Escalating Environmental Mandates

Can Local Governments Cope?

Cynthia C. Kelly

In the shadow of the Capitol building in Washington, D.C., on December 8 and 9, 1992, 30 local government managers participated in ICMA's first Environmental Mandates Task Force meeting. During the two days, managers exchanged views with an equal number of environmental specialists, Congressional staff, and U.S. Environmental Protection Agency (EPA) officials. The managers' message to Washington was clear: The cumulative effect of 20 years of environmental legislation threatens to overwhelm many local governments.

The response from Washington was equally clear: If local governments want relief, they must become more active in the legislative and regulatory process. With the Clinton administration promising a more progressive approach to intergovernmental relations, local governments have a chance to gain the flexibility they need to achieve more meaningful and cost-effective environmental results.

The Environmental Mandates Issue

Intergovernmental relations within the United States changed markedly in the late 1970s and early 1980s from a cooperative relationship based on well established grants-in-aid to one marked by conflict. State and local governments have been caught in an avalanche of federal rules and policy directives ranging from environmental programs, to those regarding race, sex and age discrimination, handicapped access and education, transporta-

tion, and health services.

Especially in the area of environmental protection, local governments are increasingly being required to meet regulatory requirements, often under the threat of criminal or civil penalties. As task force members testified, the burden of unfunded federal mandates is an issue for local governments of all sizes. Within five years, many households must pay double, triple, and even quadruple water and sewer rates. Other environmental costs are escalating in tandem, placing serious burdens on individuals and governments.

Local government managers want the Environmental Protection Agency to:

- Improve the science behind decisions;
- Encourage flexibility and innovation in meeting regulatory requirements;
- Consult with local governments earlier in the regulatory process;
- Provide local governments technical support;
- Educate the public with respect to the benefits of compliance;
- Let local governments focus on their greatest risks first; and
- Better link economic and environmental objectives.

During the opening session, local government representatives Dick Zais, Jr., city manager of Yakima, Washington, and Bob Hamilton, city manager of Cadillac, Michigan, reinforced the need to improve the science behind regulations. With apples a mainstay of its economy, Yakima (population 60,000) was particularly hard hit when EPA restricted the use of Alar, a chemical commonly sprayed on apples. When EPA later revised its assessment, the apple industry already had suffered serious losses.

Decisions based on controversial scientific judgments also had serious economic consequences for Cadillac (population 10,000). The city is in litigation with the Michigan Department of Natural Resources over a proposed permit for its wastewater treatment plant effluent. The new limits would reduce lead from 2.9 parts per billion (ppb) to 2 ppb at a cost of $2 million in capital costs and $125,000 in annual costs. At the same time, the level permitted in drinking water is 15 ppb, more than seven times greater.

Need for Flexibility and Innovation

Local governments emphasized the need for flexibility. Federal and state governments should empower local governments to find ways to meet or exceed established environmental goals at lower costs, even though they may not conform to every procedural requirement. As a case in point, Cadillac developed a creative plan to clean up a Superfund site with a cogeneration plant that would provide power for the town, a new source of tax revenue, and the ability to treat the contaminated groundwater. Instead of embracing this proposal, the state of Michigan refused to approve it and opposed legislation for the power plant. From the community's perspective, "The state had become their enemy." Only after a massive public education campaign including television talk shows did the community prevail.

Yakima will be placing inserts in utility bills to explain to the public why sewage or water supply costs are increasing and whom at the state or federal level to call with questions. Through these mailings and articles in the press, Yakima hopes to educate its citizens on why the costs of environmental services are escalating.

Challenging EPA Requirements

Many local governments are beginning to contest EPA's regulations, according to Valerie Lemmie, city manager of Petersburg, Virginia (population 66,000). In Virginia, 14 communities are challenging new standards for removing nitrates from wastewater treatment effluents. Their suit charges that the standards are based on questionable science and are technically impossible to meet. For a 30-million-gallon per day treatment system, it will cost $100 million to construct a denitrification system and as much as $40 million annually to operate it. Water and sewer costs already have increased 33 percent in five years (from $204 to $302 per household) just to meet existing requirements.

