FOIA Number: 2012-0769-F

FOIA MARKER

This is not a textual record. This is used as an administrative marker by the William J. Clinton Presidential Library Staff.

Collection/Record Group: Clinton Presidential Records

Subgroup/Office of Origin: Council on Environmental Quality

Series/Staff Member: Kathleen (Katie) McGinty

Subseries:

OA/ID Number: 2572

FolderID:

Folder Title:
Environmental Mandates Issue

Stack:	Row:	Section:	Shelf:	Position:
S	61	5	4	3

Christian - please hold.

National
Association of
Towns and Townships

RECOMMENDATIONS FOR A MORE EFFECTIVE REGULATORY FLEXIBILITY POLICY

The Requirements of the Regulatory Flexibility Act

The Regulatory Flexibility Act of 1980 (Public Law 96-354, 5 U.S.C. Sections 601-612) requires all Federal agencies to determine whether their regulations will "have a significant economic impact on a substantial number of small entities." If so, they are required to analyze fully the effects of their regulations on "small entities," to explore alternative compliance mechanisms, and to involve actively these entities in the development and review of the regulations. The Act recognizes three kinds of small entities: small businesses, small non-profits and governmental jurisdictions with a population of less than fifty thousand. For the purposes of this paper, the exclusive focus will be on small governments.

Using that approach, the law seeks to ensure that federal agencies develop regulations that do not place unnecessary and disproportionate burdens on the public; consider alternative regulatory approaches and, as appropriate, make them available to "small entities"; encourage innovation and productivity as entities comply with regulations; and develop regulations with sufficient opportunity for input from small entities.

An initial regulatory flexibility analysis (IRFA) must be conducted for each proposed regulation having an impact, either advantageously or disadvantageously, on small entities. The analysis, which must be published in the *Federal Register* in conjunction with the notice of proposed rulemaking, must discuss the impact upon small entities and propose alternatives.

Ultimately, the final regulations must contain a final regulatory flexibility analysis (FRFA). The FRFA must discuss the issues raised in public comments on the IRFA; the agency's assessment of those comments and any changes the agency has made as a result; and a discussion of each significant alternative to the rule designed to mitigate impacts on small entities and why any proposed alternative was rejected.

Additionally, each agency is required to review periodically all of its regulations which have a significant economic impact on a substantial number of small entities. Agencies must review their regulations within a 10 year period from the date of promulgation of each rule.

The Need for a More Effective Regulatory Flexibility Policy for Small Local Governments

The need to develop a more effective regulatory flexibility policy is based on a long history of Federal noncompliance with the the legislative intent of the Regulatory Flexibility Act of 1980. With few exceptions, **agencies are routinely invoking Section 605(b) of the law**, which allows an agency head to certify that the regulation has no "significant economic impact" on a "substantial number" of small entities. Once this certification is made, a regulatory flexibility analysis is no longer required. This occurs despite the fact that the impact of the regulation on small local governments seems obvious.

Furthermore, **agencies frequently are giving little--if any--description of the data that they used to reach a determination that no significant economic impact will result**. Part of the problem is that "significant economic impact" is a vague term. In the absence of a definition, agencies often focus on the impact of the proposed regulations on the government sector as a whole, not on the impact to a typical small local government.

This situation ignores the fact that **small local governments are different from their urban and suburban counterparts in terms of financial resources, staff, and other resources available to them**. Small governments may lack full-time staff lawyers, professional city managers, or environmental engineers, and have few, if any, computers. Consequently, slight increases in financial or administrative requirements may substantially impact individual governments while the aggregate impact is not large by agency standards. Under these circumstances, small local governments are powerless to challenge or even understand the decision-making process used in implementing a law which was enacted for their benefit.

By certifying that a rule has no significant economic impact, an agency administrator exempts his or her agency from the "burden" of meeting the requirements of the Act that are intended to relieve their agency's burdens on small governments.

Certifying an exemption eliminates the need to conduct an IRFA (detailed in Section 603) which requires an explanation why the regulation is being developed, its objectives and legal authority; an estimate of the number of small entities subject to the rule; a summary of the projected reporting, record keeping, and compliance requirements, including an estimate of which small entities are subject to the rule and the type of professional skills required to comply with the reporting requirements; and a description of all relevant federal rules which may duplicate, overlap or conflict with the proposed rule.

Use of the Section 605(b) certification by an administrator also **eliminates the outreach responsibilities imposed on federal agencies by Section 609 of the Act**, which requires that small entities have an opportunity to participate in rulemakings. Without legions of lobbyists to monitor federal regulatory activities, small local governments face insurmountable roadblocks to participation in the rulemaking process unless an active outreach program is in place. Small local governments are rarely involved in the rulemaking process. Ignoring the outreach requirements of the Act virtually ensures that no comments will be obtained directly from small local governments.

The heart of the Regulatory Flexibility Act is contained in Section 603(c), which requires an agency administrator to develop a list of **significant alternatives which would accomplish the stated objectives and minimize the economic impact of the regulation upon small entities**. Agencies must also consider the adoption of possible regulatory alternatives which may include: different compliance or reporting requirements, the consolidation or simplification of compliance and reporting requirements, the use of performance rather than design standards, and exemptions or exclusions.

Conflicts Between the Regulatory Flexibility Act and Executive Order 12291

Finally, a conflict has arisen between the requirements of the Act and those of Executive Order 12291. EO 12291 requires an agency to conduct a preliminary regulatory impact analysis (RIA) whenever it proposes a "major rule" and to issue a final RIA when the final rules are published. The RIA places an emphasis on cost-benefit analysis. An RIA must contain a description of the potential costs and benefits of the rule and who will receive them and a description of alternative approaches that could substantially achieve the same regulatory goal at a lower cost, together with a benefit-cost analysis of the alternatives.

Section 605 of the Regulatory Flexibility Act permits the preliminary and final regulatory flexibility analysis to be performed "... in conjunction with or as part of any other agenda or analysis required by any other law if such other analysis satisfies the provisions of such sections." In turn, EO 12291 states that a regulatory impact analysis "may be combined with any Regulatory Flexibility Analysis."

It is most often the case that the regulatory flexibility analysis is not combined with the RIA; it is supplanted by the RIA. With regard to small local governments, the requirements of an RIA are much weaker than those of a regulatory flexibility analysis, despite the requirement to examine alternative approaches that could substantially achieve the regulatory goal at lower cost.

An RIA is an inadequate substitute for small local governments for the reasons that follow:

- The requirements for performing a regulatory flexibility analysis, contained in Section 603, are more detailed than the simple requirement to examine alternative approaches. See Section 603(c) in particular.

- Following a determination of significant economic impact, Section 609 of the Regulatory Flexibility Act requires agencies to ensure that small entities have an opportunity to participate in the rulemaking process, and proposes steps an agency should take to encourage participation. EO 12291 has no such requirements for an RIA, and so no such steps are taken.

- If a regulatory flexibility analysis is required, the preliminary and final regulatory flexibility analysis are to be published in the *Federal Register* in a notice of proposed rule making and final rule. RIA's are not required to be published in the *Federal Register.*

Two recent rulemakings are good examples of these criticisms: Subtitle A of the Title II regulations of the Americans with Disabilities Act, issued by the Department of Justice, and the Accessibility Guidelines for State and Local Government Facilities, issued by the Achitectural and Transportation Barriers Compliance Board. Both rulemakings incorporated a regulatory flexibility analysis as part of an RIA, and in doing so completely undid the intent of the Regulatory Flexibility Act. Alternatives to the rule were not proposed, outreach to small entities was ignored, and the RIAs were not published but had to be obtained from the issuing agency, precluding local governments their right to produce and submit timely comments. Both of these rulemakings require a considerable outlay of expense on the part of small local governments.

