U.S. Army Corps of Engineers
Water Resources Support Center
Institute for Water Resources

National Academy of
Public Administration

PUBLIC WORKS MANAGEMENT PRACTICES - VOLUME II

LOCAL GOVERNMENT PUBLIC WORKS AGENCIES: THE EFFECT OF FEDERAL MANDATES ON THEIR ACTIVITIES AND IMPROVING THEIR MANAGEMENT PERFORMANCE

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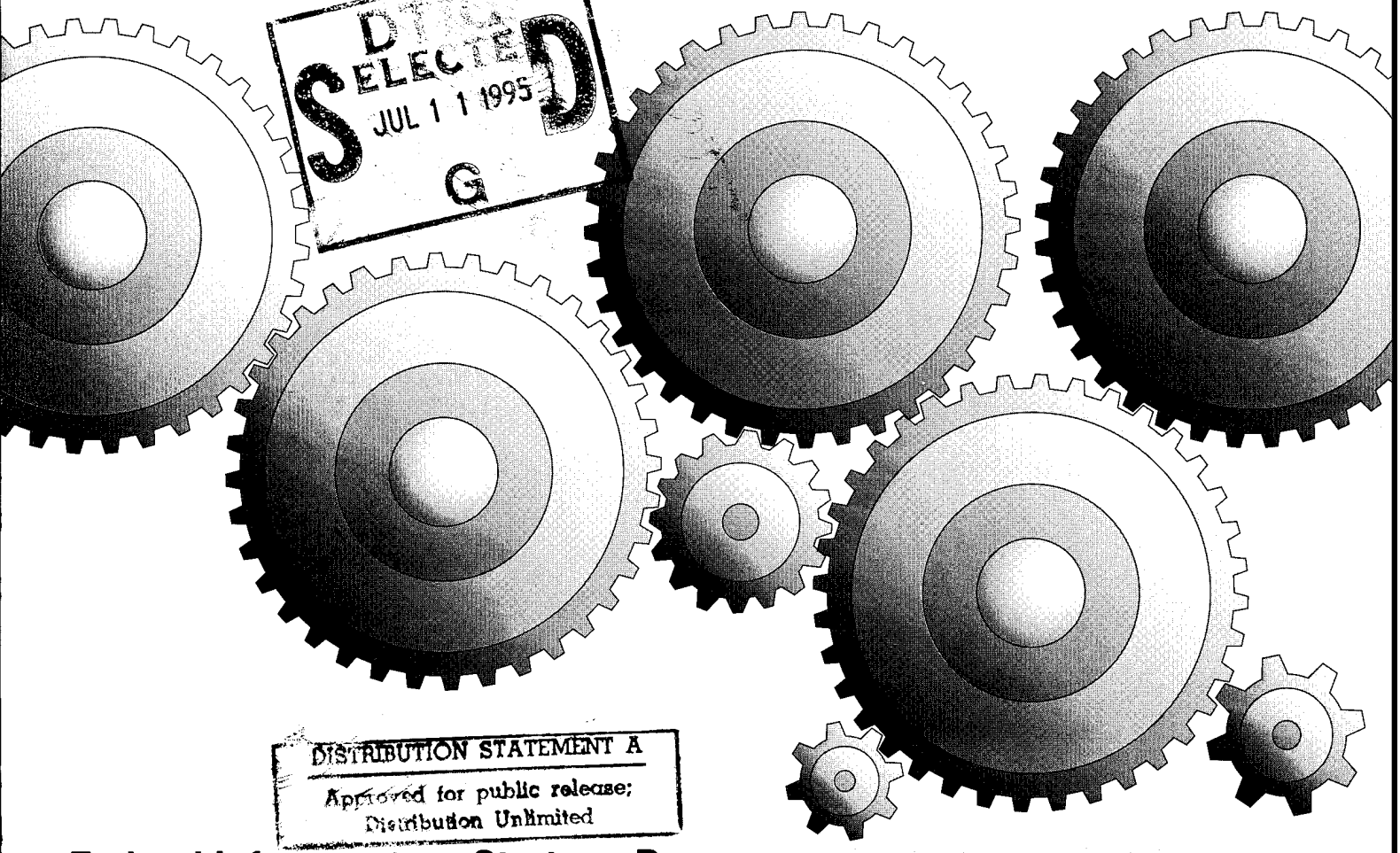

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August 1994

IWR Report 94-FIS-15

Federal Infrastructure Strategy Reports

This is one in a series of reports prepared during the Federal Infrastructure Strategy (FIS) Initiative, an intergovernmental program to explore the development of an integrated or multi-agency Federal infrastructure strategy. The series of reports which chronicle the strategy's development reflect the desire to publish interim documentation as results become available. These documents have been used to facilitate the dialogue within the Federal and non-Federal infrastructure communities as policy deliberations continue. See page 143 for a listing of other FIS reports.

The FIS program will culminate with a summary report to be published later in 1994. The documentation contained herein is not intended to foreclose or preclude the program's final conclusions and recommendations. Within this context, comments are welcome on any of the FIS reports.

This report, *Local Government Public Works Agencies: The Effect of Federal Mandates on Their Activities and Improving Their Management Performance*, is the second volume in a two-part study of the constraints and obstacles that limit the effectiveness of municipal public works agencies. This volume documents the analysis conducted by the National Academy of Public Administration (NAPA), and includes information gathered from twelve municipal, county, and state public works agencies representing a broad range of populations, geographic locations, forms of governance, and functions. Specifically, the report addresses the legislative (Federal and state), administrative, and technical impediments to improving public works management practices.

A companion analysis, contained in a IWR Report No. 94-FIS-14, was conducted by the American Public Works Association (APWA). APWA's analysis concentrated on the identification of state and local impediments to improved public works management, with a specific concentration on whether the practices contained in their *Public Works Management Practices* had been successfully implemented. NAPA extended APWA's work and developed recommendations which, if implemented, could ultimately improve public works performance while meeting the goals and objectives set out in the Federal legislation and administrative procedures.

Together, the APWA and NAPA analyses provide an indepth look into the issues and opportunities available to improve the effectiveness of our nation's public works at the local level.

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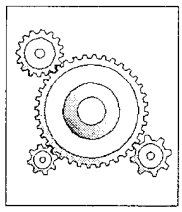
The Institute's infrastructure study team also included Dr. Cameron E. Gordon, Economics Studies Manager and Mr. James F. Thompson, Jr., Engineering Studies Manager. The program was overseen by Mr. Kyle Schilling, Director of the Institute.

Reports may be ordered by writing (above address) or calling Mrs. Arlene Nurthen, IWR Publications, at 703-355-3042.



The Federal Infrastructure Strategy Program

Public Works Management Practices - Volume II

Local Government Public Works Agencies: The Effect of Federal Mandates on Their Activities and Improving Their Management Performance

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by

Emerson Markham
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Mark Keane

National Academy of Public Administration

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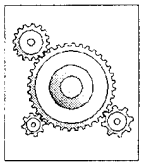


PREFACE

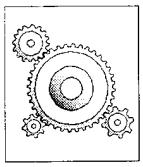
The National Academy of Public Administration (NAPA) entered into a contract with the U.S. Army Corps of Engineers to provide an analysis of roadblocks that impede improvements in public works performance. The project was done in collaboration with the American Public Works Association (APWA).

APWA developed a Public Works Management Practices Manual containing some 400 desirable management practices grouped in 29 areas. This was published as part of a project to develop, implement, and assess standard public works management and operations practices and procedures within municipalities. APWA visited public works departments at 11 local and one state government sites of varying sizes in various parts of the country to study the effects of adopting these practices. NAPA joined in these site visits to identify the effects of federal impediments that might prevent implementation of the management practices.

At the conclusion of 12 site visits, no absolute barriers to implementing the public works practices recommended in the manual were discovered. However, numerous difficulties impeding effective public works performance were uncovered. In addition, opportunities to strengthen local public works organizations were identified. Therefore, this report briefly summarizes the results of the site visits, and includes major chapters on: 1) the views of local government officials on troublesome federal mandates; and 2) desirable improvements in the management and performance of public works organizations in local governments.

We hope the results of this work will be helpful to public works managers and practitioners and to federal agencies in shaping policies affecting local public works departments.

R. Scott Fosler
President



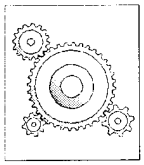
ACKNOWLEDGMENTS

This report is largely the result of contributions of many public works practitioners. These contributions were made in trips conducted over a 6-month period by people who gave unstintingly of their time and were frank and straightforward with their comments.

The authors of the report, and the Advisory Panel of the National Academy of Public Administration wish to express our appreciation to the Arizona Department of Transportation, and to the local government officials in Billings, MT; Foster City, CA; Lawrence, KS; Los Angeles County, CA; Pittsburgh, PA; Round Rock, TX; Snohomish County, WA; St. Paul, MN; Wakefield, MA; and Waukegan, IL; who graciously gave their time for these interviews.

We were partners in this project with the American Public Works Association. Jim Thorne, Eric Melvin, and John MacMullen of APWA provided valuable assistance, and the staff of the Association made many of the local arrangements essential to the success of our visits.

Finally, the U.S. Army Corps of Engineers made the project possible, not only by providing the funding support, but by the active participation of Jim Thompson, Engineering Studies Manager, and Robert Pietrowsky, Program Manager for the Federal Infrastructure Strategy (FIS), in many of our plans and deliberations. The FIS program was conducted under the direction of Eugene Stakhiv, Chief, Policy and Special Studies Division, and Kyle Schilling, Director of the Institute.



