

U.S. Environmental Protection Agency

Local Government Advisory Committee (LGAC)

Meeting Summary

Teleconference

October 10, 2014
12:00 p.m.-1:30pm ET

The meeting summary that follows reflects the general highlights of what was conveyed during the course of the meeting. The Committee is not responsible for any potential inaccuracies that may appear in the summary as a result of information conveyed. Moreover, the Committee advises that additional information sources be consulted in cases where any concern may exist about statistics or any other information contained within the minutes.

**Environmental Protection Agency
Local Government Advisory Committee
Full Committee Meeting**

**October 10, 2014
12:00 p.m.-1:30 p.m. ET**

Meeting Summary

I. Welcome and Introductions

A. Call to Order

Chairman Mayor Bob Dixon called the meeting to order and asked for a round of introductions. The Chairman thanked the Committee Members, EPA staff (Headquarters and the Regions) and members of the public for joining the LGAC teleconference. Chairman Dixon invited members of the public to speak during the allotted time on the agenda.

B. Meeting Purpose

Chairman Dixon stated that the purpose of the meeting was to deliberate recommendations on the EPA Charge on Clean Water Act (CWA) Waters of the United States (WOTUS). Additionally, the Committee will deliberate and decide on the LGAC's four other recommendation letters Clean Air Act 111(d), Oil Refineries, Polychlorinated Biphenyls (PCBs), Municipal Solid Waste (MSW) Landfills and early input to Office of Air and Radiation's (OAR) National Program Guidance (NPM).

C. Chair's Opening Remarks

Chairman Dixon gave an overview of the Local Government Advisory Committee (LGAC), stating that it is a federally chartered advisory group of 28 state, tribal, and local elected and appointed officials from across the country. We represent small, and moderate sized communities as well as large metropolitan areas. We originate from communities from all across the country-coast to coast. We are appointed by the EPA Administrator to serve on the committee and give advice and recommendations to the Administrator on environmental issues that impact us at the local level.

We serve on this Committee in a voluntary capacity in addition to our elected and appointed positions. We bring the diverse perspectives from the communities that we serve. Though our perspectives are different on any single issue, "what brings us together is the desire to make our communities better places to live and grow."

This year, the LGAC has undertaken monumental work. Administrator McCarthy has charged us, in partnership with the EPA, to provide local government input on EPA's rules and programs. In this committee, we work together on solutions and consider multiple perspectives, keeping in mind that the goal for all of us is to keep our communities safe and healthy.

Soon after Administrator McCarthy assumed her role as the administrator, I met with her via telephone. The Administrator asked me what should be her first steps in her new role. Mayor

Dixon shared with her that the foremost was “to get out and visit the communities to see what they are facing first hand. She has indeed been doing that.”

At our March 27-28th meeting, the Administrator visited with the LGAC, and she asked the Committee to give our local government perspective on the Waters of the U.S. proposed rule and climate change and resiliency.

At today’s meeting we will be discussing our Workgroups’ recommendations on Waters of the U.S., and other issues of importance to the EPA and our communities.

Chairman Dixon thanked all of the members of the public who joined the call and stated that he would be opening up time for them to speak during the public comment period.

Chairman Dixon introduced Joyce Frank.

II. Remarks of EPA Officials

A. Remarks of Joyce Frank, Deputy Associate Administrator, EPA’s Office of Congressional and Intergovernmental Relations

Joyce Frank thanked Chairman Dixon and Vice-chairman Carbajal. She thanked all of the LGAC members for all the great work throughout the year. She also thanked the members of the public for joining the call today. The work of the LGAC in incorporating the concerns of local governments into EPA decision-making is so vital to the EPA. She said that their work has helped EPA align with the Administrator’s priorities of ‘*Making a Visible Difference in Communities*’ and in setting forward a ‘*New Era of Partnerships*’. In particular, she especially pointed out the work of the Protecting America’s Waters Workgroup in creating a Draft Report on Waters of the U.S. All of the Workgroups and SCAS’ recommendations are very important. She stated that she valued how the Workgroup met with communities across the country, bringing diverse, pragmatic perspectives into the recommendations for the EPA to consider on Waters of the U.S. She thanked Chairwoman Sue Hann and Vice-Chairwoman Mayor Kautz for their leadership in the Protecting America’s Waters Workgroups. She said that there could not be enough “thank you’s” said for Chairman Dixon’s tremendous leadership on this Committee.