Recommendations to Amend the Regulatory Flexibility Act

In light of the flaws in the Regulatory Flexibility Act and the public policy benefits to reforming the Act, the following amendments should be made to the Act:

- Amend the Act so that if an agency certifies that a proposed rule will have no significant impact on small entities, it must document and publish in the *Federal Register* the reasoning by which it came to the conclusion of no significant impact.

- Repeal Section 611. Allow judicial review of the Regulatory Flexibility Act, so that both the certification process where an agency head certifies no significant impact, and the regulatory flexibility analyses are subject to court challenges. Allowing court challenges may be the single best way to gain compliance with the Act, rather than reliance on a voluntary commitment to the Act.

- Eliminate Section 605(a) of the Regulatory Flexibility Act, or amend it so that it makes clear that the requirement of the Act are not to be ignored, or supplanted, when performed in conjunction with another analysis. Section 605(a), while a well-intentioned effort to eliminate duplicative work, essentially results in an RIA supplanting a regulatory flexibility analysis and completely undermining the congressional intent of the Regulatory Flexibility Act.

- The population criterion in the definition of "small governmental jurisdiction" should be reduced to 20,000 or another figure below 50,000 residents.

- The Small Business Administration (SBA) is responsible for monitoring agency compliance with the Act, since the Act also pertains to small businesses. However, the SBA lacks expertise with small governments to advocate on their behalf. Oversight of agency compliance with the Act as it relates to small local governments should be centralized within another entity that is more familiar with how local governments operate.

Federal Policy and Small Communities

Are We Creating Second Class Communities?

National Association of Towns and Townships
1522 K Street, N.W., Suite 600, Washington, D.C. 20005
(202) 737-5200 fax (202) 289-7996

EXECUTIVE SUMMARY

Our nation is composed largely of small communities. Of the 39,000 general purpose local governments in the nation, 86 percent have fewer than 10,000 residents, while half of our nation's localities represent fewer than 1,000 individuals.

These small governments are frequently administered by part-time elected officials who must perform a variety of duties that range from responsibilities which one would normally associate with local government administration, such as conducting town meetings and developing budgets, to driving a snow plow or a road grader. While they are paid part-time, their official work is often full-time, in addition to the "regular" jobs they must hold to support their families. These small communities also rely heavily on part-time and volunteer help.

Small governments must operate under constraints that are not found in larger communities. They are limited by the state in their ability to raise revenues and must increasingly rely on property taxes--the most unpopular tax. The vast majority receive no federal funding, mainly because they must compete with urban areas that have the staff and administrative capacity to seek such funding. They are largely unable to influence federal programs because of the complexity of federal regulatory rulemaking and the expense of participating in congressional hearings.

Congress and federal regulatory agencies must share the blame for the disenfranchisement of small governments. Congress frequently legislates in an overly restrictive manner, which does not allow for the flexibility needed to "fit" policy to the incredible diversity found among 39,000 local governments. Congress also does not enforce one of its own laws--the Regulatory Flexibility Act of 1980, (P.L. 96-354), which was passed to make regulations less onerous for small communities.

Federal regulatory agencies have, for the most part, failed to carry out the intent of Reg Flex, being unwilling or unable to develop the flexible approaches that would allow small communities to meet federal goals. Most government agencies are unaware of how small governments operate, and there is no reliable data base to help them determine the impact of their rules on small governments.

In a period of fiscal austerity, when the federal government must rely on unfunded federal mandates to solve the nation's problems, it only makes sense to fashion mandates so that all communities have a hope of complying. Without doing so, and without federal and state enforcement of mandates, federal policy will not be carried out. Confronted with costly and, frequently, impossible mandates and tight budgets, small governments will run the obvious risk of not complying fully or at all. The result will be frustration of laudable national goals, while smaller communities become second class communities.

FEDERAL POLICY AND SMALL COMMUNITIES: ARE WE CREATING SECOND CLASS COMMUNITIES?

Almost 39,000 general purpose local governments provide services to Americans. Despite their numbers, little is known about the largest segment of this group--small governments. Like small businesses, small local governments are far different--in financial and personnel resources and operating procedures--from their larger counterparts.

The majority of local governments are small

The 13,000 mostly small, mostly rural communities represented by the National Association of Towns and Townships (NATaT) are typical of the majority of the nation's 39,000 general purpose local governments (i.e. township, municipal, and county governments). As the table below shows, **86 percent of the nation's general purpose local governments serve populations of less than 10,000 people, and half govern fewer than 1,000 residents.**

GENERAL PURPOSE LOCAL GOVERNMENTS

Population	Number of Governments	Percentage of Total	Cumulative Number	Cumulative Percent
Less than 2,500	26,139	67%	26,139	67%
2,500 - 4,999	4,099	11%	30,238	78%
5,000 - 9,999	2,973	8%	33,211	86%
10,000 - 24,999	2,952	8%	36,163	93%
25,000 - 49,999	1,410	4%	37,573	97%
50,000 - 99,999	779	2%	38,352	99%
More than 100,000	581	1%	38,933	100%
Total	38,933	100%		

Source: United States Department of Commerce, Bureau of the Census, 1987 Census of Governments.

Who runs small governments?

Elected officials in small governments are the administrators and managers of their governments, as well as the policymakers and leaders. In many townships, the elected official performs many duties, literally from setting property tax rates to driving the snow plow. Most people do not realize that local governments are also often run by volunteers who are not specialists in the many management areas in which they must function.

Small local governments also rely heavily on part-time employees. Of the 16,691 townships nationwide, Census Bureau figures reveal that, on average, only 55 percent of their employees work full-time. Wisconsin, for example, has 13,562 total employees in its 1,268 townships. Of these employees, only 1,591 (12 percent) work full-time.

How are they financed?

Not only do small local governments have limited human resources, they also have very limited budgets and limited options to raise revenues. A typical small local government with fewer than 2,500 residents has less than $1 million available annually to pay for all governmental services, according to Census Bureau figures (see chart below).

AVERAGE ANNUAL REVENUES OF
GENERAL PURPOSE LOCAL GOVERNMENTS
1986-1987

Population	Average Revenues	Number of Governments
Less than 250	$49,557	7,032
250 - 499	$119,207	5,269
500 - 999	$219,490	6,252
1,000 - 1,999	$477,844	5,975
2,000 - 2,999	$971,223	2,873
3,000 - 3,999	$1,535,796	1,673
4,000 - 4,999	$2,402,382	1,187

Source: United States Department of Commerce, Bureau of the Census, 1987 Census of Governments.

In analyzing the financial condition of local governments, one must realize the fundamental difference in revenue sources utilized by the federal, state, and local governments. Each level of government obtains the majority of its revenues from a different type of tax. Unfortunately, **local governments must rely on the least popular source, the property tax, for a majority of their revenues**. According to a recent report issued by the United States Advisory Commission on Intergovernmental Relations, 28 percent of those surveyed viewed the local property tax as the worst tax. Twenty-one percent applied that label to the federal income tax, and another 18 percent viewed the Social Security tax as the worst. Trailing far behind were state sales and state income taxes, given 14 and 10 percent ratings respectively.

