

To: Biden-Harris U.S. Environmental Protection Agency – Agency Review Team
From: National League of Cities
Re: Policy Areas Important to America’s Cities, Towns and Villages
Date: December 18, 2020

As the voice of America’s cities, towns and villages, representing more than 200 million people across the country, the National League of Cities (NLC) looks forward to working with the Biden-Harris Administration and with the team at the U.S. Environmental Protection Agency (EPA).

As co-regulators and regulated entities under many federal laws, including many environmental statutes, local governments share many responsibilities in implementing and enforcing programs to protect public health and the environment, and our members take these responsibilities seriously. The health, well-being and safety of residents and communities are top priorities for local officials.

NLC looks forward to serving as both a resource and partner with EPA in meeting our mutual goals. Together, we can improve the environment, boost the economy and improve the quality of life in our communities. As cities, towns and villages look to partner with the Biden-Harris Administration in the first 100 days and beyond, we hope that the following local government priority areas will be taken into consideration:

Direct Fiscal Relief to Cities, Towns and Villages

Cities are the engine of our nation’s economy and essential to America’s economic recovery. From infrastructure like roads and water to parks and open spaces, cities, towns and villages create the conditions that drive new business, spur innovation, and attract talent and investment. However, America’s communities are hurting. As the findings of NLC’s [2020 City Fiscal Conditions report](#) reveals, America’s cities are experiencing the fiscal consequences of the coronavirus pandemic-downturn at an unprecedented speed – and like recent recessions, it will take years for municipal budgets to recover from the impact of COVID-19. Cities, towns and villages across the country need direct fiscal relief to communities of all sizes to ensure that essential city services and important community-anchoring programs can remain in operation.

NLC’s [new survey data](#) of over 900 cities, towns and villages showcases the widespread affect COVID-19 is having on American municipalities. The survey found that 71% of cities, towns and villages believe their government’s condition will worsen if Congress does not pass another stimulus. Of the over 900 municipalities surveyed, approximately 70% indicated their financial health has been negatively impacted by COVID-19, with 90% of those experiencing decreased revenues and 76% having to take on additional expenses. This affects cities of all sizes – 89% of large cities, 71% of mid-sized cities and 52% of small cities indicated their governments will face significant challenges in providing necessary services to their residents.

Regular Communication with Stakeholders and Commitment to Federalism

Local leaders are committed to intergovernmental partnership, through federalism, requiring a cooperative partnership among local, state and federal governments that must be strengthened through all levels of government. Local leaders look forward to working collaboratively with the Biden-Harris Administration and in a manner that recognizes the importance of a federal-local partnership. We hope EPA will continue to host regular stakeholder meetings and have open conversations and dialogues with local officials and national organizations, such as NLC, on ongoing and emerging issues and priorities.

In 2008, EPA undertook a review of its Federalism guidance and, with NLC's urging, lowered the intergovernmental consultation threshold from \$100 million to \$25 million in the "spirit" of federalism to improve the way the agency defines, conducts and makes regulatory decisions. Since this time, NLC and the other state and local government groups have been consulted with on over 30 different rulemaking procedures. By comparison, since the Executive Order was issued in 1999 through 2008, only two EPA regulations were found to have aggregate costs to state and local governments above the \$100 million threshold for triggering the intergovernmental consultation process. While EPA has one of the most robust state and local government consultation processes, there is a cumulative effect of each of these individual rulemakings at the local level where elected officials have to look holistically and make difficult decisions about where to invest their limited financial resources.

Moreover, there are times when we believe EPA has fallen short in the consultation process, as well as in conducting the fiscal analysis that accompanies rulemakings. Over the past several years, NLC has identified several rulemakings where we believe EPA has not engaged in a "meaningful and timely" consultation process or where the Agency has underestimated or not fully considered the true cost to local governments.

While the federalism consultation 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. Local officials can provide an important perspective on ensuring that rules offer local flexibility, avoid a "one-size-fits-all" approach and avoid an unfunded mandate. We continue to urge the federal government to listen to and consider the perspective of local governments early and often during the rulemaking process.

Commitment to Racial Equity and Environmental Justice

The coronavirus pandemic [exposed the inequities](#) that long existed in communities, particularly in our Black, Indigenous, Latin/Hispanic and other communities of color, which are often the areas most affected by flooding, extreme heat, poor air quality, unsafe drinking water and contamination from industrial sites.

The impacts of climate change and extreme weather events pose an especially pressing threat to persons with disabilities, economically disadvantaged households, the elderly, Black, Indigenous and People of Color (BIPOC), and other vulnerable populations.

