MEMORANDUM

TO: Energy, Environment and Natural Resources (EENR) Federal Advocacy Committee Members

FROM: The Honorable Ellen Smith, Chair
Council Member, City of Oak Ridge, Tennessee

RE: 2021 Policy Report

On behalf of the Energy, Environment and Natural Resources (EENR) Federal Advocacy Committee, I am pleased to present the enclosed policy report for 2021. This report contains recommended policy amendments and resolutions from the EENR Committee. Please carefully review these proposals in advance of the upcoming virtual City Summit.

The EENR Federal Advocacy Committee will review and vote on these recommendations during our meeting at the virtual City Summit on Monday, November 15, 2021, from 3-5 p.m. eastern.

The primary role of NLC’s policy and advocacy committees is to oversee the regular review and updating of the National Municipal Policy to ensure that it reflects the view of local officials on current and emerging federal policy issues. Adopted positions are used to guide NLC’s federal advocacy efforts, shape public policy debates, and communicate positions with the media and national opinion leaders. In addition to developing federal policy, the committees serve as advocates on behalf of our cities, towns and village and lead on finding solutions to local challenges.

The EENR Federal Advocacy Committee has worked diligently to recommend policy changes and pursue initiatives under our Committee’s jurisdiction, including advocating for funding, policy and programs to help communities build sustainable and resilient infrastructure. If you have any questions about the proposals in this report, please feel free to contact me, any member of the Committee, or the NLC staff contact for our Committee.

It has been an honor to serve as EENR Committee Chair this year. I look forward to seeing you soon.

Sincerely,

Ellen Smith
Council Member, City of Oak Ridge, Tennessee
2021 NLC EENR Committee Chair
WELCOME, INTRODUCTIONS AND MEETING OVERVIEW

The Honorable Ellen Smith, Chair
Councilmember, City of Oak Ridge, Tennessee

Introductions and explanation of expected outcomes from this meeting.

CHAIR’S REPORT

The Honorable Ellen Smith, Chair
Councilmember, City of Oak Ridge, Tennessee

Councilmember Smith will provide an update on the EENR Committee’s work in 2021. The Committee will review and vote on the recommendations for policy amendments and resolutions.

FEDERAL ADVOCACY UPDATE

Carolyn Berndt
Legislative Director for Sustainability, Federal Advocacy, NLC

Committee members will hear an update on NLC’s 2021 legislative priorities. Committee members will discuss potential topics for 2022.

NLC SUSTAINABILITY PROGRAM

Cooper Martin
Director for Sustainability and City Solutions, NLC

Committee members will hear an update on NLC’s sustainability programs, initiatives and research.

DISCUSSION: CITY/COMMUNITY PLANNING FOR ENERGY, ENVIRONMENT AND NATURAL RESOURCES

Abygail Mangar
Program Manager, City Solutions, NLC

Through an interactive, focus group style presentation and discussion, committee members will share how city/community planning influences challenges and progress on environmental/sustainability initiatives. Discussion questions:
1) How are planners and other built environment-focused professionals hindering or promoting your work regarding environmental/sustainability initiatives?

2) What type of case studies/highlights would be helpful for you in order to foster better cohesion between built environment planning and environmental/sustainability initiatives?

4:30 p.m.  
EPA LOCAL GOVERNMENT ADVISORY COMMITTEE

The Honorable Cynthia Pratt  
Deputy Mayor, City of Lacey, Washington

The Honorable Hattie Portis-Jones  
Councilmember, City of Fairburn, Georgia

The Honorable Kwasi Fraser  
Mayor, Town of Purcellville, Virginia

Committee members will hear an update on the work of the U.S. Environmental Protection Agency’s Local Government Advisory Committee.

4:40 p.m.  
ROUND ROBIN: HOW COMMUNITIES ARE USING ARPA FUNDS

Committee members are invited to share how their communities are using ARPA funds. How are your communities advancing sustainability/climate action through ARPA funding? What type of programming or information would be helpful from NLC in 2022?

5:00 p.m.  
WRAP UP AND ADJOURN

Enclosures:
- Procedures for the Adoption of National Municipal Policy and Resolutions
- Proposed EENR Policy Amendments
- Proposed EENR Resolutions
- Energy and Environment Legal Update
- 2021 Energy, Environment and Natural Resources Committee Roster

Next EENR Committee Meeting:
NLC Congressional City Conference
Washington, DC
March 14-16, 2022
Procedures for the Adoption of National Municipal Policy and Resolutions
Virtual City Summit

November 2021

The National Municipal Policy (NMP) is NLC’s comprehensive, standing statement of goals, principles, policies, and program objectives on federal policy issues directly affecting or of concern to cities, towns and villages. The NMP serves as the basis for NLC’s advocacy efforts on behalf of the nation’s cities, towns and villages. The policy is subject to annual modification by delegates from direct member cities and state municipal leagues at the Annual Business Meeting during City Summit.

Since membership amends the NMP once each year, amendments to the policy typically do not endorse or oppose specific congressional bills, current presidential positions, or technical aspects of federal regulations. Instead, positions on such timely matters – which are subject to major changes during the annual legislative and administrative processes – are the subject of NLC resolutions that stand for one year, from their time of passage until the adjournment of the next City Summit.

At the Congressional Cities Conference (CCC) in March, the Federal Advocacy Committees set agendas for the year. At meeting(s) following CCC, the committees develop recommendations for policy amendments and resolutions. Additionally, during the summer, all NLC direct member cities and state municipal leagues were invited to submit recommendations of policy amendments and resolutions by June 25, 2021.

At least two weeks prior to the City Summit, proposed policy amendments and resolutions for 2022 are published on the NLC website and an announcement is sent to all NLC members. The proposed resolutions book for 2022 can be found here. These proposals are subject to change by the Federal Advocacy Committees and the Resolutions Committee at City Summit prior to the Annual Business Meeting.

**Federal Advocacy Committee Meetings: Monday, November 15**

NLC’s Federal Advocacy Committees will meet virtually during City Summit to finalize their recommended amendments and resolutions.

During the Federal Advocacy Committee meetings, action can be taken on policy amendments or resolutions submitted to NLC by the June 25, 2021 advance submission deadline, if the committee did not endorse those positions. Sponsors of these amendments or resolutions, or their representatives, can appear before the Federal Advocacy Committee on behalf of their proposed recommendations. The Federal Advocacy Committees can also hear additional proposals on the floor from committee members.
Individuals may submit resolutions or policy changes electronically to the NLC staff contact for the committee. (NLC staff should be notified in advance of this intention if possible.)

Federal Advocacy Committee meetings are open to all conference participants. However, only committee members are eligible to vote, make formal motions and debate items. Committee members may be asked to identify themselves.

Adoption of recommendations is by a majority vote of Federal Advocacy Committee members present and voting. Proxies are not permitted. Every reasonable effort will be made to ensure that the views of all committee members are heard.

**Resolutions Committee Meeting: Tuesday, November 16**

Proposals approved by the Federal Advocacy Committees are forwarded to the NLC Resolutions Committee for consideration. The Resolutions Committee will meet during the virtual City Summit on Wednesday, November 16. The Federal Advocacy Committee chairs will report the recommendations of their respective committees to the Resolutions Committee members.

In addition to these amendments and resolutions, the Resolutions Committee will consider any appeals by sponsors of policy amendments or resolutions that were received in NLC’s offices by the June 25, 2021, advance submission deadline and subsequently rejected during Federal Advocacy Committee debate. Proposals from Resolutions Committee members or the Board of Directors also are eligible for consideration by the Resolutions Committee.

Only Resolutions Committee members or representatives appointed by state municipal leagues who are not represented on the Board of Directors may participate and vote during the meeting. The only individuals who will be recognized to speak at the Resolutions Committee are members of the Resolutions Committee, Board members, Federal Advocacy Committee chairs, and sponsors of policy recommendations being appealed. Adoption of recommendations is by majority vote of Resolutions Committee members present and voting. Proxies are not allowed.

The Resolution Committee Official Rules of Conduct and the NLC Bylaws shall govern the conduct of the Resolutions Committee meeting. In the event that procedural matters arise that are not addressed by the Official Rules or Bylaws, Robert’s Rules of Order Newly Revised 12th Edition shall govern the conduct of the meeting.

**Annual Business Meeting: Friday, November 19**

Resolutions Committee actions are referred to the Annual Business Meeting for consideration and adoption by the voting delegates. The report of the Resolutions Committee will include only recommended policy language amendments and resolutions. The Annual Business Meeting will be held during the virtual City Summit on Friday, November 19.

To cast a vote at the Annual Business Meeting, all voting or alternate delegates must be registered with the Credentials Committee and must have official voting materials. Each direct member city has a certified voting delegate, or alternate, who is entitled to vote at the Annual Business Meeting. The delegate may cast a certain number of votes based upon the direct member city’s population as of the 2010 census; member cities may not split their votes. Each
state municipal league is entitled to cast a total of 20 votes by its delegate or delegates, and those votes may be split and distributed at the discretion of each state municipal league. Voting delegates must be present to vote. Proxies are not permitted.

After a brief presentation of the Resolutions Committee’s report, the Annual Business Meeting’s Presiding Officer will call for adoption of NMP amendments and resolutions as proposed by the Resolutions Committee. Amendments to each chapter will be considered in the order in which those chapters appear in the NMP. Motions from the floor to amend the Resolutions Committee’s recommendations require a majority vote for passage. Final adoption of amendments to the NMP requires a two-thirds vote of voting delegates.

Policy proposals not submitted by the Resolutions Committee may be presented by petition to the NLC Federal Advocacy team. Such petitions must be received by 10:00 AM ET on the day of the Annual Business Meeting – Friday, November 19. Petitions must carry the text of the proposal and printed names, titles and signatures of 10 certified voting delegates with their respective cities and states. The petition must receive a majority vote of the voting delegates to be accepted for floor consideration, and all proposals to amend or adopt the NMP and all separate resolutions require a two-thirds vote for final approval. Petitioners should complete the packet that can be found here.

The Official Rules of Conduct and the NLC Bylaws shall govern the conduct of the Annual Business Meeting. In the event that procedural matters arise that are not addressed by the Official Rules or Bylaws, Robert’s Rules of Order Newly Revised 12th Edition shall govern the conduct of the meeting.

For further information about this process prior to City Summit or to contact the NLC staff for a Federal Advocacy Committee, contact Zach Gossett at 202-626-3123 or gossett@nlc.org.
Proposed EENR Policy Amendments

Only sections of the *NLC National Municipal Policy (NMP)* where modifications are proposed are reproduced in this report. The complete text of the current *NMP*, divided into seven policy chapters, can be found at [nlc.org/national-municipal-policy](http://nlc.org/national-municipal-policy)

Please note:
- Proposed new language is underlined;
- Proposed language for deletion is struck out; and
- Existing, unchanged language is shown as plain text.

POLICY:

- **Section 2.00 Environmental Quality**
  - D. Principles

- **Section 2.02 Energy**
  - A. Goals
  - E. Renewable Energy
  - F. Conventional Energy Sources
  - G. Electricity
  - H. Transportation and Energy

- **Section 2.04 Solid and Hazardous Waste**
  - A. Problem
  - B. Goals
  - C. Solid Waste Policies
  - D. Nuclear Waste Management Policies

- **Section 2.10 Security of Critical Infrastructure**
  - C. Federal Policies

- **Section 2.11 Health-Focused Local Food Systems**
Section 2.00 Environmental Quality

D. Principles
1. Regional Approaches
[no change]

2. Sustainability
NLC is committed to the concept of sustainability, that as a society we must find ways to meet the needs of the present population without compromising the ability of future generations to meet their needs. Adopting sustainable solutions offers the potential of multiple, significant benefits to individuals, communities and society, including economic prosperity, environmental protection, environmental justice, social well-being, public health and national security.

A wide array of issues should be viewed through the sustainability lens, including energy, water, transportation, land use and economic development, housing, and public health. (See also the Community and Economic Development (CED) and Transportation Infrastructure and Services policy chapters.)

NLC supports the Interagency Partnership for Sustainable Communities formed by the U.S. Department of Housing and Urban Development, the U.S. Department of Transportation, and the U.S. Environmental Protection Agency to coordinate housing, community development, transportation, energy, and environmental policies that will help local communities create better and more affordable places to live, work and raise families. NLC urges Congress to pass legislation to officially authorize the partnership and to continue funding.

From a municipal perspective, protecting and rebuilding existing communities are vital components of a national environmental protection program. Restoring and strengthening existing communities contributes toward ensuring a sustainable future. (For more details on sustainable development, see CED Section 3.07 (C) (4) (c), Land Use, Promoting Sustainable Communities.)

America’s cities can benefit from the exchange of experiences and engagement with local governments in other countries, and must join in international cooperation and collaboration efforts to mount meaningful actions to achieve goals and reduce the impacts of climate change.

3. Environmental Justice
The impacts of pollution fall disproportionately on various communities, including people with disabilities, economically disadvantaged households, the elderly, Black, Indigenous and People of Color (BIPOC), and other vulnerable and underrepresented populations, poor and minority communities, an issue of special concern to the nation’s cities, towns and villages. To mitigate these unacceptable impacts, the federal government should:

- Identify those areas with the largest concentrations of toxic chemicals in air, land, and water;
- Assess the human health in the areas of highest impact;
- Provide opportunities and resources that will allow them to participate in determining adverse health effects and economic impacts;
• Identify activities that have significant effects on human health and develop plans that will result in net reductions in pollution;
• Include environmental justice as an integral component of all federal planning, programs, and statutes; and
• Enhance opportunities for early public and local government participation, including access to accurate, objective information about the consequences of permit issuance; and
• Prioritize equitable access to nature and natural spaces.

NLC opposes any federal regulations that place restrictions on state and local government actions regulating private property or that require additional compensation beyond current interpretations of the Fifth Amendment of the U.S. Constitution.