Not only do small local governments typically receive less revenue per capita than their larger counterparts, they must generate a greater share of their revenues from their own sources. Recent Census Bureau statistics show, for example, that municipalities over 200,000 population receive 58.2 percent of all intergovernmental revenue, although their population represents only 31.5 percent of total municipal population. In contrast, 19.1 percent of all municipal residents live in cities under 10,000 population, yet those communities garner only 9.1 percent of all intergovernmental revenue.

Local governments are constrained in seeking additional revenues by a number of factors. Many state governments have legislated tax and expenditure restrictions for local governments. At the beginning of 1989, 41 states imposed such limitations upon municipalities and counties, according to the National Conference of State Legislatures. These restrictions may prevent local governments from exceeding either an established tax rate or total levies for a given fiscal year. Other limits are set on assessment increases resulting from rising property values. Limits may also be placed on the type of taxes which may be levied or the total debt incurred by local government. For a bond referendum, voter approval may be required by a 67 percent to 80 percent approval rate.

Small local governments planning to issue general obligation bonds meet other difficulties. For some projects, the amount of money needed may simply be too small for a bond issue. In other circumstances, a local government's ability to issue debt is determined by the ratios of debt service to municipal revenues and debt service to market value of taxable property. If both ratios exceed a given threshold, the small local government is considered unqualified to issue general obligation bonds.

Federal aid to small communities has declined

Compounding the financing problems facing small communities has been the decline of federal aid for infrastructure over the past decade. The federal General Revenue Sharing program, which ended in 1986, was the last federal program of broad general investment in small, rural communities. Since that program ended, **NATaT estimates that approximately 80 percent of all local governments receive no federal funds at all.** Since municipalities with greater than 50,000 population are entitlement cities under the Community Development Block Grant program, it can be assumed that most communities which do not receive funds are small governments.

Related to the relative lack of federal funding received by small governments is an apparent bias on the part of the federal government that small grant awards are not useful. As an example, a general revenue sharing type proposal was passed by the House Government Operations Committee this year. It stipulated that any payment of less than $5,000 allocated to a local government would not be sent to the locality. Instead, it would be sent to the governor, who would in turn spend it on an infrastructure project in the area of the locality. A Senate local fiscal assistance proposal earlier in the 102nd Congress was another example of a proposal which also had a high minimum payment level which would have excluded many small communities.

The attitude that small sums "can't do any good" for a community fails to recognize that what may look like a small grant or revenue sharing allocation is large in relation to the budget of a small community. While small by today's standards, a $20,000 grant to a community with an annual budget of $500,000 is a much greater portion of that community's budget than a $3 million grant to a city or county with an annual budget of $1 billion.

Leadership is discouraged

The absence of federal funds for small localities, combined with the growth in unfunded federal and state mandates, ultimately undermines civic behavior in small communities. Citizens become unwilling to hold office, especially in jurisdictions that lack the administrative and financial support necessary to comply with mandates. Raising property taxes to pay for a program is not a popular measure. Knowing that such action will only make one unpopular in the community, many local elected officials simply leave office, and others don't bother running.

What does this mean for how grassroots governments interact with the federal government?

Impediments to small government participation

Grassroots governments are fundamentally disadvantaged when it comes to influencing or participating in federal programs. While grassroots governments are numerous, the same lack of personnel and resources that characterizes these governments keeps them from being able to participate fully in the political system. We see the difficulty small community leaders have participating at the state level, where travel to meetings is less costly and issues are much more familiar to them. Their participation in congressional hearings and federal regulatory proceedings is virtually negligible. Travel costs are much greater, especially from areas that have become isolated because of deregulation of the transportation industry. Congressional hearings are often called with little lead time. They are cancelled and rescheduled with distressing regularity, an expensive proposition to a witness from a small community who has purchased a nonrefundable ticket to save on the fare.

Compounding the difficulty of grassroots governments in influencing federal policy is the dissolution of the federal-local partnership. Where the federal government was once a source of funding and innovation, now we are in an era of what has been termed "coercive federalism," characterized by unfunded federal mandates. Federal mandates shift responsibility for program management from the federal government to state and local governments. While state and local assumption of program responsibilities brings policy implementation closer to the grassroots level, two serious drawbacks still remain. Mandates tend to be very inflexible--either because of the strict language in the legislation or because of the way federal agencies write regulations. Secondly, accountability is diluted, in two ways. Elected officials do not confront voters with the true costs of public policy decisions, and many citizens and elected officials do not know whether a mandate comes from the state or federal level, or both.

A hypothetical example of the latter case is a situation in which the federal government passes legislation in a policy area that sets performance standards and requires the states to develop plans for implementing the program. The state then develops and gains approval for the plan, but instead of using the federal standards as a minimum performance requirement, uses them as the basis for even more stringent state standards.

The elected officials of small communities are also at a great disadvantage when it comes to influencing the federal regulatory process. Small communities do not routinely get the *Federal Register*, and chances are they do not have a source for it nearby. If they did, they would probably balk at reading some of the more comprehensive regulations. Just the prospect of getting effective participation from small communities during the comment period of a proposed rule is daunting, given the limited window of opportunity to provide comments.

Organizations like NATaT must first themselves spend staff time to digest the rule and communicate it to our membership. For many organizations, the most effective means of communicating with the membership is through a regular newsletter. By the time a regulation is absorbed and understood, an article written, a newsletter laid out, printed, mailed and received, most comment periods are over.

The Regulatory Flexibility Act of 1980 (P.L. 96-354) was enacted to eliminate barriers to greater participation by small communities. That act requires all federal agencies to analyze fully the effects of their regulations on "small entities" (including small local governments), explore alternative compliance mechanisms **and to involve small entities actively in the development and review of the regulations.** Section 609 deals specifically with procedures that federal agencies must follow if they are issuing rules that will have a significant impact on small entities. The act also encourages innovative, alternative and flexible regulatory approaches which still carry out the intent of the legislation. Unfortunately, agencies rarely meet those requirements.

These characteristics of small local governments put them at a great disadvantage when they must compete with larger governments for limited federal funds. There isn't the administrative staff available in many local governments to scan the *Federal Register*, in the unlikely event that it is available, for notices of grant availability and how to apply. For small community leaders, applying for a grant requires a great deal of patience with a great deal of complex application forms. If a small community is lucky enough to receive a grant, then it must administer the grant, meet the various cross-cutting federal requirements such as the Davis-Bacon Act, get competitive bids, file periodic progress reports, and keep financial records according to generally accepted practices. These difficulties in learning about, applying for and administering grants is what results in such a low percentage of grants going to small communities.

Perhaps one of the most frustrating aspects of federal mandates from a local government perspective is that they reduce local autonomy to tailor solutions to local conditions. Prescriptive federal approaches tend to be costly, inefficient, ineffective, inflexible and, as mentioned earlier, tend to promote lack of accountability. Many mandates tend to be unfunded--thereby costly--and are based on technological or specified approaches, rather than goal-based approaches.

Congress must share this blame with regulatory agencies. The Advisory Commission on Intergovernmental Relations has noted, "In some specific instances, the congressional response to frustrating delays and ineffective implementation has been to make regulatory statutes extremely specific and rigid."

A case in point: the Safe Drinking Water Act

One federal mandate in particular demonstrates many of the problems localities face in complying with mandates. The Safe Drinking Water Act (SDWA) of 1974 requires public water systems to monitor for certain contaminants and, when found, treat the water so that the contaminant is reduced below a certain maximum contaminant level. States were required to enforce this program. In 1986, Congress amended the SDWA because of the perception that the EPA had been slow in enforcing the law. Among the amendments, Congress set deadlines for regulating 82 contaminants and strengthened the monitoring and compliance requirements. All public water systems--from one serving 20 hook-ups to one serving New York City--must meet the same standards.

