

## UNFUNDED MANDATES AND OTHER REGULATORY IMPACTS ON COUNTIES

### U.S. ENVIRONMENTAL PROTECTION AGENCY (EPA)

<p><b>Clean Air Act</b></p>	<p>Compliance with federal air pollution standards, including, but not limited to, monitoring air quality; retrofitting stationary and mobile sources of pollution and obtaining required permits; ozone and particulate matter (PM) standards for PM 10 and PM 2.5. While tighter standards for PM 10 have been temporary tabled, the reconsideration process for air standards resets every five years.</p>
<p><b>Particulate Matter Standards</b></p>	<p>Mentioned briefly above, lowering PM standards is problematic, especially for rural areas, where practices governing regular everyday events such as cars driving down dirt roads and agricultural practices that sustain local economies could be regulated, as could natural events such as wildfires, droughts or wind storms. Because of the high, naturally occurring, dust levels found in arid climates, many western counties have a difficult time meeting the current PM standard. This, in turn, affects their economic base, which will further restrain economic recovery. Based on previous experience, non- attainment areas have difficulty maintaining and attracting businesses to their regions, since these businesses would have to operate under the tighter standards. Most businesses chose to relocate or not even build in a non-attainment area.</p>
<p><b>Ozone Standards</b></p>	<p>In Oct. 2015, after months of discussions, the U.S. Environmental Protection Agency (EPA) released its final rule to tighten the <a href="#">National Ambient Air Quality Standards (NAAQS) for Ozone</a> from 75 parts per billion (ppb), last set in 2008, to 70 ppb. Ozone designations can have a significant impact on county governments, both as regulators of Clean Air Act programs, and as regulated entities. Currently, 227 counties, primarily urban and in the East, are regulated under ozone air quality standards. Under the new 70 ppb standard, the number of impacted counties is expected to increase.</p>
<p><b>Clean Water Act</b></p>	<p>Compliance with federal regulations and mandates related to: county owned water and wastewater treatment regulations; combined and sanitary sewer overflow consent decrees; "Waters of the U.S." definitional changes (refer below for more specific problems with the navigable "waters of the U.S." regulation program); regulation of point and non-point discharges (including those from forest roads), including standards for improving and maintaining water quality; stormwater regulations; and inconsistent blending and bypass rules.</p>
<p><b>Pesticides Regulation</b></p>	<p>The general permit for pesticides became effective the end of October, 2011. NACo has heard mixed reviews from our counties. Some counties, have changed spraying patterns, which may not be as effective as previous practices. The general permit has a heavier paperwork burden for spraying activities. Since county governments serve as primary service providers for their residents, this permit has significant effects on county programs, particularly mosquito abatement and noxious weed control efforts, creating unfunded mandates for both urban and rural counties through the tight reporting requirements. Additionally, the final "Waters of the U.S." rule may trigger expanded regulation for counties.</p>

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**Stormwater Regulations**

CWA stormwater regulations, also known as municipal separate storm sewer systems (MS4s), apply to counties with populations of 100 thousand or more and certain counties in or near urban areas. MS4s are required to meet water criteria standards, generally through Best Management Practices (BMPs). However, in recent years MS4 permits are moving away from BMPs to stricter nutrient numerical limits which can make it both infeasible and very expensive to comply with permit requirements.

**Blending and Bypass**

In a March 2013 court case, *Iowa League of Cities v. EPA*, the U.S. Court of Appeals for the 8<sup>th</sup> Circuit struck down EPA's prohibitions against the practice of blending wastewater at Publicly Owned Treatment Works (POTW) during wet weather events and against the use of mixing zones in permits for compliance with bacteriologic standards. Despite requests by NACo and other local government groups that this practice should not be prohibited nationwide, EPA stated that the use of blending and bypass is only applicable to areas within the 8<sup>th</sup> Circuit Court's jurisdiction and not applicable to other areas of the country. This court decision should be applied to all regions rather than just to the 8<sup>th</sup> Circuit Court region.

**Drinking Water**

Establishes maximum contaminant levels for contaminants in public water systems and specifies treatment techniques to be used. Upcoming regulations that will have a direct impact on local governments that own/operate drinking water facilities include the lead and copper rules and the cyanotoxin advisory requirements.

**Resource Conservation and Recovery Act**

Local governments who own landfills and underground storage tanks are subject to federal standards regarding location, operating criteria, groundwater monitoring, corrective actions, closure and post-closure care. For Superfund sites, the issues stem from institutional controls such as zoning around sites, setting and enforcing easements and covenants and overseeing building and/or excavation near sites.

**Brownfields Redevelopment/Dioxin**

Brownfields redevelopment has created some of the biggest success stories for local governments. However, the EPA is assessing whether to tighten its dioxin levels to a point that would halt all brownfields development in the nation. While dioxin can be created as a byproduct through manufacturing, it is also naturally occurring. The levels the EPA proposed to lower dioxin are equal to many naturally occurring levels. NACo would urge the EPA to revisit the science used behind the health standards. Otherwise, this could be a huge loss for local governments.

**Risk Management Program (RPM)**

On Dec. 21, 2016, the EPA finalized a rule which amends their Risk Management Program (RMP) safety regulations for chemical facilities. While geared toward facilities with chemicals, the revised rule also has an impact on municipal owned and maintained water and wastewater plants and local emergency responders.

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### ARMY CORPS OF ENGINEERS – SPECIFIC PROBLEMS DEALING WITH THE 404 PERMIT PROGRAM (EPA & USACE)

#### Compensation Wetland Mitigation

Rule issued in conjunction with EPA. Local governments request added flexibility in meeting wetland mitigation requirements. Specific example includes variance between state and federal requirements. In this case, the state has an expanded set of options to meet the requirement that is not necessarily followed at the federal level. Therefore a local government may satisfy state requirements but not be able to meet federal requirements.

