



May 15, 2017

Ms. Sarah Rees
Director
Office of Regulatory Policy and Management
Office of Policy
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue NW
Washington, DC 20460

RE: Docket ID EPA-HQ-OA-2017-0190 - Evaluation of Existing Regulations

Dear Ms. Rees,

On behalf of the nation's mayors, cities, counties and regions, we thank you for the opportunity to provide comments on the U.S. Environmental Protection Agency's (EPA) implementation of President Trump's Executive Order 13777 on Enforcing the Regulatory Reform Agenda. Thanks you for considering the local government perspective on regulations that may be appropriate for repeal, replacement or modification.

Our organizations collectively represent the nation's 19,000 cities and mayors and 3,069 counties. Our members are charged with protecting the environment and protecting public safety. As co-regulators, we play a vital role in implementing among others, the Clean Water Act (CWA), the Safe Drinking Water Act (SDWA), and Clean Air Act (CAA) and our members take these responsibilities seriously. We look forward working with both the federal and state governments to achieve our mutual goals of clean water and clean air, which are the backbones of a modern society.

The nation's water infrastructure systems are significant assets that protect public health, as well as the nation's precious water resources. To the extent that America's water and wastewater infrastructure is properly maintained and can adequately meet the needs of our communities, it will help ensure the long-term vitality of our communities. Additionally, local elected officials support the goals of the CAA and the National Ambient Air Quality

Standards (NAAQS) that protect public health and welfare from hazardous air pollutants. Local governments across the country are actively working toward meeting these goals of improving air quality.

As partners in protecting America's water resources and ensuring clean air, it is important that federal, state and local governments all work together to craft reasonable and practicable rules and regulations. As partners in the intergovernmental process, local governments should be at the table when rules are being crafted to provide an important perspective on ensuring that rules are effective, implementable, offer local flexibility, avoid a "one-size-fits-all" approach, and avoid an unfunded mandate.

Within the intergovernmental partnership, local governments are principally responsible for providing services, solving day-to-day public problems, and responding directly to the needs of citizens. Unfunded mandates impose additional disproportionate responsibilities on local governments and our citizens, and increased financial liability, without regard to the fiscal impact of those policies. As such, their impact on the division of power within the intergovernmental partnership ultimately moves us further from our foundational principles of federalism.

Today, local governments are at a crossroads. Local governments, our residents, and businesses must spend additional resources to comply with numerous environment and non-environmental federal and state unfunded mandates, which further limits the money available for our locally-determined priorities. Furthermore, it is important to note that the capacity of local government to respond to federal demands is limited due to our own and our citizen's limited financial resources.

With more opportunities for cities, counties and local elected officials to be a part of the rulemaking process, potential unfunded mandates and other regulatory burdens could be identified and eliminated at an early stage. While the federalism consultation process can be improved, it is an essential component of the intergovernmental process, and local elected officials value the opportunity to provide direct input into the rulemaking process before rules are even drafted. This early feedback and input helps the federal government develop rules that are effective, reasonable, and implementable at the local level. We continue to urge the federal government to listen to and consider the perspective of local governments early and often during the rulemaking process.

To that end, as described below and in the attached comment letters, we offer several suggestions for regulations that may be appropriate for repeal, replacement or modification, as well as potential forthcoming regulations where we have some concerns. Additionally, we offer suggestions strengthening a policy that in itself is designed to provide more local government flexibility in meeting requirements under the Clean Water Act.

In summary, we offer comments on the following items:

- Wastewater and Stormwater Mandates
 - Combined Sewer Overflows, Sanitary Sewer Overflows and Consent Decrees
 - Integrated Planning for Municipal Stormwater and Wastewater
 - Financial Capability Guidance - "Combined Sewer Overflows - Guidance for Financial Capability Assessment and Schedule Development" (Feb. 1997) and "Financial Capability Assessment Framework" (Nov. 2014)
 - Total Maximum Daily Loads (TMDL)

- National Pollution Discharge Elimination System (NPDES)
- Blending and Bypass (*Iowa League of Cities v. EPA*) - *See attached letter*
- Clean Water Rule/"Waters of the U.S." - *See attached letter*
- Lead and Copper Rule - *See attached letter*
- National Ambient Air Quality Standards for Ozone - *See attached letter*
- National Ambient Air Quality Standards for Particulate Matter - *See attached letter*
- Risk Management Program for Chemical Facilities - *See attached letter*
- PCB Light Ballasts in Schools and Daycares - *See attached letter*

Clean Water Act - Wastewater and Stormwater Mandates

Over the past several decades, the list of Clean Water Act (CWA) federal requirements and unfunded mandates for wastewater, stormwater management and water quality responsibilities have continued to grow for local governments.

Combined Sewer Overflows, Sanitary Sewer Overflows and Consent Decrees: In recent years, EPA has increasingly used CWA litigation or consent decrees to require communities to upgrade existing wastewater and stormwater infrastructure. These costs have far outpaced available funds and local governments struggle with funding mechanisms to keep water related upgrades affordable for residents. It also diverts scarce resources from other local priorities, including even more pressing environmental and public health needs.

To address this growing problem, we recommend that EPA:

- Reestablish the federal-state-local partnership, encourage the implementation of Integrated Planning (see below) and establish technically feasible goals in a cost effective/financially capable manner.
- Allow communities to use the permitting process (as opposed to consent decrees) to achieve clean water goals.
- Develop a Sanitary Sewer Overflow policy guidance that is technically feasible and affordable.

Integrated Planning for Municipal Stormwater and Wastewater: EPA worked with our three organizations to develop the concept of Integrated Planning (IP) and Financial Capability (FC) to allow communities to address their wastewater and stormwater needs in a more cost effective and comprehensive (non-silo) manner. Integrated Planning allows communities to develop comprehensive plans to address their most pressing public health and environmental priorities first. By moving towards a more comprehensive plan, we hope to achieve our CWA goals and requirements in a more sustainable manner. We recommend that the Integrated Planning framework be expanded to include Safe Drinking Water regulations as well.

Financial Capability Guidance - "Combined Sewer Overflows - Guidance for Financial Capability Assessment and Schedule Development" (Feb. 1997) and "Financial Capability Assessment Framework" (Nov. 2014) - Building off of the Integrated Planning framework, our organizations entered into an affordability dialogue with EPA to revise how the financial capability of a community is determined. While the Financial Capability framework allow for the consideration of additional residential and community indicators, it still relies on two percent of Median Household Income (MHI) as the primary indicator in determining affordability. This figure, however, often does not provide an

accurate indication of what citizens across the economic spectrum can afford and places an undue financial burden on low-, moderate-, and fixed-income citizens. Therefore, we recommend that EPA revise the 1997 and 2014 Financial Capability Guidances to eliminate the use of two percent MHI as a means of determining a community's financial capability.

Total Maximum Daily Loads (TMDL): Many communities are facing limits on the amount of pollutants (nitrogen, phosphorus, sediment, etc.) that drain into a water body. The cost for compliance for these communities is in the millions to billions of dollars. Although Integrated Planning can be part of the solution, we encourage EPA to reexamine the implementation of TMDLs in a more comprehensive and less financially-burdensome way.

National Pollution Discharge Elimination System (NPDES): Through Integrated Planning, EPA and the states can and should allow flexibility for local governments through the use of the NPDES permit program, rather than through consent decrees. This additional flexibility should include longer permit cycles, the ability to implement best practices, and to coordinate and prioritize projects.

In closing, working together with the federal government, we can craft laws, policies and rules that meet our mutual goals of protecting the health, safety and welfare of our citizens, while relieving the pressure of unfunded mandates and regulatory burdens on local governments. If you have any questions, please contact us: Judy Sheahan (USCM) at 202-861-6775 or jsheahan@usmayors.org; Carolyn Berndt (NLC) at 202-626-3101 or Berndt@nlc.org; Julie Ufner (NACo) at 202-942-4269 or jufner@naco.org; or Leslie Wollack (NARC) at 202-986-1032 or leslie@narc.org.

Sincerely,



Tom Cochran
CEO and Executive Director
The U.S. Conference of Mayors



Clarence E. Anthony
CEO and Executive Director
National League of Cities



Matthew D. Chase
Executive Director
National Association of Counties



Leslie Wollack
Executive Director
National Association of Regional Councils



November 26, 2013

The Honorable Gina McCarthy
Administrator
United States Environmental Protection Agency
1200 Pennsylvania Avenue, NW
Washington, DC 20460

RE: Need for Nationwide Consistency on Implementation of the 8th Circuit's Iowa League of Cities Decision

Dear Administrator McCarthy,

As you are aware, on March 25, 2013, the 8th Circuit Court of Appeals issued a ruling in *Iowa League of Cities v. EPA* (Docket No. 11-3412) that vacated, on procedural and substantive grounds, the unadopted legislative rules set forth in two U.S. Environmental Protection Agency (EPA) guidance letters. The decision addressed EPA's reinterpretation and enforcement of three key federal rules (bypass rule, Secondary Treatment rule and Water Quality-Based Permitting rule) that apply nationwide.

Specifically, the Court held that EPA's prohibition of bacteria mixing zones in primary contact recreation waters, regardless of the degree of possible health risks, unlawfully eliminated state discretion to utilize such mixing zones and, therefore, constituted a revised rule that did not go through the proper rulemaking procedures under the Administrative Procedure Act (APA). The Court also found that EPA's blending prohibition, which restricted how municipalities could design facilities to address peak flow processing (thereby reducing CSO and SSO discharges or system backups), exceeded the Agency's statutory authority under the Clean Water Act (CWA) and was inconsistent with both EPA's secondary treatment rule and bypass rule (711 F.3d 844 (8th Cir. 2013)).

