these recommendations by December 15, 2000. I would be pleased to answer any questions you may have concerning the recommendations. I can be reached at (515) 286-3447.

Sincerely,

Teree Caldwell-Johnson, Chair
Local Government Advisory Committee

Enclosure

June 20,2000

**Guiding Principles
For
The Establishment
of
The Office of the Small Town Advocate¹**

One of EPA Administrator Carol Browner's publically articulated goals is to strengthen EPA's relationship with its local government partners. After reviewing existing efforts to ascertain whether this goal is being met, **as** it relates to small communities, and to insure the implementation of the STEP legislation is met, the Small Community Advisory Subcommittee (SCAS) is recommending the Administrator fulfill the following:

The Administrator establish, staff and provide financial capacity to operate an Office of the Small Town Advocate (OSTA), at the EPA Headquarters. This office shall be at a level commensurate to other offices that have the ability to exercise independent actions. This office and staff will be an advocate for small communities **as** it relates to EPA's role in Environmental Protection.

1. Be an advocate for small communities whose time and resources are totally committed to concerns related to all aspects of environmental regulations; i.e. direct **and/or** indirect costs, direct impact, ability to implement, appropriate technology and training opportunities, etc
2. Be an equal partner in the review of proposed rules to determine if they will have federalism implications.
3. Be an equal partner in the review process in the evaluation of the implementation of delegated programs. .

The Administrator establish, staff and provide financial capacity to operate an Office of

¹ 1992 STEP legislation required that "*The Administrator shall establish and staff an Office of the Small Town Ombudsman to provide assistance to small towns in connection with the Small Town Environmental Planning Program and other business with the agency. Each regional office shall identify a small town contact.*" It is the feelings of the SCAS that the position should not be an ombudsman, who would be primarily responsible to investigate complaints, but rather an advocate, who would work for small town concerns. Further, "Small Town" means jurisdictions of fewer than 2,500 persons including incorporated and unincorporated communities; water and/or sewer districts; rural areas; homeowners associations; mobile home parks and colonias. The terms small towns and small communities will be used interchangeably.

the Small Town Advocate (OSTA), in each EPA Region. This office shall be at a level commensurate to other offices that have the ability to exercise independent actions. This office and staff will be commissioned to, but not limited to, the following:

1. Be an equal partner in the negotiations between the Regional Offices and States over National Environmental Performance Partnership System Agreements.
2. Be an equal partner when state **primacy agreements** are negotiated to assure that the concerns of small communities are adequately reflected and protected in the process.
3. Be an equal partner in the evaluation of the implementation of delegated programs.
4. Provide for a mechanism to identify and notify small communities affected by new rules as they are being developed. Building on the work of the Small Community Outreach Project for the Environment (SCOPE), the Local Government Environmental Assistance Network (LGEAN) and other pilot projects for increasing the involvement of small communities, the Office of Regulatory Management and Information should establish and maintain an outreach network database of small community representatives (2-5 persons from each State) which could be available to program offices for consultation on specific rules.
5. Provide for a mechanism to **identify** and notify small communities affected by new rules as EPA works with State environmental agencies to implement the rules.
6. Consult with affected small communities about the potential impacts of a contemplated rule.
7. Make provisions for compliance assistance to small communities when the rule is adopted and implemented.
8. Identify, document and assist small communities that suffer what may be termed "unintended consequences" as a rule is being implemented and to have the authority to advocate on behalf of the entity until an appropriate resolution is found.
9. Be an advocate (for small communities) whose time and resources are totally committed to concerns related to all aspects of environmental regulations; i.e. direct and/or indirect costs, direct impact, ability to implement, appropriate technology and training opportunities, etc.

10. Be available to mediate² disputes between small communities, the states, and federal regulators on matters of environmental compliance, and will attempt to bring parties to a resolution that addresses environmental concerns in a mutually acceptable fashion.

It is further recommended that advisory committees be appointed to advise, oversee and evaluate the OSTA at Headquarters and in each Region.