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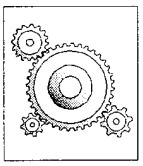


EXECUTIVE SUMMARY

At the request of the U.S. Army Corps of Engineers (COE) Institute for Water Resources (IWR), the National Academy of Public Administration (NAPA) undertook a cooperative project with the American Public Works Association (APWA). Twelve visits were made to state, county, city, and town governments -- selected to be illustrative of the country -- to review the progress of their public works departments in adopting the newly developed Public Works Management Practices Manual of APWA. These 417 practices grouped into 29 major areas such as Solid Wastes, Transportation, and Emergency Management, were the result of intensive work by a number of committees in APWA. The Academy's job was to identify federal laws or regulations which were preventing implementation of the practices.

NAPA appointed a project team of experienced former government executives, supplemented by an advisory panel of Academy Fellows, to undertake the needed research and conduct the site visits. The team's central finding of these visits was that:

1. **No Federal mandate is an absolute roadblock to implementing any of the more than 400 public works management practices in the APWA manual. That perception should be laid to rest.** However, federal mandates have expanded the missions of local public works agencies, complicated their service operations and construction projects, shifted heavy costs to their local governments, and substituted federal priorities for local priorities in the allocation of resources.

In addition, the team found:

2. Local governments' overarching and foremost grievance about federal mandates is that they are imposing heavy financial burdens on them when their finances are already severely strained, and that federal grants are paying a decreasing share of the cost.

3. As federal mandates have preempted local resources, infrastructure construction and maintenance are the expenditures cut most often by local governments.

4. The environmental protection mandates on clean water, safe drinking water, resource conservation and recovery, clean air, and the Americans with Disabilities Act (ADA) public accommodations and public services requirements are the "heaviest regulatory hits" in terms of the costs imposed on local governments.

5. Environmental protection mandates on asbestos, lead paint abatement, underground storage tanks, and endangered species also generate heavy costs in many communities.

6. Notwithstanding the costs and other burdens on them, local governments generally support the goals of the environmental protection and ADA programs. They, however, are very critical of many aspects of the federal strategies, priorities, timetables, processes, and the administration and enforcement of these programs.

7. Local criticisms of the environmental programs are frequently aimed at federal standards which are considered to be unrealistically high or for which the scientific underpinning is questionable, and at the lack of flexibility to adapt their construction and operational plans to local conditions.

8. In contrast to the environmental programs whose goals are generally supported by local officials, two other federal laws -- the Fair Labor Standards Act (FLSA) and the Davis-Bacon Act -- are considered by some local personnel and public works directors to be unnecessary, harmful, and examples of excessive intrusion by the federal government which drive up their costs.

9. For most local communities, the lion's share of the costs they would have to incur to comply with the current federal environmental mandates and ADA lie in the future. They cannot foresee where the resources will come from under current revenue and grant-in-aid systems to finance these federally-mandated costs while simultaneously meeting local infrastructure, police protection, social service, education, and other pressing community service needs.

10. The striking lack of information and widespread confusion about many of the federal mandates at the local government level underscores the need for expanded and improved communications and training activities by federal and state agencies, and by state and local public interest and professional organizations. These needs are especially acute in the smaller cities, counties, and towns.

While addressing these concerns is complex, the following close to unanimously held positions by the public works and other local officials interviewed stand out as most important:

1. **Confidence-inspiring science and risk assessment.** *When the federal or state governments establish mandates, they need to be much more certain about what the threats to the environment and public health are, and the relative risks. Careful, peer-reviewed scientific determinations must be reached before very expensive courses of action are mandated. Because each increment of progress in cleaning up pollutants and contaminants is progressively more expensive and the cost curve becomes very steep at some point, they should also produce more reliable information on the health and cost effects of each increment.*

2. **Integrated approach to the environment.** *Federal programs should promote consideration of the environment as a whole. The present 15 or more separate air, water, drinking water, and other programs work against understanding the interconnected problems, and invariably result in spending scarce resources on less important problems while more serious needs are neglected.*

3. **A workable program for each community.** *Closely related to the previous point is the need for an arrangement for communities above a certain size to develop workable programs that would analyze their environmental risks and obligations to the environment within and beyond their borders, establish priorities, and design multiple-year spending plans. Such workable programs offer the best hope for badly needed flexibility to adapt to local needs and conditions. Approval of such workable programs would, of course, be the passkey to state and federal financial assistance.*

4. **Improved state administration.** *There are strong reasons as to why state administration of environmental programs is preferable to federal administration, but some of the states need to reorganize and develop additional competence so as to carry out their many civic education, training, planning, permitting, grant administration, and other roles effectively and without dispiriting delays.*

5. **Equitable, stable federal-state-local funding.** *Legal and historical considerations aside, each level of government has a clear interest in cleaning up and protecting the environment, and each level shares in the blame for past neglect. Each level also is under budgetary stress. However, local governments' revenue-raising powers are the most constrained, and they should not have to take up the slack if other levels reduce resources. Therefore, the premier need is commitments by the federal and state governments to equitable, stable cost shares calibrated to certain rates of progress.*

These views are not unique to the people interviewed at the twelve sites. They are remarkably similar to findings and proposals in a number of recent studies, including the National Performance Review of the Clinton administration, findings of the General Accounting Office, the task force efforts sponsored by the Corps of Engineers and conducted by the Advisory Commission on Intergovernmental Relations, the Center for Resource Economies, and others. Regarding the prospects for change, the Academy project team notes that the recommendations emanating from the NPR and other national evaluators evidence much more consensus with state and local governments than would have existed, say, a decade ago. This drawing together presumably can be largely attributed to growing realizations that environmental progress has been disappointingly slow, and that the hard financial pinch calls for stronger efforts to devise more cost-effective approaches.

The NAPA project team believes that this growing consensus can be used by all parties to accelerate progress in developing mutually agreed upon programs and procedures for reaching common objectives. Therefore:

The NAPA project team endorses the proposals of local government officials calling for more confidence-inspiring science and risk assessment, an integrated approach to the environment, a workable program for each community, improved state administration, and equitable, stable federal-state-local funding.

The NAPA project team also concurs with the NPR, GAO, CORPS/ACIR, and CRE recommendations cited in this report that pertain to federal programs and regulations, and on intergovernmental service delivery and financing. Implementation of these recommendations would go a long way toward meeting local governments' needs.

As this summary makes clear, the role of the federal government, particularly the Congress, in adopting environmental legislation during the last 25 years is a high profile issue for local officials. In this context it may seem almost irrelevant to consider, as does the concluding chapter of this report, the details of managing the thousands of departments in local governments that try to make these federal policies work. But in the hometowns of America, where most of us live, the words "environment" and "infrastructure" translate into major costs and complex management problems.

Therefore, in addition, to the study of federal impediments, the Academy team reviewed steps which might be taken to further improve the public works activities of local jurisdictions building on the work of the APWA Management Practices Manual. In addition to endorsing the improvements which widespread use of the practices would bring, the Academy project team makes three recommendations for management improvements in public works organizations:

1. **Put top priority on enhancing citizen satisfaction with public works projects and services and on increasing public participation in public works problem- solving.**

2. **Develop more effective management analysis systems and decision-support tools.**

3. **Build employee trust and participation among public works' employees by applying the basic principles of Total Quality Management (TQM).**

The Academy team also concludes that the new edition of the American Public Works Association Practices should be even better adapted to the needs of local public works executives and warrants an excellent marketing program. A number of suggestions are made that could further that objective.

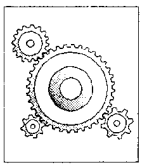
The report also stresses that a critical role is played by local elected officials, managers, and chief administrative officers. Both public works organizations and the officials under whom they function are urged to:

4. **Recruit, develop, and retain professionally competent executives.**

5. **Organize for creative, aggressive negotiations and problem-solving internally and externally.**

6. **Make creative, entrepreneurial use of the private and non-profit sectors.**

The project team concludes that one of the unifying conclusions of this study is that special efforts to help local governments play their full potential role in the infrastructure and environmental programs will pay big dividends. It will require support for intermediary organizations that can help local governments contribute to a better understanding of the national perspective and become a more creative part of the solution. This is of great importance if we are to take advantage of a climate that may now be right for the quality of communication that will be required in Washington and at the state and local levels for a major improvement in national infrastructure management.



Local Government Public Works Agencies: The Effect of Federal Mandates on Their Activities And Improving Their Management Performance

I. PROJECT OBJECTIVES AND INITIAL RESULTS

In response to the growing concern that infrastructure in the United States is deteriorating and that public services are diminishing, the National Council on Public Works Improvement was created to assess the state of America's infrastructure. After two years of study, the Council concluded, "America's infrastructure is barely adequate to fulfill current requirements, and insufficient to meet the demands of future economic growth and development." To combat these deficiencies it will become necessary to strengthen the nation's public works management and system performance.

In 1990, the U.S. Army Corps of Engineers (the Corps) was charged with exploring the issues associated with the development of a federal infrastructure strategy. In this effort, the Corps was to work in consultation with other federal agencies and with state and local governments and the private sector. As part of this effort, it has financed a number of studies expected to lead to infrastructure improvement.

IMPROVING LOCAL PUBLIC WORKS MANAGEMENT AND THE EFFECT OF FEDERAL MANDATES

In its search for opportunities for public works improvement, the Corps identified an ongoing project initiated by APWA to improve public works management. The project goals were to develop, implement, and assess standard public works management and operating practices and procedures within municipalities. APWA developed over 400 good management practices designed to assist public works managers in planning and controlling operations, improving performance, and increasing productivity.