We understand that even though this decision came down more than seven months ago and was never stayed, clarification requests regarding the implementation of this decision have gone unanswered and EPA has yet to withdraw its prior objections to NPDES permits based on these now vacated policies. We also understand based on recent public comments from EPA officials that the Agency believes the decision to have binding legal effect only in the 8th circuit and that it will be applied to permittees elsewhere in the country on a case-by-case basis. We would note that Congress expressly granted the circuit courts original jurisdiction to review the NPDES regulations at issue under Section 509 of the CWA to ensure nationwide uniformity and that EPA regulations provide for only one circuit to render an opinion on a petition for review. Consequently, we believe there is no legal basis to assert that the 8th Circuit decision does not apply nationwide.

In closing, the Agency's attempt to modify nationally applicable NPDES rules without undertaking a rulemaking was struck down in no uncertain terms. The issues in this case have been causing delay and confusion for municipal entities throughout the country in addressing wet weather compliance and have greatly increased local costs, unnecessarily. For example, even by its own estimates, the municipal cost implication of implementing just one of these rule interpretations was estimated by EPA to exceed \$150 billion nationwide, with similar extraordinary costs associated with the other provisions. It is time to put that confusion and conflict to rest. Accordingly, we respectfully request confirmation that EPA will apply the *Iowa League of Cities* decision uniformly across the country and so advise its Regions and delegated States.

Sincerely,



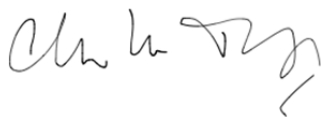
Tom Cochran
CEO and Executive Director
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Clarence E. Anthony
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National League of Cities



Matthew D. Chase
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Chuck Thompson
Executive Director and General Council
International Municipal Lawyers Association



Ken Kirk
Executive Director
National Association of Clean Water Agencies



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

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OFFICE OF WATER

Mr. Clarence E. Anthony
National League of Cities
1301 Pennsylvania Avenue
Washington, D.C. 20004

Dear Mr. Anthony:

Thank you for your November 26, 2013, letter to Administrator McCarthy. In your letter, you raised concerns about how the Environmental Protection Agency is responding to the decision in *Iowa League of Cities v. EPA* (711 F.3d 844 (8th Cir. 2013)). In addition, you indicated that you believe that there is no legal basis for EPA to assert that the decision does not apply nationwide and request that the EPA apply the *Iowa League of Cities* decision uniformly across the country.

In the *Iowa League of Cities* decision, the Eighth Circuit reviewed two EPA letters regarding two subjects under the Clean Water Act. The first area addressed in the decision was the EPA's policy view that bacteria mixing zones "should not be permitted" in waters designated for primary contact recreation. The second area addressed the issue of blending and the specific question of whether a facility that uses a physical/ chemical treatment process, such as ACTIFLO, to treat flows that are diverted around biological treatment units during wet weather events is subject to a "no feasible alternatives" demonstration under the bypass provision at 40 CFR 122.41(m). The court determined that the letters constituted legislative rules and vacated the letter's "rules" because they had been promulgated without following notice and comment procedures required under the Administrative Procedure Act.

While not necessary to its holding to vacate the letters as legislative rules, the court also stated that the EPA's statement in the blending letter "severely restricts the use of 'ACTIFLO systems that do not include a biological component' because the EPA does not 'consider[] [them] to be secondary treatment units' If a POTW designs a secondary treatment process that routes a portion of the incoming flow through a unit that uses non-biological technology disfavored by the EPA, then this will be viewed as a prohibited bypass, regardless of whether the end of pipe output ultimately meets the secondary treatment regulations." 711 F.3d at 876. The court stated that "the September 2011 letter applies effluent limitations to a facility's internal secondary treatment processes, rather than at the end of the pipe." *Id.* at 876. Finally the court stated that "the blending rule clearly exceeds the EPA's statutory authority and little would be gained by postponing a decision on the merits." *Id.* at 877.

The Eighth Circuit's decision applies as binding precedent in the Eighth Circuit. The court's decision, however, did not and could not have vacated the bypass regulation at 40 C.F.R. §122.41. The bypass regulation itself was promulgated in 1984 (94 Fed. Reg. 37,990 (Sept 26, 1984)) and was subject to the exclusive jurisdiction review provision of section 509(b) of the Clean Water Act after its date of

promulgation. That rule was reviewed and upheld by the U.S. Court of Appeals for the D.C. Circuit in *NRDC Inc. v. US EPA*, 822 F.2d 104, 126 (D.C. Cir. 1987). The D.C. Circuit found that "[t]he agency's adoption of a bypass regulation which incorporates two broad and sensible exceptions . . . is, in our view, reasonable and therefore lawful." The Eighth Circuit vacated only the letters at issue in the case.

The EPA shares with you a desire to protect human health and the environment while recognizing economic constraints and feasibility concerns. To that end, the EPA is planning to hold a forum with public health experts to ask questions about the public health implications of various bypass and blending scenarios during wet weather events. The EPA believes that this public health forum will provide valuable information on how to address discharges from POTWs that, during certain wet weather events, are diverted around biological treatment units. We expect to hold this workshop in the summer of 2014.

If you have any questions, please contact Andrew Sawyers, Director of the Office of Wastewater Management, at 202-564-0748.

Sincerely,

A handwritten signature in dark ink, appearing to read "Nancy K. Stoner", with a stylized flourish at the end.

Nancy K Stoner
Acting Assistant Administrator



May 30, 2014

Ms. Nancy Stoner
Acting Assistant Administrator
Office of Water
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue NW
Washington, DC 20460

Re: Implementation of the 8th Circuit Court of Appeals Ruling in *Iowa League of Cities v. EPA*
(Docket No. 11-3412)

Dear Ms. Stoner:

Thank you for your response to our November 26, 2013 letter to U.S. Environmental Protection Agency (EPA) Administrator Gina McCarthy on implementation of the 8th Circuit Court of Appeals ruling in *Iowa League of Cities v. EPA* (Docket No. 11-3412). The issues raised in the case are critically important to our member communities, and it is essential that they clearly understand the Clean Water Act (CWA) requirements that apply to their facilities. Our organizations were disappointed by your April 2 response and believe that the EPA has unnecessarily created regulatory uncertainty regarding the practice of peak flow blending that will impose significant burdens on the nation's communities. We request that you provide additional justification for the EPA's decision not to apply the *Iowa League of Cities* decision nationwide.

It is our position that EPA has made a policy choice to limit application of the 8th Circuit's decision – a choice we strongly disagree with and believe is legally unsupported. EPA's decision in this instance is not simply a legal exercise; it has real consequences for and will bring real harm to communities across the country. EPA's piecemeal approach to implementing the 8th Circuit's ruling will only lead to a patchwork of interpretations on peak flow blending that will lead to greater confusion and result in more costly burdens for the nation's communities. Further, the EPA's decision in this case is contrary to the importance of consistently applying solutions throughout all the regions, which Administrator McCarthy has discussed with us, despite the fact that this case presents no exception to that principle. Applying inconsistent regulatory requirements with regard to blending – applying one set of rules to one community but a different set to another – is at odds with the 8th Circuit's ruling and is unacceptable.

In recent years, EPA has increasingly acknowledged the burden its water-related regulations place on communities nationwide. EPA has made, and we have applauded, significant strides toward alleviating some of these pressures with the development of the *Integrated Municipal Stormwater and Wastewater Planning Approach Framework* in June 2012 and recent work on a new *Financial Capability Assessment Framework*. These frameworks are intended to provide local governments with more control over the CWA investments they must make and to sequence investments in a way that will protect the environment, at a pace that is fiscally sustainable for the community. It is essential, however, that the CWA mandates that drive these investments are rational and consistently applied to ensure that communities will have certainty over the long-term. The issue of blending continues to be an area that has suffered from inconsistency and uncertainty in the long-term. Now, with the 8th Circuit ruling, the issue of blending has again become a moving target. It simply does not make sense to have a policy on blending that will lead to utilities in neighboring states in the same EPA Region having to meet different requirements.

Additionally, your letter references an upcoming public health forum to “ask questions about the public health implications of various bypass and blending scenarios during wet weather events.” The question of public health impacts from peak flow treatment and blending is one that has been settled, with no evidence of an increased risk to public health following blending events.

Neither the bypass nor secondary treatment rules are “health-based.” Instead, the applicable pathogen-related requirements for municipal operations come from adopted water quality standards. Looking at the potential for health impacts associated with non-biological treatment scenarios during wet weather, *even when such treatment meets all applicable standards and permit limitations*, is contrary to the basic structure of the CWA. Examining public health impacts in the context of technology-based standards creates an entirely new compliance standard under the CWA and will have ramifications for all communities with treated combined sewer overflow discharges and for stormwater best management practices.

Given its potential outcomes, a number of our organizations plan to participate in the upcoming forum scheduled for June 19-20, and intend to submit reports and data to support the position that there is no increased public health risk. We are concerned that the outcome of the forum may lead to regulatory overreach, and therefore, we respectfully request clarification from EPA on the goals and desired outcomes of the forum.

In closing, we request that you provide additional justification for the decision not to apply the 8th Circuit decision on a national basis. Again, failure to do so creates an inconsistent and unpredictable regulatory environment for communities and clean water utilities across the country. We further request additional information on the intended goals and desired outcomes of the planned public health forum.

