NATIONAL LEAGUE OF CITIES

1997 REPORT TO THE
ENERGY, ENVIRONMENT, & NATURAL RESOURCES
POLICY COMMITTEE

CHAIR:
The Honorable Jack Lynch
Chief Executive
Butte, Montana
avoided in all future planning. Whenever such silting and erosion has already occurred, research should be continued to find ways of correcting this condition, within an ecologically sound framework.

11. Research

EPA should support research on problems growing out of the management of wastewater treatment facilities such as combined sewer overflows, land application of treatment effluent and sludges, and source reduction.

Innovative and alternative technologies have not been used to their fullest potential. Therefore, federal research, development, and public education of these technologies should expand, but not at the expense of research on management and operational issues.

Source reduction technologies and programs are prohibitively expensive for individual municipalities to develop. For example, to enable municipalities to reduce levels of metals and other toxic pollutants from non-industrial sources, EPA should undertake research to identify products introduced by small business and residential generators and suggest control programs for reducing these pollutants.

5. 42. Pretreatment

EPA should establish national categorical pretreatment standards only for those industries that it has classified as major polluters and only for those classes of toxic pollutants which are known to be widespread and which may be causing human health and aquatic life problems. EPA should be required to publish, by date specific, a listing of categories for which action will be required.

Local governments should be allowed to devise methods to satisfy national standards that not only assure protection of water quality but which are also cost effective under the conditions of their particular jurisdiction. Therefore, as an alternative to federally mandated implementation of the national categorical pretreatment standards, Congress should authorize states to approve local pollutant elimination programs.

To qualify for the alternative local program, a Publicly Owned Treatment Works (POTW) should be required to demonstrate to an authorized state agency that: 1) the POTW is in compliance with the requirements of its permit under the National Pollutant Discharge Elimination System (NPDES); 2) it has developed and implemented a local pollutant elimination program that in the aggregate is equivalent to implementation of the national categorical pretreatment standards; and 3) it is maintaining a local monitoring and reporting program which is adequate to disclose the quality of the receiving waters.

6. 43. State Water Quality Standards

The current Clean Water Act requires states to designate how each water body is to be used within its jurisdiction and to develop standards for attaining that use. Under no circumstances should a state be allowed to downgrade or revise its water quality standards where the designated uses have already been attained. However, a state may a state should only be able to revise its water quality standard if it can demonstrate that: 1) the existing designated use is unattainable because of irretrievable man-induced conditions; or 2) attainment of the designated
use would result in substantial and widespread adverse economic and social impact.

Where the water quality of a stream exceeds the level necessary to maintain a designated use, a state should have the option to allow lower water quality for that stream because of necessary and justifiable economic or social development for which there is no feasible alternative. In no case should the degradation of water quality interfere with or become injurious to existing instream use. Before a state exercises such an option, it should be required to hold public hearings and coordinate with all affected governmental agencies.

7. Effluent Trading

Assuring that the nation’s water bodies meet their designated uses and the attainment of water quality standards is the responsibility of all who contribute to stream degradation, not just of regulated point sources. It is inherently inequitable to require the attainment of these objectives solely from point sources either directly or indirectly. Environmental justice demands that all sources of pollution take full responsibility for controlling and/or mitigating their contributions to stream degradation. Where water quality standards may be attained more cost effectively by reductions from unregulated sources outside of a municipality, arrangements to finance such pollution control or mitigation activities from local revenues (effluent trading) must be entirely voluntary on the part of the affected local government. Where an affected local government is either unwilling or unable to participate in effluent trading, it should under no circumstances become the responsibility of the local government to offset from its own sources, the contributions of non-municipal entities to stream degradation.

8. 44. Toxicity Testing

NLC supports the use of Whole Effluent Toxicity Testing (WETT) for the assessment of the potential toxicity of wastewater discharges; however, legislation should be adopted to prohibit the use of such tests as “pass/fail” NPDES permit conditions imposing strict liability on POTWs.

15. Common Law

No municipality injured by a willful or negligent violation of federal or state law should be deprived of a remedy if one exists under the federal Water Pollution Control Act and other appropriate laws. However, EPA must be made a party where the defendant can demonstrate it has acted in good faith.

9. 46. Pollution Prevention

In addition to treatment policies, the federal government should develop, advocate, and institute pollution prevention measures for all contributors to degradation of the nation’s water bodies. Prevention strategies are more effective in keeping pollutants out of wastewater and far less costly than end-of-pipe technologies. Products containing chemical levels which constitute a significant percentage of the total loading should be restricted as to their composition and/or use.