The practices were then codified in a manual, Public Works Management Practices. As part of this codification they were tested and validated in four local APWA membership chapters. In each chapter an assessment was made to determine if the proposed practices were understandable, reasonable, and achievable. After appropriate changes were incorporated, the practices were distributed to APWA members across the country with recommendations for implementation. Subsequently the Corps expressed an interest in a number of on-site reviews to determine the results of applying the practices in specific organizations. Thus, the practices became the foundation for the studies by APWA and for this report by NAPA.

STUDY OBJECTIVES, APPROACH AND METHODOLOGY

A major concern of the Corps was the extent to which federal laws, regulations, and practices would prevent local public works organizations from carrying out the APWA practices.

To further the Council's goals, the Corps believed they could use the data resulting from the APWA project, coupled with the analytical capability of NAPA, to obtain:

- Analyses of the origins, impact, and current utility of the practices that impede effective management.

- Proposed federal legislative and/or regulatory options and alternatives that would allow public works administrators to construct and manage public works in their municipalities more efficiently.

- Administrative practices and strategies that would most likely improve the performance and operating efficiencies of municipal public works agencies.

This led to a cooperative project between APWA and NAPA as partners. In completing this study, although each organization worked under a separate contract, staff of the two organizations, along with Corps staff, met together frequently, maintained a free and open dialogue, shared data, and worked cooperatively in the development of analysis techniques.

APWA's Focus and Responsibilities

APWA's work was based on work conducted by the National Council on Public Works Improvement and APWA's Public Works Management Practices program. They concentrated on local administrative impediments which turned out to account for 75% of the total impediments, and State imposed impediments which accounted for another 10%. APWA's focus and responsibility was to identify whether the practices had been or could be successfully implemented in the public works programs of their members. In addition to the planned site visits, they hoped to obtain information through questionnaires to be sent to many of their member organizations. They were interested in questions such as whether the intent of each practice was clear, whether the practice was required for the local public works operation, if the practice had been implemented successfully, and if not, why not? The results of APWA's study are published as Public Works Management Practices - Volume I; A Public Works Perspective of the Road Blocks and Opportunities to Improve Performance (U.S. Army Corps of Engineers Institute for Water Resources Report 94-FIS-14).

NAPA'S Focus and Responsibilities

The overall objectives of the Academy's effort were to:

1. Assist in identifying the federal legislative, regulatory, and administrative practices that prevent municipal public works agencies from operating effectively. (Impediments that "prevent" implementation of public works projects are referred to as "roadblocks" as opposed to other impediments which created difficulties, irritations, etc, but which could be surmounted to accomplish the practice.)[1]

2. Develop federal legislative and/or regulatory options and alternatives that would allow public works administrators to operate their municipalities more efficiently.

To fulfill the Corps contractual requirements, NAPA appointed a project team of former professional managers knowledgeable of public management issues, and experienced in the activities of public works departments at the state and local level. An advisory panel of Academy Fellows was also appointed to meet with the project team from time to time and to review the draft report. The panel met four times during the course of the study.

THE ORIGINAL PROJECT WORK PLAN

The most important part of the project was the twelve site visits. These would provide an opportunity for face-to-face interviews with local officials to be conducted jointly by a team from APWA and NAPA. The visits were preceded by a pre-site questionnaire to enable the local officials to consider the matters to be discussed by the team, and to give the team an advance opportunity to consider the viewpoints of the local officials on the matters to be discussed.

At the completion of the site visits, and after analysis of the results of the pre-site visit questionnaires, a questionnaire was to be jointly developed to go to many of the APWA constituent organizations.[2] Based upon the site visits, supplemented by the global questionnaire, NAPA proposed to analyze the federal mandates identified that prevented performance of the APWA public works management practices. NAPA would then consider the best measures to take to eliminate or ameliorate the roadblocks identified.

Advance Identification of Federal Mandates

Prior to the visits, considerable effort was spent on a preliminary review of the possible effect of federal laws and regulations on the public works management practices. There was a total of 417 public works management practices grouped by 29 major areas (chapters) in the Public Works Management Practices Manual developed by the APWA.

Federal laws, regulations, or other requirements were specifically mentioned in 29 practices. Our review indicated an additional 49 practices that were definitely affected by federal law or regulation even though these requirements were not specifically mentioned in the practices. In addition, we identified 17 other practices that we suspected would be found to be affected by federal laws, regulations, administrative or technical requirements.

In the introductory material in four chapters of the APWA manual, federal laws or regulations were cited as having a general influence. In addition we identified ten additional chapters in which it appeared that federal laws and regulations would have an influence. Specific practices identified in the preceding paragraph occurred in 14 of the remaining chapters. The result was that we found only one chapter, Planning, in which we could not readily identify federal laws, regulations, administrative or technical requirements which would affect some practice within that chapter.

This analysis suggested that the pervasive influence of federal laws, regulations, administrative and technical requirements in the public works area might result in roadblocks or barriers to implementing the APWA practices. However, the range was so great, from the Davis-Bacon Act of the 1930s to the environmental laws of the 1980s, that it was not possible from an analysis of the manual to identify the areas that might prevent the accomplishment of the practice or even those judged most troublesome. The full report is contained in Appendix D.

DESCRIPTIONS OF THE FIELD VISITS

Criteria for Selection

Twelve sites were selected and proposed by APWA with the concurrence of NAPA and approval of the Corps. Eight were to represent urban areas (over 50,000 populations) and four were to represent rural areas.[3] Selected agencies were to represent various geographic regions and there was to be at least one from each time zone in the continental United States. Other criteria for selection included representation of various climates (arid, low rainfall to humid, high rainfall and freeze-thaw to no-freeze cycles) and representation of the full range of public works functions (transportation, waste water, storm water, solid waste. etc.). It was also essential that each community selected agree to have its appropriate organizations devote the necessary time to fill out the pre-site visit questionnaire and to participate in the survey.

Sites Selected

The sites selected were:

St. Paul, Minnesota - is a large urban city of 270,000 located on the Mississippi River. This major-council city has a large, sophisticated, and heavily unionized public works department of 472.

Snohomish County, Washington - is immediately north of King County (Seattle), fronts on Puget Sound, and has a population of 494,000. The county has an elected county executive and five, full-time elected members of the county council. It is strong union country with a public works department of 548 employees and a budget of $112 million.

Waukegan, Illinois - a medium-size city of 70,000 on Lake Michigan in the Chicago metropolitan area with a diversified economy and racially diverse population. The city has a mayor-council form of government; the mayor has appointed a chief-of-staff. The public works staff is 114.

Lawrence, Kansas - a city of 54,000 including the student body of 25,000 at the University of Kansas. The city , located about an hour from Kansas City, MO and 25 miles from Topeka, has been experiencing strong growth. It has a council-manager form of government with 131 non-unionized employees in the public works department.

Los Angeles County, California - serves a population of over thirteen million, the largest and most racially diverse county in the country with 30 percent of California's population. It has a council-manager form of government with 1,109 employees in the public works department. It is facing a budget reduction of more than ten percent.

Wakefield, Massachusetts - a residential suburb north of Boston with a population of 23,714. The town is governed by a Board of Selectmen-Executive Secretary plan and employs 66 people in public works.

Atlanta, Georgia - the state capital of Georgia , located in the north central part of the state. The city has a population of 450,000 and an area of 134 square miles. The city operates under the strong

mayor-council form of government assisted by a chief administrative officer and a commissioner of public works. The public works staff numbers 1,762.

Round Rock, Texas - a rapidly growing suburb about 30 minutes north of downtown Austin with a current population of 36,000. It has a council-manager form of government with 315 employees, 100 (non-unionized) of them in public works. The city is working very hard at implementing "total quality management" (TQM).

Arizona Department of Transportation - the only unit of state government included in this project. It gave a useful insight into the issues of state-local relations in mutual responsibility for a major public works service. It included most of the standard practices of public works management common to local government with the exception of solid waste. The public works staff is 4,400.

Pittsburgh, Pennsylvania - a central city in western Pennsylvania where the Allegheny and Monongahela rivers merge to form the Ohio River. Pittsburgh has a current population of 375,000 and an area of 55 square miles. It has a mayor-council form of government with a chief administrative officer. Its population had dropped by over 250,000 in the last 50 years, which means that a public works infrastructure created to support a larger population must be maintained by a smaller population and a smaller tax base.

Foster City, California - a small city of 29,000 on the San Francisco-Oakland Bay. It has a council-manager form of government with 200 employees, including 48 in the public works department.

Billings, Montana - a medium-sized urban area of 81,150 which has grown 24 percent in the last decade. The city is located on the Yellowstone River in south central Montana. They have a council-administrator (manager) form of government with 102 public works employees, and suffer from tight tax limits. A 41 percent growth in public works expenditures in the last decade has not kept up with general inflation and the population growth rate. From a public works point of view, the city has a very favorable climate, rainfall of only 13 inches per year, limited snowfall, and lack of vulnerability to natural disasters.

THE FIELD VISIT PROCESS

Pre-site visit questionnaire

Major documents developed for the site visits centered around a management practices checklist and the pre-site visit questionnaire. The questionnaire was a 40-page survey document to identify the severity of federal barriers to implementation of the practices.