As local leaders look to reimagine government policies, procedures and processes to build more equitable communities, NLC's [Race, Equity And Leadership \(REAL\)](#) department helps city, town and village leaders strengthen their knowledge and capacity to learn about the impact of historical inequities and design programs that dismantle structural and system racism. NLC aims to achieve this goal by centering racial equity in our all our work including our direct technical assistance and research. NLC calls on the federal government to prioritize federal investments in communities that have been left behind, specifically our BIPOC communities, which have been disproportionately impacted by the effects of COVID-19, climate change and historical policies and underinvestment.

Advance Climate Change Mitigation, Adaptation and Community Resilience

Cities across the country are seeing the effects of climate change and are taking action to mitigate the impacts of extreme weather events on their residents and businesses. With heat waves, droughts, wildfires, increased precipitation, more frequent and severe floods and

hurricanes, communities need to be able to anticipate, prepare for and adapt to these events. Extreme weather can cost local, state and federal governments trillions of dollars and severely impact local and regional infrastructure, the economy, public safety, public health, natural landscapes, environmental quality and national security.

This year, as communities struggled to maintain services and essential workers during the pandemic, they simultaneously faced a record number of climate-related disasters, such as wildfires, extreme heat, and hurricanes, which further increased fiscal pressure on local governments, residents and businesses.

With 30 named storms, 2020 was a record year for Atlantic hurricanes. 2020 also marked the most active fire year on record for the West and was the hottest summer on record for many cities. In 2019 historic flooding hit the Midwest and southern plains significantly affecting agriculture, roads, bridges, levees, dams and other infrastructure, assets and industries.

Budgetary concerns are [delaying large-scale climate resilience projects](#) in cities such as New York, San Francisco and Miami Beach. On the other hand, cities such as Chico, CA, Phoenix and Los Angeles have expressed a [commitment to green recovery](#) plans and programs. With an influx of federal support, smaller and mid-sized cities could follow suit.

Local leaders are taking action on climate change because local governments are first responders on the front lines of delivering services and protecting residents. Local elected officials are entrusted with the stewardship of taxpayer dollars and know that the cost of prevention pales in comparison to the cost of inaction — in terms of dollars, property and human life. Moreover, improving energy efficiency and investing in renewable energy makes good economic sense for residents, businesses and communities. While cities are prepared to forge ahead on these initiatives and actions, we urge the federal government to be a partner in these efforts in support of our economy and to build resilient communities.

Recommendations for Administrative and Congressional Action:

- Take urgent action to reduce greenhouse gas emissions across a broad sector of the economy, including energy production and consumption and transportation networks, and become carbon neutral to mitigate the effects of climate change and hold warming to 1.5°C.
- Rejoin the Paris Climate Agreement.
- Strengthen Corporate Average Fuel Economy (CAFE) and greenhouse gas emissions standards for passenger cars and light-duty trucks.
- Reinstate the Clean Air Act California waiver that allows the state to set its own standards for greenhouse gas emissions and zero emissions vehicles, which 12 other states plus the District of Columbia have adopted.
- Provide financial and technical assistance to support local government vulnerability assessments and climate change mitigation and adaptation implementation efforts.
- Establish a national climate service to communicate changes and impacts, and provide critical time-sensitive information to local governments and the public, as well as long-term climate change information.
- Require consideration of climate-related risks and vulnerabilities as part of all federal policies, practices, investments, regulatory and other programs.

Invest in our Nation's Water Infrastructure

Local government investments account for nearly 98% of all water and sewer infrastructure spending, including more than \$130 billion in 2018, according to the U.S. Census Bureau. EPA's own estimates put the nation's water infrastructure capital needs over the next 20 years at approximately \$655 billion in total. The American Society of Civil Engineers estimates the needed investment into water infrastructure is \$1.3 trillion over the next 20 to 25 years. Other estimates put the cost at more than \$4 trillion to maintain and build a 21st century water system that addresses climate change impacts. The federal government should recommit to being a significant partner in investing in our nation's water infrastructure.

Generally, when we think about the needs around water infrastructure at the local level, there are six broad categories of challenges that communities are facing:

1. **Aging Infrastructure** – Our nation's infrastructure is aging, beyond the 50-75 year life span, with some infrastructure 100-150 years old.
2. **Unfunded Mandates** – Our nation's cities, towns and villages are facing an increase in federal and state unfunded mandates, with limited fiscal resources and often state preemption on local ability to raise revenue.
3. **Affordability and Equity** – Low-income households pay a disproportionate amount of their incomes toward their water bills.
4. **Climate Change Impacts** – Whether too much water or too little water, climate change will exacerbate current water infrastructure challenges, as well as create new challenges around both water quality and availability. These changes must be taken into consideration as we're thinking about new infrastructure investments.
5. **Pollution and Contamination** – Be it lead, PFAS, nutrients, pharmaceuticals etc., local governments are charged with providing clean and safe water for communities.
6. **Aging Workforce and Workforce Diversity** – One third of water/wastewater utility workers, and in some cases 50-60 percent of the workforce, are eligible for retirement in the next 5-10 years, far exceeding workforce replacement needs in other sectors. Additionally, many communities' water workforce does not reflect the diversity of its residents.

