

**OMBUDSMAN'S OFFICE AT THE EPA, AND OTHER  
PROGRAM IMPROVEMENTS**

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**HEARING**  
BEFORE THE  
**COMMITTEE ON**  
**ENVIRONMENT AND PUBLIC WORKS**  
**UNITED STATES SENATE**  
ONE HUNDRED SIXTH CONGRESS

SECOND SESSION

SEPTEMBER 26, 2000

ON

**S. 1763**, OMBUDSMAN REAUTHORIZATION ACT OF 1999;  
**S. 1915**, SMALL COMMUNITY ASSISTANCE ACT OF 1999;  
**S. 2296**, PROJECT SEARCH ACT OF 2000; AND  
**S. 2800**, STREAMLINED ENVIRONMENTAL REPORTING AND  
POLLUTION PREVENTION ACT OF 2000

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ONE HUNDRED SIXTH CONGRESS

SECOND SESSION

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(II)

# C O N T E N T S

	Page
<b>SEPTEMBER 26, 2000</b>	
OPENING STATEMENTS	
Baucus, Hon. Max, U.S. Senator from the State of Montana .....	8
Crapo, Hon. Michael D., U.S. Senator from the State of Idaho .....	1
Lautenberg, Hon. Frank R., U.S. Senator from the State of New Jersey .....	9
Smith, Hon. Bob, U.S. Senator from the State of New Hampshire .....	7
WITNESSES	
Allard, Hon. Wayne, U.S. Senator from the State of Colorado .....	3
Baumann, Jeremiah, environmental health advocate, U.S. Public Interest Research Group .....	17
Prepared statement .....	50
Responses to additional questions from Senator Smith .....	53
Bisbee, George Dana, assistant commissioner, New Hampshire Department of Environmental Services, on behalf of Data Management Workgroup and Local Government Forum of the Environmental Council of the States .....	15
Prepared statement .....	43
Responses to additional questions from Senator Smith .....	46
Bruzelius, Ken, executive director, Midwest Assistance Program .....	25
Prepared statement .....	57
Cooper, Ben, senior vice president of Government Affairs, Printing Industries of America .....	29
Prepared statement .....	66
Response to additional question from Senator Smith .....	69
Prescott, B. Roy, chairman, Jerome County, Idaho, Board of Commissioners ...	63
Prepared statement .....	63
Responses to additional questions from Senator Smith .....	64
Sanchez, Deborah Spaar, cofounder and administrator, Overland Neighbor- hood Environmental Watch .....	23
Prepared statement .....	55
Thompson, Diane E., Associate Administrator for Congressional and Intergov- ernmental Relations, Environmental Protection Agency; accompanied by: Michael Shapiro, Principal Deputy Assistant Administrator for Solid Waste and Emergency Response; Margaret N. Schneider, Principal Deputy Assis- tant Administrator for Environmental Information .....	38
Prepared statement .....	69
Regulation, Draft Guidance for National Hazardous Waste Ombudsman, Federal Register .....	82
Responses to additional questions from:	
Senator Baucus .....	78
Senator Smith .....	76
ADDITIONAL MATERIAL	
Articles:	
Finally, A Logical Move by EPA .....	102
Vigilance Wins in Superfund .....	101
Letters:	
Chalmet, Roger A. ....	89
Giles, Glendas .....	88
Giles, Robert .....	88

IV

	Page
Letters—Continued	
Olympic Environmental Council .....	99
Pi-Pa-TAG, Inc. ....	100
South Central Idaho Tourism and Recreation Development Association ....	93
USPIRG .....	97
Statements:	
Brian, Danielle, executive director, Project on Government Oversight .....	86
Dunham, Frances, Citizens Against Toxic Exposure .....	90

## **OMBUDSMAN'S OFFICE AT THE EPA, AND OTHER PROGRAM IMPROVEMENTS**

**TUESDAY, SEPTEMBER 26, 2000**

U.S. SENATE,  
COMMITTEE ON ENVIRONMENT AND PUBLIC WORKS,  
*Washington, DC.*

The committee met, pursuant to notice, at 9:39 a.m., in room 406, Senate Dirksen Building, the Hon. Robert C. Smith (chairman of the committee) presiding.

Present: Senators Smith, Crapo, Warner, Baucus, and Lautenberg.

### **OPENING STATEMENT OF HON. MICHAEL D. CRAPO, U.S. SENATOR FROM THE STATE OF IDAHO**

Senator CRAPO [assuming the chair]. This hearing will come to order. Before I proceed, I would like to indicate that Chairman Smith has been delayed briefly. Because of some time pressures that Senator Allard is facing, we wanted to get going as quickly as we could. So, Senator Allard, we will begin.

Before I do that, however, I want to indicate that today's hearing might be cut short. For those of you who are here, ready for other panels and for other testimony, I should indicate to you that the Minority has invoked what is called the Two Hour Rule. The rule prohibits a Senate committee from meeting for more than 2 hours past the time that the Senate begins its daily session.

I hope that we will be able to conclude this hearing by then, but I am not sure that we will. In order to help ensure that the committee can hear from all witnesses, I will not ask any questions at this point, or during my time period, to help the witnesses move forward as quickly as possible.

I think the chairman is intending to waive his time, as well. We will wait until he gets here, to see if he does do that.

We hope to ensure that we can hear from all witnesses who have come today, some of whom have traveled a long distance, in order to testify.

In addition, because of this procedural objection, we need to change the order of testimony of the witnesses. Ordinarily, we have representatives of the Federal Government testify after hearing from any member or officer of Congress.

Today, however, in order to ensure that our witnesses from places such as New Hampshire, Idaho, and Minnesota, who have traveled so far, can testify before the committee, we will allow them to testify before we hear from the EPA. The Federal wit-

nesses who live here in town will, therefore, appear on the last panel.

In addition, one of our colleagues could not speak here today on behalf of the bill because of the Minority's procedural objection. Senator Jeffords had planned to speak on behalf of S.1955, the Small Community Assistance Act of 1999, but has been unable to make it to the hearing because of other procedural problems. We expect that he will submit testimony for the record.

[The prepared statement of Senator Crapo follows:]

STATEMENT OF HON. MIKE CRAPO, U.S. SENATOR FROM THE STATE OF IDAHO

Mr. Chairman, I want to express my appreciation for your holding this important hearing on pending legislation making improvements to the Environmental Protection Agency (EPA).

This is a critical issue and one close to my heart, not just because I am either a sponsor or co-sponsor of all the bills before us today. Each of these measures attempts to fix an overlooked problem within the EPA and each does take a unique approach to problem-solving. Although I am a strong supporter of each bill, I would like to take few moments here to specifically address S. 2296 and S. 1763.

As many here today know, I have been working with the EPA National Ombudsman in his investigation of allegations of long-term agency wrong-doing in North Idaho. Each effort made by the Ombudsman in this case to date has turned up further evidence of questionable behavior by agency officials. The North Idaho community has welcomed the Ombudsman's interest and has willingly provided much information critical to the Ombudsman's investigation.

I am sure that all of us here today recognize the importance of accountability and responsibility by Federal agency officials. Without public confidence in the agencies charged with protecting the environment and allocating scarce taxpayer resources properly, it will be difficult for any community to support Federal policies. In North Idaho, a long history of EPA intransigence and lack of cooperation with the community has all but eroded the confidence of the public in the conduct of agency officials. It is my understanding that this chasm of trust exists in many other communities where the EPA has used the Superfund Program.

The activities of the National Ombudsman provide a real opportunity to restore the confidence of the public. If the Ombudsman can correct agency mistakes and highlight inappropriate behavior that is ultimately corrected, communities will have a greater confidence that agency officials are acting with their best interests at heart. If the Ombudsman discovers that the EPA is acting appropriately, the public will also breathe easier.

Now, however, we have reports that the EPA is attempting to restrict the autonomy of the Ombudsman and this has raised alarm in many communities across the country. If the so-called watchdog of the Superfund program is not allowed to fully and freely investigate allegations of wrong-doing, the public will be the ultimate loser. We cannot allow the Ombudsman to be silenced in the proper conduct of his responsibilities.

For this and other reasons, S. 1763 would provide the assurances we all need to know that the Ombudsman is working to protect communities and taxpayer dollars. I call on this committee to demonstrate the importance of this measure by quickly enacting this much-needed reform of the EPA.

S. 2296 would authorize a national environmental grants program for small communities called Project SEARCH. The national Project SEARCH (Special Environmental Assistance for the Regulation of Communities and Habitat) concept is based on a demonstration program that has been operating with great success in Idaho in 1999 and 2000. In short, the bill establishes a simplified application process for communities of under 2,500 individuals to receive assistance in meeting a broad array of Federal, State, or local environmental regulations. Grants would be available for initial feasibility studies, to address unanticipated costs arising during the course of a project, or when a community has been turned down or underfunded by traditional sources. The grant program would require no match from the recipients.

Some of the major highlights of the program are:

- A simplified application process—no special grants coordinators required;
- No unsolicited bureaucratic intrusions into the decisionmaking process;
- Communities must first have attempted to receive funds from traditional sources;
- It is open to studies or projects involving any environmental regulation;

- Applications are reviewed and approved by citizens panel of volunteers;
- The panel chooses number of recipients and size of grants;
- The panel consists of volunteers representing all regions of the State; and
- No local match is required to receive the SEARCH funds.

Over the past several years, it has become increasingly apparent that small communities are having problems complying with environmental rules and regulations due primarily to lack of funding, not a willingness to do so. They, like all of us, want clean water and air and a healthy natural environment. Sometimes, they simply cannot shoulder the financial burden with their limited resources.

In addition, small communities wishing to pursue unique collaborative efforts might be discouraged by grant administrators who prefer conformity. Some run into unexpected costs during a project and have borrowed and bonded to the maximum. Others are in critical habitat locations and any affected project may have additional costs, which may not be recognized by traditional financial sources. Still others just need help for the initial environmental feasibility study so they can identify the most effective path forward.

In 1999, a \$1.3 million EPA demonstration grant program for Idaho's small communities with populations of 2,500 or less was created. Idaho's program does not replace other funding sources, but serves as a final resort when all other means have been exhausted.

The application process was simplified so that any small town mayor, county commissioner, sewer district chairman, or community leader could manage it without hiring a professional grant writer. An independent citizens committee with state-wide representation was established to make the selections and get the funds on the ground as quickly as possible. No uninvited bureaucratic or political intrusions were permitted.

Although the EPA subsequently insisted that grants be limited to water and wastewater projects, 44 communities in Idaho ultimately applied, not including 2 that failed to meet the eligibility requirements. Ultimately, 21 communities were awarded grants in several categories, and ranged in size from \$9,000 to \$319,000. Communities serving a number of Native Americans and migrant groups and several innovative collaborative efforts were included in the successful applicants. The communities that were not selected are being given assistance in exploring other funding sources and other advice.

The response and feedback from all participants has been overwhelming positive. Environmental officials from the State and EPA who witnessed the process have stated that the process worked well and was able to accomplish much on a volunteer basis. There was even extraordinary appreciation from other funding agencies because some communities that they were not able to reach were provided funds for feasibility studies. The only negative comments were from those who wished that the EPA had not limited the program to water and wastewater projects.

The conclusion of all participants was that Project SEARCH is a program worthy of being expanded nationally. So many small communities in so many States can benefit from a program that assists underserved and often overlooked communities.

I would like now to take a moment to welcome Roy Prescott, a Jerome County, Idaho, county commissioner, who will be testifying on the third panel. Roy has had extensive experience with Idaho's Project SEARCH program and will be sharing many of the highlights of the program. He has been instrumental in proving that a volunteer-based grant program can function effectively and respond to real-world problems. I appreciate his participation in the process and know that many small communities in Idaho are in his debt.

Thank you, Mr. Chairman.

Senator CRAPO. Without anything further, so we can move on as quickly as possible, we will turn to you now, Senator Allard, and you can make any statement that you would like to make.

**STATEMENT OF HON. WAYNE ALLARD, U.S. SENATOR FROM  
THE STATE OF COLORADO**

Senator ALLARD. Thank you, Senator Crapo, or I might say, Chairman Crapo.

Senator CRAPO. For the time being.

Senator ALLARD. It is good to be here before this committee to testify. I thank you and the regular chairman, Mr. Smith, for the opportunity to testify on behalf of Senate bill 1763. It is legislation

that I recently introduced to reauthorize the Office of Ombudsman of the Environmental Protection Agency.

I would like to keep my remarks brief, just for the very reasons that you shared with everybody, because I have to testify at 10 o'clock before the Commerce Committee, and then I have my own committee hearing at 10:30, so I am under the gun, myself.

I want to share with the committee my reasoning and interest in this issue. I introduced the legislation because of an ongoing battle between the citizens of a Denver neighborhood, and the Environmental Protection Agency, concerning the Shattuck Superfund site. Only through the work of the Ombudsman's Office did the truth finally become known.

The story surrounding the Shattuck side in the Overland Park neighborhood in Southwest Denver and what the EPA did to this community will have a lasting impact, not only on the residents of the Overland Park neighborhood, but on each and every one of us who looks to the EPA to be the guardian of our Nation's environmental health and safety.

In 1997, after several years of EPA stonewalling, the residents of Overland Park in Denver brought their concerns about a Superfund Site in their neighborhood and their frustrations with the Environmental Protection Agency to my attention. I learned that the neighborhood had run into a wall of bureaucracy that was unresponsive to the very public it is charged with protecting. I requested the Ombudsman's intervention.

In early 1999, the Ombudsman's Office began an investigation and quickly determined that the claims made by the residents were not only meritorious, but that EPA officials had engaged in an effort to keep documents hidden from the public, thereby placing their health in danger.

The Shattuck saga has been a frustrating and often disheartening experience for all involved. It is an example of what can happen when a Government entity goes unchecked. For the residents of Denver, the Office of Ombudsman has afforded the only opportunity to reveal the truth, and for the health and safety of the public to be given proper priority.

In fact, the Ombudsman was so successful at uncovering the facts surrounding Shattuck, his investigation has resulted in EPA officials now looking at restructuring the office, so its actions may be restricted and its independence compromised.

In essence, I fear that the EPA may be moving to gut the Ombudsman's Office. In effect, this means the EPA's actions and decisions in future cases like Shattuck may go unchecked, and citizens in other States might not have a public avenue to address concerns and get answers from the EPA.

Mr. Chairman, this cannot be allowed to happen. Without the Ombudsman's investigation at Shattuck, the residents of Overland Park would have never learned the truth. The Ombudsman's investigation brought integrity back into the process. Without the Ombudsman's work, a trusted Federal agency would have been able to successfully hide the truth from the very people it is charged to protect.

The Shattuck issue is a decade long example of why citizens' trust in their Government has waned. My bill would preserve the

only mechanism within the EPA that the public can trust to protect their health and safety.

I am not alone in my concerns, and the Shattuck case is not unique. Many of my fellow Senators and Representatives have experienced similar battles with the EPA in their States. There is companion legislation in the House.

I would also like to point out to the committee that the project on Government oversight and independent Government watchdog organizations has submitted written testimony in which they cite many other examples of EPA interference in Ombudsman inquiries of other Superfund cases. I would like to ask that this testimony be included in the record.

Senator CRAPO. Without objection, it will be.

Senator ALLARD. Let me make it clear that my main priority in introducing this bill is to keep the EPA Ombudsman's Office open for business. I want to make sure that the EPA does not pull the plug on this office. God only knows what would have happened at Shattuck without it.

I believe that in the future, my colleagues may find themselves in a similar situation, and I want to make sure that they have every assurance that the public's safety is protected, its voice is heard, its questions are answered, and that its concerns are addressed.

Mr. Chairman, those are my brief comments for the committee. Senator Smith, thank you for allowing me to testify. I expressed my thankfulness to Senator Crapo and the whole committee for allowing me to testify.

There is going to be Deb Sanchez from the Overland Park neighborhood, and you have got her scheduled to testify on the fourth panel. I think you have moved that up. She is going to give a very heart-rendering testimony on her experiences with the Environmental Protection Agency and the cleanup of this site.

I realize that there is work to do on this particular legislation. That is why we have hearings. Your having this hearing today expresses the committee's and your interest, Mr. Chairman, and profound concern about this particular issue, and is helping to move this forward. I really appreciate that.

Thank you.

Senator CRAPO. Well, thank you very much, Senator Allard. As I indicated, because of the time pressures that we are under, we will not ask you any questions at this point in time. But I did want to tell, on a personal level, that I strongly support the legislation that you have introduced. As you know, I am the co-sponsor.

Senator ALLARD. Yes.

Senator CRAPO. You indicated in your testimony that you were concerned that other communities in the country might face the same thing. In fact, in a community in North Idaho, we are concerned that we may also be facing the same type of thing. We have actually dealt with efforts by the Justice Department to tell the EPA that they had to muzzle the Ombudsman in hearings that the Ombudsman was holding in North Idaho.

Fortunately, the EPA did not follow that recommendation from Justice, and we were pleased with that. But we are aware that the EPA is now developing guidelines and rules for the Ombudsman's

Office. We think it is entirely appropriate that the Ombudsman operate under the American Bar Association's standards, rather than specific standards that we feel could be far too restrictive.

So I am very concerned about the issues that you raise here. I look forward to doing everything possible to help this legislation move along on an orderly path.

Senator ALLARD. Senator Crapo, you have been a very strong agent in helping me with this particular legislation. Our staffs have been working together, and I appreciate your support.

Senator CRAPO. Well, thank you.

At a later point in the hearing, if it turns out that we do have time, I am going to make a longer statement on this issue. But we would release you at this time, and encourage you to get over to the next hearing where you have to testify on time.

Senator ALLARD. Thank you.

[The prepared statement of Senator Allard follows:]

STATEMENT OF HON. WAYNE ALLARD, U.S. SENATOR FROM THE STATE OF COLORADO

Mr. Chairman, thank you for the opportunity to testify on behalf of S. 1763, legislation I introduced to reauthorize the Office of Ombudsman of the Environmental Protection Agency.

I'd like to keep my remarks brief, but I want to share with the committee my reasoning and interest in this issue. I introduced the legislation because of an ongoing battle between the citizens of a Denver neighborhood and the EPA concerning the Shattuck Superfund site. Only through the work of the Ombudsman's office, did the truth finally become known.

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The Shattuck saga has been a frustrating and often disheartening experience for all involved. It is an example of what can happen when a government entity goes unchecked. For the residents of Denver, the Office of Ombudsman afforded the only opportunity to reveal the truth, and for the health and safety of the public to be given proper priority. In fact, the Ombudsman was so successful at uncovering the facts surrounding Shattuck, his investigation has resulted in EPA officials now looking at restructuring his office so that its actions may be restricted, and its independence compromised. In essence, I fear that the EPA may be moving to gut the Ombudsman's office. In effect, this means that the EPA's actions and decisions in future cases like Shattuck, may go unchecked and citizens in other states may not have a public avenue to address concerns and get answers from the EPA. Mr. Chairman, this cannot be allowed to happen.

Without the Ombudsman's investigation on Shattuck, the residents of Overland Park would have never learned the truth. The Ombudsman's investigation brought integrity back into the process. Without the Ombudsman's work, a trusted Federal agency would have been able to successfully hide the truth from the very people it is charged to protect. The Shattuck issue is a decade long example of why citizens' trust in their government has waned. My bill will preserve the only mechanism within the EPA that the public can trust to protect their health and safety.

I am not alone in my concerns and the Shattuck case is not unique. Many of my fellow Senators and Representatives have experienced similar battles with the EPA in their States. There is companion legislation in the House. I would also like to point out to the committee that the Project on Government Oversight, an independent government watchdog organization, has submitted written testimony in

which they cite many other examples of EPA interference in Ombudsman inquiries of other Superfund cases. I would like to ask that this testimony be included into the record.

Let me make it clear that my main priority in introducing this bill, is to keep the EPA Ombudsman Office open for business. I want to make sure that the EPA doesn't pull the plug on this office. God only knows what would have happened at Shattuck without it. I believe that in the future, my colleagues may find themselves in a similar situation and I want to make sure that they have every assurance that the public's safety is protected, that its voice is heard, that its questions are answered and that its concerns are addressed.

Thank you Mr. Chairman.

Senator CRAPO. Before I turn the chair over to Senator Smith, I am going to launch the next panel. Then we will proceed from there.

In our haste to get going here, I did not actually describe the hearing. This is the hearing on Environmental Protection Agency Improvements. It is a hearing on S.1763, the Ombudsman Reauthorization Act of 1999; S.1915, the Small Community Assistance Act of 1999; S.2296, the Project SEARCH Act of 2000; and S.2800, the Streamlined Environmental Reporting and Pollution Prevention Act of 2000. We will have witnesses who will be testifying on one or the other of each of these bills on the panels that follow.

For the Senators who just arrived, I want to repeat what I indicated before, as we began the hearing. That is, because we are now operating under the Two Hour Rule, we are going to let the witnesses who are from out of town testify first, so that those who traveled long distances are not deprived of the opportunity to testify.

I will announce the next panel. While the next panel is being seated, I will then turn to either of the two Senators who have just joined us, to see if they would like to make an opening statement.

But while we are doing that, let us have the next panel come up. It would be the panel identified as Panel III in the schedule, which is Mr. George Dana Bisbee, the Assistant Administrator of the New Hampshire Department Services on behalf of the Environmental Council of the States; and Mr. Jeremiah Baumann of the Environmental Health Advocate of the U.S. Public Interest Research Group.

Gentlemen, if you would come forward. While you are doing so, I will turn first to Senator Smith, to see if he would like to make any statement.

Senator SMITH. I have an opening statement, which I will place in the record. I want to thank you for filling in for me, as I battled the Washington traffic this morning. I am going to ask you if you would please just stay right there, since I have not had a chance to really look through the materials as much as I wanted to. I appreciate you filling in for me.

[The prepared statement of Senator Smith follows:]

STATEMENT OF HON. BOB SMITH, U.S. SENATOR FROM THE STATE OF  
NEW HAMPSHIRE

Welcome to all the witnesses, especially those who traveled some distance to be here today. In particular, I would like to welcome Dana Bisbee, the assistant commissioner of the New Hampshire Department of Environmental Services. I look forward to hearing Dana's testimony, as well as the testimony of our other witnesses, on four bills aimed at making improvements within the Environmental Protection Agency.

Although there is little time left in this Congress, I want to take advantage of the time that does remain by looking at a few bills that fit into the long-term authorization process. As you may know, at the full committee level I have initiated an oversight effort into EPA's budget that will ultimately lead to an EPA authorization bill in a future Congress. We have held hearings on that subject already, and I expect that we will hold additional ones in the future. In fact, we have another one scheduled for next week. This hearing is a step in that process.

Although the bills before us today address separate problems, I would characterize them as an attempt to help the "little guy" deal with issues related to the environment. Small businesses and small communities are especially burdened by the onslaught of far-reaching, complex, and sometimes unnecessary Federal laws. In addition, the large number of complex regulations places an especially weighty burden on small businesses and communities. Large businesses and large governments have greater resources than small businesses and small communities to deal with the never-ending growth of the Federal code. Bearing witness to that fact is that no large business was interested in testifying before the committee today.

I would like to speak briefly about the four bills on today's agenda. S. 1763 is the Ombudsman Reauthorization Act of 1999, introduced by Senator Allard. It would reauthorize, for 10 years, the Office of the Ombudsman within the EPA Office of Solid Waste. This Ombudsman's Office has provided communities across the country with an opportunity to voice their concerns. In my home State, issues surrounding the incineration of waste and landfill space in Claremont and Newport as well as Bethlehem are the sort of issues that small communities could raise with the Ombudsman's Office.

S. 1915 is the Small Community Assistance Act of 1999, introduced by Senator Jeffords and other members. It would direct the EPA to establish a Small Community Advisory Committee and within each region, a small community ombudsman. This bill would help small communities to be heard in the regulatory process and provide a contact in each region as an advocate for small community issues.

S. 2296 is the Project SEARCH Act of 2000 introduced by Senator Crapo. It would authorize the EPA to fund environmental projects in small communities in each State through an independent citizens' council. The State of Idaho has had some experience with a program like this one, and, from what I understand, the results have been positive.

S. 2800 is the Streamlined Environmental Reporting and Pollution Prevention Act of 2000 introduced by Senator Lautenberg, Senator Crapo, and others members. It directs EPA to integrate and streamline environmental reporting requirements to ensure simplicity and consistency in reporting.

Before I turn to my colleague, the distinguished ranking member from Montana, Senator Baucus, I would like to make a few other points:

Today's hearing might be cut short. The minority has invoked what is known as the "two-hour" rule. That rule prohibits a Senate committee from meeting for more than 2 hours past the time that the Senate begins its daily session. I hope that we will be able to conclude this hearing by then, but I am not sure that we will. In order to help ensure that the committee can hear from all of the witnesses, I will not ask questions during my time period. By waiving my time, I hope to ensure that we can hear from all of the witnesses, some of whom have traveled quite a distance to testify before us today.

In addition, because of the minority's procedural objection, we need to change the order of testimony for the witnesses. Ordinarily, we have the representatives of the Federal Government testify after hearing from any member or Officer of Congress. Today, however, in order to ensure that our witnesses from places such as New Hampshire, Idaho, and Minnesota can testify before the committee, we will allow them to testify before we hear from the EPA. The Federal witnesses therefore will appear on the last panel.

Senator CRAPO. Thank you very much.  
Senator Baucus.

**OPENING STATEMENT OF HON. MAX BAUCUS,  
U.S. SENATOR FROM THE STATE OF MONTANA**

Senator BAUCUS. Mr. Chairman, in the interest of time, I will have mine inserted in the record, too. I have just a couple of points.

First, there is a fellow here who is very instrumental in Montana. His name is Ken Bruzellius. Where is Ken? There he is. He is coming up later. I look forward to Ken's statement.

Second, I am interested in the role of EPA Ombudsman. That is basically because a few years ago, a train derailed in Alberton, MT, losing tons of chlorine and other chemicals. Frankly, we have had a hard time getting documents. I think that the Ombudsman is a process which makes some sense.

Also, even though he is not here, Senator Lautenberg does not have many more days remaining in this committee. I was going to praise him for his efforts in helping the Superfund, the Community Right to Know, and his very keen interest in the communities. I will wait until he arrives. There he is. I will give a more flowery statement at a later time.

Senator CRAPO. All right, thank you, we have had two other Senators join us. I would advise the Senators that we are operating under the Two Hour Rule, because of the objection that has been made on the floor. Therefore, we have encouraged the Senators to shorten their opening statements, if possible, but we certainly would give you the opportunity to make one, so that we can make time for the witnesses who have traveled a long distance.

Senator BAUCUS. Do they know what the Two Hour Rule is?

Senator CRAPO. Yes, I explained it to them.

Senator BAUCUS. Good.

Senator LAUTENBERG. John was a step ahead of me in front of the door. Frankly, I do not mind acknowledging seniority.

Senator WARNER. No, no, do not worry about seniority. I just want to add my accolades to my distinguished colleague, as he winds down another chapter of his career. We are sort of contemporaries. We both served in the tail end of World War II, and came to the Senate about the same time.

Senator LAUTENBERG. I thought I was in Vietnam, were you not?

Senator WARNER. I was there as Secretary of the Navy, but anyway, not as a soldier.

You have made great contributions. We have served together, particularly, in the highway areas. You have been instrumental in TEA-21 and other pieces of legislation.

We have had our combative hours on the floor, but also I have joined him on some of his crusades in terms of, while not directly related to this committee, smoking on aircraft. You are the man that eliminated that throughout the United States of America. There is no question about that.

Now we take it for granted, and we all accept the improved quality of life on our aircraft. But I can remember when that was a tough battle to get through the Congress of the United States. You have also spearheaded some legislation on alcohol and highway, which I have joined you on, I think, most of the time.

So you have left your mark in the Senate, my good friend, as you go on to another chapter of another distinguished career, whatever it may be.

Senator LAUTENBERG. Thank you very kindly.

Senator CRAPO. Senator Lautenberg.

**OPENING STATEMENT OF HON. FRANK R. LAUTENBERG,  
U.S. SENATOR FROM THE STATE OF NEW JERSEY**

Senator LAUTENBERG. Thank you, Mr. Chairman.

I would like to just get a little time extension. First, I want to thank you, Mr. Chairman, for holding a hearing on these bills, especially on the section that we have called the Streamlined Environmental Reporting and Pollution Prevention Act, which was introduced by Senator Crapo and myself.

For a moment, I want to just say thanks to those who have had nice things to say, particularly my good friend from Virginia. We do go back to World War II, even though I think we fared fairly well over the long period of time.

I have enjoyed serving with Senator Warner. We see each other on an occasional social moment, and we enjoy that. I am going to miss our contact in the future, as I am with all of my colleagues, here.

I have worked closely with Senator Baucus. We have searched for lights at night from an airplane over Montana. I am amazed at the paucity of illumination there. But when you do not have any people, you do not have many lights.

Senator BAUCUS. Amazed is an understatement. You were apologetic.

[Laughter.]

Senator LAUTENBERG. I have been out in the country before. I once hiked 5 miles from the city. It was quite a trip.

[Laughter.]

Senator LAUTENBERG. And I have got to say to Senator Smith, I looked at that bill on the Everglades. It is a massive piece of critical legislation.

I know that in New Hampshire, it is not the New York Times, but is it the Manchester Leader that is the big paper up there; but the New York Times was very nice in their article, Mr. Chairman, today, and I commend you for it.

So Senator Crapo, we have been dealing with a couple of things. I love your State. I love those streams that I once fished for salmon. I think it was a long time ago, but now I understand you can get canned salmon easily in the local markets.

[Laughter.]

Senator CRAPO. Unfortunately, it is not salmon reared in Idaho. We are looking to improve that.

Senator LAUTENBERG. Yes, and I love those mountains, as well.

So I just want to say that EPA has no bigger fan, I do not think, in the Senate, than me. I have watched the improvements in efficiency and productivity there. I am pleased to note it. I think the Administrator, Carol Browner, has done a superb job, as well as the heads of the various departments.

I believe that the quality of life in the United States, the health of the public and the environment, and even the health of our economy has been increased immeasurably by the work of the Environmental Protection Agency.

The bill that I propose would advance EPA information and management reform. It is offered in this spirit of continued improvement.

Further, the bill addresses a problem that largely the Congress is making. That is kind of the fragmentation of EPA's environmental programs. The intent of EPA's creation, three decades ago,

was to gather the Federal Government's many environmental programs into one agency, to eliminate their piecemeal nature.

However, today, we have at EPA, an air office, a water office, a solid waste office, pesticide office, each of which do excellent and essential work in their own bailiwick, but do not always work together as we would like to see them do.

One by-product of this piecemeal approach is the additional administrative burdens borne by businesses reporting environmental information to EPA. For example, a work group convened under EPA's common sense initiative discovered that 48 different EPA reporting and record keeping requirements might apply to one given manufacturer.

But what is the price of requiring a business to find and read through 48 complicated requirements, and to find those handfuls which apply? There is obviously an economic cost of business, but there is also some needless confusion.

The result of the cost and confusion is, in some cases, under-compliance and even inaccurate information. When we weaken EPA's information base, we weaken the very foundation of sound environmental policy.

Obviously, nobody wants such a situation, either within EPA or outside EPA. EPA, itself, has tried for over 20 years, under Republican and Democratic Administrations, to fix this fragmentation. If their efforts have fallen short, we in the Congress have to take some of the responsibility. After all, Congress wrote the air, water, waste, and pesticide laws each with its distinct approach, and has rarely examined the intra-sections.

My bill will compliment the existing laws. Under it, EPA will continue to implement the laws, but present itself to industry with one voice. Doing so will not only lighten the load for hundreds of thousands of businesses, but it will improve environmental information, and with it, environmental policy.

This is a win/win situation, endorsed by business and environmental organizations and by EPA, itself. So today we are going to hear about some excellent work being done, both by EPA and State agencies, on this issue. My bill will ensure that this work comes to fruition.

Mr. Chairman, just as you have graciously granted us this hearing, I hope you will give us the opportunity to report this bill out of committee, so we can get to its enactment.

My bill is one of four bills that we are going to be discussing today, two of which I have co-sponsored. The other bill amends the Solid Waste Disposal Act, which is in the jurisdiction of the subcommittee, for which I am the ranking member.

I would like to briefly note that although I remain an advocate for giving communities a meaningful voice at all hazardous waste sites, there are technical issues which I would like to see resolved before we take action on that bill.

So Mr. Chairman, I will take a moment, and I am talking to both the chairman and the chair and the committee chairman, and I would like to take another moment to reflect on this last time that I participate in a hearing on EPA.

I am enormously proud to have served on this committee for over 18 years. It is a particular honor to have served with you, Senator Smith.

At the risk of repeating some of the things that I said earlier today, I say that since becoming chairman of the committee, you have demonstrated true leadership qualities. While we may not have agreed on every issue, I think it is fair to say you have shown fairness and respect in dealing with the many different interests that those of us on this committee represent.

After I am gone, I hope that you will continue the proud tradition of New Englanders from your side of the aisle, who have led this committee: the late friend of all of us, Senator Chafee, and Senator Stafford during my tenure. It was very able leadership. I know that they would be proud of the work you are doing to continue their legacy.

So I thank you for this and for your assistance in passing the Beach bill. I have been working on that legislation to protect our coastal waters for 9 years. Things do not always move in a hasty fashion around here. It is wonderful to see it finally working, and moving toward enactment.

There are other things that we have worked on, the members of this committee, to protect our environment, cleaning up toxic waste sites, Brownfield sites, stopping ocean dumping of sewage, sludge, and plastics, and making sure citizens have the right to know about what toxic chemicals are in their communities, protecting the public health from radon gas, and improving transportation in our Nation.

So I want to thank the members of the staff, both the Republican and Democratic side, who worked very hard to advance the environmental agenda. Then I talked particularly about the folks on my team, Amy Marin, Nicki Roy, Lisa Hagee, and Mitch Warren.

With that, I thank all of you for your indulgence. I apologize for having taken those extra minutes. But just think about this, you will not have to listen to me again next year.

[Laughter.]

[The prepared statement of Senator Lautenberg follows:]

STATEMENT OF HON. FRANK R. LAUTENBERG, U.S. SENATOR FROM THE STATE OF  
NEW JERSEY

I would like to thank the chairman for holding a hearing on these bills and especially on the Streamlined Environmental Reporting and Pollution Prevention Act, introduced by myself and Senator Crapo.

EPA has no bigger fan in the Senate than me. I believe the quality of life in the United States, the health of the public and the environment, and even the health of our economy have been increased immeasurably by the work of the Environmental Protection Agency.

My bill, which would advance EPA information management reform, is offered in the spirit of continuous improvement. Furthermore, the bill addresses a problem that is largely of Congress's making the fragmentation of EPA's environmental programs.

The intent of EPA's creation three decades ago was to gather the Federal Government's many environmental programs into one agency to eliminate their piecemeal nature. However, today we have at EPA an Air Office, a Water Office, a Waste Office, and a Pesticide Office, each of which do excellent and essential work in their own bailiwick, but do not always work together as well as we wish they would.

One byproduct of this piecemeal approach is additional administrative burden borne by businesses reporting environmental information to EPA. For example, a work group convened under EPA's Common Sense Initiative discovered that 48 dif-

ferent EPA reporting and recordkeeping requirements might apply to one given manufacturer.

What's the price of requiring a business to find and read through 48 complicated requirements to find those handful which apply? There's obviously an economic cost to the business, but there's also needless confusion.

The result of the cost and confusion is, in some cases, under compliance and even, inaccurate information. And when we weaken EPA's information base, we weaken the very foundation of sound environmental policy.

Obviously, nobody wants such a situation, either within EPA or without. EPA itself has tried for over 20 years, under Republican and Democratic Administrations, to fix the fragmentation. If their efforts have fallen short, Congress must take some of the responsibility. After all, Congress wrote the air, water, waste, and pesticide laws, each with its distinct approach, and has rarely examined the intersections.

My bill will complement the existing laws. Under it, EPA will continue to implement the laws, but present itself to industry with one voice. Doing so will not only lighten the load for hundreds of thousands of businesses, it will improve environmental information, and, with it, environmental policy. This is a win-win bill, which is endorsed by business and environmental organizations, and by EPA itself.

Today we will hear about excellent work being done by both EPA and State agencies on this issue. My bill will ensure that this work comes to fruition.