One of the most serious threats to municipal water supplies is posed by accidents from oil and other hazardous liquid pipelines. The federal government should adopt strict regulations to protect environmentally sensitive areas and public water supplies from pipeline accidents, take strong enforcement action against repeat polluters, and encourage greater local government participation in pipeline safety regulation.
CLEAN WATER

Over the past several years, the EENR Policy Committee has expressed continuing concern about clean water issues especially directives from the federal government and their potential impacts on cities and towns. In 1996, for instance, the Policy Committee addressed a range of concerns such as:

- Recognition that there are non-municipal contributors to pollution problems, and they must be incorporated into the process of finding solutions. Municipalities and the local ratepayers should not be responsible for pollution generated outside their jurisdiction. (C. Clean Water Act Policies, 20. Nonpoint Source Pollution) ????

- There is a need to establish a dispute resolution process so that cities and all affected parties, including Indian tribes, are involved. This concern has previously been expressed in a resolution. (F. Water Supply Policies, 12 Planning at the Federal Level)

- Cities should have the option of initiating environmental law enforcement actions against polluters. (C. Clean Water Act Policies, 17. Pollution Prevention)

This year the Steering Committee undertook a major rewrite to continue their efforts to update the policy and eliminate redundancies, clearly address cities interest in clean water, and to highlight areas where federal support (financial and technical) are sorely needed in order to achieve national water quality goals.

Related to the concern about the federal role are statements concerning State Revolving Loan Funds. Policy language emphasizes how critical it is that a range of tools (revolving loan funds, grants, etc.) be made available to municipal governments to address water quality standards.

The City of Fredericksburg, Virginia offered a policy amendment to address pipeline safety. The EENR Steering Committee concurred with the City’s proposal and incorporated the recommendation into their proposal language changes to the Pollution Prevention Section.

2.05 Water Quality And Supply

A. Problem Statement

The nation continues to experience problems with both the quality of our waters as well as the adequate supply of sources of water to sustain our population.

It is becoming increasingly apparent that no section of the country is immune to the problems associated with both natural and man-made water pollutants. Runoff from various sources (such as agriculture, confined livestock activities, mining operations, failing septic systems, deteriorating sewer pipes, and municipal stormwater) has long been recognized as a contributor to water quality problems. In many older cities, the existing sewer system with deteriorating pipes may also contribute to water pollution. The growing concern over the introduction of toxic chemicals, animal wastes, and pesticides into the environment and their
The current Clean Water Act requires states to designate how each water body is to be used within its jurisdiction and to develop standards for attaining that use. Under no circumstances should a state be allowed to downgrade or revise its water quality standards where the designated uses have already been attained. However, a state may only be able to revise its water quality standard if it can demonstrate that: 1) the existing designated use is unattainable because of irretrievable man-induced conditions; or 2) attainment of the designated use would result in substantial and widespread adverse economic and social impact.

Where the water quality of a stream exceeds the level necessary to maintain a designated use, a state should have the option to allow lower water quality for that stream because of necessary and justifiable economic or social development for which there is no feasible alternative. In no case should the degradation of water quality interfere with or become injurious to existing instream use. Before a state exercises such an option, it should be required to hold public hearings and coordinate with all affected governmental agencies.

7. Effluent Trading

Assuming that the nation's water bodies meet their designated uses and the attainment of water quality standards is the responsibility of all who contribute to stream degradation, not just of regulated point sources. It is inherently impossible to require the attainment of these objectives solely from point sources either directly or indirectly. Environmental justice demands that all sources of pollution take full responsibility for controlling and/or mitigating their contributions to stream degradation. Where water quality standards may be attained more cost-effectively by reductions from unregulated sources outside of a municipality, arrangements to finance such pollution control or mitigation activities from local revenues (effluent trading) must be entirely voluntary on the part of the affected local government. Where an affected local government is either unwilling or unable to participate in effluent trading, it should under no circumstances become the responsibility of the local government to offset from its own sources, the contributions of non-municipal entities to stream degradation.

8. Toxicity Testing

NLC supports the use of Whole Effluent Toxicity Testing (WETT) for the assessment of the potential toxicity of wastewater discharges; however, legislation should be adopted to prohibit the use of such tests as "pass/fail" NPDES permit conditions imposing strict liability on POTWs.

15. Common Law

No municipality injured by a willful or negligent violation of federal or state law should be deprived of a remedy if one exists under the federal Water Pollution Control Act and other appropriate laws. However, EPA must be a party where the defendant can demonstrate it has acted in good faith.