1. EPA Headquarters OSTA should have the current Small Community Advisory Subcommittee (SCAS) as its FACA advisory committee.
2. Each EPA Regional OSTA should also have an advisory committee (not a FACA) composed principally of small community representatives. Their main purpose would be to provide input and legitimacy to the work of the OSTA. *(These advisory committees could be similar to the Region VIII's Small Community Work Group or the Region X Small Community Clearinghouse although membership should be composed principally of small community representatives.)*

Attached, with these recommendations is "Exhibit A" providing background information related to the facts and findings of the Small Community Advisory Subcommittee (SCAS).

²

"Mediate" means to act as a facilitator to bring stakeholders to the table so that the stakeholders may work out a resolution to an issue or problem that is satisfactory to all stakeholders. The mediator does not have a decision making authority and the role of the mediator is to facilitate discussion and problem resolution only.

"Exhibit A"

Legislative Mandate

When the Regulatory Flexibility Act (RFA) was signed into law in 1980, Congress made its position increasingly clear, through a series of associated laws, its expectations that the Environmental Protection Agency work closely and cooperatively with small entities, including local and small town governments. Recognizing the environmental needs of small communities, EPA hired a Small Community Coordinator in 1988 to help raise the profile of the RFA in Agency rule-makings.

Congress, recognized the need for greater small community access to EPA's environmental problem solving resources and in 1992 passed the Small Town Environmental Planning (STEP) Act (PL 102-386, 1016192). The STEP, a section of the Federal Facility Compliance Act, required EPA to specifically "*establish a program to assist small communities in planning and financing environmental facilities*".

The first requirement of STEP instructed EPA to establish a Small Town Task Force (STTF) composed of representatives of small communities from different areas of the country. The STTF was charged with **identifying** five specific purposes:

1. Identify regulations developed pursuant to federal environmental laws which pose significant compliance problems for small communities;
2. Identify means to improve the working relationship between the Environmental Protection Agency and small communities;
3. Review proposed regulations for the protection of the environmental and public health and suggest revisions that could improve the ability of small communities to comply with such regulations;
4. Identify means to promote regionalization of environmental treatment systems and infrastructure serving small communities to improve the economic condition of such systems and infrastructure; and
5. Provide such other assistance to the administrator as the Administrator deems appropriate.

In addition to other provisions, STEP also required the establishment of a Small Town Ombudsman within EPA: "*The Administrator shall establish and staff an Office of the Small Town Ombudsman. The Office shall provide assistance to small towns in connection with the Small Town Environmental Planning Program and other business with the Agency. Each regional office shall identify a small town contact. The Small Town Ombudsman and the*

regional contacts also may assist larger communities, but only if first priority is given to providing assistance to small towns.

EPA's response to this requirement was to assign the Ombudsman responsibilities to the Small Town Coordinator positions, at both **national** and regional offices . However, these positions never **fully**, or in most instances even partially, committed themselves to that role and small communities gained no better access to EPA, or to decision makers that could help solve their problems. Observing that EPA had not responded to the Congressional mandate the STTF reasserted that **"A full time Small Town Ombudsman Office should be established in each EPA region and at headquarters with primary responsibility for serving as an advocate for small towns and as a facilitator for addressing small town concerns and programs"**. (Small Town Task Force Final Report - May 23, 1996)

In 1994, Congress enacted the Unfunded Mandates Reform Act (UMRA) requiring Federal agencies to consult with elected officers of State, Local and Tribal governments on any proposed rule that would likely impose a significant impact on them. UMRA further requires qualitative and quantitative assessments on anticipated costs and benefits reflective of the proposed rule.

In 1996 the RFA was amended with the Small Business Regulatory Flexibility Act (SBREFA) requiring federal agencies consult with small communities on any proposed rule that would likely impose a "significant impact on a substantial number of small entities". However, EPA and OSHA are the only two agencies identified in SBREFA as being required to have a panel system to advise the agency on any such rule. SBREFA also mandates procedures for both Congressional and Judicial reviews.