Mr. Chairman, just as you have graciously granted us this hearing, I hope you will also give us the opportunity to report this bill out of committee, so we can seek its enactment.

Mr. Chairman, my bill is one of four bills we will be discussing today, two of which I've cosponsored. The other bill amends the Solid Waste Disposal Act, which is in the jurisdiction of the subcommittee for which I am the ranking member.

I would like to briefly note that, although I remain an advocate for giving communities a meaningful voice at all hazardous waste sites, there are some technical issues which I would like to see resolved before we take action on the bill.

Mr. Chairman, I would like to take another moment to reflect on what will be the last time I participate in a hearing of the Environment and Public Works Committee. I am enormously proud to have served on this committee for over 16 years.

It's been a special honor to have served with you, Mr. Chairman. At the risk of repeating some of the things I said at our committee meeting last week, I want to say that, since becoming chairman of the committee, you have demonstrated true leadership qualities.

While we may not have agreed on every issue, you have shown fairness and respect in dealing with the many different interests that those of us on this committee represent. After I am gone I hope that you will continue the proud tradition of New Englanders from your side of the aisle who have led this committee: the late Senator Chafee and Senator Stafford during my tenure.

I know that they would be very proud of the work you are doing to continue their legacies.

I want to thank you and Senator Baucus for all of your assistance in passing the Beach bill. I've been working on this legislation to protect our coastal waters for 9 years.

It's wonderful to see it finally moving toward enactment. There are so many other issues I've worked on with the members of this committee to protect our environment: cleaning up toxic waste sites, bringing brownfields sites back to productive use; stopping ocean dumping of sewage sludge and plastics, making sure citizens have the right-to-know about what toxic chemicals are in their communities; protecting the public health from radon gas; and improving transportation in our nation.

I also want to thank the members of my staff who have worked very hard to help advance my environmental agenda: Amy Maron, Nikki Roy, Lisa Haage, and Mitch Warren.

Senator CRAPO. Senator, we are not concerned about that. We all appreciate your service and the opportunity to work with you. I believe Senator Smith wanted to add one more comment.

Senator SMITH. Yes, thank you, Mr. Chairman. I would like to say, Senator Lautenberg, we politically probably do not have a lot in common, but we were both born in New Jersey. We both went to college on the GI bill which, without it, I probably would not have been able to go to college, in my case.

But it has been a pleasure to work with you, over the years. I remember, I guess, 3 or 4 years of constant negotiations with you on Superfund. It never really came to fruition, but it was not for lack of trying and working together in a spirit of cooperation and bi-partisanship.

You do have a great legacy. I respect you for it. I am proud of the things that you have accomplished, especially, I think, in the area of expansion of parks, refuges, open space. You mentioned the Right to Know, as well as the beaches, and beaches are very important in New Jersey, as you and I both know.

So, you know, I hate to always say goodbye, but I want to say that in a spirit of friendship. It has been a pleasure to work with you.

Senator LAUTENBERG. Thank you very much.

Senator BAUCUS. Mr. Chairman?

Senator CRAPO. Senator Baucus.

Senator BAUCUS. I know you are pressed for time for the hearing. But I would like to say to everyone in this room and in the world, in fact, that anyone who appreciates no smoking on an airline, and I dare say that is a good number of people, has Senator Lautenberg to thank.

Senator Lautenberg spearheaded that effort. He was an indefatigable champion to get rid of smoke on airlines. He started it. He pursued it. He finished it. I think we all owe a deep, deep sense of gratitude to the Senator from New Jersey. He is the one.

Another is the Community Right to Know. If there is any recent provision in environmental law, that has been a major breakthrough to help cleanup the air and the water, particularly air, it is the Community Right to Know issue.

That is where companies have to disclose the pollutants that they put out in the air. It is just the mere fact of disclosure. That is all it is, the mere fact of disclosure. It has been a major, major, major help in cleaning up the environment.

Again, that is Senator Lautenberg. That was his idea. He pursued it. He pushed it. It is an indication of a guy who (a) knows a good idea when he sees one; (b) pushes it; and (c) aggressively. I mean, he is no wall flower. He is no shrinking violet. He gets the job done.

There are others, but those are the two that I will always remember him by, as long as I live. I think all of us are deeply grateful for it.

Senator LAUTENBERG. I thank you very much. I was anticipating these tie-ups in airplane traffic, and just thought how horrible it would be to sit 3 hours before you take off, with the pilot fighting with the passengers saying, give us a chance to smoke, with the pilot making these life and death decisions.

Senator SMITH. Now in your retirement, get to work on some of these European Airlines, where they still smoke.

[Laughter.]

Senator LAUTENBERG. They are doing better, Mr. Chairman. In many of the countries, I know that you can fly across the Pacific or across the Atlantic.

Senator BAUCUS. That is right.

Senator LAUTENBERG. Competition is what drove them there, once people saw how good it was.

Senator BAUCUS. That is right. Even on an Air France flight recently across the Atlantic, I was amazed.

Senator LAUTENBERG. There are some Japan Airlines flights that have it. Those people do not want to be drowned in smoke any more than we do. They would rather drown you in pates and things like that. We do not. I am not going to try to develop legislation against those kinds of things, I promise you.

[Laughter.]

Senator CRAPO. Well, Senator Lautenberg, as one who spends about 10 to 12 hours a week on airplanes, I join with the millions of American who thank you for that work of yours.

I would also note that although we come from a different political perspective, you and I have found opportunities to work together on issues where we find common ground. I was a joint sponsor together with you on your S. 2800 today. I think we have found some good common ground to improve environmental work there.

Senator LAUTENBERG. That is absolutely true.

Senator CRAPO. Let us proceed now to the witnesses. To not only this panel, but all panelists, I would like to remind you, especially today, because we are under such a short timeframe, to watch the clock.

We know that you have a lot more to say than you will have time to say in your 5 minutes. We have your written testimony. We have reviewed it, and we will review it carefully.

So we ask you to please watch the clock. The green light means you have got time to speak. Yellow means you have got 1 minute left. When the red light comes on, we ask you if you would please wrap up your thoughts at that point, and trust us that we will review any items that you have not been able to cover.

With that, let us start with you, Mr. Bisbee.

Senator SMITH. Mr. Chairman, before Mr. Bisbee starts, I just want to say to you that today is Dana Bisbee's wedding anniversary. He flew all the way down here for this hearing. So we want to make sure he gets the opportunity. That is real dedication.

Senator CRAPO. Maybe it is appropriate then that he is the first witness.

Senator SMITH. Yes.

Senator BAUCUS. Did your wife join you?

Mr. BISBEE. She is not here.

Senator CRAPO. We better cut him loose early.

Senator SMITH. You should wrap up soon and get back home.

Mr. BISBEE. That is right.

Senator CRAPO. Please proceed.

**STATEMENT OF GEORGE DANA BISBEE, ASSISTANT COMMISSIONER, NEW HAMPSHIRE DEPARTMENT OF ENVIRONMENTAL SERVICES, ON BEHALF OF DATA MANAGEMENT WORKGROUP AND LOCAL GOVERNMENT FORUM OF THE ENVIRONMENTAL COUNCIL OF THE STATES**

Mr. BISBEE. Thank you very much, Mr. Chairman.

Mr. Chairman and members of the committee, it is a pleasure to be here this morning. I do very much appreciate the courtesy of putting us out-of-State witnesses on early here.

If I may, in my small way, Senator Lautenberg, offer my thanks and congratulations to you, as well.

Senator LAUTENBERG. Thank you.

Mr. BISBEE. I am here to address three of the four bills before you this morning. The bulk of my 5 minutes will be devoted to S.2800, and the remainder of my time will be on the two small community assistance bills.

I am here as the Deputy Commissioner in the State of New Hampshire for the Environmental Services Department. I am also chair of the Environmental Council of the State's Data Management Work Group. I am speaking on behalf of that work group this morning on S.2800, and also on behalf of the Local Government Forum at ECOS, the Environmental Council of the States, on the two small community bills.

On S.2800, I want to say first that we strongly support the general concepts and actions that are required by the bill. We agree fully with the one stop reporting concept, the integrated reporting component of that, the electronic reporting component of that, and the consolidated reporting aspect to an integrated data reporting scheme.

We also fully agree with the notion that data standards are at the core of any new integrated data system. We believe and we trust that the integrated reporting system that S.2800 incorporates is consistent with the work that we are doing jointly right now, the States with EPA, on developing a national environmental information exchange network.

I do have three general observations and related concerns, however, that I would like to address. The first is that while this bill is necessarily focused on EPA, and Senator Crapo, you made that remark earlier, I believe, there is a significant State role in this whole data management arena.

The States are very active in data management. Roughly speaking, the States provide roughly 94 percent of the data that is maintained in the national data bases at EPA.

The States have made a significant investment in IT infrastructure. It is essential that this bill not undermine the State role in any way in the data management arena, and that it also be flexible enough to accommodate the different infrastructure needs that the States have. We should not mandate a one-size-fits-all approach in this bill.

The second point I wish to make is that it is important to the States that S.2800 fully support the notion of the partnership that has developed between the States and EPA in recent years in the data management area.

We really have developed an effective working relationship. We formalized it some 3 years ago with the creation of a joint work group between the States and EPA on information management. We have already created a Data Standards Council, and that council is hard at work now in developing environmental data standards.

We also are jointly engaged right now in the design and development of this national environmental information exchange network, that we believe is consistent with the integrated reporting system that S. 2800 provides for.

The concern we have is that we make sure that nothing in S. 2800 inadvertently is inconsistent with the network approach that we are jointly developing by either creating an unnecessary hurdle in the creation of this network, or in delaying it. We want to make sure that any of the language in S. 2800 does not provide for any unintended consequences in that regard.

The last point on S. 2800 is the simple question of resources. I just want to say that there is a significant initial investment required to do what we are doing. There are State infrastructure needs that have to be addressed. There are EPA internal capacity needs that have to be addressed. There is joint development work with the States and EPA, and the tribes are included, that needs to be supported as well.

We strongly encourage this committee to authorize the funding to make this happen.

If I may use the remainder of my time, Mr. Chairman, to address the two small community assistance bill. On behalf of the Local Government Forum at ECOS, let me simply say that we support the general concepts and the underlying principles in both S. 1915 and S. 2296.

It's importance to our small communities we see first-hand. It is important that they have a strong role in the development of regulatory programs. EPA is making progress in this area, and we believe that S. 1915 should enhance that effort.

Furthermore, on the funding side, in S. 2296, while we are concerned that the other current funding programs that are in place—most particularly the SRFs, the State revolving fund programs are not undermined—we believe that targeted assistance for the smallest of our communities does make sense. We are supportive of that notion.

Thank you very much, Mr. Chairman.

Senator CRAPO. Thank you very much, Mr. Bisbee.

Mr. Baumann.

**STATEMENT OF JEREMIAH BAUMANN, ENVIRONMENTAL HEALTH ADVOCATE, U.S. PUBLIC INTEREST RESEARCH GROUP**

Mr. BAUMANN. Thank you, Mr. Chairman and Mr. Lautenberg. It is an honor to be here to testify in support of two bills, today, the Ombudsman Reauthorization bill and the Streamlined Environmental Reporting bill.

First, let me introduce myself. My name is Jeremiah Baumann. I am an environmental health advocate for U.S. PIRG, which is the National Advocacy Office for the State Public Interest Research Groups, a nationwide network of public interest advocacy organizations, active on issues including health care, environmental protection, and consumer protection.

We welcome the opportunity to testify in support of these two bills. I have submitted comprehensive testimony, but would like to just take a few minutes to briefly comment on the two bills, and

what we see as the public interest priorities, as these reforms are made.

First, I will discuss S.2800, the streamlined Environmental Reporting and Pollution Prevention Act, introduced by Senators Lautenberg and Crapo.

U.S. PIRG supports this bill as an essential reform at EPA that makes some very critical improvements in EPA's information systems. It addresses one specific long-standing problem at EPA, which is that the agency collects an enormous wealth of information, over the course of years, or in some cases multi-year cycles, but various pieces and types of information are collected by different programs and different offices at EPA, held by different programs and offices at EPA.

Those parties who do the reporting often are reporting at different times of the year, resulting in some pieces of information, or similar pieces of information, being held more than once, and some critical pieces of information not being held at all.

This bill could not only address that problem and directly improve EPA's environmental information management, but by doing so, would actually improve EPA's work in protecting the environment, specifically by encouraging providing opportunities for facilities and States to promote pollution prevention.

One way that it does this is simply by consolidating these reporting requirements into one system, it would give those reporting, whether it is facilities or States, the opportunity to view all of that information at one time, which is critical to assessing their own environmental impacts, and then identifying ways that they can reduce their environmental impacts.

This bill, however, even goes a step further by providing those people, providing EPA with information, the information for the facility or the State to use on pollution prevention opportunities. So the reporting party can both see their environmental impacts, and identify their own ways of reducing their pollution, but then also is provided with additional information from the agency on how to reduce that pollution through pollution prevention.

The bill would also, we believe, encourage pollution prevention, simply by making it easier to report more accurately and more consistently. Reporting all information through one system and one point of contact would make it easier to identify and correct errors before the data is even submitted to EPA, which would inherently increase data accuracy.

It would also make it easier for facilities and States to increase compliance, simply by reducing the confusion created by a myriad of reporting requirements at EPA. All of these things would lead to better policymaking by EPA for the long term.

Our one concern about this bill is that by not requiring reporting parties to use the system, and by allowing EPA to establish different methods of providing that information, it could create problems of data consistency and data comparability. We think these problems are very easy to avoid.

The major problem would be that if some parties are using the system and others are not using the system, EPA or the legislation needs to take strong steps to ensure that the data will be consistent and will be comparable, which could be as simple as allow-

ing facilities who chose not to use an electronic reporting system to use the same integrated reporting system, but in paper format, so that information could easily be integrated with the larger data system.

My final thought is, as many of you are familiar with, U.S. PIRG and the State PIRGs have long advocated for improving EPA's information resources by increasing information collected by EPA, filling in gaps in EPA's information resources.

This bill does not do that but, instead, improves EPA's information, simply by making it easier to report, by making reporting more efficient, and without adding any new reporting requirements.

We see this bill, however, as a much needed reform that we strongly support, and hope it is enacted into law before the Congress leaves.

I will comment just very briefly on the Ombudsman Reauthorization Act of 1999. The most important aspect of this bill is its most basic act, simply reauthorizing the Office of the Ombudsman, who provides an important service to communities around the country, affected by problems of hazardous waste, and who sometimes do not feel their concerns are appropriately addressed by EPA.

Senator Allard mentioned some of the major concerns, both in getting EPA's attention, and having the concerns addressed; and then, also, in EPA's interactions with the Ombudsman.

We fully support extending the Ombudsman's independence and authority in compliance with the American Bar Association's model Ombudsman statute.

A couple of recommendations would be to consider adopting those reforms, especially in this legislation, rather than requiring the administrator to consider it, or to adopt the reforms to the best of her ability, to ensure that all of the Ombudsmen are publicly available; all the Ombudsmen's findings and recommendations are publicly available; and then in order to avoid having the Ombudsmen become entangled in turf battles or political wrangling, to ensure that Ombudsmen's mission is the same as the EPA's mission, which is to protect human health and the environment.

Thank you very much.

Senator CRAPO. Thank you.

Senator Smith would like to make a very quick announcement.

Senator SMITH. We had planned to have a business meeting off the floor, during this vote, in order to pass out the bills that we had the meeting on last week. We were unable to do it, because we did not have enough members.

I am going to cancel that or postpone that meeting for the benefit of members and staffs, so that I can go down and vote, come back, and then Senator Crapo can stay. Then he can leave. That way, it is at a deference to the witnesses and the time constraints we are in. So we will postpone that meeting. I will go ahead and go down and vote. You can go when I get back.

Senator LAUTENBERG. Then, Senator Crapo, may I just ask a couple of questions here while Senator Smith goes to vote, and we will kind of sequence this?

Senator CRAPO. Yes, I was going to withhold any of my questions. If you have a few questions, we would be glad to do so.

Senator LAUTENBERG. I have just a couple of quick ones, I promise. I thank each of the witnesses, Mr. Bisbee and Mr. Baumann, for your comments.

I think we are on the right track, as evidenced by your testimony. The fact is, Mr. Bisbee, some of the questions you raise, I think, some are already taken care of, I believe, and a review of the bill would help establish that. If not, we would look forward to working with you, to try and get it done.

In terms of the funding, the resources, and you mentioned that in your commentary, as well, there is a request for some \$30 million to get this done.

I would ask each of you, in short form, what would be the effect, because we do not have it provided on the House side, of not providing the financial resources? What do you think the result might be if we did not?

Mr. BISBEE. If I may address that first, we are talking about an area of technology that is changing so rapidly that the concept is to take advantage of it as soon as possible.

My personal view is the time is ripe and the time is right to invest in this technology to make happen what we know the technology will allow.

The harm that will come from delayed funding or no funding is a longer time for us to be able to put in place the kinds of data reporting processes that we feel can work, and will be a tremendous improvement over what the current system is.

Mr. BAUMANN. I would only add that EPA has had information reform and integration and electronic reporting on its agenda for several years now. After several years of working with the Agency, most of those reforms have not actually come about.

As a result, in response to many industry requests for burden reductions, EPA has been forced to respond reactively with proposals to cut important information requirements and other vital public interest information resources.

We feel this is a great proactive approach to reducing the burden, and it would make reporting more efficient. Having the necessary funding to enact these reforms immediately is crucial to prioritizing this at the agency.

Senator LAUTENBERG. I think timing in this case is really critical. If we are agreed that this has value, that we want to get to kind of a one stop approach, then we ought to get on with it. Delaying it, for whatever the reason, does not help anything or anybody.

I think that when we have an opportunity to bring business and the environment community and citizens generally together, I think that is the time that you move on these. I am hopeful that we can get the funding done.

I had one other question, and the chairman mentioned this also, I think. That is whether or not there has to be a degree of conformity to the reporting structures. Why could we not, as we go through this, establish a relatively common format, to get the data moving in and out? Do you think that would be a serious problem?

I come out of the computer business. The problem is that it was 18 years ago. I am still considered a pioneer, but I do not know in what.

[Laughter.]

Senator LAUTENBERG. Our experience goes back to the earliest 1950's, and uniformity was always a problem, in companies that operated in all the States and several countries around the world, besides ours.

Do you not think that a good effort could be made to reduce the differences, without imposing too heavy a hand in there, to make sure we get the information that we want?

Mr. BISBEE. Again, I will be happy to address that, first. I do agree with you. There is an absolute need for consistency. The data standards are at the heart of that effort.

By creating data standards that are adopted by those reporting parties who participate in the system and in the network, that will allow for the integration of the data, and the usability of the information across Government lines, State to Federal, and across State lines, as well. That is really driving our efforts here.

So on one hand, there is very much a strong need for the underlying creation of data standards to allow for the integration to occur.

There is work being engaged in right now, Senator, along those lines. A tremendous amount of work is happening within Government. It parallels work that is happening in the e-commerce arena, outside of Government. Our effort is to take advantage of what is being learned in e-commerce and apply it to Government.

So, yes, there is definitely a need for this type of standardization. I would not call it, necessarily, uniformity. It is happening. It can happen. It relates to the resource question, as well, with an infusion of additional resources for the States and EPA. That effort can be hastened significantly.

But I do want to mention, too, that we are talking about standardization of the tools needed to transfer the information and integrate the information. That is different from uniformity in the underlying data bases that the States have.

There has to be flexibility to allow for different kinds of platforms at the State level, so that we do not mandate a particular type of system at every State. That is unlikely to work as a practical matter, and it does not need to happen, because the technology will allow for that type of flexibility.

Senator LAUTENBERG. I agree.

Do you have any comment on that, Mr. Baumann?

Mr. BAUMANN. I would just add that the consistency of data standard performance is one of the most important aspects of this kind of integration. I think especially between States and EPA making data more comparable and more consistent, it is crucial, especially in issues raised by the Ombudsman Reauthorization bill, making EPA and State agencies more accessible to citizens at the local level.

Senator LAUTENBERG. I agree. I think that we can continue to allow the States to maintain their own data bases, as they see fit, but there has to be some commonality, some formatting that is consistent, so that you can patch the information with ease and reliability.

Thank you, Mr. Chairman.

Senator CRAPO. Thank you very much, Senator.

As I indicated, I will withhold my questions, so we can move to the next panel. I did want to say something, however, with regard to the comments provided by both of you.

Mr. Bisbee, I am the main sponsor of the Project SEARCH legislation. I appreciate the support that you indicated for it. You did raise the question of wanting to be sure that the money was not diverted from other funds that are also helpful to the States. Certainly, that is not the intent of the legislation.

It would be my intent that that legislation would not only authorize the additional funding for the small communities, but that that funding be additional funding, so that we can continue strengthening these communities. So your point is well taken. I appreciate your support and your comments.

Mr. Baumann, you made a comment that I wanted to follow-up on quickly. In fact, I might break my rule and ask you a real short question.

You said that you supported the Ombudsman legislation, but that you thought that maybe an improvement could be made by having us, in the legislation, adopt the ABA standards. Did I understand you correctly, there?

Mr. BAUMANN. Yes.

Senator CRAPO. I like that suggestion. The question I had was, do you believe that the legislation, as it is written right now, does not assure that the EPA has to adopt those standards?

Mr. BAUMANN. We believe that by directing the Administrator to adopt them to the maximum extent possible, given the inherent conflicts that the Ombudsman is intended to investigate the agency and the Administrator, it would probably make more sense for a third party, i.e., this committee or Congress, to legislate those standards, and especially to adopt those to the office, seems most appropriate.

Senator CRAPO. You know, I think that is a very good comment on the legislation, because to the maximum extent possible still leaves the potential that they could be adjusted somewhat in ways that the conflict you identified could become expressed. I do not think that would be appropriate.

So I appreciate that suggestion. It is one that I will encourage the committee to consider. With that, thank you very much, both of you, and we would excuse this panel at this time.

Senator Lautenberg, I intend to stay here until Senator Smith comes back, if possible. I know that we are getting close to the late time on the vote.

Senator LAUTENBERG. No, we are still going.

Senator CRAPO. We will hang in there.

We will call up the next panel now. The panel is identified as Panel IV: Ms. Deborah Sanchez, the co-founder and administrator of the Overland Neighborhood Environmental Watch; Mr. Ken Bruzellius, executive director of the Midwest Assistance Program from Minnesota; Mr. B. Roy Prescott, chairman of the Jerome County Board of Commissioners, from my home State, Idaho; and Mr. Ben Cooper, senior vice president of Government Affairs of Printing Industries of American, from here in Alexandria, VA.

We welcome all of you to the panel. You have heard all of the instructions so far. I would just again remind you to please try to watch the clock, so that we will make it through.

It is possible that if the chairman is delayed, we may have to delay the hearing for just a few moments until he gets back, while we run over to vote.

Senator LAUTENBERG. I would like to hear the full testimony.

Senator CRAPO. Yes, hopefully, we will be able to make it through. So without any further delay, we will begin in the order that you were announced.

Ms. Sanchez.

**STATEMENT OF DEBORAH SPAAR SANCHEZ, COFOUNDER AND ADMINISTRATOR, OVERLAND NEIGHBORHOOD ENVIRONMENTAL WATCH**

Ms. SANCHEZ. My name is Deborah Spaar Sanchez. I live 500 West Jewell Avenue in Denver, CO, approximately 300 yards from the Shattuck Chemical Superfund site, a toxic radioactive waste dump. I am a founding member of Overland Neighborhood Environmental Watch, a community organization of concerned citizens.

I am honored that you have invited me to speak today. I am also honored to be representing my community, and am grateful that they have funded my trip here.

I also want to honor the work of this committee, of industry, of EPA, and of the citizens of this country, for doing what I believe to be the sacred work of restoring to wholeness and protecting the life-giving systems of this earth and this Nation.

I will do my best to tell my own and my community's story in the time I have been given, but if you have questions, please call me. If I cannot answer them, I will put you in touch with those who can.

I have come to voice my strong support for Senate bill 1763, the EPA Ombudsman Reauthorization Act. I am convinced that continued funding and independence of the EPA Ombudsman Office is the only way to ensure that citizens and communities across our country have a voice in the Superfund process, and in decisions which directly affect them, their families, and the environment.

I have also come to share my thoughts with you about my community's experience with EPA National Ombudsman, Robert Martin. By the time Senator Allard had asked EPA Ombudsman Martin to help our community in early 1999, I personally had been in a war with Region 8, EPA, for 12 years.

I had been given misinformation. The EPA FOIA officer wrote me a letter in response to a request that I made in 1987 telling me that there were no national priority list sites in my zip code, when, in fact, Shattuck had the same zip code as me, and had been placed on this list 5 to 7 years before.

Mistakes had been made, and there was no interest in correcting them. When I pointed out that a flood plain map used to determine that the site was not in danger of flooding, actually showed water running uphill, EPA seemed unconcerned and did not offer any further explanation, even though the community asked for new research to be done.

There were constant contradictions in the information being given to my community. At one point, the EPA project manager told us at a meeting not to eat the fruits and vegetables from our gardens, and then without doing further research, later told us that it was OK to eat them.

Our State Health Department and the EPA sent us a proposed plan with a preferred remedy to excavate and remove, and we were told that this was the only remedy which would ensure the health and safety of our community.

Then, after closed meetings with EPA, State Health, and the PRP, a ROD was signed, ordering the company to treat and bury the radioactive soil in our neighborhood. They did this without coming back to our community to tell us that they had changed their minds.

When we asked to see the documents and records of the meetings that would explain to us why they changed their minds, we found that the documents had now been classified and were being kept from public scrutiny.

I was suspicious. I was exhausted. My husband had died suddenly of a heart attack the year before, and I was living with unspeakable fears that the health problems my son, Lucas have, were as a result of radium contamination.

I felt assaulted by the Government that I had been raised to trust. I had become like a citizen in one of those other countries where people can never relax. They go to bed at night, fearing that, at any moment, their Government will make a decision which will put them and their families in harm's way.

I did not feel seen. I did not once feel heard. I felt completely disregarded, as if I were invisible. I wanted to take my son and move out of the beautiful, passive solar home my late husband had designed and built for us, but even that thought brought fear. I could not think of trying to sell our home without disclosing to a buyer that somehow our Government had allowed a powerful company to bury radioactive toxic waste in the middle of our lovely neighborhood.

My next fear was that I might not be able to find a new home that was not also potentially contaminated by some other toxic waste. I could ask, like I did last time, but since I had received misinformation before I could not trust that I would not receive more misinformation.

The EPA Ombudsman first got involved in this issue approximately 10 years after the community began dealing with it. The first thing that he did was to listen to us. He and his small staff came and they listened. They placed no restrictions, no time limits, no agendas on their listening.

Bob Martin, the EPA Ombudsman, listened and listened. He listened to our pain. He listened to our anger. He listened to our fears. He listened to our frustration, and he listened to our disillusionment with our Government and with the EPA.

He also listened to our good ideas, and to the wisdom we shared about our own community, and what we knew about our own environment; wisdom seldom tapped into by the EPA, because the system has been structured to exclude community input. Instead, it places EPA technical scientists, addressing most of the concerns of

the money-oriented businesses, responsible for the pollution or responsible for cleaning it up.

He listened with respect and he listened to us for as long as we wanted to talk. Then he promised to uncover the facts for us.

He began to meet with EPA Region 8 staff, and began working with Senator Allard and this very Senate committee to release the many documents which had been hidden from us. He then began planning and scheduling public hearings.

It was not until Mr. Martin's office, Senator Allard, and other elected officials convened public hearings in the community with the press present that I finally felt true democracy was taking place, and I was able to regain at least a little of the faith that I had lost in my Government.

Involving the community from the beginning of the process, and actually listening to our suggestions would bring wisdom to the Government process from the governed, which would not only be good for all concerned from a spiritual and democratic perspective, but also from a monetary and a practical one. When problems arise and mistakes are made, and even when mistakes are covered up, because covering up mistakes and making them are human, it is only by exposing them to the light of day that we have any hope in correcting them.

The independent Ombudsman process is crucial for exposing the truth to the light of day for the citizens of this Nation. Knowing the truth is the only way that we can remain free and truly self-governed.

Thank you, Mr. Chairman and members of this committee. I will be happy to answer any questions that you may have of me.

Senator SMITH [assuming the chair]. Thank you for your testimony, Ms. Sanchez.

Mr. Bruzellius.

**STATEMENT OF KEN BRUZELLIUS, EXECUTIVE DIRECTOR,  
MIDWEST ASSISTANCE PROGRAM**

Mr. BRUZELLIUS. Mr. Chairman and members of the committee, it is my pleasure to be here to speak on behalf of Senate bill 1915, the Small Community Assistant Act of 1999.

My name is Kenneth Bruzellius, New Prage, MN. I am the executive director of the Midwest Assistance Program, which is non-profit that provides technical assistance to very small communities in the Midwest.

I have also been a member of the EPA Small Town Task Force, and more recently, the Small Community Advisory Subcommittee of the local government advisory committee.

I want to express my appreciation to Senator Jeffords for initiating this legislation. I would speak in support of it, not on my own behalf only, but also a coalition of local officials and other grass-roots organizations.

Establishing a Small Community Advisory Committee as a permanent committee, instead of a temporary subcommittee is extremely important. Small communities represent an overwhelming percent of local governments, over 26,000. Additionally, unincorporated communities, subject to EPA regulation, would be heard and benefit from the Small Community Advisory Committee.

It is important that these stakeholders have a direct voice to EPA decisionmakers without the filter of a committee dominated by larger cities and metropolitan areas. This message came out loud and clear in the Small Town Task Force Report. It has come out loud and clear in the current Small Community Subcommittee. The report of the Small Town Task Force and the Subcommittee both go along with the requirements of the Act.

Basically, what it says is, we need environmental protection. We need to understand how new regulations will accomplish that. We need input so that when regulations are promulgated, they are appropriate to our situation. We need advice and technical assistance in how to implement, and we need access to resources.

I want to commend EPA staff for their seriousness and commitment that I have seen in their pursuit of their responsibilities. It is because of this commitment that I am a little discouraged that they are not willing to offer to small community officials an opportunity to express their similar commitment to fully participating in the job of protecting the environment and public health.

Creating a permanent Small Community Advisory Committee with the objectives stated in S.1915 is a small but extremely important mechanism toward offering small community officials this opportunity.

S.1915 would establish the advisory committee. It would also allow for representation from Federal, State and public interests. It would seek to improve the working relationship between the Agency and small communities.

It would provide for early involvement in the development of environmental regulations. It would report its activities to Congress, and it would assist the EPA Administrator in other important matters.

Now I would ask, who could reasonably deny small community officials this opportunity to show their commitment to helping themselves and their neighbors to meet essential environmental responsibilities?

Besides that, S.1915 offers EPA an opportunity to better understand small communities. Section 8, the survey of small communities, identifies relevant information needs that, if appropriately collected and compiled, would enable EPA and the Congress to improve environmental services and quality of life in small town America.

I would like to also speak to the Ombudsman provision of the Act. The concept of Ombudsman was stated in the Step legislation of 1992, requiring EPA to create such, and they did not do so. The Small Town Task Force has also encouraged that in its report. It has not been done.

The Small Community Advisory Subcommittee is currently working on that issue. In fact, the recommendation has gone to the Administrator. We think the best hope of having that happen is for Congress to enact S.1915, that would require Ombudsman for small communities, just as they have for small business and for Superfund.

I see my time is up. Thank you very much for your time.

Senator SMITH. Thank you, Mr. Bruzellius. Unfortunately, we are under these time constraints; otherwise, I could let you go a little bit longer. As you know, we have to stop at 11:30.

Mr. Prescott.

**STATEMENT OF B. ROY PRESCOTT, CHAIRMAN, JEROME COUNTY, IDAHO, BOARD OF COMMISSIONERS**

Mr. PRESCOTT. Thank you. Mr. Chairman, it is a privilege to be here today. I am Roy Prescott. I am the chairman of the Board of Commissioners in Jerome, ID.

I apologize for my attire this morning. I was assured that as I left Boise, ID, yesterday afternoon that I and my clothes that I had packed were all on the craft. I have consequently been assured that Northwest is shepherding, at some point. I hope that that wardrobe is as well fitted as I am at this time. I do apologize for that.

[Laughter.]

Senator SMITH. Well, I think you have set a standard that makes us all jealous.

[Laughter.]

Mr. PRESCOTT. I am quite certain that if Senator Lautenberg can talk about smoking in aircraft, certainly he can do something. So there is work ahead for him in the next 3 months.

Senator SMITH. That has happened to me several times. My attitude on it is, go out and buy a brand new suit and bill the airlines.

[Laughter.]

Mr. PRESCOTT. I will use you as the resource.

[Laughter.]

Mr. PRESCOTT. I am here this morning to give a brief insight and the implementation benefits of S. 2296. I would suggest to you this morning, Senator, that I represent, in fact, a great part of those commissioned, which are part of each and all those States, which are on this commission.

We look at the small communities, of which there are over 26,000 of them in this Nation, and what qualifies for small communities. They are a population of 2,500 or less.

I would like to talk about 2296, the bill that would establish Project SEARCH, the Special Environmental Assistance for Regulation of Communities and Habitat Programs, funded through the Environmental Protection Agency for small communities under that 2,500 people.

Rural Idaho communities are facing many of the same environmental challenges seen throughout the United States, including the protection of groundwater, the disposal of wastewater, protection of critical habitat and many others.

Yet, these small communities often find themselves without the financial resources to undertake the size and scope of projects necessary to respond to environmental challenges.

In answer to their call for help in meeting environmental regulations and providing for livability, several communities in Idaho prevailed on Congress to provide funding through a project SEARCH demonstration project this last year.

Our focus was to use these funds to help small rural communities solve their environmental problems. We targeted these communities because they were generally with small operating budg-

ets, only part-time staff, and lacked financial reserves so critical to being competitive in the normal public sector for the grant process.

The 1999 initial grant of \$1.3 million from EPA went to a local non-profit. This regional planning association, the Region 4 Development Association, has considerable expertise with the grant process in helping small communities.

The association created a simple grant application that part-time city officials or mayors could complete. A notice of the grant program availability and the application was sent to all Idaho counties, and to all cities in the State with populations of less than 2,500.

To review the applicants and ensure a fair, locally-driven process, a seven-member citizen advisory committee was formed. The committee was comprised of one representative appointed by the local board of each of Idaho's six economic development planning regions, and one person who brought to the group his experience as a small town mayor, and to the EPA Small Town Task Force. This individual served as the committee's chair.

These seven individuals, of which I was one, reviewed the applicants, and made the funding decisions. Of the 47 applications received, we were able to fund only 21. The funded applications ranged from as low as \$9,000 for facility plans so that the housing authority could resolve its wastewater problems, to a high of \$319,000 for part of the funding needed for construction of a wastewater treatment facility, a very sensitive environmental area.

The project that we funded close to my home involved a community of 150. I might give you a little personal background on that area. In a population of 150, my folks met there, romanced, and married, teaching in a school that is still presently used, with no major additions or any kind of rehab, 59 years ago. That gives you an idea and a favor of that community.

This 150 were attempting to install their first wastewater treatment system using the community residents for the needed labor. This self-help project had been struggling for a couple of years with pipe stockpiled on the ground, and no financial resources to finance a section of dangerous trenching that no volunteer felt safe or capable to complete.

Project SEARCH funds enabled this community to complete this aspect of the project and focused on getting the remainder of the sewer system completed. These people in this community will hook on this fall; where if Project SEARCH were not an assistance, this project would still be years away from completion.

Implementation of Project SEARCH was not without its tense moments. In our community, the local water and sewer district was awarded a \$20,000 SEARCH grant for planning a study to determine the feasibility of installing a state-of-the-art waste treatment facility, coupled with the tours and recreation development association, a non-profit tourism and recreation group, we received a separate grant, planning through EPA's SCAS, the Small Community Advisory Subcommittee.

This has the potential to result in development of a major ecotourism park in our community, as well as protecting the point source of the drinking water source for neighboring community.

These two groups will provide written testimony concerning this important success story.

The Project SEARCH concept provides the flexibility of needed public infrastructure and grant programs. It has to be implemented.