2.02 Energy

A. Goals

NLC urges the federal government to work with local governments to develop and implement a sustainable energy policy that is reliable, equitable, environmentally responsible and evidence-based and that will:

• Continue to assess the future of our nation’s energy requirements to ensure that our energy policy adequately addresses the future needs of the country;
• Promote the most efficient and affordable use of renewable and sustainable energy sources while protecting the environment;
• Encourage the transition to a clean energy economy that increases the use of carbon neutral energy and promotes energy efficiency, with a goal of at least 50 percent carbon neutral energy by 2030 and 100 percent by 2050 or sooner;
• Protect the supply of energy by promoting the use of renewable energy sources and alternative fuels, while implementing measures developing techniques to reduce the environmental impact of the use of conventional fossil fuels;
• Protect our economic and national security by reducing our dependence on foreign oil and minimizing the environmental impact of the encouraging environmentally responsible domestic production of conventional and renewable energy sources;
• Ensure a national energy supply which will decrease greenhouse gas emissions;
• Encourage conservation and increased energy efficiency across the country and sectors of the economy;
• Encourage the widespread use and deployment of both distributed energy sources and utility scale generation of renewable energy as a component of energy infrastructure to help communities withstand impacts from disruptions in regional supply systems; and
• Promote community resilience by strengthening and modernizing energy infrastructure to reduce vulnerability to disruptions and withstand the impacts of climate change;
• Support local economies with job training and workforce development as the nation transitions to clean energy; and
• Ensure that low-income households do not face unaffordable costs related to the transition away from fossil fuels.
B. Climate Change Mitigation

[no change]

C. Federal Policies

[no change]

D. Energy Efficiency

[no change]

E. Renewable Energy Sources

1. Alternative and Renewable Energy

Federal tax policies should promote the development and use of alternative and renewable energy. NLC supports long-term extensions of the investment tax credit and the production tax credit for renewable energy as an incentive for their development and deployment. NLC supports policies and financial mechanisms that lower the cost and eliminate financial, regulatory and market barriers to development, procurement and implementation of alternative and renewable energy sources by residential, commercial and municipal entities, as well as producers. The U.S. Department of Energy (DOE) should continue to offer grants to cities for the procurement of these non-conventional renewable energy sources for use in municipal buildings.

To promote the use and development of renewable energy such as solar, wind, geothermal, biomass, tidal and hydro power, the federal government should:

- Increase funding for research and development to implement the use of renewable energy sources;
- Create a renewable portfolio standard that increases the share of electricity from renewable sources;
- Create standards for and evaluate the effectiveness of renewable energy products;
- Promote and support improvements to the electrical grid, including capabilities and incentives for smart metering, support for large scale distributed generation and storage capacity, and construction of long-distance renewable energy transmission capabilities; and
- Increase funding to research and develop innovative alternative energy technology for energy production, storage and transmission.

2. Demand Management

NLC urges the federal government to establish tax incentives promoting demand-side management of energy in such areas as distributed generation systems and electricity production to reduce base load demand.

3. Distributed Generation

The federal government should develop a comprehensive research and development program to improve storage capacity and affordability of distributed energy systems, as well as promote their implementation.

4. Renewable Energy Sources
a. Hydroelectric
The use of hydroelectric power should be done in a manner that minimizes environmental impact. The pricing of hydroelectric power generated at federal projects should be as low as possible, while ensuring that all costs to the federal government are fully recovered including the cost of federal capital. The federal government should continue to own and operate the federal power marketing agencies and should not sell, transfer, exchange or otherwise dispose of them. NLC supports the protection of municipal utility purchases of hydroelectric power through federal contracts.

b. Solar
The federal government should support research programs to develop innovative and practical solar technology. Additionally, the federal government should promote financing mechanisms that stimulate and incentivize the adoption and installation of solar technologies for residential, commercial and municipal use.

c. Wind
The federal government should support research programs to develop wind technology for commercial and residential use, clarify regulations related to its implementation, and provide incentives to promote its use.

d. Additional Energy Sources
The federal government should support research and development and use of additional energy sources such as geothermal and bioenergy, including waste-to-energy and landfill gas recovery projects, that help meet goals of an efficient, economical, and environmentally responsible energy supply. NLC urges the federal government to support technical assistance and incentives for local- and regional-scale efforts to obtain biogas from waste materials and biological feedstocks.

F. Conventional Energy Sources
2. Fossil Fuels
NLC supports the transition away from fossil fuels as energy sources toward a clean energy economy that increases the use of carbon neutral energy and promotes energy efficiency. During this transition, the federal government must ensure that:

- Fossil fuel use minimally impacts the environment;
- Communities with a reliance on the fossil fuel industry are supported with job training and workforce development;
- Low-income households do not face unaffordable energy costs;
- Carbon capture technologies are deployed to minimize environmental impacts and harm and reduce greenhouse gas emissions. The federal government should support research and development for technologies that have the potential to reduce greenhouse gas emissions, such as carbon sequestration and hydrogen production; and
- No new leases for fossil fuel development on federal land are granted and that existing permits are phased out.

While carbon sequestration has the potential to cut greenhouse gas emissions, it should not be used to extend the life of coal or natural gas plants, nor should it be a substitute for transitioning
to clean energy sources. The federal government should support nature-based carbon removal approaches, such as increasing and maintaining forests and trees, wetland preservation and restoration, and changes in farming practices that can increase soil carbon capture.

1. a. Coal

The use of clean coal technology (as defined by DOE standards) will help NLC support maximum use of measures to decrease emissions from coal utilization while helping cities affected by such emissions to reach and maintain attainment of air quality standards. Therefore, NLC urges the federal government to:

- Support research programs to develop the most efficient, environmentally responsible methods to extract, transport, and utilize coal for energy production; expeditiously minimize environmental impacts and harm from production and use of coal as the nation transitions to renewable and sustainable energy;
- Eliminate the practice of mountain top removal mining and prohibit disposal of spoils in watersheds to protect water quality and water sources;
- Continue to support and enhance efforts to minimize ongoing harm to environmental quality and threats to public safety associated with abandoned coal mines; and
- Streamline requirements for development and retention of leases for coal reserves on federal land in an environmentally responsible manner;
- Research the use and storage of coal byproducts, such as methane, as a future energy source;
- Provide appropriate guidance and standards for the safe management of coal combustion ash;
- Develop incentives for the use of clean coal technology and Best Available Control Technologies for new and existing plants; and
- Increase research and development for carbon capture and storage technology and fund large-scale integrated demonstration projects for carbon capture, transportation and storage that reduce emissions from existing coal plants.

2. b. Natural Gas

The federal government should encourage the domestic production of natural gas occurs in a manner that minimizes environmental impacts and harm in an environmentally responsible manner. Therefore, the federal government should:

- Promote measures to avoid leakage and other accidental release of methane during production and transport of natural gas and support development of new technologies for leak detection;
- Ensure that water quality and water resources are protected;
- Require the disclosure of chemicals used in hydraulic fracturing; and
- Study the relationship of the oil and natural gas production and extraction process on drinking water resources and air quality, the impacts on land and aquatic ecosystems, seismic risks and public safety.

4. c. Petroleum

While the nation continues to rely on petroleum as an energy source, the federal government should promote the ensure domestic production occurs in a manner that minimizes.
environmental impacts and harm of domestic petroleum in an environmentally responsible manner.

In the event of a supply disruption, there should be no action by the federal government that causes the depletion of the Strategic Petroleum Reserve simply to mitigate oil prices. The federal government should not reinstate price controls on domestically produced crude oil.

3. Nuclear

Nuclear power will be a necessary component of the carbon-neutral energy portfolio for the coming decades. The federal government should use its capacities and authorities to maximize the safety and minimize the adverse environmental effects and public costs of nuclear power production and the nuclear fuel cycle. The federal government should support and encourage the development and deployment of technical innovations and advanced technology that enhances safety and efficiency of nuclear power production and reduces the potential for misuse or diversion of nuclear materials. In the exploration of nuclear power options, the federal government should require the development of design and safety features that will maximize the safety of nuclear energy. The federal government should ensure that its improve existing licensing and regulatory procedures for new and existing nuclear power plants are appropriate for the potential hazards associated with their specific technologies and external conditions, including implications of climate change. In particular,

Additionally, Congress should strengthen the Nuclear Regulatory Commission’s (NRC) protection of the public and public confidence in the NRC by prohibiting “revolving door” employment between industry and the NRC. Final siting approval of nuclear facilities should be a shared responsibility among federal, state and local governments, subject to appropriate federal environmental laws and regulations.

Federal agencies providing review of emergency preparedness, response and evacuation plans must include cities in the development and review of the plans. These plans should include a protocol for educating communities, particularly those who reside within the evacuation zone, on radioactivity and radiological hazards before an incident occurs. Federal funding should be available to local governments as first responders for emergency preparedness and response for nuclear events. (Specific policies for disaster preparedness and response are contained in Section 6.03 of the Public Safety and Crime Prevention chapter.)

4. Petroleum

The federal government should promote the production of domestic petroleum in an environmentally responsible manner. In the event of a supply disruption, there should be no action by the federal government that causes the depletion of the Strategic Petroleum Reserve simply to mitigate oil prices. The federal government should not reinstate price controls on domestically produced crude oil.

G.F. Electricity

1. Infrastructure

NLC supports federal incentives for all generators and transmission grid owners to create new infrastructure, consistent with current environmental regulations and laws. To ensure that the
nation has an adequate and reliable national transmission grid, the federal government should coordinate with state and local governments. NLC opposes any attempts to preempt local authority in siting energy producing facilities or transmission grids.

2. Smart Grid

Smart grid technology will increase the capacity, quality and reliability of the electric power grid, increase the grid’s energy and operational efficiencies, and enable significant increases in distributed renewable and stored energy. NLC supports federal programs that:

- Conduct research into smart grid technology and help promote its commercialization;
- Create standards for interoperability and security;
- Fund pilot programs to study techniques that reduce energy demand by giving customers more direct and automated control over their energy use, evaluate rate structures that more accurately reflect energy costs, and investigate the integration of renewable energy sources onto the local grid;
- Provide consumer education and workforce training; and
- Facilitate an accelerated implementation of smart grid technology across the distribution and transmission networks.

2. Demand Management

NLC urges the federal government to establish tax incentives promoting demand-side management of energy in such areas as distributed generation systems and electricity production to reduce base load demand.

3. Distributed Generation

The federal government should develop a comprehensive research and development program to improve storage capacity and affordability of distributed energy systems, as well as promote their implementation. The federal government should incentivize the buildout and deployment of microgrids, which can provide backup power during emergencies.

H.G. Transportation and Energy

NLC supports federal programs that:

- Reduce dependence on fossil fuels used for transportation, including through the support and promotion of transportation alternatives such as public transportation, multi-modal transportation systems and safe and connected networks for walking and bicycling to employment, education and commercial centers routes to schools;
- Increase funding for federal research and development of alternative sources of energy for transportation;
- Pursue a national distribution system for alternative fuels for transportation use;
- Encourage national standards for electric vehicle infrastructure to ensure compatibility with all brands of vehicles;
- Offer incentives for acquisition of zero- or low-emission vehicles, such as natural gas or electric vehicles—Incentives should be available for cities to purchase these vehicles for use in public transportation systems, and municipal fleets and school buses, and to public and private entities to install electric vehicle infrastructure;
- Minimize environmental harm associated with the extraction, processing, and disposal of metals used in electric vehicle batteries, and encourage development of alternatives; and
• Ensure that the air quality benefits of using zero and low emission vehicles are quantified and credited toward meeting national air quality goals.

NLC opposes a federally mandated phase-in of a fixed number of alternative fueled vehicles for fleets, in the absence of federal funding for this purpose. (See also the Transportation Infrastructure and Services policy chapter).

2.04 Solid and Hazardous Waste

A. Problem

Disposing of solid and hazardous wastes and conserving resources are two of the most challenging issues facing local governments. The Chinese National Sword Policy has had ripple effects on community recycling programs and recycling markets across the country and necessitates finding new solutions to waste management and recycling in the United States. Improper disposal of hazardous wastes, including nuclear and radioactive waste, and spills of chemicals, oils, and other hazardous substances, can endanger public health and pollute our nation’s air, water and land resources.

B. Goals

Waste management must be addressed aggressively through source reduction, volume reduction and resource recovery. The federal government should invest in and develop sustainable domestic capacity for recovering resources and returning them to economically beneficial use. These actions must be compatible with protecting the environment.

The Chinese National Sword Policy presents an opportunity to reimagine and strengthen U.S. waste management and recycling infrastructure and programs. Investments in domestic infrastructure, support for local and regional recycling programs and education efforts, and policy changes will ensure recycling remains environmentally and economically sustainable throughout the country.

C. Solid Waste Policies

Solid waste management is primarily a local matter, but the nature and quantity of waste that must be managed is largely dictated by national and multinational decisions and trends. The federal government should support local and regional programs by developing a national solid waste management policy that takes an integrated approach to best meet local needs.

1. Source Reduction

To help relieve local governments and tax-payers of the financial burden of product and packaging management and to reduce greenhouse gas emissions, the federal government should:

• Develop and implement policies that promote product stewardship and create incentives for manufacturers and marketers to design and produce products and packaging created with less energy, materials and toxins;
• Support the creation of effective producer-led reduction, reuse and recycling programs to address a product’s life cycle environmental impacts;
• Create incentives for local governments and producers to develop systems to collect, compost, reuse and recycle products;
• Promote material exchange and secondary markets;
• Support research and development on conversion technology, packaging materials, biodegradability and techniques to minimize solid waste, facilitate recycling and reuse, and provide safe and cost-effective methods to convert nonrecyclable wastes to energy;
• Support public participation and education programs to provide a better understanding of source reduction (reduce, reuse, recycle) and disposal options; and
• Promote the recycling of materials for federally-funded projects.

2. Electronic Waste

NLC supports federal efforts to educate the public on minimizing electronic waste and associated risks to health and the environment. NLC urges Congress to develop a system to maximize the reuse and responsible recycling of used electronics and create a viable financing mechanism. Congress should investigate the use of appropriate incentives to:
• Design products that facilitate source reduction, reduce environmental impact, and encourage reuse, recycling, product take-back, and responsible reclamation of components;
• Ensure that used electronics are recycled in a sustainable manner, such as through an accredited third-party certification program;
• Promote green electronics as a source selection preference;
• Reduce toxicity by limiting the use of hazardous materials in electronics manufacture; and
• Increase recycled content and improve efficiencies in development and operation of electronic products.

NLC urges Congress and the Administration to ensure that all exported electronics are handled and disposed of safely in a manner that does not harm public health or the environment.