In the 1970s and 1980s, advocates for environmental legislation paid little attention to how the costs of compliance would be financed. The driving philosophy of "polluter must pay" intended to place the burden on the permittee. In the private sector, the permittee was presumably benefiting from the freedom to pollute. In the case of local governments, citizens receive little or no comparable benefit. An environmental trust fund like the Highway Trust Fund may be a more equitable way to finance local government's costs of environmental infrastructure.

Signed in April 1992, Executive Order 12803 allows local governments to sell infrastructure financed by federal grants and keep a large percentage of the proceeds. While EPA has not yet issued regulations governing the sale of wastewater treatment plants, perhaps 10 percent of local governments will privatize their facilities and benefit from this provision. Local governments, however, need to consider how to protect

consumers from unreasonable rate increases in the future. While there are many alternatives, Phoenix, Arizona (pop. 853,000), currently is selling its $250 million facility to a city-owned corporation and leasing it back. Thus the city can leverage these funds and maintain control over the facility and the rates at the same time.

Message from EPA

Laurie Goodman, EPA associate administrator for Regional Operations and State/Local Relations, predicts that the environmental mandates issue will preoccupy the Clinton administration just as the wetlands issue did the Bush administration. Goodman advised local governments to get their message to the new EPA administrator and Congress. EPA has established a one-year work group on the environmental requirements issue, and EPA would appreciate the substantial contributions of ICMA members.

Brendan Doyle, special assistant to the assistant administrator for EPA's Office of Policy, Planning, and Evaluation, recognizes that the increasing costs of compliance with new environmental requirements, shortfalls in available resources, and competing demands for limited ratepayer and taxpayer dollars mean that EPA, states, and local governments need to find new ways of doing business. In January 1993, EPA's State Capacity Task Force and Local Government Policy Dialogue Group recommended that EPA find ways to support state and local government priority setting and build flexibility into program implementation.

John Zirschky, staff to Vermont Senator James Jeffords, said legislation to protect small towns (below 2,500 population) from onerous environmental mandates would be reintroduced this year. Zirschky recommended inviting members of Congress to have hearings on the mandates issue in their home districts. Chris Bohanan, staff to Oklahoma Congressman Glenn English, said the increasing burden of environmental mandates is a growing issue for Congress. Some of the $20 billion that may be used to stimulate the economy should be invested in environmental infrastructure, he said. English believes that investment in water quality infrastructure can create more jobs and a larger tax base than investment in surface transportation.

Tracy Mehan, deputy associate administrator for EPA, described Washington, D.C., as "sixty-nine square miles surrounded by reality." As former director of the Missouri Department of Natural Resources, he said Missouri was spending 35 percent of its budget and potentially 80 percent of new general revenue on compliance with all mandates from Congress and the federal courts. Nationally, this country is spending roughly 2 percent of gross national product on environmental compliance. This will rise to 3 percent by the year 2000. Environmentalists fear the issue of cumulative burden may become a Trojan horse for deregulation. Mehan thinks there will be no rollback in current mandates but perhaps greater consideration of funding issues with the next wave of regulations (for example, nonpoint sources). Local governments need to seek more flexibility from Congress and raise the issue of cost/benefit analysis early on in the legislative and regulatory processes. The $25 per ton emissions fee in the revised Clean Air Act to help defray the costs of implementing the program by state and local authorities may be a model for other environmental legislation.

State and Local Deregulation Initiative

In the Progressive Policy Institute's new book, *Mandate for Change*, David Osborne, author of one article, says Congress should give the federal government broad authority to cut through red tape and reduce overregulation. While the country has changed dramatically since the 1930s, the federal government's bureaucratic, centralized, command-and-control approach has not. Osborne recommends that, as part of a new federal compact, the new administration should increase dramatically the number of waivers granted to state and local governments struggling to meet overly burdensome federal requirements.

Drinking Water: Need to Set Priorities

Leading the panel discussion on the Safe Drinking Water Act, James Elder, director of EPA's Office of Ground Water and Drinking Water, said that EPA is trying to set priorities among the numerous new regulatory requirements affecting drinking water systems. Forty-nine states have primacy or authority to implement the federal program, but many have insufficient staff to consider waivers for qualifying systems. EPA is trying to streamline the exemption program with a one-page application for local public water supplies. George Haskew, vice chairman of United Water Resources, said that consumers are demanding higher quality drinking water. While the cost of drinking water in the United States now is the third lowest of 13 industrial countries, to meet EPA's new requirements and replace drinking water infrastructure could increase costs significantly.