To typify, I think, and to top off what we are trying to say here, when Senator Crapo announced those which would receive the funds, a mayor from a small town, Idaho City, less than 100, stated, "To you, this might not represent much in the form of the dollars that you have to work to. But with us, it is an absolute God-send." I think that typifies what the issue is.

We would encourage you to support it, in any way that you can. It is the only means that small communities under 2,500 have really to realistically look at the problems that they have to resolve.

Thank you.

Senator SMITH. Thank you, Mr. Prescott.

Mr. Cooper.

**STATEMENT OF BEN COOPER, SENIOR VICE PRESIDENT OF GOVERNMENT AFFAIRS, PRINTING INDUSTRIES OF AMERICA**

Mr. COOPER. Thank you, Mr. Chairman. I appreciate this opportunity to appear before you in support of S.2800, the Streamlined Environmental Reporting and Pollution Prevention Act of 2000.

S.2800 is important legislation. It is important for today, but it may have greater value, as the impact of Federal environmental regulations is extended to smaller and smaller companies.

For smaller companies, reporting can be a complex and sometimes error-prone process. These companies often lack the tools and experience to provide the information. Often small companies have to rely on suppliers or material safety data sheets to determine the volatility or toxicity of a chemical.

The level of complexity is also a factor in the rate of error. The more complex the reporting requirement, the greater the chance of error.

S.2800 could provide significant help in reducing the time required to file. If the reporting is consolidated into fewer reports, it is possible that the rate of error will be reduced, simply by minimizing the time required to fill out forms.

In terms of reporting burden, it is not unusual for a printing company to file quarterly, semi-annual, as well as annual, emission reports. A printer may also have to file an additional State emission statement, with a different format and data element presentation requirement to a different branch of the same media program.

Some air programs, such as title 5, can also require additional annual reports, when mandatory annual training is completed. These various annual reports have different deadlines.

These companies must also account for any significant changes. The purchase of a new press, or an expansion of the facility triggers other series of reports, including new permitting, new source review, and more.

Frankly, we do not believe that Congress considered the purchase of new equipment in a small business as an event triggering new source review, but that is where we are today.

In light of these concerns, we think S.2800 provides an opening to some genuine reporting reform. For a smaller printing company, the most accurate reporting is by inventory or use of input materials, not outputs, such as emissions, effluence, and waste generation.

Companies buy a certain quantity of ink, solvents, and other chemicals. The process of accounting for these chemicals provides information about emissions and waste. Additionally, inventory accounting may also indicate areas where changes can be made to reduce or eliminate problems. Inventory accounting can also be more accurate.

Another benefit of consolidated reporting is to improve EPA's inventory of pollutant loadings. One of the ongoing disputes that we have with EPA is the emissions inventory. EPA determines the emissions inventory and the emissions of particular industries through emissions factors.

These factors are not changed often enough to account for new technology. Since printing and other manufacturers have been through a technology revolution in the past decade, old data is worthless data.

It is my opinion that the challenge that is facing EPA is not a lack of desire to make the change. Instead, the lack of success may be due to the statutory "balkanization" of EPA into media programs.

Each of these programs has developed data that is important to the individual program. There is almost certainly a level of concern about a proposal such as this that would consolidate such data into a single point, since data is a form of power.

One question about this legislation is, why is it necessary? Experience tells us if we want consolidated reporting, it will be necessary to legislate it. It is our hope that the legislation goes where EPA would go, anyway.

Would EPA accomplish the same goal, absent legislation? For some of the reasons stated above, we do not believe so. EPA's priority is the environment. From the environmental community side, that means enforcement. From the business side, that means communication and regulatory efficiency.

Enforcement tends to win this battle. However, at some point, every constituent of EPA must realize that improvements in data gathering also help improve the environment. Better communications help. Regulatory flexibility can also help.

The primary benefit of consolidated reporting is that fewer man hours will be spent reporting data to the Government, and fewer hours will be spent by the Agency in processing the data, once it is received.

However, there are other benefits that have environmental significance. Consolidated reporting has the additional benefit of giving the business the opportunity to look at a larger picture of chemical use. Small companies are able to manage the entire company at once. Likewise, if chemical data and use is managed as a whole, problems and opportunities become more evident.

If the report only addresses air emissions, the use of a specific chemical may not be in sufficient quantities to pass a reporting threshold. However, if that same chemical causes TRI reporting, a

waste restriction or a discharge limit, the business may also be able to see that through consolidated reporting. In effect, consolidated reporting presents an opportunity for pollution prevention by highlighting emissions, effluents, and waste as whole, and not in parts.

While we think EPA has done a good job at improving its communication with the regulated community, it has not succeeded in reducing the reporting burden. We cannot find a single example of a company that has had its actual reporting burden reduced through EPA's One Stop Reporting Program, for example.

If this legislation will produce results, it is worth the effort to pass it. We urge your support and prompt action on S. 2800.

Thank you.

Senator SMITH. Thank you very much, Mr. Cooper.

Senator Lautenberg, do you have any questions for this panel. I would remind you, we have to stop at 11:30.

Senator LAUTENBERG. OK.

Senator SMITH. We have one more panel.

Senator LAUTENBERG. I will be brief, Mr. Chairman.

I am pleased to have the support for S. 2800 that we have. When it comes from an organization like the Printing Industries of America, it strikes a particularly good cord. That is an industry that is comprised of lots of small businesses. It is an industry that touches every other industry, and has an impact on our lives, one way or the other.

I know that the environmental questions have long been a problem for the industry. So I am pleased to have the endorsement of your organization, Mr. Cooper.

I would just make an assumption about lots of these smaller companies. I have a nephew who is in the printing business, in a family business. It has been there for two generations. They operate in New York City, and life is complicated, getting materials, et cetera, moved back and forth.

Do most of your members, would you say, have any awareness that they have got to be in touch with the environmental statutes and requirements? Or is this something that sometimes, I will not say, gets overlooked, because I know they are a law-abiding group of businesses, but is it the kind of burden that is often discouraging for those types of businesses, and difficult for them to respond to, to the requirements that they have to fulfill before they can use some materials or discharge some types of materials?

Mr. COOPER. Senator, I think the biggest problem, in listening to the situation with the small communities, it is not significantly different for small companies. You have to be a fairly large printing company before you can afford an environmental specialist.

Consequently, I imagine in the case of your nephew's company, he is doing the reporting. He is the one doing the calculation, and he is also doing the wage and hour reports. He is also buying the paper.

Senator LAUTENBERG. Absolutely.

Mr. COOPER. He is also selling the printing. So that is where the difficulty comes in. So it is really a question of where the priority falls.

We have done a great deal of work, over the last decade, in trying to improve information flow to our members, and get them in compliance. New Jersey has a marvelous small business compliance program that has helped tremendously with that. Nothing, though, seems to reach out to literally millions of companies as effectively as we would hope it does.

The real burden is that there is just not enough room in the budget for the kind of people to do this kind of work. So it is much like taxes, if you do not have a CPA on staff, you have to find some simpler way of doing it. That is the burden we are facing.

Senator LAUTENBERG. So obviously, as a result of your encouragement here, companies have been surveyed pretty much to see their attitude, and they are positive about it?

Mr. COOPER. Yes.

Senator LAUTENBERG. We appreciate your encouragement.

Mr. Chairman, that is all I have.

Senator SMITH. Senator Crapo.

Senator CRAPO. Thank you very much, Mr. Chairman.

Ms. Sanchez, I will start with you. I appreciate your testimony and support of the Ombudsman's Act that we are considering.

It seems to me that whether it is from the communities that have been impacted by EPA actions, or whether it is from the environmental groups that have seen the value of the Ombudsman's ability to intervene and assure that the environmental statutes of this country are properly being enforced, that we see strong support for the Ombudsman throughout this country.

As you probably know, we have a situation similar to yours in Idaho, where we have been very concerned at the community level that the Ombudsman be independent.

I think it is critical that we, in Congress, assure that we not only reauthorize the Ombudsman's Office in the EPA, but that we assure that that office is independent. That requires both that it is independent in terms of its budget, as well as that it is independent in terms of the rules under which the Ombudsman's Office operates.

You may have heard the testimony earlier by Mr. Baumann, who indicated that he felt that one improvement in the act we are considering is possibly for Congress, itself, to adopt the ABA standards, rather than to leave that up to the discretion of the EPA, or in other words, letting the EPA determine how much those standards can be adopted in consistence with their operations. Would you support that kind of a change in the statute?

Ms. SANCHEZ. I certainly would. I have read the ABA standards, and I feel that they are very well thought out. I know how the ABA does things. I know that the words that they choose are very specific.

Although I do not have a copy right in front of me, I believe the ABA standards begin by listing that one of the main duties of the Ombudsman is "to criticize" the agency process, or whatever is going on. I would just suggest that the word "criticize" be taken out and another word be used, because I think that one of the problems we had at Region 8 is that they felt the Ombudsman was criticizing them.

You know, when people make mistakes, they get very defensive when other people come in and start criticizing them.

So that may seem like a trite suggestion. But I think that from our community's perspective, bringing the facts to the light of day and uncovering the facts, I know that the critical process was inherent in that. But I think that maybe "uncovering the facts" would be a better choice of words.

Senator CRAPO. Maybe a concept of oversight or investigation would be a proper focus.

Ms. SANCHEZ. Right, hopefully it would help people not be so defensive about the process.

Senator CRAPO. Thank you. It also seems to me that the budget for the Ombudsman should not be something that is up to the discretion of the very agency which the Ombudsman is overseeing in investigating. Would you agree with that?

Ms. SANCHEZ. I certainly would agree with that.

I also wanted to add that, you know, I have seen over the years a tremendous waste of taxpayer dollars being used for our city attorneys to sue the EPA, which is represented by the Department of Justice attorney in Federal Court, et cetera. The taxpayers are paying for all of this.

If the Ombudsman could be brought in earlier in the process, it could certainly help save the tremendous waste of taxpayers' dollars in all these lawsuits.

Senator CRAPO. Thank you.

Mr. Prescott, I apologize that the vote took me away for the beginning of your testimony, but I did get back to hear the vast majority of it.

I understand that as you began, you pointed out that the airline still has your suitcase. I have experienced that myself, so I can empathize with your feelings. However, it did give you the perfect excuse to dress comfortably today, and you have got us all feeling very envious up here.

Senator LAUTENBERG. And thank you.

[Laughter.]

Senator CRAPO. I appreciate the fact that you have done so much good work out in Idaho, and that you have come here to tell the Nation what a good experience we had with the pilot project of Project SEARCH out in Idaho. I just wanted to give you an opportunity to describe a little better why we need this.

I know one of the objections to this legislation is a concern that has been raised that by providing funding to this project, Project SEARCH, that we would divert funding from other needed water quality and other projects that are helpful for the small communities.

But nowhere in this legislation does it take the money from other sources. It simply authorizes the appropriating committee to provide this funding for this project.

I guess I would simply state at the outset that the question of funding is one that came up, as we investigated the fact that some of these very small communities simply do not have access to current funding sources.

In fact, one of the requirements under this project is that they have to have tried to get the other funding sources and have failed, before they qualify for these projects; is that not correct?

Mr. PRESCOTT. Yes.

Senator CRAPO. So any small community that can adequately and effectively access the other avenues of support that we already have, like the State revolving funds and so forth, would not necessarily be tapping into these funds, in any event, would they?

Mr. PRESCOTT. No, they would not.

Senator CRAPO. You reminded me, it was Idaho City, was it not, that you referred to in your testimony? You reminded me of the press conference we had, when we announced these projects, and how the mayor of Idaho City indicated that had this project not been available, Idaho City would not have been able to obtain this funding from any other source. If it had been available, or they ultimately could get it, it would have been years down the line.

Could you just expand a little bit on your experience, as you have worked with this project on its pilot basis in Idaho, as to what kinds of challenges these small communities truly do face in trying to get resources to apply to their water quality needs?

Mr. PRESCOTT. Mr. Chairman and Senator Crapo, you found in this, as it was developed in this program, and I think each of you have a feel for that, first the community of which it serves, if you take a community of less than 2,500, far too often, particularly in these 47, those applications that were received by us in Idaho, there were not any of those that approached the 2,500 population.

It was more on the average of 100 to 200. More of those which were making application that had a part-time, whether it be a clerk for the city, whether it be a volunteer group that was there, trying to go out and look for those moneys.

It was interesting, as the process went along, and you noticed that to those communities which this serves, they sought as the absolute last means to implement, which they had been required to do, I say, a standard of life. It does not really matter to them whether they lived in New York City or Chicago or Los Angeles. In fact, they lived in Eaton, ID, with a population of 75.

The very idea of having to finance a perimeter fence around an open lagoon system caused problems for those people; let alone the idea of having to design it, engineer it and, in fact, implement those engineering features.

They did not know, and this is generally that I speak, and I could get more specific. Generally, they spoke that they could not find the funds. In those areas which they had looked for, they did not quality.

Part of what happened in our particular situation was the match. There were some areas that EPA worked out extremely well, in the Boise office, to resolve those issues.

This money is last resource for communities that have no other way to either find them, to apply for them, and if those are in place, to even receive funds for them.

Senator CRAPO. Yet, these communities are still subject to the mandates of Federal law, that they comply with the standards that they must achieve.

Mr. PRESCOTT. Absolutely.

Senator CRAPO. If I recall correctly, some of these communities were facing a mandate that they spend amounts which, for the number of people in this community, was absolutely prohibitive. Because the engineering costs for these systems, the construction costs, and all of the other costs, which a larger community like a Los Angeles, a Chicago, or a New York can more easily spread over a diverse population, those costs are not necessarily that much smaller for these types of systems.

I realize you have got larger costs, because they are much bigger systems. But it is not on the same ratio of reduction in cost, is it?

Mr. PRESCOTT. No, and I will give you an example. There is a small piece in one country whose total tax base was on 279 taxpayers within that entire country. Imagine a system, and you work with those numbers much more than what I do, of \$100,000, how that impacts that 279 families.

Senator CRAPO. Thank you very much.

I think it is important for us to realize that as we work to achieve the water quality standards that this Nation desires, and water quality is one of the most important aspects of quality of life in America, that as we set these standards at the Federal level, we have let a major group of people fall through the cracks. It is the people who live in these small communities that do not qualify or do not have the resources to be able to effectively participate in the programs that we have already put together.

Yet, the people who live in a small town of 75 or 250 or whatever are every bit as much entitled to have clean water as the people who live in larger communities. That is why we have to insist that we recognize this need.

I appreciate your being here to testify, and hope that you find your suitcase soon.

Mr. PRESCOTT. So does my wife.

[Laughter.]

Senator CRAPO. Thank you very much, Mr. Chairman.

Senator LAUTENBERG. Mr. Chairman, I have one observation.

Senator SMITH. Go ahead.

Senator LAUTENBERG. I do not know Idaho well, but I have been out there. I have been to the places that the tourists go, like Sun Valley. I like to ski in those mountains.

But people do not realize that in my State, which is the most densely populated State in the country, New Jersey has almost eight million people, and we are 150 miles long, and as Senator Smith knows, it is maybe 50 miles, in some places, wide. So you have got a lot of people in a very small space.

Our small kind of miniature cities are 20,000 or something like that. It is quite a different problem, when you are working with communities of less than a 2,500 size.

You know, this is not an uncommon problem. This is where we have some philosophical differences here, as well as on other committees. That is, how far does the hand of larger government go? That is in contrast to the question, Mr. Prescott, of how do small communities?

We have it in our State, in different ways. If you have police departments, they do not have a bomb squad. They do not have a particular research kind of facility. They do not have the kind of

armament that they need in the event of a hostage situation or something like that.

It is a question that is larger than the one that we are dealing with, but I think this one is important. I commend Senator Crapo for leading this legislation.

Senator CRAPO. Thank you.

Senator LAUTENBERG. But it does raise the question of where does Government come in, and where does it stay out.

Senator CRAPO. One of the problems we are facing is the Government has come in, and these small communities are facing Federal mandates, but they have no access to the traditional resources.

Senator LAUTENBERG. Yes.

Senator SMITH. Let me just ask anyone who might like to respond, and perhaps you, Mr. Prescott, I am not sure, how do we ensure that the grants are awarded to different communities and the more influential communities do not go to the well too often, to the detriment of others? How would you suggest we avoid that?

Mr. PRESCOTT. If I could, I would suggest that first, you make that invitation which was done with this pilot, that was last year worked on in the State of Idaho.

Every community under the population, and we will break that at 2,500, was given an invitation to make application for that. Second, I think, and equally as important, is that it has to be regulated by a group or committee, whoever would sift through that, of peers.

It was based on, in our case, there were six. They were from the economic districts across the State. I have never been more impressed than with that group that knuckled down to the real issue, and that was absolute need. It had nothing to do with the volume of projects, until you get down to that last piece. But as importantly, they looked at need, and they looked at how they had done in the past.

You did find those communities which made application because it was easy for them. It has to be local. It has to be controlled by those people which really understand what the process is.

Senator SMITH. One other thing, and I think it is in 2296, I am all for local control, as local as you can get, for decisionmaking. But we do have a situation here where you have private citizens making grant decisions that may otherwise have been made by, say, the Governor or other local officials. Do you see any problems with that, in terms of 2296?

Mr. PRESCOTT. I do not. The reason why I say that is, I firmly believe that for the most part, these committees are by appointment. Those appointments are made by individuals which understand what the real process is. It is not a political appointment of design to fix, in any way, that you really try to get to in this area.

The issues that individuals, and I would suggest, Governors or whoever, would have to make, they will not recognize the sensitivity that you just addressed put on those areas of concern and responsibility, those which would look to that, as compared with what the real needs would be.

Senator SMITH. All right, does anyone else have another comment?

Senator LAUTENBERG. I have just one. I am sorry, Mr. Chairman, that I interrupted your flow before.

But when people look at New Jersey, with all those teaming masses that we have, and we have 92 communities, I am reminded, that would be eligible for assistance under the bill, we still have those smaller communities, and they need help.

Senator CRAPO. They do, in fact, Senator Lautenberg. We started this as a pilot project because of the need that was expressed to me by my constituents. But it was so successful in Idaho, that other communities across the country started hearing about it and saying, "Well, what about us?"

As we looked into it, we found that even in the most populated of States, like New Jersey, there were needs of this kind. So I think this legislation is truly a national need.

Mr. BRUZELLUIS. The Small Community Advisory Subcommittee members, at least those who recently retired from the subcommittee, certainly endorse and support this SEARCH legislation, as well.

We believe it goes hand in hand with the need for small communities to have a national advisory committee, and also a regional Ombudsman and task force. But the implementation at the community level with resources really meshes well with the concept. I believe that there will be written testimony presented, in addition to what has been here, that will endorse that concept.

Senator SMITH. We do have to stop after this question, because we have to quit at 11:30.

How do you view the Ombudsman? Should that person be an advocate, or should that person just be a receiver of information?

Mr. BRUZELLUIS. It should be some of both, but primarily an advocate. There are unintended consequences of what environmental regulations do in very small communities that somebody needs to be able to step forward that has resources to work with that community, with the agency, with the State, to help resolve those issues. It is very important.

Senator SMITH. In your case, Ms. Sanchez, it is more of an advocate?

Ms. SANCHEZ. Well, I was thinking of an advocate for uncovering the truth; so an advocate for bringing forth the facts. I think that, the community has its own wisdom, if we had had access to the documents that had been classified, if we had had access to the meetings, if we had had access to a process in which to give our input—but we did not have that.

So I think that the most important thing that Mr. Martin did for our community was to assure us that if there were documents out there with information that was pertinent to us that we should have access to those documents, that would give us information about our own health and safety, he was there to get it for us.

You know, just recently, we had some problems with the community advisory group. The EPA evidently had not even read their guidance, showing that the community should take the lead in setting up the community advisory group. One of their facilitators just sort of set it up and excluded members of our community.

We asked Mr. Martin what his thoughts were. He basically said, you are the community. You can go take back that process and

work with the EPA. I read the guidance, talked to the EPA, and we were able to work out the problem.

The Ombudsman has given us information. He has reminded us where we have power and where we have rights. He has been able to uncover documents for us that gave us information that we needed and deserved to have. That is the long story, but thanks.

Senator SMITH. Thank you very much.

Let me thank this panel and also the previous panel, who traveled here a long way. I apologize to have to shorten the hearing for you.

There could be other questions presented to you from members. If so, then you would have some time to respond to those questions in writing. We thank you all.

Ms. SANCHEZ. Thank you very much.

Senator CRAPO. Thank you.

Senator SMITH. The next witness is Diane Thompson, the Associate Administrator for the congressional and Intergovernmental Relations of the EPA; accompanied by Mr. Michael Shapiro, who is the Deputy Assistant Administrator of the Office of Solid Waste and Emergency Response; as well as Margaret Schneider, Deputy Assistant Administrator for the Office of Environmental Information.

We thank you all for being here. We have about 12 minutes before we have to stop. I believe you want to speak, right, Ms. Thompson? So we will start with you. We will let it go up until 25 minutes after, in case a member has a question or two. So please proceed.

**STATEMENT OF DIANE E. THOMPSON, ASSOCIATE ADMINISTRATOR FOR CONGRESSIONAL AND INTERGOVERNMENTAL RELATIONS, ENVIRONMENTAL PROTECTION AGENCY; ACCOMPANIED BY: MICHAEL SHAPIRO, PRINCIPAL DEPUTY ASSISTANT ADMINISTRATOR FOR SOLID WASTE AND EMERGENCY RESPONSE; MARGARET N. SCHNEIDER, PRINCIPAL DEPUTY ASSISTANT ADMINISTRATOR FOR ENVIRONMENTAL INFORMATION**

Ms. THOMPSON. Thank you, Mr. Chairman. I will make my opening remarks as brief as possible. I appreciate your doing the introductions for me, so I do not need to do that. Briefly, I will address each of the four bills that are before the committee today.

With respect to S.2800, the goals of this legislation are consistent with the Agency's ongoing efforts to improve the way we collect, manage, analyze, and provide access to environmental information for the American public.

Last fall, Administrator Carol Browner created the Office of Environmental Information, and directed it to design and implement a comprehensive new information integration effort. The Agency has already begun work to create a national environmental information exchange network, in 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.

As we work to implement these and other components of a national environmental information exchange network, we are com-

mitted to building a secure network that will ensure the integrity of our data holdings.

We very much look forward to continuing to work with Senator Lautenberg and other members of this committee to assure that this legislation first, provides the flexibility we will need to deal with rapidly changing technologies; that it affirms that the primary Federal role in streamlining the reporting process should be standard setting and not as software developer or licensor; that it recognizes the critical importance of public access to high quality environmental information; that it ensures enforceability comparable to existing practices; that it recognizes the key, the very key role, of the States in this process, as the committee has heard in previous testimony; and, of course, ensures that there is adequate funding to address this significant challenge.

With respect to S. 1915 and S. 2296, the two small community bills, one of Administrator Browner's key goals has been to strengthen EPA's relationships with its State and local government partners. We know that small town governments face special challenges when it comes to environmental protection.

Acknowledging the special needs of small communities, the Agency has initiated a number of programs to assist them. We have established a standing advisory panel, focused on small communities, the Small Community Advisory Subcommittee, which is a subcommittee of the local government advisory committee.

This subcommittee advises the agency on ways to enhance small town participation and involvement in Federal environmental planning and decisionmaking, and has consulted on specific regulations.

The Agency has dedicated staff in both the program offices in Washington and in the regions to work specifically with small towns, and we have initiated a number of programs to provide continuing compliance assistance.

Another element of our small community environmental planning effort has been to find ways to better involve small towns early during our regulatory development process. We have been doing this through vigorous implementation of the unfunded Mandates Reform Act, the Regulatory Flexibility Act, and implementation of Executive Order 13132, "Federalism." We are continuing to strive to improve this approach to small town consultation.

Much of the emphasis of S. 1915 appears to be aimed at improving the access of small communities to regulation development. We agree that that is an important goal, but we believe it is currently being addressed in the various initiatives that the Agency is undertaking, as is outlined in my written statement.

Turning now to S. 2296, this legislation would direct the Administrator to provide grants in the amount of \$1 million annually to the Governors of each State, for use by small communities. We are concerned that S. 2296 could divert scarce resources from EPA's budget for State revolving and grant funds supporting critical State programs.

These funds have been targeted specifically for the highest priority public health and environmental needs in each State, such as sewage treatment and safe drinking water.

As detailed in my written statement, we also have a number of concerns regarding some of the more technical aspects of the legis-

lation: how it would provide for accountability for the funds, and how it would determine priorities, for example, to ensure that these funds are being used, in fact, for the highest priority projects.

Finally, with respect to the Ombudsman legislation, we should begin by stating that the Agency strongly supports the Ombudsman. I think the testimony that we have heard today, the very compelling testimony from Ms. Sanchez, would strongly suggest that the Ombudsman program is working. The Ombudsman program played a very significant role in what occurred with the Shattuck Superfund site.

This Ombudsman function was established first in 1984, as part of the Resource Conservation and Recovery Act. When the authorization expired in 1989, the Office of Solid Waste and Emergency Response retained the function, as a matter of policy.

In 1991, it was broadened to include other statutes, particularly Superfund, and in 1995, the Agency created regional Ombudsmen, as part of the Superfund administrative reforms.

We are concerned that the legislation, as proposed, in addition to simply reauthorizing the Ombudsman position, would propose that the structure of the Office of Ombudsman conform, to the maximum extent practicable, to the structure of the model Ombudsman statute for State governments, developed by the American Bar Association.

We think some of the aspects of that model are problematic. In fact, we should note that the ABA, itself, is doing an additional model that would provide the guidelines for use in the Federal administrative context. We think it would be useful to look to that model, as well, to address some of the inconsistencies that might occur by relying on the State model.

We welcome the opportunity to work with the committee and the sponsors of all of this legislation, as these proposals move forward. We thank the committee for the opportunity to appear before you this morning.

My colleagues and I would be happy to respond to any questions.

Senator SMITH. Given the short timeframe, and since many of these are Senator Crapo's bills, I am going to yield to him, at this point.

Senator CRAPO. Thank you very much, Mr. Chairman. I will try to be very quick.

With regard to S. 2296, I understand the Agency's concern that we not divert money from other funds that are provided for States and local communities. Certainly, that is not the intent of the legislation. If we were able to address that issue, would the Agency's primary concerns be alleviated?

Ms. THOMPSON. I think the Agency not only has a concern with that, but it also goes to the question of whether funds will be used to really address priority problems.

As I am sure you are aware, \$50 million represents three times the amount of funds that the Agency has for its entire National Wetlands Program. It is also approximately half of what the Agency has in its Safe Drinking Water Program. So I think there is a concern there in that regard.

Then there are obviously the concerns that I am sure we could address, working together, about accountability and assuring that

these funds are actually being used appropriately in the context of their being Federal funding.

Senator CRAPO. Well, let me just comment on that, and then go to another question. I understand the point you are making. However, I think that the pilot project that we utilized in Idaho has proven that the process that we put together does truly have the accountability and gets the dollars to the most significant needs. Therefore, it meets the priorities.

Now we may have a difference on that. But one of the concerns that I strongly want to address in this legislation is to create a locally-controlled decisionmaking body; not one with a whole bunch of Federal rules and regulations that create the rigidity that we are trying to avoid, and let local decisionmakers apply this to the most effective and important needs. Again, these are needs defined by Federal statute. So I think the priorities will be met.

Ms. THOMPSON. Senator, if I may, with respect to the pilot project, you may recall there was some concern about whether that pilot could be constructed under the necessary authorization.

Senator CRAPO. Right.

Ms. THOMPSON. So that authorization was, in fact, changed to ensure that the pilot would be authorized under our existing programs. Those existing programs have the type of safeguards in them that we are talking about, that we think are necessary to ensure accountability.

I think the other issue with respect to the pilot, and we certainly understand that your intent would not be to divert funds from perhaps these other programs that I have mentioned, Wetlands or Clean Water, but in fact the way the pilot was funded, was to designate, it is my understanding, funds from our existing account. So the way the pilot worked, it was not a situation that you have envisioned.

Senator CRAPO. Right, although the legislation does not do that.

Ms. THOMPSON. No, it does not do that. But what we are concerned about is with its silence, the practical effect has been, at least through the pilot, that it was done as an earmark, which displaced funds from other programs.

Senator CRAPO. Well, what this legislation will do, in that context though, is to authorize the money. Then our job, as Senators, is to go to get the appropriators to put the money there, without diverting it from other resources. So on that one, we agree. We are going to try to fix it in that way.

Let me go quickly, with the time that I have, to the Ombudsman's legislation. First of all, I appreciate the Agency's extension of the Ombudsman's functions, when its authorization expired, and your support for the reauthorization of that function.

As you know, I have strong concerns about the independence of the Ombudsman's Office. To give you just an example of that, in your written testimony, you indicated that one conflict with the ABA model statute was an inconsistency with the recommendations of the Administrative Conference of the United States, which provides, and this is a quote,

The Ombudsman should refrain from involvement in the merits of individual matters that are the subject on ongoing adjudication or litigation, or investigations incident thereto.

That was exactly the position taken by the Justice Department with an Ombudsman investigation in Idaho. Frankly, the EPA did not follow the Justice Department on that recommendation, and I appreciated that.

But with regard to that position, if we are going to say that the Ombudsman's Office should not get involved in anything that is the subject of adjudication or litigation, then basically, in today's world especially, are we not saying that the Ombudsman's Office cannot get involved in anything that is significant?

I mean, is almost every major EPA action not going to be the subject of some kind of challenge at some point; and, if so, then we are saying the Ombudsman's Office cannot function?

Ms. THOMPSON. I think it is certainly an unfortunate but accurate observation that the Agency is involved in litigation, certainly in a large number of the actions which it initiates.

The point of the concern expressed in the model that you spoke about was obviously to ensure that we do not have processes that undermine each other. It is certainly appropriate to provide safeguards, that you do not have one process going on, on the one hand, that is undermining another process.

As you noted, in the Ombudsman hearing that was held in Coeur d'Alene, the Agency did participate, because there are ways certainly to address issues that can provide those safeguards. Perhaps Mr. Shapiro would like to elaborate on that.

Senator CRAPO. Mr. Shapiro, would you like to elaborate?

Mr. SHAPIRO. Just to extend the comments, one point is that I think the Administrative conference guidelines speak to active litigation.

Obviously, many things we do will ultimately wind up in litigation. But even those guidelines, if strictly followed, would not preclude Ombudsmen from looking into situations that were not yet in formal litigation.

A second point, and I think this speaks to the Idaho situation, is that even though some aspects of a particular site or set of issues might be the subject of active litigation, there may be many other aspects that are not in the key area, that are being addressed by the litigation.

Indeed, in the case of Idaho, we attempted to cooperate as fully as possible with the Ombudsman in the hearing. I understand that the hearing went well, and that all parties felt that they had the ability to provide their views.

But there were issues, had they come, where the EPA representative, would have had to say that because of litigation they could not respond with certain information.

We think, in many circumstances, the litigation language in the Administrative Conference recommendations would not preclude Ombudsman work at a particular site or on a particular set of issues.

Senator CRAPO. Thank you. I know my time is up, so thank you.

Senator SMITH. Just so I can explain to those who may not understand why we have to stop here, there is a Senate rule, Rule 26, and in this case, 26-5[a]. We call it the Two Hour Rule, which says that 2 hours from the time the Senate opens, if anyone asks

that the Two Hour Rule be invoked, as the Minority has, that we have to stop all committee business.

The penalty would be that there could be a point of order raised on any piece of legislation we might be considering. I do not know that they will drag us off to jail or anything, although you never know.

So anyway, the hour of 11:30 having come, because we did go into session at 9:30, we are going to have to adjourn the hearing.

Let me just also indicate that there may be some members who have questions and other letters that may have to come in. People have expressed interest in sending some letters in regarding this legislation. So I will keep the record open until the close of business on Friday.

At this point, I would thank all the witnesses for coming. I apologize for any inconvenience that it may have caused.

Senator LAUTENBERG. Mr. Chairman, I have one process question. I assume that the record will reflect the statements, as we have heard them. But also, can we be assured that the questions that would be posed are included in the record, as if they were in direct response to witnesses' testimony?

Senator SMITH. Yes, certainly.

Senator LAUTENBERG. Thank you.

Senator SMITH. At this point, the hearing is adjourned.

[Whereupon, at 11:34 a.m., the committee was adjourned, to reconvene at the call of the chair.]

[Additional statements submitted for the record follow:]

STATEMENT OF GEORGE DANA BISBEE, ASSISTANT COMMISSIONER, NEW HAMPSHIRE DEPARTMENT OF ENVIRONMENTAL SERVICES, CHAIRMAN, ECOS DATA MANGEMENT WORKGROUP

Mr. Chairman and members of the committee: My name is Dana Bisbee, and I am the Assistant Commissioner of the New Hampshire Department of Environmental Services. I bring along greetings to you, Mr. Chairman, from Governor Shaheen and Commissioner Varney.

I am testifying today on behalf of the Data Management Workgroup and the Local Government Forum of the Environmental Council of the States (ECOS), which is the national, non-profit, non-partisan association representing the State and territorial environmental commissioners. I serve as the Chairman of the Data Management Workgroup. On behalf of ECOS and the State of New Hampshire, I very much appreciate your invitation to join you today.

As requested, I have prepared comments on the four bills you are considering today. I will address them in turn.

S. 2800, THE STREAMLINED ENVIRONMENTAL REPORTING AND POLLUTION PREVENTION ACT OF 2000, INTRODUCED BY SENATOR LAUTENBERG AND SENATOR CRAPO

This bill addresses a very important issue facing government agencies and one that deserves the scrutiny you are providing today. The ECOS Data Management Workgroup endorses many of the principles contained within the bill. In fact, we have been working to implement a number of them over the past 3 years in partnership with the Environmental Protection Agency.

We applaud the concept of a "one-stop" reporting system proposed in the bill, both for those who report directly to EPA and for the far greater numbers who report to the States. We agree strongly with the need to establish and use common data standards. Consolidated reporting, a feature of the bill, is also a worthy objective. We support the bill's aim of allowing participation in the new integrated reporting scheme for those who choose to do so voluntarily. It is imperative that any law affecting environmental data reporting fully recognizes the tremendous investment many States have made in upgrading their data systems, building electronic interfaces, and developing data standards. Any new reporting process must be flexible enough to account for different systems and applications at the State level.

We also feel the bill should more explicitly account for the considerable role that States play in the collection and management of environmental data and should emphasize State investment in the design and development of a new national integrated reporting network. Here are a few specifics to put this issue in perspective. Nationally, States collect 94 percent of environmental data, conduct 97 percent of facility inspections, operate about 70 percent of the Federal programs delegable to them, conduct about 80 percent of the enforcement actions, and contribute about twice as much funding to environmental programs as EPA. Under these circumstances, the bill should promote a partnership in which EPA, the States, Tribes and local agencies work together to design and put in place a much-needed national integrated reporting network.

EPA already recognizes the critical role of States on this issue and, in 1997, EPA and ECOS formulated their collaborative efforts on data management and established the State/EPA Information Management Workgroup. This effort grew out of EPA's highly successful "One Stop" program that was designed to assist States in developing innovative solutions to data management problems. We have developed a joint vision and a set of operating principles to guide the work of our State/EPA information management partnership, and we are already addressing many of the proposals contained in the bill. For example, we have joined with the Tribes and EPA to create an independent Environmental Data Standards Council that will help establish standards as envisioned by the legislation. Environmental and business groups will be an integral part of that process.

The States and EPA are also collaborating on other crucial issues that must be resolved to make the environmental information more effective and efficient. Among these issues are: defining what constitutes a "facility;" solving key data exchange problems; ensuring public access to information; reducing information reporting burdens; and sharing experiences among the States and EPA.

The State/EPA partnership is also tackling the issue of what S. 2800 refers to as a "national environmental reporting system." Together, we are designing a national environmental information exchange network (the Network) that taps into the private sector Internet revolution, adapts it to government needs, and keeps it "off-the-shelf," open and non-proprietary. This Network will depend upon technology-based partnership, with all levels of government leveraging and benefiting from each other. We have been selective in the choice of technology to ensure that the information system is transparent—and thus more accountable—and scalable so that control and responsibility for the information stays as close as possible to its origins, whether at the local, county, State or Federal level. No matter where the information resides, it would be easily accessible via the Internet for everything from reports by EPA on national environmental performance to local citizen inquiries about emissions from the industrial plant around the corner. As part of the Network, States would continue to collect the data and would—through uniform data standards, integration and quality assurance—ensure that EPA, as well as the regulated community, elected officials, environmental groups and the general public have access to timely, accurate and useful information.

