

## **RESOLUTION TO REINSTATE A FEDERAL, STATE AND LOCAL GOVERNMENT PARTNERSHIP FOR ACHIEVABLE AND AFFORDABLE WATER QUALITY IMPROVEMENTS**

**WHEREAS**, the capital costs that cities bear to address combined sewer overflows (CSOs), sanitary sewer overflows (SSOs), treatment plant upgrades, and stormwater controls are unfunded federal mandates and are among the most costly burdens faced by local governments; and

**WHEREAS**, upon the passage of the Clean Water Act, Congress authorized and funded over \$60 billion in grants that created partnerships between municipalities, states and the federal government to share the costs of upgrading publicly owned treatment works around the country to meet the Clean Water Act mandates relating to secondary treatment; and

**WHEREAS**, in 1987, Congress determined that large capital grants for municipal wastewater treatment were no longer necessary, and phased out grants to local governments in lieu of a loan program to be managed by the states; and

**WHEREAS**, since then many unanticipated and extremely costly new Clean Water Act and Safe Drinking Water Act mandates have been imposed on local governments and indeed more are to be imposed on local governments in coming months and years, but federal grant money is no longer provided to help meet these mandates; and

**WHEREAS**, today municipalities expend billions of dollars every year (\$111.4 billion in 2010) to provide essential water services and meet state and federal water and wastewater mandates, an annual amount that is nearly double the total of all the grants that the federal government provided over nearly 20 years; and

**WHEREAS**, the many mandates imposed by the Clean Water Act and the Safe Drinking Water Act have created cumulative financial burdens that cannot be borne by municipalities, their low and moderate income families, and their business enterprises, forcing municipalities to forego investment in competing municipal priorities; and

**WHEREAS**, in explicit recognition of the burden of these costs USEPA has recently developed a policy allowing local governments to create Integrated Plans through which a local government can coordinate competing and sometimes conflicting actions, prioritize actions that will provide the greatest environmental benefits for the funds expended, and evaluate progress and the need for further actions to meet water quality standards through adaptive management processes; and

**WHEREAS**, because USEPA currently interprets the Clean Water Act to require immediate compliance with any pre-1977 water quality standards, it relies on aggressive enforcement tools such as consent decrees and orders as its principal method of interacting with municipalities, resulting in overly costly and overly prescriptive mandates that often yield negligible public benefits, and precluding opportunities for flexibility by preempting the use of permits and adaptive management processes to comply with Clean Water Act obligations, and

**WHEREAS**, in tandem with these decrees and orders, USEPA and DOJ have adopted policies on penalties and fines that treat local governments as polluters, rather than as partners and stewards in improving our environment,

**NOW THEREFORE, BE IT RESOLVED**, that The U.S. Conference of Mayors urges the United States Congress to determine that large capital grants to cities are necessary to meet mandates imposed under the Clean Water Act; to re-establish a joint environmental stewardship with cities; and, to assure that the costs of sustaining the infrastructure and operations of water and wastewater systems of cities do not unjustly burden low and moderate income households nor create burdensome costs for business enterprises; and

**BE IT FURTHER RESOLVED**, that The U.S. Conference of Mayors urges the United States Congress to authorize and appropriate sufficient funding for capital grants to cities facing mandates levied by the Clean Water Act, that these grants be prioritized for financially distressed cities and be for no less than 75 per cent of the costs of projects to be undertaken by cities, and that these grants may be used to retire debt to which cities have obligated themselves to comply with Clean Water Act, if those debts have imposed costs on customers that are beyond the affordability limits discussed below; and

**BE IT FURTHER RESOLVED** that The U.S. Conference of Mayors urges the United States Congress to enact amendments to the Clean Water Act to address concerns related to unfunded federal mandates, such as the following:

- a) Without regard to the actual availability of federal grants or loans for addressing Clean Water Act and Safe Drinking Water Act mandates, increased flexibility must be allowed to municipalities seeking to comply with the mandates and that this be achieved through permits based upon integrated plans developed by municipalities to prioritize actions providing the greatest environmental benefits for the funds expended, and to allow municipalities to evaluate their progress and any need for further actions to meet water quality standards through adaptive management processes; and
- b) Remove regulatory barriers to the use of adaptive management and permits to implement integrated plans by specifically determining that a municipality implementing an integrated plan will be in compliance with its permit as long as it is making reasonable progress towards achieving Clean Water Act goals; and
- c) Authorize USEPA discretion to determine what constitutes “reasonable progress”, but do so within certain limits. Specifically, Congress should direct that a municipality will not be out of compliance with its permit for failing to make reasonable progress if:
  - the applicable water quality standard is not achievable based on a use attainability analysis in accordance with current EPA regulations (where substantial impact is defined as 2% of a household income and a widespread impact is defined at 20% of the service area); and
  - the control measures are not economically affordable because they would result in rates that exceed 2% of the household income of at least 20% of the families in a service area; and
  - or the control measures are not economically affordable because the annual implementation costs, including debt service, will exceed half the annual operating budget of the municipal utility and the municipality does not receive a grant covering at least 75% of the costs or the permit does not

allow at least 40 years for implementation of controls.

d) Provide the same flexibility for integrated plans implemented through consent decrees or administrative orders.

e) Authorize permits for unavoidable sanitary

sewer discharges so that controls on such discharges may be included in an integrated permit (rather than a consent decree).

f) Allow regulators to issue permits with 10-year terms.

g) Require USEPA to issue or work with States and their Regions to issue at least one integrated permit in each of the 10 EPA Regions within one year and to report to Congress on the implementation of integrated permits within two years.

h) Prohibit USEPA from imposing civil or administrative penalties on a municipality for past violations if the municipality agrees to implement a plan to come into compliance with Clean Water Act obligations.

i) Define the term “by-pass” to clarify that a system that is designed and permitted to treat excess flows in peak flow treatment systems is not considered a by-pass to address the concern that some EPA regions are now claiming that permitted peak flow treatment systems are somehow an illegal by-pass of a treatment system.

j) Amend title 6 of the Clean Water Act to authorize repayment of SRF loans over 30 years instead of 20 years to make the annual costs of financing those loans more affordable for municipalities.

k) Require USEPA to update its affordability guidance to provide a more realistic and complete review of the all the financial burdens on municipalities and their ratepayers, including burden imposed by other federal laws and to justify flexible approaches to meeting all federal and state water-related mandates.

Projected Cost: Unknown