NLC NATIONAL LEAGUE OF CITIES

CITIES STRONG TOGETHER

Energy, Environment and Natural Resources Federal Advocacy Committee

2025 Congressional City Conference

Marriott Marquis Hotel
Washington, D.C.
Sunday, March 9, 2025
1:00-3:30 p.m.

NLC CONGRESSIONAL CITY CONFERENCE 2025 March 10-12

EXECUTIVE EDUCATION AND PRE-CONFERENCE ACTIVITIES: MARCH 8-9 WASHINGTON, DC

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

Sunday, March 9, 2025 – 1:00 to 3:30 p.m.
Room: Liberty Salons NOP, Level M4

1:00 – 1:10 p.m. **WELCOME, INTRODUCTIONS AND MEETING OVERVIEW**

The Honorable Katrina Thompson, Chair
Mayor, Village of Broadview, Illinois

Introductions, overview of expected outcomes from the meeting, and Board of Directors report.

1:10 – 1:20 p.m. **NLC OFFICER WELCOME**

The Honorable Steve Patterson, NLC President
Mayor, City of Athens, Ohio

1:20 – 1:40 p.m. **TAKING ACTION IN 2025: NLC'S FEDERAL ACTION AGENDA**

Carolyn Berndt
Legislative Director for Sustainability, Federal Advocacy, National League of Cities

Committee members will hear an update on NLC's Federal Action Agenda, as well as energy and environmental issues before Congress, the Administration and the courts. Committee members will also discuss the EENR Committee 2025 Workplan and advocacy actions they can take to advance local priorities.

1:40 – 1:55 p.m. **NLC SUSTAINABILITY PROGRAM UPDATE**

Catherine Werner
Director, Sustainability and Innovation, Center for Municipal Practice, National League of Cities

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

1:55 – 2:15 p.m. **BUILDING PARTNERSHIP AMONG FRESH WATER COMMUNITIES**

Jonathan Altenberg
President/CEO, Great Lakes and St. Lawrence Cities Initiative

Brandt Thorington
Director of Government Relations, Mississippi River Cities and Towns Initiative

Committee members will learn about a partnership proposal to bring together communities along the Great Lakes, Mississippi River and other fresh waterbodies to collaborate and advocate for solutions to address the challenges around environmental and economic issues.

2:15 – 2:30 p.m. **BREAK AND TRANSITION TO JOINT COMMITTEE SESSION**
Members of the ITC Committee will join the EENR meeting room

2:30 – 3:25 p.m. **JOINT FEDERAL ADVOCACY COMMITTEE MEETING: DATA CENTERS – ENVIRONMENTAL CONSIDERATIONS OF THE CLOUD AND AI**

The Honorable Katrina Thompson, Chair, Energy, Environment and Natural Resources Committee
Mayor, Village of Broadview, Illinois

The Honorable Martha Castex-Tatum, Chair, Information Technology and Communications Committee
Mayor Pro Tem, City of Houston, Texas

Angelina Panettieri
Legislative Director, Information Technology and Communications, Federal Advocacy, National League of Cities

Catherine Werner
Director, Sustainability and Innovation, Center for Municipal Practice, National League of Cities

The ITC and EENR Federal Advocacy Committees will hold a joint session focused on the environmental impacts of data centers as the need for more data capacity grows to meet the demands of technology such as artificial intelligence and cloud computing. This discussion will allow committee members to share how their community is addressing this issue and will help inform NLC programming and any future policy position. *See enclosed discussion guide.*

3:25 – 3:30 p.m. **WRAP UP AND ADJOURN**

The Honorable Katrina Thompson, Chair, Energy, Environment and Natural Resources Committee
Mayor, Village of Broadview, Illinois

The Honorable Martha Castex-Tatum, Chair, Information Technology and Communications Committee
Councilmember, City of Houston, Texas

Enclosures:

- NLC Policy Development and Advocacy Process
- 2024 City Summit EENR Executive Summary
- 2025 EENR Workplan
- Energy and Environment Legal Update
- Discussion Guide: Data Centers – Environmental Considerations of the Cloud and AI
- AMPO Policy Update: Removal of NEPA Implementing Regulations (Feb. 25, 2025)
- 2025 Energy, Environment and Natural Resources Committee Roster

Upcoming EENR Committee Meetings

April/May Conference Call – TBD
Summer Board and Leadership Meeting – July 16-18 – Columbus, Ohio

CCC Sessions of Interest

- Workshop: Utilizing Clean Energy Finance Programs in Your Community, Monday, March 10, 4:00 – 5:30 p.m.

- Workshop: A Closer Look at New Rules for PFAS, Lead and Copper, Tuesday, March 11, 11:30 am – 12:30 p.m.

- Federal Agency Expo, Monday, March 10, 12:30 – 2:00 p.m.; Tuesday, March 11, 2:15 – 3:30 p.m.

- Networking: Sustainability Sips Networking Event, Monday, March 10, 5:30-6:30 p.m.

NLC POLICY DEVELOPMENT AND ADVOCACY PROCESS

As a resource and advocate for more than 19,000 cities, towns and villages, the National League of Cities (NLC) brings municipal officials together to influence federal policy affecting local governments. NLC adopts positions on federal actions, programs and proposals that directly impact municipalities and formalizes those positions in the National Municipal Policy (NMP), which guides NLC's federal advocacy efforts.

NLC divides its advocacy efforts into seven subject areas:

- Community and Economic Development
- Energy, Environment and Natural Resources
- Finance, Administration and Intergovernmental Relations
- Human Development
- Information Technology and Communications
- Public Safety and Crime Prevention
- Transportation and Infrastructure Services

For each of the seven issue areas, a Federal Advocacy Committee advocates in support of NLC's federal policy positions. Members of each Committee serve for one calendar year and are appointed by the NLC President.

Federal Advocacy Committees

Federal Advocacy Committee members are responsible for providing input and advocating on legislative priorities and reviewing and approving policy proposals and resolutions. Additionally, Committee members engage in networking and sharing of best practices throughout the year.

Federal Advocacy Committees are comprised of local elected and appointed city, town and village officials from NLC member cities. NLC members must apply annually for membership to a Federal Advocacy Committee. The NLC President makes appointments for chair, vice chairs, and general membership. In addition to leading the Federal Advocacy Committees, those appointed as Committee chairs also serve on NLC's Board of Directors during their leadership year.

At the Congressional City Conference, Federal Advocacy Committee members are called upon to advocate for NLC's legislative priorities on Capitol Hill, as well as develop the committee's agenda and work plan for the year. Committee members meet throughout the year to further the plan, hear from guest presenters, discuss advocacy strategies and develop specific policy amendments and resolutions. At the City Summit, Committee members review and approve policy proposals and resolutions. These action items are then forwarded to NLC's Resolutions Committee and are considered at the Annual Business Meeting, also held during the City Summit.

Advocacy

Throughout the year, Committee members participate in advocacy efforts to influence the federal decision-making process, focusing on actions concerning local governments and communities. During the Congressional City Conference, Committee members have an opportunity, and are encouraged, to meet with their congressional representatives on Capitol Hill. When NLC members are involved in the legislative process and share their expertise and experiences with Congress, municipalities have a stronger national voice, affecting the outcomes of federal policy debates that impact cities, towns and villages.