9. Pollution Prevention

In addition to treatment policies, the federal government should develop, advocate, and institute pollution prevention measures for all contributors to degradation of the nation's water bodies. Prevention strategies are more effective in keeping pollutants out of wastewater and far less costly than end-of-pipe technologies. Products containing chemical levels which constitute a
significant percentage of the total loading should be restricted as to their composition and/or use.

One of the most serious threats to municipal water supplies is posed by accidents from oil and other hazardous liquid pipelines. The federal government should adopt strict regulations to protect environmentally sensitive areas and public water supplies from pipeline accidents. Take strong enforcement action against repeat polluters and encourage greater local government participation in pipeline safety regulation.

10. Legal Remedies

No municipality injured by a willful or negligent violation of federal or state law should be deprived of a remedy if one exists under the federal Water Pollution Control Act and other appropriate laws. However, EPA must be made a party where the defendant can demonstrate it has acted in good faith.

In addition, Municipalities should be granted the authority to bring environmental law enforcement actions against polluters within the municipal jurisdiction or when the pollution from outside of its boundaries poses a potential threat to the health, safety, or welfare of those living in the municipality. The decision to exercise such authority would be solely at the discretion of the municipality.

11. Separate Storm Sewer Requirements

NLC continues to support a more simplified and flexible approach to management of municipal stormwater run-off which would allow for orderly and cost effective development of both information and program design than that which exists under current EPA Phase I regulations.

Congress should amend the Clean Water Act to regulate urban stormwater run-off under a newly-enacted provision of the Act separate from the NPDES program. Such regulations should require implementation of Best Management Practices (BMPs) to the Maximum Extent Practicable (MEP) with a legislative prohibition on requirements for end-of-the-pipe treatment. Until such legislation is enacted EPA should continue in effect its August 1996 Policy recommending against inclusion of end-of-pipe requirements in stormwater permits. Management of run-off from municipal industrial facilities should be incorporated as part of a system- or jurisdiction-wide stormwater management program. Municipal compliance with stormwater management requirements should be based on implementation of site-specific Best Management Practices required in the permit.

NLC opposes federal intrusion into local land use planning through the regulation of stormwater "flows." Federal involvement in this area should be limited to research, education and appropriate incentives for voluntary local flow management programs. This position is consistent with NLC's land use positions as contained in Section 3.06 of the Community and Economic Development chapter.

12. Combined Sewer Overflow (CSO)

NLC supports the CSO control policy developed by EPA after a modified negotiation process, which involved major stakeholders including NLC if critical issues related to the financial impacts of the proposed EPA policy are addressed. The opportunity to successfully implement
FACSIMILE TRANSMISSION COVER SHEET

Date: Oct. 27, 1997

Please deliver the following pages to:

Name: Bill Backiff

Firm: ____________________________

Facsimile Number: 850-332-5024

Telephone Number: 850-332-9789

From:

Name: James M. Pates

Total number of pages including cover letter: 4

Message:

________________________________________________________________________

________________________________________________________________________

________________________________________________________________________

________________________________________________________________________

________________________________________________________________________

Operator: Gary Lombardo Time Sent: 11:30 a.m.

NOTE: CONFIDENTIAL COMMUNICATION
The information contained in this facsimile message is attorney privileged and confidential information intended only for the use of the individual or entity named above. If the reader of this message is not the intended recipient, you are hereby notified that any dissemination, distribution or copy of this communication is strictly prohibited. If you have received this communication in error, please immediately notify us by telephone and return the original message to us at the above address via the U. S. Postal Service. Thank you. (Forms diskette #4-fax.form)
The City's proposed amendment to Paragraph 16, Section 2.05, of the National Municipal Policy on Energy, Environment & Natural Resources would, for the first time, put the National League of Cities on record as recognizing the serious environmental hazards posed by oil and other hazardous liquid pipelines. Pipeline accidents are the leading point source of oil pollution in the United States. From 1980 through 1989, there were 3,910 spills from land-based pipelines in this country, causing the release of nearly 20 million gallons of petroleum products into the environment. On average, this amounted to more than one water-polluting spill every single day.

The U. S. Department of Transportation has the primary responsibility for safeguarding the public from the threat of such accidents, but DOT has been lax in protecting public safety and the environment. It has failed to adopt even the most minimal environmental regulations, has allowed oil companies to violate federal safety laws with impunity, and has largely excluded local governments from participating in the regulatory process.