Nancy Stoner, Office of Water

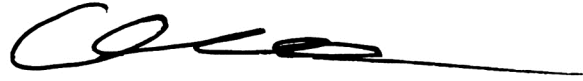
May 30, 2014

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Sincerely,



Tom Cochran
CEO and Executive Director
The U.S. Conference of Mayors



Clarence E. Anthony
Executive Director
National League of Cities



Matthew D. Chase
Executive Director
National Association of Counties



Ken Kirk
Executive Director
National Association of Clean Water Agencies

cc: Gina McCarthy, Administrator, EPA
Bob Perciasepe, Deputy Administrator, EPA
Andrew Sawyers, Office of Wastewater Management, EPA



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

JUN 18 2014

Mr. Clarence E. Anthony
National League of Cities
1301 Pennsylvania Avenue, NW
Washington, D.C. 20004

OFFICE OF WATER

JUN 19 2014

Dear Mr. Anthony:

Thank you for your May 30, 2014, letter in which you request the Environmental Protection Agency to supplement the Agency's April 2, 2014, letter to provide additional explanation for the way the Agency is applying the decision in *Iowa League of Cities v. EPA* (711 F.3d 844 (8th Cir. 2013)). I acknowledge that you disagree with my April 2, 2014, letter to you that articulated that the Eighth's Circuit decision applies as binding precedent in the Eighth Circuit. We hope that discussions at the June experts forum on the public health impacts of blending will provide valuable information on how to address discharges from publicly owned treatment works that, during certain wet weather events, are diverted around biological treatment units. In addition, you request clarification from the EPA on the goals and desired outcomes of the experts forum on the public health impacts of blending that is scheduled for June 19 and 20, 2014.

I would like to express my deep appreciation for your strong and continued support of sustainable policies and requirements for municipal wastewater infrastructure. The EPA shares your desire to protect human health and the environment while recognizing economic constraints and feasibility concerns. Thanks to your efforts and those of many others, the nation has come a long way in improving water quality, public health and the environment since Congress enacted the Clean Water Act over 40 years ago. Much of those gains are associated with the expansion and improvement of the nation's municipal wastewater infrastructure. We know that you and the other signatories to your letter agree with the EPA that a primary goal of sewage treatment is to protect public health. In fact, improved sewage treatment has been identified as one of the ten greatest advances in the protection of public health during the 20th century. We are all proud of that collective achievement.

The June 19 and 20, 2014 experts forum provides an excellent opportunity for all of us to further our commitment to working together for the benefit of the American public since it will focus on key issues of providing public health protection in a manner that is feasible from an engineering perspective. The EPA and the National League of Cities have a long history of working cooperatively on approaches to improving the public health protection provided by municipal wastewater infrastructure in ways that are technically and economically feasible. We look forward to continuing to work with you on our common goal of achieving environmental and public health protection through cooperative dialogues and active engagement.

If you have any questions, please contact Andrew Sawyers, Director of the Office of Wastewater Management, at 202-564-0748.

Sincerely,

A handwritten signature in black ink, appearing to read "Nancy K. Stoner", is written over a horizontal line.

Nancy K. Stoner
Acting Assistant Administrator



November 14, 2014

Ms. Donna Downing
Jurisdiction Team Leader, Wetlands Division
U.S. Environmental Protection Agency
Water Docket, Room 2822T
1200 Pennsylvania Avenue NW
Washington, DC 20460

Ms. Stacey Jensen
Regulatory Community of Practice
U.S. Army Corps of Engineers
441 G Street NW
Washington, DC 20314

RE: Proposed Rule on “Definition of “Waters of the United States” Under the Clean Water Act,” Docket No. EPA-HQ-OW-2011-0880

Dear Ms. Downing and Ms. Jensen:

On behalf of the nation’s mayors, cities, counties, regional governments and agencies, we appreciate the opportunity to submit comments on the U.S. Environmental Protection Agency’s (EPA) and the U.S. Army Corps of Engineers’ (Corps) proposed rule on “*Definition of “Waters of the United States” Under the Clean Water Act.*” We thank the agencies for educating our members on the proposal and for extending the public comment period in order to give our members additional time to analyze the proposal. We thank the agencies in advance for continued opportunities to discuss these, and other, important issues.

The health, well-being and safety of our citizens and communities are top priorities for us. To that end, it is important that federal, state and local governments all work together to craft reasonable and practicable rules and regulations. As partners in protecting America’s water resources, it is essential that state and local governments have a clear understanding of the vast impact that a change to the definition of “waters of the U.S.” will have on all aspects of the Clean Water Act (CWA). That is why several of our organizations and other state and local government partners asked for a transparent and straight-forward rulemaking process, inclusive of a federalism consultation process, rather than having changes of such a complex nature instituted through a guidance document alone.

As described below, we have a number of overarching concerns with the rulemaking process, as well as specific concerns regarding the proposed rule. In light of both, we have the following requests:

1. We strongly urge EPA and the Corps to modify the proposed rule by addressing our concerns and incorporating our suggestions to provide greater certainty and clarity for local governments; and
2. We ask that EPA and the Corps issue a revised proposed rule with an additional comment period, so that we can be certain these concerns are adequately addressed; or
3. Alternatively, if an additional comment period is not granted, we respectfully call for the withdrawal of this proposed rule and ask the agencies to resubmit a proposed rule at a later date that addresses our concerns.

Overarching Concerns with the Rulemaking Process

While we appreciate the willingness of EPA and the Corps to engage state and local government organizations in a voluntary consultation process prior to the proposed rule's publication, we remain concerned that the direct and indirect impacts of the proposed rule on state and local governments have not been thoroughly examined because three key opportunities that would have provided a greater understanding of these impacts were missed:

1. Additional analysis under the Regulatory Flexibility Act, which examines economic impacts on small entities, including cities and counties;
2. State and local government consultation under Executive Order 13132: Federalism, which allows state and local governments to weigh in on draft rules before they are developed or publicly proposed in order to address intergovernmental concerns; and
3. The agencies' economic analysis of the proposed rule, which did not thoroughly examine impacts beyond the CWA 404 permit program and relied on incomplete and inadequate data.

Additionally, we believe there needs to be an opportunity for intergovernmental state and local partners to thoroughly read the yet-to-be-released final connectivity report, synthesize the information, and incorporate those suggestions into their public comments on the proposed rule. These missed opportunities and our concerns regarding the connectivity report are discussed in greater detail below.

1. The **Regulatory Flexibility Act (RFA)** requires federal agencies that promulgate rules to consider the impact of their proposed rule on small entities, which under the definition includes cities, counties, school districts, and special districts of less than 50,000 people. RFA, as amended by the Small Business Regulatory Enforcement Fairness Act, requires agencies to make available, at the time the proposed rule is published, an initial regulatory flexibility analysis on how the proposed rule impacts these small entities. The analysis must certify that the rule does not have a Significant Economic Impact on a Substantial Number of Small Entities (SISNOSE). The RFA SISNOSE process allows federal agencies to identify areas where the proposed rule may economically impact a significant number of small entities and consider regulatory alternatives that will lessen the burden on these entities. The RFA process was not undertaken for this rule.

Based on analysis by our cities and counties, the proposed rule will have a significant impact on all local governments, but on small communities particularly. Most of our nation's cities and counties—more than 18,000 cities and 2,000 counties—have populations less than 50,000. The RFA SISNOSE analysis would be of significant value to these governments.

2. Executive Order 13132: Federalism requires federal agencies to work with state and local governments on proposed regulations that have substantial direct compliance costs. Since the agencies have determined that a change in the definition of “waters of the U.S.” imposes only indirect costs, the agencies state that the proposed rule does not trigger Federalism considerations. We wholeheartedly disagree with this conclusion and are convinced there will be both direct and indirect costs for implementation.

Additionally, while EPA initiated a Federalism consultation for its state and local partners in 2011, the process was prematurely shortened. In the 17 months between the initial Federalism consultation and the publication of the proposed rule, the agencies changed directions several times (regulation versus guidance). In those intervening 17 months between the consultation and the publication of the proposed rule, the agencies failed to continue substantial discussions, thereby not fulfilling the intent of Executive Order 13132.

3. The *Economic Analysis of Proposed Revised Definition of Waters of the U.S.* is flawed because it does not include a full analysis of the proposed rule’s impact on all CWA programs beyond the 404 program (including the National Pollutant Discharge Elimination System (NPDES), total maximum daily load (TMDL) and other water quality standards programs, state water quality certification process, and Spill Prevention, Control and Countermeasure (SPCC) programs). Since a number of these CWA programs directly affect state and local governments, it is imperative the analysis provide a more comprehensive review of the actual costs and consequences of the proposed rule on these programs.

Moreover, we remain concerned that the data used in the analysis is insufficient. The economic analysis used 2009-2010 data of Section 404 permit applications as a basis for examining the impacts of the proposed rule on all CWA programs. It is insufficient to compare data from the Section 404 permit program and speculate to the potential impacts to other CWA programs. Additionally, 2009-2010 was at the height of the recession when development (and other types of projects) was at an all-time low. The poor sample period and limited data creates uncertainty in the analysis’s conclusions.

In addition to the missed opportunities, we are concerned about the timing of the yet-to-be-finalized *Connectivity of Streams and Wetlands to Downstream Waters: A Review and Synthesis of the Scientific Evidence* report, which will serve as the scientific basis for the proposed rule. In mid-October, EPA’s Science Advisory Board (SAB), which was tasked with reviewing the document, sent a letter with detailed recommendations on how to modify the report. The SAB raised important questions about the scope of connectivity in their recommendations, which will need to be addressed prior to finalizing the report. We recommend EPA and the Corps pause this rulemaking effort until after the connectivity report is finalized to allow the public an opportunity to comment on the proposed rule in relation to the final report.