3. Recycling

To support municipal recycling initiatives, EPA should develop a clearinghouse to share best practices among cities on delivering efficient recycling programs and to create connections that foster collaboration between waste producers and users.

Congress should encourage development of long-term stable markets for recycled products, hard-to-recycle products (such as plastics) and non-recyclable products. In addition, federal funding should:
• Support research and development and pilot programs to assist local governments in demonstrating of new recycling techniques;
• Fund research and development for conversion technology for recycled materials, including products from tires and batteries; and
• Develop fair and appropriate tax incentives to target problematic waste streams from recycling processing centers.
4. Environmental Labeling

NLC supports the development of national programs to ensure that environmental labels for products and packaging, including labels regarding recyclability, biodegradability, flushability and suitability for composting or other processing, are based on a set of clear and verifiable definitions and standards that facilitate the safe and efficient processing of municipal solid waste and recycled goods and reduce costs to municipalities.

5. Plastics

Plastic waste is found in the planet’s land and oceans, in our food streams and in animals and human bodies. Plastics in our environment do not biodegrade, nor are all plastics are recyclable. For these reasons, NLC supports federal efforts to:

- reduce plastic use, including incentives to reduce the use of single-serve plastics that are not recyclable;
- incentivize and support research and development to reuse plastic waste through extended producer responsibility or other programs; and
- increase plastic recycling through public education and outreach and clear and verifiable definitions and labeling.

6. Organic Material

NLC supports the diversion and reduction of compostable materials from landfills. NLC encourages development of reliable technical guidance to assist municipalities in establishing successful arrangements, including composting programs or other bioprocessing operations, that will convert organic waste materials into useful products or energy sources, rather than sending these materials to landfills.

Organic material, such as food waste, breaks down anaerobically and produces methane, which is a short-lived climate pollutant. Collected food waste can be composted into nutrient rich soil or renewable natural gas and lessen the impact on landfills and the environment.

Organic waste diversion and reduction are costly to implement. Barriers for organic waste collection are the requirements to sort into its own designated recycling bin with its own collection, public education and outreach, and the lack of technology and infrastructure by solid waste providers to process and convert organic waste. Additional barriers are individual environmental approvals for recycling facilities, as well as the need for regional recycling sites.

To support the proliferation of organic material diversion and reduction from landfills, Congress should consider:

- Funding to support the procurement organic waste infrastructure, including technological advancements in organic waste processing;
- Support for environmental approvals to establish anaerobic recycling facilities;
- Funding for public education and outreach to support and comply with organic waste collection; and
- Incentives for waste haulers or processors.
A byproduct of organic waste collection is food waste prevention. Markets, restaurants, farmers, and institutions (hospitals and schools) contribute to the organic waste stream by disposing edible food products. Congress can incentivize unnecessary food waste by:

- Supporting the redistribution or donation of edible food sources to local charities, food pantries or homeless shelters;
- Supporting the redistribution of edible food sources to animal feed processors; and
- Creating tax incentives and liability protections for donations.

7. Medical Sharps and Pharmaceuticals

NLC supports medical sharps and pharmaceutical collection in order to protect public health, the environment and water quality. Improper disposal of expired or unused pharmaceuticals and medical sharps, such as needles and syringes, can endanger municipal workers and the public, as well as impose a cost-burden on local governments.

Extended producer responsibility through pharmaceutical and drug take-back programs will help prevent pollution of waterways, drinking water and soil contamination. Although pharmacy chains are working with drug manufacturers to create greater resources for drug disposal, the federal government should continue to work with drug manufacturer and local communities on public education and outreach and to further develop and expand product stewardship and take-back programs.

Product stewardship and collection centers are also important in sharps disposal. Sharps have been comingled in regular and public trash cans (such restrooms, hotels) leading to injury and harm to children, maintenance workers, and others. Sharps could contaminate trash, recycling bins and landfills, which impacts sanitation workers, recycling workers and water treatment facilities. While hospitals and pharmaceutical chains have participated in collection programs, Congress can help support proper sharps disposal by:

- Funding public disposal and collection sites at both public and private facilities including entertainment venues, airports, restaurants, hotels, etc.;
- Working with sharps manufacturers and pharmaceutical companies to develop sharps product stewardship programs and distribution of biohazard containers;
- Creating convenient sharps disposal sites such as pharmacy chains, hospitals, etc.;
- Providing funding for public health organizations to develop disposal sites and distribution of biohazard containers; and
- Supporting public outreach and education.

D. Nuclear Waste Management Policies

1. Local Participation in Site Selection

Final siting approval of nuclear facilities should be a shared responsibility among federal, state and local governments, subject to appropriate federal environmental laws and regulations. Federal policy related to nuclear and radioactive waste disposal should be amended to give local governments the authority to directly participate in selecting the site for permanent repositories for high-level nuclear and intermediate and low-level radioactive waste. The permanent disposal or storage of nuclear and radioactive waste, within any populated area, is completely unacceptable. Further, sufficient technical assistance funding from the Nuclear Waste Trust Fund should be provided to local governments to enable them to conduct technical studies of potential
repository sites, to provide technical comments on federal siting-related documents, and to monitor the site selection process. This should apply to sites identified on federal property or reservations in close proximity to a municipal boundary.

Section 2.10 Security of Critical Infrastructure

C. Federal Policies

3. Nuclear Facilities Protection

NLC supports a federal regulatory system that protects nuclear facilities from direct attack or extreme events, including natural or human-caused disasters. Federal agencies and/or state agencies with delegated authority that provide review of emergency preparedness, response and evacuation plans must include cities in the development and review of the plans. These plans should include a protocol for educating communities, particularly those who reside within the evacuation zone, on radioactivity and radiological hazards before an incident occurs. Federal funding should be available to local governments as first responders for emergency preparedness, training and response for nuclear events. (Specific policies for disaster preparedness and response are contained in Section 6.03 of the Public Safety and Crime Prevention chapter.)

NLC opposes any attempts by the federal government to federalize nuclear plant security teams or to provide the Nuclear Regulatory Commission (NRC) with authority to summon any branch of the military.

NLC urges the federal government to increase funding available to local governments to train first responders in the event of a nuclear emergency.

Section 2.11 Health-Focused Local Food Systems

NLC urges Congress and the Administration to:

- Support policies and programs that reduce the prevalence of obesity and improve the overall health and wellness of those in our communities;
- Ensure that all people have access to food that is healthy, affordable and, where practicable, locally grown food;
- Support efforts to establish, promote and expand local farmers markets and school and community gardens;
- Provide incentives for local farms to sell fresh produce at farmers markets and to schools;
- Support educational programming, outreach efforts and policies to reduce food loss and waste;
• Encourage farmland conservation and sustainable regenerative agricultural practices, such as water conservation, organic fertilizers, crop rotation and the use of living covers using less water and fertilizer and rotating crops, by providing incentives to small, local farms in urban and rural areas;
• Improve the quality of food in schools by supporting and promoting the purchase of unprocessed and minimally processed, locally grown and locally raised agriculture products, such as fresh fruits and vegetables, in schools;
• Expand and strengthen the Healthy Food Financing Initiative to meet the growing demand of healthy food access in underserved urban and rural communities;
• Maintain the Supplemental Nutrition Assistance Program as a federal grant program;
• Establish and maintain a national set of uniform, integrated food system metrics to help evaluate the effectiveness of existing programs and to plan innovative initiatives; and
• Enable an interagency partnership among the U.S. Environmental Protection Agency, U.S. Department of Health and Human Services, and U.S. Department of Agriculture to protect and improve human, animal, and environmental health as an integrated system, including food safety and production.
Proposed EENR Resolutions

NLC Resolutions are annual statements of position that sunset at the end of the calendar year unless action is taken. The committee must review each of the 2021 resolutions that originated in the EENR Committee to determine recommendations for 2022. The committee has the following options:

1. Renew the resolution for the coming year (with or without edits)
2. Incorporate the resolution into permanent policy; or
3. Let the resolution expire.

The EENR resolutions that were approved for 2021 at the virtual City Summit with recommendations for 2022 are:

<table>
<thead>
<tr>
<th>Resolution</th>
<th>EENR Committee Recommendation</th>
</tr>
</thead>
<tbody>
<tr>
<td>NLC RESOLUTION #20: Supporting Local PACE Programs</td>
<td>Renew</td>
</tr>
<tr>
<td>NLC RESOLUTION #21: Supporting and Advancing Resilient Communities to Prepare for Changing Climate and Extreme Weather Events</td>
<td>Renew with edits</td>
</tr>
<tr>
<td>NLC RESOLUTION #22: Supporting Urgent Action to Reduce Carbon Emissions and Mitigate the Effects of Climate Change</td>
<td>Renew with edits</td>
</tr>
<tr>
<td>NLC RESOLUTION #23: Addressing Lead Contamination and Calling for Nationwide Federal Support for Water Infrastructure</td>
<td>Renew with edits</td>
</tr>
<tr>
<td>NLC RESOLUTION #24: Increase Federal Investment in Water Infrastructure</td>
<td>Renew with edits</td>
</tr>
<tr>
<td>NLC RESOLUTION #25: Support for Integrated Planning and New Affordability Consideration for Water</td>
<td>Renew with edits</td>
</tr>
<tr>
<td>NLC RESOLUTION #26: Calling on the Federal Government to Take Action to Address PFAS Contamination</td>
<td>Renew</td>
</tr>
<tr>
<td>NLC RESOLUTION #27: Improve the Benefit-Cost Analysis for Federally Funded Flood Control Projects</td>
<td>Renew with edits</td>
</tr>
</tbody>
</table>
### Proposed EENR Resolutions

<table>
<thead>
<tr>
<th>Resolution</th>
<th>Action</th>
</tr>
</thead>
<tbody>
<tr>
<td>NLC RESOLUTION #28: Increase Funding for Border Water Infrastructure Projects</td>
<td>Renew</td>
</tr>
<tr>
<td>NLC RESOLUTION #29: Supporting Local Control of Water Infrastructure Projects</td>
<td>Renew</td>
</tr>
</tbody>
</table>
NLC RESOLUTION #20

SUPPORTING LOCAL PACE PROGRAMS

[EENR COMMITTEE RECOMMENDATION: Renew]

WHEREAS, utility bills represent a major part of operating costs for home and business owners; and

WHEREAS, the building sector accounts for 39 percent of the nation’s energy use, 72 percent of its electricity use, one third of all global greenhouse gas emissions and represents the single largest, most accessible opportunity for deep emission cuts in the United States; and

WHEREAS, investing in cost-effective energy efficiency and renewable energy improvements to homes and businesses can save energy, cut utility bills up to $140 billion per year, create thousands of local jobs, reduce reliance on fossil fuels, and dramatically reduce greenhouse gas emissions; and

WHEREAS, a 2013 study that found default risks are on average 32 percent lower in energy efficient homes and recommends that the lower risks associated with energy efficiency should be taken into consideration when underwriting mortgages; and

WHEREAS, Property Assessed Clean Energy (PACE) financing programs are an innovative local government solution to help property owners finance energy efficiency and renewable energy improvements – such as energy efficient HVAC systems, upgraded insulation, new windows, solar installations, etc. – to their homes and businesses; and

WHEREAS, PACE programs can also be used for other types of projects that provide public and community benefits, such as improving community resilience to hurricanes and wildfires and managing stormwater and tidal flooding; and

WHEREAS, the PACE program removes many of the barriers of energy efficiency and renewable energy retrofits that otherwise exist for residential homeowners and businesses, particularly the high upfront cost of making such an investment and the long-term ability to reap the benefits of cost savings; and

WHEREAS, 37 states plus the District of Columbia have passed laws enabling local governments to develop PACE programs; and

WHEREAS, locally-administered PACE programs are an exercise of the traditional authority of local governments to utilize the tax code for public benefit; and

WHEREAS, PACE programs help local governments meet a core obligation to their citizens to maintain housing stock and improve housing opportunities for all citizens; and

WHEREAS, the PACE program is an achievement of the intergovernmental partnership to realize national policy goals, namely, reducing energy consumption, that will positively impact the fiscal conditions of every level of government; and

WHEREAS, PACE holds the potential to unlock private capital and jumpstart economic growth backed by the marketplace certainty of the federal government; and

WHEREAS, despite PACE’s great promise, in July 2010 the Federal Housing Finance Agency (FHFA) and the Office of the Comptroller of the Currency issued statements that immediately forced existing PACE residential programs to halt operations and froze the development of dozens of other residential PACE programs nationwide; and

WHEREAS, despite the FHFA directive, many commercial and a few residential PACE programs are operating or are in development in hundreds of municipalities across the country; and

WHEREAS, in 2010 the U.S. Department of Energy dedicated $150 million to assist in the development of local PACE programs and in 2016 issued Best Practice Guidelines for Residential PACE Financing Programs to help state and local governments develop and implement programs and recommended protections that PACE programs should put in place for consumers and lenders; and

WHEREAS, in July 2016, the U.S. Department of Housing and Urban Development released guidance allowing the Federal Housing Administration to insure mortgages on properties that include PACE assessments, which has since been withdrawn; and

WHEREAS, in 2018, Congress passed the Economic Growth, Regulatory Relief, and Consumer Protection Act banking reform bill that recognizes PACE as a tax assessment and directs the Consumer Financial Protection Bureau (CFPB) to develop rules in consultation with state and local governments that ensure consumers have the ability to pay their residential PACE financing obligations.