A major problem became apparent at the site visit orientation in St.Paul prior to the initial site survey. The answers to the questionnaires from the first five sites varied substantially. Two sites reported practically no barriers, or roadblocks, and the other three reported more barriers although not a substantial number. This suggested that the questions were being interpreted differently. More importantly, it was the first indication of a situation that became more apparent as the site visits progressed; that federal laws, regulations, and practices, while onerous or a nuisance, might <u>not</u> be roadblocks to implementation of the APWA practices.

The site visits also confirmed that the questionnaires were not as useful as both NAPA and APWA had hoped since the questions required considerable explanation in order to ensure a common understanding. The questionnaire contained 200 substantive questions. Although lengthy, it was difficult to determine what might be eliminated. In addition, its scope required that it be filled out by a number of people in the larger jurisdictions.

As a result of the many problems, the IWR staff agreed with NAPA and APWA that the results which could be expected from the general questionnaire to be sent to all participants in the APWA management practice clinics[4] would not be worth the effort and this part of the project was abandoned. Nevertheless, some valuable material had been obtained.[5]

Conduct of the interviews

The site visit teams were composed generally of an APWA representative who served as the team leader, a high-level public works official from the public works department of another site to be visited,[6] and a NAPA team member. While APWA concentrated its work on public works officials, the Academy team interviewed mayors, managers, city council and county board members, finance directors, personnel directors, and others who might have a broader, or different, perspective on public works activities. It should be noted that the NAPA representatives had many years of experience as city managers.

Before visiting the sites, the pre-site questionnaires were completed by the jurisdiction and analyzed by the APWA. The questionnaires, though limited as discussed in the previous section, provided a useful point of departure in discussing federal mandates.

In addition, the Academy project team identified laws in several areas which it expected might be the source of federal mandates preventing the implementation of public works practices. The most important of these laws were:

- Clean Water Acts
- Safe Drinking Water Act
- Resource Conservation and Recovery Act
- Clean Air Acts
- Occupational Safety and Health Act
- Davis-Bacon Act
- Fair Labor Standards Act
- Americans with Disabilities Act
- Intermodal Surface Transportation Efficiency Act (ISTEA)

An interview guide was developed to insure that similar questions would be asked of the appropriate officials during each visit.

Site Visit Reports

Reports were prepared on each site visit. These are included in Appendix B in the order the field visits were made.

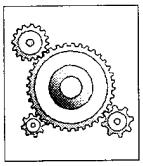
REVISIONS TO THE PROJECT

After completing the site visits, representatives of NAPA and APWA analyzed the results. After consultation with the Corps of Engineers, NAPA was authorized to refocus its efforts into two areas:

1. A summary of the views and recommendations of local government officials on the impact of federal mandates on their local public works operations and the relationship of these views to a variety of recommendations from other U.S. government and national evaluators such as the National Performance Review, the General Accounting Office, and the Advisory Commission on Intergovernmental Relations. This is the focus of Chapter II.

2. Recommendations for improving the management and performance of public works organizations in local governments which would build upon, but go beyond, the APWA management practices. This is the focus of Chapter III.

Thus the project that evolved from this combination of the institutional capacities of APWA and NAPA is unique among the battery of studies conducted under the leadership of the Corps. **It reports and analyzes the viewpoints of local government officials who must turn the national goals of environmental and other federal mandates into reality in a reasonably efficient and effective manner. These officials tell us what they see as the problems created by the federal system that regulates much of what they do and how they do it. And it focuses on the management of public works organizations in cities, counties, and towns where local officials tell us what they are doing to improve the management of their own local systems.**



II. VIEWS OF LOCAL GOVERNMENT OFFICIALS ON FEDERAL MANDATES AND PROPOSALS FOR CHANGE

Chapter I described this Corps of Engineers' project and the responsibilities of APWA and NAPA in carrying it out. NAPA was to participate in the 12 field visits so as to identify federal mandates that are roadblocks to implementation of any of the APWA practices.

Several terms must be defined here, as they were at the beginning of this project. "Federal mandates" is defined as "Acts of the federal legislative, executive, or judicial branches that place requirements on state or local governments." We were focused on requirements on local governments, but understanding the state role and requirements placed on them by the federal government is often essential to understanding the federal requirements on local governments.

The other key word is "roadblock." We were to identify roadblocks to implementation of the APWA practices. By "roadblock" or "barrier," the synonym we used, is meant, for purposes of this project, "a federal mandate that prevents or precludes implementation of an APWA management practice." This was clarified at the beginning of the project, as was the agreement that we would use weaker words such as "impediment" when speaking of a federal mandate that makes implementation of a management practice more difficult but does not ultimately prevent or preclude it. The fact that common usages of roadblock, barrier, impediment, and related words such as obstacle or hindrance do not constitute a precise gradation inevitably caused problems in connection with the mandates questionnaire and necessitated efforts to clarify its meaning during the field visits.

So, to repeat, the NAPA project team's responsibility was to search for federal mandate roadblocks to implementing any of the APWA practices. Our sights were trained on 29 of the APWA practices where their manual specifically mentioned federal laws, regulations, or other requirements. APWA, during the long process of developing and rigorously reviewing the manual, reportedly heard many comments about federal roadblocks or barriers to adoption of this or that practice. NAPA, in preparation for the field visits, working principally from an inventory of 63 major federal statutes and amendments regulating state and local governments, spotted 49 additional APWA practices that are affected in some way by federal law or regulations, and 17 other APWA practices where such federal impacts appeared likely. As mentioned in Chapter I, this analysis is presented as Appendix D to this report.

THE CENTRAL FINDING AND ITS SIGNIFICANCE

Most of this chapter is devoted to reporting local government officials' criticisms of federal mandates and complaints about their heavy, pervasive effects on local government operations, costs, performance, and priorities. However, with reference to the narrower question on whether federal mandates prevent or preclude implementation of any of the APWA management practices, the central finding from our investigation is:

> **No federal mandate is an absolute roadblock to implementing any of the more than 400 public works management practices in the APWA Manual.**

At the conclusion of the field visits and after study of the facts we gathered, we could not identify even one such roadblock. In fact, no local official even contended that even one such federal roadblock exists. **That perception should be laid to rest.**

Putting aside for now some observations about the effects of federal mandates on local government generally, and staying with our focus on their public works departments, we can describe how they have been affected. In historic terms, federal initiatives have been launched, mainly during the past 30 years, to clean up and protect the environment, to expand civil rights and militate against discrimination, and to fulfill certain other purposes. In work and expenditure terms, the environmental task is by far the largest, and public works departments have been designated as the primary implementers in most cities, counties, and towns. They are mandated to take many actions, to meet many standards and deadlines, and to cease certain practices by these environmental mandates and by a number of other federal mandates. Almost every local public works operation is now more complicated and sophisticated, involves more submissions to higher levels of governments and more approvals and delays, and therefore costs more than was true several decades ago. If resources available to public works departments had been increased commensurately, the burdens would be easier to bear, but federal grants have been cut and local resources are under severe strain in most communities.

Specifics in support of these generalities will be provided in sections to follow on specific federal mandates.

Returning to the effects of federal mandates on the implementation of the APWA management practices, reference should be made to some examples. These APWA management practices "call for the development and implementation of a policy or procedure in the form of a rule, regulation, (or) written directive; or for the execution of an activity, report, procedure, or other action."

The APWA manual sets forth over 400 management practices under 29 chapters. The following list of illustrative practices from the manual should provide a sense of how federal mandates may affect them in some way but not absolutely block their implementation.

Table 1

ILLUSTRATIVE APWA MANAGEMENT PRACTICES

Organization and General Management	Public Works Activities
Statement of agency's purposes, goals, and objectives	Work zone traffic control
Code of ethics	Handicap access policy
Classification and compensation plans	Call-before-you-dig system
Safety training	Emergency audits
Affirmative action plan	Preventive maintenance program
Sexual harassment policy	Forestry planning program
Grievance procedure	Solid waste policy
Capital improvement program	Recycling feasibility study
Public participation objectives	Landfill leachate control
Twenty-four hour emergency access	Landfill methane recovery or venting
	Pavement maintenance procedures
	Snow and ice control plan
	Flood plain management policy

In elaboration of the project team's central finding, then, the point is that every one of the above APWA management practices is affected by federal mandates in some direct or tangential way, but no federal mandate prevents a city, county, or town from implementing these management practices. No federal mandate forecloses a local government from developing and implementing a safety training program, affirmative action plan, handicap access policy, or solid waste policy, but federal mandates will almost certainly dictate or influence their content. Implementing good management practices is possible even with expanding missions, mandatory standards, procedural complications, and shrinking resources. The fact is that good management becomes more necessary than ever.

As was explained toward the end of Chapter I, the Corps of Engineers revised NAPA's responsibilities when agreement was reached that there are no absolute federal mandate roadblocks, and that analyzing the lesser effects of mandates on management practices would not be fruitful if done in a general way. Instead, NAPA was charged with distilling what it had learned about the federal mandates, and how the mandates and their administration might be changed to improve the results of the federal programs involved and ease the burdens on state and local governments. We begin by reporting the observations of local officials on each of the specific federal mandates, and then will move on to general findings about the mandates and some widely supported prescriptions for change.

LOCAL OFFICIALS' OBSERVATIONS ON SPECIFIC FEDERAL MANDATES

During the course of the 12 field visits, we interviewed almost 200 city, county, and town officials and managers and, at the Arizona Department of Transportation, almost a score of state administrators.