In a November 8, 2013 letter from the U.S. Conference of Mayors, National League of Cities and National Association of Counties to the Office and Management and Budget Administrator, we highlight the various correspondences our associations have submitted since 2011 as part of the guidance and rulemaking consideration process. (See attached.) We share this with you to demonstrate that we have been consistent in our request for a federalism consultation, concerns regarding the cost-benefit analysis, and concerns about the process and scope of the rulemaking. With these comments, we renew those requests.

Requests:

- Conduct an analysis to examine if the proposed rule imposes a significant economic impact on a substantial number of small entities per the Regulatory Flexibility Act.
- Initiate a formal state and local government federalism consultation process per Executive Order 13132: Federalism to address local government concerns and issues of clarity and certainty.
- Perform a thorough economic analysis inclusive of an examination of impacts of the proposed rule on all CWA programs using deeper and more relevant data. We urge the agencies to interact with issue-specific national associations to collect these data sets.
- Reopen the comment period for the proposed rule once the connectivity report is finalized for a minimum of 60 days.

Specific Concerns Regarding the Proposed Rule

As currently drafted, there are many examples where the language of the proposed rule is ambiguous and would create more confusion, not less, for local governments and ultimately for agency field staff responsible for making jurisdictional determinations. Overall, this lack of clarity and uncertainty within the language opens the door unfairly to litigation and citizen suits against local governments. To avoid such scenarios, setting a clear definition and understanding of what constitutes a “waters of the U.S.” is critical. We urge you to consider the following concerns and recommendations in any future proposed rule or final rule.

Key Definitions

Key terms used in the proposed rule such as “uplands,” “tributary,” “floodplain,” “significant nexus,” “adjacent,” and “neighboring” will be used to define what waters are jurisdictional under the proposed rule. However, since these terms are either broadly defined, or not defined at all, this will lead to further confusion over what waters fall under federal jurisdiction, not less as the proposed rule aims to accomplish. The lack of clarity will lead to unnecessary project delays, added costs to local governments and inconsistency across the country.

Request:

- Provide more specificity for proposed definitions such as “uplands,” “tributary,” “floodplain,” “significant nexus,” “adjacent,” “neighboring,” and other such words that could be subject to different interpretations.

Public Safety Ditches

While EPA and the Corps have publically stated the proposed rule will not increase jurisdiction over ditches, based on current regulatory practices and the vague definitions in the proposed rule, we remain concerned.

Under the current regulatory program, ditches are regulated under CWA Section 404, both for construction and maintenance activities. There are a number of challenges under the current program that would be worsened by the proposed rule. For example, across the country, public safety ditches, both wet and dry, are being regulated under Section 404. While an exemption exists for ditch maintenance, Corps districts inconsistently apply it nationally. In some areas, local governments

have a clear exemption, but in other areas, local governments must apply for a ditch maintenance exemption permit and provide surveys and data as part of the maintenance exemption request.

Beyond the inconsistency, many local governments have expressed concerns that the Section 404 permit process is time-consuming, cumbersome and expensive. Local governments are responsible for public safety; they own and manage a wide variety of public safety ditches—road, drainage, stormwater conveyances and others—that are used to funnel water away from low-lying areas to prevent accidents and flooding of homes and businesses. Ultimately, a local government is liable for maintaining the integrity of their ditches, even if federal permits are not approved by the federal agencies in a timely manner. In *Arreola v Monterey* (99 Cal. App. 4th 722), the Fourth District Court of Appeals held the County of Monterey, California liable for not maintaining a levee that failed due to overgrowth of vegetation.

The proposed rule does little to resolve the issues of uncertainty and inconsistency with the current exemption language or the amount of time, energy and money that is involved in obtaining a Section 404 permit or an exemption for a public safety ditch. The exemption for ditches in the proposed rule is so narrowly drawn that any city or county would be hard-pressed to claim the exemption. It is hard—if not impossible—to prove that a ditch is excavated wholly in uplands, drains only uplands and has less than perennial flow.

Request:

- Provide a specific exemption for public safety ditches from the “waters of the U.S.” definition.

Stormwater Permits and MS4s

Under the NPDES program, all facilities which discharge pollutants from any point source into a “waters of the U.S.” are required to obtain a permit, including local governments with Municipal Separate Storm Sewer Systems (MS4s). Some cities and counties own MS4 infrastructure that flow into a “waters of the U.S.” and are therefore regulated under the CWA Section 402 stormwater permit program. These waters, however, are not treated as jurisdictional waters since the nature of stormwater makes it impossible to regulate these features.

It is this distinction that creates a conflict between the stormwater program and the definition of “waters of the U.S.” in the proposed rule and opens the door to citizen suits. Water conveyances including but not limited to MS4s that are purposed for and servicing public use are essentially a series of open ditches, channels and pipes designed to funnel or to treat stormwater runoff before it enters into a “waters of U.S.” However, under the proposed rule, these systems could meet the definition of a “tributary,” and thus be jurisdictional as a “waters of the U.S.” The language in the proposed rule must be clarified because a water conveyance cannot both treat water and prevent untreated water from entering the system.

Additionally, waterbodies that are considered a “waters of the U.S.” are subject to state water quality standards and total maximum daily loads, which are inappropriate for this purpose. Applying water quality standards and total maximum daily loads to stormwater systems would mean that not only would the discharge leaving the system be regulated, but all flows entering the MS4 would be regulated as well. This, again, creates a conflict between the stormwater program and the definition of “waters of the U.S.” in the proposed rule.

Request:

- Provide a specific exemption for water conveyances including but not limited to MS4s that are purposed for and servicing public use from the “waters of the U.S.” definition.

Waste Treatment Exemption

The proposed rule provides that “waste treatment systems, including treatment ponds or lagoons, *designed to meet the requirements of the Clean Water Act*” (emphasis added) are not “waters of the U.S.” In recent years, local governments and other entities have moved toward a holistic approach in treating stormwater by using ponds, swales and wetlands. Traditionally, such systems have been exempt from the CWA, but due to the broad nature of the proposed rule, we believe the agencies should also exempt other constructed wetland and treatment facilities which may inadvertently fall under the proposed rule. This would include, but not be limited to, water and water reuse, recycling, treatment lagoons, settling basins, ponds, artificially constructed wetlands (i.e. green infrastructure) and artificially constructed groundwater recharge basins. Therefore, we ask the agencies to specifically include green infrastructure techniques and water delivery and reuse facilities under this exemption.

A. Green Infrastructure

With the encouragement of EPA, local governments across the country are utilizing green infrastructure techniques as a stormwater management tool to lessen flooding and protect water quality by using vegetation, soils and natural processes to treat stormwater runoff. These more beneficial and aesthetically pleasing features, which include existing stormwater treatment systems and low impact development stormwater treatment systems, are not explicitly exempt under the proposed rule. Therefore, these sites could be inadvertently impacted and require Section 404 permits for green infrastructure construction projects if they are determined to be jurisdictional under the new definitions in the proposed rule.

Additionally, it is unclear under the proposed rule whether a Section 404 permit will be required for maintenance activities on green infrastructure areas once the area is established. Moreover, if these features are defined as “waters of the U.S.,” they would be subject to all other sections of the CWA, including monitoring, attainment of water quality standards, controlling and permitting all discharges in these features, which would be costly and problematic for local governments.

Because of the multiple benefits of green infrastructure and the incentives that EPA and other federal agencies provide for local governments to adopt and construct green infrastructure techniques, it is ill-conceived to hamper local efforts by subjecting them to 404 permits or the other requirements that would come with being considered a “waters of the U.S.”

B. Water Delivery and Reuse Facilities

Across the country, and particularly in the arid west, water supply systems depend on open canals to convey water. Under the proposed rule, these canals would be considered “tributaries.” Water reuse facilities include ditches, canals and basins, and are often adjacent to jurisdictional waters. These features would also be “waters of the U.S.” and as such subject to regulation and management that would not only be unnecessarily costly, but

discourage water reuse entirely. Together, these facilities serve essential purposes in the process of waste treatment and should be exempt under the proposed rule.

Requests:

- Clarify the waste treatment exemption by stating that green infrastructure practices and water delivery and reuse facilities meet the requirements of the exemption.
- Expand the waste treatment exemption to include systems that are designed to meet *any* water quality requirements, not just the requirements of the CWA.
- Provide a specific exemption for green infrastructure and water delivery and reuse facilities from the “waters of the U.S.” definition.

NPDES Pesticide Permit Program

Local governments use pesticides and herbicides in public safety infrastructure to control weeds, prevent breeding of mosquitos and other pests, and limit the spread of invasive species. While the permit has general requirements, more stringent monitoring and paperwork requirements are triggered if more than 6,400 acres are impacted in a calendar year. For local governments who have huge swathes of land, the acreage limit can be quickly triggered. The acreage limit also becomes problematic as more waterbodies are designated as a “waters of the U.S.”

Additional Considerations

Finally, we would like to offer two additional considerations that would help to resolve any outstanding confusion or disagreement over the breath of the proposed rule and assist local governments in meeting our mutual goals of protecting water resources and ensuring public safety.

Appeals Process

Many of the definitions in the proposed rule are incredibly broad and may lead to further confusion and lawsuits. To lessen confusion, we recommend the agencies implement a transparent and understandable appeals procedure for entities to challenge agency jurisdictional determinations without having to go to court.

Request:

- Institute a straight-forward and transparent process for entities to appeal agency jurisdictional determinations.

Emergency Exemptions

In the past several years, local governments who have experienced natural or man-made disasters have expressed difficulty obtaining emergency clean-up waivers for ditches and other conveyances. This, in turn, endangers public health and safety and jeopardizes habitats. We urge the EPA and the Corps to revisit that policy, especially as more waters are classified as “waters of the U.S.” under the proposed rule.