NOW, THEREFORE, BE IT RESOLVED that locally-administered PACE programs operating in accord with state and federal guidelines are a safe and sound investment of public and private funds; and

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BE IT FURTHER RESOLVED that locally-administered PACE programs represent an essential contribution of local governments to reduce greenhouse gas emissions and promote renewable energy; and

BE IT FURTHER RESOLVED that the National League of Cities (NLC) urges FHFA to work with local governments seeking to establish PACE programs that benefit from the same senior lien status of all other projects that are funded through municipal assessments that improve private property and meet public policy objectives; and

BE IT FURTHER RESOLVED that NLC urges the CFPB to work with local governments to adopt regulations that clearly reaffirms the right of state and local governments to exercise liens or assess special taxes or other property obligations to protect and improve housing stock for the public good, including energy efficiency improvements, and establishes underwriting standards that are consistent with guidelines issued by the U.S. Department of Energy for PACE financing programs or by implementing any other appropriate measure.
NLC RESOLUTION #21

SUPPORTING AND ADVANCING RESILIENT COMMUNITIES TO PREPARE FOR CHANGING CLIMATE AND EXTREME WEATHER EVENTS

[EENR COMMITTEE RECOMMENDATION: Renew with edits]

WHEREAS, across the country local governments are seeing the devastating effects associated with a changing climate and recent extreme weather events, such as heat waves, droughts, heavy downpours, floods, hurricanes, and changes in other storms have brought renewed attention to the need for cities to anticipate, prepare for and adapt to these events; and

WHEREAS, these challenges are larger than individual communities can address on their own, making it beneficial to coordinate regionally and across levels of government; and

WHEREAS, while all regions of the country are impacted by climate change, approximately one third of the U.S. population—more than 100 million people—live in coastal communities that are threatened by rising sea levels, which could impact economic development, land availability, property values, insurance rates, beaches and tourism, and critical water, transportation and energy infrastructure; and

WHEREAS, the 2014Fourth National Climate Assessment reports that current evidence of climate change appears in every region and impacts are currently visible in every state, and concludes that the evidence of human-induced climate change continues to strengthen;¹ and

WHEREAS, the effects of a changing climate are a national security issue with potential impacts to the U.S. Department of Defense (DoD) missions, operations plans and installations and the DoD must be able to adapt to current and future operations to address the impacts of a variety of threats and conditions, including those from weather and natural events²; and

WHEREAS, a report by the Intergovernmental Panel on Climate Change indicates that limiting global warming to 1.5° C is necessary to avoid the worst impacts of climate change;³ and

WHEREAS, climate change and extreme weather events can have severe impacts on local and regional infrastructure, economies, public safety, national security, public health, population migration, natural landscapes, water resources, and environmental quality; and

WHEREAS, 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 and underrepresented populations; and

WHEREAS, as local governments grapple with the COVID-19 challenge continue to recover from the coronavirus pandemic, hurricanes, wildfires, floods and other disasters continue to threaten communities across the U.S. and present new challenges for communities in protecting residents, particularly those that are most affected and least able to prepare or respond; and

WHEREAS, the capability of maintaining energy availability is a critical first order priority in maintaining critical infrastructure and building community resilience; and

WHEREAS, there is currently insufficient information, technical coordination or financial assessment of the costs and mechanisms to rapidly retrofit and redesign local energy systems to enable them to be more resilient to a range of potential disruptive events, such as extreme weather, terrorism, and energy price escalation; and

WHEREAS, the United States has seen separate billion-dollar-plus weather and climate disasters since 1980, including 14 in 2019 and 14 in 2020, with a cumulative cost exceeding $1.97 trillion (CPI-adjusted) and a total death toll of 14,223,492; and

WHEREAS, in 2005 Hurricane Katrina led to 1,833 deaths and more than $167.5 billion (CPI-adjusted) in losses, and a subsequent $120 billion in supplemental disaster assistance and in 2012 Hurricane Sandy led to 159 deaths and more than $73.5 billion in damages (CPI-adjusted), and a subsequent $60.4 billion in supplemental disaster assistance; and

WHEREAS, in 2017 three Category 4 hurricanes made landfall in the U.S. totaling more than $275 billion (CPI-adjusted) in damages and a death toll of 3,167, including 2,981 from Hurricane Maria, which made landfall in Puerto Rico; and

WHEREAS, in 2019 historic flooding hit the Midwest and southern plains significantly affecting agriculture, roads, bridges, levees, dams and other infrastructure, assets and industries, resulting in 12 deaths and $20.3 billion (CPI-adjusted) in economic costs; and

WHEREAS, 2020 sets the new annual record of billion-dollar-plus weather or climate events - shattering the previous annual record of 16 events that occurred in 2011 and 2017, and is the sixth consecutive year (2015-2020) in which 10 or more billion-dollar weather and climate disaster events have impacted the United States; and


7 National Climate Data Center, National Oceanic and Atmospheric Administration, available at: https://www.ncdc.noaa.gov/billions/events/US/2019

8 “Billion-Dollar Weather and Climate Disasters: Overview.” National Climate Data Center, National Oceanic and Atmospheric Administration, available at: https://www.ncdc.noaa.gov/billions/overview
WHEREAS, rising temperatures are lengthening the wildfire season, causing more radical fire behavior and increasing wildfire risks throughout the Western United States due to earlier snow melts and forests that are drier longer, the costs of putting out wildfires has increased dramatically, from $715 million in 1985 to over $2.23 billion in 2018 (2018 dollars), and the economic losses associated with wildfire continues to grow, with the 2018 western wildfires costing over $24.5 billion (CPI-adjusted); and the 2020 western wildfires, the most active fire season on record, costing over $16.6 billion (CPI-adjusted); and

WHEREAS, Congress approved over $62 billion in disaster relief in FY2018 and FY19; and

WHEREAS, 2019 was the second warmest year on record behind 2016 (warmest), followed by 2019 (third warmest), 2015 (third fourth warmest), 2017 (fourth fifth warmest) and 2018 (fifth sixth warmest); and

WHEREAS, as extreme weather events become more common, local governments in all geographic and climatic regions require resources to assist them in anticipating, preparing for and adapting to these events; and

WHEREAS, a preparedness response fund would provide financial assistance to accelerate the development of adaptive success models and provide a far-reaching damage prevention initiative that would help reduce the ultimate financial pressure on the federal government; and

WHEREAS, local governments are first responders—preparing in advance of emergency situations, offering immediate assistance to those impacted, and identifying strategies, solutions, and partnerships to address situations quickly and efficiently; and

WHEREAS, firefighters and other local essential personnel, who risk their lives responding to natural disasters and extreme weather events, are put at even greater risk of contracting coronavirus as they respond to emergency situations; and

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10 Federal Firefighting Costs (Suppression Only), National Interagency Fire Center, available at: https://www.nifc.gov/fire-information/statistics/suppression-costs
WHEREAS, taking action now to adapt to a changing environment and create community resilience will help save lives, strengthen local economies, save taxpayer dollars and build preparedness for future events; and

WHEREAS, in 2014 the President’s Task Force on Climate Preparedness and Resilience, comprised of state, local and tribal leaders, including representatives from the National League of Cities (NLC) made recommendations to the President on ways the federal government can assist local efforts to address and prepare for the impacts of climate change.

NOW, THEREFORE, BE IT RESOLVED that NLC calls on Congress and the Administration to partner with local governments and to support local action on climate change adaptation and resilience; and

BE IT FURTHER RESOLVED that NLC urges Congress and the Administration to take urgent action to help states and local governments conduct vulnerability assessments, develop and implement long-term mitigation, adaptation and resiliency action plans, and identify innovative financing opportunities to implement these assessments and plans in order to prepare, plan for and more quickly recover from extreme weather events; and

BE IT FURTHER RESOLVED that NLC calls on Congress and the Administration to recognize the unique risks and opportunities communities face and to offer customized tools and incentives to local governments to encourage communities to plan for and rapidly respond to the effects of climate change and extreme weather; and

BE IT FURTHER RESOLVED that NLC urges the federal government to develop a national strategy to assist communities in integrating the risks of climate change and extreme weather events into emergency management planning and responses to identify and quantify the economic value of regional infrastructure at risk under different scenarios; and

BE IT FURTHER RESOLVED that NLC urges the federal government to work with state and local governments, the insurance industry, and other stakeholders to develop an incentive-based disaster insurance and mitigation system that would encourage property owners to retrofit existing structures to reduce future losses from natural disasters; and

BE IT FURTHER RESOLVED that returning to the status quo is not sufficient in meeting the challenges of climate change and inequities in our society; and

BE IT FURTHER RESOLVED that NLC calls on the federal government to outline strategies and actions to reduce the vulnerability of federal programs to the impacts of climate change and extreme weather; and

BE IT FURTHER RESOLVED that NLC calls on the federal government to better align federal funding with local preparedness and resilience-building efforts; and

BE IT FURTHER RESOLVED that NLC calls on Congress to fully fund grant programs that help local governments prepare, respond and recover from climate change and extreme weather
events and establish a preparedness and response fund to support local governments that are at
the forefront of developing adaptive solutions; and

BE IT FURTHER RESOLVED that NLC urges the federal government to develop grant and
technical assistance programs to enable communities to develop community energy transition
plans that ensure the capability of cities to maintain critical energy and infrastructure during
disruptions to local, regional or national energy infrastructure; and

BE IT FURTHER RESOLVED that NLC urges the federal government to develop a national
pilot project initiative to conduct detailed assessments and designs for resilient city energy
system retrofit and redesign across a range of different regions and city sizes; and

BE IT FURTHER RESOLVED that federal investments in communities must prioritize those
communities that have been left behind and BIPOC communities, which have been
disproportionately impacted by the effects of climate change and COVID-19.
SUPPORTING URGENT ACTION TO REDUCE CARBON EMISSIONS AND MITIGATE THE EFFECTS OF CLIMATE CHANGE

[EE NR COMMITTEE RECOMMENDATION: Renew with edits]

WHEREAS, climate change mitigation is a global problem that demands a global solution; and

WHEREAS, the 2014 Fourth National Climate Assessment reports that current evidence of climate change appears in every region and impacts are currently visible in every state, and concludes that the evidence of human-induced climate change continues to strengthen;¹ and

WHEREAS, a report by the Intergovernmental Panel on Climate Change (IPCC) indicates that limiting global warming to 1.5°C is necessary to avoid the worst impacts of climate change;² and

WHEREAS, extreme heat will have more serious health consequences on people living in low-income communities, communities of color, and tribal communities, and people in these communities have been disproportionately impacted by coronavirus and high rates of underlying health conditions, both of which can be exacerbated by extreme heat; and

WHEREAS, according to the American Lung Association’s 2021 State of the Air report, more than 406 percent or 135 million people live in counties with unhealthy air, which is especially concerning as research shows that people with long-term exposure to air pollution are more likely to die from COVID-19³; and

WHEREAS, while some impacts of climate change are inevitable, sharp reductions in greenhouse gas emissions will reduce the severity of the impacts and limit the rate of climate change; and

WHEREAS, the U.S. Environmental Protection Agency’s (EPA) 2015 Clean Power Plan set state-specific carbon emissions reductions goals that would have reduced carbon emissions from coal and natural gas fired power plants by 32 percent below 2005 levels by 2030; and

WHEREAS, EPA repealed the Clean Power Plan and replaced it with the Affordable Clean Energy Rule, which establishes emission guidelines for states to use when developing plans to limit carbon dioxide at their coal-fired power plants; and

³ “State of the Air,” American Lung Association (2021), available at: https://www.lung.org/research/sota/key-findings
WHEREAS, in order to meet the carbon emissions reductions goals necessary to help mitigate the effects of climate change on communities, improving energy efficiency, increasing energy conservation and deploying renewable energy systems will be essential at the local, state and federal levels; and

WHEREAS, improving energy efficiency, increasing energy conservation and deploying renewable energy systems will save taxpayer dollars, boost the national and local economy, enhance national security, increase our nation’s energy independence, and improve environmental quality; and

WHEREAS, technology exists and continues to be developed that will help families, businesses and communities reduce energy use, but without standards to encourage adoption of new technology, many of these technology options will be unavailable or unaffordable; and

WHEREAS, the transportation sector generates the largest share of greenhouse gas emissions, over 298 percent of 2019 greenhouse gas emissions, in the United States; and

WHEREAS, buildings account for nearly 40 percent of the nation’s energy consumption and more than 70 percent of its electricity use, and electricity production represents the second largest share of greenhouse gas emissions, nearly 257 percent of 2019 greenhouse gas emissions, in the United States; and

WHEREAS, indoor and outdoor lighting account for 86 percent of electricity consumed in the nation, and rapid conversion to efficient lighting would result in significant greenhouse gas reductions as well as a decrease in base load energy needs; and

WHEREAS, communities large and small nationwide are laboratories of innovation and are taking action on climate mitigation, including adopting greenhouse gas reduction goals, successfully pioneering and demonstrating cost-effective clean energy solutions, and pursuing local strategies that create jobs, save energy and taxpayer dollars, and promote renewable sources; and

WHEREAS, the Energy Efficiency and Conservation Block Grant (EECBG) helped local governments undertake projects to reduce energy use, diversify energy supplies and improve air quality and the environment; and

WHEREAS, all levels of government must work to become more resilient by achieving greater energy independence based on a multi-pronged strategy of aggressively expanding renewable

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energy, significantly increasing energy efficiency portfolio standards, and creating new financing mechanisms; and

WHEREAS, in 2014 the President’s Task Force on Climate Preparedness and Resilience, comprised of state, local and tribal leaders, including representatives from the National League of Cities (NLC), made recommendations to the President on ways the federal government can assist local efforts to address and prepare for the impacts of climate change; and

WHEREAS, 77 percent of millennial voters, ages 18-35, believe that the U.S. should try to stop or slow climate change.¹

NOW, THEREFORE, BE IT RESOLVED that NLC calls on Congress and the Administration to partner with local governments, to support local action on climate change mitigation, and to provide essential tools, research, technology development, data, and funding, as well as workforce development, job training and community assistance, to help local governments achieve their greenhouse gas reduction targets and transition to a clean energy economy; and

BE IT FURTHER RESOLVED that NLC urges Congress and the Administration to take urgent action to reduce carbon emissions across a broad sector of the economy and become carbon neutral to mitigate the effects of climate change; and hold warming to 1.5°C; and

BE IT FURTHER RESOLVED that NLC calls on Congress to position the U.S. as a climate leader and adopt nationwide greenhouse gas emission goals and policies that exceed the IPCC 1.5°C targets of 45% emissions reduction from 2010 levels by 2030 and net zero by 2050; and

BE IT FURTHER RESOLVED that NLC opposes efforts to repeal the Clean Power Plan and supports the U.S.’s reengagement in the Paris Climate Agreement; and

BE IT FURTHER RESOLVED that NLC opposes/supports efforts to lower/increase the CAFE standards or fuel efficiency for all types of vehicles; and

BE IT FURTHER RESOLVED that NLC calls on Congress to pass energy efficiency and conservation legislation to incentivize energy efficiency improvements in residential and commercial buildings, schools and federal buildings located in communities; and