In interviews with public works directors and supervisors, NAPA's focus was on whether federal mandates blocked implementation of any of the APWA management practices. However, at the end of each of these sessions, we also asked for general comments on federal mandates affecting the public works activity under discussion. In sessions with mayors, council or board members, and city or county managers, attorneys, finance or budget directors, personnel directors, and other staff people, we sought their observations, complaints, and proposals on the whole range of federal mandates perceived as applicable to their units of government.

The purpose of this section is to report the significant things they said and, later, to synthesize those expressions into a composite local government view of federal mandates. We have tried to avoid inaccuracies by relating their statements to what we know about the federal programs and mandates, and to statements made by other local officials. Beyond that, our project has not extended to verifying their statements, some of which may be inaccurate or accurate only in their particular circumstance. There is, nevertheless, value in knowing what the perceptions and opinions of these local government officials are.

Another caveat about this section is that it was not our charge to evaluate the local officials' observations, complaints, or proposals about federal mandates, or to answer or rebut them. For every complaint or criticism they made about a federal law or program, there undoubtedly is some justification or argument for the current requirement or practice, but we have not amassed those justifications for the many mandates and their administration. It was also beyond the scope of this project to identify federal initiatives and actions that are responsive to local officials' proposals and complaints, but we learned during the course of the project that many such efforts are underway.

This whole subject of federal mandates on local governments is complicated by the relations between federal and state laws, and the division of responsibilities between federal and state agencies. Sometimes the federal law or regulation stands alone. Sometimes it is repeated almost verbatim in state law, but in other instances the state law is more restrictive or extensive than the federal law or regulation. Administration and enforcement of the federal law is often delegated to the states that enact laws at least as restrictive as the federal. This arrangement is frequently employed in the environmental protection field. And there are some other arrangements, too. The importance of these facts is that busy local public works officials often have little reason or opportunity to sort out which requirements emanate from Washington and which were crafted in their state capitals. Consequently, some complaints may be directed at the wrong capital or left unattributed. Here again, our project did not extend to research on these legal relationships in the 11 states we visited, though we will note a few facts and questions on this subject that arose during the field visits.

We begin with the two major groups of federal mandates - environmental mandates and personnel mandates - and close with shorter treatments of a miscellaneous group.

Environmental Mandates

The first annual program evaluation and budget analysis of the U.S. Environmental Protection Agency (EPA), published in 1993 by the Center for Resource Economics, contains this introductory paragraph:

> EPA's simply worded mandate to protect human health and the environment is a complicated task involving the enforcement of 12 major federal laws, the issuance of thousands of permits, the control of tons of toxic emissions and the study of risks in humans, animals and ecological habitats. The scope of the agency's mandate seems to constantly expand. Congress enacted ten new statutes or reauthorizations since 1980.

The environmental protection mandates, especially for local government public works agencies, tower above the other federal mandates to be discussed in this report in terms of demands on their communities' energies and resources.

In the immediately following sections, each of the significant environmental mandates on local governments is described briefly, and the comments of local government people interviewed by the NAPA project team, especially public works managers, are presented. We start with the "big four" -- Clean Water, Safe Drinking Water, Resource Conservation and Recovery, and Clean Air -- and then move on to five other lesser but still burdensome environmental mandates.

Clean Water Act (CWA). EPA's water program, which implements a number of statutes, derives most of its responsibilities from the Clean Water Act of 1972, as amended. Its overall objective is "to restore and maintain the chemical, physical, and biological integrity of the Nation's waters."

The CWA requirements establish standards and procedures that call for a variety of actions by industries, agriculture, state and local governments, and other entities. However, local governments' responsibilities pertain primarily, but not entirely, to their sewer systems, sewage treatment plants, and specific problems related to stormwater. Under provisions of the National Pollution Discharge Elimination System (NPDES), authorized by the 1987 Water Quality Act, cities and counties that operate separate storm sewers and have populations of 100,000 or more are required to obtain NPDES permits to discharge stormwater from storm sewers. Implementation authority for the NPDES program resides with EPA's ten regional offices and delegated states (which numbered 39 in June 1992).

The clean water mandates on local governments are by far the heaviest financial burden placed on them by Washington. Expenditures for the separation of sewer systems and the upgrading and expansion of sewage treatment facilities will total hundreds of millions and even billions of dollars in many of our larger cities and metropolitan areas.

Problems Reported by Our Field Visit Communities. Three of the 11 cities, counties, and towns we visited - Atlanta, Snohomish County, and St. Paul - are among the almost 200 so-called Phase I localities that have completed or are in the process of completing NPDES permit applications. St. Paul is the farthest along and therefore illustrates what a long journey communities must travel to reach compliance. Their metropolitan planning studies began in the late 1970s; they decided that sewer separation was the most economical method to abate combined sewer overflows into the Mississippi

River; they received their permit to proceed in 1985; and they are now nearing the end of their street-by-street construction.

Wakefield, among the smaller jurisdictions we visited, is essentially in the same boat with the larger Phase I communities. This is the case because Wakefield is in the service area of the Massachusetts Water Resources Authority, which is proceeding with a $3 billion project to clean up the Boston Harbor. Wakefield's already high water and sewer charges are projected to quadruple and, for many homes, to equal their property tax bills.

Two opinions about the NPDES requirements are paramount in these jurisdictions. First, they agree with and support the objective; the Mississippi and the Boston Harbor must be cleaned up. But, second, the costs are staggering, and the federal government, which has cut back on its grants, should do more to help.

In the seven local communities we visited that were not yet required to obtain NPDES permits, they, of course, have not settled on an engineering approach, so their expressions indicated uncertainty and apprehension rather than firm objections. Some of them know that they have especially difficult problems to overcome and that they may be required to undertake courses of action they consider to be excessively burdensome. Pittsburgh, which was exempted from the Phase I NPDES process, is served by combined sewers but has 135 combined sewer outlets (CSOs) into three rivers. Lawrence has separate storm and sanitary systems but considers it possible that they may have to go back to combined sewers if both types of wastewater must be treated and meet the same standards. Round Rock is at the confluence of four creeks so potentially has major stormwater problems. Billings has separated sewer systems, only five outlets into the Yellowstone River, and infrequent and small stormwater flows because their annual rainfall is only 13 inches. They, however, occasionally bypass their sewage treatment plant for short periods to make repairs, so they could face a costly requirement to build-in redundant or dual facilities.

Atlanta voiced the centrally important objection that goes to the necessity and reasonableness of the water quality standards. To them, the currently controversial EPA metals standards, including the "dissolved metals" and "bio-available metals" requirements, are of dubious validity, and the removal cost would be colossal. More broadly, Los Angeles stated that the water quality standards for discharges into inland water bodies are more restrictive than drinking water standards.

Finally, as was the case with the other environmental protection programs, cities and counties expressed apprehensions to the NAPA project team about what the clean water requirements will be in the future. Federal requirements keep changing and are ratcheted up repeatedly. Local actions to comply at great expense can later be adjudged to be inadequate or, worse yet, almost worthless, a trip down the wrong path. These kinds of concerns pertain, for example, to what the ultimate requirements will be with reference to street dirt and pollutants, the treatment of stormwater, and combined sewer overflows.

Turning to another part of the federal water program, Waukegan voiced the well-known lament that the Corps of Engineers takes too long to make a wetlands delineation and the delineations are sometimes imprecise. This complicates their development control activities. "Once or twice a month," one official said, "they must deal with a property owner who finds he cannot develop his property or can only develop 20 percent of it." They also stated that it doesn't make sense to them that areas they used to maintain as beaches now must be allowed to grow up in weeds.

Safe Drinking Water Act (SDWA). This 1974 act of Congress required EPA to set national standards for contaminants in drinking water, and it authorized regulating underground injection wells and the protection of aquifers.

EPA Requirements. EPA has identified more than 700 contaminants that are found in drinking water. Lead, on which attention is currently concentrated, is at dangerous levels in 20 percent of our nation's largest public water systems.[7] For each contaminant, EPA establishes two standards: the Maximum Contaminant Level Goal (MCLG) and the Maximum Contaminant Level (MCL). The MCLG represents a level of safety that will not cause adverse health effects over a lifetime of exposure, but, in recognition of costs and the limitations of technology, only the MCL, a lower standard, is enforceable.

Because EPA issued standards for only 22 contaminants during the first 12 years it administered SDWA, Congress quickened the pace by requiring in the 1986 amendments that EPA issue standards for 83 contaminants by June 1989, and 25 more every three years thereafter.

States are delegated the responsibility for enforcing the SDWA if they qualify for "primacy" by adopting standards at least as strong as the federal. The local governments which operate potable water systems are mandated to undertake certain monitoring and testing procedures, to treat the water and take any necessary corrective steps to ensure compliance with standards, and to notify the public of any violations of the MCL standards.

Protests from Localities. Our field visits corroborated that the EPA standards have created a huge credibility problem. Local public works officials simply do not believe that some of the MCL standards are necessary to protect the public health. They cite studies and well-known questions about certain standards. This atmosphere of incredulousness is rooted in the commonplace understanding that "America has the safest drinking water in the world," and personal observations that very few communities have ever experienced serious problems. The congressional requirement that EPA issue standards on 25 additional contaminants every three years also fuels doubts and resentments about the standards. The federal government, in their eyes, has determined to increase, at a relentless rate, the obligations and costs of local water utilities even though the scientific research on specific standards and relative risks has not been completed. Doubts about the standards then predictably give rise to objections about the testing local governments must undertake periodically at a high cost, especially high to the smaller communities. Waukegan somewhat humorously noted that the EPA limits lead in drinking water to 15 parts per billion, but some red wines contain over 300 parts. Round Rock, though they think the requirements are "irrational," tests for new constituents each year and sends in the samples, "but they don't hear anything back."