Request:

- Set clear national guidance for quick approval of emergency exemptions.

Conclusion

On behalf of the nation's mayors, cities, counties, regional governments and agencies, we thank you for the opportunity to comment on the proposed rule. Changing the CWA definition of "waters of the U.S." will have far-reaching impacts on our various constituencies.

As local governments and associated agencies, we are charged with protecting the environment and protecting public safety. We play a strong role in CWA implementation and are key partners in its enactment; clean and safe drinking water is essential for our survival. We take these responsibilities seriously.

As partners in protecting America's water resources, it is essential that state and local governments have a clear understanding of the vast impact the proposed "waters of the U.S." rule will have on our local communities. We look forward to continuing to work with EPA and the Corps as the regulatory process moves forward.

Sincerely,



Tom Cochran
CEO and Executive Director
The U.S. Conference of Mayors



Clarence E. Anthony
Executive Director
National League of Cities



Matthew D. Chase
Executive Director
National Association of Counties



Joanna L. Turner
Executive Director
National Association of
Regional Councils



Brian Roberts
Executive Director
National Association of County
Engineers



Peter B. King
Executive Director
American Public Works
Association



Susan Gilson
Executive Director
National Association of Flood and
Stormwater Management Agencies



November 8, 2013

The Honorable Howard Shelanski
Administrator, Office of Information and Regulatory Affairs
Office of Management and Budget
725 17th Street N.W.
Washington D.C. 20503

RE: EPA's Definition of "Waters of the U.S." Under the Clean Water Act Proposed Rule and Connectivity Report (Docket ID No. EPA-HQ-OA-2013-0582)

Dear Administrator Shelanski:

On behalf of the nation's mayors, cities and counties, we are writing regarding the U.S. Environmental Protection Agency (EPA) and the U.S. Army Corps of Engineers' (Corps) proposed rulemaking to change the Clean Water Act definition of "Waters of the U.S." and the draft science report, *Connectivity of Streams and Wetlands to Downstream Waters: A Review and Synthesis of the Scientific Evidence*, which EPA indicated will serve as a basis for the rulemaking. We appreciate that EPA and the Corps are moving forward with a rule under the Administrative Procedures Act, as our organizations previously requested, however, we have concerns about the process and the scope of the rulemaking.

Background

In May 2011, EPA and the Corps released Draft Guidance on Identifying Waters Protected by the Clean Water Act (Draft Guidance) to help determine whether a waterway, water body or wetland would be jurisdictional under the Clean Water Act (CWA).

In July 2011, our organizations submitted comments on the Draft Guidance, requesting that EPA and the Corps move forward with a rulemaking process that features an open and transparent means of proposing and establishing regulations and ensures that state, local, and private entity concerns are fully considered and properly addressed. Additionally, our joint comments raised concerns with the fact that the Draft Guidance failed to consider the effects of the proposed changes on all CWA programs beyond the 404 permit program, such as Total Maximum Daily Load (TMDL) and water quality standards programs and the National Pollutant Discharge Elimination System (NPDES) permit program.

In response to these comments, EPA indicated that it would not move forward with the Draft Guidance, but rather a rulemaking pertaining to the "Waters of the U.S." definition. In November 2011, EPA and the Corps initiated a formal federalism consultation process with state and local government organizations. Our organizations submitted comments on the federalism consultation briefing in December 2011. In early 2012, however, EPA changed course, putting the rulemaking on hold and sent a final guidance document to the Office of Management and Budget (OMB) for interagency review. Our organizations submitted a letter to OMB in March 2012 repeating our concerns with the agencies moving forward with a guidance document.

Most recently, in September 2013, EPA and the Corps changed course again and withdrew the Draft Guidance and sent a draft "Waters of the U.S" rule to OMB for review. At the same time, the agencies released a draft science report, *Connectivity of Streams and Wetlands to Downstream Waters: A Review and Synthesis of the Scientific Evidence*.

Concerns

While we acknowledge the federalism consultation process that EPA and the Corps began in 2011, in light of the time that has passed and the most recent developments in the process toward clarifying the jurisdiction of the CWA, we request that EPA and the Corps hold a briefing for state and local governments groups on the differences between the Draft Guidance and the proposed rule that was sent to OMB in September. Additionally, if EPA and the Corps have since completed a full cost analysis of the proposed rule on all CWA programs beyond the 404 permit program, as our organizations requested, we ask for a briefing on these findings.

In addition to our aforementioned concerns, we have a new concern with the sequence and timing of the draft science report, *Connectivity of Streams and Wetlands to Downstream Waters: A Review and Synthesis of the Scientific Evidence*, and how it fits into the proposed "Waters of the U.S." rulemaking process, especially since the document will be used as a basis to claim federal jurisdiction over certain water bodies. By releasing the draft report for public comment at the same time as a proposed rule was sent to OMB for review, we believe EPA and the Corps have missed the opportunity to review any comments or concerns that may be raised on the draft science report actually inform the development of the proposed rule. We ask that OMB remand the proposed rule back to EPA and the Corps and that the agencies refrain from developing a proposed rule until after the agencies have thoroughly reviewed comments on the draft science report.

While you consider our requests for additional briefings on this important rulemaking process and material, we also respectfully request additional time to review the draft science report. We believe that 44 days allotted for review is insufficient given the report's technical nature and potential ramifications on other policy matters.

As partners in protecting America's water resources, it is essential that state and local governments have a clear understanding of the vast affect that a change to the definition of "Waters of the U.S." will have on all aspects of the CWA. We look forward to continuing to work with EPA and the Corps as the regulatory process moves forward.

Sincerely,



Tom Cochran
CEO and Executive Director
The U.S. Conference of Mayors



Clarence E. Anthony
Executive Director
National League of Cities



Matt Chase
Executive Director
National Association of Counties

cc: Gina McCarthy, Administrator, U.S. Environmental Protection Agency
Lt. General Thomas P. Bostick, Commanding General and Chief of Engineers, Army Corps of Engineers



January 13, 2012

Ms. Cynthia C. Dougherty
Director
Office of Ground Water and Drinking Water
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue, NW
Washington, D.C. 20460

Dear Ms. Dougherty,

On behalf of the National League of Cities (NLC) and the United States Conference of Mayors (USCM), who represent the nation's cities and mayors, we appreciate the opportunity to provide input pursuant to Executive Order 13132: Federalism on the U.S. Environmental Protection Agency's (EPA) forthcoming proposed regulatory revisions to the Lead and Copper Rule (LCR). As the Agency considers revisions to the LCR, a drinking water regulation that requires monitoring and treatment techniques to control lead and copper corrosion in drinking water systems, we are hopeful you will consider the local government perspective on these important issues. We are pleased to share our comments and concerns.

In general, NLC and USCM support provisions in the 1996 Amendments to the Safe Drinking Water Act (SDWA) which mandate that drinking water standards be based on sound science, public health protection, occurrence of the contaminant(s) in drinking water supplies at levels of public health concern, risk reduction and cost. Moreover, where the contaminant is naturally occurring, monitoring should be required only if EPA can demonstrate that any proposed remedial treatment would ensure greater health protection. For introduced materials, a risk-based standard should be developed.

Additionally, NLC and USCM support programs for public education regarding safe drinking water. While our organizations do not have a position pertaining to copper, we do have with respect to lead on three of the five areas the Agency is focusing on for the rule revision. In general, we believe the National Primary Drinking Water Regulation for lead, and any legislative initiatives addressing lead in drinking water, should give municipal water systems options for reducing drinking water lead levels.

Key Areas Under Consideration for Lead and Copper Rule Revisions

- **Lead Sample Protocol** – We support measuring the level for lead in the public water system at the point where the water leaves the distribution system and enters the user's property.

Ms. Cynthia C. Dougherty
January 13, 2012
Page Two

- **Measures to Ensure Optimal Corrosion Control Treatment** – Corrosion control should be considered the optimal tool for reducing exposure to lead through the drinking water supplies. Municipal water systems should be allowed to utilize the least expensive, yet effective, methods for reducing human exposure to lead in drinking water.
- **Lead Service Line Replacement** – We have a concern about a potential revision to the lead service line replacement program, which would place an extreme financial burden on cities and towns and raises questions of jurisdiction. While a partial lead service line replacement—when the city or drinking water system replaces the portion of the pipe it owns, but the homeowner does not replace their portion—may not be effective in reducing lead levels in the short-term (as determined by a Science Advisory Board Drinking Water Committee in March 2011), cities and towns should not be held financially responsible for replacing the homeowner's portion of the pipes. Such a mandate, absent a full federal funding source, could cripple local governments who are already struggling financially.

Thank you for considering the perspective of cities and mayors as you gather input for revising the Lead and Copper Rule. We look forward to a continued partnership between local governments and EPA as we work toward our mutual goals of providing safe drinking water in our nation's cities and towns. If you have any questions, please contact Carolyn Berndt at NLC (202-626-3101) or Judy Sheahan at USCM (202-861-6775).

Sincerely,



Donald J. Borut
Executive Director
National League of Cities



Tom Cochran
CEO and Executive Director
The United States Conference of Mayors



March 17, 2015

Air and Radiation Docket and Information Center
U.S. Environmental Protection Agency
Mail Code 28221T
1200 Pennsylvania Ave., NW
Washington, DC 20460

Re: Docket No. EPA-HQ-OAR-2008-0699, National Ambient Air Quality Standards for Ozone

Dear Administrator McCarthy:

On behalf of the nation's mayors, counties, cities and regions, we respectfully submit our comments on the U.S. Environmental Protection Agency's (EPA) "Draft Documents Related to the Review of the National Ambient Air Quality Standards (NAAQS) for Ozone."