According to Erik Olsen, senior attorney with the Natural Resources Defense Council, over 110,000 ill-

nesses due to drinking water contamination were documented between 1986 and 1990; the actual number may be 20 to 30 times higher. Some 10,000 Americans get rectal or bladder cancer each year because of by-products in chlorinated water. Over 40 million people are at risk of cancer due to radionuclides, which commonly occur in water supplies. If the public were better informed about these risks, it might be more supportive of regulations.

Jimmie Powell, professional staff member for the Senate Environment and Public Works Committee, recalled that the Safe Drinking Water Act amendments of 1986 passed by overwhelming margins. The public already is spending $2 billion a year on bottled water. For $1 billion, the public can ensure that public drinking water supplies meet stringent health standards. With few exceptions, states are not doing a good job providing variances for those drinking water systems that may not need expensive filtration or other treatment to ensure high quality drinking water. Since 1972, the federal government has been providing $10 billion in loans and $3 billion in grants to small communities. States could impose fees to subsidize some of the smaller systems and encourage others to join regional drinking water systems.

Jack Sullivan, deputy executive director, American Water Works Association, was emphatic that communities must accept the bulk of the requirements under the Safe Drinking Water Act as "real" and work for flexibility to get the job done through priority setting based on risk reduction. As scientists continue research on the health effects of small quantities of chemical contaminants in drinking water, even more stringent controls may be needed. It is estimated that treatment costs may triple between 1989 and 2010 (from roughly $3 billion to $10 billion nationally) while the actual costs to local governments and ratepayers could be nine or 10 times higher as federal and state support declines. Replacing old infrastructure will cost approximately $250 billion, with $8 to $10 billion annually for maintenance. Local governments must be prepared to finance these expenses. Preventing combined sewer overflows or stormwater from contaminating streams may save treatment costs.

Managers should tell their Congressional representatives as comprehensive a story as possible about their environmental problems.

Frank Patrizio, city manager of Piqua, Ohio (population 20,000), eloquently described how increasing environmental rates makes it difficult for senior citizens and other low-income residents to afford nutritious food, heating costs, and health care. Heart attacks and high blood pressure are the real health impacts. The panel's short-term prediction, however, was that "the costs of meeting environmental requirements are only going to increase," unless the new administration takes actions to make things more affordable.

The New Clean Air Act

Robert Brenner, director of EPA's Office of Policy Analysis and Review, described some of the regulatory activities under the Clean Air Act of 1990. For some pollutants, utilities and other sources can earn credits for each ton eliminated and may bank or sell these credits. These and other economic incentives should reduce the overall costs of compliance. Similarly, local governments will have flexibility to use pollution prevention or other means to meet forthcoming standards for municipal waste combustors, wastewater treatment works, and asphalt operations. While many of its provisions are progressive, the Clean Air Act of 1990 will result in the largest federal environmental regulatory program and could be expensive.

As air quality plans are developed under the new Clean Air Act, local governments should be involved. Gregory Wetstone, counsel to the House Subcommittee on Health and the Environment, explained that it is a "zero-sum game": if an industry or downtown area does not meet its goal, then the other sectors must pick up the slack. Under the emissions trading plan, local governments could facilitate economic growth by buying and offering emission credits to new industries. Attracting the air pollution control technology industry itself could be a great boon, with $25 billion annual revenues expected after the year 2000.

Vehicle traffic is responsible for 90 percent of Phoenix, Arizona's carbon monoxide, 70 percent of the

ozone, and 80 percent of the particulate problems. George Britton, deputy city manager of Phoenix, described the city's trip reduction plan, alternative fuels program, 350 miles of bike lanes, and other measures to reduce air pollution. Such groups as the Sierra Club, the American Lung Association, and others have provided a valuable counterpoint to highway proponents and others with more conventional views.

From Phoenix's perspective, EPA's guidance and rules are too little and too late for effective planning. Regional staff need to visit states and local governments to better understand the complexities of implementing a clean air program. Looking ahead, Phoenix anticipates people will drive 127 million miles per day by the year 2020, compared with 5 million miles per day in 1990. The federal government needs to promote research into an alternative to the internal combustion engine. The new Intermodal Surface Transportation and Efficiency Act (ISTEA) gives local governments the tools to comply with the Clean Air Act, but Congress has not fully funded it. Federal funding also is critical for mass transit systems (for example, over two-thirds of Washington, D.C.'s Metro system was federally financed).