SDWA Lead and Copper Rule. It is, however, the SDWA Lead and Copper Rule that is generating the most concern among local public works officials at this moment. Unlike most drinking water contaminants, lead enters the water after it leaves the treatment plant. The lead leaches from lead or copper pipes with lead soldering. The problem is difficult to cure because much of the leaching occurs on private property where that property's lateral line connects with the distribution line, and from household plumbing installations. Water utilities meanwhile can feed phosphate or silicate inhibitors into the water to coat the lines and prevent or slow down corrosion.

Local governments, including Billings, Wakefield, and Waukegan, have in many cases willingly begun corrosion control treatment. It costs Waukegan, a community of some 70,000 people, about

$50,000 annually. They typically see this as the least of their problems. More seriously, they question the lead standard, believe that the public can be educated to bring any lead in the water down to safe levels by running their faucet for just a few seconds, and fear that they are vulnerable to occasional, quickly passing violations of the lead standard. But most frightening is the specter of digging up private properties at high private or public costs when even this drastic step would not deal with that part of the problem situated in the home plumbing installations.

EPA seemingly has recognized how difficult this problem is for localities. Its regulations allow up to eight years to fully implement a rule for corrosion control, and up to 24 years for the removal of lead service lines.[8]

Resource Conservation and Recovery Act (RCRA). This 1976 act, which was substantially overhauled by the 1984 Hazardous and Solid Waste Amendments (HSWA), is the basis for the federal hazardous waste regulations (Subtitle C) and state regulation of nonhazardous waste (Subtitle D).

EPA Requirements. RCRA's three objectives are to minimize the quality and toxicity of waste generated, ensure environmentally sound management of solid and hazardous wastes, and prepare for effective and timely responses to releases of hazardous materials into the environment.

The attentions and concerns of the local governments we visited are centered on Subtitle D of RCRA, under which EPA in 1991 promulgated new municipal solid waste (MSW) landfill standards and regulations on the design and control of municipal waste combustors. The states have the primary responsibility for the Subtitle D program. EPA promulgates regulations and provides guidance, but little oversight, funding, or enforcement.

EPA's activities to date have concentrated on MSW and especially landfills. Their survey of 6,500 landfills found the vast majority to be unlined and lacking leachate collection systems and methane controls.[9] The 1991 landfill standards address these deficiencies. MSW landfills must comply with location, design and operating criteria, groundwater monitoring, corrective action, and financial assistance and landfill closure requirements by October 1993.

Recycling is also a current preoccupation of local communities, though there are no federal mandates requiring it. EPA encourages recycling but only through publications, training programs, and limited efforts to expand markets for the material involved. EPA's advice pushes for this order of priority in waste management: source reduction, recycling and composting, combustion, and disposal in landfills. In contrast, 67 percent of MSW is placed in landfills, 16 percent is incinerated, and 17 percent is recycled.[10]

Effects on Communities. Communities have a variety of options for providing MSW services. They can directly operate, contract out, or "load shed" to the private sector the collection activity, any processing, and disposal. The 11 cities, counties, and towns we visited illustrate some of the choices. Some have contracted out or load-shedded collections but continue as regulators. Only two, Atlanta and Billings, operate active landfills, but the others contract with privately-owned landfills. Wakefield is served by a nearby, pioneering waste-to-energy plant and its adjoining landfill for the ash. Regardless of the arrangement chosen, the citizens of the community pay the bill.

The complaints we received about RCRA were numerous and frequently vehement, but some were aimed at the EPA regulations; some at more demanding state laws and regulations, which we understand are becoming more prevalent; and some at state regulators who lack the competence and assurance required to take advantage of the flexibility which EPA allows. Our research did not extend to sorting out the blame in the 11 states we visited.

Many local governments, as their foremost grievance against RCRA, charge that the Subtitle D landfill standards require measures that are unnecessary and technically unjustified in their local situation. The Billings facts constitute a classic case. Their 540-acre landfill is underlain by 250 feet of clay, including some bentonite, which is so effective as a landfill sealant that a six-inch layer is sometimes prescribed for placement between plastic liners. The average annual rainfall is only 13 inches. Their test wells, which have been in operation for years, are essentially dry and show no leachate problem. In short, Billings asserts that its landfill does not pollute the groundwater. They nevertheless were required to drill additional test wells and change their testing in ways they considered inappropriate for their landfill, and they face unending large costs for liners and testing as they expand laterally. The landfill's capacity is adequate until the year 2045.

Atlanta made essentially the same charge: that they are being required to incur large expenditures for liners even though their landfills do not pollute the groundwater.

Waukegan supplied a second type of complaint generated by the Subtitle D landfill closure requirements. There are within Waukegan's city limits two inactive, closed landfills. The city is currently spending $300,000 per year to pump leachates from these landfills and transport this material to Chicago or Vickrey, Ohio. If future demands, as they understand them, are insisted upon, Waukegan's cost will be $50 million. Their outrage has been heightened by the fact that they were in full compliance as they filled the landfills. They see themselves as now having two alternatives under the mandates, one horrendous and the other foreclosed in their situation. The first alternative would be to remove the contents of the landfills and transport it elsewhere. Under the second alternative, they would capture the leachate and transport it by sewer to a treatment plant, but the North Shore Sanitary District's plant, which serves Waukegan, is not equipped to treat such leachates.

As previously stated, recycling is not required by federal mandates, but some public works officials fear that it will be mandated by either the federal government or their state. If recycling requirements spread, Wakefield and Waukegan interviewees contended that the federal government should "mandate markets" by requiring manufacturers to use recyclable materials to a greater extent. The Waukegan public works director went further by saying that the federal government "should do such things as mandate that all bottles must be brown so as to eliminate sorting by color." The common overriding contention, however, is that recycling should not be mandated. Local officials point with pride to their locally-adapted programs and the aggressive experimentation that is proceeding in many communities. They also underscore local differences. Pittsburgh, for example, has an abundance of present and potential landfills that were strip mines. Billings, too, can landfill indefinitely and is many hundreds of miles from most markets for recyclable materials.

Local officials made several proposals regarding RCRA in addition to the pleas for flexibility and freedom. The Lawrence solid wastes superintendent, who atypically earned a master's degree in geography, pushed two recommendations: "Stop suing parties for past pollution events," and "Spend more on prevention of new problems." The Lawrence city attorney added that "the law should be

changed to provide for a statute of limitations on suits for the closing of landfills." Lawrence, to defend against a suit or threatened suit, is "currently researching the coverage under an old liability insurance policy of 20 years ago."

Officials in three states made more sweeping proposals about RCRA that label the Subtitle D MSW regulations as unnecessarily demanding, and that urge federal restraint or even leaving the solid waste field to the states. Pittsburgh made exactly this point and underscored Pennsylvania's activism and sense of responsibility for the environment by observing that there were 122 environmental bills before the legislature on a recent date. Snohomish County referred to Washington's State Department of Ecology and the local enforcement agency as "very reasonable," which presumably implied understanding of local conditions, not laxness, and they condemned the new federal regulations for "going too far."

Clean Air Act (CAA). The Clean Air Act of 1955, as substantially amended in 1970, 1977, and 1990, is the primary statute that governs air emissions from stationary and mobile sources.

EPA Requirements. State implementation plans, in which local governments must participate, must provide for meeting National Ambient Air Quality Standards (NAAQS), National Emission Standards for Hazardous Air Pollutants (NESHAPs), and certain other standards. Local governments in "non-attainment areas" are required to undertake a number of corrective actions. Federal law also requires local governments to secure permits for certain facilities they operate such as asphalt plants, paint shops, and storage tanks.

Community Reactions. The Clean Air Act is commonly referred to in local government reports as a "major regulatory hit" or one of the four most burdensome federal mandates. Despite CAA's relative importance, our field visits elicited few comments or complaints about it, but there are reasons why it received so little attention. The city and county public works agencies we visited are involved and affected by CAA, but other departments of their same jurisdictions and regional bodies are assigned the primary or lead responsibilities. Consequently, the APWA Management Practices Manual, which structured our interviews, contains no chapter on air pollution, though some of its practices on subjects such as traffic engineering could have generated more comments on clean air.

Two strong complaints were voiced. Atlanta is in the early stages of preparing an "Advanced Traffic Management System." They have issued a request for proposals for traffic engineering studies of 70 intersections, and EPA is requiring a separate environmental impact statement (EIS) for each intersection, instead of one per corridor. Atlanta contends that EPA is feeling its way in this activity, which was opened up by the Intermodal Surface Transportation Efficiency Act of 1991 (ISTEA), and that it still has a great deal to learn about modern traffic engineering.

Asphalt plants. Asphalt plants, such as those operated by St. Paul and Pittsburgh, were the subject of the second strong complaint, in this case multi-faceted and anguished. St. Paul prepared for us a detailed and quite technical report on the myriad and, to date, unsolved serious problems they face in attempting to comply with the EPA and Minnesota requirements. These requirements, incidentally, pertain heavily to air emissions and therefore are discussed here, but they also pertain to scrubber water, an NPDES permit requirement, and other environmental matters. St. Paul's complaints included the following:

1. For their single plant, they are required to secure multiple, overlapping permits, including an air emissions permit, which includes scrubber water provisions; a separate NPDES scrubber water permit; several stormwater permits; and underground and above ground storage tank permits.

2. The air emissions guidelines recommend the use of flocculents in scrubber water, but the water quality enforcers have not approved the use of any flocculents or other chemicals.