2024 CITY SUMMIT
EENR EXECUTIVE SUMMARY

Policy Amendments:

- **Section 2.01 Climate Change Adaptation and Resilience**
- **Section 2.02 Energy**
  - E. Energy Sources
    - 3. Nuclear
- **Section 2.04 Solid and Hazardous Waste**
  - D. Nuclear Waste Management Policies
    - 1. Local Participation in Site Selection
- **Section 2.05 Water Quality and Supply**
  - C. Local Control
  - E. Watershed Planning and Management
    - 1. Restructuring
  - G. Drinking Water Policies
    - 7. Safe Harbor Policy

Resolutions:

NLC RESOLUTION 2025-8: Supporting Local PACE Programs

NLC RESOLUTION 2025-9: Supporting and Advancing Resilient Communities to Prepare for Changing Climate and Extreme Weather Events

NLC RESOLUTION 2025-10: Supporting Urgent Action to Reduce Carbon Emissions and Mitigate the Effects of Climate Change

NLC RESOLUTION 2025-11: Addressing Lead Contamination and Calling for Nationwide Federal Support for Water Infrastructure

NLC RESOLUTION 2025-12: Increase Federal Investment in Water Infrastructure

NLC RESOLUTION 2025-13: Support for Integrated Planning and New Affordability Consideration for Water

NLC RESOLUTION 2025-14: Calling on the Federal Government to Take Action to Address PFAS Contamination

NLC RESOLUTION 2025-15: Improve the Benefit-Cost Analysis for Federally Funded Flood Control Projects and Supporting Beneficial Reuse of Dredged Material

NLC RESOLUTION 2025-16: Increase Funding for Border Water Infrastructure Projects

NLC RESOLUTION 2025-17: Support for Outdoor Recreation Legacy Partnership Program and the Outdoors for All Act

NLC RESOLUTION 2025-18: Supporting and Advance Cities Impacted by Federal Facilities and Infrastructure Through Community Benefit Programs

ENERGY, ENVIRONMENT AND NATURAL RESOURCES
FEDERAL ADVOCACY COMMITTEE
2025 WORK PLAN

The main purpose of the Energy, Environment and Natural Resources (EENR) Federal Advocacy Committee is to 1) provide input and advocate on legislative priorities, 2) review and approve policy proposals and resolutions, and 3) engage in networking and sharing of best practices.

NLC's 2025 Federal Action Agenda is a biannual agenda mapped to the Congressional cycle to guide local advocacy efforts on Capitol Hill and with the Administration. The agenda for 2025 is about strengthening local economies through federal partnership and positioning local leaders as key partners in shaping federal policies to meet the needs of their communities. The 2025 Action Agenda outlines NLC's core principals, aims to support cities, towns and villages of all sizes in successfully accessing federal grant opportunities and urges Congressional and Administrative action in helping to solve some of the most pressing challenges at the local level.

The charge to each of NLC's federal advocacy committees is to develop a work plan to further the Federal Action Agenda. Core EENR issues fall under several pillars of the 2025 Action Agenda. The committee will meet over the course of the year to engage in advocacy activities and develop policy recommendations, as necessary. Committee members will also share best practices, successes and challenges in utilizing these new federal funding opportunities.

Summary of Last Year's Activities
Last year, the EENR Committee supported advocacy efforts on climate change and water infrastructure as the top issues. Specifically, the committee focused on the need for federal financial resources for local governments; building community resilience by strengthening disaster preparedness and investing in mitigation efforts; addressing water affordability and equity; and protecting municipal governments from liability under CERCLA.

Congressional and Administrative Actions and NLC Accomplishments in 2024:

- **Congress –** NLC played a lead advocacy role in urging Congress to provide liability protection for municipal governments around PFAS. Although that legislation did not pass, NLC laid the groundwork for legislation in 2025. NLC also championed legislation to improve access to outdoor recreation opportunities, including codifying and providing a dedicated funding stream for the Outdoor Recreation Legacy Partnership program, which passed in December 2024 via the EXPLORE Act. Additionally, NLC successfully advocated for passage of the Water Resources Development Act (WRDA) authorize flood control, navigation and ecosystem restoration projects under the U.S. Army Corps of Engineers, which passed in December 2024.

- **Administration –** The Administration continued to stand up federal grant programs under BIL and IRA and release funding opportunities. NLC weighed in a number of federal rulemakings that would place significant unfunded mandates on local governments, including regulations around PFAS and the Lead and Copper Rule that were finalized in 2024. Additionally, NLC successfully advocated to the IRS that when lead service lines on private property are replaced at partial or no cost to a homeowner, it is not considered taxable income, and therefore does not necessitate the local government to issue a 1099 to a homeowner. As local governments are voluntarily undergoing lead service line replacement projects, and soon will be required to do so, questions arose about the ambiguity of tax law in this area and the need for clarity either through IRS guidance or legislation.

EENR PRIORITY AREAS

Water
What to watch in 2025:

- **Implementation of funding programs for water infrastructure under the bipartisan Infrastructure Investment and Jobs Act (IIJA) and use of funds under the American Rescue Plan Act for water infrastructure projects.**
    - The funding allocations for the Clean Water and Drinkng Water State Revolving Funds under the U.S. Environmental Protection Agency hit their maximum levels in FY25 and FY26. NLC will continue to track these opportunities for local governments, as well as the projects funded with previous year allocations. NLC is gathering feedback from local officials about any pauses in federal funding and the impacts at the local level and sharing questions and concerns with agency and White House contacts.
    - The **Local Infrastructure Hub** (LIH) plays an important role in helping communities successfully apply for and receive funding through federal grant programs. Local Infrastructure Hub Bootcamps included the Clean Water and Drinking Water State Revolving Fund programs.
    - In April 2025, NLC and NACo will serve as co-hosts for the **2025 National Stormwater Policy Forum**. This hybrid convening co-led by the Water Environment Federation and the National Municipal Stormwater Alliance, is an opportunity to learn about current national policy issues impacting the stormwater sector today. Learn more and register.

- **Clean water and drinking water grants –** While the IIJA included significant water infrastructure funding through the state revolving fund programs, most of that funding will go from states to local governments in the form of loans. IIJA also authorized, but did not fund, a number of clean water and drinking water grant programs including for lead pipe replacement, low income water assistance, sewer overflows and stormwater reuse, alternative water source projects and individual household decentralized wastewater treatment systems (septic systems). NLC will continue to advocate for funding for these programs through the annual appropriations process.
    - **Appropriations – SRFs. vs. earmarks** – There is growing concern, particularly at the state level, that the return of Congressional Directed Spending (or earmarks) is siphoning funds away from the State Revolving Funds. For the past couple of years, Congress has awarded communities with water infrastructure grants, but these awards have come from the total allocation for the State Revolving Funds. This has resulted in state winners and losers in terms of net water infrastructure funding. NLC's position is that any funding for Congressional Directed Spending for water infrastructure should be in addition to the appropriations for State Revolving Funds, rather than off the top.

- **Clean water and drinking water policy changes –** NLC supports legislation that would provide additional flexibility for communities. We anticipate many of these bills from last Congress will be introduced soon, which NLC will support.
    - A bill to extend the maximum term for **National Pollutant Discharge Elimination System** permits issued under the Clean Water Act from five to ten years to better reflect water utility project construction schedules.

- **Financing Lead Out of Water (FLOW) Act** – to amend the tax code to allow water utilities to use tax-exempt bonds to pay for private-side lead service line replacement without navigating the IRS red tape.
- **Low Income Home Water Assistance Program** – to reauthorize the Low Income Home Water Assistance Program (LIHWAP) under the U.S. Department of Health and Human Services. LIHWAP was funded through ARPA and the FY21 appropriations bill. The program provides funds to assist low-income households with water and wastewater bills.
- **Mississippi River Restoration and Resilience Initiative (MRRRI)** – to establish a non-regulatory initiative that will coordinate restoration and resilience opportunities along the Mississippi River corridor. MRRRI is modeled around the Great Lakes Restoration Initiative.
- **Water Conservation Rebate Tax Parity Act** – to amend Federal tax law so that homeowners would not need to pay income tax when they receive rebates from water utilities for water conservation and water runoff management improvements.

- **Congressional Legislation on PFAS –** A key issue for local governments is around liability – local governments (including municipal airports, fire departments, landfills and water utilities) should not be held liable for PFAS contamination or cleanup costs. With final regulations from EPA on PFAS issued in 2024, local governments need Congress to act. NLC expects legislation from the Senate Environment and Public Works Committee to broadly address PFAS contamination in the environment including remediation, detection and prevention. NLC urges the committee to include a provision that would provide legal and financial liability protection for local governments that did not cause or contribute to the contamination.
  - NLC supports the bipartisan Water Systems PFAS Liability Protection Act (H.R. 1267, sponsored by Reps. Gluesenkamp Perez (D-WA) and Celeste Maloy (R-UT).
  - Local leaders must weigh in with their Congressional delegation about why municipal liability protection is critical to include in any PFAS legislation.

- **EPA Regulations** – EPA recently held federalism consultations on two forthcoming rulemakings.
  - Potential revisions to the Microbial and Disinfectants Byproducts Rules expected to by proposed by Summer 2025.
  - **National Primary Drinking Water Regulation for Perchlorate** (comments due March 17). EPA is expected to issue a proposed rule by November 2025 and a final regulation by May 2027.