All of the workgroups and the Small Community Advisory Subcommittee (SCAS) have also been extremely busy with giving EPA feedback on the Clean Air Act 111(d), MSW Landfill Emissions and OAR NPM Guidance letters, PCBs, and Oil Refineries. In these letters, you have also considered the impacts to small communities and environmental justice (EJ) communities. These issues are all important actions, and on behalf of EPA, I thank you.

At EPA we need feedback from our state, local and tribal leaders. Your work today in gathering your advice and recommendations will help shape a more robust decision making process at the national level. You all bring diverse perspectives which is why you were appointed by the Administrator to serve.

Joyce Frank gave a status of the 2014 LGAC membership. She said that some LGAC Members’ terms would expire December, 2014. She said that OCIR was working hard to process those reappointments as soon as possible. She thanked the LGAC Members for their interest in continuing on the Committee. She said that the next face to face meeting of the LGAC has yet to be determined

due to the continuing resolution of the budget. But she also said that she was optimistic about a meeting sometime in early 2015.

Mark Rupp is recognized to give brief opening remarks

B. Mark Rupp, Deputy Associate Administrator, OCIR, Intergovernmental Relations

Mark Rupp thanked Joyce Frank and Chairman Dixon, and Vice-Chairman Carbajal. He said that he could not say enough about the good work this Committee has done and that the Administrator was deeply appreciative of their work.

He said that the LGAC is very unique in government and that the EPA was fortunate to have this Committee. He also stated that there currently is no other advisory committee of elected and appointed officials like this in government.

Everywhere the LGAC travelled, the communities were very generous, and grateful for your service. He said that there was a great deal of appreciation among communities in bringing their local government concerns back to the EPA. This is why this meeting and what you are doing is so important.

He said that the Administrator has been busy visiting with LGAC Members in their communities. He mentioned that she visited with Mayor Kautz, Mayor Murrell, and most recently with Kevin Shafer in Milwaukee, Wisconsin. He indicated that the Administrator could not be on the call today but that he wanted to acknowledge the EPA Regional Administrators on the call.

[Mark Rupp called on Region 8 Administrator Dennis McLerran.]

C. EPA Regional Administrators

Dennis McLerran, EPA Region 8 Regional Administrator, thanked the LGAC for their work and the opportunity to join them on the call. He said that not all of the work at EPA is about Washington, DC. In fact, most of what we do at EPA happens in our 10 EPA Regions. He thanked the LGAC Members from Region 10: Commissioner Cope, Representative Morris, and Council Member Somers. He thanked the Workgroup for coming to Region 10 for their August 13th Tacoma, Washington meeting which he felt was very successful.

Susan Hedman, EPA Region 5 Administrator, also thanked the LGAC for their work, and particularly thanked the LGAC Members from Region 5: Mayor Elizabeth Kautz, Mayor Karen Freeman-Wilson, Executive Director Kevin Shafer and County Executive Tom Hickner. She also mentioned the great meeting the LGAC had in St. Paul, Minnesota and her following visit to Burnsville, Minnesota with Mayor Kautz.

Mayor Dixon thanked Mark Rupp, Joyce Frank and Regional Administrators and announced the opening of the public comment period.

III. Public Comment Period

Lauren Driscoll, Washington Department of Ecology

Lauren Driscoll thanked the Committee for the opportunity to meet with them and thanked them for the work the LGAC is doing on Waters of the U.S. She said that the Washington Department of Ecology was very much in support of the proposed Waters of the U.S. rule. She also said that EPA and the Corps should work with the state to clarify terms within the rule. She said that state agencies and the Association of Counties are still concerned on how MS4 systems will be affected by the jurisdiction of ditches and tributaries.

Loren Mauren, City of Tacoma, Washington

Loren Mauren also thanked the Committee for the opportunity to speak. She also thanked the LGAC for their meeting on Waters of the U.S. held in the city of Tacoma, Washington (August 13). She said that the city of Tacoma was in favor of WOTUS and hoped that the clarification to the rule would help the permitting process.