3. Criteria for testing for allowable emission limits and for annual emission fees differ. "Quantities of each pollutant emitted are determined by emission test results and production data or by EPA factors. Using EPA factors may result in quantities much greater than actual and may even indicate quantities that exceed permit limits."

4. Permit limitations based on operating conditions at the time of testing unreasonably and rigidly limit the plant's production.

To place St. Paul's objections in context, they have operated this plant since 1962 under a Minnesota permit for many of those years, they believe they have been conscientious and effective in controlling pollution, and they concluded that all of the new requirements have done very little to protect the environment despite the high and unreasonable costs which they have borne.

An elected official in another field visit site, whose employer operates a number of asphalt plants, made a different charge. He said that the EPA requirements focus on some of the less important components of asphalt plant operations but ignore some of the more serious environmental problems associated with these plants.

Underground Storage Tanks (UST). Pursuant to Subtitle I of RCRA, EPA issued the Underground Storage Tank regulations in 1988. The UST program regulates tanks that store petroleum and hazardous substances. The goals of the program are to prevent, find, and correct leaks and spills and environmental damage they caused. EPA estimates that there are over 2 million regulated tanks at 700,000 facilities, and that about 40 percent of the tanks are leaking.[11] The UST program is administered primarily by the states, which must enact regulations no less stringent than the federal requirements and provide for adequate enforcement.

Local governments are affected by the UST program primarily in their capacities as owners of tanks, developers of real estate on which tanks have been located, and regulators of such developments by private parties.

Comments received from cities and counties during our field visits spanned the spectrum. A professional city engineer in Waukegan referred to the requirements on fuel tank removals as "overkill" and "bizarre," but Billings had replaced their underground tanks with new double-wall tanks and required controls, and they had no major disagreements with the requirements. An Atlanta division head questioned whether this mandate "makes sense" in terms of environmental benefits and the very high costs. He fulminated that the fines are unconscionable, even worse than digging out contaminated soil. A Pittsburgh public works official added that they have learned that they must be very careful in buying sites for new facilities because they "can easily get hit with $500,000 in clean-up costs."

Additional Environmental Mandates. Some studies other than ours that spanned more communities or the whole range of municipal functions, not just public works, refer to a handful of federal environmental mandates that we heard little about during our 12 field visits. Several of these mandates have shouldered local governments with heavy cost burdens, and all are worth mentioning to fill out our inventory of environmental mandates.

Lead-base paint abatement in federally-assisted housing is required by the Residential Lead-Based Paint Hazard Reduction Act of 1992. Complaints from cities center on the costs for equipment, testing, and reducing or abating the lead hazards. There apparently are some other lead paint mandates pertaining to items of infrastructure that did not come to our attention.

Asbestos abatement requirements for school districts are the subject of the Asbestos Hazard Emergency Response Act of 1986, and the EPA's NESHAP regulations establish worker protection requirements which apply to state and local government employees working on asbestos abatement projects. Legislation that would require asbestos management planning for public buildings was introduced in the Congress but has not been enacted. Cities mainly protest about the cost burden, and they claim that many studies have found that asbestos removal may increase the exposure risk rather than reducing it.

The Federal Insecticide, Fungicide and Rodenticide Act (FIFRA) and the Toxic Substances Control Act (TSCA) govern the manufacture and use of pesticides and chemical substances. These laws therefore affect a number of local government activities ranging from maintenance of parks and public buildings and grounds, to regulation of new developments, and to fire department operations.

The Endangered Species Act of 1973, which provides for the protection of species of fish, wildlife, and plants facing extinction, does not directly affect most communities, but there have been classic cases where the effects on a city's finances and economic development have been very damaging. Foster City spoke for many California communities by saying that mandatory reductions in water allocations are being made, in some cases "to meet the needs of an endangered fish species, the Delta Smelt" and..." there are 5-6 million people in the Bay area that need to be considered along with the Delta Smelt."

Personnel Mandates

Federal laws that regulate personnel or human resources administration in state and local governments have impacts on these governments that are second only to the environmental protection laws just discussed. These personnel laws pertain mainly to civil rights and anti-discrimination, health and safety in the workplace, and labor standards. Almost all of these mandates have been enacted during the past 25 years, and a significant number of the laws and amendments were first implemented during the past five years. Taken together, this group of federal personnel mandates has probably been the primary force that has transformed personnel administration in our cities, counties, and towns. As the following sections on the specific mandates will relate, local government officials are supportive of the central objectives of many, but not all, of these mandates, and they would like to see a number of changes made.

Civil Rights and Anti-Discrimination Acts. Local governments, in company with other employers, are covered by a collection of federal laws that uphold the right of Americans to equal employment opportunity regardless of race, color, religion, sex, national origin, age, or disability.

These laws, which are administered primarily by the Equal Employment Opportunity Commission (EEOC), include: Title VII of the Civil Rights Act of 1964, as amended; the Equal Pay Act of 1963; the Age Discrimination in Employment Act of 1967, as amended; the Equal Employment Opportunity Act of 1972; Section 501 of the Rehabilitation Act of 1973; the Americans with Disabilities Act of 1990; and the Civil Rights Act of 1991.

Some local governments or departments thereof are also required by federal court orders to prepare and implement affirmative action plans, but none of the public works departments we visited was operating under such a court mandate.

While the EEOC, the Department of Justice, and several other federal agencies are responsible for enforcing these laws, the EEOC accomplishes a good deal of its work through agreements with state and local Fair Employment Practices Agencies (FEPAs). These FEPAs, in fiscal year 1992, conducted about 43 percent of the investigations of discrimination charges.[12] Hence, in most of the cities and counties we visited and in larger local governments generally, discrimination charges are processed by units of those same local governments, and the EEOC monitors the investigation results to ensure compliance with EEOC standards.

The public works, personnel or human resources, and other local officials we interviewed freely told us about the problems, costs, and frustrations their jurisdictions have experienced under these laws. However, two striking findings emerged from the field visits. **First, no one expressed lack of support for the central objectives of these civil rights and anti-discrimination laws. Second, while local officials often take issue with decisions in particular discrimination cases and might propose procedural changes, no one suggested any fundamental reforms or even hinted that the human relations clock should be turned back.**

Public works directors and supervisors fully grant the right of an employee to contest personnel actions, but they are frustrated by charges they consider to be ill-founded and opportunistic, and by ultimate decisions they believe are miscarriages and "rip-offs" of their governments' resources. Public works departments, it should be noted, are especially susceptible to discrimination and reverse discrimination charges because they have relatively high percentages of minority employees. Each such case drains their time and resources. A supervisor in Waukegan, a city which is approximately one-third black, one-third Hispanic, and one-third non-Hispanic white, remarked that they automatically expect a discrimination charge whenever they discharge an employee. The Billings public works director observed that disciplinary actions, demotions, and discharges "are very difficult to carry through." And the human resources director in St. Paul was unwaveringly supportive of the federal anti-discrimination laws, but he granted that the burdens are heavy and suffuse every aspect of management.

Implicit in a number of the foregoing comments is the lament that local governments, which have historically been sharply criticized for tolerating poor performance by their employees, are now more in peril when they take disciplinary actions, especially against members of a protected class.

To appreciate how burdensome a discrimination case can be, it must be understood that the EEOC procedure is, in a sense, on top of, and duplicative of, the local government's grievance procedures. The applicable grievance procedure, established in a collective bargaining contract or by personnel rules, often provides for two appeals by successively higher managers after a decision at the first level, and then may go on to final and binding arbitration or some other final step involving a third party. Then, if the

grievant loses or is not satisfied with the decision, he or she can file a charge under the EEOC procedure and proceed through that multi-step journey that can culminate in a suit in federal court. Needless to say, the paperwork, expense, and demands on the managers and supervisors involved can be heavy and not uncommonly drag on for years.

The EEOC recordkeeping and reporting mandates have also drawn serious complaints from cities such as Atlanta. The amount of detail is considered excessive, and the cost of maintaining the statistics seems unreasonable to them. All local governments which have 100 or more employees now must submit a biennial report showing figures on full-time employees, other than full-time employees, and new hires classified into 11 race, ethnicity, and gender groups, eight job categories, and eight salary brackets. The form contains over 900 boxes. Just as you can imagine how an EEOC analyst might defend the form as being fully necessary to monitor a local government's status and progress, so it is easy to sympathize with a local official who views this mandate as overkill and who doubts that EEOC can and will make productive use of so much detail.

Americans with Disabilities Act: The Personnel Provisions. The Americans with Disabilities Act of 1990 (ADA) contains provisions on employment, which will be discussed here under personnel mandates, and provisions on public accommodations and public services, which will be the subject of a later section.

Title I of the ADA prohibits employment discrimination against "qualified individuals with disabilities." State and local governments, as "covered entities" under the act, cannot discriminate against people with disabilities in regard to any of their employment practices or terms, conditions, or privileges of employment. The act specifies numerous types of actions that may constitute discrimination.

ADA also requires employers to make "reasonable accommodations," meaning modifications or adjustments to a job or a work environment so that a person with a disability can perform that job and have the same rights and privileges as a non-disabled employee. Reasonable accommodations, for example, can include making the work site readily accessible and usable, restructuring the job, changing the work schedule, acquiring or modifying equipment, or appropriately modifying training programs. The employer is not required to make an accommodation that would impose an "undue hardship" on the operation.[13]

With reference to charges of discrimination brought under ADA, the preceding section of this report on civil rights and anti-discrimination acts and the observations and complaints of local government presented there are also applicable to ADA.