Executive Order 13132 was signed into law by President Clinton on August 4, 1999 (*effective 90 days later*). The Order's purpose is "to ensure that the principles of federalism established by the Framers (*of the Constitution*) guide the executive departments and agencies in the formulation and implementation of policies and to further the policies of the Unfunded Mandates Reform Act."

The Order dictates that in formulating and implementing policies that have federalism implications, agencies shall be guided by **fundamental** federalism principles. Those principles emphasize the role and importance of addressing issues by the "level of government closest to the people". Further, the Order encourages the use of a variety of approaches and cooperative efforts among various stakeholders. As such, the Order directs agencies to 1) develop policies and programs to work with officials, 2) defer to States on standards where possible and 3) consult with appropriate State and local officials. Ultimately, the agencies "shall have an accountable process to ensure meaningful and timely input by State and local officials". The Order does not cover State or local staff.

Small Town Goals

People who live in **small towns** are proud of their community and see a unique quality of life that is different from the quality of life of big cities or even suburban areas. While they are unique and the quality of life involves a keen appreciation for the natural environment, they also wish to comply with reasonable health and environmental standards.

Administrator's Goals

One of EPA Administrator Carol Browner's publically articulated goals is to strengthen EPA's relationship with its local government partners. A critical part of this effort concerns EPA relationships with smaller local governments. According to the 1990 Census, small local governments serve approximately 61 million residents and of this, approximately 26,000 serve communities of no more than 2,500 residents. Improving the access for the small local governments serving the 61 million residents is the challenge facing EPA, small local governments and the SCAS.

Administrator Browner, in recognizing the need to strengthen EPA's relationship with its local small **governments**, has established the Small town Advisory Subcommittee (SCAS) of the Local Government Advisory Committee to monitor the implementation of the recommendations of the STTF report (*Minutes of the June 17, 1996 STTF meeting*).

SCAS Initial Facts and Findings

Based on the direction from Administrator Browner, at the June 17, 1996 STTF meeting, SCAS conducted an inventory of EPA efforts to implement the recommendations of the STTF. The Regional Offices, in the Small town Activities Inventory Update, described activities being helpful to local small governments, but not addressing what was envisioned by Section 109 of the Small Town Environmental Planning (STEP) or the Small Town Task Force (STTF) Final Report.

In September 1998, SCAS conducted a teleconference with all but one of the Regional Small town Contacts. Only one Region indicated it employed a full time Small town Contact (SCC) and that only 10% of the SCC's time was spent on small communities. The rest indicated that very little, if any, time was spent on small town issues.

In February 1999, SCAS met with one full time Regional Small town Contact and concluded this individual's work was outstanding and somewhat helpful to small communities. However, they also noted many of the other duties were determined not to be specifically small town issues.

As a result of these initial facts and findings, SCAS reaffirmed the need for EPA to implement the Office of the Small Town Ombudsman (OSTO) at it's February, 1999 meeting.

Working Group Formed

At the February 1999 meeting, SCAS established a working group to set forth a plan for the establishment and duties of the OSTO. The working group has defined the OSTO as: "***A government office with an official appointed to receive and investigate complaints, questions and suggestions by small town officials about environmental laws, regulations, policies, guidance and actions by EPA officials***".

EPA "Ombudsman Office" Models

The working group reviewed the purpose and function of two other "ombudsman" like EPA offices: The ***American Indian Environmental Office*** and the ***Small Business Ombudsman Office***. Based on this review, the working group identified characteristics about EPA Ombudsman Offices that have applicability to the proposed Office of Small Town Advocate:

1. They work with respective agency programs and decision makers to identify requirements that could have a potential affect on their constituents.
2. They work with qualified technical assistants who are supported and supplied either by EPA or a third party provider.
3. They advocate causes and proposals on behalf of their constituency.
4. They provide information and comments to their respective agency programs and decision makers related to impending or changing regulations that may adversely or positively affect their constituents .
5. They serve as a point of contact, providing information on the interpretation of policies and regulations, as well as acting **as** a resource for the distribution of information.