- **Final EPA Actions to Continue Watching –** Although the following items are final actions by EPA, there are pending issues and concerns from local governments that need to be resolved. Additionally, some regulatory actions face legal challenges that could prompt administrative revisions to the final rules.
  - **Lead and Copper Rule** – Under the Lead and Copper Rule Revisions, all community water systems must have completed a lead pipe inventory by Oct. 2024. Under the Lead and Copper Rule Improvements, finalized in Oct.2024, community water systems must replace all lead pipes by Oct. 2027, among other requirements..
  - **National Primary Drinking Water Regulation for PFAS** – In April 2024, EPA released a the final National Primary Drinking Water Regulation that establishes

legally enforceable levels, called Maximum Contaminant Levels (MCLs), for six PFAS in drinking water.

- **PFAS Chemicals Designation Under CERCLA** – In April 2024, EPA released a final rule designating two PFAS chemicals as hazardous substances under CERCLA. The rule will have cost and liability concerns for local governments, including drinking water, wastewater and stormwater utilities and municipal airports and landfills. EPA has a separate rulemaking to regulate additional PFAS chemicals under CERCLA.
- **Waters of the U.S. –** In December 2022, EPA and the U.S Army Corps of Engineers (Army Corps) released a new final rule on which waterbodies are federally regulated as "waters of the U.S." (WOTUS) under the Clean Water Act. At the outset of the EPA and Army Corps rulemaking process, the agencies stated they would undertake a two-step process on WOTUS. This final rule represents step one. In October 2022, the U.S. Supreme Court heard oral arguments in the case of *Sackett v. EPA*, asking the court to decide the proper test for determining when wetlands are "waters of the U.S." NLC filed an *amicus* brief in the case arguing that municipal water infrastructure is not a WOTUS. In June 2023, the U.S. Supreme Court reversed a Ninth Circuit decision and disregarded Justice Kennedy's "significant nexus" test established under the 2006 *Rapanos* case. Read more here. In Oct. 2023, EPA released updates to the WOTUS rule to conform with the Supreme Court decision in *Sackett v. EPA*. The WOTUS rule continues to face legal challenges and the revised rule is blocked in 26 states. In Feb. 2025, industry groups petitioned EPA to revisit the latest rule.
- **Cybersecurity at Public Water Systems –** In March 2023, EPA released a memorandum conveying EPA's interpretation that states must include cybersecurity when they conduct periodic audits of water systems (called "sanitary surveys"). NLC and others raised concerns that EPA was not following the proper legal or procedural processes. In Oct. 2023, EPA withdrew the memo. Cyber security remains an important and emerging issue for local governments, with NLC calling for a collaborative approach with EPA. This issue could be revisited in the new administration.
- **Financial Capability Assessment Guidance** – NLC has engaged the past three Administrations around efforts to develop an integrated planning framework and revise the Financial Capability Assessment Guidance to better support communities in determining affordability of wastewater projects and meeting the requirements of the Clean Water Act. There may be an opportunity to revisit the existing Financial Capability Assessment Guidance, finalize during the Biden Administration, because previous guidance from the first Trump Administration, which NLC supported, did not go into effect.

Climate Change, Clean Energy and Community Resilience

What to watch in 2025:

- **Implementation of funding programs for climate change, clean energy and community resilience under the Bipartisan Infrastructure Law and Inflation Reduction Act. Use of funds under the American Rescue Plan Act for climate resilience projects.**
    - NLC will continue to grants to local governments track through the IIJA and IRA through the Rebuild America Dashboard, with the final data from the Biden Administration uploaded in early March. NLC is gathering feedback from local officials about any pauses in federal funding and the impacts at the local level and sharing questions and concerns with agency and White House contacts. NLC is also working with coalition partners to help build out a public dashboard of

local clean energy projects funded through the direct pay provision of the IRA. Local leaders can let their members of Congress know how the IRA supported clean energy projects in their communities.
    - The **Local Infrastructure Hub** (LIH) plays an important role in helping communities successfully apply for and receive funding through federal grant programs. Local Infrastructure Hub Bootcamps included many climate and clean energy programs such as BRIC, EVs, Climate Pollution Reduction Grants and Direct Pay.
    - NLC is engaged in partnership efforts around building the workforce to support a green economy, such as the EV Workforce Collaborative.

- NLC will support efforts to reauthorize the **Energy Efficiency and Conservation Block Grant**. The EECBG program is a vital tool that can be used by cities, counties and states throughout the U.S. to promote energy efficiency, increase energy independence and reduce greenhouse gas emissions. Reauthorizing the EECBG program will provide much needed resources to increase and expand state and local sustainability and climate action. Additionally, the EECBG program will become more effective and more efficient as the funding becomes durable and predictable. The stability of funding is almost as important as the funding level, since the predictability of funding enables cities to build capacity and plan for future investments and sustained programs.

- **Prevent Clawback/Repurpose of IRA Funding and Programs** – Last Congress, NLC opposed a comprehensive energy package to repeal provisions of the Inflation Reduction Act that benefit cities and residents. While the bill passed the House, it did not make it out of the Senate. These programs, including the direct pay provision, are under threat again as a possible funding offset as Congress discusses extending the 2017 tax cuts. Over 130 local leaders sent a letter to the Senate Finance Committee and House Ways and Means Committee urging Congress to protect all the clean energy tax credits from the IRA.

- **Climate resilience legislation** – Addressing climate change and resilience is a key priority for local government and a broad coalition of stakeholders. NLC supported the following legislation last Congress and these bills are expected to be reintroduced soon to strengthen community resilience and federal-state-local pre-disaster mitigation and hazard mitigation:
    - **National Coordination on Adaptation and Resilience for Security Act** - to require the development of a whole-of-government National Climate Adaptation and Resilience Strategy and authorize a Chief Resilience Officer in the White House to direct national resilience efforts and lead the development of the U.S. Resilience Strategy.
    - **Excess Urban Heat Mitigation Act** – to create a competitive grant program through the U.S. Department of Housing and Urban Development to provide funding to combat the causes and effects of excess urban heat and heat islands.
    - **Extreme Heat Emergency Act** – to amend the Stafford Act to include extreme heat in the definition of a major disaster.
    - **Wildfire Response Improvement Act** (H.R. 1393) – sponsored by Reps. Stanton (D-AZ) and LaMalfa (R-CA), directs the Federal Emergency Management Agency (FEMA) to update its regulations and guidance for the Fire Management Assistance Grant, Public Assistance, and mitigation programs to better respond to the unique challenges of wildfires and improve wildfire mitigation—including debris removal, emergency protective measures and impacts to drinking water resources. The bill would also improve FEMA's benefit

cost analysis for wildfire mitigation projects to help them be more competitive for federal funding.
    - **Wildfire Resilient Communities Act** – to create a $30 billion fund to allow the U.S. Forest Service, Bureau of Land Management, and other land management agencies to increase catastrophic wildfire reduction projects and reauthorize and triple funding up to $3 billion for the U.S. Department of Agriculture Community Wildfire Defense Grant program.
    - **Energizing Our Communities Act** – to create a new Community Economic Development Transmission Fund to provide funding back to communities that host energy transmission infrastructure for community infrastructure improvements and natural resources. The funding would be derived from interest already collected from U.S. Department of Energy loan repayments and deposited into the Treasury.

- **EPA Regulations** –
    - NLC will monitor and engage in any future rulemaking processes pertaining to efforts to regulate greenhouse gas emissions from new and existing coal and gas power plants. (Rulemaking similar to the Obama Clean Power Plan and the Trump Affordable Clean Energy rule.)
    - In January, EPA reopened the comment period a proposed rule on New Source Performance Standards and Emissions Guidelines for large municipal waste combustors. This rulemaking will impact waste-to-energy facilities. Comments are due on July 16, 2025.

- **Climate litigation** – See legal update.

- **Emerging Issue** – Both President Biden and President Trump have touted the benefit and need for more **data centers** across the country to meet the nation's growing technological needs. Data centers can have negative environmental impacts on communities—from increased water and energy usage. NLC seeks feedback from local leaders about any needed decision-making resources and/or policy position.