BE IT FURTHER RESOLVED that NLC calls on Congress to pass a national renewable portfolio standard that increases the use of carbon neutral energy and promotes energy efficiency, with the goal of at least 50 percent carbon neutral energy by 2030 and 100 percent by 2050 or sooner; and

BE IT FURTHER RESOLVED that NLC calls on Congress to pass a long-term extension of the investment tax credit and the production tax credit for renewable energy as an incentive for their development and deployment; and

¹Poll, Alliance for Market Solutions, (March 5, 2018), available at: https://allianceformarketsolutions.org/public-opinion/
BE IT FURTHER RESOLVED that NLC calls on Congress to reauthorize and fully fund the
EECBG or other funding structure at the U.S. Department of Energy to further incentivize clean
ergy at the local level; and

BE IT FURTHER RESOLVED that federal investments in communities must prioritize those
communities that have been left behind and Black, Indigenous and People of Color (BIPOC)
who have been disproportionately impacted by the effects of climate change and COVID-19.
WHEREAS, access to clean drinking water is fundamental to the health and well-being of America’s communities and families; and

WHEREAS, Flint, Michigan, and Sebring, Ohio, are two recent examples of cities where high levels of lead have been found in the city’s drinking water; and

WHEREAS, in the early 2000s, the District of Columbia experienced a similar crisis, as have many other cities; and

WHEREAS, lead has negative and long-term neurological effects, particularly in infants and children; and

WHEREAS, in Flint, the elevated blood lead level was discovered in children after the city’s water source was switched to the Flint River by the state-appointed emergency manager, a decision made without coordination or consultation with local officials; and

WHEREAS, a contributing factor to the Flint, Michigan, drinking water crisis was the city’s aging infrastructure and the lack of investment in infrastructure and the community; and

WHEREAS, incidents like these can undermine citizens’ confidence in the safety and quality of the drinking water supply and water infrastructure of every community; and

WHEREAS, in January 2016, President Obama signed an emergency declaration in the State of Michigan, ordering federal aid to supplement state and local response efforts due to the emergency conditions caused by lead-contaminated water; and

WHEREAS, corrosion control and testing are essential to preventing lead leaching and alerting the public to potential dangers; and

WHEREAS, recent analysis by the National Resources Defense Council found that over 5,300 water systems nationwide have elevated levels of lead¹ and a recent analysis by the American Water Works Association estimates 6.1 million lead service lines remain in U.S. communities, at an estimated $30 billion to replace;² and

WHEREAS, there is a need to invest in our aging water infrastructure nationwide and a failure to do so can have negative public health consequences; and

WHEREAS, the U.S. Environmental Protection Agency (EPA) estimates the nation’s water infrastructure capital needs over the next 20 years to be approximately $743 billion in total, the American Society for Civil Engineers estimates the needed investment for water infrastructure to be $1.3 trillion over the next 20-25 years, that over the next 20 years, the cumulative water and wastewater capital investment need will soar to $3.27 trillion and the cumulative capital investment gap will total $2.2 trillion, and other estimates put the cost at more than $4 trillion to maintain and build a 21st century water system.

NOW, THEREFORE, BE IT RESOLVED that local planning and infrastructure decisions, including those related to clean drinking water, should not be preempted and should be made by locally elected leaders in coordination with state and federal officials; and

BE IT FURTHER RESOLVED that the National League of Cities (NLC) calls on Congress to provide direct assistance to the City of Flint, Michigan, and for EPA and the federal government to 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; and

BE IT FURTHER RESOLVED that NLC calls on Congress and the Administration to 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; and

BE IT FURTHER RESOLVED that NLC calls on Congress and the Administration to support robust funding for all water infrastructure funding mechanisms, including the Clean Water and Drinking Water State Revolving Loan Fund programs and the Water Infrastructure Finance and Innovation Act (WIFIA); and

BE IT FURTHER RESOLVED that NLC calls on Congress and the Administration to support other mechanisms of infrastructure financing, including protecting the tax-exempt status of municipal bonds and reinstating the tax exemption for advance refunding bonds; and

BE IT FURTHER RESOLVED that NLC calls on Congress and the Administration to support 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.

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NLC RESOLUTION #24

INCREASE FEDERAL INVESTMENT IN WATER INFRASTRUCTURE

[EENR COMMITTEE RECOMMENDATION: Renew with edits]

WHEREAS, the nation’s water infrastructure systems, both built and natural, are significant assets that protect public health and the nation’s water resources and well-maintained systems are essential to our citizens’ general welfare and the nation’s prosperity; and

WHEREAS, with much of our nation’s physical water infrastructure built in the post-World War II period—and some of it more than 100 years old—there are an estimated 240,000 water main breaks each year;¹ and

WHEREAS, cities and towns nationwide are finding that decentralized water solutions such as water use efficiency measures and green stormwater installations can effectively and affordably serve many of the same functions as conventional water infrastructure and can supplement and extend their existing centralized systems;² and

WHEREAS, federal loan and grant assistance to cities and local governments to assist in maintaining and upgrading water infrastructure systems has continued to decline in real dollars over the past decades³; and

WHEREAS, local governments are responsible for the vast majority of investment in water and sewer infrastructure, investing over $1.7 trillion between 1956-2010⁴ (not adjusted for inflation) and over $1340 billion in 2018 alone;⁵ and

WHEREAS, tax-exempt municipal bonds are the primary funding mechanism for state and local government infrastructure projects with three-quarters of the total United States investment in infrastructure being accomplished with tax-exempt financing; and

WHEREAS, an economic analysis by the American Society of Civil Engineers shows a water-related infrastructure investment gap of $434 billion over 10 years for drinking water, wastewater, and stormwater combined—an estimated $271 billion is needed to meet current and future demands over the next 20 years for upgrading the nation’s wastewater infrastructure and


³ Infrastructure Report Card, American Society of Civil Engineers, available at: https://www.infrastructurereportcard.org/cat-item/drinking-water/


an estimated $1 trillion is necessary to maintain and expand service to meeting drinking water
demands over the next 25 years;⁶ and

WHEREAS, this funding gap does not include anticipated expenditures to comply with new
Clean Water Act and Safe Drinking Water Act mandates, consent decrees, new responsibilities
and costs relating to water security and source water protection, additional needs for re-use of
treated effluent, or impacts due to climate change; and

WHEREAS, municipal resources dedicated to water infrastructure are currently overwhelmingly
directed to comply with new complex federal mandates and are therefore unavailable for critical
maintenance, repair, and rehabilitation needs; and

WHEREAS, public-private partnerships can provide options for communities to access sources
of private capital to meet water infrastructure needs, but are not a viable for all communities or
all types of projects; and

WHEREAS, private activity bonds or tax-exempt facility bonds are a form of tax-exempt
financing that can be used for water infrastructure projects that utilize private capital instead of
public debt and shift the risk and long-term obligation from the municipality to the private equity
partner; and

WHEREAS, Congress provides to states a capped annual allocation (“volume cap”) of tax-
exempt bonds, based on population, but historically, most of the tax-exempt bonds are issued to
short-term projects such as housing and education loans; and

WHEREAS, Congress has previously enacted legislation eliminating the state volume cap for
such municipal infrastructure projects such as airports, landfills, and ports; and

WHEREAS, eliminating the state volume cap is estimated to make available $5-6 billion in
private capital for water projects, while the cost in foregone revenue to the federal government is
nominal.⁷

NOW, THEREFORE, BE IT RESOLVED that the National League of Cities (NLC) continues
to urge Congress and the Administration to reverse the decline in federal financial participation
in funding municipal water infrastructure needs by developing a financial option that strikes the
right balance between local responsibility and federal assistance; and

BE IT FURTHER RESOLVED that NLC calls on Congress and the Administration to support
robust funding for water infrastructure through the Clean Water and Drinking
Water State Revolving Loan Fund programs and to reauthorize the programs; and

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⁶ 2019 Infrastructure Report Card, American Society of Civil Engineers, available at:
http://www.infrastructurereportcard.org/
BE IT FURTHER RESOLVED that Congress should provide full appropriation to the Water Infrastructure Finance and Innovation Act (WIFIA) for loans and loan guarantees for water infrastructure projects; and

BE IT FURTHER RESOLVED that Congress should provide funding to local governments through grant programs such as for sewer overflow and stormwater management, lead pipe replacement, water infrastructure resilience/sustainability to protect and reduce risk to extreme weather events, new/emerging technologies for cybersecurity improvements and water efficiency, workforce development in the water sector, and other programs; and

BE IT FURTHER RESOLVED that Congress should exempt from federal taxation rebates issued to consumers by local governments to pay for consumer-installed decentralized water infrastructure that benefits their communities; and

BE IT FURTHER RESOLVED that NLC supports legislation removing the federal volume cap on tax-exempt bonds for water and wastewater infrastructure projects; and

BE IT FURTHER RESOLVED that NLC calls on Congress and the Administration to support other mechanisms of infrastructure funding and financing, including protecting the tax-exempt status of municipal bonds and reinstating the tax exemption for advance refunding bonds; and

BE IT FURTHER RESOLVED that Congress and the Administration should enact new legislation which provides adequate and reliable long-term funding for municipal water infrastructure needs to help close the funding gap.
NLC RESOLUTION #25

SUPPORT FOR INTEGRATED PLANNING AND NEW AFFORDABILITY
CONSIDERATION FOR WATER

[EE NR COMMITTEE RECOMMENDATION: Renew with edits]

WHEREAS, in 2012 the U.S. Environmental Protection Agency (EPA) issued its Integrated Municipal Stormwater and Wastewater Planning Approach Framework (“Integrated Planning Framework”), which was intended to help local governments seek more efficient and affordable solutions to stormwater and wastewater issues and meet the requirements of the Clean Water Act (CWA) in a more flexible, affordable, and cost-effective manner; and

WHEREAS, in 2014 EPA issued its Financial Capability Assessment Framework for Municipal Clean Water Act Requirements (“Financial Capability Framework”), which allows the consideration of additional information, such as socio-economic factors, in determining the financial capability of residents and a community when developing compliance schedules for municipal projects necessary to meet CWA obligations; and

WHEREAS, these two policy frameworks demonstrate an awareness by EPA of the challenges local governments face in meeting CWA requirements, as well as the conflicts they face in balancing environmental protection with economic feasibility; and

WHEREAS, at a time where local financial resources are increasingly limited and the ability of local governments to raise revenue is also limited, local governments are facing costly unfunded federal and state regulatory requirements forcing them to make tough decisions about the services and maintenance that they can afford; and

WHEREAS, proposed federal budget cuts to critical local programs would further reduce the ability of cities and towns to meet the everyday needs of their community; and

WHEREAS, local water and sewer rates and stormwater fees are rapidly becoming unaffordable for many fixed- and low-income citizens, placing a disproportionate financial burden on these vulnerable populations who live at or below the poverty level; and

WHEREAS, the current reliance on two percent of median household income for wastewater and combined sewer overflows controls is a misleading indicator of a community’s ability to pay, and often places a particularly high burden on residents at the lower end of the economic scale; and

WHEREAS, green infrastructure, such as constructed swales, wetlands, green roofs, infiltration planters, rain gardens, cisterns, and enhanced floodplains and riparian buffers, augmented by permeable pavers, rain barrels, and trees, is a valuable part of water infrastructure systems and provides a multitude of community benefits such as helping local governments manage runoff, extending the life of local infrastructure, saving the city and taxpayers money, providing outdoor
recreation opportunities through parks and green spaces and promoting the joint use of city and school facilities, and serve as an economic development tool; and

WHEREAS, National Pollutant Discharge Elimination System (NPDES) permits are increasingly stringent, the treatment technologies and approaches necessary to meet permit limits have become exceedingly expensive and time-intensive to implement, and project construction timelines for clean water infrastructure projects can extend more than a decade.

NOW, THEREFORE, BE IT RESOLVED that the National League of Cities (NLC) calls on EPA to work with local governments to develop local integrated plans through the permit process to comprehensively and collectively manage wastewater and stormwater needs, prioritize investments in wet weather overflows and flooding, incorporate green infrastructure components, and to ease the burden of unfunded mandates; and

BE IT FURTHER RESOLVED that NLC calls on EPA to share integrated planning best management practices, including those that take a regional watershed approach, from across the country with all communities that are interested in pursuing an integrated planning approach; and

BE IT FURTHER RESOLVED that NLC calls on Congress to modernize the NPDES permitting process to approve legislation to allow states with delegated authority to administer the NPDES permitting program to issue permits of up to ten years; and

BE IT FURTHER RESOLVED that NLC calls on EPA to work with local governments to revise the “Combined Sewer Overflows—Guidance for Financial Capability Assessment and Schedule Development” (Feb. 1997) to eliminate reliance on median household income as the critical metric for determining investment level and to allow for the consideration of additional information, such as socio-economic factors, consistent with the Agency’s 2014 Financial Capability Framework; and

BE IT FURTHER RESOLVED that NLC calls on the federal government to explore options for addressing affordability and providing ratepayer assistance, such as through a consumer assistance program modeled on the Low Income Home Energy Assistance Program.
NLC RESOLUTION #26

CALLING ON THE FEDERAL GOVERNMENT TO TAKE ACTION TO ADDRESS PFAS CONTAMINATION

[EENR COMMITTEE RECOMMENDATION: Renew]

WHEREAS, Per- and polyfluoroalkyl substances (PFAS) are a class of nearly 5,000 man-made chemicals that includes PFOA, PFOS, PFBS and GenX manufactured and used in a variety of industries; and

WHEREAS, PFAS chemicals are known as “forever” chemicals because they are persistent in the environment and in the human body; and

WHEREAS, PFAS chemicals have been known to cause adverse health outcomes in humans including effects on prenatal development, low infant birth weights, early onset of puberty, negative effect on the immune system, cancer, liver damage, and thyroid disruption; and

WHEREAS, while science predicts that the entire class of PFAS chemical may be associated with adverse health effects and many such chemicals are in industrial and commercial use, only a small fraction of these chemicals have been investigated sufficiently to establish quantitative measures of toxicity; and

WHEREAS, in 2016 the U.S. Environmental Protection Agency (EPA) established a lifetime exposure health advisory level of 70 parts per trillion for the combined concentration of PFOA and PFOS in drinking water; and