Research Associate Debbie Sheiman described the Natural Resources Defense Council's (NRDC) alliance with citizen groups in different parts of the country. NRDC's goal is to ensure that state implementation plans are adequate to attain the goals of the Clean Air Act. Over time, these plans will involve increasingly difficult political and economic issues as state and local governments struggle with growth, transportation controls, and other controversial measures necessary to attain reduced pollutant levels. Andrew Mishkin, partner in the law firm of Beveridge & Diamond, warned that the Clean Air Act could have potentially negative impacts on growth and development with local governments having limited ability to affect these issues.

Wastewater Treatment Issues

Jeffery Jordan, assistant city manager of South Portland, Maine (population 22,000), described the expense that the majority of older cities in the northeast and midwest face to eliminate or control combined sewer overflows as required by the Clean Water Act. Since 1972, some $50 billion has been spent for wastewater treatment in communities throughout the United States, but 1,100 communities with combined sanitary and storm sewers may have to spend three times that amount over the next several years to meet EPA's combined sewer overflow (CSO) regulations. To control these costs, local governments with combined sewer systems should get involved in determining local water quality goals and developing cost-effective solutions.

Along with environmental, industry, and other interest group representatives, Jordan participated in a negotiated dialogue with key stakeholders on combined sewer overflows. While some advocated national design standards, such uniform standards would not allow for site-specific differences or take advantage of more cost-effective local solutions. Jordan quoted Rhode Island Senator John Chafee from the May 15, 1991, *Congressional Record*, "To require a blanket elimination of all CSOs in the event of a one-year, six-hour storm does not take into account the legitimate constraints on local resources or the great variability associated with each combined sewer system. Depending upon the constituents in the overflow, the quality and use of the receiving waters, and the particular geology, climate, and hydrology of the CSO area, total elimination may be unnecessary and certainly will be costly." Jordan called for a balance between the desire for regulatory accountability and ease of administration with the need to find tailored cost-effective solutions to specific problems.

Jeffrey Lape, chief of the pretreatment section in EPA's Office of Wastewater Enforcement and Compliance, said that EPA is interested in building upon its experience with negotiated dialogue for combined sewer overflows. The wastewater office is committed to consulting with local governments earlier in the regulatory development process, improving science behind decision making, focusing resources in areas of greatest risk, providing tools and a framework to make the right decisions, and securing adequate funding to implement the Clean Water Act.

For many rural communities, agricultural runoff is by far the greatest

Wanted: An Extension for Stormwater Compliance

The city of Knoxville, Tennessee, wrote to its Congressional delegation urging a two-year extension of the storm water program for cities and counties with populations between 100,000 to 250,000. This amendment would give these medium-sized governments until May 1995 to develop a stormwater utility or other alternative source of funding. For Knoxville, compliance with the requirements will cost $1.6 million, the same as their city-wide road paving program and three times their budget for bridge maintenance. With an extension of time, Knoxville hopes to have in place the means to finance the program without an ad valorem tax increase on property or cutting back essential programs.

EPA should play a greater role in educating local government officials and the public concerning mandated environmental programs. In order to gain approval or funding for an initiative, input from EPA could be very helpful. As Dick Zais, city manager of Yakima, Washington, said, "When we ask for help, we mean it. We need EPA to be there."

source of water pollution. While such communities as San Jacinto, California, and Chesapeake, Virginia, pay millions of dollars to remove small quantities of toxics in their wastewater, agribusiness freely contributes tons of pesticides and fertilizer in runoff from its fields. EPA's approach of determining the total maximum daily load from all pollution sources in a watershed is promising, but agricultural runoff needs to be regulated.

Claudia Copeland, environmental specialist with the Congressional Research Service, reported that Congress is increasingly aware of the burden on municipalities. Managers should tell their Congressional representatives as comprehensive a story as possible about their environmental problems. An environmental cost index would help Congress gauge the impact of new laws before they enact them. Congress also must give EPA greater flexibility under existing laws.