Farm Bill Reauthorization

While the Farm Bill expired on Sept. 30, 2023, it is currently operating under a CR until September 30, 2025. The Farm Bill has a significant impact on both rural and urban communities. NLC is advocating for Congress's continued support for programs and policies in the legislation essential to local economic success and quality of life through important titles such as **Rural Development Title, Nutrition Title, and the Conservation Title.**

What to watch in 2025:

- House and Senate Agriculture Committee Leaders have not yet released text for the Farm Bill reauthorization, raising questions about whether it can be passed in 2025.
- The IRA provided nearly $20 billion to USDA Conservation programs. There are some efforts in Congress to **redirect some or all of this funding.**
- Last Farm Bill, NLC fought back efforts to **prevent states and local governments from implementing pesticide permit programs**. Such language is likely to be reintroduced this Congress:
    - **Agricultural Labeling Uniformity Act** – to prohibit state and local governments from adopting pesticide laws that are more protective than federal rules, including prohibiting supplemental requirements or warnings that are different from federal labels.

    - **Ending Agricultural Trade Suppression (EATS) Act** – to prohibit state and local governments from imposing standards or conditions on any agricultural products produced in another state and sold in interstate commerce.
- **Rural Partnership and Prosperity Act** – Last Congress, NLC sent a joint letter to House and Senate Agriculture Committee members urging them to provide funding for a rural capacity building program for rural local governments and our non-governmental partners in the Farm Bill. The Rural Partnership and Prosperity Act is standalone legislation that we hope can be included in the Farm Bill.

Brownfields Reauthorization

In 2018, NLC successfully advocated for a reauthorization of the EPA Brownfields program with key changes to assist with the cleanup and redevelopment of large, complex brownfields sites. Specifically, these changes included:

- Authorizing multipurpose grants up to $1 million
- Increasing funding for remediation grants to $500,000, with the ability for EPA to go up to $650,000 per site
- Allowing up to 5 percent of grant amounts to be used for administrative costs
- Allowing local governments to be eligible to receive brownfield assessment or remediation grants for brownfields properties that were acquired prior to Jan. 11, 2002
- Addressing liability concerns for the "voluntary" acquisition of properties
- Reauthorizing the program through 2023 and maintaining the existing authorization level of $200 million annually.

What to watch in 2025:

- The Brownfields program authorization expired in 2023. On the House side, the Energy and Commerce Committee and Transportation and Infrastructure Committee share jurisdiction over Brownfields. On the Senate side the issue falls under the Environment and Public Works Committee. In February, the Senate Environment and Public Works Committee passed the **Brownfields Reauthorization Act** (S. 347, sponsored by Sens. Capito (R-WV) and Blunt Rochester (D-DE)). The House Committee are developing their own legislation and hope to have a hearing this Spring and moving the bills quickly.
- **Brownfields Redevelopment Tax Incentive Reauthorization Act – to allow** taxpayers to fully deduct the cleanup costs of contaminated property in the year the costs were incurred. Brownfield Tax Incentive was first passed in 1997 to allow parties who voluntarily investigated and remediated contaminated properties to deduct all cleanup costs on their federal income tax return in the year the money was spent. By allowing for expensing rather than requiring remediation deductions to be spread out over ten years, the tax incentive was a powerful driver of private investment in the economic revitalization of brownfields. The tax incentive expired in 2012. NLC supports the bill.

Rethinking and Reimaging our Nation's Recycling Infrastructure and Programs

While solid waste management is a local issue, the federal government is an important partner. Cities, towns and villages across the country urge the federal government to develop a national policy that includes source reduction, volume reduction and resource recovery. Collaborative efforts to reimagine and restructure our nation's waste management and recycling systems are even more critical given the recent impacts on local and national recycling markets.

What to watch in 2025:

- **Congressional legislation** to help local governments improve recycling infrastructure, develop recycling programs, and build community awareness:
    - **STEWARD Act** (S. 351, sponsored by Sens. Capito (R-WV), Whitehouse (D-RI) and Boozman (R-AR)) – The *STEWARD Act* is the combination of the *Recycling*

Infrastructure and Accessibility Act of 2023 and the *Recycling and Composting Accountability Act*, which both unanimously passed the EPW Committee last Congress in April 2023 and passed the U.S. Senate by unanimous consent in March 2024. The bills creates a new pilot program for competitive grants to communities to enhance recycling accessibility.
    - **Break Free From Plastic Pollution Act** – to create an extended producer responsibility/product stewardship framework, as well as address source reduction and the phasing-out of single use plastic products.
- In February, NLC and WM collaborated on a **Sustainability Forum** which brought together a small group of local officials to discuss the future of waste and recycling in U.S. cities, towns and villages. The local leaders in attendance shared their innovations and challenges around recycling and provided input to NLC and WM around a forthcoming **public education campaign and toolkit.**

Parks and Open Space
What to watch in 2025:

- **Implementation of the EXPLORE Act and the Outdoors for All Act** – In December, Congress passed the **Expanding Public Lands Outdoor Recreation Experiences (EXPLORE) Act**, sponsored by Reps. Westerman (R-AR) and Grijalva (D-AZ), which includes the Outdoors for All Act as well as codifies the **Every Kid Outdoors program**. NLC supported the bills. NLC will monitor implementation of the programs under the U.S. Department of the Interior.
    - The Outdoors for All Act would codify and establish a dedicated funding source for the Outdoor Recreation Legacy Partnership program (ORLP). Established by Congress in 2014 and administered through the National Park Service, ORLP is a competitive grant funded through the Land and Water Conservation Fund that helps communities create and improve parks and other outdoor recreation areas to improve public access, particularly in disadvantaged or low-income communities.

Permitting Reform
Streamlining the federal permitting process is a key priority for Congress and the Administration. A focus has been on efforts to speed up oil and gas permitting. Local officials also acknowledge that the National Environmental Protection Act (NEPA) can be cumbersome causing delays in projects.

Previous proposed permitting reform legislation included preemption provisions: 1) around Sec. 401 of the Clean Water Act related to Water Quality Standards, which NLC opposed during a prior rulemaking process and 2) energy transmission, which NLC has specific policy language opposing.

With clean energy investments supported by the Inflation Reduction Act spending and tax incentives, more renewable energy will be coming online. The EENR Committee has explored this issue, adding policy language to ensure the grid can maintain reliability and to improve resilience.

What to watch in 2025:

- Permitting reform will continue to be a topic of discussion among House and Senate Republicans and Democrats. One of the priorities for Democrats is to streamlining permitting for clean energy projects to realize the goals of the Inflation Reduction Act. One of the priorities for Republicans is to streamline permitting for oil and gas

projects. NLC is watching the following energy-related permitting legislation, which were introduced last Congress:

- **Building Integrated Grids With Inter-Regional Energy Supply (BIG WIRES Act** – Directs the Federal Energy Regulatory Commission (FERC) to undergo a rulemaking process to better coordinate construction of an interregional transmission system to minimize haphazard and patchwork upgrades to the grid. Requires regions to submit plans to FERC outlining how they will meet a new 30% minimum peak demand transfer requirement between each other. If regions fail to submit plans that satisfy the requirement, FERC is empowered to act as a backstop and do so in their stead.
- **Facilitating America's Siting of Transmission and Electric Reliability (FASTER) Act** – Establishes FERC as the lead agency to coordinate state, local and federal for National Interest Electric Transmission Facilities, giving them authority to site and permit certain high-voltage lines (while maintaining state-led permitting in current law that provides states with one year to issue or deny a permit before FERC can issue a permit). Incentivizes communities and project sponsors to negotiate an enforceable Community Benefits Agreement by streamlining the grant application process for DOE's Transmission Siting and Economic Development Grant program.