WHEREAS, in 2018 the U.S. Department of Health and Human Services Agency for Toxic Substances and Disease Registry released a draft report warning that PFAS chemicals could pose a health risk at levels lower than currently recommended by the EPA; and

WHEREAS, in 2019 EPA announced a comprehensive nationwide action plan for addressing PFAS, 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 and address PFAS at the source – before it gets into the water; and

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1 Fact Sheet: PFOA & PFOS Drinking Water Health Advisories, U.S. Environmental Protection Agency (Nov. 2016); available at: https://www.epa.gov/sites/production/files/2016-06/documents/drinkingwaterhealthadvisories_pfoa_pfos_updated_5.31.16.pdf

2 Ibid


WHEREAS, in February 2020 EPA issued a proposed regulatory determination to regulate PFOS and PFOA, the first step in the regulatory process of setting a Maximum Contaminant Level under the Safe Drinking Water Act; and

WHEREAS, there are significant technical challenges in detecting and measuring PFAS in water and other environmental media at the levels where health effects can occur, and analytical methodologies are still under development or are not yet generally available; and

WHEREAS, the Environmental Working Group and the Social Science Environmental Health Research Institute at Northeastern University updated an interactive map of known contamination of communities from PFAS; and

WHEREAS, as of March 2019, the interactive map shows at least 610 locations in 43 states are known to be contaminated, including drinking water systems serving an estimated 19 million people;^5 and

WHEREAS, in February 2019, EPA and United States Geological Survey scientists published results on analysis for 17 PFAS compounds in water samples from 25 public drinking water supplies in 24 states (locations confidential) that detected PFAS in every sample tested, suggesting that PFAS is ubiquitous in our water;^6 and

WHEREAS, PFAS chemicals were widely used in firefighting foams, particularly for airports, and were used in frequent training exercises at military air bases; and

WHEREAS, PFAS chemicals were required in firefighting foams used at airports to meet federal performance standards for extinguishing agents, but currently the Federal Aviation Administration is updating its standards to allow for a non-fluorinated option for airports; and

WHEREAS, the U.S. Department of Defense has ended its use of the foam in training exercises; and

WHEREAS, PFAS contamination is found at and around military bases, airports, manufacturing sites, landfills, and in local water supplies obtained from both rivers and groundwater; and

WHEREAS, local governments are responsible for protecting the health, safety and welfare of residents, including providing clean and safe water; and

WHEREAS, while treatment technology for removing PFAS from water is not well-developed, the more effective methods use technologies that are not conventionally available in existing water treatment plants, so removing these PFAS chemicals from water could require costly investments by local governments and other local water suppliers, which would be passed onto ratepayers; and

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^5 EWG: PFAS Chemicals Must be Regulated as a Class, Not One by One (May 6, 2019), available at: https://www.ewg.org/release/mapping-pfas-contamination-crisis-new-data-show-610-sites-43-states

WHEREAS, local governments are owners and operators of airports and landfills and employ firefighters, some of whom may have been exposed to PFAS chemicals on the job through inhalation or skin absorption, and therefore present a pension and liability concern for local budgets; and

WHEREAS, PFAS contamination not only poses health risks, but also economic impacts on communities, including in the agriculture and fishing industries by contamination of food sources; and

WHEREAS, a number of states have adopted PFAS policies pertaining to prohibiting use, monitoring and reporting, cleanup, health studies, testing, liability provisions, and contamination limits, including Michigan, New Jersey and Vermont that have set maximum contamination levels lower than EPA health advisory levels; and

WHEREAS, a number of bills have been introduced in both the U.S. House of Representatives and U.S. Senate to survey, regulate, mitigate and phaseout the use of PFAS.

NOW, THEREFORE, BE IT RESOLVED that the National League of Cities (NLC) calls on Congress and the Administration to holistically examine PFAS contamination and to take comprehensive action to address the problem, including through nationwide testing, monitoring, mapping, public education, and water supply treatment; and

BE IT FURTHER RESOLVED that NLC calls on the federal government to ensure that the parties responsible for PFAS contamination, including the federal government but excluding local governments, are held fully liable for costs of cleanup and mitigation and to 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; and

BE IT FURTHER RESOLVED that 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; and

BE IT FURTHER RESOLVED that 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; and

BE IT FURTHER RESOLVED, that NLC calls on the federal government to 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; and

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7 States Forge Ahead with PFAS Regulations, PoliticoPro Datapoint on Energy (Feb. 28, 2019)
BE IT FURTHER RESOLVED, that NLC calls on the federal government to set drinking water standards, including for PFAS chemicals, 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; and

BE IT FURTHER RESOLVED that NLC calls for the federal government to avoid passing costs onto local ratepayers and to provide financial and technical assistance to communities for testing, monitoring, mapping, public education, water supply treatment, and pursuit of alternative water supplies if necessary; and

BE IT FURTHER RESOLVED that NLC calls on the federal government to prevent further exposure to PFAS through multiple means, including promoting and funding the development and use of firefighting alternatives and the phasing out the use of PFAS; and

BE IT FURTHER RESOLVED that the federal government should thoroughly study and test alternative PFAS and other long-chain chemicals before they are put into circulation to make sure they are safe; and

BE IT FURTHER RESOLVED that NLC should update the “Assessing the State Firefighter Cancer Presumption Laws and Current Cancer Firefighter Cancer Research” that it conducted in 2009 to determine what linkages there are between firefighting and an elevated incidence of cancer.
NLC RESOLUTION #27

IMPROVE THE BENEFIT-COST ANALYSIS FOR FEDERALLY FUNDED FLOOD CONTROL PROJECTS AND SUPPORTING BENEFICIAL REUSE OF DREDGED MATERIAL

[EEFR COMMITTEE RECOMMENDATION: Renew]

WHEREAS, the U.S. Army Corps of Engineers (Army Corps) at the U.S. Department of Defense has responsibilities for development and maintenance of waterways and harbors and for other water resource projects across the nation, and is the primary federal agency associated with the design and construction of flood damage reduction projects protection systems in communities across the country; and

WHEREAS, the White House Office of Management and Budget (OMB) works with the Army Corps to determine what water resource projects are funded with the budget allocation for the Army Corps enacted by Congress each year; and

WHEREAS, the Army Corps and OMB rely heavily on a benefit-cost analysis to determine which projects receive federal funding each year; and

WHEREAS, since Congress traditionally provides the Army Corps with far fewer resources than are necessary to fund the significant backlog of projects under their jurisdiction, the benefit-cost analysis has become a de facto filter for the Army Corps and OMB; and

WHEREAS, as a result, projects that have a benefit-cost ratio below a certain level are often not considered for funding at all; and

WHEREAS, the current system used by the Army Corps for determining benefit-cost ratios is narrowly focused on traditional economic and financial costs and benefits, largely overlooking environmental costs and benefits, social equity and potential for secondary benefits of interest to local communities; and

WHEREAS, the current system used by the Army Corps for determining benefit-cost ratios at the U.S. Army Corps of Engineers does not adequately consider effectively reflect the potential value of projects for low-income communities, including the benefits of replacement of structures that protect low-income, low-cost of living communities; and

WHEREAS, the current system used by the Army Corps for determining benefit-cost ratios at the U.S. Army Corps of Engineers does not adequately consider the impacts of the loss of a community’s livelihood associated with agricultural land; and

WHEREAS, the current system used by the Army Corps for determining benefit-cost ratio at the U.S. Army Corps of Engineers does not include consider the value of federal lands; and

WHEREAS, dredged materials produced from Army Corps waterway and harbor maintenance activities may be suitable for beneficial reuse, but often are disposed as waste; and
WHEREAS, there is a lack of sediment available for the habitat restoration and flood protection needed along our coasts and waterways.

NOW, THEREFORE, BE IT RESOLVED that the National League of Cities (NLC) calls on the U.S. Army Corps of Engineers and the White House Office of Management and Budget to revise the benefit-cost analysis system used for projects to reflect the values of the nation to protect communities from flooding in ways that are environmentally protective and foster social equity;

BE IT FURTHER RESOLVED that NLC calls on the Army Corps and OMB to add a quantitative indexed value to life and safety to determine the benefit of federal investments in flood control projects; and

BE IT FURTHER RESOLVED that NLC calls on the Army Corps and OMB to add a quantitative indexed value to agricultural land value and the impacts of crop flooding to determine the benefit of federal investments in flood control projects; and

BE IT FURTHER RESOLVED that NLC calls on the Army Corps and OMB to add a quantitative indexed value to protection of low-income communities and environmental benefits to determine the benefit of federal investments in water resources projects, including projects for flood control projects; and

BE IT FURTHER RESOLVED that NLC calls on the Army Corps and OMB to add a quantitative indexed value to potential benefits of projects on federal properties, as well as benefits to military readiness when developing coastal storm protection projects in the adjacent community;

BE IT FURTHER RESOLVED that NLC calls on the Army Corps to increase the quantity of dredged materials put to environmentally beneficial uses, especially related to marsh restoration and sea level rise protection, by allowing a national beneficial reuse policy that considers dredged materials to be a potential resource (instead of a waste product) and establishes a realistic economic value of environmentally-suitable dredged material that takes into account its use for storm or flood risk reduction and habitat restoration; and

BE IT FURTHER RESOLVED that the cost of offshore disposal of dredged materials should include the full future economic value of that sediment that would be lost if it is deposited offshore.
WHEREAS, international transboundary rivers on the southern border of the United States are a major source of sewage, trash, chemicals, heavy metals and toxins; and

WHEREAS, transboundary flows threaten the health of 18 million residents in the United States and Mexico, harm important estuarine land and water of international significance, force closure of beaches, damage farmland, compromise border security, and directly affect U.S. military readiness; and

WHEREAS, a significant amount of untreated sewage, sediment, hazardous chemicals and trash have entered United States waters, via the Tijuana and New Rivers in southern California, the Santa Cruz and San Pedro Rivers in Arizona and the Rio Grande in Texas, eventually draining into coastal waterways, waterbodies and inland waters, such as the Salton Sea; and

WHEREAS, the presence of pollution on state and federal public lands is creating unsafe conditions for visitors and residents—these lands are taxpayer supported and intended to be managed for recreation, resource conservation and the enjoyment by the public, and

WHEREAS, the current insufficient and degrading infrastructure in the border zone poses a significant risk to the public health and safety of residents and the environment on both sides of the border, and places the economic stress on cities that are struggling to mitigate the negative impacts of pollution; and

WHEREAS, the 1944 treaty between the United States and Mexico regarding Utilization of Waters of the Colorado and Tijuana Rivers and of the Rio Grande allocates flows on transborder rivers between Mexico and the United States, and provides that the nations, through their respective sections of the International Boundary Water Commission shall give control of sanitation in cross border flows the highest priority; and

WHEREAS, in 1993, the United States and Mexico entered into the Agreement Between the Government of the United States of America and the Government of the United Mexican States Concerning the Establishment of a North American Development Bank which created the North American Development Bank (NADB) to certify and fund environmental infrastructure projects in border-area communities; and

WHEREAS, on November 30, 2018 the United States, Mexico and Canada entered into the Agreement Between The United States of America, The United Mexican States, And Canada to replace the North American Free Trade Agreement, and on December 10, 2019 the United States, Mexico and Canada agreed to a protocol of amendment to the U.S.-Mexico-Canada Agreement (USMCA), which became effective in the United States on January 29, 2020; and

WHEREAS, the implementing language of USMCA authorizes and allocates funding for grants under the U.S.-Mexico Border Water Infrastructure Program (BWIP), the Trade Enforcement Trust Fund and recapitalization of the NADB; and
WHEREAS, the funding package included $300 million to be available to address the problem of toxic sewage flowing from the Tijuana River watershed; and

WHEREAS, the increase in commerce and traffic across the border has resulted in economic benefits for both the U.S. and Mexico; and

WHEREAS, the ease of trade and commerce has resulted in increased vehicle and factory emissions, which negatively impact the water quality, land quality and air quality of the areas along the southern border; and

WHEREAS, border communities need modernized and innovative water infrastructure to provide clean and sanitary drinking water to improve the quality of living and support the expanding communities; and

WHEREAS, the adverse environmental impact will worsen existing environmental issues and the strain on aging infrastructure, while also creating new environmental issues in the future; and

WHEREAS, the widespread threat to public health and safety, damage to fish and wildlife resources and degradation to the environment caused by transboundary pollution in the border states requires urgent action by the federal and state governments; and

WHEREAS, Congress authorized funding under the Safe Drinking Water Act and established the State and Tribal Assistance Grants (STAG) program for the U.S.-Mexico Border Water Infrastructure Program in 1996 to provide grants for high-priority water, wastewater, and stormwater infrastructure projects within 100 kilometers of the southern border; and

WHEREAS, the EPA administers the STAG and BWIP, and coordinates with the NADB to allocate BWIP grant funds to projects in the border zone; and

WHEREAS, since its inception, the BWIP has provided funding for projects in California, Arizona, New Mexico and Texas that would not have been constructed without the grant program; and

WHEREAS, the BWIP program was initially funded at $100 million per year, but, over the last 20 years, the program has been significantly reduced to $15 million in FY19 and $25 million in FY20; and

WHEREAS, in its FY 2021 Budget Request, the Administration proposed to eliminate the BWIP program and recommends that state revolving funds be used as a source of infrastructure funding; and

WHEREAS, officials from EPA Region 6 and 9 identified a multitude of BWIP-eligible projects along the southern border totaling over $300 million; and

WHEREAS, Mexico has identified multiple projects totaling hundreds of millions of dollars that would benefit from BWIP funding; and
WHEREAS, without federal partnership through the BWIP and state support to address pollution, cities that are impacted by transboundary sewage and toxic waste flows are left with limited resources to address a critical pollution and public health issue and limited legal remedies to address the problem; and

WHEREAS, Mexico benefits from the bi-national funding program and relies on the North American Development Bank to assist in funding projects on the Mexico side of the border, which have an immediate and long-term environmental impact along the border in the U.S. due to the upstream, transboundary flows of the major rivers; and

WHEREAS, local governments and the public support the State’s primary objectives in complying with environmental laws including the Clean Water Act and Endangered Species Act, and are supported by substantial public investments at all levels of government to maintain a healthy and sustainable environment for the future.