One problem with the law is the cost of the program. The cost of monitoring and treatment is much higher per hook-up in a small system than in a community with many hook-ups, because costs in large systems are spread over more customers. The EPA has estimated that **annual costs per household for certain water treatments can reach $1600 in a small system,** while the same treatments in a large system would annually be about $50 per household.

Perhaps even worse is that **a small system with perfectly good water quality might not even be able to afford the monitoring requirements mandated to prove that it has clean and safe water.** The perverse result is that the water system goes bankrupt, and the persons formerly served by the system dig individual wells for their own use, which are not subject to regulation. In some instances, then, the SDWA has the ironic impact of **not allowing people to drink safe water and actually forcing them to resort to completely unregulated sources of water (wells), which have greater risk of contamination.**

The monitoring requirements of the SDWA could be made rational and reasonable; in fact, the law includes provisions to do so. States do have the authority to grant waivers to water systems from monitoring for chemicals that have never been used, manufactured, stored, transported, or disposed of in the state or the area of the water system. Unfortunately, the program is voluntary for the state, and most states have not had the resources to develop a program and the criteria for granting waivers. Only five states have submitted plans for a sampling waiver program to EPA.

Consequently, localities face surreal monitoring requirements. For instance, one of the contaminants that must be monitored is a pesticide used only on pineapples. It has no other use. Since pineapples are only grown in one of the 50 states, the other 49 shouldn't be expected to monitor for it, but they are. In a similar instance, a North Dakota water supplier will reportedly have to spend $6,000 annually to monitor for 36 pesticides that have never been used on farmlands in the northern Great Plains. In the absence of a state waiver plan, water systems must pay to monitor for contaminants that common sense would indicate are not present.

This SDWA example embodies all of the characteristics for which top-down federal regulations are so often criticized. **Costly**: Drives costs up to $1,600 per household annually. **Inefficient**: Requires all states to monitor for a pesticide used only in one. **Ineffective**: Forces a water system to shut down because it cannot afford to meet monitoring costs to prove that its safe water is indeed safe, and forces people to resort to unregulated and less safe sources of water. And who does the operator of a small water system think is accountable for these policies: a member of congress or the state's drinking water authority, which is telling the system operator what he or she has to do?

An Rx for grassroots governments

What must the federal government do to help small communities meet public policy goals in a rational fashion? Two things need to be done. **Small communities should be brought actively into the policy development process, and they must also be given a fair opportunity to comply with federal programs**. Maintaining the *status quo* will increasingly result in small communities not complying with mandates because of lack of funds, or spending limited resources defending themselves against enforcement actions. Small localities have the right not to evolve into second class communities--without safe drinking water, rights for disabled citizens, clean lakes and streams, safe working conditions--because federal policy is developed in such a fashion that they cannot possibly comply.

The federal government already has the tools to bring small communities actively into the policy development process. As mentioned above, the Regulatory Flexibility Act contains requirements for bringing small communities into the policy process. Unfortunately, most government agencies either do not understand the act or are unaware of how small local governments operate.

The extent to which a program reaches out to, and is utilized by, a small local government, is largely determined by how proactive Congress and the federal agencies make the programs. Some approaches for making programs more inclusive of small governments follow:

- **The Regulatory Flexibility Act should be amended to make it more effective**. The major focus of the act is to require the federal government to analyze the impact of their regulations on "small entities," to explore alternative compliance mechanisms and to involve actively small entities in the development and review of regulations. "Small entities" means small businesses and local governments under 50,000 population. Currently, the vast majority of federal agencies are ignoring the intent of the legislation and are availing themselves of a provision which allows them to exempt themselves from the act's requirements by certifying that the act has no significant impact on small entities. Even then, the vast majority of agencies are doing no analysis of the economic impact of their regulations on small entities; they merely assert the lack of impact.

The act could be made more effective by enlisting the support of the White House to bring its considerable influence to bear on agencies so that they will follow the spirit of the law. The act could also be amended legislatively to give it some means of forcing agencies to comply. One often-mentioned approach would be to allow judicial review of an agency's certification that its regulations have no significant impact on small entities. The threat of a costly judicial challenge would provide the incentive to consider more closely a rule's impact.

- **Federal agencies administering programs having an impact on small communities should include small communities in the development of those rules.** This sounds obvious, but it is rarely done. The traditional federal rulemaking process with its short comment period does not allow most small communities to participate, given the time it takes to learn of a rulemaking, digest the proposed rules, develop comments and send them to the administering agency. Agencies should: modify their rulemaking process to reduce the cost and difficulty to small governments of participating in a rulemaking; conduct regional hearings; and publish notification of rulemakings in newsletters of state and national associations which represent small local governments, or attempt to notify them directly.

- Once rules have been finalized, **federal agency personnel within the states should be made available to assist small governments** in answering their questions about the program or the application process. Agency personnel in state offices should also work with statewide associations representing small governments to announce the availability of the program and to provide technical assistance.

- Within the amounts authorized to implement a program, **Congress should set aside program funds specifically for small governments**, so that they can compete for funds among themselves, rather than with large urban areas. A community of 2,500 does not have the resources to compete for federal funds with a community of 500,000.

- **Congress should provide modest funding to organizations that assist local governments in applying for and administering grants.** Even if funds are available for small communities, community leaders may not be aware of the program and may need assistance in applying for and administering grants. Generally, entities such as designated economic development districts, local development districts under the Appalachian Regional Commission, councils of governments and engineering firms work with small governments to make them aware of programs and to assist them in applying for and administering grants. However, engineering firms are motivated by profit, and sub-state regional organizations such as development districts themselves have very limited resources and staff in most rural areas. They should be rewarded for the considerable time they must devote to developing and administering a successful application.

- **States should play an active role in technical assistance to small local governments.** Many federal program funds are routed through a particular state office for distribution to the local level. As one would expect, the level of state technical assistance to local governments varies. Technical assistance ranges from state offices which merely send forms to local governments interested in applying for funds from a particular federal program, to states in which an individual would be assigned to walk an applicant through the entire application process. The two approaches result in a remarkable difference in participation by small communities. States should provide adequate technical assistance to their small communities, and the federal government should compensate them by allowing them to deduct adequate funds from programs for administrative expenses.

- **Congress should refrain from legislating strict and inflexible standards that must be met by communities of all sizes.**

The bottom line is that a federal policy that does not recognize the environment in which small communities must operate will not work. If the federal government continues to pass along unfunded mandates to states and localities, then it must include some degree of flexibility in how that mandate will be carried out by small communities--the overwhelming **majority** of all localities.

A policy framework based on unfunded mandates, with no local flexibility and no federal and state enforcement, will not work in small communities. Local governments, when confronted with a costly and impossible mandate, limited federal and state enforcement and tough budget decisions, will have little choice but to run the obvious risk. It is unrealistic to expect otherwise, and unfair to expect compliance. The result could be disastrous for the health and safety of small town citizens and their environment. Ultimately, small communities fall that much further behind larger urban areas in terms of quality of life and economic viability. Federal policy will thus have the effect of turning the nation's small communities into second class communities.

The National Association of Towns and Townships works to assist federal policymakers in understanding the unique needs of small local governments and how to structure federal initiatives so they are workable at the local level. If you would like additional information on matters affecting small governments, please contact Tom Halicki of the NATaT staff at (202) 737-5200.