- Water-related permit streamlining bills were also introduced last Congress and five standalone bills were combined into a single bill:
  - **Creating Confidence in Clean Water Permitting Act** – While NLC was watching this legislation as a whole, NLC supported one of the five bills that is included in the package. The **Confidence in Clean Water Permits Act** clarifies that permits must include only clear, objective, concrete limits on specific pollutants or waterbody conditions, and that as long as permit holders are adhering to these clear effluent limitations, they are in compliance under the law. Additionally, this bill codifies the longstanding EPA policy that permit holders are shielded from liability if they are following the terms in their NPDES permits and have provided all relevant information to the permit writer during the application process. The legislation responds directly to legal challenge the San Francisco Public Utilities Commission has taken to the U.S. Supreme Court, with implications for all wastewater utilities.
- In 2023, some modest **NEPA reforms**, which NLC supported, passed Congress as part of the debt ceiling bill. In Sept. 2024, the House Natural Resources Committee introduced several bills to further reform the NEPA process.
  - The Biden Administration developed rules to implement the NEPA changes. However, some members of Congress did not view the rules as following the intent of the law and introduced a Joint Resolution to void them.
  - In November 2024, the D.C. Circuit Court of Appeals issued a ruling in *Marin Audubon Society v. Federal Aviation Administration* holding that the White House Council on Environmental Quality (CEQ) lacks the authority to issue binding regulations implementing NEPA.
  - On Feb. 25, CEQ issued an Interim Final Rule to remove the long-standing and overarching federal regulations that guide how agencies implement NEPA. The action is designed to give agencies more flexibility to implement and/or modify their own NEPA procedures. The action is in response not only to the legal challenge, but also the Executive Order on Unleashing American Energy.
  - NLC will continue to monitor this issue and assess the impact on local governments.

ENERGY AND ENVIRONMENT LEGAL UPDATE

1. *City and County of Honolulu v. Sonoco LP, et al. – U.S. Supreme Court*

Update since City Summit: *The defendants filed a cert petition with the U.S. Supreme Court in February 2024. The U.S. Supreme Court has asked for the views of the Solicitor General, which said that the decision was not a final judgement and so the U.S. Supreme Court does not have jurisdiction to review it. The Petition for certiorari was denied by the U.S. Supreme Court on Jan. 13. The case is proceeding to trial in the state.*

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. NLC filed an amicus brief in this case in September 2021. The Ninth Circuit heard oral argument in February 2022. Shortly after, the court put the case in abeyance pending the issuance in the San Mateo case. In July 2022, the Ninth Circuit upheld the District Court's ruling, ordering the case remanded to state court. Defendants subsequently filed a cert petition with the U.S. Supreme Court in December 2022, which was denied in April 2023.

The oil companies filed a cert petition with the U.S. Supreme Court seeking review of the Hawaii Supreme Court's ruling the Honolulu's case is not preempted by federal law. This is a different argument than removal was as it goes to the substance of the case. Preemption was not a basis for removal, but an affirmative defense. Honolulu filed a brief in opposition in May 2024. In June, the U.S. Supreme Court asked for the views of the Solicitor General. The court is not likely to hear the petition until the fall.

2. *Union of Concerned Scientists v. National Highway Traffic Safety Administration – DC Circuit – California Waiver*

Update since City Summit: *None – This case remains in abeyance. In January 2022,* state and local government petitioners *and* respondents *requested that the cases remain in abeyance while EPA continues its reconsideration of the challenged rule.*

Background: In September 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 2020 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).

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.

In Jan. 2021, NLC filed an *amicus* brief in the case of *California v. Wheeler* before the DC Circuit challenging the rollback of fuel economy standards. *California v. Wheeler* has been consolidated into *Union of Concerned Scientists*.

3. Texas v. EPA – Fifth Circuit

Update since City Summit: *On February 6, 2025, the private petitioners filed a motion to hold the case in abeyance while EPA reviews the Heavy-Duty Vehicle Rule and complies with Trump's Executive Order 14154, Unleashing American Energy. The Court has not yet ruled on the motion.*

On December 30, 2021, EPA issued a final rule under Section 202(a) of the Clean Air Act, updating the vehicle emissions standards applicable to cars produced in model years 2022-2026. These updated standards reduced the permissible greenhouse gases ("GHGs") "tailpipe emissions" from these vehicles. For 40 years, these standards have been set, not by per-vehicle measurements, but by "fleetwide averaging" - that is, by averaging the emissions of all vehicles produced by a manufacturer. EPA's new thresholds assume that electric vehicle ("EV") use will continue to increase, and for the purpose of averaging EPA treats EVs as though they have no tailpipe emissions. This rule was immediately challenged by a coalition of several Republican-controlled states (the "State Petitioners"), joined by a number of individual plaintiffs, private sector businesses, and nonprofits (together, the "Private Petitioners"). This coalition has broadly attacked EPA's regulatory authority and cost-benefit methodology and argues that the new rule presents a "major question" that requires express Congressional authorization.

NLC filed an *amicus* brief in this case in March 2023. Oral argument was heard in September 2023. At the Court's request, a supplemental briefing was submitted in August and September 2024 on the impact of the Supreme Court's decision in Ohio v. EPA on this case.

Local government impact: The local government position in the amicus addresses the familiar climate concerns we have addressed in previous briefs: the impacts climate has on cities nationwide, and the role of cities as climate innovators dependent, to some degree, on federal regulation to provide a predictable and helpful context to reduce GHGs. NLC's *amicus* brief focuses on two narrow legal issues of particular concern to local governments.

First, it addresses Private Petitioners' argument that EPA acted arbitrarily by regulating "tailpipe" emissions rather than considering the full "lifecycle emissions" of EVs (which would include emissions from power plants that charge EVs). This is particularly important to local governments because tailpipe emissions are a major source of air pollution in municipalities across the country. The Clean Air Act prevents state and local governments from regulating

tailpipe emissions on their own, and so municipalities have no tools to restrain these emissions except federal regulation. While EPA's rule focuses on GHG emissions, it will also save American communities more than $12 billion in public health benefits by reducing non-GHG tailpipe emissions that cause asthma, heart attacks, respiratory illnesses and premature death. Private Petitioners ignore these benefits in their brief.

Second, the amicus brief addresses petitioners' proposed expansion of the "Major Questions Doctrine." Petitioners argue that EPA's rule will cause more EVs to be produced, and that more EVs may strain electrical grids, which are largely regulated by states. Petitioners argue that this causal chain means that any EPA action that might encourage EV use must be specifically approved by Congress. However, if the Major Questions Doctrine is expanded in the way that Petitioners ask, it could cause chaos in local governments. Many federal regulations overlap with and affect important areas of state and local policy; barring any federal regulation that would affect an area of state interest ignores the reality of American federalism and would cripple municipalities' ability to rely on and respond to federal regulation.

4. West Virgina v. EPA – DC Circuit – Greenhouse Gas Emissions from Power Plants

Update since City Summit: *NLC filed an amicus brief in this case in October 2024.* On February 5, 2025, EPA submitted an unopposed motion to hold the case in abeyance to "provide new [EPA] leadership with sufficient time to familiarize themselves with these issues and determine how they wish to proceed." The court granted that motion on February 19, 2025, holding the case in abeyance for 60 days and ordering EPA to file motions to govern the future proceedings by April 21, 2025.

Litigation Summary: On May 9, 2024, an assemblage of states (Petitioners) challenged a final rule promulgated by the U.S. Environmental Protection Agency (EPA) that (1) repeals the Trump administration's Affordable Clean Energy (ACE) Rule and (2) sets new source performance standards for greenhouse gas (GHG) emissions for new and existing fossil fuel-fired electric generating units (EGUs) (i.e., coal and natural gas-fired power plants).

The rule comprises several actions under Section 111 of the Clean Air Act to "reduce the significant quantity of GHG emissions from fossil fuel-fired [power plants] by establishing emission guidelines and new source performance standards (NSPS) that are based on cost-effective technologies that directly reduce GHG emissions from these sources." Specifically, the rule addresses climate pollution from existing coal-fired power plants and is intended to ensure that new combustion turbines are constructed to minimize GHG emissions by requiring those plants to achieve emissions reductions through the use of carbon capture and sequestration (CCS), among other pathways.

The petition for review contends that the final rule "exceeds [EPA's] statutory authority, and otherwise is arbitrary and capricious, an abuse of discretion, and not in accordance with law." One of their main arguments against the NSPS is that, in their view, CCS as a viable technology has not been "adequately demonstrated" and must be broadly available before the EPA can determine it is the BSER. See 42 U.S.C. § 7411(a)(1).