NOW, THEREFORE, BE IT RESOLVED that the National League of Cities urges the Federal government to continue to fund the Border Water Infrastructure Program, and to recommit to working bi-nationally to develop and implement long-term solutions to address serious water quality and contamination issues, such as discharges of untreated sewage and polluted sediment and trash-laden transboundary flows originating from Mexico, that result in significant health, environmental, and safety concerns of affected communities.
NLC RESOLUTION #29

SUPPORTING LOCAL CONTROL OF WATER INFRASTRUCTURE PROJECTS

[EE NR COMMITTEE RECOMMENDATION: Renew]

WHEREAS, local leaders have a strong commitment to ensuring that our citizens have access to clean and reliable drinking water and wastewater systems; and

WHEREAS, local leaders have an obligation to protect public health, to use limited public resources in the most efficient manner possible, and to promote economic development; and

WHEREAS, local public and private engineers and water professionals also have an obligation to protect public health, to use limited public resources in the most efficient manner possible, and to promote economic development; and

WHEREAS, there are efforts at the federal level and in various states that would undermine these goals, supersede engineering judgment and impose new mandates on local communities; and

WHEREAS, the design of drinking water and wastewater systems is an inherently local process and local communities are in the best position to select infrastructure materials, as each community’s needs are unique; and

WHEREAS, infrastructure materials all have different service lives, durability, reliability, economic, health and safety characteristics and engineers and communities need to retain local control to select infrastructure materials based on factors important to the local community; and

WHEREAS, communities should remain free to adopt system-wide best management practices and uniform design specifications in the development and maintenance of their water systems to maximize efficiency and control costs; and

WHEREAS, restricting local control increases costs, interferes with sound engineering judgment, limits the ability of communities to manage their systems as efficiently as possible and delays projects.

NOW, THEREFORE, BE IT RESOLVED that the National League of Cities (NLC) supports local control of drinking water and wastewater systems and the ability of local governments to make water infrastructure decisions based on engineering and design, not solely based on cost; and

BE IT FURTHER RESOLVED that NLC opposes federal and state policies that mandate, or in any way promote, material preferences or otherwise undermine local autonomy for local water and wastewater infrastructure systems.
ENERGY AND ENVIRONMENT LEGAL UPDATE

NOTE: At issue in cases 1-8 below is whether cities and counties may bring state common law claims seeking damages or compensation for climate change impacts. Given the long history of local government reliance on public nuisance and other state common law claims to address widespread social problems affecting the public health and welfare, it is imperative that the courts recognize the viability of this type of claim. Local governments everywhere have an interest in affirming the principles of federalism underlying state common law.

Cities and counties across the United States have brought lawsuits against major oil and gas companies claiming they knew for decades their products caused climate change but denied or downplayed the threat. These lawsuits have been brought under state common law (including public and private nuisance, trespass, negligence, design defect and failure to warn). The suits seek damages or compensation for current and future costs associated with climate change.

Lawsuits have been filed in California (eight separate lawsuits), Colorado, Delaware, Hawaii, New Jersey, New York, Rhode Island, Washington and Washington, DC. There are at least 15 similar cases being litigated at various stages, of which NLC is participating in six. The circuit courts have ruled on five cases, with the local government position upheld in all.

The lower courts all consider the following two cases: In American Electric Power v. Connecticut (2011) the Supreme Court held a federal common law public nuisance lawsuit seeking an injunction against power companies to reduce greenhouse gas emissions (GHGs), brought by cities and states, was displaced by the Clean Air Act, which delegates authority to regulate GHGs to the U.S. Environmental Protection Agency (EPA). In Native Village of Kivalina v. ExxonMobil (2012) the Ninth Circuit held that a federal common law public nuisance lawsuit seeking damages for climate change brought by a Native village in Alaska was also displaced by the Clean Air Act. (Displacement of federal common law by a federal statute is, in essence, the same as preemption of state common law by a federal statute.)

1. Mayor and City Council of Baltimore v. BP et al. – Fourth Circuit

Update since Summer Leadership Meeting: In September, NLC filed an amicus brief in the remand of the case by the U.S. Supreme Court back to the Fourth Circuit. No update on the schedule for oral arguments at this time.

On June 10, 2019, the U.S. District Court for Maryland granted the City of Baltimore’s motion to remand to Maryland state court the City’s case against fossil fuel companies for climate change-related damages. In a lengthy and comprehensive opinion, the judge rejected each of defendants’ “proverbial ‘laundry list’ of grounds for removal.” The court held that the City’s public nuisance claim was not governed by federal common law, and that its claims did not necessarily raise substantial and disputed federal issues and were not completely preempted. The court also held that there was no federal enclave jurisdiction, no jurisdiction under the Outer Continental Shelf Lands Act, no federal officer removal jurisdiction, and no bankruptcy removal jurisdiction. The decision follows a similar order granting remand in the San Mateo County appeal currently pending in the Ninth Circuit.

Federal law allows defendants to “remove” a case brought in state court into federal court if the federal court has jurisdiction over the case. BP claims that the federal court has jurisdiction to hear this case on eight grounds, including the federal officer removal statute. This statute allows federal courts to hear cases involving a private defendant who can show that it “acted under” a
federal officer, has a “colorable federal defense,” and that the “charged conduct was carried out for [or] in relation to the asserted official authority.”

A federal district court rejected all eight grounds BP alleged supported removing this case to federal court. The federal district court remanded the case back to Maryland state court.

28 U.S.C. §1447(d) generally disallows federal courts of appeals to review federal district court orders remanding a case back to state court which was removed to federal court. The statute creates an exception for “an order remanding a case to the State court for which it was removed pursuant to” the federal officer removal statute or the civil-rights removal statute (not at issue in this case).

BP asked the Fourth Circuit to review all eight of its grounds for removing the case to federal court because one of the grounds it alleged--federal officer removal--is an exception allowing federal appellate court review.

The Fourth Circuit refused to review all eight grounds. It cited to a Fourth Circuit case decided in 1976, Noel v. McCain, holding that “when a case is removed on several grounds, appellate courts lack jurisdiction to review any ground other than the one specifically exempted from §1447(d)’s bar on review.” BP argued that a 1996 Supreme Court case and the Removal Clarification Act of 2011 “effectively abrogated” the 4th Circuit decision. The Fourth Circuit disagreed but acknowledged other courts have reached different conclusions.

NLC filed an amicus brief in this case in the Fourth Circuit. Oral arguments were held in December 2019. In March, the Fourth Circuit upheld the district court’s ruling to remand the case to state court, consistent with NLC’s amicus brief. Later in March, the defendants filed a certiorari petition in the U.S. Supreme Court.

On July 31, 2019, the judge denied defendants’ motion for a stay pending appeal of her remand order. The 4th Circuit declined to stay the district court's remand of the case to state court pending the appeal. This then caused the defendants to ask the district court to extend its stay of the remand, pending a petition for an emergency stay to the U.S. Supreme Court. The district court agreed, but also gave plaintiffs the opportunity to move to rescind the stay. The petition for an emergency stay was denied by the U.S. Supreme Court in October. The only precedent for anything like this would be the Supreme Court's stay of the Clean Power Plan.

In Oct. 2020, the U.S. Supreme Court decided to take up the case. The Court will decide whether a federal appellate court may review any grounds the district court considered for trying to remove a case to federal court where only one of the grounds the defendant alleges is specifically listed in federal statute as a basis for federal appellate court review. The U.S. Supreme Court heard oral argument in this case in January 2021. The State and Local Legal Center filed a brief in the case, with NLC participating.

In June 2021, the U.S. Supreme Court held that a federal court of appeals may review any grounds the district court considered for trying to remove a case to federal court where one of the grounds was federal officer or civil rights removal.

2. **City of New York v. BP et al. – Second Circuit**

**Update since Summer Leadership Meeting:** In April, the Second Circuit affirmed dismissal of the case, largely on preemption grounds that federal common law displaced the City’s state-law
public nuisance, private nuisance and trespass claims. The time for New York City to file a cert petition has passed and the City is not moving forward with the case.

In the case NYC v. BP et al. the district court ruled that cities and counties may not bring state common law claims and dismissed the lawsuit. The district court relied on the above two cases to conclude that, first, a federal common law public nuisance claim for climate change does exist and, second, that as a result of the existence of a federal nuisance claim cities and counties cannot bring state common law claims for damages for climate change. (The lower courts also relied on separation of powers principles to hold that the courts should not consider any federal claims.) NLC filed an amicus brief in the case. Oral argument was held in November 2019. The Second Circuit held the case until after the U.S. Supreme Court decided the Baltimore Case.

3. **City of Oakland v. BP et al. – Ninth Circuit**

Update since Summer Leadership Meeting: None – On June 14, the U.S. Supreme Court denied cert. The case was remanded to the lower court to act on the original motion. No action to date from the Ninth Circuit.

In the case City of Oakland v BP et al. the district court ruled that cities and counties may not bring state common law claims and dismissed the lawsuit. Similar to New York City case, in this case, the district court concluded that, first, a federal common law public nuisance claim for climate change does exist and, second, that as a result of the existence of a federal nuisance claim cities and counties cannot bring state common law claims for damages for climate change. NLC filed an amicus brief in this case. In May, the Ninth Circuit reversed the district court’s ruling to dismiss the case and remanded it back to the district court for further analysis and action, consistent with NLC’s amicus brief. In August 2020, the Ninth Circuit denied a request for a rehearing en banc.

In January 2021, defendants filed a petition for a writ of certiorari with the U.S. Supreme Court. The petition for cert posed the following different questions from the other cases below: “Whether putative state-law tort claims alleging harm from global climate change are removable because they arise under federal law” and “Whether a plaintiff is barred from challenging removal on appeal after curing any jurisdictional defect and litigating the case to final judgment.” On June 14, the Court denied cert on that question, so the case goes back to the district court to act on Oakland’s original motion to remand the case to state court. Oakland also filed a motion to amend its complaint to withdraw federal common law public nuisance claims, which they added only conditionally after the district court originally denied remand so that any trial that took place in federal court considered that issue as well.

4. **County of San Mateo v. Chevron et al. – Ninth Circuit**

Update since Summer Leadership Meeting: None – The U.S. Supreme Court has remanded the case to the lower court to reexamine its decision in light of the Baltimore holding. No action to date from the Ninth Circuit.

In the case County of San Mateo v. Chevron et al. the district court ruled cities and counties may bring state common law claims and ordered the case remanded to state court. In contrast to the New York City and Oakland cases, the district court concluded that the existence of a federal common law claim does not eliminate the state common law claim, and that the Clean Air Act’s delegation of regulatory authority to EPA doesn’t preempt state law claims. NLC filed
an amicus brief in the case. In May, the Ninth Circuit upheld the district court’s ruling, consistent with NLC’s amicus brief.

The district court stated:

“To the contrary, the Clean Air Act and the Clean Water Act both contain savings clauses that preserve state causes of action and suggest that Congress did not intend the federal causes of action under those statutes “to be exclusive.”"

In August 2020, the Ninth Circuit denied a request for a rehearing en banc. In December 2020, defendants filed a petition for a writ of certiorari with the U.S. Supreme Court.

5. **Board of County Commissioners of Boulder County v. Suncor Energy et al. – Tenth Circuit**

**Update since Summer Leadership Meeting:** None – The U.S. Supreme Court has remanded the case to the lower court to reexamine its decision in light of the Baltimore holding. No action to date from the Tenth Circuit.

On Sept. 5, 2019, the U.S. District Court for Colorado granted the City and County of Boulder’s motion to remand to Colorado state court the local governments’ case against fossil fuel companies for climate change-related damages. The decision closely resembles the San Mateo, Baltimore, and Rhode Island decisions. Defendants have filed an appeal in the 10th Circuit Court of Appeals. NLC filed an amicus brief in this case. Oral argument was heard in May. In July 2020, the Tenth Circuit ruled in favor of the local government position. In December 2020, defendants filed a petition for a writ of certiorari with the U.S. Supreme Court.

6. **State of Rhode Island v. Chevron et. al – First Circuit**

**Update since Summer Leadership Meeting:** U.S. Supreme Court has remanded the case to the lower court to reexamine its decision in light of the Baltimore holding. NLC filed an amicus brief in this case. No update on the schedule for oral arguments at this time.

On July 22, 2019, the U.S. District Court for Rhode Island granted the State of Rhode Island’s motion to remand to Rhode Island state court the State’s case against fossil fuel companies for climate change-related damages. The decision rejected each of defendants’ grounds for removal. The court held that the State’s public nuisance claim was not governed by federal common law, and that its claims did not necessarily raise substantial and disputed federal issues and were not completely preempted. The court also held that there was no federal enclave jurisdiction, no jurisdiction under the Outer Continental Shelf Lands Act, no federal officer removal jurisdiction, and no bankruptcy removal jurisdiction. The decision follows a similar order granting remand in the San Mateo County appeal currently pending in the Ninth Circuit, and as well as a similar order granting remand in Baltimore’s case, currently pending in the Fourth Circuit. The defendants have filed an appeal in the 1st Circuit Court of Appeals. NLC filed an amicus brief in this case.

Oral argument was heard in the First Circuit in September 2020. In October 2020, the First Circuit issued its decision, holding that federal officer removal only permits interlocutory appeal of that one issue and not other grounds for removal, agreeing with the local government position. In December 2020, defendants filed a petition for a writ of certiorari with the U.S. Supreme Court.
7. **State of Minnesota v. American Petroleum Institute, et al. – Eighth Circuit**

**New:** In August, NLC filed an amicus brief in this case. No update on the schedule for oral arguments at this time.

The NLC brief focus on the right of state and local governments to be the masters of their complaints, just as any other plaintiff is, that doing so and choosing to litigate state law issues in state court is not “artful pleading,” and that there is no relevant federal cause of action that supplants the state causes of action pleaded.

It is important that each circuit is aware that there are important federalism issues in removal to federal court as articulated by groups that have a stake in federalism concerns.

8. **City and County of Honolulu v. Sonoco LP, et al. – Ninth Circuit**

**New:** In September, NLC filed an amicus brief in this case. No update on the schedule for oral arguments at this time.