It is vital that S. 2800 recognize and support this joint effort to develop a national environmental data exchange network.

We also believe that EPA and the States must be provided sufficient resources as soon as possible to make the integrated reporting network a reality. Creating a national information exchange network requires a significant initial investment. Although States have helped lead this effort, many States currently lack the capacity to undertake comprehensive re-engineering of their information management processes. They need financial and technical assistance, and more opportunities to share their experiences. EPA needs additional resources to facilitate development of its Central Data Exchange capacity, to develop the Agency's connection to the exchange network, and to accelerate testing and development of technical and management protocols to ensure data quality, security, authenticity and confidentiality. Together, EPA and the States must integrate data bases, create data standards, develop consolidated reporting to ease industry and small business reporting burdens, increase data quality, ensure appropriate information interpretation, and ease accessibility for anyone who wishes to see and use environmental data. The committee could provide useful direction to appropriators via S. 2800 by authorizing sufficient funding to ensure the success of this national network.

Finally, we hope that S. 2800, as adopted by Congress, would permit and support the continuation of this healthy and productive effort. We are concerned it may not. We are particularly worried that the legislation would create a burdensome and unnecessary bias toward feeding one or more national data bases. The States' experience with existing EPA data systems has been unsatisfactory. That is one reason the States are enthusiastically partnering with EPA to develop a new Internet-

based, integrated information exchange network that in large measure builds on existing State data systems. We hope the language in §3(b) can be clarified to demonstrate that there is no bias against the Network approach favoring the traditional, huge, unwieldy national data base or data systems.

Further, we want to ensure that enactment of S. 2800 will not produce the unintended consequence of slowing progress toward better information management while EPA creates rules and guidance to implement it. We trust that the intent of Congress is not to force a change from our current efforts, but rather to clearly authorize and support the work that EPA and the States have underway.

Our last specific concern is the National Environmental Data Model referred to in §3(b)(9). As written, this section may be more expansive than simply a description of EPA's own data management architecture. It should be made clear that this section refers only to the way EPA would configure its systems, not a potential mandate for States and others to follow.

The State environmental commissioners are encouraged by the spirit and progress of the State/EPA information management partnership. It is now time to invest in its success. We hope you will support our progress by incorporating these principles into S. 2800 or any other legislation you might consider to improve the reporting and quality of environmental information.

S. 1915, THE SMALL COMMUNITY ASSISTANCE ACT OF 1999, INTRODUCED BY SENATOR JEFFORDS AND OTHERS; S. 2296, THE PROJECT SEARCH ACT OF 2000, INTRODUCED BY SENATOR CRAPO

With the indulgence of the committee, I will speak to S. 1915 and S. 2296 together because of their common focus on improving the ability of small communities to manage their environments.

Our small communities need this help. The Local Government Forum of ECOS supports the fundamental principles embodied in these bills: greater involvement by small communities in environmental regulatory processes and more funding to meet regulatory demands.

Much of the work of the State environmental agencies involves communities—whether related to wastewater treatment, cleaning up the town dump, or figuring out where the asphalt plant should be located. The ECOS Local Government Forum was among our earliest established committees and remains a critical part of ECOS's outreach, not only to our communities, but also to EPA, which has a profound influence over the environmental and financial health of our towns.

While villages conjure powerful emotional, social and sometimes political appeal, those strong feelings have not adequately translated into power to affect Federal policy decisions or the flow of financial and technical resources. Challenged by their environmental problems, these communities are frequently overwhelmed by the Federal process that aims to solve them.

Perhaps the best recent example of the need for greater small community involvement in the EPA rulemaking process, and hence the need for bills like S. 1915, is the proposed rule dealing with arsenic in drinking water. The Small Community Advisory Subcommittee (SCAS)—an EPA FACA—reviewed the arsenic drinking water standard and expressed great concern for the impacts of the proposed rule on small systems. SCAS has requested that EPA review the specific impacts on particular communities rather than gauging impacts based on national income levels and all drinking water systems. The extraordinary impact of EPA's proposed arsenic rule clearly demonstrates the need for and fairness of including small communities constructively in the regulatory development process.

ECOS members can readily relate to the plight of small communities who desire an effective partnership with EPA. We have been struggling toward that goal ourselves. If you look in the right places, you can see the appropriate guidance—the Regulatory Flexibility Act of 1980, the Small Business Regulatory Enforcement Fairness Act of 1996 and Title II of the Unfunded Mandates Reform Act of 1995, as well as relevant Executive Orders such as E.O. 13132 on federalism. EPA's own guidelines mandate consultation and outreach. And more than ever, it is working, as Ms. Thompson's testimony for EPA demonstrates. Fritz Schwindt, Chief of the North Dakota Environmental Health Section, Co-Chair of the ECOS Local Government Forum, and a member of the SCAS agrees that EPA is making efforts to involve small communities. S. 1915 will help ensure that these good works continue and that EPA remains accountable to Congress for its continued sensitivity to the needs of these communities.

Small communities, close to the land and water and at home with the concept of environmental stewardship, are particularly hard pressed to meet the financial demands of that commitment. They simply cannot make up for the lack of a tax base.

Whether a community of 200,000 or 2,500, the same suite of services must be provided—safe drinking water, wastewater treatment, storm water control, landfills—all in addition to the other amenities of community living. Few communities of 2,500 or less have the financial or human resources necessary to adequately meet health and environmental goals—even with the existence of State Revolving Funds to help finance costly infrastructure—hence the need for the targeted financial assistance envisioned by S. 2296. The grants proposed in this legislation are even more important for the poorest communities that are unable to provide the relatively small matching funds required for expensive water treatment facilities and other projects. It is critical, especially in light of the huge gap between environmental expenditures and identified water, wastewater, air quality and other needs, that the funding envisioned in S. 2296 not be at the expense of resources for other environmental programs.

S. 1763, THE OMBUDSMAN REAUTHORIZATION ACT OF 1999, INTRODUCED BY  
SENATOR ALLARD

I have little to say about S. 1763 except that ECOS members seldom use Ombudsman services, relying on other lines of communication with EPA. I guess that is a good sign. For that reason, ECOS does not have a position on this legislation.

CONCLUSION

Thank you again, Mr. Chairman and members of the committee, for this opportunity to comment on these bills. Please feel free to call on me or ECOS if you have any additional questions.

RESPONSES OF GEORGE DANA BISBEE TO ADDITIONAL QUESTIONS FROM  
SENATOR SMITH

*Question 1.* In your written testimony, mention was made of the interrelations between S. 1915 and S. 2296. Both bills work to benefit small communities: S. 1915 by ensuring that a Small Community Advisory Committee exists at EPA and within each Region, a Small Town Ombudsman and S. 2296 by providing funds for environmental projects to be distributed by an independent citizens' council. If enacted, what kind of benefit would these bills bring to New Hampshire?

Response. S. 1915 and S. 2296 would have a direct benefit to the small communities in the State of New Hampshire. S. 1915 would codify certain steps that are being taken by EPA to ensure greater involvement of small communities in the development and implementation of EPA's regulatory programs. As defined in S. 1915, small community is one of under 7500 in population, which covers all but 34 New Hampshire communities.

S. 2296 also would provide effective assistance to New Hampshire's small communities. In this bill, which defines "small community" as one under 2500 in population, 123 of New Hampshire's 234 cities and towns would be eligible for assistance, and there is no question that many of these eligible communities are among the least affluent in the State. While the State of New Hampshire provides State aid grants for significant environmental infrastructure projects (wastewater and water treatment facilities, landfill closure and source water protection land acquisition) and while the State Revolving Fund Program under the Clean Water Act and the Safe Drinking Water Act provide important financial assistance to these communities, certain of our small communities are in need of significant additional help. S. 2296 would allow those communities to move forward sooner and more effectively to address significant environmental infrastructure needs.

*Question 2a.* In an effort to provide as comprehensive a response as possible to the committee's questions 2a–2g, I requested, through ECOS, States' input. We received responses from the following 12 States: Alabama, Idaho, Michigan, Mississippi, Nebraska, North Carolina, North Dakota, Oklahoma, South Carolina, Texas, Washington and Wisconsin. Where there is broad agreement on a point, it is simply stated. Where there are variations in State responses, they are referred to individually—sometimes with attribution. Another general note: the States believe, as I testified, that the SEARCH funding should be new money, not taken from existing programs like the State Revolving Loan Funds (SRF) and the Drinking Water State Revolving Loan Fund (DWSRF). Converting SRF or DWSRF funding would limit states' flexibility to address small community needs, and limit the capacity to grow the program in perpetuity.

S. 2296 would create a grant program in each State that is different from current EPA programs. The funds would be targeted to small communities for environ-

mental projects as opposed to States for defined purposes. What percent of grant funds currently are awarded to the type of small communities that would be affected by S. 2296—that is, communities of 2,500 or fewer individuals?

Response. Most of the respondent State agencies do not provide grants to small communities, though they do provide loans through the SRF and DWSRF. Certain Federal programs provide grants to small communities, including Rural Development (formerly the FmHA), Community Development Block Grants, and the Appalachian Regional Commission. We do not have collective data on the percentages of available grant funding that is targeted to small communities of 2,500 or fewer individuals. Texas emphasized that the funding level of \$1 million per State is not sufficient for a State of its size and believes that states with a large number of small communities need more support.

Following is a description of grant programs operating in some States:

*Washington.*—The State provides Extended Grant Payments (set asides) that go to large municipalities, which, in some years, account for as much as 50 percent of funding off the top. Approximately 20–25 percent of the rest goes to communities with a population under 2,500. Perhaps as much as 50 percent of the funding goes to communities of under 10,000 residents. In the last biennium, Washington provided an additional \$10 million targeted to small communities with a population less than 3,500.

*Oklahoma.*—There is a State funded Rural Economic Action Plan (REAP) that provides water and sewer grants to small communities. Annually, the Oklahoma Legislature provides \$4.5 million and 90 percent of this money goes to communities of 2,500 or fewer.

*Wisconsin.*—No data on the percent of grants to small communities was available, but the best professional estimate puts the figure at about 25 percent going to communities of 2,500 residents or less.

*South Carolina.*—Here are the percentages of funding (and the actual amounts) that go to communities of less than 2,500 population for programs operated by agencies in South Carolina:

- Rural Development (Formerly Farmers Home Admin.): 30 percent (\$7,041,000).
- Community Development Block Grants: 20 percent (\$5,900,000).
- Local Governments Division of State Budget & Control Board: 60 percent (\$4,480,000).

*Michigan.*—The State has provided information on the use of SRF and DWSRF loan funds and wellhead protection grants by small communities that may be instructive—

- SRF: 17 percent of the projects and 5 percent of the funds go to communities under 2,500;
- DWSRF: 23 percent of the projects and 10 percent of the funds go to communities under 2,500;
- Wellhead Protection Grants: 38 percent of the grants are awarded to communities under 2,500.

*Nebraska.*—The State awarded \$8,145,000 for water and wastewater in 1999 to communities with populations less than 2,500. These grants are awarded through the Department of Economic Development, USDA and the Department of Environmental Quality. No percentages were given.

*Question 2b.* S. 2296 is focused on providing help to small communities. What is the principal need that small communities have? Is it construction funds for environmental projects, such as a sewer system or a wastewater treatment plant (WWTP)? Legal assistance in understanding Federal law and completing grant applications? Paying experts? Hiring personnel?

Response. Small communities have needs for all of the above, specifically in meeting their environmental mandates in the areas of drinking water, landfill closure, brownfields remediation, and responding to local problems such as open burning, noise, and odor complaints. There is furthermore a general lack of adequate technical, legal and process expertise (e.g., trouble understanding the requirements of current and proposed regulations) that dogs small communities at virtually every step, regardless of the type of environmental challenge they face.

Specifically, many small communities face the need to upgrade their WWTPs because of the more stringent limits of new NPDES permits. Nutrient criteria and TMDLs will certainly add to that list. Communities need help in all of these categories, however the most costly projects are the construction of environmental projects such as wastewater collection/treatment, storm water pollution control, and drinking water facilities.

One of the major impediments to providing financial assistance to these communities is that many existing loan and grant programs do not cover the cost of planning and design until the project is ready to bid. A small community may have

water, wastewater or solid waste needs but very few towns know how to handle a grant or loan application and they often do not have the funds to hire a firm to begin developing a feasibility study or engineering report that can be presented to funding agencies. This gap in funding requires a community to borrow money for planning or hire a consultant who will wait until the loan is closed. Often, when an engineering firm is not paid up front for planning and design, the quality of work is not always the best and the community may not get the most viable or cost-effective project possible. In addition, some things are excluded from funding eligibility in almost every program. Therefore, funding for planning and development of projects and for covering costs that other programs do not are primary needs for small communities.

Smaller municipalities also need treatment alternatives that are more affordable and the ability to get grants for innovative or alternative technology projects.

The flexible program proposed by S.2296 would help with all of these challenges.

*Question 2c.* The criticism has been raised that S.2296 would allow grants to be awarded to neighborhoods within large cities, instead of to small communities. Do you want that opportunity to exist? If not, how can it be prevented?

Response. The general consensus among the State respondents was that grants should be limited to small communities. In some instances, a small town may be surrounded by a larger city and one of the States would see no reason to exclude that town if it met the population requirement. A couple of respondents also mentioned the need to address unincorporated towns, perhaps by directing funds to the county within which the unincorporated area resides.

Many State programs require that the loan or grant recipient be a municipality or other form of government such as a rural water district. Several of the States recommended that S.2296 eligibility for grants be limited to stand-alone government entities or other entities that have the authority to provide the type of service for which the grant is sought, such as Metropolitan Sewerage Districts, Water and Sewer Districts and Water and Sewer Authorities, etc. A couple of specific proposals offered include:

- Eligibility criteria could read “only incorporated municipalities with current and verifiable populations of 2,500 or less.”
- To avoid funding neighborhoods, bill language could describe a small municipality as “any city, town, village, town sanitary district, or public inland lake protection and rehabilitation district with a population of 2,500 or less.”

There is some difference of opinion among the States about the small community threshold. One of our State respondents suggested the threshold be raised to 10,000.

*Question 2d.* The criticism has been raised that S.2296 would allow all of a State’s funds to be granted for community welfare projects, such as swimming pools. What safeguards do you have in place to ensure that grants are awarded only for what ordinarily would be understood as environmental projects, instead of other community welfare projects? What safeguards are necessary to have in S.2296?

Response. Many states currently have programs with environmental priority scoring systems to rank projects in order of environmental importance. In Oklahoma, eligible items are spelled out by statute or by rule and are a part of the ranking system for the program. South Carolina’s enabling legislation limits projects to water and sewer only. Idaho likewise limits its grants to drinking water and wastewater projects.

Several States suggested that the language “public welfare” could be removed from the legislative language and that the bill could specify that only environmental projects would be eligible for grant funding, and leave to the States the ability to set their own priorities. In addition, grant applicants could be required on the application to stipulate which environmental law or requirement the project will address, e.g., solid waste reduction or the Clean Air Act. The decisionmaking body would then ensure in their review only eligible projects are funded.

*Question 2e.* Is there a means by which Congress can ensure that grants are awarded to different communities over time, so that no one community or set of communities will be able to monopolize grants?

States agree that all eligible communities should have access to grants. A couple of States suggested that if S.2296 required the award of grants based on a priority system that considered environmental benefit and ability to pay, this concern would not exist. In fact, this is the way granting programs for small communities already operate in most States. States with these mechanisms in place are wary of having to create yet another ranking and distribution process when fairness and access to funding issues are already addressed in their current programs.

The other States recommend that Congress allow them the flexibility to ensure fair access to grants. For example, States could:

- limit funding to any one community over a fixed period of time by—
  - changing the eligibility ranking of a community that has received a grant (thus reducing the chance they would be eligible again in the short term);
  - specifying that a community receiving a grant must wait until all other eligible communities have the opportunity to apply for available funds before applying again;
  - limiting the number of applications that a municipality may submit during a certain period of time (say 1, 3 or 5 years), as is done already in some State grant programs;
- require that the administering agency consider geographic distribution throughout the State when awarding grants, as in the Clean Michigan Initiative and in Nebraska's waste reduction grant program; or
  - allow only loans for facility construction, then add grants (e.g., the SEARCH grants) later if financial need is demonstrated—as is being proposed in Washington State. The effect of this would be that well-off communities can't get all the grant money, even if their project rates higher from an environmental or public health perspective. They would get loans instead.

*Question 2f.* Should this grant program be a preferred source of money for small communities or should it be a source of funds to be used as a last resort?

Response. Most of the responding States agreed that funding should be made available to small communities that are eligible and rank at the top of the priority system established by the State regardless of the availability of other funding sources. This should not be a fund of last resort.

One State pointed out that the preference would depend on the need of the community. Grant/loan combos should be an option, but there are small communities that are not good risks for loans due to financial instability but that are in great need of moneys for systems. Also, some loan programs are mired in bureaucracy making it difficult for small communities to get in the hopper. The State could determine priority for funds.

Another State suggested that this funding should be a preferred source of funding because, in that State at least, there are already several funds of last resort. It becomes difficult under those circumstances to determine who should be the lead agency in providing small community assistance.

Three of the respondents suggested that the SEARCH funds should be used as a last resort.

*Question 2g.* Should the authority to make grant decisions be vested in a council composed of private citizens, or should the authority be given to a governmental official, such as the Governor or a group of local officials?

Response. Most of the responding States suggest that the grant decision process should be given to the environmental agency that already has experience making these kinds of decisions. These States agree that the decisions should be based on a clear set of criteria to allow a prioritization of applicants. States are already involved in helping to finance many small community environmental projects, for example through the SRF process, and could avoid a lot of additional bureaucratic hurdles and costs by adding the SEARCH funds to their existing resources to make these projects more affordable.

Two States pointed out that for such relatively small amounts of money, the creation of councils—in fact, the establishment of an entirely new process—would be overly complicated, bureaucratic and expensive.

A couple of respondents suggest that an impartial ranking system that is particularly responsive to small communities is the key. Perhaps a council composed of local government representatives could recommend the ranking system that could then be administered by an agency with experience in administering such programs.

If there is a council, one State suggested requiring at least one elected and one non-elected local official serve on it.

*Question 3.* You are the Chairman of the ECOS Data Management Workgroup. EPA and ECOS have been working together since 1997 on data management such as a national environmental reporting system and data management standards. According to your testimony, this State-EPA partnership has been working well. Would enactment of S. 2800 tie the hands of this workgroup or impact the collaborative effort?

Response. The States and EPA have been collaborating on data management issues long before 1997, as the States have always been an integral part of the national environmental data collection and management scheme. What occurred in 1997 was the formalization of a closer collaboration with the creation of the joint State-EPA Information Management Workgroup. Most particularly since then the State-EPA partnership on environmental data management has been an effective

one. We have jointly developed a common vision and set of operating principles to guide our work, we have created the Environmental Data Standards Council (which has already released recommended standards), we have made improvements in how EPA and the States release environmental information to the public, and we are now deeply and collaboratively engaged in the development of the National Environmental Information Exchange Network. The States on the Data Management Workgroup have been concerned that enactment of S. 2800 would have the potential for affecting the collaborative effort that we are engaged in with EPA in a non-productive way. This potential would arise if an unintended consequence of S. 2800 were to delay the ongoing data integration effort at EPA and the development of the data exchange network, or if the bill inadvertently diminished the flexibility needed to deal with ever-evolving data management technologies and approaches.

We were pleased at the hearing with the sponsors' understanding of our concerns and their willingness to adjust the bill to address them. In subsequent suggested changes to the bill, the suggestion of a new national "system" or large data base being mandated by this bill has been removed, and particular concerns about the details of the process that would need to be followed in developing data standards has been made more flexible as well. And, finally, in a very positive way, the draft bills inclusion now authorizing language to provide funding for the significant initial investment needed to "kick start" the National Environmental Exchange Network is a very positive development. These changes that have been presented to us have removed our concerns about the passage of S. 2800.

STATEMENT OF JEREMIAH D. BAUMANN, ENVIRONMENTAL HEALTH ADVOCATE,  
U.S. PUBLIC INTEREST RESEARCH GROUP

The U.S. Public Interest Research Group (U.S. PIRG) is the National Association of State Public Interest Research Groups (the State PIRGs) and serves as the national advocacy office for the State PIRGs. The State PIRGs and U.S. PIRG are non-profit, nonpartisan organizations that conduct public interest research, advocacy, and education on a range of issues including health care, environmental and public health protection, consumer protection, and good-government reforms.

The PIRGs have a long history of work on several of the issues raised by two of the bills being considered today. Increasing citizen involvement in Federal Government decisionmaking, ensuring agency accountability, protecting the public from toxic hazards, and ensuring that the public has access to information about toxic hazards are all long-standing aspects of the PIRGs' environmental work. The State PIRGs have worked to pass right-to-know laws and toxic waste cleanup laws for several decades, including Massachusetts' Toxics Use Reduction Act and New Jersey's Pollution Prevention Act.

U.S. PIRG welcomes the opportunity to testify in support of Senator Allard's bill, S. 1763, The Ombudsman Reauthorization Act, and Senator Lautenberg's bill, S. 2800, The Streamlined Environmental Reporting and Pollution Prevention Act of 2000. Both of these bills take important steps toward making government, in this case the Environmental Protection Agency (EPA), more responsive to the public whose health it is the Agency's mission to protect. The Ombudsman Reauthorization Act helps to ensure agency accountability to the public and the Streamlined Environmental Reporting Act increases the efficiency of the Agency's information management and resources.

THE OMBUDSMAN REAUTHORIZATION ACT OF 1999, S. 1763

U.S. PIRG supports The Ombudsman Reauthorization Act of 1999. The bill reauthorizes the office of the Ombudsman at EPA, requires a report to Congress on the status of health and environmental concerns raised by the Ombudsman's investigations, and directs the Administrator of the EPA to re-structure the office to conform with the American Bar Association's model Ombudsman statute.

The EPA National Ombudsman serves as an "EPA watchdog," receiving requests or complaints from Members of Congress or citizens concerning EPA's actions in cases involving the Superfund or other hazardous substances programs. The Ombudsman conducts investigations into these complaints and then makes findings of fact and recommendations to the Agency on how to resolve the dispute(s).

This office has provided valuable service assisting communities who have felt EPA was unresponsive to their needs. In particular, the Ombudsman has investigated and helped to resolve disputes at a number of Superfund sites around the country. In the last 8 years, the National Ombudsman's Office has assisted citizens in Montana, Ohio, Missouri, Idaho, Texas, California, Florida, Colorado, Pennsylvania, and Washington. A few of the Ombudsman's successful investigations include:

*Houston, TX.*—Community residents near a toxic waste site at an abandoned facility that had been used by Monsanto and other companies for storing a reprocessing chemical waste had worked for years to have the site cleaned up. In the early 1990's, the EPA's Region 6 office in Dallas approved a plan to dispose of the contaminated soil from the site by incineration. However, community activists who had worked for years to have the site cleaned up, were concerned that digging up the contaminated soil and burning it would only further disperse the chemical pollutants. They took their case to the EPA Ombudsman who conducted an investigation and recommended that EPA adopt an alternative plan, an action EPA took.

*Denver, CO.*—At the Shattuck Chemical Superfund site, Denver residents had been requesting that EPA ensure that the radioactive soil from the site was removed to a licensed disposal facility. Instead, the Agency decided to employ the too-often preferred solution of capping the site rather than cleaning it up. In this case, the contaminated soil was to be capped on the site in the middle of Denver. The residents contacted Senator Allard, who took the case to the National Ombudsman. The Ombudsman's investigation showed that a capped pile of contaminated soil could leak into the community. EPA later agreed they would have to remove the contaminated soil.

These cases and others show the importance of an independent, empowered Ombudsman in making the EPA an agency that is accountable to the public whose health the Agency's mission is to protect. Another case shows the importance of ensuring and strengthening the Ombudsman's independence and authority.

*Lock Haven, PA.*—Similar to the situation in Texas, residents near the Drake Chemical Superfund Site were concerned that EPA planned to incinerate contaminated material and that such action would worsen rather than solve the contamination problem. The residents contacted Senator Specter, who requested the Ombudsman's assistance. The Ombudsman was critical of the studies and methods used to determine that incineration was an appropriate means of remediation and recommended that the incineration not go forward until further testing was done. According to Vicki Smedley, one of the concerned residents, the community could not gain access to the Ombudsman's interim report and after the recommendations were issued, the Ombudsman was told not to continue work on the case. The incineration started before the Ombudsman's final report was issued.

To ensure that the Ombudsman's work can be effective in making the Agency accountable, the Ombudsman position should be re-structured to include several key elements:

- (1) *Independence of the Ombudsman from control by an officer of the agency.*
- (2) *Authority and freedom to investigate any action or failure to act by any Agency official or entity.* The Ombudsman must be able to investigate the appropriateness of the action or failure to act, but also the correctness of Agency findings, the procedural propriety, and the Agency's motivations and reasons for acting or failing to act at the national level.
- (3) *Access to all public records the Ombudsman finds relevant to the investigation, as well as authority to compel testimony by the Agency, its personnel, or its contractors.*
- (4) *Accountability of the Ombudsman.* The Ombudsman should be accountable to Congress and any Agency official, entity, or contractor criticized by the Ombudsman should have opportunity to present their answer to the criticism.

The Ombudsman Reauthorization Act directs the Administrator to re-structure the office to conform to the American Bar Association's model Ombudsman statute. This step could result adoption of the elements needed to strengthen the Ombudsman's independence and authority. However, U.S. PIRG recommends that the bill explicitly grant the National Ombudsman necessary authority rather than relying on the Administrator to do so "to the maximum extent possible."

Some have expressed concern that strengthening the Ombudsman's independence and authority would grant too much power to the Ombudsman. It is important to note, however, that with the strengthening measures put forth by this legislation, the Ombudsman would not have the authority to:

- Compel any decision by the Agency;
- Create, change, or set aside any law, policy, or Agency decision, nor compel any entity or person to make such a change; or
- Substitute for an administrative or judicial proceeding determining anyone's rights.

One more critical means of strengthening the Office of the National Ombudsman is adequate funding. The Ombudsman has to date carried out his important work with limited staff and resources. Congress should ensure that the Office of the National Ombudsman has the funding necessary to carry out its important work.

The EPA National Ombudsman provides an invaluable service in responding to and investigating problems faced by communities and individuals whose health may be threatened by hazardous waste. The Ombudsman increases EPA's accountability and provides recourse to communities and citizens who have problems with EPA's procedures or actions. Simply re-authorizing the Office of the Ombudsman is an essential action for Congress to take in its final weeks, but essential to that action are the elements of this bill that would ensure the Ombudsman's independence and authority.

THE STREAMLINED ENVIRONMENTAL REPORTING AND POLLUTION PREVENTION ACT OF  
2000, S. 2800

U.S. PIRG supports The Streamlined Environmental Reporting and Pollution Prevention Act of 2000 as an essential reform at EPA that improves EPA's management of important environmental information. The reforms made in this bill, without in any way reducing or increasing the types of information collected and disseminated by EPA, have the potential to vastly streamline EPA's information systems. This would make EPA's information systems more efficient and easier to use for those reporting information to EPA, as well as for those using EPA's information resources.

The Act requires EPA to establish an integrated electronic reporting system. This integrated system would:

- allow reporting to one point of contact within EPA, rather than to multiple programs and offices; establish and improve electronic reporting systems for reporting information to the Agency;
- identify environmental or occupational safety and health reporting requirements not administered by EPA and communicating those to reporting parties;
- consolidate reporting requirements that would otherwise have to be reported more than once; and
- provide important information on pollution prevention to reporting parties at the point of reporting.

These actions address a long-standing problem at EPA, namely, EPA collects a wealth of information, but various pieces and types of information are reported to a number of different offices or programs within EPA at various times during the year. This not only means that information collection and storage is dispersed throughout the Agency, but that in some cases, the same or similar pieces of information are reported under more than one program and potentially more than once during the year. In addition to some pieces of information being collected multiple times, some types of information are not collected at all.

Public interest groups have long held that EPA must improve its data management in order to determine what information it does and does not have. U.S. PIRG, along with a coalition of environmental and other public interest organizations, have long advocated for increasing the information on environmental hazards and conditions that is available to the public. This bill, without adding any new information reporting requirements, improves EPA's environmental information resources in ways that will not only improve information, but could also improve environmental protection by creating a significant opportunity for industries to prevent pollution and reduce environmental hazards.

First, consolidating reporting requirements into one system gives facilities the opportunity to view all of their environmental information in one place. This would make it easier for companies to assess their environmental impact and identify, on their own, ways of reducing that impact. It would also help companies better translate information generated by environmental management systems into EPA's reporting requirements and formats. At the same time, the integrated system would provide information on pollution prevention to reporting facilities during the process of reporting. This means that industries would be simultaneously given the opportunity to review their own environmental impacts and at the same time the tools for reducing those impacts through pollution prevention.

Second, the bill could increase pollution prevention simply by making it easier to report accurately and consistently. Reporting all environmental information to the same point of contact and through the same system would make it easier for the facility to identify and reduce reporting errors before even submitting the data to EPA. This would lead to increased compliance with laws and regulations as it would be easier for industries to reduce or address problems that may come about from simple confusion created by the myriad reporting requirements. This increased compliance and/or improved data quality would in turn lead to better policymaking and enforcement by EPA.

This bill also addresses a concern raised primarily by industry representatives—that EPA should reduce the “burden” of reporting environmental information. The reporting of environmental information should not be seen as a burden, but rather as one part of industry’s duty to protect human health and the environment. Nonetheless, U.S. PIRG supports efforts to increase the efficiency and ease with which information can be reported to EPA.

Unfortunately, most of the “burden reduction” measures proposed by various EPA offices and by the White House Office of Management and Budget would reduce the information available to the public or compromise its quality. These are reactive responses to industry’s burden claims; they would weaken environmental information at EPA and in most cases would not make reporting easier. U.S. PIRG and a coalition of public interest organizations have strongly opposed these initiatives as harmful to EPA’s environmental information resources and ultimately harmful to human health and the environment.

This bill, in contrast, seeks to proactively reform information management at EPA, which public interest groups have long supported. It would improve, not compromise, EPA’s environmental information resources, and ultimately aid the protection of human health and the environment, while at the same time making it easier for industry to comply with EPA’s reporting requirements.

While this bill presents a great opportunity to improve the management of environmental information and potentially improve environmental protection, care must be taken to ensure that the integrated reporting system does not allow small loopholes to compromise the entire system. One potential flaw is that reporting parties are not required to use the new integrated system. Having some parties use the system while others choose not to could compromise EPA’s data holdings by resulting in data bases with inconsistent data or data that are not internally comparable. Similarly, the bill allows EPA to establish different methods of providing information to facilitate use of the system by different sectors, sizes, and types of reporting entities. Both of these provisions could result in an information system in which internal comparisons cannot be made, significantly undermining EPA’s ability to effectively use the information it gathers.

The bill should be amended to clarify that whatever flexibility is allowed for small businesses that may not be technologically capable of reporting electronically there is a guarantee that the data can be integrated into the integrated system. One solution would be to ensure that even if electronic reporting is not required, use of the integrated reporting system is, so that even if information is not submitted electronically, it can be integrated into the larger information management system. A simple waiver could allow those few facilities choosing not to report electronically to report on paper to the integrated reporting system.

U.S. PIRG’s final comment is that the bill does not address a significant information management problem at EPA—the numerous data gaps in EPA’s systems. Important information, ranging from toxic pollution released by some industries to data on ambient environmental quality, is not collected by the Agency. This bill improves the Agency’s information management without adding any new information to that already collected, but future efforts must address the need to fill these gaps in information necessary to protecting the environment.

While there are several improvements that could be made in this legislation, U.S. PIRG supports this bill as an important improvement to EPA’s information management and as an opportunity for industries to prevent pollution. This bill embodies a common-sense information reform that the Congress should immediately pass into law.

RESPONSES BY JEREMIAH BAUMANN TO ADDITIONAL QUESTIONS FROM  
SENATOR SMITH

*Question 1a.* Your testimony indicated that you support S.1763 as written. In your opinion, who should appoint and remove the Ombudsman?

Response. It is my opinion that the Ombudsman should be appointed by the Congress, in accordance with the American Bar Association’s model Ombudsman statute characteristics. This is one element of ensuring that the Ombudsman has independence from the Agency that he or she is charged with investigating. This procedure would also establish accountability to a representative body.

*Question 1b.* Specifically, what powers should the Ombudsman have, and why should the Ombudsman have those powers?

Response. In order to assure independence of the Ombudsman and his or her investigations from Agency influence or control, the Ombudsman should have the following powers:

- authority to criticize all Agency officials;

- freedom to employ his or her own assistants and to delegate them;
- freedom to investigate any act or failure to act by the Agency or an Agency official;
- access to all public records relevant to an investigation;
- authority to inquire into fairness, correctness of findings, motivation, adequacy of reasons, efficiency, and procedural propriety of action or inaction by the Agency or an Agency official; and
- discretionary power to determine what complaints to investigate and what criticisms to make or publicize.

These powers for the Ombudsman allow the independence, access and authority necessary to fully empower his or her investigations and activities to determine the fairness and appropriateness of Agency activities. However, the Ombudsman cannot be unaccountable. Accordingly, counterbalancing measures are also important. For example, the Agency and Agency officials criticized by the Ombudsman must have advance notice of the criticism and the opportunity to publish an answering statement.

*Question 1c.* Should the Office of the Ombudsman have a separate line item in the EPA budget?

Response. Yes. In order to grant the full authority and independence necessary for an empowered Ombudsman, the Agency (whom he or she is charged to investigate) should not have discretion over the Ombudsman's budget. Congress, to whom the Ombudsman is accountable, should determine the Ombudsman's budget.

*Question 1d.* Why is it necessary to have an Office of the Ombudsman, instead of a Complaint Bureau or an Advisory Committee?

Response. An Ombudsman, particularly one with the powers defined by the American Bar Association's model Ombudsman guidelines, has unique independence and authority to investigate. It is these characteristics (denoted in my response to question 1b) that are important to the Office more than what the office is called. A complaint bureau refers commonly to a bureaucratic unit that is charged with processing and attempting to ameliorate complaints. An advisory committee typically addresses issues or resolved disputes at the request or initiation of the Agency itself, often in consultation with the agency. The Office of the Ombudsman should be empowered with unique independence and authority, and a mission expressly dedicated to investigating the complaints brought by citizens and communities.

*Question 1e.* How should the Office of the Ombudsman be structured? In that regard, should the Office of the Ombudsman be established at EPA Headquarters in Washington, DC, or should there be a separate Ombudsman for each EPA Region?

Response. It is important that there be a national Ombudsman office for two reasons. First, the EPA Regions' policies and activities, for the most part, flow from the national office's policies. In order to ensure the Ombudsman's ability to investigate root causes of problems he or she discovers, the Ombudsman must be able to investigate the agency or agency officials on a national scale. Second, because of inconsistencies in responsiveness to community concerns, it is useful to have an Ombudsman outside the region to approach with complaints about the region's policies or activities.

Regional Ombudsmen might be, because of their more localized attention, more responsive to local concerns in some cases (provided they have independence from the Regional Office in order to investigate the Region's activities) and we support the establishment of regional Ombudsmen. However, regional Ombudsmen cannot be a substitution for a national Ombudsman.

*Question 2.* Our written testimony highlighted the fact that EPA needs to improve public access to information and increase their usefulness to the public. You support both S. 2800, the Streamlined Environmental Reporting and Pollution Prevention Act of 2000, and S. 1763, the Ombudsman Reauthorization Act of 1999, because of the benefit the public would derive from those EPA services. However, do either of these bills increase environmental protection?