The proposed amendment would encourage the federal government to move beyond its present emphasis on oil spill response efforts (the responsibility of EPA) to the prevention of such accidents in the first place (the responsibility of DOT).
National League of Cities

Proposed Amendment to the 1997 National Municipal Policy
Energy, Environment & Natural Resources

PIPELINE SAFETY

Section 2.05 - Water Quality and Supply

Paragraph 16, "Pollution Prevention," should be amended as follows:

In addition to treatment policies, the federal government should develop, advocate, and institute pollution prevention measures for all contributors to degradation of the nation’s water bodies. Prevention strategies are more effective in keeping pollutants out of wastewater and far less costly than end-of-pipe technologies. Products containing chemical levels which constitute a significant percentage of the total loading should be restricted as to their composition and/or use.

One of the most serious threats to municipal water supplies is posed by accidents from oil and other hazardous liquid pipelines. The federal government should adopt strict regulations to protect environmentally sensitive areas and public water supplies from pipeline accidents, take strong enforcement action against repeat polluters, and encourage greater local government participation in pipeline safety regulation.

In addition, municipalities should be granted the authority to bring environmental law enforcement actions against polluters within the municipal jurisdiction or when the pollution poses a potential threat to the health, safety, or welfare of those living in the municipality. The decision to exercise such authority would be solely at the discretion of the municipality.
MEMORANDUM

TO: Rob Rackleff  
    Lois Epstein  
    Janis Lowe

FROM: Jim Pat

DATE: August 1, 1997

RE: National League of Cities

Please find attached a copy of the letter and proposed policy resolution that the City sent today to the National League of Cities. This is the first step in a rather cumbersome procedure to get the NLC to make some kind of general policy statement on pipeline safety.

I send it to you in case you know of any cities that you think would be interested and willing to contact the League to register support for this effort.

If we meet in Washington in September, perhaps we can pay a visit on Sharon Anderson.

memo.oil.nlc
Ms. Sharon Anderson  
Center for Policy and Federal Relations  
National League of Cities  
1301 Pennsylvania Avenue, N.W., 5th Floor  
Washington, D. C. 20004

RE: Amendment to National Municipal Policy/Pipeline Safety

Dear Sharon:

Please find enclosed a copy of the City of Fredericksburg’s proposed amendment to the National Municipal Policy on Energy, Environment & Natural Resources regarding pipeline safety, along with the requisite page of supporting explanation. I am faxing these three pages, while a larger package of supporting documentation is being sent under separate cover. The package includes my two recent papers on pipeline safety, the City’s pipeline safety video, and a representative selection of news clippings from across the country. I hope this information proves helpful.

Incidentally, Councilman Gordon Shelton has asked me to convey a request for permission to place this issue on the agenda at the upcoming meeting of the Energy, Environment & Natural Resources Steering Committee in Gloucester, Massachusetts. The City would like the opportunity to make a very brief presentation on the subject at that meeting.

I hope to get to Washington within the near future so that we can meet and discuss this whole issue in greater detail. I realize it is a somewhat arcane issue and apologize for the fact that we are bringing it up without having done a lot of advance
Ms. Sharon Anderson
August 1, 1997
Page two

work with the NLC staff. If you have any questions or suggestions about any of this, please feel free to give me a call.

Sincerely,

James M. Pates

JMP/jo
ltr.anderson
cc: Hon. Gordon W. Shelton
    Mayor H. William Greenup
    Marvin S. Bolinger, City Manager
Family seeks more Everglades oil

The Palm Beach Post

WEDNESDAY, NOVEMBER 5, 1997

Oil-well permit process includes public hearings

**OIL WELLS**

*From 1A*

The family of Naples oilman Col. Robert P. King could not be reached for comment Tuesday. Tiller said Cawley announced the family's plans last week at a meeting of the Broward County Sierra Club.

The family also has told the National Park Service that it plans to seek as many as 28 drilling permits, said Patrick Kenney, a resource management specialist at Big Cypress.

The Colliers applied to the park service Oct. 9 for the first permit. It would allow one exploratory well 5 miles south of Alligator Alley midway through the preserve, Kenney said.

Tiller said other proposed drilling sites include locations in the Florida Panther National Wildlife Refuge, just west of Big Cypress, and in the preserve's south end, close to Everglades National Park.

The Colliers already operate about 30 wells at drilling pads near the preserve's east and northwest borders. The proposed wells would be the first to be drilled outside those established areas since at least the early 1980s, Kenney said.

He said reviewing the first permit request could take as long as a year and will allow the public and the Seminole and Miccosukee Indian tribes to comment. On the other hand, he said, "There is a property-rights issue here."

The family has been a major force in Southwest Florida since the 1920s when banker and railroad man Barron Collier bought a million acres, began construction of the Tamiami Trail and got a county named after himself.