While the Ninth Circuit is familiar with the Federalism arguments NLC has made in similar cases, it is possible that Honolulu will be heard by a new panel unfamiliar with the arguments. The brief serves as a “raise the flag” effort to make sure the Court understands that local government groups support the right of cities to pursue state law causes of action as plaintiffs like this in state court.

**NOTE:** Cases 9-11 below relate to the U.S. Environmental Protection Agency and U.S. Department of Transportation’s joint rulemakings to rollback fuel economy standards and preempt the State of California and others from issuing more stringent greenhouse gas regulations on vehicles. In September 2019 the Trump Administration finalized two related actions that are collectively referred to as “Part 1” of the SAFE Rule: EPA withdrew California’s authority to set its own motor vehicle standards, and NHTSA issued a rule holding that any state or local regulation on tailpipe greenhouse gas emissions is preempted by federal law. NHTSA’s rule was challenged in California v. Chao and both actions were challenged in Union of Concerned Scientists.

9. **California v. Chao et al. – DC District Court – Preemption**

**Update since Summer Leadership Meeting:** None – In February 2020, the federal district court for the District of Columbia stayed this case pending resolution of related litigation in the DC Circuit (see Union of Concerned Scientists v. National Highway Traffic Safety Administration below).

Final regulations of the National Highway Traffic Safety Administration (NHTSA) called the “Preemption Regulation” declare that the Energy Policy and Conservation Act of 1975 (EPCA) preempts state laws that regulate greenhouse gas emissions from new passenger cars and light trucks. California has had emissions standards for light-duty vehicles for 60 years. The federal government has repeatedly granted California and other states who have adopted California’s standards waivers of preemption the Clean Air Act.
At issue in this case is whether the Preemption Regulation is unlawful, exceeds NHTSA’s authority, contravenes Congressional intent, and is arbitrary and capricious because the NHTSA has failed to conduct the analysis required under the National Environmental Policy Act (NEPA). In September, 23 states, the District of Columbia, and the cities of Los Angeles and New York, filed a lawsuit in federal district court in DC making numerous arguments against the U.S. Department of Transportation pursuant to the Administrative Procedures Act.

First, the states argue that the Preemption Regulation exceeds NHTSA’s statutory authority because “Congress has not delegated to NHTSA any authority to issue a regulation or other legally effective determination under EPCA regarding express or implied preemption under EPCA, nor to adopt regulations declaring particular state laws, or categories of state laws, preempted by EPCA.”

Second, the Preemption Regulation is ultra vires, meaning beyond NHTSA’s scope of authority because NHTSA “does not identify any statute or other authority that authorizes the regulation.”

Third, the lawsuit offers numerous arguments for why the Preemption Regulation is arbitrary and capricious including that it “interprets EPCA as expressly and implicitly preempting state laws regulating or prohibiting—or “having the direct or substantial effect of regulating or prohibiting,” p. 224—tailpipe greenhouse gas emissions, regardless of whether EPA has waived Clean Air Act preemption of those laws under Section 209(b) of the Clean Air Act.”

Finally, the lawsuit describes NHTSA’s assertion that NEPA does not apply to the Preemption Regulation so it didn’t comply with it as “arbitrary, capricious, and an abuse of discretion.” The lawsuit notes that NEPA “requires the preparation of a detailed environmental impact statement for any “major Federal actions significantly affecting the quality of the human environment.”


**Update since Summer Leadership Meeting:** None – Under the new Biden Administration, the U.S. Environmental Protection Agency asked the U.S. Department of Justice (DOJ) to seek a pause on the litigation while the Administration considers rewriting the rule. The DC Circuit has granted DOJ’s request, placing the case on hold.

**Background:** On September 27, 2019, EPA and the National Highway Traffic Safety Administration (NHTSA) issued a withdrawal of waiver it had previously provided to California for that State’s greenhouse gas and zero-emissions vehicle programs under section 209 of the Clean Air Act.

Before this withdrawal of waiver, California had adopted emissions standards for passenger cars and light trucks for 60 years that were more rigorous than the federal standard. The federal government had repeatedly granted California and other states who have adopted California’s standards waivers under the Clean Air Act.
**Litigation Status:** To date, revocation of this waiver has generated four lawsuits: California and other states; three California air districts; the National Coalition for Advanced Transportation, which represents Tesla and other electric vehicle-aligned companies; and eleven environmental groups. NLC filed an amicus brief in the Union of Concerned Scientists case in July 202 and the DC Circuit had planned to take briefing on both the California waiver and NHSTA preemption issues.

The waiver lawsuit brought by California and other states has been filed in the D.C. Circuit. The Trump administration asked the court to combine the waiver lawsuit and a related preemption lawsuit against the National Highway Traffic Safety Association (California vs. Chao above).


**Update since Summer Leadership Meeting:** None – Under the new Biden Administration, the U.S. Environmental Protection Agency asked the U.S. Department of Justice (DOJ) to seek a pause on the litigation while the Administration considers rewriting the rule. In April, the DC Circuit granted DOJ’s request, placing the case on hold.

This case is the challenge to the Safer Affordable Fuel Efficient (SAFE) Vehicles Rule. The SAFE Rule was promulgated by the U.S. Environmental Protection Agency (EPA) and the National Highway Traffic Safety Administration (NHTSA) in March 2020. The rule significantly weakens greenhouse gas and fuel economy standards for new passenger motor vehicle rules and light trucks. In 2012 the Obama Administration issued standards that would have required a 5% improvement in both greenhouse gas emissions and fuel economy every year – the SAFE Rule replaces those standards and requires only a 1.5% improvement in each, and is expected to result in an additional 867-923 million metric tons of carbon dioxide. The SAFE Rule was challenged in the D.C. Circuit by 23 states, several cities, and a coalition of public interest groups, as well as some other petitioners. (Because the case is actually a number of consolidated cases it has a number of titles and is also referred to as Competitive Enterprise Institute v. NHTSA). NLC filed an amicus brief in this case in January 2021.


**Update since Summer Leadership Meeting:** The U.S. Supreme Court has agreed to hear a related case, West Virginia v. EPA, which is a collection of appeals asking the court to overturn the D.C. Circuit’s January ruling that struck down the Trump administration’s Affordable Clean Energy rule.

In New York v. EPA states and cities, environmental groups, and other organizations have filed a lawsuit challenging the Trump Administration’s repeal of the Clean Power Plan (CPP) and issuance of the Affordable Clean Energy (ACE) Rule, which establishes greenhouse gas emissions standards for existing power plants. The repeal of the CPP and the promulgation of the ACE Rule represent the Trump Administration’s most significant climate rollback to date.

In April 2020, NLC filed an amicus brief in this case. The goal of the local government amicus brief, as with our previous efforts in the EPA climate regulation cases, is to highlight the perspective of localities as the first responders to the impacts of climate change and as climate policy innovators. The brief reflects signatory associations’ and local governments’ priority concerns related to climate impacts, to highlight local sustainability and climate action plans, and to support the legal arguments set forth by petitioners challenging the regulatory rollback. The brief largely resembles the one filed in support of the Clean Power Plan.
in terms of its approach, although of course the legal arguments will be different, focusing on the arbitrary and capricious nature of the new rule and its lack of a rational basis.

Twenty-three cities, counties and mayors have signed onto the brief. For comparison, about 50 signed onto the brief supporting the Clean Power Plan.

The U.S. Court of Appeals for the District of Columbia Circuit found that the ACE rule failed to provide adequate environmental and public health protections. The court ruled that EPA relied on a "fundamental misconstruction" of the Clean Air Act. "The question in this case is whether the Environmental Protection Agency (EPA) acted lawfully in adopting the 2019 Affordable Clean Energy Rule (ACE Rule), as a means of regulating power plants’ emissions of greenhouse gases. It did not," the court wrote. In January 2021, the U.S. Court of Appeals for the District of Columbia Circuit vacated and remanded the Trump Administration Affordable Clean Energy (ACE) Rule.


Update since Summer Leadership Meeting: This case is being held in abeyance until December, with a proposed briefing schedule due by December 21. NLC will file an amicus brief in this case.

In Dec. 2019, the Federal Energy Regulatory Commission (FERC) directed PJM, a regional wholesale electricity market covering 13 states in much of the mid-Atlantic and Ohio River Valley, to establish a price floor for state subsidized resources in PJM’s capacity market, seeking to ensure grid reliability by auctioning power delivery obligations three years before the electricity is needed. That price floor, called the Minimum Offer Price Rule (MOPR), would block many wind, solar and nuclear plants from clearing those auctions.

The MOPR would increase the price of certain wind, solar, and nuclear power generation that receives subsidies from almost every state in PJM’s region, thereby removing the impact of the state’s subsidy. Specifically, three states in PJM’s territory—Ohio, Illinois and New Jersey—have nuclear subsidies, and eleven have renewable energy mandates that would make new clean energy subject to the MOPR. FERC Chairman Neil Chatterjee did note the MOPR will not apply to existing renewable energy plants, energy storage resources, or power generators that are already under ratepayer-funded “self supply” contracts, like those owned by municipal utilities. This is forecast to exempt about 5,000 MW, a small percentage of the total power usage in the region.

Current status: Following the rule’s publication, many states that participate in PJM, the nuclear industry and renewable energy groups asked FERC to rehear the subsidy case. In April 2020, FERC declined to review its Dec. 2019 decision to limit participation of state-subsidized renewable and nuclear energy in PJM, setting the stage for a raft of legal challenges and potential state exits from the region’s long-term electricity auctions.

FERC’s decision to toss out appeal requests allows opponents of the decision to file legal challenges at the D.C. Circuit Court. Illinois utility regulators, environmental groups and municipal utilities are filing suit. The case was initially held in abeyance pending FERC’s ruling on several petitions for rehearing that were filed with it. FERC has now resolved those petitions and the abeyance will expire on December 14. The court is expected to issue a scheduling order around that time.
The Illinois filing in the U.S. 7th Circuit Court of Appeals was followed by a challenge from the American Public Power Association and American Municipal Power in the D.C. Circuit Court of Appeals. New Jersey and Maryland have also filed in the DC Circuit. The Sierra Club, Natural Resources Defense Council and Environmental Defense Fund also plan to file at the D.C. Circuit. The National Rural Electric Cooperative Association is also planning to formally file suit against the PJM decision.

**Local government impact:** FERC’s decision to deny a rehearing could also push some PJM states with nuclear power subsidies and renewable energy mandates to end their participation in the region’s capacity market, while continuing to utilize its shorter-term real-time and day-ahead markets. This could make meeting local or state renewable energy goals or carbon mitigation goals difficult. PJM has proposed a June deadline for states to leave the market as part of its compliance filing, but some states are concerned that coronavirus complications will make that timeline unworkable.

**Related:** In June, PJM proposed changes to the MOPR that effectively exempt “state-subsidized” renewables from the rule (see here for a brief overview). PJM requested FERC approval to implement the change but the Commission took no action. As a result, in accordance with section 205 of the Federal Power Act, the changes automatically took effect in September. This would seem to moot the case, but it hasn't been formally dismissed, and actions challenging the revised MOPR are expected. Requests for rehearing have already been filed with FERC.

14. **California Restaurant Association v. Berkeley – Ninth Circuit**

**New:** NLC will join an amicus brief in this case, which is due in January 2022.

In this case, a restaurant trade group plaintiff brought suit against the city of Berkeley, California, claiming that Berkeley’s 2019 “natural gas ban,” which prohibited or restricted gas connections to many new buildings within the city, was preempted by both the U.S. Energy Policy & Conservation Act (EPCA) and state law. The federal district court dismissed the EPCA preemption claims (i.e., all claims under federal law), holding that EPCA -- which preempts state and local standards relating to the energy efficiency or energy use of many appliances -- did not preempt the Berkeley gas ban. (More information about the case can be found on the Sabin Center blog.)

The Restaurant Association has filed a notice of appeal to the U.S. Court of Appeals for the Ninth Circuit. The amicus brief would address the perspective of cities advocating for the less expansive reading of EPCA preemption, consistent with the view of the district court. This less expansive reading would give cities more confidence that many of their policies would not be preempted simply because they have a very tangential relation to the energy efficiency or energy use of an appliance.

15. **California River Watch v. City of Vacaville – Ninth Circuit**

**New:** NLC will join an amicus brief in this case, which is due in November.

The City of Vacaville, CA draws groundwater from wells and distributes it to city residents. The City’s water complies with federal and state drinking water standards, but also contains hexavalent chromium. California River Watch (CRW) sued the city in federal district court under the citizen-suit provision of the Resource Conservation and Recovery Act of 1976 (RCRA),
claiming the city’s distribution of this water violated RCRA because it constituted the generation and transportation of dangerous solid waste. The district court granted summary judgment to the city on the grounds that the water containing hexavalent chromium was “discarded material” under RCRA.

The Ninth Circuit reversed. The panel’s reversal rested on two holdings. First, it held there was a genuine issue of material fact that the hexavalent chromium was “discarded material.” Second, the panel held “nothing in RCRA’s text suggests that” the city had to “play some role in ‘discarding’ the waste” to be held liable. “While the City may be distributing groundwater contaminated by others, RCRA’s endangerment provision broadly applies to any person, including a governmental instrumentality, like the City, that contributes to the transportation of any waste. So, a transporter of waste need not also be the cause of the waste’s existence.” As the dissent pointed out the panel thus partly overruled Hinds Investments, L.P. v. Angioli, where the Ninth Circuit “require[d] that a defendant be actively involved in or have some degree of control over the waste disposal process to be liable under RCRA.”

The panel decision disturbs Ninth Circuit case law and could significantly increase liability risks for municipal and other public water suppliers that are complying with applicable maximum contaminant levels (MCLs) and had no role in introducing contaminants into their water supplies. Indeed, public suppliers could be subject to RCRA litigation for merely conveying contaminants through their distribution systems at levels deemed otherwise acceptable under the Safe Drinking Water Act and implementing federal and state regulations.

The amicus brief will communicate the consequences of the panel’s decision on water suppliers. The brief will argue that when a water supplier extracts groundwater containing a contaminant and distributes it to the public, the supplier’s actions should be protected by the safe harbor that MCLs are intended to provide, consistent with the Safe Drinking Water Act. The brief will argue for an alternative basis for affirmance of the district court’s decision, and the brief takes no position on some of the major issues being argued in the case (namely, the RCRA definitions).
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