Julie Ufner, National Association of Counties (NACo)

Julie Ufner began by saying that the LGAC outreach efforts done on Waters of the U.S. "has been inspiring." She also thanked EPA for being responsive to their concerns. She also stated there are still a number of concerns that need to be addressed. NACo will draft a comment letter to send forward to the EPA on Waters of the U.S.

She emphasized that a major concern of WOTUS is whether ditches will be jurisdictional. Local governments have been sued for not maintaining ditches and in some cases it was because they were waiting for permits that were not processed in a timely manner. These ditches are very complex, they run indirectly or directly into a WOTUS, they run for hundreds of miles, and it's in the best interest of local government to acknowledge this.

Finally, she expressed her appreciation for NACo Members who serve on the LGAC.

Judy Sheahan, U.S. Conference of Mayors (USCM)

Judy Sheahan thanked the EPA for reaching out to local communities on Waters of the U.S. "The LGAC has done an outstanding job." She also acknowledged USCM members and greeted Mayor Kautz. In regards to the proposed rule, the USCM wants to eliminate uncertainty and ideally eliminate citizen suits. Lack of clarity with definitions in WOTUS is a major concern. Definitions such as floodplain, uplands, adjacent, neighboring, significant nexus are either not defined or defined so broadly that they will be left open to interpretation, potentially causing litigation issues. We are worried that this will create different applications throughout the country.

We are also very concerned with MS4s and green infrastructure. EPA and the Army Corps, should provide a very clear exemption for MS4s and other stormwater systems and features as well as green infrastructure. MS4s are already regulated under the NPDES program and should therefore be categorically excluded. Additionally, it has been a priority to encourage local governments to adopt green infrastructure systems to solve stormwater issues. However, we are concerned that if the infrastructure systems are near WOTUS areas, then they could be treated as WOTUS and this could open it up to litigation.

We would like to see a rule come out of this and would like to see improvements made in order to make the rule better.

[Mayor Dixon called on any other presenters, thanked the public presenters, and closed the public comment period].

IV. LGAC Business Meeting

A. Protecting America's Waters Workgroup

Chairwoman Susan Hann presented the Draft Waters of the U.S. Transmittal letter and Draft WOTUS Report. She said that there were several focus areas highlighted in the Report. Permitting is one of these focus areas. Participants at the public meetings consistently reported having had challenging experiences with the permitting process and fear that the rule will only complicate these concerns. Permitting is not wholly within EPA's control but participants expressed their skepticism of how the Army Corps will implement this rule. She said that many of the public comments heard were about clarity and permitting. These comments are highlighted in the Draft Report as well as the transmittal letter.

The Report also emphasizes that exemptions need to be clearly defined. As Judy Sheahan, USCM, mentioned in her remarks, we want to avoid MS4s being subject to two different permits so we recommend an exemption for manmade systems and a number of other recommendations regarding MS4s.

Green infrastructure should be incentivized. Communities working on improving water quality, should be supported not deterred by the proposed rule. We want to encourage EPA to allow the flexibility to move community clean water goals forward, recognizing regional differences in water management happens in our states and local communities. Chairwoman Hann also mentioned that the Small Community Advisory Subcommittee (SCAS) crafted many recommendations specifically related to agriculture and those are incorporated into the Report.

The issue of implementation was also addressed in the Report. The issue of state assumption of the Clean Water Act 404 was investigated. The State of Michigan has assumed the permitting process and it has become from our standpoint more efficient. We think local solutions to clean water issues are important and a lot of us are doing great things in our communities so clean water programs like Michigan's should be incentivized.

Communication on this rule at the local level is also very important. We want to make sure that messages are consistent and well understood by everyone. The Draft Report is still being refined. We would like to move it forward as soon as possible to forward to the Administrator.

We also incorporated some additional edits by one our members (Commissioner Carolyn Peterson)-"While we all agree that clean water is vitally important of the nation, we also agree that a rule supporting the Clean Water Act works best when it's clear, has workable and understandable definitions, has clearly delineated exemptions, is certain as to implementation, and controls cost to localities already under severe resource constraints."