Congress bought much of the family's land before creating the 575,000-acre preserve in 1974, but the federal government didn't buy the Colliers' oil and gas rights. The family's high price probably would have killed the deal, said Hobe Sound environmentalist Nat Reed, who advocated the land purchase as an assistant secretary of the U.S. Interior Department.

Reed said the rights still could be too expensive, depending on what price the Colliers demand.

"If guarantee you it's not worth $1 billion," Reed said, adding that drilling "is not the end of the world." He said he doesn't like the idea of new wells, but federal regulators probably could limit the environmental damage.

The Colliers have offered to surrender their drilling rights in return for federal land worth hundreds of millions of dollars. According to published reports, the sites under discussion include the Orlando Naval Training Center and various closed bases in California, including the Treasure Island Naval Station in San Francisco Bay.

In a similar swap concluded last year, the Colliers gave up 108,000 acres in and near the Big Cypress in return for 68 acres of federal land in downtown Phoenix. Of the land the family gave up, 83,000 acres was added to the Big Cypress preserve.
Judges Can Bar ‘Junk Science,’ Top Court Says

By Edward Felsenthal
Staff Reporter of The Wall Street Journal
WASHINGTON — The Supreme Court strengthened the power of trial judges to bar controversial scientific evidence from their courtrooms.

Ruling in the case of a man who claims he got cancer from exposure to chemicals, the justices ordered appeals courts to show restraint before second-guessing trial judges who exclude scientific evidence.

The decision was a significant victory for business groups, which have long fought to rein in what they deride as “junk science,” or evidence that comes from scientifically shaky studies or dubious expert witnesses.

During the past few years, many trial judges have shown a growing tendency to keep out such evidence, which is introduced frequently in cases ranging from medical malpractice to product liability. The question before the Supreme Court was how much leeway appeals courts have to overrule those decisions.

In an opinion by Chief Justice William Rehnquist, the court ruled unanimously that those decisions can be overruled only when trial judges have clearly abused their discretion. That reversed an opinion chief justice said Mr. Joiner hadn’t explained “how and why the experts could have extrapolated their opinions from these seemingly far-removed animal studies.”

Alan Untereiner, a corporate lawyer at Mayer, Brown & Platt, said the opinion provided “a nice plus for business litigants” by outlining the problems with Mr. Joiner’s evidence. It shows federal judges what to do “by example,” he said, and it sends a message that “gatekeeping is very important.”

Justice John Paul Stevens filed a separate opinion dissenting from the part of the opinion that reviewed the evidence in the Joiner case. He sided with the majority in the rest of the opinion. Justice Stephen Breyer also wrote separately, in part to urge trial judges reviewing such evidence to make more use of their own outside experts. “Judges are not scientists and do not have the scientific training that can facilitate the making of such decisions,” Justice Breyer said. (GE vs. Joiner)

---

Continued From Page B1

by the federal appeals court in Atlanta, which had ruled that decisions to exclude scientific evidence should be scrutinized more closely.

The ruling helps resolve a debate over how courts should apply the Supreme Court’s 1993 decision in a case known as Daubert. In Daubert, the court ruled that, before admitting expert scientific testimony, a trial judge must determine that the science involved is legitimate. Under the previous rule, known as the Frye test, judges could admit any evidence as long as it was based on science or technology that was “generally accepted” by other practitioners.

But the Daubert ruling sent some conflicting signals: It emphasized that federal evidence rules permit a broad range of testimony. But it also appeared to boost the role of judges as “gatekeepers” responsible for weeding out unreliable evidence.

Yesterday’s opinion seemed designed in part to clear up that confusion, explicitly affirming the gatekeeping power of trial-court judges. “While the Federal Rules of Evidence allow district courts to admit a somewhat broader range of scientific testimony than would have been admissible under Frye, they leave in place the ‘gatekeeper’ role of the trial judge,” Chief Justice Rehnquist wrote. “In applying an overly ‘stringent’ review,” he continued, the Atlanta appeals court “failed to give the trial court the deference it deserved.

Business groups were particularly heartened that the court went on to rule that the trial judge had correctly excluded the scientific evidence in this case, which involved an electrician’s claim against General Electric Co., Westinghouse Electric Corp. and Monsanto Co. The electrician, Robert Joiner, contends he got lung cancer from exposure to chemicals in transformers made by GE and Westinghouse. Monsanto made one of the chemicals involved.

Chief Justice Rehnquist criticized Mr. Joiner’s expert witnesses for relying on animal studies that were “dissimilar to the facts presented in this litigation.” The