Our organizations, which collectively represent the nation's 19,000 cities and mayors, 3,069 counties and more than 500 regional councils, support the goals of the Clean Air Act (CAA) and the National Ambient Air Quality Standards (NAAQS) that protect public health and welfare from hazardous air pollutants. Local governments across the country are actively working toward meeting these goals of improving air quality.

The NAAQS applies to counties and cities within a metropolitan region and plays a critical role in shaping regional transportation plans and can influence regional economic vitality. The proposed rule would revise the current NAAQS for ozone of 75 parts per billion (ppb), which was set in 2008, proposing to reduce both the primary and secondary standard to within a range of 65-70 ppb over an 8-hour average. EPA is also accepting comments on setting the standard at a level as low as 60 ppb.

Because of the financial and administrative burden that would come with a more stringent NAAQS for ozone, we ask EPA to delay implementation of a new standard until the 2008 standard is fully implemented. The current 2008 standard of 75 ppb has yet to be implemented due to litigation opposing the standard. The 1997 standard of 80 ppb is still generally used by regions and it will take several additional years to fully implement the more stringent 2008 standard.

A more stringent NAAQS for ozone will dramatically increase the number of regions classified as non-attainment. By EPA's own estimates, under a 70 ppb standard, 358 counties and their cities would be in violation; under a 65 ppb standard, an additional 558 counties and their cities would be in violation. Unfortunately, there is very little federal funding available to assist local governments in meeting CAA requirements. According to EPA, under this proposed rule a 70 ppb standard would cost approximately \$3.9 billion per year; a 65 ppb standard would cost approximately \$15.2 billion annually to implement.¹

Moreover, these figures do not take into account the impact that the proposed rule will have on the nation's transportation system. Transportation conformity is required under the CAA² to ensure that federally-supported transportation activities (including transportation plans, transportation improvement programs, and highway and transit projects) are consistent with state air quality implementation plans. Transportation conformity applies to all areas that are designated non-attainment or "maintenance areas" for transportation-related criteria pollutants, including ozone.³ Transportation conformity determinations are required before federal approval or funding is given to transportation planning and highway and transit projects.

For non-attainment areas, the federal government can withhold federal highway funds for projects and plans. Withholding these funds can negatively affect job creation and critical economic development projects for impacted regions, even when these projects and plans could have a measurable positive effect on congestion relief.

Additionally, these proposed new ozone regulations will add to an already confusing transportation conformity compliance process due to a recent decision by the United States Court of Appeals for the District of Columbia Circuit. In 2012, after the 2008 NAAQS for ozone was finalized, EPA issued a common-sense proposal to revoke the 1997 NAAQS for ozone in transportation conformity requirements to ensure that regulated entities were not required to simultaneously meet two sets of standards—the 1997 and 2008 NAAQS for ozone. However, the court disagreed, and on December 23, 2014 ruled, in *Natural Resources Defense Council vs. Environmental Protection Agency and Gina McCarthy*, that EPA lacked the authority to revoke conformity requirements. This ruling has left state and local governments with a conformity process that is now even more confusing and administratively burdensome, and a new NAAQS for ozone will add to the complexity.

Given these financial and administrative burdens on local governments, we urge EPA to delay issuing a new NAAQS for ozone until the 2008 ozone standard is fully implemented.

¹ The cost to California is not included in these calculations, since a number of California counties would be given until 2032–2037 to meet the standards.

² Section 176(c) (42 U.S.C. 7506(c))

³ See 40 CFR Part 93, subpart A

If you have any questions, please contact us: Judy Sheahan (USCM) at 202-861-6775 or jsheahan@usmayors.org; Julie Ufner (NACo) at 202-942-4269 or jufner@naco.org; Carolyn Berndt (NLC) at 202-626-3101 or Berndt@nlc.org; Joanna Turner (NARC) at 202-618-5689 or Joanna@narc.org.

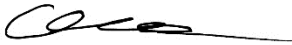
Sincerely,



Tom Cochran
CEO and Executive Director
The U.S. Conference of Mayors



Matthew D. Chase
Executive Director
National Association of Counties



Clarence E. Anthony
CEO and Executive Director
National League of Cities



Joanna L. Turner
Executive Director
National Association of Regional Councils



August 29, 2012

Environmental Protection Agency
Mailcode: 6102T
1200 Pennsylvania Ave., NW,
Washington, DC 20460
Attention Docket ID No. EPA-HQ-OAR-2007-0492

Subject: Second Draft Document Related to the Review of the NAAQS for Particulate Matter

To Whom It May Concern:

On behalf of the National Association of Counties (NACo), I respectfully offer comments on the U.S. Environmental Protection Agency's (EPA) "Release of Second Draft Document Related to the Review of the National Ambient Air Quality Standards (NAAQS) for Particulate Matter," published in the July 8 *Federal Register*.

To that end, we reference NACo's August 16, 2010 letter on the Second Draft Policy Assessment for the Review of Particulate Matter (PM) NAAQS, also found under Docket No. EPA-HQ-OAR-2007-0492. Since counties are the primary service providers and have a responsibility to protect the health, welfare and safety of our citizens, counties have a vested interest in this decision.

While the EPA may not consider implementation costs for NAAQS per the Supreme Court ruling in *Whitman v. American Trucking Associations*, 531 U.S. 457, 465–472, 475–76 (2001), the direct and indirect impacts of tighter standards should be addressed. Tightening the PM standards further will have a detrimental effect, not only on all sizes of government but also on regional and local economies.

The majority of our nation's counties contain large rural areas, with economies heavily dependent on agricultural practices. If the limits are tighter, practices governing everyday events, such as driving down a gravel road or agricultural practices could be regulated, as could natural events such as wildfires and windstorms. The arid west and areas experiencing drought may particularly be negatively impacted by tighter PM standards.

Many counties struggle to meet the current PM standards. This, in turn, affects their economic base, which will further shake any hope of economic recovery in these tight fiscal times. That is why we oppose any attempt by the Environmental Protection Agency (EPA) to impose regulation of Particulate Matter (PM) at levels more stringent than current levels.

NACo supports the goals of the Clean Air Act which balances the need to ensure the highest level of environmental protection with the need to maintain economically viable and sustainable communities. We also believe that NAAQS should be set using well-founded, peer-reviewed scientific evidence.

Thank you for the opportunity to comment. If you have any questions, please do not hesitate to contact my staff, Julie Ufner at 202-942-4269 or jufner@naco.org.

Sincerely,

A handwritten signature in black ink that reads 'Larry E. Naake'. The signature is written in a cursive, flowing style.

Larry E. Naake
Executive Director



May 13, 2016

The Honorable Gina McCarthy
Administrator
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue, NW
Washington, DC 20460

Attention: Accidental Release Prevention Requirements: Risk Management Programs Under the Clean Air Act, Docket # EPA-HQ-OEM-2015-0725

Dear Administrator McCarthy:

On behalf of the nation's cities, counties and mayors, we respectfully submit comments on the U.S. Environmental Protection Agency (EPA) proposed rule for *Accidental Release Prevention Requirements: Risk Management Programs Under the Clean Air Act, Docket # EPA-HQ-OEM-2015-0725*.

Cities, counties and mayors across the country have a significant interest in this proposed rule. Local governments play an instrumental role in managing and overseeing public safety policy and services including police and sheriff departments, 911 call centers, emergency management professionals, fire departments, public health officials, public records and code inspectors, among others. They are the first responders in any disaster, and are often the first emergency response and recovery teams on the scene. Additionally, local governments own and operate water and wastewater facilities that would be required to comply with this proposed rule.

Under the proposed rule, local governments may be most impacted on two fronts. First, as owners and operators of publically owned water/wastewater treatment facilities, local governments would be regulated through new requirements on facilities. In particular, we are concerned that in addition to the increased managerial costs associated with compliance, EPA is considering subjecting these facilities to safer alternative technology (STAA) reviews. Safer technology alternatives to reduce risk at a water treatment plant could inadvertently counter other federal environmental quality objectives and, selecting the most appropriate water treatment chemicals and technology applications should be made by water utility managers based on science, practical experience, and their professional opinion of what will most effectively make water safe for public consumption and comply with the Safe Drinking Water Act.

Second, since local governments often serve as our nation's first line of defense before and after disasters strike, changes to emergency protocol will directly impact them. The proposed rule will expand local government responsibilities, without providing funding to implement the more complex requirements.

In EPA's cost benefit analysis, we believe that EPA has not adequately considered all the necessary local government costs that would be needed to implement these new responsibilities. The proposed rule would require local governments to coordinate emergency response activities with 11,900 individual facilities. This will be costly and complex for local governments to implement, and more staff and other resources will be needed to effectively meet the goals of the rule. Furthermore, EPA did not consider how an increased local government workload as a result of this rule would be funded. Since publicly owned water treatment systems are funded through user fees, under law, the new facility management costs would be borne by them.

Additionally, we are concerned that the costs and impacts of a more prescriptive risk management program will fall disproportionately on smaller communities, compounding their challenges of complying with the new federal mandates. These jurisdictions generally have small staffs who are already managing a wide range of issues. Larger communities will also be faced with increased reporting and activity burdens as first responders, emergency planners, and regulators of land use activities.

Moreover, while we are appreciative the agency held a one-hour briefing for our organizations during the rule's public comment period, we remain concerned about the proposed rule's direct impact on local governments. We believe the agency missed a valuable opportunity to engage local governments prior to the rule's publication in the *Federal Register*. This is counter to EPA's internal "Guidance on Executive Order 13132: Federalism" (Nov. 2008), which specifies that states and local governments must be consulted on rules if they impose substantial compliance costs, preempt state or local laws and/or have "substantial direct effects on state and local governments." If the agency had engaged us prior to public comment period, we believe we could have flagged some of these problems and identified potential solutions.