On May 13, 2024, the Petitioners filed a motion to stay the rule during the pendency of the litigation. On Jul 19, 2024, a three-judge panel of the D.C. Circuit unanimously denied the request for a stay, stating:

> "[P]etitioners have not shown they are likely to succeed on [their claims]. Nor does this case implicate a major question under West Virginia v. EPA . . . because EPA has

> claimed the power to 'set emissions limits under Section 111 based on the application of measures that would that would reduce pollution by causing the regulated source to operate more cleanly[,]' a type of conduct that falls well within EPA's bailiwick."

Accordingly, the rules will remain in effect during the litigation; the U.S. Supreme Court did not grant an emergency application seeking an immediate stay. The outcome of this case will directly impact how electricity is generated and the future of fossil fuel-fired power plants, especially with regard to CCS and co-firing requirements.

This case builds on previous *amicus* briefs: in 2016 supporting the Obama Administration's Clean Power Plan (*West Virginia v. EPA*); in 2020 challenging the Trump Administration's repeal of the Clean Power Plan and issuance of the Affordable Clean Energy Rule (*New York v. EPA*); and in 2022 pertaining to the scope of EPA's authority to regulate greenhouse gas emissions from existing fossil fuel power plants under Section 11(d) of the Clean Air Act (*West Virginia v. EPA*).

5. ***City and County of San Francisco v. Environmental Protection Agency – U.S. Supreme Court***

Update since City Summit: *Closed—On March 4, the U.S. Supreme Court ruled that that EPA cannot enforce requirements in wastewater permits that "do not spell out what a permittee must do or refrain from doing." NLC is still analyzing the opinion, but it seems to be a win for the local government position.*

This case is a challenge by the City and County of San Francisco to the Environmental Protection Agency's (EPA) issuance of a discharge permit containing ambiguous provisions regarding water quality standards. It is not a challenge to clean water, and it is not an argument applicable only to San Francisco; the issue in this case is confronted by jurisdictions around the country as they seek discharge permits.

The Clean Water Act: The Clean Water Act, 33 U.S.C. § 1251 et seq., was enacted in 1972 to protect the "integrity of the Nation's waters" and create a scheme that would clearly define individuals' obligations to control pollution. Congress expected EPA and the States to issue National Pollutant Discharge Elimination System (NPDES) permits containing pollutant limits that would create "clear and identifiable requirements" to "provide manageable and precise benchmarks for enforcement." S. Rep. No. 92-414, at 81 (1971); among other things, NPDES permits must set "effluent limitations"—end-of-pipe restrictions "on quantities, rates, and concentrations of . . . constituents . . . discharged from point sources." (The EPA has exclusive jurisdiction to issue NPDES permits for discharges more than three miles offshore, while the States may issue NPDES permits for discharges within three miles of shore).

Contrary to the requirements of the CWA and EPA guidance, NPDES permits routinely deviate from the use of specific effluent limitations to ensure that water quality standards are met, instead imposing generic prohibitions against discharging in a manner that causes or contributes to exceeding applicable water quality standards.

San Francisco's Water Treatment: Like local governments across the nation, San Francisco owns and operates wastewater treatment facilities that accept sewage and stormwater generated citywide, treat it to required standards, and discharge treated effluent. Part of that infrastructure, known as "Oceanside Facilities," serves more than 250,000 people living in the western portion of SF and discharges into the Pacific Ocean at several locations, including one that extends 4.5 miles from the shoreline. As one of hundreds of older cities where combined

wastewater and stormwater overflows (CSOs) periodically exceed the sewer system's capacity, San Francisco has invested heavily in water quality; its multibillion-dollar citywide investment has reduced CSO frequency from the Oceanside Facilities by 94%.

In December 2019, the EPA approved issuance of the Oceanside Facilities' NPDES permit, comprising more than 100 pages of detailed requirements. That permit included numeric limitations and comprehensive management requirements, but also added two unspecific, generic prohibitions: a discharge may "not cause or contribute to a violation of any applicable water quality standard. . . ." and no "discharge of pollutants shall create pollution, contamination, or nuisance as defined by California Water Code section 13050." (Generic Prohibitions). The second item is particularly problematic: San Francisco's compliance turns on whether, after the fact, it is determined that the City's discharge unreasonably impacted one of the Pacific Ocean's broad beneficial uses, such as recreation.

Litigation Status: San Francisco filed for review with EPA's Environmental Appeals Board (EAB) to challenge the Generic Prohibitions (and others). After denial by the EAB, SF sought review in the Ninth Circuit. There, a divided panel concluded that the Generic Prohibitions are "consistent with the CWA and its implementing regulations." The majority found that CWA provisions empower the EPA and States to impose generic prohibitions against violating water quality standards anytime they find it "necessary" to do so. They determined that these regulations, despite imposing a mandatory process for translating water quality standards into specific limitations, nonetheless leave EPA and States free to impose generic prohibitions.

In dissent, Judge Collins found the Generic Prohibitions to be "inconsistent with the text of the CWA." By broadly demanding that SF not violate water quality standards without specifying how to do so, the Generic Prohibitions "ignore this critical distinction by making the ultimate, overall 'water quality standards' themselves the applicable limitation for" SF. The panel majority, in Judge Collins' view, authorized EPA to "abdicate[] the regulatory task assigned to it under the CWA" to define the extent to which permittees must control their discharges to comply with the CWA.

Supreme Court Review: San Francisco has been granted cert in its challenge to the Ninth Circuit decision, which conflicts with Supreme Court and Second Circuit precedent reading the CWA to require the EPA and the States to provide permit recipients with specific limits to achieve water quality standards. The question presented is:

> Whether the Clean Water Act allows EPA (or an authorized state) to impose generic prohibitions in NPDES permits that subject permitholders to enforcement for exceedances of water quality standards without identifying specific limits to which their discharges must conform.

NLC, as part of the Local Government Legal Center, filed an amicus brief in this case in July 2024. The U.S. Supreme Court held oral argument in Oct. 2024.

Local government impact: Clarity in NPDES permits is not merely critical to implementation. The CWA imposes severe consequences for violation. Even a negligent violation can be punished criminally, and in civil enforcement actions, the suit can seek civil penalties exceeding $66,000 per day for each permit violation, as well as injunctive relief. For municipalities, the costs of injunctive relief in CWA enforcement cases can run into the hundreds of millions or even billions of dollars. And under the CWA, permittees are assured that they will not face sanctions unless they violate the requirements found within the four corners of their permits. The CWA's "Permit Shield" provides that "[c]ompliance with [an NPDES permit] shall be

deemed compliance, for purposes of sections 1319 and 1365 of this title," with various substantive provisions of the Act. An NPDES permit "shield[s] its holder from CWA liability" so long as the permittee complies with the permit's terms.

The Generic Prohibitions inserted in the San Francisco NPDES permit, and elsewhere in NPDES permits issued to localities around the country, undermine the Permit Shield, creating uncertainty and the risk of significant penalties. Rather than specifying pollutant limits that tell the permitholder how much they need to control their discharges as required by the CWA, these prohibitions effectively tell permitholders nothing more than not to cause "too much" pollution. These generic water quality terms expose SF and numerous permitholders nationwide to enforcement actions while failing to tell them how much they need to limit or treat their discharges to comply with the CWA.

6. Mayor and City Council of Baltimore v. BP et. al – Appellate Court of Maryland

NEW: *In January, NLC filed an amicus brief in this case. A briefing schedule has not yet been set.*

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 2020, 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, 2020, 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 question before the court was whether a federal appellate court may review all the grounds upon which a defendant claims its case should not be sent back to state court when 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. In September 2021, NLC filed an amicus brief in the remand of the case by the U.S. Supreme Court back to the Fourth Circuit. The Fourth Circuit heard oral argument in this case in January 2022 on the question of jurisdiction. Read more here. In April 2022, the Fourth Circuit remanded the case to state court. In May, the Fourth Circuit denied a petition for rehearing en banc. Defendants subsequently filed a cert petition with the U.S. Supreme Court, which was denied in April 2023. After remand from federal court in April 2023, the Maryland Circuit Court is proceeding with the case on its merits.