TO BE DELIVERED WEDNESDAY JANUARY 20

Municipality of Anchorage

P.O. BOX 196650
ANCHORAGE. ALASKA 99519-6650
TELEPHONE: (907) 343-4431
FAX: (907) 272-1991

Tom Fink. Mayor

OFFICE OF THE MAYOR

January 20, 1993

The President
The White House

Dear Mr. President:

I am transmitting to you the enclosed letter on behalf of the 114 mayors from across the United States who have signed it.

The mayors' letter and its accompanying report warn of a looming fiscal crisis for local governments in trying to pay for a seeming endless stream of federal (and state) environmental requirements. It urges reexamination of the view that "We just can't spend too much on the environment." Further, it urges efforts to set priorities and provide means for balancing environmental fiscal requirements with other pressing community needs such as schools, police and fire protection and infrastructure.

While the letter and report are addressed primarily to Congress, we recognize that the Executive Branch plays an extremely important role in interpreting congressional intent, implementing laws passed by Congress, and in recommending and commenting on new legislation. In particular, the agencies and the Administration develop cost estimates and risk assessments used as a basis for both legislation and implementing regulations. Both types of estimates should be as accurate as possible; but the report suggests that, in reality, costs may often by underestimated while risks may be overestimated.

The report suggests that there is especially a need to make environmental risk analysis more scientifically objective, understandable, and credible so that it can be used to set rational priorities and reasonable standards. Several efforts in that direction were begun under the previous Administration, including efforts to develop a Presidential Executive order on risk analysis. We hope and recommend that you and the agencies will now move even more aggressively in that direction.

The mayors who have signed the enclosed letter are not anti-environmental. We believe that we must all face up to fiscal realities at the local as well as the federal level if we are to safeguard the future of our cities and towns.

This is an interagency problem that urgently requires White House oversight. We respectfully request an opportunity for a representative group of mayors to meet with you or a senior White House official who can work with us to design a process for advancing specific measures to solve the problem.

Respectfully,

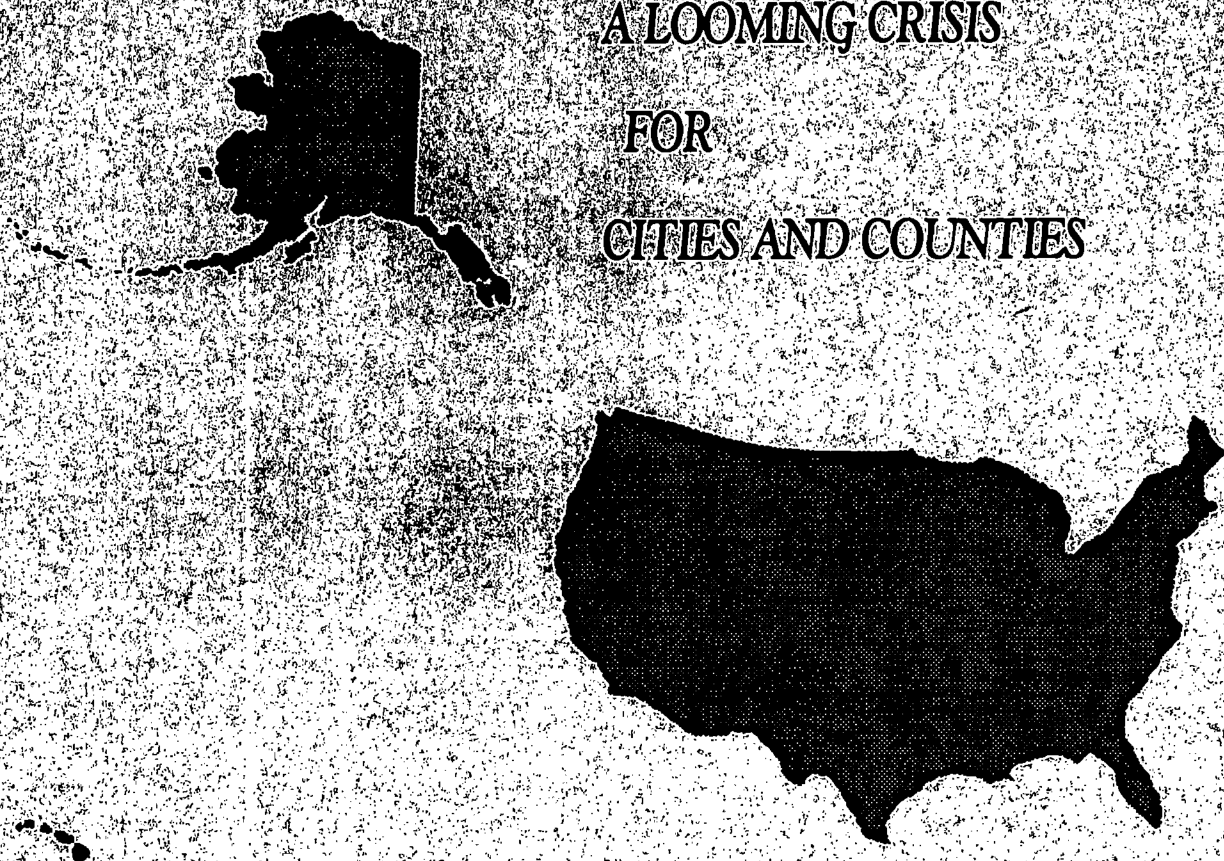
Tom Fink

Tom Fink
Mayor

Enclosures

PAYING FOR FEDERAL ENVIRONMENTAL MANDATES:

A LOOMING CRISIS FOR CITIES AND COUNTIES



Compiled for the United States Congress by

Municipality of Anchorage
Anchorage, Alaska

Tom Fink, Mayor

September, 1992

For release
January, 1993

THE CUMULATIVE IMPACT OF ENVIRONMENTAL REGULATIONS

1. PREFACE

THE GOVERNORS SHARE THE COMMITMENT OF THE AMERICAN PEOPLE TO ENVIRONMENTAL PROTECTION. YET THE GOVERNORS ALSO REALIZE THAT WE DO NOT PROTECT THE ENVIRONMENT BY THE PROMULGATION OF RULES ALONE. SOMEONE MUST CARRY OUT THE RULES AND THAT "SOMEONE" OFTEN IS STATE AND LOCAL GOVERNMENT. THE GOVERNORS ARE CONVINCED THAT THE FUTURE SUCCESS OF ENVIRONMENTAL PROTECTION AND REMEDIATION DEPENDS ON CONSISTENT ATTENTION TO STATE AND LOCAL CAPACITY.

UNDERFUNDED AND INFLEXIBLE ENVIRONMENTAL REGULATIONS OFTEN EXCEED THE FINANCIAL AND TECHNICAL CAPABILITIES OF THE GOVERNING AGENCIES THAT MUST IMPLEMENT THEM. WHILE THIS IS PARTICULARLY TRUE IN SMALL TOWNS AND RURAL AMERICA, IT IS BECOMING INCREASINGLY CLEAR THAT LARGE MUNICIPALITIES ALSO SHARE THESE PROBLEMS.

RESOURCES ARE FINITE, BUT CURRENT REGULATORY PRACTICES – WHICH MAY NOT INCLUDE THE FLEXIBILITY TO ADAPT TO DISTINCTIVE, SPECIFIC CHARACTERISTICS OF INDIVIDUAL AREAS – OFTEN PRECLUDE THE INTELLIGENT APPLICATION OF RESOURCES TO PROBLEMS.