Richard Anderson, director of government affairs for Wheelabrator Technologies, Inc., encouraged local government managers to consider partnerships with the private sector that can fast forward money and technology and reduce operation and maintenance costs. In addition, he suggested that EPA consider developing a single set of environmental requirements for local governments. EPA currently is developing standards for the pulp and paper industry, some 600 mills, that incorporate both air and water requirements. Once this regulatory package is complete, EPA expects it will be in place for a decade. Being able to plan for environmental investments all at once instead of working with a moving regulatory target would be a great benefit to local governments.

Solid Waste Management Issues

Andrew Teplitzky, chief of the residuals management section, EPA's Office of Solid Waste, described new regulations specifying criteria for municipal landfills. The criteria include an exemption for small landfills from the design and groundwater monitoring requirements in dry (less than 25 inches of precipitation annually) or remote areas (where there is interruption of surface transportation for three consecutive months). The rules are self-implementing by owners and operators in states and tribal areas where EPA has not yet approved their permit programs, with citizens empowered to sue for failure to comply. Approved states and tribes can develop alternative liner, cover, and other landfill requirements. To date, no state or tribal program has received final EPA approval. EPA hopes that the vast majority of states will seek partial approval for the program by October 9, 1993. By that date, any municipal landfill that still is in operation falls under the full force of the requirements.

Because Yuma, Arizona, only has 2½ inches of rain and 100 inches of evaporation annually, there is no leachate or liquid runoff from their landfill. Yet Yuma's landfill receives over 20 tons per day and thus does not qualify for the small landfill exemption. Because of the expense of complying with requirements for landfill liners and leachate collection systems, Yuma has decided to close the landfill. Citizens now are paying $12 each to close out the landfill under the new regulations, with no new capacity in sight. A referendum to increase capacity was voted down three times. While there is tremendous interest in recycling, it is expensive ($80 per ton). "We are entombing our trash, at great expense," said Bob Gingrich, Yuma's assistant public works director. One consequence of higher disposal costs is already evident: desert dumping, a potentially serious environmental problem.

State regulatory flexibility can be a double-edged sword for local governments. Claire Harrison, environmental specialist with the Eastern Municipal Water District of San Jacinto, California, reported that a California law requires communities to reduce solid waste by 50 percent in the next 10 years. As a result, waste-to-energy incinerators may not have sufficient flow to operate efficiently. Many states have not been receptive to innovative, integrated solutions. Tom Kennedy, executive director of the Association of State and Territorial Solid Waste Management Officials, predicts that eventually states will assume responsibility for landfill regulation and may be able to provide some relief to local governments through variances if they can be justified by engineering analyses. But there are many open issues, including the financial test for local governments and tests for groundwater reliability.

Jon Greenberg, director of Environmental Policy for Browning-Ferris, Inc., outlined the advantages and disadvantages of alliances with the private sector. Among the advantages were economies of scale, rate certainty (at least for a period of time), accountability built into the contract, liability insulation, assistance in siting landfills or other new facilities, and marketing recyclables. Among the disadvantages were potentially displaced employees, litigation over contracts, changes in benefits, and lack of equipment for emergencies (for example, snow plowing).

Carol Andress, senior policy ana-

lyst with the Northeast/Midwest Institute, encouraged local governments to attract businesses involved in recycling. Most of the meeting's debate over the Resource Conservation and Recovery Act focused on how to stimulate markets for recycled materials, including creating a new Office of Recycling and Source Reduction at EPA. Many local governments complained that states set ambitious recycling goals without recognizing the softness in recycling markets. Recycling is popular because people think that it will generate revenues. Until markets for recycled materials are established, however, recycling programs can be expensive. The disparity with landfilling can be enormous. In Yuma, for example, it costs $80 per ton to recycle and $8.50 to landfill.

What Is Ahead?

The meeting concluded with a strategy session for members of the Environmental Mandates Task Force. The task force wants to brief the ICMA Executive Board, recommending that ICMA take an active role in promoting the perspective of local governments on the issue of environmental mandates. The task force's mission is to educate federal and state decision makers concerning the cumulative impact of environmental mandates and build coalitions with other organizations on key legislative and regulatory issues.

At the next meeting at ICMA on March 5, the task force will refine its strategy for the next year and hopefully meet with spokesmen from the Clinton administration for environmental and intergovernmental relations issues. If you want more information about the task force, call me at 202/962-3669 or Steve Sokol at 202/962-3530. PM

Cynthia C. Kelly is director of ICMA's Environmental Programs, Washington, D.C.