B. SCAS

Commissioner Cope, in speaking for the SCAS, stated that the SCAS met in a workgroup session in Tacoma, Washington, (August 13) and heard many concerns of the rule expressed by agricultural

and state commissioners. He emphasized that the rule lacks clarity in the agricultural exemptions. SCAS' recommendations reflect this, requesting more explicit definitions and conditions. The SCAS also introduced many recommendations on the Interpretative rule and agriculture to be considered by the Committee.

C. Environmental Justice (EJ) Workgroup

Mayor Wong reported that on September 22, the EJ Workgroup had a great meeting on environmental justice in Worcester and those major topics were included in the Report. The main issues the EJ Workgroup brought forward were regarding water access and water security. We also incorporated information on public health submitted in the Draft Report. We thank everyone for contributing to the discussion and for always thinking about issues that are affecting local communities. We also appreciate everyone continuing to link EJ with economic justice as well as public health. Dr. Gonzalez, Vice-chair of EJ, reported that the report incorporated the concerns that were raised and thanked everyone for their contributions.

D. Discussion on Waters of the U.S. Report and Transmittal Letter

Supervisor Carbajal suggested that the word 'many' in the permitting and clarity sections of the transmittal letter be changed to 'some'.

Commissioner Cope said that he did not have a problem with 'many', but since we repeatedly heard this issue throughout the country, 'many' gives it strength.

Commissioner Larson said that he respectfully disagreed with the change and wanted the word 'many' to remain.

Supervisor Carbajal said that he would respectfully yield to his colleague.

Council Member Richins said that one of the issues that was mentioned in the WOTUS public meetings was clarity in the term 'watershed'. He said that he did not see it addressed in the definitions section of the report. I've heard concerns about it in Arizona and would like more clarity on that.

Dr. Ellen Gilinsky, EPA's Office of Water, was called upon to address the issue. She said that she is not sure the term 'watershed' is mentioned in the CWA but would look into that.

Chairwoman Hann made a motion that the LGAC approve the Report, findings and recommendations, and transmittal letter subject to clarifying edits by the Executive Committee. Executive Director Tiberi seconded the motion. All in favor-motion carried.

E. Cleaning Up Our Communities (CUOC) Workgroup

MSW Letter

Mayor Karen Freeman-Wilson, Vice-chair, reported out for the Workgroup. She said that for local elected or appointed officials the regulation of Municipal Solid Waste is critical to our cities, especially larger cities. She said that the CUOC carefully reviewed the letter and attempted to capture all of the suggestions and comments that the LGAC workgroups provided.

There was extensive review involved with this letter, so that we could ensure that we captured the sentiment of all of the committee.

Commissioner Peterson indicated that the Air, Climate, and Energy workgroup is also a cosigner of this letter. She said that, “methane releases affect the quality of the air we breathe so the ACE workgroup supports the letter.”

Supervisor Carbajal made a motion to approve the letter. Executive Director Tiberi seconded the motion. All in favor-motion carried.

PCB Letter

Mayor Freeman-Wilson said that many of the committee members were together at the LGAC Meeting in March in Washington, D.C. where this issue and the PCB letter of recommendation began. She said that the workgroup looked at the essential options for the regulatory framework, and put forward recommendations that balance the environment and cost, as well as public health. The letter has been discussed over the course of the last three or four months, and we have had an opportunity to really refine our thinking and address individual comments that we believe are essential in conveying our concerns.

And so we have this letter before you. It has again been reviewed by other workgroups, and input provided by the EJ workgroup. We ask that you approve it, so that we can send it to the Administrator. Dr. Gonzalez made a motion to approve the letter. Supervisor Carbajal seconded the motion. All were in favor, motion carried.

F. Air, Climate and Energy Workgroup (ACE)

Clean Air Act 111(d) Letter

Commissioner Peterson said that the letter had been reviewed at least three times by the Air, Climate and Energy Workgroup, and also been reviewed by the EJ Workgroup and SCAS. Some of the changes made in this letter include affordability and local solutions. We also included information about public health and EJ. Supervisor Carbajal said that he thinks “It’s timely that we submit this letter at this point.”