2. SOLUTIONS

THE GOVERNORS RECOGNIZE THAT ENVIRONMENTAL PROTECTION WILL NOT SUCCEED UNLESS REGULATIONS ARE WORKABLE IN A MAJORITY OF COMMUNITIES. THE GOVERNORS SUGGEST THAT ADHERENCE TO THE FOLLOWING FOUR PRINCIPLES WOULD IMPROVE ENVIRONMENTAL COMPLIANCE NATIONWIDE, PARTICULARLY IN SMALL TOWNS AND RURAL AREAS.

2.1 **RISK-BASED ENVIRONMENTAL REGULATION.** AS RECOMMENDED BY THE SCIENCE ADVISORY BOARD OF THE ENVIRONMENTAL PROTECTION AGENCY (EPA), EPA SHOULD SET RISK-BASED PRIORITIES FOR ENVIRONMENTAL PROTECTION. EPA SHOULD TARGET ITS EFFORTS TO REDUCING THE MOST SERIOUS REMAINING RISKS TO THE ENVIRONMENT AND PUBLIC HEALTH. RISK IDENTIFICATION AND RESULTING ENVIRONMENTAL REGULATION SHOULD BE THE PRODUCT OF SCIENTIFIC STUDY.

2.2 STATE AND LOCAL IMPLEMENTATION FLEXIBILITY. TOO OFTEN ENVIRONMENTAL RULES ARE WRITTEN TO A 'ONE-SIZE-FITS-ALL' STANDARD THAT DOES NOT ACCOUNT FOR REGIONAL VARIATION. INFLEXIBLE STANDARDS CAN LEAD TO INADEQUATE PROTECTION AND WASTED RESOURCES. THE GOVERNORS BELIEVE THE FOLLOWING.

- RULES SHOULD ACCOUNT FOR REGIONAL RESOURCE VARIATION, AND STATES AND LOCALITIES SHOULD HAVE THE FLEXIBILITY TO TAILOR IMPLEMENTATION TO LOCAL OR REGIONAL RESOURCE NEEDS. FOR EXAMPLE, THE GOVERNORS COMMEND THE RECENT PROPOSAL TO DISTINGUISH BETWEEN ARID AND HUMID ENVIRONMENTS IN ESTABLISHING STANDARDS FOR MUNICIPAL WASTE LANDFILLS. SUCH FLEXIBILITY SHOULD BE ALLOWED WHENEVER POSSIBLE IN OTHER PROGRAMS.

- STATE AND LOCAL GOVERNMENTS MUST HAVE THE AUTHORITY TO PRIORITIZE ENVIRONMENTAL PROBLEMS AND ALLOCATE RESOURCES ON A "WORST-FIRST" BASIS.

- STATES SHOULD HAVE THE AUTHORITY TO SHIFT EPA-ADMINISTERED GRANT FUNDS AMONG PROGRAMS TO TARGET LOCAL PRIORITIES. FOR EXAMPLE, WESTERN STATES THAT RELY HEAVILY ON GROUNDWATER FOR DRINKING SUPPLIES BUT HAVE VERY LIMITED AIR QUALITY PROBLEMS MIGHT TRANSFER FUNDS FROM AIR PROGRAMS TO WATER PROGRAMS.

2.3 ASSESSMENT OF CUMULATIVE IMPACTS. EACH ENVIRONMENTAL REGULATION APPEARS TO BE DEVELOPED INDEPENDENT OF OTHER REGULATIONS WITHOUT CONSIDERATION OF THE CUMULATIVE REGULATORY IMPACT.

THE GOVERNORS URGE EPA TO INSTITUTE MORE INTEGRATION IN RULES DEVELOPMENT ACROSS PROGRAM AREAS. EPA SHOULD CONSIDER THE TIMING OF THE ISSUANCE OF RULES SO THAT COMMUNITIES CAN ADJUST TO ONE NEW REQUIREMENT AT A TIME, AND IT SHOULD CONSIDER THE CUMULATIVE IMPACT OF ALL RULES ON STATE AND LOCAL FINANCIAL AND TECHNICAL CAPACITY.

2.4 FUNDING OF ALL FEDERAL MANDATES. INCREASINGLY, ENVIRONMENTAL MANDATES ARE UNDERFUNDED. THE GOVERNORS STRESS THAT ESPECIALLY IN AN ERA OF TIGHT STATE BUDGETS, WHEN ENVIRONMENTAL INITIATIVES MUST COMPETE WITH A HOST OF OTHER FEDERALLY MANDATED SOCIAL PROGRAMS,

CONGRESS MUST ACCOMPANY ANY ENVIRONMENTAL MANDATES WITH THE FUNDS NECESSARY TO CARRY THEM OUT.

IN ADDITION, THE GOVERNORS URGE EPA TO EXPAND EDUCATION AND TRAINING PROGRAMS FOR STATE AND LOCAL GOVERNMENT OFFICIALS; EXPAND TECHNICAL ASSISTANCE; AND ASSIST IN TRANSFERRING ENVIRONMENTAL TECHNOLOGY FROM FEDERAL AGENCIES -- PARTICULARLY NATIONAL LABORATORIES -- TO STATE AND LOCAL GOVERNMENTS.

3. **RESPONSE OF THE ENVIRONMENTAL PROTECTION AGENCY AND CONGRESS TO STATE AND LOCAL CAPACITY ISSUES**

THE GOVERNORS COMMEND EPA'S ONGOING EFFORTS TO ADDRESS STATE AND LOCAL CAPACITY PROBLEMS, AND URGE EPA TO PROVIDE FOR MAXIMUM PARTICIPATION BY STATE AND LOCAL GOVERNMENTS IN THE DEVELOPMENT OF ENVIRONMENTAL RULES. THE ADMINISTRATIVE PROCEDURES ACT AND THE FEDERAL ADVISORY COMMITTEE ACT, AS WELL AS OTHER RELEVANT STATUTES, SHOULD BE AMENDED TO ALLOW STATES TO PARTICIPATE AS PARTNERS IN EPA RULEMAKING FOR PROGRAMS THAT STATES WILL ADMINISTER UNDER A DELEGATION OF AUTHORITY.

CONGRESS ALSO IS BEGINNING TO RECOGNIZE THE SEVERITY OF STATE AND LOCAL CAPACITY PROBLEMS, PARTICULARLY WITH REGARD TO SMALL COMMUNITIES. THE GOVERNORS STRONGLY SUPPORT THE PROVISIONS OF THE FEDERAL FACILITY COMPLIANCE ACT OF 1992 THAT ARE DESIGNED TO HELP TOWNS WITH A POPULATION OF LESS THAN 2,500 MEET ENVIRONMENTAL REQUIREMENTS.

Time limited (effective February 1993-February 1995).