For these reasons, we urge you to delay advancing the proposed rule and perform a local government impact analysis and consultation with the nation's cities, counties and mayors before finalizing this rule.

As an intergovernmental partner, we thank you for the opportunity to comment on the proposed rule, which will have a major impact on our various constituencies. On behalf of the nation's cities, counties and mayors, we thank you for your consideration of our request. If you have any questions, please contact us: Carolyn Berndt (NLC) at 202-626-3101 or Berndt@nlc.org; Julie Ufner (NACo) at 202-942-4269 or jufner@naco.org; or Judy Sheahan (USCM) at 202-861-6775 or jsheahan@usmayors.org.

Sincerely,



Tom Cochran
CEO and Executive Director
The U.S. Conference of Mayors



Matthew D. Chase
Executive Director
National Association of Counties



Clarence E. Anthony
CEO and Executive Director
National League of Cities



December 2, 2016

Mr. Howard Shelanski
Administrator
Office of Information and Regulatory Affairs
Office of Management and Budget
725 17th Street N.W.
Washington D.C. 20503

RE: EPA's Accidental Release Prevention Requirements: Risk Management Programs Under the Clean Air Act, Docket #EPA-HQ-OEM-2015-0725

Dear Administrator Shelanski:

On behalf of the nation's cities, counties and mayors, we are writing to express concerns about the U.S. Environmental Protection Agency's (EPA) proposed rule for Accidental Release Prevention Requirements: Risk Management Programs Under the Clean Air Act (Docket # EPA-HQ-OEM-2015-0725). Under Executive Order 12866: Regulatory Planning and Review, we request a meeting to discuss our concerns outlined below with the proposed rule.

The risk management programs (RMP) proposed rule would give communities access to information about nearby chemical hazards, the associated risks and potential response options. This rule is of specific interest to our members since local governments play a key role in ensuring the health, safety and welfare of our residents and communities. These responsibilities include operation and management of water and wastewater facilities and emergency response, both of which would be directly impacted by this proposed rule.

While we support the purpose of this rulemaking, we have a number of overarching concerns with the rulemaking process and the proposed rule itself. This includes the process used to craft the proposed rule, the scope and substance of the rulemaking, and the ability of local governments to effectively implement the rule.

For the reasons that follow, we request that OMB refer the proposed rule back to EPA to address our concerns and request that EPA fulfill its obligation to perform a meaningful consultation with local elected officials.

1. The process used to craft the proposed rule circumvented EPA's internal guidance on Executive Order 13132

Local governments are a key partner in the federal-state-local intergovernmental system. Cities and counties are both subject to state and federal regulations and help to implement regulations at the local level. Therefore, as both regulated entities and regulators, it is critical that local governments be fully engaged as intergovernmental partners through the entire federal regulatory process—from initial development through implementation.

Since this rule has a direct impact on local governments, we are concerned that EPA did not engage cities, mayors and counties during the writing of the rule. Only after the rule was proposed, and only at our organizations request, did the EPA hold a one-hour briefing on May 4, 2016—one week before the public comment period for the rule closed. As a result of that briefing, on May 9, 2016 our organizations requested an extension of the comment period to ensure that our local governments could fully analyze EPA's proposal, but EPA denied this request.

We believe the agency missed a valuable opportunity to engage local governments prior to the rule's publication in the Federal Register; this is counter to EPA's internal "Guidance on Executive Order 13132: Federalism" (Nov. 2008), which specifies that states and local governments must be consulted on rules if they impose substantial compliance costs, preempt state or local laws and/or have "substantial direct effects on state and local governments." If the Agency had engaged its intergovernmental partners prior to public comment period, we believe we could have flagged some of our concerns listed below and identified potential solutions before the rule was proposed.

2. The proposed rule does not take into account the broad impacts on local governments.

Under the proposed rule, local governments will be impacted on two fronts. First, as owners and operators of publicly owned water and wastewater treatment facilities, local governments would be regulated through new requirements on these facilities. Second, since local governments often serve as our nation's first line of defense before and after disasters strike, changes to emergency protocols will have a direct impact on local resources. The proposed rule will expand local government responsibilities, without providing funding to implement the more complex requirements.

a. Water and wastewater facilities are low risk facilities; regulatory requirements should reflect actual risk.

Water and wastewater treatment facilities are uniquely impacted by this rule. EPA estimates that there are approximately 155,000 public drinking water systems in the nation (U.S. EPA, November 2008). This includes 52,000 community water systems and 16,000 publicly owned wastewater treatment plants. While water and wastewater facilities use chemicals to remove impurities, they are considered "simple process" and/or "low risk" facilities. Moreover, for the last decade, the water industry has relied on safe best-practices and has no concrete examples of "hits" or "near misses" that jeopardized public safety. This low

risk profile and demonstrated record of safety is not representative of the chemical process safety risks that the proposed RMP rule aims to address. **Therefore, we urge EPA to afford the water sector with regulatory flexibility since water and wastewater facilities pose low risk for chemical accidents.**

b. Public safety services would be overburdened.

Local governments play an instrumental role in managing and overseeing public safety as they are the first responders in any disaster and are often the first emergency response and recovery teams on the scene. Local government public safety services include police and sheriff departments, 911 call centers, emergency management professionals, fire departments, public health officials, public records and code inspectors, among others.

The proposed rule would require local governments to coordinate emergency response activities with 11,900 individual facilities, including water treatment facilities, located within their boundaries. As part of these requirements, regulated facilities would be required to consult individually with emergency managers on a yearly basis for notifications and tabletop exercises and every five years to conduct field exercises.

While the intent of the provision is laudable, the rule does not take into account the extra emergency response manpower needed to participate in additional emergency response drills. For example, if a community has 20 regulated facilities within its borders, local government emergency responders would be responsible for an additional 80 tabletop exercises and 20 field exercises over the course of five years.

One of NACo's Pennsylvania counties estimates that it takes approximately 60-80 hours to develop a tabletop exercise and 100-150 hours to develop a functional or full scale exercise. Additionally, it takes 48-80 man hours to participate in a tabletop exercise and approximately 200 man-hours to participate in one functional or full-scale exercise. These numbers are estimated solely for internal hazmat and emergency management components and do not reflect the participation of fire, police, emergency management systems, local emergency management agencies, hospital, facility personnel or other local government representatives.

Finally, the rule doesn't take into consideration the public safety responsibilities our emergency responders have under other federal rules and regulations. Many cities and counties are already required to actively participate on a yearly basis in a number of emergency response drills, tabletops, functional and full scale exercises as required under the Homeland Security Exercise and Evaluation Program for a variety of potential situations including natural disaster, active shooter, transportation, nuclear power plant, mass casualty, etc. These drills are expensive and time consuming, and the proposed rule would be duplicative of current responsibilities.

c. Proposed rule vests too much authority with Local Emergency Planning Committees.

Local Emergency Planning Committees (LEPCs) are an independent, community-wide body comprised of elected state and local officials; public safety and health professionals; environment, transportation and hospital officials; facility representatives; and representatives from community groups and the media.

LEPCs are charged with identifying potential risks associated with stored and transported chemicals. Under the proposed rule, LEPCs will be given greater responsibility and authority in chemical emergency response.

While LEPCs work well in some communities, their effectiveness varies across the country. They are more common in larger cities and counties, however, many rural and suburban communities may not have active programs, simply because they do not have the available resources (lack of time, staff, funds, expertise, etc.). Therefore, relying on LEPCs to guide emergency response at chemical facilities is not a viable option nationally.

The proposed rule would also involve LEPCs in land use decisions. We have strong concerns that this provision could lead to preemption of local authority since local governments are given direct authority to undertake local land use planning, zoning and code enforcement activities to balance the interests of residents, commercial and industrial activities, and institutional land uses.

3. Proposed definitions and other provisions are vague and unworkable.

The proposed rule is complex and lengthy, and many of the provisions and definitions are overly broad and vague, which is likely to cause uncertainty at the local level. Specifically, we are concerned with the terms “root cause investigations,” and “safer technology and alternative analysis.”

a. Root Cause Investigations

While root cause investigations are an important part of community safety programs, we are concerned that new terms and definitions may circumvent successful investigations. Use of the terms “correctable failures in management systems” and “near miss” incidents are difficult to measure. This is especially problematic at water and wastewater facilities that are, by their very nature, considered low risk for accidents. **Instead of using the term “near miss,” root cause investigations should be triggered by incidents that involve injuries, neighborhood evacuations and shelter in-place incidents.**

b. Safer Technology and Alternatives Analysis (STAA)

Additionally, EPA has proposed that “simple process” and “low risk” water and wastewater treatment plants use safer alternative technology analysis. While we agree with the underlying objective, we are concerned that reliance on STAA may undercut other federal environmental quality objectives. Any changes to what is already a highly complex treatment process could impact other chemical processes for corrosivity, lead, copper, chlorination, trihalomethanes, etc. in our water supply. **We urge EPA to give water and wastewater treatment facilities flexibility to select the most appropriate treatment based on local conditions, science and professional experience, instead of setting specific STAA.**

4. The costs to local governments have not been fully considered.

EPA's cost-benefit analysis does not adequately consider the necessary local government costs associated with implementing the new responsibilities for water treatment facilities and emergency response under the proposed rule. This will be costly and complex for local governments to implement, and more staff and other resources will be needed to effectively meet the goals of the rule.