Response. Both of these bills ultimately increase environmental protection indirectly, by making the EPA more efficient and more responsive. However, the Streamlined Reporting Act would do so even more directly for several reasons. First, integrating reporting provides companies with a unique opportunity to assess, view, and report the entirety of their environmental information, reflecting the entirety of their environmental impacts, at once. This simple activity (which is not currently unavailable to industries, but for which this bill provides added encouragement) would give industries the opportunity to reduce their environmental impacts. Second, the bill would provide industries with information on pollution prevention. Pollution prevention is the most protective and efficient way of reducing environmental impacts. It means reducing impacts by eliminating the generation and use of pol-

luting material, rather than trying to clean up waste streams at the “end of the pipe” (whether that location be a pipe, outlet, or a product containing polluting materials). This bill again creates a unique opportunity for industries to prevent pollution by providing pollution prevention information at the point of reporting, that is, at the point where the facility’s managers are seeing their total environmental impacts. Again, this information is not necessarily unavailable to industries; in fact, facilities that are looking to improve their environmental performance should already be making these assessments, gathering pollution prevention information, and taking action to prevent pollution already. This bill makes this process easier and provides encouragement for those facilities who would otherwise not take the initiative.

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STATEMENT OF DEBORAH SPAAR SANCHEZ, ADMINISTRATOR, OVERLAND  
NEIGHBORHOOD ENVIRONMENTAL WATCH

My name is Deborah Spaar Sanchez. I live at 500 West Jewell Avenue in Denver, Colorado, approximately 300 yards from the Shattuck Chemical Superfund site, a toxic radioactive waste dump. I am a founding member and the Administrator of Overland Neighborhood Environmental Watch—a community organization of concerned citizens operating under a Technical Assistant Grant from the EPA.

I am honored that you have invited me to speak to you today. I am honored to be representing my community and am deeply grateful to my neighbors for funding my trip here. I also wish to honor this committee, industry representatives, the EPA and citizens across our Nation for doing what I believe to be the sacred work of protecting and restoring to wholeness the lifegiving systems of this Nation and this earth.

I have come to voice my strong support for S. 1763. I am convinced that continued funding and independence of the EPA National Ombudsman Office is the only way to ensure that citizens and communities across our country have a voice in the Superfund process and in decisions which directly affect them, their families and the environment. I have also come to share my thoughts with you about my community’s experience with the EPA National Ombudsman, Robert Martin.

I will do my best to tell my and my community’s story in the time I have been given but if you have any questions later, please call me and if I can’t answer them, I’ll be happy to put you in touch with one of my neighbors who can.

By the time Senator Allard asked EPA Ombudsman Robert Martin to help our community in the spring of 1999, I personally felt as if I had been in a war with Region 8 EPA for 12 years.

I had been given misinformation (the EPA FOIA officer wrote me a letter in response to a request I made in 1987 saying that there were “no NPL sites in my zip code,” when in fact, Shattuck had the same zip code as me and had been placed on the National Priority List sometime between 1983 and 1985.) Mistakes had been made and there was no interest in correcting them (when I pointed out to EPA that a flood plain map used to determine that the site was not in danger of flooding actually showed water running uphill, they seemed unconcerned and did not offer any further explanation even though the community wanted new research done).

There were constant contradictions in the information being given to the community (first the Project Manager announced in a community meeting that we shouldn’t eat the fruits and vegetables in our gardens and then later, without doing any further research studies, said it was safe to eat them.) Our State Health Department and the EPA sent us a proposed plan saying that the “preferred remedy” was to “excavate and remove” the waste. We were told that this was the only remedy which would completely ensure health and safety of the community. Then, after closed meetings with the EPA, State health and the PRP, a ROD was signed ordering the company to treat, stabilize and bury the radioactive soil in our neighborhood. They did this without coming back to the community to tell us that they had changed their minds. When we asked to see documents and records of meetings that would explain to us why they changed their minds, we found that approximately 2,000 documents were now classified, marked “privileged” and kept from public scrutiny.

I was suspicious, I was exhausted, my husband had died suddenly and unexpectedly of a heart attack the year before and I was living with unspeakable fears that the health problems my son was having were a result of radium contamination. I felt assaulted by the Government I had been raised to trust as supposedly working to ensure every citizen’s right to “life, liberty and the pursuit of happiness.”

I had become like a citizen in one of “those other countries” where people can never relax. They go to bed at night fearing that, at any moment, their government

will make some decision which could put them and their family in harms way. I did not once feel heard; I did not feel seen. I felt completely disregarded as if I were invisible. I wanted to take my son and move out of the beautiful passive solar home my late husband had designed and built for us but even that thought brought fear.

I could not think of trying to sell our home without disclosing to a buyer that our Government had allowed a rich and powerful company to bury radioactive toxic waste dump in the middle of our lovely neighborhood. My next fear was that I might not be able to find a new home that wasn't also potentially affected by some toxic waste. I could ask, like I did last time, but after my experience of receiving false information before, how could I ever be sure?

The first thing that Mr. Martin did was to listen to us. He and his small staff came and they listened. They placed no restrictions, no time limits, no agendas on their listening. Mr. Martin, listened and listened. He listened to our pain, he listened to our anger, he listened to our fears. He listened to our frustration and he listened to our disillusionment with our Government and with the EPA. He also listened to our good ideas and to the wisdom we shared about our community and what we knew about our own environment—wisdom seldom tapped into by the EPA because the system had been structured to exclude community input. It places EPA technical scientists addressing only the concerns of the money oriented businesses either responsible for pollution and/or cleaning it up. He listened with respect and he listened for as long as we wanted to talk. Then he promised to uncover the facts for us.

He began to meet with EPA Region 8 staff and began working with Senator Allard and this very Senate committee to release the documents which had been hidden from us. He then began planning for and scheduled public hearings.

EPA Assistant Administrator for Solid Waste and Emergency Response Tim Fields came to our community about the same time that Mr. Martin came and he also began to listen. I believed he genuinely wanted to find out what problems there were to be solved. He treated me with respect and I believe honestly wanted to help solve the problems we were facing. He set up a series of Dialogue Meetings with all stakeholders concerned with the Shattuck site. I felt that these Dialogue Meetings were productive and helped me to feel as if I was finally getting a chance to work with my government but the difference between this process and the Ombudsman process was that these meetings were closed to the public and to the press. Even though, this time, the community had a seat at the table, and we were discussing possible solutions to the problems with each other, we could not take much of that information out into our community.

It was when Mr. Martin's office, Senator Allard and other elected officials convened public hearings in the community with the press present, that our community seemed to sigh with relief. I felt true democracy was finally taking place and I was able to regain at least a little of the faith in my government that I had lost.

I believe that funding the Ombudsman Office is also the best use of our taxpayer dollars. I have mentioned many times at all of the meetings how outraged I have been at the waste of the taxpayer dollars and how much these dollars have been used to make mistakes and then to cover up mistakes. We pay the city attorney and the Mayor to fight with the company and the EPA, the EPA is represented by the Department of Justice attorneys, who we pay—and the lawsuits are brought before the Federal judges, who we also pay. Many times I have advocated for us to stay home and sue ourselves without all the middle men.

Increased funding would allow communities to ask for help from the Ombudsman before taxpayer dollars were thrown away on lawsuits.

Involving the community from the beginning of the process—and actually listening to our suggestions—would bring a wisdom to the Government process from the governed which would not only be good for all concerned from a spiritual and democratic perspective but also from a monetary and practical one.

When problems arise and mistakes are made, and even when mistakes are covered up, it is only by exposing them to the light of day that we have any hope of correcting them. We crucially need an honest and diligent EPA protecting the environment of our Nation and serving as an example to other Nations. The Ombudsman process is crucial for helping expose the truth to the light of day for citizens dealing with serious threats to our environment and knowing the truth is the only way that we can remain free and truly self governed.

Thank you Mr. Chairman and members of this committee. I will be happy to answer any questions you may have.

STATEMENT OF KENNETH BRUZELIUS, EXECUTIVE DIRECTOR, MIDWEST ASSISTANCE PROGRAM, INC.

Mr. Chairman, Senator Baucus, and distinguished members of the committee. Thank you for the opportunity to testify in support of Senate Bill 1915, The Small Community Assistance Act.

My name is Kenneth Bruzelius, New Prague, Minnesota. I bring three perspectives to the issue of small communities and their concerns. First, I have lived over 50 of my 65 years in rural places or small communities under 7,500 in population. In this capacity as citizen, I have served on a city council for a town of 50 people and I have served for 2 years as a township representative to a county planning board.

Second, as the Executive Director of the Midwest Assistance Program (MAP), my staff and I have entered thousands of small communities providing technical assistance to mayors, city councils and special district boards of directors. The Midwest Assistance Program is a not-for-profit agency that serves nine Midwest and western states with technical assistance to small communities on drinking water, wastewater, solid waste management and other environmental concerns. MAP is part of the Rural Community Assistance Program (RCAP) network.

As an aside, the RCAP network deeply appreciates the support that we have received from members of this committee through the years as we work with EPA, USDA, HHS and other government agencies. In particular, we thank both Senator Baucus and the chairman for their support of a provision in the Water Resources Development Act (WRDA), which, if enacted, will allow the Corps of Engineers to enter into cooperative agreements with RCAPs or other rural technical assistance entities to assist small rural communities during planning and implementation of Corps projects.

Third, I was a member of the Small Town Task Force (STTF) created by Public Law 102-386 dated October 6, 1992. Upon sunset of that task force I was asked to be a member of the Small Community Advisory Subcommittee (SCAS)—a *subcommittee* of the Local Government Advisory Committee. In July of this year my term on this small community advisory subcommittee expired.

I am pleased to be here today to support The Small Community Assistance Act of 1999. I commend Senator Jeffords for initiating and introducing this legislation, as well as those who are cosponsors. I also express appreciation to the Environmental Protection Agency for its interest, commitment and support of Small Community issues.

My testimony supporting this legislation is a combination of individual expression as well as collaboration from local officials, other grassroots organizations, and the Rural Community Assistance Program network (RCAP).

Establishing a Small Community Advisory Committee as a permanent committee—instead of a temporary subcommittee is extremely important. Small communities represent an overwhelming percent of local governments . . . over 26,000. Additionally, unincorporated communities subject to EPA regulation would be heard and benefit from the Small Community Advisory Committee. It is important that these stakeholders have a direct voice to EPA decisionmakers without the filter of a committee dominated by larger cities and metropolitan areas. This message came out loud and clear in the Small Town Task Force Report and has been reaffirmed in the current work of the Small Community Advisory Subcommittee. Background information about and excerpts from the STTF Report are included as part of this testimony starting on page 6.

The Small Community Assistance Act responds to the message conveyed by small communities in the Small Town Task Force Report. Briefly stated, that message is:

- We need environmental protections;
- We need to understand how new regulations will accomplish that;
- We need input so that when regulations are promulgated they are appropriate to our situation;
- We need advice and technical assistance in how to implement;
- We need access to resources so that we don't bankrupt our communities and our future.

I commend EPA Staff for the seriousness and commitment that I have seen in their pursuit of their responsibilities. It is because of that commitment that I find it discouraging that they are not willing to offer to small community officials an opportunity to express their similar commitment to fully participating in the job of protecting the environment and public health.

Creating a permanent Small Community Advisory Committee with the objectives stated in S.1915 is a small, but extremely important mechanism toward offering small community officials this opportunity.

S. 1915 would establish an advisory committee composed of at least one (1) small community representative from each of EPA's ten (10) regions. It would:

- Allow for representation from Federal, State and public interest representatives.
- Seek to improve the working relationship between the agency and small communities.
- Provide for early involvement in the development of environmental regulations.
- Report its activities to Congress.
- Assist the EPA Administrator in other appropriate matters.

I ask—Who could reasonably deny small community officials this opportunity to show their commitment to helping themselves and their neighbors to meet essential environmental responsibilities?

S. 1915 offers EPA an opportunity to better understand small communities. Section 8—The Survey of Small Communities identifies relevant information needs that, if appropriately collected, compiled, analyzed, and translated into strategy, can assist EPA and the Congress in improving environmental services and quality of life in small town America.

S. 1915 also offers small communities an opportunity to better understand the Federal Government's regulatory requirements for small communities. A Guide for Small Communities entitled "Everything You Wanted to Know About Environmental Regulations—But Are Afraid to Ask" was originally published by my organization (the Midwest Assistance Program) under a contract from Region VIII—EPA. It has been amended and updated a number of times by EPA regions, headquarters and States. This publication has fallen out of date and needs EPA to publish an on going, up-to-date guide in a format useful to small communities.

I would like to speak in particular about the concept of a Small Town Ombudsman at regional EPA offices. The STEP legislation of 1992 required EPA to initiate an Ombudsman function for small communities. *EPA has refused to do so!* The final report of the Small Town Task Force also recommended that EPA establish a Small Community Ombudsman office at EPA regional and headquarters offices. This recommendation has not been honored. (EPA has re-established a Small Community Advisory Subcommittee, and small communities are thankful for this limited voice.) Once again the Ombudsman issue was raised by the Small Community Advisory Subcommittee. The advisory subcommittee has spent the last 2 years asking EPA to implement an Ombudsman like function for small communities. Even today they resist this request. A letter of September 19, 2000, just 1 week ago today, was transmitted to the Agency again requesting the establishment of an office of a small town advocate. Such offices could serve a number of useful functions benefiting small communities as they seek to enhance and preserve environmental, quality of life services to their residents.

Regional Ombudsman Offices could:

- Provide for a mechanism to identify and notify small communities affected by new rules.
- Consult with affected small communities about the potential impacts of a contemplated rule.
- Make provisions for compliance assistance to small communities when the rule is adopted and implemented.
- Identify "unintended consequences" of implementing a rule in unique situations and assist in providing an appropriate resolution.
- Be a full-time advocate for small communities to the universal goal of enabling them to improve their environment and quality of life and meet regulatory compliance through implementation or appropriate exemptions or waivers.
- Be a participant in State/EPA partnerships and delegation agreements to assure that small community concerns are considered: such as, outreach, technical assistance, availability of resources, etc.

It is also important for each Regional Ombudsman Office to have an advisory board of small community stakeholders. This approach recognizes the likelihood of regional differences and enables local officials to inform their Regional Ombudsman of their unique needs. The regional advisory mechanism should enable EPA, States, and local small community advisors an opportunity to understand issues that arise at each level and work toward acceptable solutions.

An EPA Headquarters Ombudsman Office could:

- Be an advocate within EPA at the start of, and during the regulatory development process to assure that impacts to small communities are clearly understood. In particular the cost implications of new regulations should be projected on a real cost basis to the smallest regulated community system that would be impacted. (i.e. if a community of 25 would be impacted, what would the real cost to that community be?)

- Be an equal partner in the development of rules to determine what, if any, federalism implications may be involved in implementation.
- Participate as an equal partner in EPA's evaluation of delegated programs to help identify and ameliorate unworkable or unintended negative regulatory impacts on small, rural communities.

The Superfund Ombudsman and the Small Business Ombudsman Offices are clear examples that the availability of such assistance benefits smaller entities, which often have few resources to secure other professional or legal assistance.

The Regulatory Review Plan described in Section 6 of the Act would seek to increase the involvement of small communities in the regulatory review process. This is important because:

- Small community systems represent the largest number of regulated systems.
- Small communities are the least able to survive a regulatory mistake or debacle.
- Solutions that are available to cities are often cost prohibitive to small systems, and solutions appropriate to small systems are often untested or otherwise not acceptable to State regulatory agencies.
- Small communities need to be represented by a larger number of community officials, because as individuals they often lack the time, experience and technical knowledge that paid staff and consultants can provide to larger cities.

The Regulatory Flexibility Act of 1980, the Unfunded Mandates Reform Act of 1995, and the Small Business Regulator Enforcement Fairness Act of 1996 have each prompted EPA to show a little more interest in how small communities are treated by the Agency. In effect, EPA has responded to small community needs only after Congress has mandated it.

The Small Business Regulatory Flexibility Act (SBREFA) requires EPA to consult with small entities (including communities) when a proposed rule is likely to impose a "significant impact on a substantial number of small entities". Recently EPA utilized this stakeholder consultation process to review the development of a proposed regulation (arsenic). In spite of strong stakeholder dissent to what EPA proposed, it is yet to be shown that EPA's publishing of the proposed regulation was informed or modified in any way by this stakeholder process.

#### BACKGROUND INFORMATION

This background information is taken from the Small Town Environmental Planning (STEP) legislation (Public Law 102-386) and from the Small Town Task Force Report dated May 23, 1996.

Small communities across the United States face a wide range of environmental challenges and responsibilities. Local leaders must evaluate a multitude of competing priorities with limited resources and are accountable to their citizenry for the decisions they make regarding these issues. It is increasingly difficult for small towns to manage and implement environmental requirements for a variety of reasons.

The work of the Small Town Task Force (STTF) characterized small communities as follows: People who live in small towns are proud of their community. They want to comply with reasonable health and environmental standards leaving a healthy legacy for their children. However, local officials are concerned about standards written without consideration for the special circumstances small towns in America face. They take issue with unnecessary and cumbersome regulations restricting their ability to respond intelligently to local priorities and needs. It is not that small towns do not want to comply with environmental regulations. They simply want some flexibility in order to comply in a reasonable manner. Small towns do not want preferential treatment; they want treatment that recognizes their unique political and financial situations. Small towns have many unique characteristics. It is realized that in order to maintain or improve the quality of life for citizens, difficult choices will have to be made.

#### SMALL TOWN TASK FORCE [STTF] HISTORY

The Small Town Task Force was established by Public Law 102-386 dated October 6, 1992, section 109, Small Town Environmental Planning. This is also referred to as the STEP Legislation.

The STEP legislation authorized the Administrator of the Environmental Protection Agency to establish the Small Town Environmental Planning Task Force, commonly referred to as the Small Town Task Force (STTF). The STTF was formed to improve the working relationship between EPA and small towns and the ability of small towns to comply with environmental regulations. The task force was to include representatives of small towns from different areas of the United States, Fed-

eral and State governmental agencies and public interest groups. Fourteen individuals were appointed to the task force including municipal, township, and State and Federal officials as well as others who work with small towns on environmental issues. It was my privilege and honor to be a part of this group.

The STTF provided recommendations to EPA on building the capacity of small towns to comply with regulations, promoting regionalization of environmental treatment systems, solving multi-jurisdictional compliance and permitting problems, involving small communities in the rulemaking process and improving the working relationship between EPA and small towns. Those recommendations are explained in detail in this testimony.

The STTF had five major responsibilities. They were to:

a. Identify regulations developed pursuant to Federal environmental laws which pose significant compliance problems for small towns;

b. Identify means to improve the working relationship between the Environmental Protection Agency and small towns;

c. Review proposed regulations for the protection of the environment and public health and suggest revisions that could improve the ability of small towns to comply with such regulations;

d. Identify means to promote regionalization of environmental treatment systems and infrastructure serving small towns to improve the economic condition of such systems and infrastructure; and

e. Provide such other assistance to the administrator, as the administrator deems appropriate.

Several responsibilities are assigned to the administrator or to the agency. Perhaps the most important is, "The Administrator . . . shall establish a program to assist small communities in planning and financing environmental facilities."

To begin the process of advising the administrator, the task force stated one finding and four principles, which it believed, guided and shaped all specific recommendations.

*Finding: Small towns are different from large towns—not just smaller*

There are several reasons why this is true. Most of the reasons can be grouped into three broad areas: limitations on technical and professional capacity, limitations of financial resources, and demographic and socio-economic factors.

*A. Limitations on technical and professional capacity*

*No. 1, small towns, as a general rule, have no full time officials.*—One State represented on the task force has 310 municipalities; 297 have fewer than 5,000 people. There are two full-time mayors in the State (for one town of 50,000 population and another with more than 100,000 population). There are four full-time city council members. All the remaining mayors and council members are part-time, and have other, full-time, life-supporting occupations.

On a national basis, 86 percent of the 35,000 total governments in the United States contain fewer than 10,000 people. Ninety million people in the United States live in jurisdictions under 10,000 population; 74 million live in jurisdictions under 2,500. One third of all governments in the United States have no employees at all.

*No. 2, small towns, as a general rule, have little or no professional staff.*—Such towns may have a clerk, who may or may not have received specialized training. Routinely, small towns do not have planning offices or engineering staffs. The wastewater operator may have been trained by the State and may, in addition to operating the wastewater system, perform other municipal functions including maintenance and some law enforcement.

A key factor related to these two points is continuity, because town officials change, as do the bureaucrats who regulate them. At just about the time that agency officials are getting along with the current group of town officials, an election can cause them all to be thrown out of office. Then the whole education process has to start all over again. The loss of continuity threatens the communication linkages that have developed among local, State and Federal officials. When that happens, regulatory compliance becomes a nightmare. Any good developed by regulators may be lost in this situation.

Finally, there is often reluctance on the part of potential candidates to run for office and to be associated with unpopular environmental projects. In one State represented by a task force member, there are often elections in which nobody declares his or her candidacy. This means that the people who will address the challenges of environmental protection are write-in candidates.

*No. 3, small towns, as a general rule, cannot attract or support private technical businesses; accordingly, there is no private capability to supplement governmental capacity.*—There will usually be no registered engineer in a small town, for example,

nor will there be an engineering firm. There will be no laboratory to perform required tests. One member of the task force has no certified laboratory in her state.

*No. 4, there will be few, if any, training opportunities.*—Small towns do not generally contain universities or significant technical training capabilities. Some progress is being made in this area in two respects: first, State governments have taken on some of the training responsibilities. Where local budgets permit travel, states can train, for example, water and wastewater operators. Second, in some areas interactive television networks offer an alternative form of training. But training opportunities will always be in short supply for small towns because training capacity does not exist locally.

The result of these four facts is that technical and bureaucratic capacity is severely limited in small towns. The part-time mayor is limited in ability to understand what requirements must be met; the council is limited in their ability to understand the significance of what they are being asked to do; and there are limited or no staff or private resources upon which to draw.

#### *B. Limitations of financial resources*

*No. 5, almost by definition, small towns have severely limited tax bases.*—In one State represented on the task force, a small town which needed a loan for water and wastewater projects found that the amount of the loan would have exceeded the entire assessed value of the town.

*No. 6, small towns, because of limited opportunities for young people, tend to have disproportionately older populations.*—The implications of this fact will be explored in another way under socio-economic factors. On average, older persons, retired and/or living on fixed incomes—especially in rural areas—tend to be poorer than the population as a whole. Their marginal capacity to support increased spending, for any public purpose, is quite limited.

*No. 7, small towns tend to have fragile, heavily concentrated economic bases.*—Thus, the small town gasoline station faced with the cost of upgrading underground storage tanks may be the only station in town. Should the owner not succeed in coming into compliance, the result of the loss is not a reduced competitive base; it may be the total loss of the services.

This can also have major impacts on individuals. Station owners cannot, in some instances, sell their businesses because of the cost to clean up the areas where previous owners have discarded petroleum products on the property. In some instances, the cost would exceed the sale price of the property. This burden causes loss of retirement income.

*No. 8, infrastructure costs fall disproportionately on small towns because entry-level costs must be distributed over a smaller base.*—Thus, the cost of a waste water system for a population of 1,000 is not 1 percent of the cost of such a system for a population of 100,000; it is substantially more. When those costs are distributed over a smaller number of households, the per family costs escalate—perhaps as much as 10 times. EPA is currently considering combined sewer overflow rules. The agency estimates that the per-household costs in towns under 1,000 population will be more than 10 times higher than similar costs in towns with populations greater than 100,000. This is a well-recognized principle in the development of rural drinking water systems. Unfortunately, this does not appear to have been a consideration when the Federal pollution abatement grant programs were being administered.

*No. 9, limited tax bases mean limited budgets.*—Small towns routinely operate with budgets smaller than \$100,000 per year. In many instances, the amounts will not exceed \$50,000. These budgets are so small that the cost of additional drinking water testing, for example, may be 10 percent, or higher, of the total annual budget.

Many small jurisdictions do not have access to capital at reasonable rates. This may occur because of costs of obtaining bond ratings, thereby causing the community to have a “non-investment grade” rating with accompanying higher rates. Or the problem may arise from limited resources, or from State constitutional limitations on indebtedness.

While funding sources exist at the Federal, State and local levels, small communities often find it difficult to access these sources, for reasons discussed elsewhere, such as the absence of technical and professional staff, absence of political strength, and a lack of recognition of the particular problems of small communities.

Many small towns cannot get local approval to expend funds for programs which go beyond what they believe is necessary.

#### *C. Demographic and Socio-Economic Factors.*

*No. 10, small towns tend to have little, or no, medical care or emergency services readily available.*—In the current debate on national health care, rural states have repeatedly tried to make clear that their problem is, more than anything else, the

absence of medical care. Thus, “managed competition” may not be the answer where there is no competition to manage. Additionally, medical infrastructure, such as ambulance and 911 services are routinely not available. Finally, small towns have limited fire-fighting capability. They often rely on volunteer fire departments and limited equipment.

It is, therefore, somewhat facile to argue that small towns must meet the same environmental standards as the rest of the Nation and that such standards are required by “environmental equity.” Citizens of small towns may already be subject to greater health risks than their neighbors in large cities. If the basis for imposing the environmental standard is health protection, greater health protection could be accomplished through expanded medical and emergency services.

*No. 11, a disproportionately older population may require different forms of health protection.*—Typically, environmental protection is based on health risks that may or may not come to fruition for 10 or 20 years. The older population of the typical small town has many more immediate health threats with which it must cope.

*No. 12, small communities often lack political strength, both on the State and national levels.*—Small communities perceive that they are required to meet higher environmental standards than large communities are able to arrange for themselves through the exercise of political power. This lack of political strength may affect the distribution of resources as well as the granting of exemptions and deviations.

For all these reasons, the STTF found that small towns are fundamentally different from large communities.

The Small Town Task Force Committee identified three primary priorities. These priorities are excerpts from the Small Town Task Force Report.

#### *I. Improving the Working Relationship Between EPA and Small Towns*

The STTF should be re-established as an independent advisory group by the Administrator, within existing statutory and funding guidelines, to continue its work and provide ongoing guidance to EPA regarding small towns.

A Small Town Ombudsperson 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.

EPA should formulate a method for allocating Federal resources and funds for environmental issues targeted on the basis of need recognizing that small towns often pay a disproportionate share of expense.

EPA should take an activist role in shifting both environmental responsibility and accountability to the states, giving them the capacity to solve local problems in the most economically feasible and timely manner. These efforts should support the broader concept of encouraging localities to implement community-based environmental planning.

EPA should recognize the ability of small towns to initiate, prioritize and implement community-based environmental planning efforts.

EPA must use the opportunity of Agency reorganization to institutionalize special considerations for small towns.

A brief preface for each proposed and adopted regulation should be provided in layperson terms providing a justification for the regulation.

Information developed on environmental regulations and requirements of regulations must be written in user-friendly language.

A waiver process that is easily understood and implemented should be developed so that when small communities request a waiver, states have a process in place.

Chemical monitoring requirements should be revised to provide states with authority to design alternatives to national monitoring requirements.

#### *II. Policy and Procedure to Involve Small Towns in the Rule-Making Process*

EPA should establish a Small Community Advisory Committee to review environmental regulations as part of an initiative for involving small towns as early as possible in the process of developing environmental rules, guidance's and policies.

Funding should be set aside to include conflict resolution experts in the regulatory process. This will be especially crucial when those with opposing views are not able to reach a compromise or mutually agreed upon solution.

Outreach mechanisms are needed for small towns that extend beyond those that have traditionally been used. Special efforts are needed for reaching small jurisdictions.

EPA must insure that a small town official sits on the Regulatory Negotiation Work Group when a rule or policy that has the potential to impact small towns is being reviewed to assure the special nature of small towns is considered. The STTF should have the opportunity to identify a representative that is knowledgeable on the specific issue being considered.

EPA needs to improve methodologies for assessing the environmental impacts, costs, and practical and technical applications of proposed regulations. Special consideration should be given to how regulations will impact towns with populations less than 2,500.

EPA should expand its use of focus groups, Internet, public meetings, newspaper articles and regional small community work groups such as the one in Region VIII to inform small towns of pending rules and issues of concern.

EPA should utilize the small community data bank for information about small towns when writing regulations.

### *III. Technical Assistance*

EPA should assure that technical assistance is available to small town officials from Federal, State and third party providers to enable timely and cost effective environmental compliance capacity at the local level.

The Office of the Small Town Ombudsperson must be staffed to provide technical assistance to small towns and to resolve problems between State primacy agencies and small towns pertaining to interpreting and implementing new regulatory requirements.

EPA and Congress should fund technical assistance as part of State delegation grant programs and provide assurances that states have the capacity to provide technical assistance to help small towns comply with mandated regulations.

EPA and Congress should expand resources available, both directly and through third party technical assistance providers, enabling small towns to secure professional services for planning, developing and implementing new or rehabilitated environmental facilities whether immediate compliance problems are at stake or pollution prevention efforts are the issue.

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#### STATEMENT OF B. ROY PRESCOTT, CHAIRMAN, JEROME COUNTY, IDAHO, BOARD OF COMMISSIONERS

Mr. Chairman and members of the committee, my name is Roy Prescott and I am the Chairman of the Board of County Commissioners for Jerome County, Idaho. I am here to give you a brief insight into the implementation and benefits of S. 2296, a bill that would establish Project SEARCH—the Special Environmental Assistance for Regulation of Communities and Habitat program funded through the Environmental Protection Agency for small communities under 2,500 people.

Rural Idaho communities are facing many of the same environmental challenges seen throughout the United States, including the protection of groundwater, the disposal of waste water, the protection of critical habitat, and many others. Yet these small communities often find themselves without the financial resources to undertake the size and scope of project necessary to respond to environmental challenges.

In answer to their call for help in meeting environmental regulations and providing for liveability, several communities in Idaho prevailed on Congress to provide funding through a 1-year Project SEARCH program. Our focus was to use these funds to help small rural communities solve their environmental problems. We targeted these communities because they generally have small operating budgets, only part-time staff, and lack the financial reserves so critical to being competitive in the normal public sector grant processes.

The 1999 initial grant of \$1.3 million from EPA went to a local non-profit. This regional planning association, the Region IV Development Association, has considerable experience with grant processes and helping small communities. The Association created a simplified grant application that any part-time city officials or mayors could complete. A notice of the grant program availability and an application was sent to all of Idaho's counties and all cities with a Census population of less than 2,500.

To review the applications and ensure a fair, locally-driven process, a seven-member Citizens Advisory Committee was formed. The Committee was comprised of one representative appointed by the local board of each of Idaho's six economic development planning regions, and one person who brought to the group his experience as a small town mayor and with the EPA's Small Town Task Force. This individual served as the Committee's Chair. These seven individuals, of which I was one, reviewed the applications and made the funding decisions.

Of the 47 applications received, we were able to fund only 21. The funded applications ranged from a low of \$9,000 for a facility plan so that a housing authority could solve its wastewater problems to a high of \$319,000 for part of the funding needed for construction of a wastewater treatment facility in a very sensitive environmental area.

One project that we funded close to home involved a community of 150 attempting to install its first wastewater treatment system using the community residents for the needed labor. This “self-help” project had been struggling along for a couple of years with pipe stockpiled on the ground and no financial resources to finance a section of dangerous trenching that no volunteer felt safe (or capable) to complete. Project SEARCH funds enabled this community to complete this aspect of the project and refocus on getting the remainder of their sewer system completed. The people of this community will be hooking up homes to the new system this fall. Without Project SEARCH assistance, this project would still be years away from completion.

Implementation of Project SEARCH was not without its tense moments. The project grant from EPA required a 45 percent match. As previously mentioned, small communities generally cannot come up with the matching requirements for most public infrastructure grant programs—effectively eliminating their potential for receiving grant assistance. As originally proposed, Project SEARCH was not much different in this regard—many applicants could not meet the 45 percent match requirement. To overcome this obstacle, our grant administrator worked with EPA to structure the program so that each individual community *would not be required* to come up with a 45 percent match—but rather that the overall program would be responsible for meeting the match requirement. As a result of this common-sense approach, we will meet EPA’s 45 percent match requirement and the individual towns will be able to use Project SEARCH funds to solve their problems while participating to the maximum of their financial abilities. The small towns were able to match their Project SEARCH Grants with local resources ranging from 14 percent up to about 87 percent.

The Project SEARCH concept provides a flexibility not readily available with other public infrastructure grant programs. Yet this project has still been able to maintain full accountability through the EPA grant being awarded to an experienced local non-profit. Through this combination of local direction and Federal partnering, Project SEARCH has enabled more direct infrastructure building/environmental problem solving dollars to get to the communities than if EPA had awarded individual grants.

Throughout the process of implementing this program, the Environmental Protection Agency, especially the Boise Field Office, was exceptional to work with. Project SEARCH has enabled 21 Idaho communities to solve or make major strides in solving their environmental problems that could not have been done otherwise. As a representative of small town America, I encourage you to fund this type of project in the future.

Thank you for your time.

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RESPONSES BY ROY PRESCOTT TO ADDITIONAL QUESTIONS FROM SENATOR SMITH

*Question 1a.* S. 2296 is focused on providing help to small communities. What is the principal need that small communities have? Is it construction funds for environmental projects, such as a sewer system or a Waste Water Treatment Plant (WWTP)? Legal assistance in understanding Federal law and completing grant applications? Paying experts? Hiring personnel?

Response. Construction funds are among the needs of small communities. Constrained by a limited tax base for general obligation bonds and/or customer base for revenue bonds, these communities are unable to raise sufficient funds to undertake major infrastructure projects through these traditional means. The cost of an environmentally sound solution to wastewater or domestic water problems does not correspond proportionally to the size of a town. A town of 2,500 faces the same multi-million dollar improvement bill that a town of many times that size. This lack of local share consequently limits the ability of the community to leverage from traditional grant sources.

Also needed are funds to support preliminary assessments and project planning. Both regulatory and project funding agencies require professionally prepared facilities studies, project planning documents, and cost estimates prior to authorizing the start of a construction project or committing Federal/State funds. Small communities do not have this technical capacity in-house and must hire professional consultants to accomplish these tasks. Again, limited revenue resources restrict the towns’ ability to contract for these services, and few outside financial resources are currently available to finance the cost.

Without the ability to qualify the problem and identify options for a solution, the community cannot move to the next step—resolving their environmental infrastructure issues.

Our existing network of Department of Environmental Quality staff and planning districts assist small communities with understanding the Federal regulations and the paperwork involved with developing applications for funding—no financial assistance is needed for hiring legal counsel or technical assistance. Hiring personnel is not an eligible activity under the current program, as it requires an on-going commitment for funding as an operating cost for the system. To accommodate the need for trained technical operators, communities throughout the State have been encouraged to share professional staff for their wastewater and water systems. Cooperative agreements have been developed creating a circuit-rider concept where nearby small towns can share the expense of a professional operator. In addition, those communities not granted are given help with future direction, appropriate agencies or individuals that could help them, if they wish to follow through.

*Question 1b.* In your prepared testimony, you mentioned two specific uses to which grant funds were put—a facility plan to deal with a housing authority's wastewater problems, and the construction of a WWTP. Please supply the committee with additional examples of how Idaho has used the funds already made available to your State.

*Response.* We were able to fund 21 projects because of limitations place by the E.P.A. on eligible projects to include only infrastructure projects. Seven projects were for the construction of wastewater treatment system improvements including the one I previously testified on where the community members are actually constructing the community's first waste water treatment facility. Three projects were for the construction of water system improvements. Eight Projects were for engineering needed to solve wastewater problems. Three projects were for engineering needed to solve water system problems.

*Question 1c.* How were grant decisions made in Idaho?

*Response.* A seven member Citizens Committee made the grant decisions.

Six Economic Development Districts cover the entire State of Idaho. A board of directors governs three non-profit economic and community development organizations. This board is comprised of local elected officials and private sector representatives (sometimes referred to as "Council of Governments"). Each of these boards appointed one representative to our Project SEARCH Citizens Committee. To chair the Committee, a former small town (population 800) mayor, that has led the cause of small rural communities at the State and National level was chosen. This individual has served on the Environmental Protection Agency's Small Town Task Force. These seven individuals met by conference call (to reduce administrative expense) and in person to make funding decisions.

Each Committee member was supplied with a copy of the grant application (there were 44 to review). A copy of the actual grant application of the city of Dietrich is attached to this response.

*Question 1d.* The criticism has been raised that S. 2296 would allow grants to be awarded to neighborhoods within large cities, instead of a small communities? Do you want that opportunity to exist? If not, how can it be prevented?