#### Ditch Drainage Requirements

The excessive amount of requirements necessary to provide information for USACE to review before a project is approved is both costly and time consuming for counties. For example, a county that wished to pursue and complete a drainage project was informed that the following was needed by USACE before work could be started: detailed plans showing existing condition, photos of areas where work will be done, details concerning existing water surface elevation, ordinary high water line, calculations of amount of material to be excavated, and a wetland delineation. Just to do this, the county would need to hire engineers to survey and perform calculations. All of this would significantly add to the cost of the project without necessarily ensuring clean water.

#### Post construction requirements – 404 Permit Related

The post construction monitoring process adds costs for channel rebuilds and other mitigation measures. For example, one county, after completion of a bridge replacement project, was required by NOAA Fisheries and FHWA to reinstate formal consultation due to shifting boulders in the stream bed. State fish and wildlife officials supported the county in its objection and in its request to allow the channel to continue to stabilize. An updated BA and additional reporting would cost the county \$50,000 in this instance. Should the reconstruction of the stream bed be required by the agencies, almost \$1M in additional costs could be incurred.

#### Waters of the U.S.

Any changes to “Waters of the U.S.” definition within the CWA will have an impact on county owned and maintained ditches such as roadside, flood control, stormwater, etc. Additionally, since there is only one “waters of the U.S.” definition in the CWA, changes would impact more than the Section 404 permit program.

### TRANSPORTATION

#### Grant Requirements

Requirements do not provide flexibility during implementation phase. For example, a county applies for funding to install electronic dynamic driver feedback speed limit signs. The county would like to purchase the signs using grant funding and then use county resources (e.g. staff) to install them. Requirements however, dictate that all stages of the process must be let out to private contractors, which further implies other requirements, e.g. Davis-Bacon, EEO, etc.

#### FAST Act

The FAST Act provides for some major reforms in regard to project delivery/environmental streamlining. It also proposes to modify the categorical exclusion process for National Environmental Policy Act (NEPA) review of certain projects. NACo continues to be engaged in rulemakings pertaining to these areas.

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### NATIONAL OCEANIC AND ATMOSPHERIC ADMINISTRATION

#### National Marine Fisheries Service

The Biological Assessment (BA) process through NMFS is extremely time consuming and raises costly barriers. For example, one county was working on a joint interchange project with the state to address urban growth. In an attempt to navigate the federal environmental permitting process, the project took two years alone to navigate the BA consultation with NMFS. A standard BA consultation generally takes 9-12 months but the NMFS process added more than a year in time and approximately \$1M in additional engineering costs with no added value to the project.

### MISCELLANEOUS/MULTIPLE AGENCIES

#### Inmate Healthcare

The Supreme Court required counties to provide health care for jail inmates in *Estelle v. Gamble*, 429 U.S. 97 (1976), while the federal government refuses to contribute to the provision of Medicaid, Medicare, CHIP or veterans' health benefits or services for otherwise eligible inmates.

#### Funding assistance-applications

When applying for funding assistance from separate sources/agencies for one project, multiple applications are required. The duplicity and lack of interchangeability of the forms and the agencies is very time consuming for local governments.

#### Use of ".gov" Domain for County Websites

The U.S. General Services Administration regulates the use of this extension. Arguably, this would make county sites easier to access for constituents. However, the current rules restrict counties from enacting local ordinances/laws to assist in offsetting technological costs associated with website development, operation and maintenance.

#### Website Accessibility

The Department of Justice is currently considering a rule that would establish requirements to make websites for state and local governments accessible to individuals with disabilities. An advanced notice of the proposed rule-making was issued in 2010; however the Department has yet to issue the proposed rule. While counties support ensuring individuals with disabilities are able to access public information, the resources and additional funding needed for county websites to meet whatever standard is required by the rule will vary on a county by county basis and must be taken into consideration when determining the implementation period of the rule.

#### Overtime Pay

In May 2016, the U.S. Department of Labor (DOL) released a final rule to amend regulations under the Fair Labor Standards Act governing the "white collar" exemption from overtime pay for executive, administrative and professional employees. In the final rule, DOL nearly doubles the threshold for employees who are eligible to receive overtime pay, from \$23,660 to \$47,476. This level would also be adjusted every three years. This may create a significant financial and administrative burden for counties.

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### MISCELLANEOUS/MULTIPLE AGENCIES

#### **Assessment of Fair Housing**

The U.S. Department of Housing (HUD) released a final rule on updating Affirmatively Furthering Fair Housing practices and a proposed rule on the Assessment of Fair Housing Tool. HUD grantees are supposed to use the Assessment of Fair Housing (AFH) tool to analyze their fair housing goals to more effectively carry out their obligation to affirmatively further fair housing. AFH replaces the current Analysis of Impediments (AI) process which required HUD grantees that receive CDBG, HOME and Emergency Shelter Grants funding to identify local barriers to fair housing choice. The AFH is a much more comprehensive planning process, requiring jurisdictions to look at patterns of segregation and integration; racially and ethnically concentrated areas of poverty, and disparities in access to opportunity, as well as the contributing factors of those issues. The Tool is expansive and will take staff time and likely financial resources to implement. NACo submitted comments expressing concerns about the AFH Tool due to the lack of data provided by HUD for the new planning process and because HUD is not providing any funding to grantees to implement the new planning process and because HUD is not providing any funding to grantees to implement the new planning process. NACo continues to engage the Administration and Congress about county concerns with the AFH rulemaking.