The case went to state court, where the defendants made a successful motion to dismiss on grounds that federal law preempted any state lawsuit as a matter of federal common law and the Clean Air Act. In addition, though not necessary to the court's conclusion, it found that the various state causes of action (public nuisance, trespass, strict liability, negligence, and the Maryland Consumer Protection law) did not apply. The essence of the preemption ruling is that regardless of how this was framed (as deceptive marketing that denied fossil fuels contributed to climate change), it really was about regulating air pollution globally — and that is a federal and not a state concern.

NLC's amicus brief in this case makes three interrelated arguments:

(1) the decision would render state, county, and municipal governments helpless in addressing deceptive marketing if it can be said that the marketing is nationwide or even greater and had the same effect throughout the nation. Yet, the federal scheme on consumer protection anticipates state and local government actions to assure that consumers are not deceived or subject to marketing fraud. From the enactment of "little FTC acts" and false advertising laws, state and local governments regularly protect consumers without harmful effect on federal efforts (and in many cases, coordinated attempts to enforce respective consumer laws).

(2) the decision fails to recognize that the same thing is true of environmental laws. States have significant responsibility to assure healthy environments in terms of clean water and air. State and local governments expend significant resources in furthering those interests, which complement and do no frustrate federal efforts. Other state laws also figure in this important state and local interest such as nuisance laws. For example, if a factory on one side of a state border spews pollutants that the wind carries into a municipality in another state, there is no federal common law or CAA preemption of the ensuing cause of action.

(3) the decision adopts the defendants' characterization of the complaint over what the city of Baltimore actually pleaded, denying the deceptive marketing focus in favor of calling it a climate-change lawsuit. Municipalities, like any other plaintiff, must be treated as the master of their complaints. If defendants could recharacterize it, then they are the masters of nothing. One can pursue a deceptive marketing claim without forcing anyone to change their product or business except to assure that they tell the truth about their products. Moreover, courts regularly restrict the remedy afforded a successful plaintiff to that which addresses what the case legitimately is about. That provides defendants with all the protection they require when they claim that the lawsuit improperly affects uniquely federal interests.

7. ***Nebraska v. EPA – DC Circuit – Heavy Duty Vehicle Emissions Standards***

NEW: *In January, NLC filed an amicus brief in this case. On February 6, 2025, the private petitioners filed a motion to hold the case in abeyance while EPA reviews the Heavy-Duty Vehicle Rule and complies with Trump's Executive Order 14154, Unleashing American Energy. The Court has not yet ruled on the motion.*

On May 13, 2024, Nebraska's Attorney General Mike Hilgers led a coalition of 24 states to file a petition for review in the U.S. Court of Appeals for the D.C. Circuit, seeking to declare the EPA's final rule concerning GHG Standards for Heavy-Duty Vehicles – Phase 3 (Phase 3) unlawful and vacate the EPA's action. *See* 89 Fed. Reg. 29,440 (April 22, 2024). The petition asserted that the rule "exceeds the agency's statutory authority and otherwise is arbitrary, capricious, an abuse of discretion, and not in accordance with the law." Similar to *Kentucky v. EPA*, this case may have significant impacts on heavy-duty vehicle transportation standards and emissions reductions in the transportation sector.

8. ***Kentucky v. EPA – DC Circuit – Light/Medium Duty Vehicle Emissions Standards***

NEW: *In December 2024, NLC filed an amicus brief and motion for leave in this case. On February 6, 2025, the private petitioners filed a motion to hold the case in abeyance while EPA reviews the Light- and Medium-Duty Vehicle Emissions Standards and complies with President Trump's Executive Order 14154, Unleashing American Energy. The Court has not yet ruled on the motion.*

On April 18, 2024, Kentucky and 24 states filed a petition for review in the U.S. Court of Appeals for the D.C. Circuit, seeking to vacate the EPA's final rule on light- and medium-duty vehicle emissions standards for model years 2027-2032. *See* 89 Fed. Reg. 27,842 (Apr. 18, 2024) (effective June 17, 2024).[1] The Petitioner's asserted that the final rule "exceeds the [EPA's] statutory authority, and otherwise is arbitrary and capricious, an abuse of discretion, and not in accordance with law." This case may have significant impacts on light- and medium-duty vehicle transportation standards and emissions reductions in the transportation sector.

[1] Texas filed a petition for review separately on April 29, 2024.

Data Centers – Environmental Considerations of the Cloud and AI

The Growing Opportunity and Challenge of Data Centers

Data centers are the backbone of the digital economy. They power cloud computing, artificial intelligence (AI), and online services. As demand for these technologies grows, so does the need for the infrastructure that supports them.

This rapid expansion presents both opportunities and challenges for cities. On one hand, data centers attract investment, create jobs, and drive economic growth. On the other, they are resource-intensive, consuming significant amounts of electricity and water, requiring careful zoning and land-use planning, and impacting local infrastructure and utility costs.

Data Centers Increase Energy Demand.

- Data centers currently account for **4% of total U.S. electricity demand** (2023), a figure expected to rise to **9% by 2033**.[2]
- States experiencing rapid computing facility growth, such as **Virginia and Texas**, have seen the largest increases in commercial electricity demand over the past five years.[3]
- Electricity demand in the U.S. is projected to grow by **15-20% over the next decade**.[4]

Data Centers' Energy and Water Demand are Intertwined.

- A hyperscale data center (a large-scale facility designed for cloud computing and AI processing) can use between **3 to 5 million gallons of water daily** for cooling. There are currently over **1,000 hyperscale data centers globally**, with nearly half located in the U.S. [5]
- Generative AI accelerates the resource demand of data centers. For example, generating a **100-word email with a large language model (LLM) uses the equivalent of one bottle of water**.[6]
- To curb water consumption, industry solutions include:
    - **Immersion and ambient cooling** (placing servers underwater or underground to improve efficiency)
    - **Closed-loop cooling systems** (recycling water to minimize waste)
    - **Alternative water sources** (e.g., seawater-based cooling)[7]

---

[2] Shehabi, A. et al. 2024. United States Data Center Energy Usage Report. Lawrence Berkeley National Laboratory, Berkeley, California. LBNL-2001637
[3] US Energy Information Administration. *Electricity Data Browser*. https://www.eia.gov/electricity/data/browser/
[4] Shehabi, A. et al. 2024. United States Data Center Energy Usage Report. Lawrence Berkeley National Laboratory, Berkeley, California. LBNL-2001637
[5] Siddik, M. A. B., Shehabi, A., & Marston, L. (2021). The environmental footprint of data centers in the United States. Environmental Research Letters, 16(6), 064017. https://doi.org/10.1088/1748-9326/abfba1
[6] Pranshu Verma and Shelly Tan, "A bottle of water per email: the hidden environmental costs of using AI chatbots." The Washington Post. September 18, 2024. https://www.washingtonpost.com/technology/2024/09/18/energy-ai-use-electricity-water-data-centers/
[7] Yang, J., Islam, M. A., & Ren, S. (2023). Making AI Less "Thirsty": Uncovering and Addressing the Secret Water Footprint of AI Models (arXiv:2304.03271)

Data Centers and Land Use Considerations

The rapid expansion of data centers presents unique zoning and land-use challenges for local governments. Cities and municipalities may need to update regulations to address:

- **Siting requirements** in appropriate zoning districts
- **Building size, configuration, and setbacks** to accommodate infrastructure
- **Water and stormwater management** due to high resource consumption
- **Ancillary support facilities** such as backup generators and cooling equipment
- **Noise and lighting regulations** to minimize disruption to nearby communities
- **Architectural standards and screening** to integrate data centers into local environments
- **Fire and site security requirements** to ensure safety and operational continuity

Discussion Questions for City Leaders

Discussion Topic: What is needed to support local governments as they seek to balance computing and economic benefits associated with data centers with environmental and infrastructure demands (e.g., energy, water, land use)?

1. What tools, resources, or information would help local government planners and decision-makers address the growth and operation of data centers in their community?

2. To what extent, if any, are local governments concerned about preserving community character and minimizing disruptions to placemaking values?

3. What policies or incentives are local governments interested in exploring to encourage sustainable data center development (e.g., renewable energy commitments, water conservation strategies, or zoning regulations)?

4. In what circumstances do local governments have leverage with/access to utilities or data center operators to encourage grid resilience and avoid negative impacts on electricity costs for residents and businesses?