*Response.* Large communities would not qualify under the definition to participate in the program. At the same time, large communities do not need this type of assistance. Larger communities generally have more financial options available to them due to their size, tax base, and revenue resources. The small rural areas do not have the tax base of large cities. In addition, cities of over 50,000 population get a direct Community Development Block Grant from H.U.D. In Idaho and most States, communities of less than 50,000 compete for the Small Cities Program of HUD's Community Development Block Grant that goes directly to the States. This competition among communities often center around which communities can provide the most matching funds. Usually, the larger the population of a city, the more matching funds it can provide. This makes these cities more likely to be awarded the grant from the State.

Small communities do not have the financial resources that larger communities have, In Idaho, eligibility for Project SEARCH was limited to cities and unincorporated communities with 2,500 people or less. This criteria eliminated the possibility that a neighborhood within a larger city could be awarded funds.

There are small communities encased in large communities. This program allows these small communities the same or equal opportunity to apply for these grants. The selection committee ultimately has the final decision based on need and qualification.

*Question 1e.* The criticism has been raised that S. 2296 would allow all of a State's funds to be granted for community welfare projects, such as swimming pools. What safeguards do you have in place to ensure that grants are awarded only for what

ordinarily would be understood as environmental projects, instead of other community welfare projects? What safeguards are necessary to have in S. 2296?

Response. It is our intention that an application must identify the specific environmental obligation the project will meet. Supporting documentation regarding the problem must be provided including letters from the regulatory agencies. The Department of Environmental Quality provides consultation to the selection committee on which projects are the most critical for resolving infrastructure issues.

The proposed project must resolve a clear environmental problem. Without a critical infrastructure issue to resolve, requests from a previously funded community will not be competitive against another community's current problems. No Congressional language is required.

*Question 1f.* Is there a means by which Congress can ensure that grants are awarded to different communities over time, so that no one community or set of communities will be able to monopolize grants?

Response. The Citizens Committee makes decisions regarding selecting the grantees. The Committee members are appointed from regions throughout the State. Regional representation would determine successful applicants and appropriate distribution of grants. This would allow non-political decisionmaking to review needs, and direct where resources go.

*Question 1g.* Should this grant program be preferred source of money for small communities, or should it be a source of funds to be used as a last resource.

Response. There currently exist many sources of infrastructure funding from State and Federal agencies. These sources should remain the preferred source of funding. However, because of various rules and regulations, often small communities are not able to access these funding sources. Applicants should demonstrate that they have attempted to secure other funding and have either been unsuccessful or that the other funding is not adequate to complete the project and other funding is not available.

Project SEARCH funds are the dollars of last resort. The applicants must identify all other efforts at raising funds to resolve their environmental problems and provide written documentation on commitments and rejections for funding. When all other traditional resources are exhausted, Project SEARCH funds can be requested.

*Question 1h.* Should the authority to make grant decisions be vested in a council composed of private citizens, or should the authority be given to a governmental official, such as the Governor or a group of local officials?

Response. A private citizen group such as we developed in Idaho is the fairest process. This program should not be allowed to become part of a bureaucracy or political process. Our Idaho example is the best method that will ensure that projects with the most need will be funded.

Maintaining a non-partisan process is critical to the success of the program. Local elected officials and private sector business people appointed the members of Idaho's selection committee. This local control (including wide geographic participation) insures equal consideration for projects from all areas of the State and provides a level of confidence to the public that the projects awarded are vital to the sustainability of the small towns and not political plumbs.

Keeping this program out of the hands of State government enabled us to have a simple application process for the small communities. A part-time city clerk or mayor could complete the application that could be as short as two pages.

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STATEMENT OF BENJAMIN Y. COOPER, PRINTING INDUSTRIES OF AMERICA, INC.

Mr. Chairman and members of the Committee on Environment and Public Works, I appreciate this opportunity to appear before you in support of S. 2800, the Streamlined Environmental Reporting and Pollution Prevention Act of 2000. My name is Benjamin Y. Cooper. I am senior vice president for Government Affairs for the Printing Industries of America, the Nation's largest graphic arts association. I have included a page of statistical information about PIA and the U.S. printing industry.

S. 2800 is important legislation. It is important for today but it may have greater value in the future as the impact of Federal environmental regulations is extended to smaller and smaller companies. EPA and the States continue to make improvements in the quality of the information they provide to businesses. Nevertheless, the level of information required from business increases each year. More importantly, the size of the companies that must report is getting smaller.

The Clean Air Act, the major environmental program affecting the U.S. printing industry, now applies to companies as small as 15 employees in some areas of the country. In fact, most urban areas consider all printers as major sources of air pollu-

tion because the industry is a large area source. While it is true that the majority of printing companies do not have "site specific" Federal air permits now, unless we change the Clean Air Act, more and more of these companies will have the same permit requirements as large printers. In addition, virtually every printing company has some level of reporting requirement for waste, chemical storage, or water discharge. Any steps we can take now to make reporting easier for these companies will pay significant dividends.

For smaller companies, reporting can be a complex and sometimes error prone process. These companies often lack the tools and experience to provide the information. Often small companies have to rely on suppliers or Material Safety Data Sheets to determine the volatility or toxicity of a chemical. The level of complexity is also a factor in the rate of error. The more complex the reporting requirement, the greater the chance of error.

S. 2800 could provide significant help in reducing the time required to file. If the reporting is consolidated into fewer reports, it is possible that the rate of error will be reduced simply by minimizing the time required to fill out forms.

In the real world of business, particularly manufacturing, changes in the last few years have been astonishing. Printing, one of the Nation's largest manufacturing industries, is threatened by new media, the cost of supplies, increased postal rates, a lack of skilled labor and the imposition of Federal and State regulations. Reports of streamlined regulations and reinvention have been grossly overstated. Companies that have been reporting are still reporting, and new companies are being added regularly. With each new threat, companies in our industry meet the challenge by reducing costs in every facet of the company. In many cases, this means reducing the expertise a company might have to handle State and Federal regulatory reporting. Nationally, a very small number of PIA members have environmental specialists.

One Federal statute, the Clean Air Act, gives a good indication of the expansion of reporting requirements. The Act categorizes businesses as sources of emissions, not by how much they emit, but by their *potential* emissions. Further, the Act imposes significant controls on states to reduce pollution. Printing companies are capital intensive. Commercial printers in a community want to be in a position to offer a wide range of printing options which means they will likely have more equipment than they need. While this may make good sense from a customer service standpoint, EPA evaluates each of these presses by its potential to emit. In simple terms, a printing company has the potential to emit a great deal more than it could ever hope to emit. In an industry such as printing where there are a significant number of small companies, very small companies can become major sources as defined by the Clean Air Act.

We have worked with EPA in an effort to improve the "potential to emit" rules. If these rules are clarified favorably, some printing companies may no longer have to report as major sources.

In terms of reporting burden, it is not unusual for a printing company to file quarterly, semiannual, as well as annual emission reports. A printer may also have to file an additional State annual emission statement with a different format and data element presentation requirement to a different branch of the same media program. Some air programs such as Title V can also require additional annual reports when mandatory annual training is completed. These various annual reports have different deadlines.

These companies must also account for any significant changes. Purchase of a new press or an expansion of the facility triggers other series of reports including new permitting, new source review, and more. Frankly, we do not believe Congress considered the purchase of new equipment in a small business as an event triggering new source review, but that is where we are today.

In light of these concerns, we think S. 2800 provides an opening to some genuine reporting reform. Reporting on an issue by issue basis is inefficient for many businesses. In the case of a smaller printing company, the most accurate reporting is by inventory or use of input materials, not outputs such as emissions, effluents, and waste generation. Companies buy a certain quantity of inks, solvents and other chemicals. The process of accounting for these chemicals provides information about emissions and waste. Additionally, inventory accounting may also indicate areas where changes can be made to reduce or eliminate problems. Inventory accounting can be more accurate.

Another benefit of consolidated reporting is to improve the EPA's "inventory" of pollutant loadings. One of the ongoing disputes we have with EPA is the emissions inventory. EPA determines the emissions inventory and the emissions of particular industries through emissions factors. These factors are not changed often enough to account for new technology. Since printing has been through a technology revolution

in the past decade that some compare to the invention of movable type, old data is worthless data. Regulatory decisions and targets of emission reductions are based on emissions inventories and emission factors that do not reflect current emissions. If the data making up the inventory and the factors are incorrect, the regulatory action itself may be incorrect. In the case of printing, we believe change in technology alone has resulted in substantial reduction of air emissions, but it is difficult to get credit for these changes in the current information system.

It is my opinion that the challenge facing EPA is not a lack of desire to make the changes. Instead, the lack of success may be due to the statutory "balkanization" of EPA into media programs. Each of these programs has developed data that is important to the individual program. There is almost certainly a level of concern about a proposal such as this that would consolidate such data into a single point. Data is a form of power.

One question about this legislation is why is it necessary? The Nation has embraced technology, and the internet will make electronic information exchange easy. While these statements may be true, it is not necessarily true that EPA or any other Federal agency will place a high level of priority on such consolidated reporting. Part of our concern is based on an experience we had with OSHA in attempting to get them to embrace electronic Material Safety Data Sheets. While OSHA would permit electronic systems, it required redundant paper systems as a back up to the electronic system. Obviously, this defeated the purpose of the electronic systems. OSHA has changed its attitude about electronic MSDS's, but it was not a smooth transition.

This experience tells us that if we want consolidated reporting, it will be necessary to legislate it. It is our hope that the legislation goes where EPA would go anyway.

Would EPA accomplish the same goal absent legislation? For some of the reasons stated above, we do not. EPA's priority is the environment. From the environmental community side, that means enforcement. From the business side that means communication and regulatory efficiency. Enforcement tends to win this battle. However, at some point, every constituent of EPA must realize that improvements in data gathering also help improve the environment. Better communications help. Regulatory flexibility can also help.

The primary benefit of consolidated reporting is that fewer man-hours will be spent reporting data to the government and fewer hours will be spent by the agency in processing the data once it is received. However, there are other benefits that have environmental significance. Consolidated reporting has the additional benefit of giving the business the opportunity to look at a larger picture of chemical use. Small companies are able to manage the entire company at once. Likewise, if chemical data and use is managed as a whole, problems and opportunities become more evident. If the report only addresses air emissions, the use of a specific chemical may not be in sufficient quantities to pass a reporting threshold. However, if that same chemical causes TRI reporting, a waste restriction or a discharge limit, the business may be able to see that through consolidated reporting. In effect, consolidated reporting presents an opportunity for pollution prevention by highlighting the emissions, effluents, and waste as a whole and not in parts.

While we think EPA has done a good job at improving its communication with the regulated community, it has not succeeded in reducing the reporting burden. We cannot find a single example of a company that has had its actual reporting burden reduced through EPA's One Stop Reporting program. If this legislation will produce results, it is worth the effort to pass it.

We urge your support and prompt action on S. 2800.

#### 1999 U.S. Market Segment Breakout

	Establishments	Employment	Shipments (\$M)
Commercial Printing:			
General Commercial Printing* .....	22,629	382,932	\$49,328.7
Quick Printing* .....	7,853	57,837	5,291.7
Magazine Printing .....	269	38,274	5,970.8
Newspaper Printing .....	5,319	202,376	28,880.8
Book Printing .....	356	54,807	7,109.0
Financial, Legal Printing .....	179	14,811	2,242.1
Screen Printing .....	1,347	26,816	2,708.6
Thermography .....	278	8,371	1,141.5

## 1999 U.S. Market Segment Breakout—Continued

	Establishments	Employment	Shipments (\$M)
Total .....	38,230	786,224	\$102,673.2
Form, Label & Tag Printing:			
Business Forms Printing .....	807	42,397	\$8,154.3
Label, Wrapper Printing .....	834	37,160	5,229.5
Tag, Ticket, Tape Printing .....	150	6,482	911.7
Total .....	1,791	86,039	\$14,295.5
Greeting Card Printing:			
Total .....	55	4,023	\$616.3
Specialty Printing:			
Total .....	992	42,954	\$6,224.5
Packaging Printing:			
Total .....	1,714	146,945	\$22,088.4
Trade Services:			
Prepress Services .....	5,092	70,133	\$7,272.1
Trade Binding .....	721	20,121	1,390.1
Other Finishing Services .....	815	16,954	1,151.0
Total .....	6,628	107,208	\$9,813.2
Total U.S. Printing .....	49,410	1,173,393	\$155,711.1

\*Note.—The small commercial printing (<10 employees) and quick printing market totals: Establishments: 23,068; Employment: 119,602; and Shipments (\$M): \$10,746.0

## RESPONSE OF BEN COOPER TO AN ADDITIONAL QUESTION FROM SENATOR SMITH

*Question.* What technologies can EPA use to improve data-collection and reporting compliance?

*Response.* It is our opinion that we should be in a position to take advantage of any technology which helps centralize information. Certainly, we would be supportive of flexibility in the adoption of future technology. It is our opinion that S. 2800 does not freeze EPA in technology. The advantage of consolidated reporting and, by extension, data gathering, is that it reduces the challenges the reporting community faces in providing redundant data. While we are very supportive of the rights of States to collect and use data, the alternative to a national database at this point is a series of databases located in the States. One of the trends we see in our industry is consolidation. Small companies are being purchased by larger companies and small companies are aligning themselves for a variety of purposes. It is becoming increasingly common to have relatively small companies with multi-state operations. These trends suggest that the challenges of reporting will increase in the future. We face a fundamental choice of reporting to a State database from which the Federal data can be gathered or to a Federal database from which the State data can be gathered. While we will likely have a combination of these approaches, it is essential that we work toward a common reporting format, data needs, and time requirements. In the current technical environment, these efforts would favor a national database.

While we are not as familiar with other industries, it is likely that small-business-dominated industries such as furniture manufacturing, auto service, dry cleaning, and metal finishing would face similar problems.

## STATEMENT OF DIANE E. THOMPSON, ASSOCIATE ADMINISTRATOR FOR CONGRESSIONAL AND INTERGOVERNMENTAL RELATIONS, ENVIRONMENTAL PROTECTION AGENCY

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 decisionmaking.

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 data bases.

#### 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 (P.L. 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 decisionmaking.

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 decisionmaking 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 dialog 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 decisionmaking. We see the special circumstances of smaller local govern-

ments 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 traditional 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. \$50 million 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 (P.L. 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 dialog 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 decisionmaker 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, confidentiality, 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 Establish-

ment 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.

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RESPONSES BY DIANE E. THOMPSON TO ADDITIONAL QUESTIONS FROM  
SENATOR SMITH

*Question 1a.* The Office of the Ombudsman was created within the Office of Solid Waste and Emergency Response in amendments to the Solid Waste Disposal Act in 1984. Why did the original legislation have only a 4-year lifespan?

Response. The amendments to the Solid Waste Disposal Act passed by Congress in 1984 included a provision which stated, "The Office of Ombudsman shall cease to exist 4 years after the date of enactment of the Hazardous and Solid Waste Amendments of 1984." In 1989, when the statutory authorization for the Hazardous Waste Ombudsman function expired, Congress did not re-authorize the Ombudsman function. The Agency does not know why. The Congressional Record does not address this question. EPA chose administratively to maintain the function as a matter of policy after the authorization expired. EPA continues to support the Ombudsman function.

*Question 1b.* What would be the EPA's position on a bill that merely sought to re-enact the provision in the original legislation for an additional 10 years?

Response. EPA would not oppose a bill that re-authorizes, for an additional 10 years, the 1984 amendments to the Solid Waste Disposal Act which directed the Administrator to establish an Office of the Ombudsman. EPA believes that the Ombudsman function can be of assistance to 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.

*Question 1c.* The EPA presently has an Office of the Ombudsman that it has supported since the original legislation expired. What injury to the environment and to the work of the EPA would be caused by legislation reauthorizing the Office of the Ombudsman or a separate line item in the budget for this Office?

Response. The Agency does not believe that re-authorizing the Office of the Ombudsman would result in injury to the environment and to the work of the EPA. To the contrary, when the statutory authorization for the Hazardous Waste Ombudsman function expired in 1989, EPA chose administratively to maintain the function as a matter of policy. As further evidence of the Agency's commitment to the Ombudsman function, in 1991 EPA broadened the National Ombudsman's scope of activity to include other programs administered by the Office of Solid Waste and Emergency Response, particularly the Superfund program. In addition, in 1995 the Agency created a Regional Ombudsman function in each EPA Regional office as part of the Agency's Superfund Administrative Reforms effort. EPA believes that the Ombudsman function is useful for the Agency and the public.

Since its establishment in 1984, EPA has provided adequate resources (funding, person-years, etc.) for the Ombudsman function. Over the last 16 years, supplemental needs of the Ombudsman have been met through the Office of Solid Waste and Emergency Response's (OSWER's) routine allocation of funds. OSWER has assigned staff to support this function and assisted the ten Regional Ombudsman as needed. Over the years, funding for the National Ombudsman function has steadily

increased despite the fact that OSWER program budgets have been reduced. In fact, funding to support the National Ombudsman function has increased from \$117,000 in fiscal year 1993 to more than \$519,000 in fiscal year 2000.

When the need has arisen, additional funds have been provided to the Ombudsman function. The fiscal year 2000 direct funding for OSWER National Ombudsman function, in Headquarters, was \$500,000 (primarily staff salary, travel and hearing expenses). Historically, this more than adequately met its needs. In addition, the Ombudsman, depending on the site and issues under review, has relied upon the technical expertise of EPA's professional staff resources, such as the Office of Emergency and Remedial Response, to supplement investigative efforts. Because these needs vary from year to year, it would be difficult to predict the nature and amount of these supplemental needs. In addition to the OSWER National Ombudsman, there is a strong Regional Ombudsman network, with a counterpart in each of the 10 EPA Regional Offices. This network is available and fully funded at roughly \$1 million a year, to support the National Ombudsman.

EPA does not believe a separate line item in the budget for the Ombudsman's Office is necessary. It would represent an unnecessary precedent to establish such a line item appropriation.

*Question 2a.* Your testimony indicates that the Agency is implementing the suggestions made by the Small Town Task Force, however, there is no mention of a Small Community Ombudsman Office at EPA Regional Offices. Is the Agency implementing that recommendation?

Response. In 1996, the Small Town Environmental Planning Task Force (STTF) recommended that "a Small Town Ombudsperson Office should be established in each EPA region and at headquarters with a primary responsibility for serving as an advocate for small towns and as a facilitator for addressing small town concerns and programs." The Agency's implementation of that recommendation has proceeded along three tracks.

The first track is a multi-media approach which began the same year that the STTF made its recommendation. The then-EPA Associate Administrator for Regional Operations and State and Local Relations asked each Regional Administrator to designate a small community coordinator to work with the headquarters small community coordinator. Since then, these small community contacts have evolved into focal points for the receipt and transmittal of information to local communities and facilitators of the communication process between EPA Regional Offices and small towns.

A second track involves working closely with State environmental agencies which have established strong small community outreach efforts. Nebraska, Oregon, and Oklahoma, for example, are three State environmental programs with a strong small town emphasis. EPA supports innovative State efforts in three ways: (1) encouraging States to adopt flexible enforcement approaches to small town compliance; (2) providing technical assistance to States which are developing small community programs; and (3) working with the Environmental Council of the States (ECOS) to provide a forum to share solutions to common small town issues among the States.

EPA media or program offices are the primary component of the third track in EPA's implementation of the Small Town Ombudsperson Office recommendation. Individual program offices have established dedicated teams to work with small towns in the following areas: (1) wastewater; (2) drinking water; (3) compliance assistance; and, (4) early involvement in the regulatory development process. These teams have been established based on EPA's understanding of the environmental challenges facing small communities and on the on-going advice we have received from the small town advisory panels we have established.

*Question 2b.* If so, approximately how many full time employees (FTEs) per Region are assigned to a Small Community Ombudsman Office?

Response. While each EPA Regional Office has established a small community coordinator function, resource levels supporting that function vary widely depending on (1) the number of small communities in the region with identified environmental assistance needs; (2) the extent of State small community programs; and, (3) the extent of the small community effort within regional programs or media divisions. We have no formal accounting of the total FTE assigned to coordinator/outreach functions.

*Question 3.* Your written testimony indicates that the agency has implemented, or has undertaken efforts to achieve the various goals of these bills. For example: the Agency administratively supports the current Office of the Ombudsman, although the authorization for the Office has expired; a Small Community Advisory

Subcommittee already exists within the Local Government Advisory Committee; and there are current plans to update environmental reporting to a Central Data Exchange. All that being said, none of these initiatives have been specifically authorized by Congress. In addition to authorization for the Programs, some of the bills include an authorization for appropriations to carry out the mandates of the bills. Seeing as the Agency has so many initiatives, is it helpful to have a Congressional mandate to set priorities and ensure funding for the Program?

Response. As outlined in the testimony, although EPA supports the goals of S. 1915 and S. 2296, the Agency has significant concerns with many of the specific provisions included in that legislation. Moreover, although those two bills would provide specific authority for many activities conducted presently under more general authorizations, such specific authorization does not guarantee the availability of funds beyond those already being expended on those activities. To the contrary, EPA's experience with the SEARCH pilot project was that funding was diverted from other priorities. Too often, new authorities simply establish conflicting priorities for the same appropriations, and reduce the flexibility necessary to address the highest priority public health and environmental protection issues. Moreover, such authorizations often have the unintended consequence of creating opportunities for litigation which further diverts resources from existing, well established priorities.

RESPONSES BY DIANE E. THOMPSON TO ADDITIONAL QUESTIONS FROM  
SENATOR BAUCUS

*Question 1a.* Please identify which, if any, portions of the models and guidelines for ombudsmen identified below would be consistent with the structure currently in place at EPA (with the Ombudsman's Office within the Office of Solid Waste and Emergency Response), the U.S. Ombudsman Association's Model Ombudsman Act for State Governments, dated February 1997.

Response. Many of the provisions in the U.S. Ombudsman Association's Model Ombudsman Act for State Governments, dated February 1997 are consistent with the structure currently in place within the OSWER Ombudsman's Office including the Ombudsman's powers and duties, and discretion over the investigation complaints. Some areas that are not consistent include the power to subpoena, the power to bring suit to enforce the provisions of the Act and the requirement for issuing annual reports. Other aspects of this model conflict with requirements for Federal employees and the Freedom of Information Act requirements for Federal agencies. As Federal employees reporting to Agency managers the Ombudsmen cannot be completely independent in the normal course of relations between supervisors and their employees.

*Question 1b.* Please identify which, if any, portions of the models and guidelines for ombudsmen identified below would be consistent with the structure currently in place at EPA (with the Ombudsman's Office within the Office of Solid Waste and Emergency Response), the American Bar Association's proposed Standards for the Establishment and Operation of Ombudsman Offices, dated July 2000.

Response. Many of the provisions in the American Bar Association's proposed Standards for the Establishment and Operation of Ombudsman Offices, dated July 2000, are consistent with the structure currently in place within the Office of Solid Waste and Emergency Responses's (OSWER) Ombudsman's Office. Some aspects of this proposed Standard conflict with requirements for Federal employees and the Freedom of Information Act requirements for Federal agencies. For example, as Federal employees reporting to Agency managers the ombudsmen cannot be completely independent in the normal course of relations between supervisors and their employees.

*Question 2.* Are you aware of any other model or framework that you believe would be more suitable for the Ombudsman's Office? If so, please describe.

Response. In addition to the ABA proposed Standards, EPA believes that Conference Recommendation 90-2: "The Ombudsman in Federal Agencies," adopted June 7, 1990 by the Administrative Conference of the United States, provides a reasonable framework for establishing and maintaining an Ombudsman function in a Federal agency. See Attachment A.

*Question 3.* Are you aware of any other Federal agency, or division within an agency, with an Ombudsman's Office? If so, please identify how Ombudsman's Offices are structured and function in other Federal agencies, relative to their structure and function at EPA.

Response. We are aware of several other Ombudsman functions within the Federal Government. The Agency for Toxic Substances and Disease Registry has re-

cently established an Ombudsman function (see Attachment B). We understand that the Internal Revenue Service and the Department of Health and Human Services have Ombudsmen as well.

*Question 4.* What issues do you expect will be addressed by the guidance that EPA is developing for the Ombudsman's Office? Do you anticipate that the guidance will address any of the significant criticisms of the current structure of the office, such as claims that the office does not have sufficient autonomy from OSWER, authority to obtain documents or other information, or resources? Does EPA expect to make any changes that would affect the structure or functioning of the Ombudsman's Office? When does EPA expect to issue the guidance?

Response. Shortly after Congress established the Ombudsman program, the Agency issued the Hazardous Waste Ombudsman Handbook to help the newly created National and Regional Ombudsmen administer, within a public framework, the Ombudsman program. During the initial years of the Ombudsman program, most of the assistance sought by the public was for information on the RCRA program. The Ombudsmen spent most of their time responding to general questions and directing requests to the appropriate sources. The handbook reflected this role.

Over the years, the public gained a better understanding of EPA's hazardous waste programs. Requests for answers to basic questions became requests for resolution of complaints. The Ombudsman function has evolved to reflect the changing needs of its clients. Since earlier guidance no longer reflected the current Ombudsman activities and function, this guidance has been updated to explain the role of the Ombudsmen, their scope of activity, and the guidelines under which they coordinate and carry out their responsibilities. The main objective in issuing new guidance is to improve the effectiveness of this program by giving the Ombudsmen and those who may contact them a clear and consistent set of operating expectations and policies.

In preparing the updated guidance, a workgroup met with representatives of the U.S. Ombudsman Association and evaluated and considered guidance documents from this organization as well as from other organizations with Ombudsman programs and the American Bar Association's draft *Standards for the Establishment and Operation of Ombudsman Offices*. The workgroup has attempted to draft guidance which reflects key aspects of various external models in a manner that supports the Ombudsman's independent operations within the context of a civil service position within the Federal structure. EPA believes the draft guidance will provide for effective and fair implementation of OSWER's Ombudsman program.

The draft guidance was made available for public comment by *Federal Register* notice on January 3, 2001, copy attached. Public comment is requested by March 5, 2001. The Agency has also made the draft guidance available on EPA's internet website.

*Question 5.* Does the Hazardous Waste Ombudsman Handbook bear on any matters referenced in the previous question? Please provide a copy of the handbook.

Response. In 1987, the Agency issued the Hazardous Waste Ombudsman Handbook to help the newly created National and Regional Ombudsmen to administer, and the public to understand what to expect from the Ombudsman program. During the initial years of the Ombudsman program, most of the assistance sought by the public was for information on the RCRA program. The Ombudsmen spent most of their time responding to general questions and directing requests to the appropriate sources. The handbook reflected this role. See Attachment C.

*Question 6.* Please provide copies of any correspondence or memoranda between the Ombudsman's Office and the Office of Solid Waste and Emergency Response from the past year that bear on the responsibilities? or functioning of the Ombudsman's Office.

Response. Attachment D contains relevant correspondence or memoranda between the Ombudsman's Office and the Office of Solid Waste and Emergency Response.

*Question 7.* Has the Ombudsman's Office prepared any recommendations to improve the functioning of OSWER and the Ombudsman's Office? If so, please provide copies, and identify any measures taken in response to the recommendations.

Response. The OSWER National Ombudsman has made recommendations to improve the OSWER Ombudsman function. See Attachment E.

*Question 8.* Please provide copies of each of the Ombudsman's reports on site investigations and recommendations (including both preliminary and final recommendations).

Response. Attachment C contains the reports requested. They include: (1) Final Report on the Review of the Brio Superfund Site; (2) Interim Report on the Review

of the Times Beach Site; (3) Final Report on the Review of the Times Beach Site; (4) Final Report—National Ombudsman’s Review of the Drake Chemical Site; (5) Shattuck Chemical Superfund Site—Preliminary National Ombudsman Recommendations.

*Question 9.* In coordination with the Department of Justice, please respond to assertions that: DOJ attempted to “muzzle” the Ombudsman’s Office; and limits on the Ombudsman’s authority to become involved in cases in litigation would preclude his involvement at a significant number of sites, and would be inappropriate (in what, if any, circumstances, could it be appropriate for an Ombudsman’s investigation to proceed in connection with a site that is, has been or may in the future be the subject of litigation?)

Response. EPA and Department of Justice support the existence of an Ombudsman Office within EPA. We recognize that Ombudsman offices within Federal agencies play an important role in responding to and investigating complaints and questions from members of the public or employees regarding agency processes and the manner in which individuals or other entities have been treated in those processes. We also agree, consistent with the American Bar Association’s (“ABA’s”) draft Standards for the Establishment and Operation of Ombudsman Offices (July 2000), that to function effectively with respect to matters within their areas of responsibility, ombudsmen must be able to operate with a considerable degree of independence, impartiality, and confidentiality.

This does not mean, however, that the National Hazardous Waste Ombudsman should have unlimited discretion to investigate any issue that comes to his or her attention. For example, if the Ombudsman discovers evidence of potentially criminal conduct, he or she should immediately refer the matter to the appropriate criminal investigative office and should refrain from further investigation of the matter. Similarly, the Ombudsman’s jurisdiction should be limited with respect to civil matters that are before a court or administrative tribunal. To the extent that there is already a neutral forum for resolving certain issues, a parallel Ombudsman investigation is likely to add confusion rather than clarity to the situation. Moreover, where the Ombudsman seeks to address an issue already before a court in pending litigation, this duplicative process tends to undermine the court’s authority and risks harming the interests of the United States in the litigation. For example, testimony by government officials at an Ombudsman’s hearing while litigation is pending can raise serious concerns regarding potential waiver of privileges.

There are at least two sets of national standards concerning Federal agency ombudsmen, issued by two highly respected legal bodies, the ABA and the Administrative Conference of the United States, that would caution the EPA Ombudsman to avoid duplicating or undermining the civil judicial proceedings related to the instant case. The draft ABA Standards issued in July 2000 State that “[a]n entity should not authorize an Ombudsman to: (1) make, change or set aside a law, policy, or administrative decision” or “(4) conduct an investigation that substitutes for administrative or judicial proceedings.” Similarly, the U.S. Administrative Conference’s Recommendations for the Ombudsman in Federal Agencies (Aug. 1990) State that “legislation or guidelines [for a Federal agency Ombudsman] should \* \* \* 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 incident thereto.” (Emphasis added.)

*Question 10.* Please identify the responsibilities of the regional ombudsmen and the nature of the matters they work on, and discuss whether and how they differ from those of the Ombudsman’s Office at EPA headquarters. What is your response to testimony that the very structure of the regional Ombudsman’s Offices creates a conflict of interest, since staff serving this function spend the majority of their time working in the program office that is scrutinized by the Ombudsman’s Office.

Response. The Superfund Administrative Reforms established a Superfund Ombudsman in each EPA Region. The Regional Ombudsman is a high-level employee who serves as a point of contact for members of the public who have concerns about Superfund activities. The Regional Ombudsman has the ability to look independently into problems and facilitate the communication that can lead to a solution. Each Regional Ombudsman has direct access to top management and can recommend actions to resolve legitimate complaints. Each year, as a group, they receive and respond to hundreds of inquiries. Most of these are routine and the Regional Ombudsman provides information or connects the request or to the person who can help with his/her issue. In a few cases, the Regional Ombudsman has undertaken fact-finding assessments or engaged in facilitation between the person with the concern and Agency officials. Members of the public may contact the Na-

tional Ombudsman for assistance at any time if they are not comfortable working with a Regional Ombudsman.

As a general matter, the National Ombudsman focuses his/her efforts on cases of national significance or precedent, while the Regional Ombudsmen have focused on issues that are more operational or that can be resolved informally. In some cases, the National and Regional Ombudsmen may participate together in the inquiry. The Regional Ombudsmen have been established primarily to focus on matters related to implementation of the Superfund program while the National Ombudsman functions across all programs managed by OSWER.

The organizational location and operation of the Regional Superfund Ombudsmen is a matter of regional discretion, thus no single description exactly fits all 10 regional approaches. For the most part, the Regional Ombudsmen report to the Superfund division director, directly or through an intermediate supervisor. With this arrangement, the Regional Ombudsman frequently also has direct access to the Regional Administrator or Deputy Regional Administrator when he/she believes that specific issues warrant direct involvement by top regional managers. EPA understands that this type of organizational structure (reporting to the Regional Superfund division director) has created the perception, in some cases, that there is a conflict of interest. This is an issue we will be asking the Regions to consider after the Agency has issued the OSWER Ombudsman guidance. In general, however, we have found that Regional Ombudsmen can be very effective in improving the operation of the regional program when they have appropriate resources and support.

*Question 11.* What is your reaction to the suggestion at the hearing that S. 1763 should be amended in subsection (c) to incorporate by reference the ABA model Ombudsman's statute, rather than relying on a determination by the Administrator as to whether it is practicable to follow particular aspects of the model?

Response. Models or guidelines for ombudsmen have been developed by a variety of organizations, including the ABA, the U.S. Ombudsman Association, and others. The Agency is concerned that the establishment of the ABA model as the appropriate Ombudsman structure may create both unreasonable expectations and inappropriate opportunities for litigation. 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, confidentiality, 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. In addition, the Freedom of Information Act obligations for Federal agencies and the confidentiality guidelines of the Model Ombudsman Statute are inconsistent.

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."

*Question 12.* Would EPA oppose a bill that ensured the continued existence of the Ombudsman's Office by reauthorizing the office, and which required an annual report to Congress on the Ombudsman's investigations and recommendations?

Response. The Agency would not oppose a bill that re-authorizes the provision which directed the Administrator to establish an Office of the Ombudsman. EPA believes that the Ombudsman function can be of assistance to the Agency and the pub-

lic. 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. In addition, the Agency would not oppose a requirement that the Ombudsman's Office submit an annual report to Congress on the Ombudsman's investigations and recommendations.

### **Environmental Protection Agency**

[FRL-6928-8]

Draft Guidance for National Hazardous Waste Ombudsman and Regional Superfund Ombudsmen Program

**AGENCY:** Environmental Protection Agency.

**ACTION:** Notice of available draft guidance with request for comment.

**SUMMARY:** The Environmental Protection Agency (EPA) has developed and is requesting comment on the "Draft Guidance for National Hazardous Waste Ombudsman and Regional Superfund Ombudsmen Program." The Office of Solid Waste and Emergency Response (OSWER) National Hazardous Waste and Superfund Ombudsman (National Ombudsman) and the Regional Superfund Ombudsmen (Regional Ombudsmen) were established to provide help to the public in resolving issues and concerns raised about the solid and hazardous waste programs administered by OSWER.

The purpose of this draft guidance is to explain the role of the Ombudsmen, their scope of activity, and the guidelines under which they coordinate and carry out their responsibilities. EPA believes this draft guidance will improve the effectiveness of this program by giving the Ombudsmen and those who may contact them a clear and consistent set of operating policies and expectations.

**DATES:** To make sure we consider your comments we must receive them by March 5, 2001. Comments received after that date will be considered to the extent feasible; however, EPA will not delay finalizing the guidance to accommodate late comments.

**ADDRESSES:** You may request copies of the "Draft Guidance for National Hazardous Waste Ombudsman and Regional Superfund Ombudsmen Program" by any of the following ways:

Mail or write to: Docket Coordinator, Headquarters, U.S. EPA, CERCLA Docket Office, (Mail Code 5201G), Ariel Rios Building, 1200 Pennsylvania Avenue, NW., Washington, DC 20460.

Phone: call (703) 603-9232, or (800) 424-9346.

Internet: <http://www.epa.gov/swerrims/whatsnew.htm>

If you wish to send us comments on the guidance, you must send them in any one of the following ways:

Mail: Docket Coordinator, Headquarters, U.S. EPA, CERCLA Docket Office, (Mail Code 5201G), Ariel Rios Building, 1200 Pennsylvania Avenue, NW., Washington, DC 20460.

Express Mail or courier (such as Federal Express, other overnight delivery, or courier): Docket Coordinator, Headquarters, U.S. EPA, CERCLA Docket Office, 1235 Jefferson Davis Highway, Crystal Gateway #1, First floor, Arlington, Virginia, 22202.

E-mail: in ASCII format only to [superfund.docket@epa.gov](mailto:superfund.docket@epa.gov).