As the coronavirus pandemic continues, local water and wastewater utilities are committed to ensuring all customers have access to clean and safe water to maintain public health. This, however, has come at a cost to utilities, which are overwhelmingly funded by local ratepayers, and are now facing a significant drop in utility revenue essential to providing water service, continuing operations and making capital investments. The estimated financial impact of COVID-19 on water and wastewater utilities combined will exceed [\\$30 billion in lost revenues](#).

Recommendations for Administrative and Congressional Action:

- Increase federal investments in water infrastructure including for investments in innovative technologies, less conventional water infrastructure, and lead service line replacements to ensure robust funding through established programs such as the Clean Water and Drinking Water State Revolving Loan Funds (SRF), Water Infrastructure Finance and Innovation Act Loans, Sewer Overflow and Stormwater Reuse Municipal Grants, Drinking Water System Infrastructure Resilience and Sustainability Act Grants, Assistance for Small and Disadvantaged Communities Grants, Lead Testing in School and Child Care Drinking Water Grants, and Reducing Lead in Drinking Water Grants programs.
- Direct EPA to work with State Revolving Fund administrators and encourage increased SRF funding in the form of grants, and zero-interest and principal-forgiveness loans.

- Direct EPA to provide guidance to State Revolving Fund administrators on issuing loans and grants to fund consumer incentive or direct installation programs.
- Direct EPA to prioritize SRF funding for utility incentives and rebates for green stormwater infrastructure, water use and energy efficiency, lead service line replacements and other distributed, onsite direct installation, including installations on private residential and commercial property.
- Support EPA's Integrated Planning for Municipal Stormwater and Wastewater Framework to allow communities to meet their Clean Water Act Requirements in the most cost-effective manner. EPA's Office of Municipal Ombudsman is an important resource for local governments in this regard.
- Continue development of the Proposed 2020 Financial Capability Assessment Guidance released for public comment on September 18, 2020. Local governments urge EPA to remove Median Household Income as a benchmark for assessing a community's financial capacity to comply with the Clean Water Act.
- Modernize the National Pollutant Discharge Elimination System permitting process to allow states with delegated authority the ability to issue a permit to a municipality of up to ten years.
- Provide robust and increased funding for the Water Workforce Infrastructure and Utility Development Grants program to support economic recovery, workforce development and skills training needed across the water sector, and particularly in innovative and emerging fields including green infrastructure and water reuse.
- Add water and sewerage facilities to the list of private activity bonds that are not subject to the volume cap to maintain tax-exempt status. (*Treasury*)
- Expand federal income tax exclusions to include homeowners who receive rebates from water utilities to purchase and install water conservation or stormwater management systems. (*Treasury*)

Protect Drinking Water Quality

The nation's drinking water should be as safe as technologically feasible at reasonable cost. Drinking water standards should be based on sound science, public health protection, occurrence of the contaminant in drinking water supplies at levels of public health concern, risk reduction and cost. It is imperative for the continued health and welfare of the nation that local governments have the financial resources and technical expertise needed to provide adequate and safe drinking water to their residents.

For the past several years, there has been a growing concern across all levels of government about drinking water contamination from PFAS – a group of human-made chemicals that were made and used in a variety of industries around the globe, which have made their way into drinking water systems across the country, particularly in communities near military installations or industrial sites. As EPA undergoes a rulemaking on a proposed regulatory determination for PFOA and PFOS in drinking water—the two most well-known and studied PFAS chemicals—and a potential forthcoming rulemaking to establish a National Primary Drinking Water Standard, we urge EPA and other federal agencies to continue to make progress on a comprehensive nationwide action plan for addressing PFAS contamination, including identifying both short-term solutions for addressing these chemicals and long-term strategies that will help states, tribes and local communities provide clean and safe drinking water to residents. With regard to lead, implementation of the Lead and Copper Rule over the last 30 years has resulted in major improvements in public health. As EPA considers revisions to the Lead and Copper Rule, any federal mandate on local governments should include additional federal financial resources, as well as offer municipal water systems flexibility in implementation and

compliance options. New funding sources and financing mechanisms must be created to assist local governments, homeowners, schools, and daycare facilities comply and implement the rule, particularly with regard to replacing lead pipes. Current levels and types of financing and funding opportunities are not adequate to address lead pipe remediation in communities across the country and an influx of money is necessary to meet the costs of replacing the estimated six to ten million pipes that are currently in use.