Since municipal water facilities are solely funded through user fees, facility owners and operators carefully plan budgets years in advance to ensure that costs remain affordable for citizens and customers. These new requirements under the proposed rule will likely require municipal water agencies to further raise rates, which could lead to a greater disproportionate impact on low, moderate and fixed income populations. In our opinion, EPA has not adequately considered these costs.

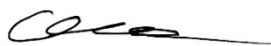
Additionally, we are concerned that the costs and impacts of a more prescriptive risk management program will fall disproportionately on smaller communities, compounding their challenges of complying with the new federal mandates. These jurisdictions generally have small staffs who are already managing a wide range of issues. Larger communities will also be faced with increased reporting and activity burdens as first responders, emergency planners, and regulators of land use activities.

For these reasons, we urge EPA to conduct a thorough cost analysis that fully considers the impact of the proposed rule on local governments.

In conclusion, in light of these aforementioned concerns, we request that OMB send the rule back to EPA for consideration and consultation with the nation's cities, counties and mayors before finalizing this rule.

On behalf of the nation's cities, counties and mayors, we thank you for your consideration of our request. If you have any questions, please contact us: Carolyn Berndt (NLC) at 202-626-3101 or Berndt@nlc.org; Julie Ufner (NACo) at 202- 942-4269 or jufner@naco.org; or Judy Sheahan (USCM) at 202-861-6775 or jsheahan@usmayors.org.

Sincerely,



Clarence E. Anthony
CEO and Executive Director
National League of Cities



Matthew D. Chase
Executive Director
National Association of Counties



Tom Cochran
CEO and Executive Director
The U.S. Conference of Mayors

cc: EPA Office of Air and Radiation and Intergovernmental



September 26, 2016

Mr. Peter Gimlin
National Program Chemicals Division/OPPT
U.S. Environmental Protection Agency
Mail Code 7404-T
Washington, DC 20460

**Re: E.O. 13132: Federalism and UMRA Consultation on Reassessment of Use
Authorizations for PCBs in Small Capacitors: PCB Light Ballasts in Schools and Daycares**

Dear Mr. Gimlin,

On behalf of the nation's mayors, cities, counties, county executives, school superintendents, school business officials, rural school advocates, and school boards members, we appreciate the opportunity to provide comments pursuant to Executive Order 13132: Federalism regarding the U.S. Environmental Protection Agency's (EPA) potential changes to the polychlorinated biphenyls (PCBs) use authorizations in schools and daycares. Additionally, thank you for holding a Federalism and UMRA consultation meeting on July 28, 2016 with state and local government groups on these potential changes.

Local governments and school systems have a vested interest in this rule since we both own and operate schools and daycare centers and share funding and budget responsibilities. While we share EPA's concern over the potential health risks of PCBs, we are concerned about the scope of the rulemaking and the unintended consequences that a tight compliance schedule may have on our local governments, schools, the teachers we employ, and the students we serve.

We have four principal concerns with the proposed rule:

- **The proposed rule is based on insufficient data**
- **EPA underestimates the costs for PCB removal in schools**
- **The proposed rule is duplicative of other federal efforts**
- **The proposed timeline for the rule's implementation is unworkable**

For these reasons, as discussed below, we recommend that EPA postpone further action on this rulemaking and take steps to accurately determine the scope of the problem and the costs to local governments and school districts before proceeding with a proposed rule.

The proposed rule is based on insufficient data

According to the EPA, 38 percent of PCB lighting fixtures in schools nationally are leaking. However, EPA used a data set that was derived from “several entities,” rather than from a nationwide survey. EPA’s limited data, however, runs counter to a 2014 survey done by the School Superintendents Association (AASA), Association of School Business Officials International (ASBO), and the National School Boards Association (NSBA). Over 1,200 superintendents, school business officials, and school board members indicated that it is unusual for a capacitor to leak PCBs, even if the ballast overheats and leaks the potting compound (which encapsulates the PCB capacitor). In fact, according to survey respondents, it is rare for PCBs to leak in school buildings at all.

The survey also indicated that lighting retrofits, including replacement of PCB light fixtures, have been completed in 55.2 percent of all school buildings constructed prior to 1980. An additional 31 percent indicated that some of their school buildings have gone through upgrades. Finally, in stark contrast with EPA’s data, only 2.1 percent of respondents reported having had any PCB-related incident in their school buildings, and several of those have already addressed the problem by removing all PCB-containing ballasts.

We believe the data in the 2014 AASA et al. survey is closer to the reality on the ground than the data used in EPA’s limited data set. **Therefore, we recommend that EPA undertake a new statistically valid nationwide survey of all schools and daycares before proposing a rule.**

The EPA underestimates the costs for PCB removal in schools

EPA’s analysis estimates that it will cost between \$153 million and \$263 million to remove PCB light fixtures from schools. Not only has EPA significantly overstated the problem, but we believe the agency has also significantly underestimated the anticipated costs for removing PCB-containing fluorescent light ballasts, since the proposal assumes that PCB removal can be completed by a school janitor or custodian.

Due to the complex nature of electrical systems, liability concerns and union contracts, the school district would likely have to hire certified electricians. This would significantly increase costs, especially for school districts in rural areas, who would have to pay for certified electricians from outside the community.

Furthermore, EPA has not assessed PCB light fixture disposal costs and the potential need to ship the fixtures to one of the 50 PCB disposal facilities located across the country. The need for special handling will result in significant shipping costs, while creating additional risk, given the large number of PCB ballasts disposed of in a short period of time.

We urge EPA to recalculate their cost-benefit analysis to reflect the additional implementation costs this proposed rule may impose on local governments and school districts.

The proposed rule is duplicative of other federal efforts

We are concerned that EPA is undertaking a rulemaking that will be duplicative of a U.S. Department of Energy (DOE) rule that updates energy efficiency requirements, resulting in the removal of old fluorescent light ballasts, by 2020. **Instead of initiating a new rulemaking to accelerate this timetable, we believe that a better path forward is to work with local governments and school districts to incentivize early removal of PCB light fixtures.**

A good example of this partnership at work is DOE's Energy Efficiency and Conservation Block Grant Program (EECBG). Funded through the American Recovery and Reinvestment Act, local governments spent approximately \$1 billion on energy retrofits of their buildings. Approximately 86,000 facilities, including public buildings, were retrofitted. This is a prime example of a federal program supporting both energy efficiency and public health goals at the local level.

Our organizations would be glad to explore the best ways to incentivize PCB ballast removal projects in schools and local government-owned daycare centers with EPA.

The proposed timeline for rule's implementation is unworkable

Under this rulemaking, EPA is considering a two- or four-year compliance schedule, which will cause extreme hardship for local governments, school districts, and our schools.

While school districts are considered as special-purpose governments, they may be managed by local governments and/or funded through a portion of local government property taxes and fees. Even though the national economy has officially emerged from the recession, our nation's county and city economies have not fully recovered. According to NACo's County Economies report released in January, only 214 of the nation's 3,069 county economies have fully recovered to pre-recession economic conditions. Additionally, according to NLC's most recent City Fiscal Conditions report, as of 2015, almost eight years after the start of the recession, cities are operating at only 91.6 percent of 2006 revenues.

The recession has also had lasting impacts on school districts where school funding is still capped at approximately 2004 levels. This is despite new federal and state requirements and an expanding student base that is less affluent and has additional needs. Currently, school districts have little to no room for new spending in their budgets. For example, to ensure that schools have enough qualified teachers and supporting staff, 80 to 85 percent of school budgets are spent

on personnel and benefits. That leaves only 15 to 20 percent for facility projects, which are often budgeted and planned years in advance.

Additionally, facility funding often comes from local levies or bonds, which are targeted toward a specific project. That means that school districts cannot reallocate existing facility management funds to remove PCB ballasts without putting school districts in the difficult position of having to find funding from another part of their budget, such as eliminating teacher positions or student programs. Ultimately, this can undermine important educational attainment objectives.

Finally, the tight timeline under this rulemaking does not take into account school budget cycles. In the majority of the nation's school districts, the school year's budget is usually decided by winter of the previous year. In some school districts, the budget is planned several years in advance. A two or four year implementation schedule would be unfeasible for most school districts.

For these reasons, we recommend that EPA postpone initiation of a formal rule in order to assess and more accurately determine the scope of the problem and the fiscal impacts on local governments and school districts. Specifically, we ask EPA to: 1) clarify the number, location, and size of schools in their data set; 2) undertake a new statistically valid nationwide survey of schools and daycares to determine the true scope of the problem; 3) reassess the costs to local governments and school districts of complying with a potential rule, including proper disposal costs.

Thank you for the opportunity to submit comments and for considering the local perspective as you consider this rulemaking. If you have any questions, please do not hesitate to contact us: Judy Sheahan at USCM (jsheahan@usmayors.org), Carolyn Berndt at NLC (berndt@nlc.org), Julie Ufner at NACo (JUfner@naco.org), Mike Griffin at CEA (mgriffin@countyexecutives.org), Leslie Finnan at AASA (lfinnan@aasa.org), and Kimberly Richey at NSBA (krichey@nsba.org). Thank you for your consideration.

Sincerely,



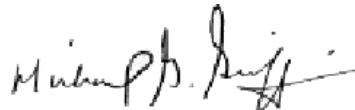
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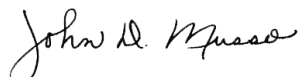
Michael Griffin
Executive Director
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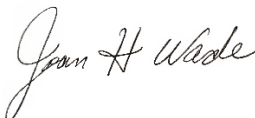
Thomas Gentzel
Chief Executive Officer and Executive
Director
National School Boards Association



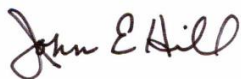
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Coalition