**FOR FURTHER INFORMATION CONTACT:** Caroline Previ, phone number (202) 260-2593, Office of Solid Waste and Emergency Response (Mail Code 5101), U.S. Environmental Protection Agency, Ariel Rios Building, 1200 Pennsylvania Avenue, NW., Washington, DC 20460, or the Superfund Hotline, phone number (800) 424-9346 or (703) 412-9810 in the Washington, DC metropolitan area.

### **SUPPLEMENTARY INFORMATION:**

#### **I. INTRODUCTION**

The program managers and staff in the Regions and at Headquarters are committed to implementing the Federal solid waste and hazardous waste statutes managed by EPA, being responsive to the public, and resolving issues and concerns brought to their attention. In some cases, the individual or group raising a given concern does not believe the official problem solving channels dealt fairly or fully with their situation. In such cases, the individual or group may request assistance from the Office of Solid Waste and Emergency Response (OSWER) Ombudsman, an Agency official designated to receive inquiries and complaints about the administration of OSWER programs. The National and Regional Ombudsmen receive many calls for assistance each year—ranging from routine questions about hazardous

waste laws to specific complaints about allegedly improper activities conducted at a site or facility.

Today's Federal Register notice introduces a policy entitled "Draft Guidance for National Hazardous Waste Ombudsman and Regional Superfund Ombudsmen Program" which explains the role and conduct of the OSWER National Ombudsman and the Regional Superfund Ombudsmen, scope of their activity, and the guidelines under which they coordinate and carry out their responsibilities. The main objective in issuing this guidance is to improve the effectiveness of this program by giving the Ombudsmen and those who may contact them a clear and consistent set of operating policies and expectations. This draft guidance would cover only the Ombudsmen who work on OSWER related issues, and staff who supply primary support or assistance to the Ombudsmen.

This guidance, when finalized, is not intended to be, and should not be construed as a rule. Use of the guidance would not be legally binding on EPA managers or staff or on other parties. EPA is seeking public comment at this time to ensure hearing the widest range of views and obtaining all information relevant to the development of the guidance.

## II. BACKGROUND

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) so that the public would have someone to come to with questions and concerns about the RCRA program. Soon after, we issued the "Hazardous Waste Ombudsman Handbook" to help the newly created National Ombudsman administer, and the public understand what to expect from, the Ombudsman program. During the initial years of the National Ombudsman program, most of the assistance sought by the public was for help understanding the complex RCRA program. The Ombudsman spent most of his time responding to general questions and directing requests to the appropriate sources. The handbook reflected this role.

When the statutory authority for the National Ombudsman program expired in 1989, 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 in the EPA Headquarters office in Washington, DC.

In 1995, EPA created a Regional Superfund Ombudsman position in each EPA Regional office as part of the Superfund Administrative Reforms. The Regional Ombudsmen program, at a minimum, operates in support of the Superfund program, but—depending on the Region—may also provide support to other programs, including RCRA, Underground Storage Tanks (UST), and chemical emergency prevention and preparedness.

Over the years, the public gained a better understanding of EPA's hazardous waste programs. Requests for answers to basic questions more frequently became requests for resolution of complaints. The Ombudsman function evolved to reflect these changes. The existing guidance no longer reflects the Ombudsman function as it has evolved.

In the fall of 1999, the EPA established an internal workgroup to update the "Hazardous Waste Ombudsman Handbook." In preparing the updated guidance, the workgroup met with representatives of the U.S. Ombudsman Association, and evaluated and considered guidance documents from this organization, as well as other organizations with Ombudsman programs and the American Bar Association's draft Standards for the Establishment and Operation of Ombudsman Offices. To the extent possible, EPA has drafted guidelines which reflect key aspects of various external models in a manner that supports the Ombudsman's independent operation within the context of a civil service position within the Federal Government structure. EPA developed these procedures to meet the specific needs of the OSWER Ombudsman program and they may not be completely consistent with Ombudsmen principles established by other organizations.

The draft guidance explains to the public the role of the National Hazardous Waste and Superfund Ombudsman and Regional Superfund Ombudsmen today, their scope of activity, and the guidelines under which they coordinate and carry out their responsibilities. We believe the draft guidance will provide for effective and fair implementation of OSWER's Ombudsman program.

## III. SUMMARY OF DRAFT GUIDANCE

The draft "Guidance for the National Hazardous Waste and Superfund Ombudsman and Regional Superfund Ombudsmen Program" puts forth our philosophy concerning the basic operating principles and procedures for the OSWER Ombudsman

program. Ombudsmen functioning under this guidance are authorized to provide information and look into complaints and grievances related to OSWER's administration of the programs implemented under the following authorities:

- Comprehensive Environmental Response, Compensation and Liability Act (CERCLA) or Superfund
- Resource Conservation and Recovery Act (RCRA), including Underground Storage Tanks (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 112r

The Ombudsman may be called to serve in a number of capacities: (1) providing information and facilitating informal contact with EPA staff, (2) conducting informal inquiries and developing recommendations to address difficult problems, (3) helping to mediate disputes, and (4) making recommendations to Agency senior management regarding procedural and policy changes aimed at improving the program. The goal of the Ombudsman program is to respond to requests in an appropriate, transparent and objective manner as promptly, informally and discretely as possible. The guidance briefly discusses each of these functions, but we anticipate that a significant amount of the Ombudsman's time will be dedicated to looking into issues raised by the public concerning decisions that EPA has made. Because of this, most of the draft guidance is devoted to outlining the Ombudsman's responsibilities in carrying out this activity. Overall, the Ombudsman's role is to listen to all sides in an impartial, objective manner, to provide assistance in trying to understand and resolve the problem, and, if necessary, to recommend possible solutions to senior Agency managers. It is important to note that the Ombudsman does not have authority to change decisions made by program managers or staff.

Generally, the National Ombudsman handles cases of national significance. The Regional Ombudsmen handle the more routine requests for assistance and conducts more informal inquiries to investigate complaints. The guidance explains how the Ombudsman will evaluate requests for assistance, and how inquiries will be conducted.

Whatever capacity the Ombudsman is serving in, he is expected to act with independence, impartiality and confidentiality—the basic operating principles of all Ombudsmen. The guidance provides a brief description of how the Ombudsman will demonstrate these responsibilities effectively and discusses limitations with respect to confidentiality imposed by existing laws and regulations that the OSWER Ombudsman must abide by as Federal civil servant.

Our goal is to receive feedback on the draft guidance from the widest range of interested parties possible. We welcome comments on any or all aspects of the guidance. Your comments will help us improve this document. We invite you to provide your comments on our approach and your ideas on alternative approaches we have not considered. Explain your views as clearly as possible and provide a summary of the reasoning you used to arrive at your conclusions. Tell us which parts of the guidance you support, as well as the parts with which you disagree. Your comments must be submitted by March 5, 2001. EPA will review the public comments received on the guidance and where appropriate, incorporate changes responsive to those comments.

We specifically request your comments on the following three topics related to the independence of the Ombudsman. These issues emerged as key issues during the development of this guidance.

1. *Does the Organizational Structure of the Ombudsman Program Impact the Independence of the Ombudsman?*—One of the main principles an Ombudsman operates under is the ability to work independently in determining which complaints to investigate, how an inquiry should proceed and what are the findings of an inquiry. EPA recognizes the importance of an Ombudsman being and appearing to be independent from the organization he/she is investigating. EPA believes both the National Ombudsman and the Regional Ombudsmen are able to look independently into problems and facilitate the communication that can lead to a solution. We do not select which cases the Ombudsman will take, nor direct how the Ombudsman will investigate a complaint. We do not interfere with or attempt to influence the Ombudsman as he formulates his findings and recommendations.

From the time Congress established the National Ombudsman, this function has been a Federal Government employee reporting to a senior Agency official. Because the Ombudsman is a Federal employee, he/she cannot be completely independent in the normal course of relations between a supervisor and his/her employee. Currently, the National Ombudsman reports directly to the Assistant Administrator for OSWER. We believe this is the appropriate reporting structure for the National Om-

budsman. The Assistant Administrator for OSWER is the senior Presidential appointee responsible for the programs the Ombudsman is looking into and he/she is in the best position to use the advice of the National Ombudsman. For the most part, each Regional Ombudsman reports to the appropriate Regional Superfund division director, directly or through an intermediate supervisor. No matter what capacity an Ombudsman is serving in at any given time, we have worked to ensure the Ombudsman's ability to operate with maximum independence.

The organizational location and operation of the National Ombudsman and the Regional Ombudsmen is a matter of EPA discretion. We agree that it is very important that the Ombudsman be and appear to be independent from the organization he is investigating.

Does this structure ensure the appropriate level of interaction between the OSWER Ombudsman and senior EPA officials while maintaining enough independence for the Ombudsman to operate effectively?

*2. Should the Ombudsman Have Sole Discretion To Decide How Cases Are To Be Handled?*—The guidance states that the National and Regional Ombudsmen have the discretion either to accept a request for assistance or decline to act. While the National Ombudsman and the Regional Ombudsmen work fairly autonomously, coordination in this area is crucial. Requests for assistance may come directly to either the National or a Regional Ombudsman. To avoid duplication of effort, the guidance lays out general procedures for evaluating incoming requests.

The guidance requires that before conducting an inquiry that is primarily related to one Region, the National Ombudsman will consult with the relevant Regional Ombudsman. We believe this consultation will help the National Ombudsman make a fully informed decision about whether it is more appropriate for him/her to handle the matter, to refer it to the Regional Ombudsman, or to decline to investigate. Similarly, a Regional Ombudsman is expected to notify the National Ombudsman if he/she has been requested to conduct an inquiry that may be nationally significant. The Regional Ombudsman should discuss with the National Ombudsman how he/she plans to proceed with the inquiry, including the level of involvement that the National Ombudsman wishes to have in the inquiry.

We expect that a Regional Ombudsman and the National Ombudsman almost always will agree on who should handle an inquiry. In those rare situations when there is not agreement the Assistant Administrator or Deputy Assistant Administrator for OSWER will resolve the dispute. The guidance requires the Regional Ombudsman (in consultation with the appropriate Regional Administrator or Deputy Regional Administrator) and the National Ombudsman will each forward a memorandum to the Assistant Administrator for OSWER, or jointly hold a conference call explaining his/her perspective on the disagreement. The Assistant Administrator or Deputy Assistant Administrator for OSWER will then make the decision about who should handle the inquiry.

Is this the appropriate way to resolve such disputes?

*3. Should an Ombudsman's Scope of Inquiry Be Restricted To Protect EPA's Litigation position?*—We considered three alternative approaches to this question. The approach we selected and which is reflected in the draft guidance generally precludes the Ombudsmen from investigating an issue or dispute which is in litigation, i.e., pending before a court. The presumption is that Ombudsmen should not take action on an issue or dispute which is in litigation since that issue is in the hands of an independent tribunal for decision, as provided for by the relevant statute. In addition, the public has access to that tribunal to raise serious concerns. For example, in the case of a consent decree presented to a court, public comment will be solicited on the decree, and the court will consider those comments and then determine if it is in the public interest to enter the decree. In the case of a challenge to agency action, affected members of the public can intervene and present argument to the court, and the court will decide whether we demonstrated an adequate basis for its action and whether we acted in a non-arbitrary manner and in accordance with law. This approach also avoids creating the false impression that the Ombudsman's Office is an alternative forum for arguing controversial issues, which would result in confusion, inefficiency, and potentially conflicting statements about the Agency's position. The OSWER Ombudsman program is not intended or authorized to circumvent existing channels of management authority or established formal administrative avenues of appeal.

However, we believe that there may be situations where it is appropriate for the Ombudsman to investigate actions EPA has taken, even where those actions are before a court for review. For instance, the Ombudsman may have information to suggest that our action at issue in the legal proceedings is infirm or erroneous. Or the Ombudsman may bring to Agency management information of significant public concern about an Agency action at issue in the courts. In either case, if the Ombuds-

man believes an inquiry is necessary, he/she should communicate that information to the appropriate Agency official before proceeding with his/her inquiry. Such an investigation would proceed only after concurrence by the Assistant Administrator or Deputy Assistant Administrator for OSWER or the appropriate Regional Administrator or Deputy Regional Administrator, in consultation with EPA's lead litigation office, taking into account its potential impact on pending litigation.

It should be noted that this presumption against investigations applies to an "issue or dispute" that is before a court for consideration. Thus, the fact that a site or facility is in litigation does not necessarily mean that the Ombudsman should refrain from conducting an investigation of all issues arising at that site or facility. For instance, if the issue before a court is the authority of the Agency to get access to a piece of property, that would not create a presumption against an investigation of alleged deficiencies regarding remedy selection.

For your information, we are providing details of the two alternative approaches to this matter we considered but did not select. The first alternative approach removed any restrictions on the Ombudsman's ability to conduct an inquiry concerning an issue or dispute which is in litigation. The Ombudsman would be free to conduct an inquiry regardless of whether an issue or dispute was in litigation.

The second alternative approach would restrain the Ombudsman from conducting new fact gathering concerning decisions made based on the administrative record. The Ombudsman would remain able to audit the existing information and data that were part of the Agency's factual record. Under this model, if the Ombudsman concluded that additional fact finding and data gathering were necessary, that would become part of his recommendation. If the Agency agreed with this recommendation, it would conduct additional information gathering by utilizing the appropriate program staff and established procedures. The Ombudsman would be precluded from undertaking separate fact finding activities such as public meetings and formal on-the-record interviews. This approach would address concerns that an Ombudsman's activities may create a second record outside of the official administrative record, which could confuse and potentially mislead the public and could damage the Agency's position during litigation.

Is the chosen approach the most appropriate?

Dated: December 27, 2000.

**Michael Shapiro,**  
*Acting Assistant Administrator,*  
*Office of Solid Waste and Emergency Response.*

[FR Doc. 01-112 Filed 1-2-01; 8:45 am]

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STATEMENT OF DANIELLE BRIAN, EXECUTIVE DIRECTOR, PROJECT ON  
GOVERNMENT OVERSIGHT

The Project On Government Oversight (POGO) is a non-partisan non-profit organization that, since 1981, has worked to investigate, expose, and remedy abuses of power, mismanagement, and subservience to special interests by the Federal Government. POGO's goal is to improve the way the government works by revealing examples of systemic problems, offering possible solutions, and initiating change.

POGO has come across several attempts to stifle the independence of the National Ombudsman's Office. POGO first became aware of a problem when citizens from Lake Township, Ohio brought the Industrial Excess Landfill (IEL) Superfund site to our attention. From the beginning, concerns about the handling of the site have been voiced by citizens, public officials, and scientists. With each step, there have been questions raised about conflicts of interest, inappropriate testing methods, quality of site characterization, and adequacy of the methods of remediation selected for the site clean-up. Because of these issues, we worked to get the EPA National Ombudsman's Office to review the site. It took repeated requests by POGO and U.S. Representative Tom Sawyer to get EPA Administrator Carol Browner and top EPA management to overturn their earlier decision to prevent the National Ombudsman, Robert Martin, from reviewing the site. This documented interference by top EPA management, requiring the National Ombudsman to receive permission before considering an investigation, strikes at the heart of the independence of the office and the entire Ombudsman process.

We decided to look at other EPA regions around the country to see if these problems with the EPA were unique. Unfortunately, we found that they were not. We learned about the Shattuck site in Denver, Colorado; the Brio site in Harris County, Texas; about McFarland, California; Tarpon Springs, Florida and on and on. The communities affected by these sites had all come to view the EPA not only as unre-

sponsive to their concerns, but as active partners with the polluters. In fact, it appears that all too often the EPA has even broken the law in its rush to appease the polluting companies: withholding documents, holding secret meetings, lying to Members of Congress and to the community. And the only thing that stands between the EPA and the polluters is the National Ombudsman's Office.

Despite the obstacles, the National Ombudsman's Office has been remarkably effective at getting the EPA to review its decisions and correct its mistakes. Not only did the Ombudsman offer the communities successful resolutions to their particular troubles, he gave them reason to believe that sometimes the government can do the right thing. Unfortunately, the success of the Ombudsman's work has resulted in an effort by the EPA to undermine that Office. Not only is the Office ridiculously underfunded, but one of the more insidious efforts to drain power from the National Ombudsman is the emergence of the EPA's Regional Ombudsman program. This is an utterly flawed concept where a person wears two hats—part of their day they are expected to be an independent arbiter, and the other part of their day they return to being an employee for the very people whose work they are evaluating and investigating.

The attempts to undermine the independence of the Headquarters Ombudsman do not stop here. Our concern over this lack of independence led us to suggest to EPA top management in 1998 that a public process and working group be initiated to develop recommendations for improving the independence of the National Ombudsman's Office. We recommended that representatives from the United States Ombudsman Association, environmental community, labor, industry, good government public interest groups, the EPA, the National Ombudsman's Office, members of affected communities and others be included in this working group. In a response to our letter, however, EPA management stated "I do not find that such a review as depicted in your letter is necessary."

Apparently, while no public review was necessary, the EPA found that a covert one was. Responding to complaints from within, the EPA convened a behind-closed-doors committee on the National Ombudsman "problem." Why was an internal EPA management committee created to change a process that is lauded by the public and their elected officials?

It is clear that the office of the National Ombudsman has come under constant attack by EPA top management because he has been effective in doing exactly what an Ombudsman is supposed to do—to investigate complaints of inadequacies in the EPA's handling of Superfund sites and to suggest remedies to the problems it finds. Rather than allowing him to continue this work, however, the agency is trying to revise the procedures governing the Ombudsman program.

It is definitely time for a change, but not in the National Ombudsman's Office. There is already established guidance regarding the functioning of an Ombudsman's Office, and that guidance comes from the American Bar Association and the U.S. Ombudsman Association. According to the Ombudsman Association, an Ombudsman's Office should have: "independence of the Ombudsman from control by any other officer, except for responsibility to the legislative body; freedom of the Ombudsman to investigate any act or failure to act by any agency, official, or public employee, and; discretionary power to determine what complaints to investigate and to determine what criticisms to make or to publicize."

The very essence of an Ombudsman is to stand apart from the agency and to perform independent investigations. Discretion over which cases an Ombudsman looks into, without having to ask permission from anyone within the organization, is essential for the effectiveness of that office. Should the Ombudsman become subservient to the agency whose work he is meant to investigate, his decisions would become suspect, compromising the legitimacy and integrity of the office.

In 1998, POGO was proud to give Mr. Martin our "Beyond the Headlines" award. This is an award designed to recognize a politician, Federal employee, journalist or activist who has made significant contributions toward public policy improvements without regards for personal gain. I have seen over the past 2 years how hard the EPA has made it for Mr. Martin to do his job. Not only must he enter into highly contentious situations and work to identify the appropriate resolution for a site, but he must do this while constantly keeping an eye on his back. It seems that Mr. Martin's ability to cut through bureaucratic stonewalling has earned him a fair number of enemies at his own agency—which is unfortunately what you would expect for an Ombudsman who is doing his job well. Senator Allard's legislation will help to preserve the National Ombudsman's ability to call it as he sees it.

The people of Denver, Colorado are remarkably lucky in that they have a Senator who was willing to attend not just one, but three public hearings held by the Ombudsman's Office. I can't think of another instance that I'm aware of where a Senator has devoted so much of his personal time to helping on an issue like this. Sen-

ator Allard and his fellow elected officials have demonstrated their support of the vital role that the National Ombudsman has played in working toward a safe resolution of various Superfund sites. But not every Superfund community has such a supportive Senator. These other communities need to know that the Ombudsman's Office will be there for them. S. 1763 will help to protect the credibility and independence of the critically important National Ombudsman Office so that this office can function in the future with no further interference.

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ROBERT GILES,  
P.O. BOX 354,  
Eureka, MT, September 25, 2000.

Hon. ROBERT SMITH, *Chairman,*  
*Committee on Environment and Public Works,*  
*Washington, DC.*

Re: S. 1763/H B. 3656

DEAR SENATOR SMITH: This letter is my written request for you and your committee to approve and vote affirmatively in support of S. 1763/H.B. 3656—EPA National Ombudsman Re-authorization Act of 2000.

I have been appalled as I have become aware of arrogant and possibly illegal actions by EPA personnel toward citizens and victims who have and are continuing to be exposed to harmful, and in many cases, deadly toxins. When these victims have requested EPA review and access to documents available through the Freedom of Information Act, they have met with refusals and denials by the EPA. At this point the only recourse these victims and citizens have is the EPA National Ombudsman, Robert Martin. I have met personally with Mr. Martin and have followed with great interest his actions in several cases. I am amazed that Mr. Martin has been able to accomplish as much as he has with his limited powers.

However, I fear he will not be capable of continuing these accomplishments because he has obviously made some enemies simply by performing his duties so admirably. I believe for him to be able to continue to do his job it is imperative that he be given subpoena power, and that he be independent of the EPA physically, financially, and authoritatively.

For these reasons I believe it is crucial that this legislation be approved. Please vote affirmatively for the above mentioned legislation, and give victims and citizens someone they can turn to that will be able to do something for them now and in the future. Without this legislation I fear Mr. Martin will be hamstrung and unable to help those whom all government should answer to, the citizens.

Please include this letter in the Congressional record.

Thank you,

ROBERT GILES.

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GLENDA GILES,  
P.O. BOX 354,  
Eureka, MT, September 25, 2000.

Hon. ROBERT SMITH, *Chairman,*  
*Committee on Environment and Public Works,*  
*Washington, DC.*

Re: S. 1763/H B. 3656

DEAR SENATOR SMITH: This letter is my written request for support and passage of S. 1763/H.B. 3856—EPA National Ombudsman Re-authorization Act of 2000.

I am personally aware of four different situations that involved seriously injured victims, when EPA employees violated their own laws and were involved in concealing facts of what had actually occurred that injured the victims. EPA's actions have caused victims additional injury and damage. In my opinion, their behavior is a national scandal, and poses a very real threat to the safety and health of U.S. citizens now and in the future.

The EPA National Ombudsman, Robert Martin, is the only individual associated with the EPA that I have found to be honest. He also has integrity, which seems to be missing from EPA employees in general.

I believe it is crucial that the above referenced legislation be approved so that current and future victims have someone they can turn to for help. I have found Robert Martin to be committed to the truth. He has genuine concern, as well as compassion, for victims. At the present time, Mr. Martin is the only source of help and hope

for victims of EPA wrong-doing. Please vote affirmatively for the above mentioned legislation, and give victims the protection and support they need and deserve.

Please include this letter in the Congressional record.

Thank you,

GLEND A GILES.

September 22, 2000.

Hon. ROBERT SMITH, *Chairman,*  
*Committee on Environment and Public Works,*  
*Washington, DC.*

Re: Ombudsman Reauthorization Act—S. 1763/H B. 3656

DEAR HONORABLE SIR: I have personally been involved with the EPA National Ombudsman's Office (Mr. Robert Martin) concerning a toxic train derailment (MRL) April 1996, Alberton, MT. I find this office to be of the finest integrity one would hope to find in a government that can be trusted. I believe without the Ombudsman the quality and trustworthiness of the EPA would be at stake Nationwide.

In my opinion the EPA has to work with (the polluters) on a repeated basis and consequently relationships develop between the EPA staff and the polluters staff to the point of compromising environments and communities.

The Ombudsman is the committees' only tool for these type of situations.

I highly recommend that the Ombudsman's Office be granted the same powers and authority as a hazmat material investigator has currently and is listed in Code of Federal Regulations CFR-49, 107.305 investigations (see attachments).

As I see the National Ombudsman's Office as the highest level of Hazmat Material investigator's, that office should have the same power or greater in order to report and make recommendations to the committee accurately and comprehensively.

The Ombudsman's Office cannot do the job without the proper power and authority—in my opinion the Ombudsman's Office should be totally independent of the EPA and be funded solely by Congress with each case being a line item.

This would assure an objective third party review and quality reporting for the committee.

The fact is that the United States will be moving high levels of Nuclear Waste across this Country to temporary/permanent storage locations in the near future, therefore I believe it is in the best interest of the United States to keep an oversight position like the Ombudsman over the National EPA and is imperative to the Security and well being of the United States.

Bluntly Senators, the committee needs to sharpen its tools in this area of concern.

Please include this letter in the Congressional Record.

Sincerely,

ROGER A. CHALMET.

ATTACHMENT

CODE OF FEDERAL REGULATIONS.—CFR-49

SECTION 107.305.—INVESTIGATIONS

(a) *General.* In accordance with its delegated authority under part I of this title, the Associate Administrator for Hazardous Materials Safety may initiate investigations relating to compliance by any person with any provisions of this subchapter or subchapter C of this chapter, or any exemption, approval, or order issued thereunder, or any court decree relating thereto. The Associate Administrator or Hazardous Materials Safety encourages voluntary production of documents in accordance with and subject to § 107.13, and hearings may be conducted, and depositions taken pursuant to 49 U.S.C. 21(a). The Associate Administrator for Hazardous Materials Safety may conduct investigative conferences and hearings in the course of any investigation.

(b) *Investigations and Inspections.* Investigations under 49 U.S.C. 5121(a) are conducted by personnel duly authorized for that purpose by the Associate Administrator. Inspections under 49 U.S.C. 5121(c) are conducted by Hazardous Materials Enforcement Specialists, also known as "hazmat inspectors" or "inspectors," whom the Associate Administrator has designated for that purpose.

(1) An inspector will, on request, present his or her credentials for examination, but the credentials may not be reproduced.

(2) An inspector may administer oaths and receive affirmations in any matter under investigation by the Associate Administrator.

(3) An inspector may gather information by reasonable means including but not limited to, interviews, statements, photocopying, photography, and video- and audio-recording.

(4) With concurrence of the Director, Office of Hazardous Materials Enforcement, Research and Special Programs Administration, an inspector may issue a subpoena for the production of documentary or other tangible evidence if, on the basis of information available to the inspector, the documents and evidence materially will advance a determination of compliance with this subchapter or subchapter C. Service of a subpoena shall be in accordance with § 107.13(c) and (d). A person to whom a subpoena is directed may seek review of the subpoena by applying to the Office of Chief Counsel in accordance with § 107.13(h). A subpoena issued under this paragraph may be enforced in accordance with § 107.13(i).

(c) *Notification.* Any person who is the subject of an Associate Administrator for Hazardous Materials Safety investigation and who is requested to furnish information or documentary evidence is notified as to the general purpose for which the information or evidence is sought.

(d) *Termination.* When the facts disclosed by an investigation indicate that further action is unnecessary or unwarranted at that time, the person being investigated is notified and the investigative file is closed without prejudice to further investigation by the Associate Administrator for Hazardous Materials Safety.

(e) *Confidentiality.* Information received in an investigation under this section, including the identity of the person investigated and any other persons who provides information during the investigation, shall remain confidential under the investigatory file exception, or other appropriate exception, to the public disclosure requirements of 5 U.S.C. 552.

[Amdt. 107-11, 48 FR 2651, Jan. 20, 1983, as amended by Amdt. 107-24, 56 FR 8621, Feb. 28, 1991; Amdt. 107-32, 59 FR 49131, Sept. 26, 1994; Amdt. 107-38, 61 FR 21099, May 9, 1996]

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STATEMENT OF FRANCES DUNHAM, CITIZENS AGAINST TOXIC EXPOSURE

Mr. Chairman and distinguished members of the committee, Margaret Williams, President, and the other members of Citizens Against Toxic Exposure (CATE) join me in thanking you for the opportunity to submit written testimony on S. 1763, the Ombudsman Reauthorization Act. Our experiences with the United States Environmental Protection Agency (EPA) Region 4 illustrate the great need for the National Ombudsman's Office to be vested with the powers and independence described in the American Bar Association Ombudsman guidelines and sufficiently funded to resolve problems in the application of the EPA Superfund program.

CATE was formed in the spring of 1992 because of urgent concerns about the health of residents near Escambia Treating Company (ETC) in north central Pensacola, Florida, where EPA Region 4 was conducting an emergency removal of contaminated soil. Eventually that soil became "Mt. Dioxin," 255,000 cubic yards saturated with toxic woodtreating wastes now stockpiled onsite under a temporary plastic cover. An equal volume remains uncovered on the 26-acre site and in nearby residential yards. The site was added to the National Priorities List in December 1994. Just across the railroad tracks to the southeast is the Agrico Chemical Superfund site, where soil and groundwater testing has found ETC contaminants in addition to Agrico's own wastes from a century of agricultural chemicals production. Between and around the two sites were three African American residential neighborhoods and a subsidized housing facility. Currently 358 families are being moved away from the site, the third largest permanent relocation in Superfund history.

Escambia Treating Company operated from 1943 to 1982, leaving onsite and off-site areas saturated with an extraordinarily toxic mixture of woodtreating chemicals, including dioxins, furans, benzo(a)pyrene, pentachlorophenol, arsenic, creosote, dieldrin, naphthalene, toluene, xylene, benzene, copper, chromium, and more, including asbestos and PCB's. EPA documents indicate that the contamination has spread out from the site in all directions, carried by wind and rain. Over the years the toxic chemicals also leached down into the groundwater just 48 feet of sandy soil below the surface, forming a plume of contamination which reaches 1.5 miles east and south toward Bayou Texar and the Pensacola Bay System. This extremely vulnerable surficial aquifer supplies drinking water to Pensacola, southern Escambia County, and parts of Santa Rosa County.

Much of the area surrounding the ETC site is zoned commercial and industrial, but there are many homes, schools, and churches nearby. This historically mixed

industrial/residential zone in north central Pensacola has important environmental and economic consequences for the greater area. An ambitious redevelopment plan aims to return the Palafox Corridor to vibrant commercial viability. The ETC cleanup will set the tone for the future of the area. Yet EPA Region 4 managers appear determined to follow the precedent they set at the Agrico site, leaving all the surface contaminants in an onsite "containment" (which, like all landfills, will eventually leak) and leaving the untreated groundwater contaminants to threaten Bayou Texar, Pensacola Bay, and Pensacola's drinking water aquifer. Despite the serious threat to groundwater, EPA has conducted no serious analysis of the site's geology and hydrogeology and their suitability for a landfill.

Region 4 has set out its assessment of the kinds, levels, and extent of toxic contamination at the ETC site and its evaluation of cleanup technologies in the June 1998 Remedial Investigation/Feasibility Study (RI/FS) for the Surface Soils at the ETC site. According to Superfund rules, the National Oil and Hazardous Substances Pollution Contingency Plan (NCP), this document should serve as a guide to site remediation, leading to a Proposed Plan and a Record of Decision (ROD).

Unfortunately, data gaps and other flaws in the RI/FS are likely to distort ETC cleanup decisions so that highly toxic woodtreating wastes are left in soil and groundwater. The following points summarize some of the ways in which this RI/FS deviates from the NCP, customary Superfund program practice, and common sense, and why Congressman Joe Scarborough, the Board of County Commissioners of Escambia County, CATE, and local citizens' groups have requested that the National Ombudsman's Office oversee the ETC remediation process:

- *Dioxin TEQ soil cleanup levels in the RI/FS are inadequate to protect local human populations from exposures associated with carcinogenic and non-carcinogenic health effects.*—EPA has previously stated its intention to use a cleanup level within the range of 2 parts per trillion (for residential) to 200 ppt (for industrial) for the ETC site. The State of Florida uses a 7 ppt level for a residential cleanup and is requesting the use of that standard at another Florida woodtreating Superfund site. But this RI/FS states that the dioxin TEQ cleanup standard EPA now plans to use at ETC is 5 to 20 ppb (5,000 to 20,000 parts per trillion). This very low standard for the ETC cleanup will leave substantial amounts of dioxin, a potent toxicant associated with a wide variety of serious carcinogenic and noncarcinogenic effects.

- *Background sampling, intended to ascertain the natural or typical levels of contaminants existing in area soils, was conducted on the ETC site itself.*—In a striking departure from Superfund guidance, "background" samples were obtained onsite. Over the years, especially during 40 years of woodtreating activities and EPA's own massive soil excavation, both strong winds and stormwater runoff have carried ETC contaminants in all directions. EPA's own Action Memoranda from 1992 and 1993 noted work interruptions and contaminant migration due to severe weather. These onsite locations have no credibility as "background."

- *Dieldrin, a now banned pesticide found at very high levels on and around the site, is being ignored by EPA in cleanup plans.*—EPA fails to consider this dangerous pesticide in determining cleanup procedures, even though dieldrin was found at ETC at hundreds of times the "safe" level.

According to an Agency for Toxic Substances and Disease Registry Public Health Statement, "Aldrin and dieldrin were widely used from the 1950's to the early 1970's. . . . Dieldrin . . . has been used in treatment of wood . . ." (in addition to agricultural uses) It is described as persistent in soil and a potential health threat to cleanup workers at waste sites through inhalation and absorption through the skin. Since historical uses of dieldrin connect it with wood treatment, EPA should be including the presence of high levels of dieldrin in ETC cleanup plans.

- *EPA is allowing contaminated groundwater to spread in a complex plume toward Bayou Texar and toward drinking water wells.*—In the 9 years since beginning the original excavation, when ETC's threat to groundwater was stated as the justification for the dig, EPA has done nothing to treat or contain ETC's contaminated groundwater. EPA intends to finalize a decision on the surface soils at ETC very soon but only now is beginning consideration of a plan to clean the groundwater. This failure follows the precedent EPA set at the nearby Agrico Superfund site: letting "natural attenuation" disperse the toxic contaminants into the environment. But ETC's contaminants are an even greater threat to public health and the environment than those of the Agrico site. Soil cleanup and groundwater cleanup should be considered and decided together.

- *The risk assessment ignores the potential for human exposure to groundwater through drinking water and food.*—Even a soil cleanup separate from groundwater cleanup should include the groundwater exposure potential in its risk assessment. A person who might come in contact with ETC, soils, dust, or fumes might also be

exposed to the site's contaminants through drinking water from affected wells and/or from eating local seafood and produce from gardens contaminated by wastes from ETC. No decision on soil cleanup should be made without considering these pathways of exposure, especially since soil cleanup levels to protect groundwater are more stringent than those to protect against direct human exposure.

- *The risk assessment ignores the need for protection of the groundwater from leaching of benzo(a)pyrene and dioxin TEQ from ETC soils.*—EPA has found both dioxin and benzo(a)pyrene in groundwater, but the RI/FS cleanup standards fail to consider the protection of groundwater from these chemicals. [note: Although dioxin is usually thought to cling to soils and not to be soluble in water, it can be dissolved in water in the presence of solvents, as is the case at ETC.]

- *The risk assessment ignores cumulative risks.*—The RI/FS fails to evaluate the human health threat posed by exposure to several contaminants even though each may be below its respective risk level. The NCP requires the consideration of additive effects of multiple contaminants.

- *There is insufficient data on the contaminated soil stockpiled onsite.*—EPA has not yet carried out enough testing of this 255,000 cubic yards (344,250 tons) of contaminated soil to make an informed decision. Excavated during 1991–93 and known as “Mt. Dioxin” for the extraordinary (as high as 1.09 parts per million) of dioxin TEQ, the stockpile also contains high levels of pentachlorophenol, creosote, arsenic, benzo(a)pyrene, dieldrin, naphthalene, toluene, xylene, benzene, copper, chromium, and more. During the excavation, 41 55-gallon drums of unknown chemical wastes were added to these materials, further compounding the lack of reliable data on what is assumed to be the largest portion of site contaminants to be remediated. It is not rational to proceed toward a cleanup decision without this information.

- *There is insufficient data on toxic wastes below the stockpile and under the two pits from which contaminated soil was removed.*—EPA has not obtained adequate information about the levels and total amounts of contamination under Mt. Dioxin and under the excavation pits onsite. Even though during 1991–93 EPA noted that the contamination extended below the 48' pits and appeared to include non-aqueous phase liquids (NAPLs), no further testing was performed on these contaminants for the RI/FS.

- *The RI/FS is hampered by the large numbers and large amounts of unidentified and tentatively identified compounds.*—These substances must be identified and quantified before decisions concerning cleanup criteria are made.

- *The RI/FS sets out a plan to select a cleanup method first and then characterize the full kind and extent of the contamination.*—The data gaps described above may lead to errors in assessing the total amounts and types of contamination to be remediated and the efficacy of various cleanup methods. In effect, EPA is making important decisions without necessary information.

- *EPA further compounds the lack of information about the contamination by selecting a cleanup method before adequate treatability testing establishes the viability of a chosen cleanup technology.*—If information on the kinds, levels, and amounts of contamination is incomplete and there is inadequate testing of a technology to demonstrate that it will work on the actual ETC soils, then the logical basis for the cleanup choice is absent.