Recommendations for Administrative and Congressional Action:

- Holistically examine PFAS contamination and take comprehensive action to address the problem, including through nationwide testing, monitoring, mapping, public education and water supply treatment. The federal government should avoid passing costs onto local governments or ratepayers.
- Ensure that the parties responsible for PFAS contamination, including the federal government, are held fully liable for costs of cleanup and mitigation and ensure that sites are cleaned up in a timely manner and to standards sufficiently stringent to permit reuse of the site and to obviate the need for additional cleanup and mitigation costs by affected local governments.
 - Local governments should be excluded from liability for costs associated with cleanup and mitigation. Local governments, including municipal airports and fire departments, were required by federal law to use firefighting foam containing PFAS chemicals, and therefore should not be held liable for PFAS contamination or cleanup costs. Additionally, local governments, including drinking water and wastewater utilities and municipal landfills, serve as receivers of PFAS chemicals and did not cause or contribute to contamination, and therefore should not be held liable for PFAS contamination or cleanup costs.
- Accelerate research and technology development to advance the science needed to understand the health consequences of exposure to PFAS chemicals, detect and measure PFAS chemicals in water and other environmental media, treat water supplies to remove these substances and find safe substitutes for PFAS chemicals.
- Provide robust funding for grants to local governments, as well as school systems and daycare centers, for the replacement of lead service lines, testing, planning, corrosion control, and public education campaigns, and to assist small and disadvantaged communities in complying with the Safe Drinking Water Act.
- Provide direct assistance to the City of Flint, Michigan and work directly with local officials, for as long as necessary, to resolve the drinking water crisis through the provision of safe drinking water and to support economic recovery. Provide long-term support for the families affected by lead drinking water contamination in Flint and nationwide, including in the areas of education and mental health.
- Support programs for public education regarding safe drinking water and innovative solutions that could address lead drinking water contamination beyond the traditional command and control.

Promote Economic Development through Brownfields Redevelopment

Since its creation, the EPA Brownfields program has provided crucial assistance to local governments for reuse of hazardous, polluted and underutilized properties. To date, there have been over 24,000 brownfields assessments and 1,200 brownfields cleanups nationally, which has led to over 113,000 jobs. Each of the \$22 billion federal dollars that has been invested since the program was established in 2002 has leveraged approximately \$18 in other investments, close to \$400 billion in total.

To build upon these past successes and assist in the cleanup, reuse and redevelopment of remaining sites, NLC successfully advocated for the passage of legislation in 2018 that reauthorized the program and made some key improvements to the program. Three of the most significant changes were authorizing multipurpose grants up to \$1 million, increasing funding for remediation grants \$500,000 with the ability for EPA to go up to \$650,000 per site, and addressing liability concerns for the voluntary acquisition of properties. These changes will facilitate the cleanup and redevelopment of large, complex brownfields sites.

Recommendations for Administrative and Congressional Action:

- Continue to provide robust funding for the Brownfields program to support the redevelopment of sites nationwide.
- Renew the Brownfields Tax Incentive, section 198 of the Internal Revenue Code, which allowed taxpayers to deduct remediation expenditures for the cleanup of a property if the property was used for a trade, business or for the production of income. The incentive expired on January 1, 2012. (*Treasury*)

Reimagine our Nation's Recycling Infrastructure and Programs

In February 2020, [NLC testified](#) before the House Appropriations Committee, Subcommittee on Interior and Environment on the challenges that cities, towns and villages are facing on recycling and the opportunities for improving local recycling programs, upgrading recycling infrastructure and protecting the environment.

China's National Sword Policy demands that public, private and nonprofit sectors to rethink and reimagine recycling. The challenges today are largely due to two problems: (1) contamination in our recycled materials, which increases costs, damages equipment and reduces the quality of the material – potentially making whole loads of material completely unrecyclable, and (2) materials, particularly plastics and plastic film, that are recyclable only under ideal physical and market conditions but which very few American facilities can recycle in practice.

The COVID-19 pandemic has exacerbated these problems as oil prices have dropped, making it even cheaper to produce virgin plastic instead of using recycled content. Since the coronavirus struck, recyclers worldwide are reporting their businesses have shrunk, by more than 20% in Europe, by 50% in parts of Asia and as much as 60% for some firms in the United States [according to a Reuters investigation](#).