Commissioner Cope said that the recommendation that the EPA fully investigate the operation of nuclear plants needs to be amended. EPA is already doing this in conjunction with the Nuclear Regulatory Commission (NRC). He offered alternate language that “EPA continue to work with NRC to monitor radiation levels and plants during times of refueling.” Furthermore, in the two sentences following “These emissions are harmful and invisible” and simply say that LGAC recommends that EPA continue to work with the NRC to monitor potential higher levels to normal radiation particularly during and after refueling”.

Commissioner Larson seconded the motion. All in favor-motion carried.

Executive Tiberi motioned to approve the letter as amended. Supervisor Carbajal seconded the motion.

All in favor-motion carried.

Refineries Letter

Commissioner Peterson presented the oil refineries letter which had additional controls and measurements added to address shut down, start up, and malfunctions for better protection of persons who are living near these refineries. There's one minor change since we saw this letter back in August which reflects that there have already been public hearings held in California and Texas. Supervisor Carbajal motioned to approve the letter. Executive Director Tiberi seconded the motion. All in favor-motion carried.

OAR NPM Guidance Letter

Commissioner Peterson said that the LGAC appreciates being asked to review their workplan early in this process. Within the letter we give clear indication of issues raised by workgroup members and issues of concern for local government. Additionally, OAR has reviewed the draft letter and made some technical edits. There also are some comments in reference to 'radiation' mentioned in this letter that we just amended in the previous letter. Commissioner Cope motioned to move this letter forward with an amendment that is consistent with the clarifications made to the 111(d) letter.

Supervisor Carbajal seconded the motion. All in favor-motion carried.

V. Wrap and Adjournment

Chairman Mayor Dixon asked if there was any further business of the LGAC.

Executive Director Tiberi made a motion to approve the minutes from the July 3 LGAC meeting. Commissioner Peterson seconded the motion. All in favor-motion carried.

Chairman Dixon thanked everyone for all of the hard work. He particularly thanked the Workgroups and the Water Workgroup Chairwoman Sue Hann and Vice-chairwoman, Mayor Kautz for all of their work on the Waters of the U.S. Report and meetings. He thanked Dr. Gilinsky, Mark Rupp and Fran Eargle for their participation and contributions. The Chairman also thanked Jincy Varughese, OCIR Intern, for her work and contributions.

Chairman Dixon also thanked the public presenters and participating in the call. Commissioner Cope made a motion to adjourn, it was followed by several seconds. Meeting was adjourned.

Participants

LGAC Members in Attendance

Mayor Elizabeth Kautz
Mayor Bob Dixon, Chair
City Manager Susan Hann
Supervisor Salud Carbajal
Executive Director Jeff Tiberi
Council Member Dave Somers
Commissioner Don Larson
Executive Director Kevin Shafer
Commissioner Robert Cope
Commissioner Carolyn Peterson
Representative Jeff Morris
Legislator Manna Jo Green
Mayor Karen Freeman-Wilson
Director Adam Ortiz
Mayor Lisa Wong
Dr. Hector Gonzalez
Council Member Dave Richins

EPA Participants

Mark Rupp, Deputy Associate Administrator for Intergovernmental Relations
Joyce Frank, Principal Deputy Associate Administrator, Office of Congressional and Intergovernmental Relations
Dr. Ellen Gilinsky, Senior Advisor, Office of Water
Dennis McLerran, Regional Administrator, Region 10
Rebecca Edelstein, Office of Pollution Prevention and Toxics
Susan Hedman, Regional Administrator, Region 5
Jack Bowles, OCIR, Director, State and Local
Frances Eargle, Designated Federal Officer, DFO, LGAC
Jincy Varughese, OCIR Intern

Public Participants

Lauren Driscoll, WA State Dept. of Ecology
Lorna Mauren, City of Tacoma
Julie Ufner, NACo representative
Kelli Levy, FL Stormwater Association
Judy Sheahan, US Conference of Mayors

We hereby certify that, to the best of our knowledge, the foregoing minutes are accurate and complete.

Respectfully submitted:



11/06/14

Frances Eargle
Designated Federal Officer
Local Government Advisory Committee
U.S. Environmental Protection Agency

Date



11/06/14

Mayor Bob Dixon
Chairman
Local Government Advisory Committee
U.S. Environmental Protection Agency

Date