Since 1991 when the ETC soil excavation began, Region 4 has shown little interest in protection of public health. If the “emergency removal” at ETC had been confined to the relatively routine cleanup of drums, lab, transformer, and boiler, nearby residents would have welcomed it. Instead, Region 4 bulldozed the asbestos boiler building and then began excavation of the very contaminated soil and sludge without determining the magnitude of the problem. Years of accumulated woodtreating wastes blew in the wind, and nearby residents suffered serious effects from acute exposures. No protective measures were taken. Separated from residential yards by nothing more than a broken chain-link fence, the excavation created a straight 40-foot drop from the yards bordering the site. Several properties had to be shored up to keep them from falling in the huge pits; the foundation of one home was cracked. From October 1991 through November 1992, workers in “moonsuits” dredged up toxic soil less than 15 feet from children playing in their own yards.

In 1995, Region 4 took two actions with respect to the Agrico Chemicals site, both strongly protested by CATE and other local interests and both favoring the potentially responsible party (the polluter) over public health and the environment:

1. The surface soils were excavated and gathered into an onsite “containment” (landfill) which is in fact open underneath and on two sides. Like the ETC dig, this procedure went ahead during hurricane season (indeed, during two hurricanes), without protection for the residents, who at that time were awaiting a decision on the possible ETC relocation.

2. Region 4 approved "natural attenuation" for the Agrico groundwater plume, in effect 70 years of monitoring but no remediation.

In 1998, Region 4 issued the flawed ETC RI/FS, which sets the stage for similar errors at "Mt. Dioxin."

Our community has nowhere to turn but to the National Ombudsman's Office. As presently structured, the regional ombudsmen lack the independence and impartiality to resolve such problems, which seem to exist in many of the regions. Only the National Superfund Ombudsman has the objectivity and the credibility to resolve disparities, conflicts, and inconsistencies so that the program will conform to Superfund law and rules. A strong, independent, adequately staffed and funded National Ombudsman's Office, authorized in accordance with the American Bar Association standards, is essential to keep Superfund operating as Congress has directed. The Superfund program is far too important to operate without accountability to citizens.

Thank you for this opportunity to present CATE's concerns as a written statement for the record.

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SOUTH CENTRAL IDAHO TOURISM AND  
RECREATION DEVELOPMENT ASSOCIATION,  
RIDE THE GREAT RIFT,  
September 27, 2000.

Hon. BOB SMITH, *Chairman,*  
*Environment and Public Works Committee,*  
*U.S. Senate,*  
*Washington, DC.*

Re: SB 1915, Small Community Assistance Act; SB 2296, Project SEARCH

DEAR CHAIRMAN SMITH: The following language is submitted as testimony in support of, and urging expedited passage of the above referenced legislation. We respectfully request that these comments be made a part of the official record of the formal hearing held by the committee on Monday, September 26, 2000. As chairman of this association, I attended those hearings for the expressed purpose of demonstrating the importance of this legislation to the future of small communities.

The South Central Idaho Tourism and Recreation Development Association is a 501(c)3 non-profit corporation that operates in 13 counties in South Central Idaho and is governed by a board of directors of 24 members. Our mission statement is to promote and support public and private partnerships in order to provide tourism and recreation visitor services, to ensure appropriate use of regional, cultural aboard natural resources, stimulation of economic development and job creation. We have had considerable experience with proposals and purposes outlined both of these bills and can demonstrate positive, on the grounds, community-based results, that have resulted from our participation in these type of activities.

SB 1915

We have had specific success working with the SCAS in the past and have developed genuine respect for the importance of their role in assisting small communities. As dictated by our mission statement, we are focused on working on behalf of rural and small communities. The following language, which I believe describes the mutual benefit of cooperation rather than confrontation, was developed during our early dialog with SCAS. I believe our experience demonstrates the importance and power of SCAS having it own clear, unfiltered voice directly to EPA.

Traditional command control relationships dearly do not work in this relationship, so what will? Helping small communities protect natural resources through the application of sustainable, livable and smart growth community development and planning strategies requires Federal agencies to participate in multi-level partnerships that are initiated and lead by locally-elected officials and grassroots community leadership. These partnerships, public/private and local/State/Federal, are the only practicable way to truly integrate the diverse components that are necessary to actually execute and follow through with specific actions and strategies to ensure long term success and positive outcomes. These kinds of local projects build on the foundation of national environmental goals and standards expressed in law and regulation. The link between national policies, locally-driven environmental protection strategies, and sustainable development, may be best defined by the commitment of technical and financial resources from Federal agencies fully cooperating with locally-elected leaders. Relying entirely on the regulatory-enforcement process without a partnership relationship, limits the chances that the 61 million people living

in rural and small community areas will reap the benefits of national environmental standards and policies. Only by approaching small community environmental protection in a way that is energized and guided by local goals will we achieve locally important environmental protection standards and sustain the local cultural, natural and historical resources that are so vital to our national well-being. Without these Federal/local partnerships, locally important natural resources such as the Snake River Plain Regional Aquifer and the wetlands and threatened migration routes in Northampton County, VA will continue to suffer indifference and significant degradation.

From the intent of this language, draft recommendations were developed by SCAS and subsequently used by our association to seek planning grant assistance from EPA for a significant regional eco-tourism and recreation park. This project is designed to protect the point source aquifer and drinking water source of a city of 35,000 inhabitants, as well as, protect the pristine rim of the Snake River Canyon from development in perpetuity. The SCAS recommendations we followed were as follows:

- Develop a rural environmental policy and program to promote innovative and local-driven compliance strategies, sustainable development, smart growth and livable community efforts for small towns and rural areas.

- Work with other Federal agencies in a coordinated manner to support locally-driven small town sustainable development, smart growth, and livable community initiatives.

- To the extent that any existing and proposed grant programs (including Sustainable Development Challenge Grants and Brownfields Redevelopment Grants, etc.) deal with sustainable development projects, smart growth and livable communities, EPA should emphasize small town and rural community projects.

- Provide technical assistance either directly or through third party providers to small communities to plan, apply for and implement planning incentives for sustainable development, smart growth, and livable community projects and resources.

- Recognize, support and promote the Snake River Plain Aquifer eco-tourism project and the Northampton County Virginia Sustainable Community Development Action Plan as outstanding examples of small town sustainability, livability and smart growth community development efforts.

- Support the Conference of Southern County Association's effort to develop a sustainable community development "How To" manual to assist elected small town officials using the Snake River Plain Aquifer eco-tourism project and the Northampton County Virginia Sustainable Community Development Action Plan as models.

- Export to the Small Community Advisory Subcommittee, within 2 years of the adoption of these recommendations, on the progress made, both within and outside of the Agency, toward implementing small town sustainable development, smart growth and livable community programs, projects and initiatives across the Nation.

Based on the draft recommendations developed with SCAS, we invoked a similar philosophy and presented EPA with a specific proposal for developing a regional eco-tourism park. We requested planning and financial assistance from EPA based the following work plan:

#### *Background*

The tracts of land described in this issue paper are located in Jerome County (County), north of the Snake River Canyon, south of I-84, west of the Hansen Bridge (Exit 182), east Highway 93, and west of Auger Falls. (See attached map). Approximately 7,300 acres are currently owned by the Bureau of Land Management (BLM), 1,646 acres owned by the Idaho Department of Lands (State) and 400 acres are held in three privately-owned parcels. The project objective is to develop the consolidated parcels into a regional multi-use tourism and recreation area. The intent is to set aside these lands in perpetuity for public access and use, while at the same time, focusing on protection and preservation of the natural beauty, cultural resources, open spaces and environmental sensitivity of these parcels. The project would include protecting 9 miles of the Snake River Canyon in perpetuity. Programs would be developed to feature the cultural, historical, and natural resources of the area.

The Draft of the Bennett Hills RMP identified the BLM portion of these public lands for disposal. Of the 800 public comment letters received, 500 were in favor of retaining the lands east of Highway 93 primarily for public recreational use. For BLM to follow through with the wishes expressed in public comment letters for a multi use recreational use facility, it would be require a tax payers investment of \$3-\$4 million and \$300,000 per year to administer the area. BLM currently expends \$15,000-\$20,000 per year on limited recreational, mineral and law enforcement ac-

tivities on the site. In 1996, Jerome completed and adopted a revised Jerome Joint Agency Comprehensive Plan (Comp Plan). The Comp Plan designated lands around the I-84/Hwy 93 interchange (Exit 173) as a commercial zone designed to expand Jerome County's tax base. Lands west of Highway 93 and south of I-84 were designated primarily for residential development. (BLM commented on the Comp Plan but disposition of their public lands was not specifically addressed pending completion of the final RMP.) The Comp Plan also includes provisions for a preservation zone to protect the integrity of the Snake River Canyon Rim from development.

Seventy percent of the potable water supply of the city of Twin Falls (Twin Falls) is derived from the aquifer under these lands. Twin Falls has a vested interest in future disposition of these lands in order to provide for wellhead protection to this resource. Twin Falls has presented a proposed Wellhead Protection Ordinance and map to Jerome County that would prohibit future commercial development in this area.

The College of Southern Idaho (CSI) is the principal post secondary educational institution in the area and is funded as a taxing district in Jerome and Twin Falls Counties. CSI has a strong interest in establishing a world class aquifer research center in partnership with Idaho State University (ISU), the University of Idaho (UofI) and Boise State University (BSU) at a pristine location, within the boundaries of the proposed set aside area. A component of these plans includes a living laboratory at Devil's Corral, one of the last pristine ecosystems along the Snake River Canyon. The research center would develop science and data to support litigation claims pending in the Basin 36 Adjudication Court and issues surrounding potential impact on aquifer contamination from nuclear waste at INEEL. In addition to its scientific value, the center would serve as an educational complex and a regional tourism interpretation and redistribution center.

The South Central Idaho Tourism and Recreation Development Association, Inc. (SCITRDA) is a 501(c)3 non-profit public/private partnership that represents 13 counties and has an elected board of directors of 20 members. SCITRDA's mission is to develop and manage regional tourism and recreation opportunities and contribute to enhancement of sustainable economic development and creation of quality employment opportunities. SCITRDA currently has a written contract with the county to design, develop and finance this project from grants and other private sector resources. A primary objective of SCITRDA is to use the site as a focal point of their strategic plan to establish Southern Idaho as a recognizable tourism destination that will contribute to economic diversification and job creation in the region.

#### *Decisions to be Made*

BLM will exchange mutually agreed upon parcels with the State for parcels that will generate revenue for the educational endowment fund. BLM will also trade parcels of equal value with the owners of the privately held parcels. One of the privately held parcels (128 acres) is being gifted to CSI for exchange purposes to generate endowment funds similar to the State exchange. Once the parcels are consolidated into a single parcel, BLM will lease the area within the boundary of the proposed park to Jerome County on a long term R&PP Lease. A 1,300 acre portion of the BLM land west of Highway 93 will be acquired by Jerome County at non-competitive fair market value (approximately 1,300 acres @ \$300=\$390,000). Funding for this interim transaction will be provided by a private sector foundation and have no impact on Jerome County taxpayers. These lands will eventually be resold for residential development that is consistent with the intent of the Comp Plan. Proceeds from the sale of residential land will be used exclusively as matching funds for grants to develop the park complex. All future funding responsibilities under the proposed scenario would become the responsibility of the "Public/Private Partnership" and be managed by SCITRDA. None of these transactions will require the support of local taxpayers.

**Expected Results:** This project has the potential to be a win-win-win-win proposal. The integrity of the Snake River Canyon rim is protected from future development. The public will receive a wonderful recreation area that has world class geological, historical, and cultural resources. It will alleviate the aquifer contamination concerns of the city of Twin Falls. Idaho's educational institutions receive a research center for expanded scientific and educational endeavors. BLM alleviates the funding drain required to police the area in its current condition. The tourism industry gets a new resource that will provide a destination identity and interpretation of the area's recreational resources. This expanded tourism opportunity will provide sustainable economic diversification and employment opportunities. And finally, control of Federal lands is being transferred to local control and private sector operation at no cost to the local taxpayer.

Because of our affiliation with and the role we played as a model project supported by SCAS, and the collaborative manner in which we approached the process, I am pleased to report that our project planning request was funded by EPA in the following manner:

- EPA Office of Water: \$45,000
- EPA Region X: \$22,500
- EPA Office of Planning, Economy and Innovation: \$22,500
- Idaho Power Company Match: \$25,000

Today, some 2 years after we initiated the process, our project is fully operational. We hired nationally recognized consultants who are in the process of preparing a community-based communications plan, natural, cultural and environmental-based resource plan, and initiating appropriate levels of NEPA compliance. We expect to have a community-based communications model and natural resource based land use plan completed by December 2000.

Our project strongly subscribes to the principles of sustainability, livability, and smart growth, because they are not only good for the environment, but are good economic development strategies as well. The reality for rural communities is that we must work together collaboratively with all sectors if we are to succeed—we must learn to farm our own local driven initiatives rather than depending on Government mandated and funded projects. The public/private partnership we have created provides a win-win equation for success for all its stakeholders. We honor and thank the SCAS and EPA for their active participation in this creative initiative. We pledge in return, to provide a transferability message to other rural and small communities that can benefit from implementation of similar strategies. I believe this success demonstrates why it is necessary to maintain SCAS for the benefit of small communities and demonstrates the value and advantage of having a clear, un-filtered voice to work directly with EPA. Passage of SB 1915 will ensure that SCAS can maintain that level of effectiveness in representing the needs of small communities.

#### SB 2296

The Project SEARCH legislation equally important to the survival of rural communities. Many small communities are faced with the trauma of complying with Federal mandates with not enough resources available to even understand the problem. In most cases small communities do not even have paid staff or funding available to even assess the smallest part of these mandates.

The pilot version of Project SEARCH in Idaho, demonstrated how a minimal amount of money, administered by a community-based organization at the local level, can make a huge impact on the lives of citizens in small communities. Rural Idaho communities were facing many of the environmental challenges seen throughout the United States, including the protection of groundwater, the disposal of waste water, the protection of critical habitat, and many others. Yet these small communities found themselves without the financial resources to undertake the size and scope of project necessary to respond to environmental challenges.

The 1999 initial grant of \$1.3 million from EPA was issued to a local non-profit. This regional planning association, the Region IV Development Association, has considerable experience with grant processes and helping small communities. The association created a simple grant application that any part-time city official or mayor could complete. A notice of the grant program availability and an application was sent to all of Idaho's counties and all cities with a Census population of less than 2,500. Application review was a locally driven process by a seven member Citizens Advisory Committee. The Committee was comprised of one representative appointed by the local board of each of Idaho's six economic development planning regions, and one person who brought to the group his experience as a small town mayor and with the SCAS. This experienced individual served as the committee's chair. These seven individuals reviewed the applications and made the funding decisions. Of the 47 applications received, were able to fund only 21. The funded applications ranged from a low of \$9,000 for a facility plan so that a housing authority could solve its wastewater problems to a high of \$319,000 for part of the funding needed for construction of a wastewater treatment facility in a very sensitive environmental area. Examples of a few of the projects and attributes is as follows:

- A community 150 installed its first wastewater treatment system using the community residents for the needed labor. The people of this community will be hooking up homes to the new system this fall. Without Project SEARCH assistance, this project would still be years away from completion.
- The demonstration project grant from EPA required a 45-percent match. This program was structured so that each individual community *would not be required*

to come up with a 45-percent match—but rather that the overall program would be responsible for meeting the match requirement. The small towns were able to match their Project SEARCH Grants with local resources ranging from 14 percent up to about 87 percent.

- The project maintained full accountability the EPA grant being awarded to an experienced local non-profit. Through this combination of local direction and Federal partnering enabled more direct infrastructure building/environmental problem solving dollars to get to the communities that if EPA had awarded individual grants.

- The pilot Project SEARCH enables 21 Idaho communities to solve or make major strides in solving their environmental problems that could not have been done otherwise.

SCITRDA's neighbor to the part project, the Jerome Water and Sewer District, was awarded a \$20,000 SEARCH Grant for planning study to determine the feasibility of installing a state-of-the-art wastewater treatment facility. Implementation of wastewater treatment infrastructure will allow the development of a significant residential development that is consistent with the tenants of the Jerome County Comprehensive Plan. Proceeds from the sale of these lands will be diverted to an endowment fund to support on-going operation of the above referenced park project. We believe that this demonstrates that SB 1915 and SB 2296 are not only complimentary, but collaborative in nature. We urge passage of both bills in order to assist and sustain the integrity and health of our small communities.

Thank you for your consideration and cooperation in this matter. We would urge you to report these bills out of committee for further consideration at your earliest opportunity.

Sincerely yours,

STEVEN L. THORSON,  
*Chairman.*

USPIRG,  
*June 14, 2000.*

Hon. DENNIS HASTERT,  
Hon. RICHARD GEPHARDT,  
*U.S. House of Representatives,  
Washington, DC.*

DEAR REPRESENTATIVES: Our organizations submit this letter in support of H.R. 3656, the Ombudsman Reauthorization Act of 2000, or amendments to the VA, HUD, and Independent Agencies Appropriations Act for fiscal year 2001 that are made on the House floor that would implement H.R. 3656. This legislation will greatly aid citizens' efforts to ensure that their need and views are fully considered in the EPA's decisionmaking process regarding Superfund and other toxic waste sites. Many Members of Congress have worked with the Ombudsman's Office and there is bipartisan support for the vital role this office plays.

The EPA National Ombudsman, or "EPA watchdog," receives requests and complaints from Members of Congress and citizens concerning Superfund and other hazardous materials programs and conducts investigations into those complaints. The EPA National Ombudsman then makes findings of facts and non-binding recommendations to the EPA on how to resolve the dispute(s).

The numerous communities who have felt the EPA was unresponsive to community needs, the National Ombudsman has assisted in resolving problems. The EPA National Ombudsman's Office has investigated and brought to resolution conflicts at Superfund sites around the Nation. For example, over the last 8 years, the National Ombudsman's Office has helped citizens from the States of California, Colorado, Florida, Idaho, Ohio, Missouri, Montana, Pennsylvania, Texas, and Washington. In some instances, assistance was in response to a request from Members of Congress. Likewise, citizens and Members of Congress have praised the work of the Ombudsman's Office. Enclosed is a recent Tampa Tribune editorial entitled "Eroding Credibility of the EPA," that highlights the type of conflicts the Ombudsman often works hard to resolve and a Washington Post article that illustrates some of his accomplishments.

Essential to our support for the Ombudsman's reauthorization is the American Bar Association's (ABA) Model Ombudsman Statute as referenced in this legislation. The ABA Standards embodied in this Model Statute will provide the Ombudsman with the ability to convene public hearings and meetings on the record; interview witnesses or the record; subpoena witnesses and documents relevant to Ombudsman investigations; and select and conduct cases with critical independence from the

EPA. It is also essential that the EPA National Ombudsman's Office have adequate resources to operate effectively.

For over 20 years the ABA's "twelve essential characteristics" have provided guidance to mainstream public-sector Ombudsman positions across the country (see attachments). The States of Alaska, Nebraska, Hawaii, Iowa, and Arizona have empowered their Ombudsmen with some of these essential characteristics. A number of Federal agencies also have Ombudsman positions with some aspects of the "twelve essential characteristics" including the IFS, FDA, and Commerce Department.

Some Members of Congress have expressed concerns that this legislation would give too much power to the Ombudsman. However, the legislation imposes important limitations on the role the Office plays. For example, under the amendment, the Ombudsman does not have the direct power to: (1) compel and decision; (2) make, change, or set aside a law, policy or administrative/managerial decision, nor to compel an entity or any person to make those changes; or (3) substitute for an administrative or judicial proceeding for determining anyone's rights.

The EPA National Ombudsman serves the invaluable function of being the last recourse available to Superfund communities. The Ombudsman is also, in some cases, the first office to adequately investigate and resolve the problems faced by communities and individuals affected by hazardous waste. We respectfully submit that reauthorization, as described above, would allow the EPA National Ombudsman's Office to continue providing a vital service to the American public.

Sincerely,

20/20 Vision, Washington, DC; Alaska Forum for Environmental Responsibility, Valdez, AK; Alberton Community Coalition for Environmental Health, Alberton, MT; American Friends Service Committee, Northeast Ohio Office, Akron, OH; American Lands Alliance, Washington, DC; Arrest the Incinerator Remediation, Lockhaven, PA; Alliance for Nuclear Accountability, Washington, DC; Alliance to End Childhood Lead Poisoning, Washington, DC; Brio Community Group, Houston, TX; Campaign to Safeguard America's Waters, Earth Island Institute, Haines, AK; Cetacean Society International, Georgetown, CT; Chemical Weapons Working Group, Berea, KY; Citizens Advocating Responsible Treatment, Coeur d'Alene, ID; Citizens Against Toxic Exposure, Pensacola, FL; Citizens Progressive Alliance, Denver, CO; Clean Air Hotline, Port Angeles, WA; Clean Water Action, Washington, DC; Cold Mountain-Cold Rivers, Missoula, MT; Committee for Clean Air and Water, Tarpon Springs, FL; Committee to Bridge the Gap, Los Angeles, Sacramento, and Santa Cruz, CA; Common Ground, Berea, KY; Concerned Citizens of Lake Township, Uniontown, OH; Cook Inlet Keeper, Homer, AK; Don't Waste Arizona, Phoenix, AZ; Environmental Association for Great Lakes Education, Duluth, MN; Friends of Miller Peninsula State Park, Port Angeles, WA; Friends of the Earth, Washington, DC; Galveston-Houston, Association for Smog Prevention, Houston, TX; Government Accountability Project, Washington, DC; Global Response, Boulder, CO; Glynn Environmental Coalition, Brunswick, GA; Grand Canyon Trust, Flagstaff, AZ; Greenpeace, Washington, DC; Greenwatch, Jersey Shore, PA; Idaho Conservation League, Boise, ID; International Marine Mammal, Project of Earth Island Institute, San Francisco, CA; Kentucky Environmental Foundation, Berea, KY; Kootenai Environmental Alliance, Coeur d'Alene, ID; Lead Safe Idaho, Buhl, ID; Mangrove Action Project, Port Angeles, WA; Mineral Policy Center, Washington, DC; Mission Society of St. Gregorius, Salt Lake City, UT; Montana-CHEER, Missoula, MT; Non-Stockpile Chemical Weapons Coalition, Berea, KY; North-Missoula Community Development Corporation, Missoula, MT; Olympic Environmental Council, Sequim, WA; Overland Neighborhood Environmental Watch, Overland Park, CO; Peace and Justice Action League of Spokane, Spokane, WA; People for a Liveable Community, Port Townsend, WA; PEER New England, Lexington, MA; Pennsylvania Environmental Network, Fumble, PA; PiPa-Tag, Tarpon Spring, FL; Protect the Peninsula's Future, North Olympic Peninsula, WA; Public Citizen, Washington, DC; Public Employees for Environmental Responsibility, Washington, DC; Project On Government Oversight, Washington, DC; Quincy Concern, Quincy, WA; Rocky Mountain Peace and Justice Center, Boulder, CO; Salmon and Wildlife Advocates, Sequim, WA; Service Employees

International Union (SEIU), Washington, DC; Site Specific Advisory Board, Rocky Mountain Arsenal, Commerce City, CO; Silicon Valley Toxics Coalition, San Jose, CA; Silver Valley People's Action Coalition, Kellogg, ID; Spirit Tree, Indianapolis, IN; Squirt Irrigation, Kellogg, ID; SUMAC Association, Philadelphia, PA; Summitville TAG/Summitville Superfund Site, Del Norte, CO; Tongass Conservation Society, Ketchikan, AK; Trans Alaska Gas System Environmental Review Committee, Anchorage, AK; Tri-State Environmental Council, Chester, WV; U.S. Public Interest Research Group, Washington, DC.

OLYMPIC ENVIRONMENTAL COUNCIL,  
Port Angeles, WA, September 25, 2000.

Hon. ROBERT SMITH, *Chair*,  
Hon. MAX BAUCUS, *Chair*,  
*Environment and Public Works Committee*,  
*U.S. Senate*,  
*Washington, DC*.

Attn: Alistair Hubbell

RE: S1763 Ombudsman Reauthorization Act of 2000

DEAR SENATORS SMITH AND BAUCUS: The Olympic Environmental Council (OEC) is a coalition of citizens in Jefferson and Clallam Counties in the State of Washington. We work to protect human health and the environment for present and future generations. OEC has formed a coalition with western WA educational, health and environmental organizations working to protect our community and State and Federal aquatic lands that have been contaminated by a pulp mill.

OEC is writing in support of Senate bill 1763, the Ombudsman Reauthorization Act of 2000, that will be under consideration in your September 26 Environment and Public Works Committee hearing. This legislation would ensure the future functioning of the EPA National Ombudsman Office, with adequate funding, powers, and independence to function appropriately under the nationally and internationally recognized American Bar Association (ABA) guidelines.

The Ombudsman Office is an important part of a democratic system of government. It serves Superfund communities and others most directly affected by toxic exposure, serving as a "watchdog" and final recourse when citizens feel they have not received justice elsewhere in their cases. In many cases, the National Ombudsman has been the first agency person to actually listen to the complaints of citizens and elected officials' and to work toward resolution. In our case, it was only through the auspices of this Office, and after 8 years of trying to get government help, that citizens succeeded in getting us government help.

A well known pulp mill polluter for over 60 years, Rayonier, Inc., Washington State's primary polluter for a number of years they were in operation, smothered our air, waters, and soils with highly toxic materials. Only with Ombudsman help were citizens able to get site assessments under the Superfund laws when Rayonier closed their mill and tried to leave the citizens to clean it up at public expense. The pollution has also greatly impacted Federal and State aquatic lands.

Still, today, governments come to the rescue of the corporation to save it dollars, rather than the sick and dying citizens who have impaired health and property investments due to the operation of this mill, leaving use needing the Ombudsman's help to insure governments overseeing assessments and cleanup do it right.

EPA has ignored citizens most directly affected by toxics in their community across the country. EPA employees hazardous waste site assessments are often flawed, allowing the agency to both under estimate the seriousness of the contamination, and limit the options for cleanup and remediation.

National Ombudsman help across the country in Washington, Pennsylvania, Idaho, Montana, Florida, Colorado, and elsewhere, proves that the role of the National EPA Ombudsman must be adequately secured with reauthorization, funding, independence according to American Bar Association standards, and from the agency it must watchdog and, finally, subpoena power. The Ombudsman should also be in charge of the workings of the countries ten (10) regional EPA Ombudsmen.

I am highly in favor of strong environmental regulation in our country and necessary appropriations for ongoing programs and enforcement capabilities. An important part of this work is the independent position and funding for a National Ombudsman that brings us accountability of the EPA itself and how this agency meets its mandate to protect this Nation's health and environment.

I urge your to support the functioning of this Office at the National level as S.1763 is written. Thank you for your consideration and please include my testi-

mony in the subcommittee hearing record. I would also appreciate being updated by your office on the progress of this bill.

Sincerely,

DARLENE SCHANFALD,  
*Project Director.*

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PI-PA-TAG, INC.,  
*Tarpon Springs, FL, September 23, 2000.*

Hon. ROBERT SMITH, *Chair,*  
*Environment and Public Works Committee,*  
*Washington, DC.*

DEAR SENATOR SMITH: This letter is presented by the Board of PiPaTAG, Inc., in full support of Senate bill 1763, the Ombudsman Reauthorization Act of 1999, which will be under consideration in your September 26, Environment and Public Works Committee hearing. Pi-Pa-Tag, Inc., holds a Technical Assistance Grant to provide community information concerning cleanup of the Stauffer Chemical Superfund Site in Pinellas County, FL, under EPA Assistance Agreement No. 1994931-01-0. Our newsletter reaches over 700 concerned citizens at the intersection of Florida's Pinellas and Pasco counties.

We request that this letter be included as testimony in the subcommittee hearing record.

PiPaTAG, Inc., believes that this legislation will ensure the future functioning of the EPA National Ombudsman Office, with adequate funding, subpoena powers, and independence to function appropriately under the nationally and internationally recognized American Bar Association (ABA) guidelines. Without this legislation, it is probable that many other communities will suffer the same poor treatment from EPA that has been manifest in our own locality.

The community affected by the Stauffer Chemical Superfund Site near Tarpon Springs, FL, is shocked at the treatment it has received at the hands of EPA Region 4. Though EPA has attempted to portray itself as being in a partnership with the community, observed behaviors point to the partnership actually being between EPA Region 4 and Stauffer Management Co. (SMC), the Potentially Responsible Party (PRP).

For years, members of the community have asked reasonable, legitimate questions about the Stauffer Chemical Superfund Site and the surrounding area, and for years they have received very few satisfactory answers. At a number of public meetings, EPA told citizens that their questions would be answered at a later date, after further study. Most questions were never answered. Thus, the community was patronized and denied meaningful participation in the Superfund process. Though an EPA Technical Assistance Grant was awarded, reports and comments from the public and from the environmental scientists under contract as Technical Advisors were, for the most part, ignored. In some instances, those comments were used as excuses to weaken parts of the proposed containment project. EPA Region 4 staff has turned citizens' comments about contamination from the site that has spread into the surrounding community into excuses to reduce the level of the remediation on the site itself.

EPA Region 4 promised to clean the site (located within a residential community) to residential standards, yet they released a Record of Decision (ROD) with no soil cleanup level for arsenic, the main chemical contaminant, then resorted to intellectual obfuscation while they adopted a less-stringent cleanup standard.

Without performing the studies needed to determine potential short- or long-range safety issues, EPA Region 4 agreed to the remedy chosen by Stauffer Management Co.'s (SMC) contractor. While EPA Region 4 staff have staunchly defended the acres of monstrous concretized mounds of heavy metal and radioactive contaminants included in the proposed remedy, they evaded questions about the need for hydrogeological studies to determine the flow of groundwater and the potential for sinkhole formation beneath those mounds. In spite of obvious lack of scientific, fiscal, or common sense and ignoring the fact that the site is over an extremely vulnerable part of the Floridan Aquifer (the major source of the area's drinking water), they attempted to convince the community that a second operational unit, begun only after the huge mounds were completed, would determine the safety of the remedy.

EPA Region 4 professed a strong commitment to working with community members, yet they sent the Consent Decree to the Department of Justice over the community's strenuous objections.

Actual proof of the irresponsibility of the actions of EPA Region 4 was not available until the EPA National Ombudsman responded to the appeals of local citizens and agreed to investigate the situation. Suddenly, unanswered questions began to be raised in a more public arena. New questions emerged: through the efforts of the Ombudsman's Office, the community learned that EPA Region 4 has shielded the PRP by not taking into account or publicly revealing its knowledge of certain financial maneuverings of the ownership of the Stauffer Chemical Superfund Site, maneuverings which place the long-range (and, indeed, possibly the short-range) fiscal accountability for the site in serious jeopardy.

Only because of the investigation by the Ombudsman's Office, EPA Region 4 agreed to withdraw both the original Consent Decree and the Amended Consent Decree; perform the hydrogeological tests required to determine the suitability of the proposed remedy for the geological characteristics of the site prior to implementing the remedy; bring in special hydrogeological consultants, including the U.S. Geological Survey; compromise with the Florida Department of Environmental Protection to use Florida's Commercial standards for arsenic cleanup. They have delayed, but have not abandoned the original proposed remedy, nor have they reopened the Record of Decision (ROD). Without continued oversight of this project by the Ombudsman's Office, we citizens know that EPA will eventually resort to "business as usual," ignoring the evidence of scientific tests and shielding the true reasons for decisions in the project.

Documentation for these and other problems associated with Region 4 EPA's handling of this Superfund site can be found posted on Pi-Pa-TAG's website, [www.nucleicassays.com/eco/TAGindex.htm](http://www.nucleicassays.com/eco/TAGindex.htm) or can be obtained by request to Pi-Pa-TAG at the address on this letterhead.

We respectfully urge action on Senate bill 1763 to protect the public from EPA's deliberate or accidental behavior that benefits the polluter at the expense of the affected citizens.

Sincerely,

JOHN "CHUCK" LEHR,  
*President, Pi-Pa-TAG.*

ROSE MARY AMMONS, Ed.D.,  
*Vice President, Pi-Pa-TAG.*

HEATHER A. MALINOWSKI, D.N.,  
*Secretary, Pi-Pa-TAG.*

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[From the St. Petersburg Times, August 30, 2000]

VIGILANCE WINS IN SUPERFUND

(Times Editorial)

No one will ever accuse the U.S. Environmental Protection Agency of learning a lesson the easy way. While seeking judicial approval of a controversial cleanup plan for the Stauffer Chemical Superfund site, EPA officials offended U.S. Representative Mike Bilirakis, fought with the Florida Department of Environmental Protection, ignored Pinellas County health officials and angered Tarpon Springs residents.

Now, the EPA has withdrawn the proposed plan from Federal court, ordered more testing and said it wants to work with all interested parties. Regaining trust is not going to be that easy.

The cleanup plan was incomplete, if not outright flawed. The EPA and Stauffer's corporate owner both favored piling 300,000 cubic yards of contaminated soil into mounds and sealing them below and above ground to prevent leaks. But the EPA Ombudsman shattered confidence in that plan by exposing weaknesses in the "pile and cap" method at a comparable site in Denver, saying pollutants could leak into the ground without being detected.

Stauffer is Pinellas County's only Superfund site and an obvious threat to human health. It sits on a bank of the Anclote River, surrounded by houses, businesses and an elementary school. Yet the EPA ignored county health officials and residents who feared the piled pollutants would leak into the aquifer or be undermined by a sinkhole. The Federal agency fought State environmental officials who wanted to reduce the amount of arsenic left in the soil. And two EPA officials walked out of a public hearing held by Bilirakis rather than answer residents' questions.

Given such behavior, EPA officials shouldn't be surprised that much of the public has lost confidence in the agency. The EPA did the right thing by stopping the legal process, requiring Stauffer officials to study the site's geology and signing a cooperative agreement with the DEP. But EPA project manager John Blanchard won't rule

out a return to the same “pile and cap” plan. The burden is on the EPA to persuade everyone that the next proposed cleanup will protect the environment and human health.

Call it a temporary victory for residents such as Mary Mosley (who has been fighting Stauffer pollution for 22 years), politicians Bilirakis (who supported the EPA Ombudsman’s intervention) and State Senator Jack Latvala (who pressured the DEP to get involved) and county health department official Mike Flanery (who questioned the plan’s attention to drinking water safety).

We now know there is no substitute for vigilance in the Superfund process.

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[From the Tampa Tribune, August 31, 2000]

FINALLY A LOGICAL MOVE BY EPA

(Tampa Tribune Editorial)

The decision this week by the U.S. Environmental Protection Agency to formally withdraw its plan for cleaning up the Stauffer Chemical site near Tarpon Springs may not qualify as a true miracle, but it is darn close.

After years of insensitivity and downright stubbornness, the country’s chief environmental regulatory agency finally pulled the official consent decree that allows Stauffer Management to leave an estimated 300,000 cubic yards of hazardous soil onsite. The shelved plan consists of rounding up an estimated 300,000 cubic yards of hazardous soil, putting it in a mound, sealing it, and then injecting it with cement.

After prodding from persistent resident activists, EPA decided additional tests are needed, including studies to determine the risk of sinkholes and whether drinking water supplies would be protected. EPA officials don’t deserve much praise for this decision, because these most important studies should have been undertaken long ago—certainly before the so-called mound-and-cap method was chosen. As activist Mary Mosley told a reporter: “It’s a victory for the community. We knew that you can’t fit a remedy without testing for the most obvious.”

But caution and continued persistence is needed in the communities surrounding the hazardous waste site, which is on the EPA’s Superfund list as one of the Nation’s most contaminated. Some EPA officials were quick to point out Monday the proposed mound-and-cap cleanup method has not been totally “scrapped.” Such comments are disheartening, because they do not reflect an open mind—one reason many in the community are distrustful of EPA officials. EPA officials must keep an open mind during this review and study period.

The EPA is charged with protecting the environment and health of residents, and it has a duty to require Stauffer Management to undertake a cleanup method that will accomplish that without any doubt—no matter the cost to the company. As U.S. Representative Mike Bilirakis, R-Palm Harbor, said in a statement: “We must all remain actively involved in this process to secure a cleanup of the Stauffer site consistent with the public health and safety.”