These costs are forcing local governments, private haulers and facility operators to reevaluate and reduce their operations in order to maintain viable municipal materials management systems. Public education campaigns to raise awareness of the proper way to recycle play a large role in sustaining recycling programs in communities across the country, but education alone is not sufficient to meet the challenges that have rippled through global recycling markets.

While solid waste management is a local issue, the federal government is an important partner. Cities, towns and villages across the country urge the federal government to develop a national policy that includes source reduction, volume reduction and resource recovery. Collaborative efforts to reimagine and restructure our nation's waste management and recycling systems are even more critical given the wide-spread and significant budget shortfalls at the local level due to COVID-19. [New York City](#) is just one example – facing a \$9 billion shortfall, the city was forced to cut \$5 billion from its budget, eliminating a long-standing composting program.

Recommendations for Administrative and Congressional Action:

- Move forward in finalizing the Draft National Recycling Strategy to create a stronger, more resilient and cost-effective U.S. municipal solid waste recycling system.
- Support public education designed to promote participation in activities that reduce the volume and toxicity of municipal solid waste and the proper diversion of recyclable materials.
- Develop policies that promote product stewardship and create incentives for manufacturers to design and produce products created with less energy, materials and toxins.
- Develop a national program to ensure that recycling labels for packaging are based on a set of clear and verifiable definitions and standards.
- Create federal procurement standards for recyclable materials and recycled products to drive more robust market demand.

NLC's Work with Cities

The [Leadership in Community Resilience \(LCR\)](#) grant program supports and enhances local capacity among elected leaders and staff, communities and community-based organizations as they pursue coordinated climate resilience efforts. In addition to providing direct assistance to cities, the program gathers new insights related to the challenges and opportunities associated with local resilience initiatives. NLC is sharing the lessons learned with cities throughout the United States. Since 2017, 33 cities have participated in the LCR program.

[Local Interventions for Financial Empowerment through Utility Payments initiative \(LIFT-UP\)](#) was a two-year pilot project conducted by NLC in five cities. LIFT-UP offers local leaders a “win-win” scenario, allowing city utilities to recoup lost revenue due to unpaid bills, while connecting residents who are behind on their utility bills with financial empowerment services to help them improve their overall financial well-being. Additionally, NLC's Cities Addressing Fines and Fees Equitably (CAFFE) project helps municipalities assess the negative impacts of municipal fines and fees on residents' financial health and implement equitable collections strategies that help reduce debt. Finally, REAL is working with cities, towns and villages to understand how to center racial equity as it examines the impact of economic mobility and uses a racial equity tool to identify who benefits and is burdened by policies local governments implement.

Appendix

NLC's [Leading Together Cities Agenda](#) reflect the local government priorities for the Biden-Harris Administration. The [Building Sustainable Infrastructure](#) pillar brings together water infrastructure and community resilience.

[Letter](#) from NLC and WaterNow Alliance to Biden-Harris EPA Agency Review Team on water infrastructure priorities (December 14, 2020)

Recent comment letters from NLC to EPA:

- [National Primary Drinking Water Regulations: Proposed Lead and Copper Rule Revisions \(February 12, 2020\)](#)
- [2020 Proposed Financial Capability Assessment for Clean Water Act Obligations \(October 19, 2020\)](#)
- [Draft National Recycling Strategy \(December 4, 2020\)](#)

NLC [comment letter](#) to the Council on Environmental Quality on the proposed rule to update the regulations implementing the procedural provisions of the National Environmental Policy Act (March 10, 2020)

NLC [comment letter](#) to the House Select Committee on the Climate Crisis (November 18, 2019)

NLC [Congressional testimony](#) on how the federal government can reduce unfunded mandates and unnecessary regulatory burdens on local governments and how the Federalism consultation process can be improved (April 26, 2017)

NLC is participating/participated in the following legal cases:

- *California v. Wheeler* – NLC will file an amicus brief in this case, which are due on January 21, 2021
- [Union of Concerned Scientists v. National Highway Traffic Safety Administration](#)
- [New York v. EPA](#)
- [West Virginia v. EPA](#)
- *Hawaii Wildlife Fund v. County of Maui*
 - [State and Local Legal Center U.S. Supreme Court brief](#)
 - NLC [amicus brief](#) supporting the County of Maui in its appeal with the U.S. Supreme Court
 - NLC [amicus brief](#) supporting the County of Maui in the Ninth Circuit

NLC resources for cities, towns and villages to respond to and recover from the coronavirus pandemic:

- [Emergency Preparedness Amidst COVID-19](#)
- [COVID-19 Local Response Principles](#)