RESOLUTION #93-14

RISK ASSESSMENT

WHEREAS, the nation's cities and towns support national initiatives to enhance and protect our environment; and

WHEREAS, concerns about the federal deficit have diminished, reduced and in many instances eliminated, federal financial participation in attaining national environmental goals; and

WHEREAS, in a climate of reduced fiscal resources at all levels of government, the federal government has made no attempt to prioritize the nation's environmental objectives and goals; and

WHEREAS, states and local governments and their tax and rate payers are consequently saddled with the full burden for financing national environmental objectives irrespective of their relevance in the affected jurisdiction(s);

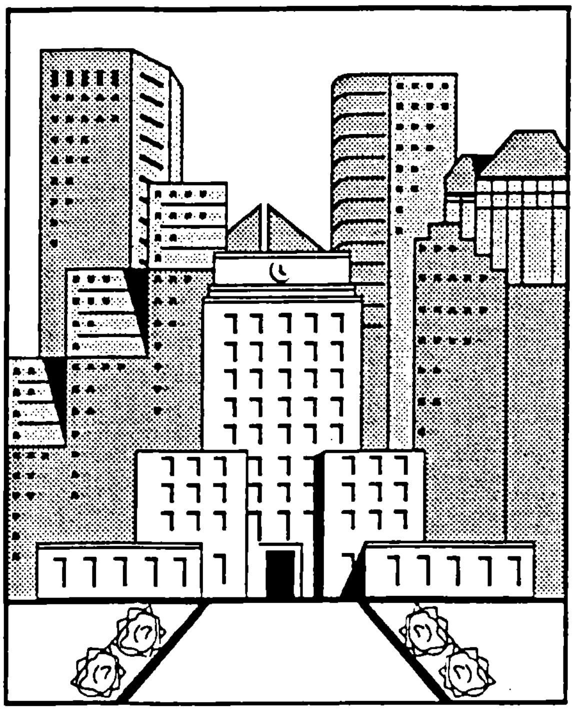
NOW, THEREFORE, BE IT RESOLVED by the National League of Cities, that both Congress and the Administration review, evaluate and calculate the total burden unfunded federal mandates place on states and local governments and local tax and rate payers; and

BE IT FURTHER RESOLVED that Congress and the Administration authorize and fund significant efforts to assess real and scientifically verifiable risk prior to requiring any action; and

BE IT FURTHER RESOLVED that Congress and the Administration develop guidelines based on the results of scientifically verifiable risk assessment which would authorize regional authorities, states and local governments to prioritize the implementation of national environmental mandates based on actual regional, state and/or local environmental problems.

Adopted at National League of Cities Annual Business Meeting, December 1, 1992, 69th Annual Congress of Cities and Exposition, New Orleans, Louisiana

HOUSTON



60TH U.S. CONFERENCE

OF

MAYORS

Official Policy Resolutions

Adopted at the 60th Annual Conference of Mayors

Houston, Texas

June 19 - 24, 1992

Neglect, to conduct hearings and prepare a report with recommendations to address the myriad of issues pertaining to urban distress; and

BE IT FURTHER RESOLVED, that this Commission consist of prominent individuals from business, labor, education, clergy and community-based organizations, among others; and

BE IT FURTHER RESOLVED, that this Commission be chaired (or co-chaired) by a mayor.

UNFUNDED FEDERAL MANDATES

WHEREAS, Congress frequently enacts legislation for various purposes which requires cities, counties, and states to spend thousands and millions of dollars; and

WHEREAS, Congress invariably fails to provide funding for these additional state and local expenditures; and

WHEREAS, the effect of these unfunded federal mandates is to divert existing tax revenue away from priorities set by city council and other legislative bodies to priorities set by the United States Congress or a local tax increase is required without those responsible for it having to take responsibility; and

WHEREAS, the aforementioned burdens, costs, failures to fund and detrimental effects of unfunded federal mandates extend also to unfunded federal mandates imposed or proposed by the Environmental Protection Agency,

NOW, THEREFORE, BE IT RESOLVED, by The U.S. Conference of Mayors, that the Congress and the President are urged either to halt the practice of enacting unfunded federal mandates or to provide federal funding for mandates in the future which it enacts; and

BE IT FURTHER RESOLVED, that The U.S. Conference of Mayors' staff should compile a list of all current unfunded federal mandates and to submit it to the Advisory Board and Trustees for its review and study as well as to the appropriate members of Congress and the executive branch of the federal government; and

BE IT FURTHER RESOLVED, that The U.S. Conference of Mayors goes on record as suggesting to the National League of Cities, National Governors' Association, and the National Association of Counties that a joint effort be made to develop a common policy on this issue which adversely impacts all organizations and its members so that Congress will halt this practice.

BE IT FURTHER RESOLVED, that The U.S. Conference of Mayors' staff should compile a list of all current unfunded federal mandates promulgated by the Environmental Protection Agency, including, but not limited to, stormwater regulations, radon/water regulations, and water and sewer regulations which affect cities all across the country, and that such list should be submitted to the Advisory Board and Trustees for its review and study as well as to the appropriate members of Congress and the executive branch of the federal government.

CITY OF PHILADELPHIA

OFFICE OF THE MAYOR
ROOM 215 CITY HALL
PHILADELPHIA, PENNSYLVANIA 19107-3295
(215) 686-2181
FAX (215) 686-2170

EDWARD G. RENDELL
MAYOR

December 29, 1992

Mr. Thomas Cochran
Executive Director
U.S. Conference of Mayors
1620 "I" Street, NW, 4th Fl.
Washington, DC 20006

Mr. Donald Borut
Executive Director
National League of Cities
1301 Pennsylvania Ave.
Washington, DC 20004

Mr. Larry Naake
Executive Director
National Association of Counties
440 First Street, NW, 8th Fl.
Washington, DC 20001

Dear Messrs. Cochran, Borut, and Naake:

As we anticipate the inauguration of a new administration in Washington, and with it a renewed realization of the importance of local governments, I write about a matter of extreme importance to virtually all municipalities and counties -- that of underfunded federal mandates. As each of you know it is becoming increasingly difficult for all sub-national jurisdictions to comply with the often praiseworthy policy goals of the federal government that have all too frequently been imposed with little or no apparent recognition that real people must pay real dollars for their implementation.

I would like to inform you about two problems areas for Philadelphia, and, I strongly suspect, virtually all local governments as well. The first deals with implementation of the Clean Water Act and the Safe Drinking Water Act. Both were originally passed in the 1970's and have been amended and expanded since then.

Some areas of the laws have already affected Philadelphia: For example, the $850 million upgrade of the City's wastewater treatment system is a direct result of Clean Water Act mandates as enforced by the Environmental Protection Agency (EPA) and the Pennsylvania Department of Environmental Resources (DER). In addition, the construction of the City's $90 million Sludge Processing and Distribution Center is a direct result of federal orders to stop ocean dumping of sewage sludge. To comply with state requirements growing out of the federal law, the City has had to post tens of thousands of dollars in bonds at sludge revegetation and farmland application sites (despite our self-insured status) and has invested hundreds of thousands of dollars in public involvement efforts surrounding sludge. The City has also had to pay millions of dollars in cumulative miscellaneous costs of compliance ranging from production and advertisement of availability of a brochure on drinking water quality to mandatory placarding of city long-haul sludge vehicles (identifying them as transporting municipal waste from Philadelphia).

However, the dramatic expansion of water and wastewater environmental legislation in the late 1980's and the lag in promulgation of implementing regulations means that many requirements are just beginning to hit us. For example, the current public notification effort on lead in drinking water is a requirement of the 1986 Safe Drinking Water Act, which took over five years to become effective. Likewise, we are in the monitoring and testing phase of efforts to comply with the new action level for lead in drinking water mandated by the 1986 Safe Drinking Water Act Amendments.

Following are summaries of major upcoming environmental regulations and their impact on Philadelphia:

Wastewater Discharge Permit Renewal

The City's National Pollution Discharge Elimination System permits required under the Clean Water Act, which allow wastewater discharges into the Delaware River, are currently in the renewal process. We have received draft five-year permits which would require increased monitoring of combined sewer overflows, toxicity testing of the plants' effluent, and expanded sampling protocol, and efforts to reduce chlorine in the effluent. (Chlorine is added to disinfect the effluent, but is harmful to biota in the receiving waters.)

The permits are likely to go into effect this calendar year or early 1994, and will likely require $17 million in capital costs and $1.1 million in annual operating costs over the next four years. Of most serious concern to the City is the possibility that required biomonitoring of the plant effluent - in which it is determined whether small aquatic organisms can survive in treated wastewater - will trigger a toxics reduction inventory, which could significantly increase costs.