AMPO Policy Update

Removal of NEPA Implementing Regulations

February 25th, 2025

Please note: this analysis is based on our understanding of how these processes typically work, insights from transportation policy experts, and information rooted in law and historical precedent. ***It is intended to provide context and perspective but should not be taken as official guidance***.

Removal of National Environmental Policy Act Implementing Regulations

On February 25th, 2025, the White House Council on Environmental Quality (CEQ) issued an **Interim Final Rule** to remove the long-standing federal regulations that guide how agencies implement the **National Environmental Policy Act (NEPA)**. This action is designed to allow more flexibility for agencies, including USDOT, to develop, revise, and implement their own NEPA procedures. **USDOT already has its own NEPA regulations**, but it now may take advantage of the **flexibility to modify them** in response to CEQ's decision. Other agencies may need to develop their own environmental review processes from scratch.

Today's action follows the Administration's January 20th Executive Order (EO) on "**Unleashing American Energy**," which directs CEQ to revisit and potentially revoke these regulations. The removal of these rules is in response to legal challenges that question CEQ's authority to issue binding NEPA regulations without direct statutory backing. Key updates on the rule include:

- The rule is effective on **April 11th, 2025**, and public comments are being accepted until **March 27th, 2025.** (Note: even though public comments are accepted, **CEQ isn't required to respond to comments or modify the rule before finalizing it**.)
- On February 19th, CEQ issued a **memo** with updated guidance to federal agencies on implementing NEPA, **which calls for expedited NEPA processes aligned with the Fiscal Responsibility Act of 2023 (FRA)**, and focuses on faster permitting timelines and enhanced coordination, especially for certain energy projects.
    - Agencies are required to revise their NEPA procedures by **February 19, 2026**.
- The guidance reinforces elements of the Bipartisan Infrastructure Law to use a **single environmental document for multi-agency projects** in attempts to reduce duplication and improve efficiency.
- Consistent with NEPA amendments, federal agencies are now **required to meet clear deadlines for completing environmental reviews**, attempting to help avoid bottlenecks and accelerate project timelines.

What's could this mean for MPOs and transportation projects?

With CEQ stepping back, each federal agency will have greater control over its own NEPA procedures. (Federal Agencies already had a fair degree of flexibility within the CEQ framework. The key change is the removal of the CEQ's unifying regulations.)

- **USDOT Rule Changes Possible:** While USDOT has existing NEPA procedures, it now has greater discretion to change them. This could impact:
    - Decisions over whether NEPA is triggered at all based on the agency's involvement
    - The **level of analysis** required for environmental clearance
    - **Timelines for project approval and funding** disbursements
- **Potential Project Delays:** As agencies adjust to the new regulatory landscape and staffing realities, MPOs could experience **delays in environmental reviews and project approvals**.
- **State, Regional, and Local Adjustments:** Many MPOs and state DOTs align their processes with CEQ's NEPA framework and related programs. With these rules removed, **state DOTs and MPOs will be advised to revisit their own procedures**.

How might this broadly impact transportation policy and funding?

That is unclear. USDOT could take different approaches to adjusting its NEPA review process, signaling the types of projects that could be favored as a policy matter. The agency could institute:

- **Minor Adjustments:** USDOT may **clarify internal processes or issue new guidance** on project-level reviews.
- **Major Adjustments:** USDOT could significantly revise its NEPA rules, **potentially streamlining** some project reviews while **increasing scrutiny** of others.

In addition to potential NEPA policy revisions, USDOT has flagged specific priorities in recent **memos and orders, which may influence how USDOT** conducts NEPA reviews. These policies may encourage a shift in analysis of topics such as:

- **Economic Growth:** Focusing on projects that boost economic returns and are based in cost-benefit analysis.
- **Climate and Environmental Justice Rollbacks:** Rescinding initiatives related to climate change, greenhouse gas emissions, and diversity, equity, and inclusion (DEI) efforts.
- **Community Demographics and Transportation Trends:** This could include priorities noted in **recent USDOT orders that emphasize** projects in communities with **higher marriage and birth rates, return on investment, and ensuring compliance with federal immigration policies**.

What's next?

Lawsuits will likely impact how quickly this rule change takes hold or whether it gets reversed.

- **Legal Challenges Expected:** Environmental groups are likely to challenge both the rollback of these regulations and the use of an Interim Final Rule, which limits public input.
    - As one practitioner warned, the absence of a uniform regulatory framework could "intensify litigation" as project opponents take different approaches to test these changes: "**Unless and until Congress does something to further restrict judicial review, the history of NEPA will continue to be written in common law (court rulings)**." **Read here**.

AMPO is closely tracking these developments and will provide updates as more details emerge.

2025 Energy, Environment and Natural Resources Federal Advocacy Committee

Leadership

Chair Katrina Thompson, Mayor, Village of Broadview, IL

Vice Chair Mila Besich, Mayor, Town of Superior, AZ

Vice Chair Abbie Kamin, Council Member, City of Houston, TX

Members

Bessye Adams, Council Member, City of Grand Prairie, TX

Taishya Adams, Councilmember, City of Boulder, CO

Dominic Aliano, Councilmember, City of Concord, CA

David Anderson, Council President/Vice Mayor, City of Dover, DE

Salette Andrews, Councilmember, City of Wilmington, NC

Anne Barrington, Council Member, Town of Parker, CO

Anna Brawley, Assembly Member, Municipality of Anchorage, AK

Chris Brown, Mayor, City of Morris, IL

Anne Burt, Mayor, City of Woodbury, MN

Deborah Calvert, Council Member, City of Minnetonka, MN

TJ Cawley, Mayor, Town of Morrisville, NC

Arlene Chin, Councilmember, City of Tempe, AZ

Margaret Clark, Mayor Pro Tem, City of Rosemead, CA

Derrick Creech, Councilman, City of Wilson, NC

Laura Dent, Councilmember, City of Harrisonburg, VA

Kristi Douglas, Councilmember, City of Commerce City, CO

Carrie Anne Downey, Council Member, City of Coronado, CA

Jennifer Duff, Councilmember, City of Mesa, AZ

Danielle Duran, Intergovernmental Affairs Manager, Los Alamos County, NM

Rick Elumbaugh, Mayor, City of Batesville, AR

Junior Ezeonu, Deputy Mayor Pro Tem, City of Grand Prairie, TX

Dalia Fadl, Principal Civil Engineer, City of Rancho Cordova, CA

Lindsay French, Council Member, City of Kansas City, MO

Thomas Good, Commissioner, City of Pembroke Pines, FL

Jeanette Herron, Deputy Majority Leader & Councilmember, City of Bridgeport, CT

Alan Hew, Councilmember, City of College Park, MD

William Houston, Mayor, City of Grandview, TX

Brittany Jones, Councilmember, City of Toledo, OH

Lorraine Koss, Council Member, City of Cocoa, FL

Debra Kring, Council Member, City of Mission, KS

Janifer Kulmann, Mayor, City of Thornton, CO

Mina Layba, Legislative Affairs Manager, City of Thousand Oaks, CA

Laura Mork, Deputy Mayor, City of Shoreline, WA

David Newman, Mayor, City of Thousand Oaks, CA

Patricia Nolan, Council Member, City of Cambridge, MA

Johnnie Parks, Vice Mayor, City of Broken Arrow, OK

Billy Pearson, Council Member, City of Lincoln, AL

Gabriel Quinto, Mayor Pro Tem, City of El Cerrito, CA

Jenni Pompi, Council Member, City of Greenbelt, MD

Joe Rasco, Mayor, Village of Key Biscayne, FL

Victor Rivas, Councilmember, City of Bloomington, MN

Jessica Sandgren, Councilwoman, City of Thornton, CO

Andrew Sensi, Infrastructure Project Manager II, City of New Orleans, LA

Patricia Showalter, Mayor, City of Mountain View, CA

Ryan Skrobarczyk, Director of Intergovernmental Relations, City of Corpus Christi, TX

Ellen Smith, Council Member, City of Oak Ridge, TN

Melissa Stuart, Councilmember, City of Redmond, WA

Brian Vincent, Mayor, Town of Farmville, VA

Jarett Waite, Council Member, City of Santa Clara, UT

Matthew Walter, Senior Council Aide, City and County of Denver, CO

Kimberly Wilburn, Council Member, City of Minnetonka, MN