Stormwater Management

The 1987 amendments to the Clean Water Act dramatically expanded requirements to reduce stormwater pollution of waterways. The City is required to prepare a plan to reduce pollutants in stormwater runoff (everything from used oil dumped in drains to dog feces), detect and prevent illegal storm sewer connections (potentially a large liability for the City), and to reduce or eliminate runoff from construction and hazardous waste sites. The City estimates costs as high as $32 million over five years, depending on the final requirements of the regulations.

Improved Monitoring and Control of Combined Sewer Overflow (CSOs)

The 1987 amendments also required increased control of CSOs, which allow diversions of untreated waste to the river during large storms when the City's treatment plants cannot handle the surcharge of stormwater in addition to the regular sanitary flows. Depending on the final version of the regulations, the City could face up to $34.9 million in capital costs to expand its network of monitoring and control regulators form 8 to 170 sites to allow remote controlled storage of combined sewer system when it rains. Some have argued that combined sewer systems should be phased out and replaced with separate stormwater collectors, but this is unlikely to happen because of price tags in the hundreds of millions for older cities like ours (where most of the business district is served by combined sewers).

Control of Air Emissions from Wastewater Treatment Plants

The 1990 Clean Air Act amendments require mitigation of annual emissions of over 10 tons of volatile organic compounds from all stationary sources. Our wastewater treatment plants easily exceed this limit. While Clean Air Act regulations are not finalized, it seems likely that they will require construction of some sort of cover for the sedimentation tanks at the wastewater plants, as well as installations of scrubber systems and disposal of contaminated scrubber media in landfills. Costs are speculative at this point, but will run into the tens of millions.

Lead and Copper Rule

Regulations under the 1986 Safe Drinking Water Act amendments have required extensive testing and engineering to minimize corrosivity of our water to reduce leaching of lead into drinking water. The regulatory requirements for corrosion control and mandatory public education will result in about $600,000 in additional operating costs within the next few years. However, if the City is required to replace all of its lead water service lines (EPA's current position and a reasonable possibility under the regulations), an additional cost of $125 million over the 15 year period beginning in FY98 would be incurred.

Disinfection By-Products (DBPs)

Another rule from the Safe Drinking Water Act seeks to reduce potential harmful effects of the use of chlorine to disinfect drinking water. A regulation is not likely before 19995, but at that time we forecast a possible requirement to install ozone treatment at our drinking water plants at a capital cost of $25 million in 1990 dollars. (Operating costs would be significant, but would depend largely on prevailing electric rates.) A much less likely scenario, under which we would be required to install ozone and granular activated carbon treatment, would cost $200 million in capital in 1990 dollars.

Tertiary Treatment

In 1986 the Delaware River Basin Commission (DRBC) began a federally-mandated Use Attainability Assessment (UAA) of the Delaware Estuary. The study was designed to assess the potential to upgrade water quality standards of the Delaware River to meet the Clean Water Act's "fishable and swimmable" goals.

The UAA, which used water quality data from 1985 and 1986, was released in 1989 and concluded that the "swimmable" goal could not be achieved until regulations controlling combined sewer overflows are adopted. However, the UAA also concluded that the "fishable" goal could be met in the Philadelphia area by maintaining dissolved oxygen levels in the river of 4 milligrams/liter (mg/l) or above. According to the UAA, such a standard could only be achieved if Philadelphia, Camden and other large municipal discharges upgraded to tertiary wastewater treatment.

The UAA presented unreasonably low estimates of the cost to municipalities of moving to tertiary treatment -- $41 million in capital investment and $3 million in annual operating expenses. (In contrast, the capital costs of upgrading from primary to secondary treatment in Philadelphia were about $85 million.) The Philadelphia Water Department estimates that the tertiary upgrade would cost $250 - $500 million in capital, as much or more than the upgrade to secondary, since $550 million of the $850 million for that project came from federal grants.

The other problem area that I wish to focus on is the *<u>Americans with Disability Act</u>* *(ADA). Among its provisions, the ADA requires that curb ramps be provided for pedestrians at newly constructed or altered streets. The City of Philadelphia has become the first municipality in the nation to be sued regarding provision of curb ramps.*

As a result of the suit, and the City of Philadelphia's efforts to comply with the ADA, a major problem has arisen which requires clarification through legislation or promulgation of new regulations: Both the statute and legislative history are silent and provide no guidance regarding whether "resurfacing contracts" are subject to the reconstruction and street alteration requirement of the ADA (Section 35.150)

The present lawsuit concerns whether the resurfacing of streets implicates the same requirements as new construction and alteration. According to the U.S. Department of Justice, the determining factor is the amount of the work and the nature of work being conducted on the street surface. However, the statute and regulations contain no clear definition of what is a "street alteration".

Under the worst case interpretation of the language for the City, we would have to create approximately 80,000 curb ramps before 1995 at a cost of $141 million - three times our typical annual total capital budget of $40 - $50 million in recent years.

In closing, I want to be very clear that I am in no way criticizing the laudatory goals of the ADA and federal environmental laws. However, the crushing financial impact of these and other federal mandates present enormous burdens on local governments throughout this nation. Local government simply does not have the capacity to generate sufficient revenue to satisfactorily meet the required mandates. Collectively we must mobilize our efforts to make clear to the new administration and the new Congress that the spiralling trend of new mandates absent commensurate funding may ultimately serve as the death knell for the fiscal stability of local governments. I am confident that President-elect Clinton, as a former governor who knows all too well the problems caused by unfunded mandates, will be receptive to our message. I also believe from the meeting the Mayors had with Senators this past June that the Congress also understands this problem. I will be happy to work with each of you on getting this important message out.

Sincerely,

EDWARD G. RENDELL
MAYOR

EGR:MG:ldm1219

3/30/93

General Principles for Resolving the Unfunded Environmental Mandates Problem

A loose consensus has developed among State and local officials that they should push for adoption and implementation of principles that can be summarized as follows:

1. Sound science: Regulatory standards should be based on sound, objective, peer-reviewed science. not on "assumptions", extreme views, "conservative" or "worst-case" modeling, or "upper confidence limit" statistical analyses.

2. National priorities: Everything cannot be done at once; and even if requirements are phased-in they still might not be affordable. The federal government will therefore need to decide, on the basis of comparative risk assessment, what deserves the most attention, what will bring the most benefits per dollar expended for efficient use of local tax dollars. The risk assessments used to set priorities must meet the "sound science" criteria summarized above, which will require reforms.

3. Local flexibility: Individual cities, towns, and counties have their own unique needs which should be taken into consideration. For example, a town may need to replace rusting drinking water pipes, but cannot afford to do so if it spends several million dollars upgrading its sewage plant immediately (to obtain very minimal additional benefits) as required by federal mandates. Should not the town have the flexibility to adjust mandates so that it can replace its pipes first and postpone improvements to the sewage plant?

4. Federal funding: In general, cities and towns are opposing additional mandates until existing mandates have been fully implemented and the benefits have been assessed; however, if Congress does impose additional mandates, mayors want federal funding for new federal mandates. While many want one hundred percent federal funding, some members of Congress have indicated willingness to support a fifty percent federal contribution. In connection with this principle, many also want Congress to conduct a formal appraisal of the costs of any proposed new mandates before they are voted on.

5. Intergovernmental consultation: State and local government officials should be actively consulted regarding new environmental legislation and regulations when they are still in the drafting stage.