Most of the local governments that we visited are taking steps to revise their position specifications so as to prevent discrimination against qualified individuals with disabilities. In Billings, for example, consultants are in the process of revising all of their specifications, but some of the other jurisdictions are proceeding incrementally as needs emerge and time permits. It was also our impression that some are using this task as an opportunity to restructure jobs and qualifications so that as many jobs as possible will be open to disabled people, while others are only eliminating indefensible requirements that tend to exclude disabled people. No jurisdiction claimed to have completed this task.

The fact that this work is incomplete and that the objectives may not be fully shaken down and understood throughout the organization may explain some apprehensions expressed by public works

managers. The Billings public works director fears that ADA will cut back their flexibility in defining jobs and assigning people. As an example, they now require sign painters to drive snow plows when needed, but it seems probable that sign painter positions may be "saved for" or occupied by disabled individuals in the future. In Waukegan, they speculate that the common public works practice of assigning injured or aged employees to "light duty" or "alternative duty" jobs will be foreclosed when those lighter jobs are occupied permanently by disabled employees.

Concerns were also expressed about the ADA requirement that employers make reasonable accommodations so that a disabled employee can perform a particular job. The concern goes to the inevitable differences of opinion and difficult fact-finding and negotiations over what accommodations and levels of expense are necessary and reasonable. Some common requests are for dedicated parking spaces, ramps to work stations, special lighting, special headsets or assistive hearing devices, and special arrangements to assist disabled employees in the event of fire. The Lawrence city attorney was among those who fear adverse impacts as differences are worked out.

Some of the apprehensions about the various parts of the ADA personnel provisions, it seems clear, are attributable to the fact that the act is still relatively new and experience under it is limited.

Occupational Safety and Health Act (OSHA). This 1970 act was designed to create safer workplaces by preventing workplace accidents and work-related illnesses.

The Occupational Safety and Health Administration (OSHA) in the Department of Labor (DOL) is responsible for administering this act, but OSHA can delegate authority to enforce the act to state governments with approved plans.

State and local employees are exempt from the federal OSHA law, but a state must apply OSHA regulations to employees of that state and its local governments if it seeks approval of its state plan. As of March 1992, OSHA had approved plans for 21 states, and Connecticut and New York also had approved programs that covered only state and local workers.

Four of the states in which we conducted five of our field visits - Arizona, California, Minnesota, and Washington - had approved OSHA programs as of the March 1992 date, but the other seven states in which we conducted seven field visits did not.

The legal situation is further complicated by the fact that some states and local governments have enacted their own OSHA laws, and that federal laws other than OSHA apply OSHA requirements to local government employees engaged in specified activities such as hazardous material cleanups.

The comments on OSHA we received from public works directors and supervisors were overwhelmingly positive, but this finding is largely attributable to the fact that they have been allowed to proceed at their own pace and selectively. In most of the cities we visited, we were told that OSHA did not apply to them or that they were not sure whether it applied, and none recalled any direct contact with federal or state OSHA enforcement people or other direct pressures to comply. The Billings public works director said that they "hadn't come to grips with OSHA" and that safety was a neglected area he planned to address soon. Round Rock said that they had seen no sign of OSHA but the city had called them in to enforce certain provisions against contractors. (It is noteworthy that OSHA's activities

directed at the construction industry and contractors promote safety on most local government construction projects of any size because contractors are engaged to do the work.)

It follows that local public works people generally appreciate that OSHA has generated advances and awareness in the safety and health field. They, however, typically acquire knowledge of the required practices incrementally and often as a happenstance, and they implement OSHA requirements selectively. A Waukegan supervisor, for example, said that OSHA has been a positive development because it is a lever they have used to get the safety equipment they need. The Atlanta risk manager expressed appreciation by opining that OSHA will reduce their workers' compensation claims and expenses over time.

OSHA awareness currently seems to be concentrated on the confined space trenching and shoring requirements, which were mentioned most often. Public works officials know that these operations are dangerous and that they have too often been lax in implementing safe practices. Wakefield acknowledged that they have taken unnecessary risks even in the digging of graves in the town cemetery. In Pittsburgh, the assistant director, drawing on earlier personal experience and advice from a mining specialist friend, developed and conducted an aggressive training program, and later assisted some other jurisdictions in following suit.

While we heard nothing about it during our field visits, we have since learned from Alexandria, VA, that carrying out OSHA's Bloodborne Pathogens regulation has been the major new safety initiative in many cities and counties recently. Compliance was required by April 1993. This regulation aims to protect from the hepatitis B and HIV viruses any employees who may be exposed to blood or certain other bodily fluids. Sewer workers and solid waste collection and disposal workers are the primary groups within a typical public works department that are covered by this regulation. Their employer is required to carry out an education program, provide protective clothing, vaccinate all such workers against hepatitis B, and also provide post-exposure testing. These requirements entail considerable work and expense, but we doubt that many local officials would question their necessity or timeliness.

Nothing amounting to a serious complaint about OSHA was raised in any of our field visit interviews, but, again, this must be understood in light of the fact that local government has not felt compelled to comply with OSHA requirements across-the-board. The Arizona Department of Transportation, after expressing approval of the OSHA requirements to protect workers on open highways, did fault OSHA and/or EPA for not issuing standards on "SBS - Sick Building Syndrome" as yet. They are necessarily proceeding on their own and taking the risks that go with pre-regulation action. Foster City complained that OSHA imposes mandates with no flexibility to meet local conditions, but they cited no specific examples.

Fair Labor Standards Act (FLSA). This federal law, which is enforced by the Department of Labor's Wage and Hour Division, establishes minimum wage, overtime pay, employer recordkeeping, and child labor requirements. Generally, FLSA applies to employees of private sector enterprises, except for small firms engaged only in intrastate commerce, and to federal, state, and local government employees.

The history of FLSA with reference to its coverage of state and local government employees is important because it partially explains the resentment toward the act. The FLSA, as enacted in 1938, did not apply to public sector employees, but Congress in 1974 amended the act to bring those employees

within its scope. However, the Supreme Court in 1976, in National League of Cities vs. Usery, struck down the application of FLSA to state and local employees, but this decision was reversed by the Court's 1985 decision in Garcia vs. San Antonio Metropolitan Transit Authority.

Our field visits corroborated that FLSA is widely considered by local government officials and managers to be the most burdensome, costly, and excessively intrusive of the federal mandates affecting local government employees and personnel administration.

The attitudes of public works managers toward FLSA did vary, we found. Atlanta, Lawrence, and Pittsburgh, for example, reported that they experienced transition, training, and recordkeeping problems when the act was first applied to them, but they have learned to live with it. Others are not resigned; they cited recurring problems and they do resent this law for reasons that will be explained. It should be noted that public works departments are affected by many FLSA requirements but that public safety organizations - especially, fire, emergency medical services, and police - encounter more serious problems and choices. Hence, the difficulties and costs in the public safety area tended to dominate the thoughts and opinions on FLSA expressed by personnel directors, finance directors, and other general managers whose purviews spanned all of the city or county services.

Throughout the years of contention with the Department of Labor, state and local governments have asserted that the FLSA regulations, which were originally developed to fit private sector, especially industrial, working conditions and pay practices, have not been adapted to accommodate fairly their many and varied service operations. A city of 100,000 population will often have over 20 departments and other organizational units, will conduct well over 100 activities, and will employ people in many hundreds of job classifications. Many of its operations go around the clock or are set up to respond to frequent emergencies, so the city needs a number of different arrangements on hours of work and pay practices, often negotiated by collective bargaining. Local officials contend that FLSA has too often forced changes that were contrary to good practice, the public's interest and pocketbook, and even the preferences of employees.

The International City/County Management Association (ICMA), in association with the Washington law firm of Steptoe and Johnson, recently released FLSA: The Public Employer's Guide. The table of contents of this 542-page guide, shown on page 39, provides a fair understanding of the range of requirements and complexities a local government now confronts under FLSA.

Local Government's Loss of Flexibility. The first category of complaints about FLSA grieves over a local government's loss of flexibility in this age of employer-employee experimentation with liberating flextime, job sharing, work-at-home, and other deviations from conventional work schedules. In Foster City, FLSA was mentioned frequently and passionately as totally inappropriate to their local government. The city, in their words, "is forced to try to put a good local government personnel system into the constraints of FLSA... employees' opportunity to exercise initiative is limited (we have to tell the ambitious employees to stop working overtime or else we have to pay them)...it just doesn't fit a modern workplace." The personnel director in the Snohomish County Department of Public Works referred to "reduced flexibility ... lost freedom to act like professionals ... the place empties out at 5:00 ... ordinary employees are annoyed ... overall, negative."

FLSA: THE PUBLIC EMPLOYER'S GUIDE ABBREVIATED CONTENTS

Coverage of the FLSA
Independent Contractors
Trainees, Volunteers, Students, Patients, and Prisoners
Elected Officials, Legislative Staff

Exemptions
Executive, Administrative, Professional Employees
Employees of Seasonal Amusement or Recreational Establishments
Handicapped and Student Workers
Computer Professionals
Hospital Employees
Special Overtime Rules for Public Employees

Hours Worked
Waiting Time and On-Call Time
Rest, Meal, Sleep, and Travel Time
Pre-Shift and Post-Shift Activities
Education and Training Time
Medical Examinations
Civic and Charitable Work and Voting Time
Shift Trading and Joint Employment
Occasional Work for Same Employer
Mechanics of Recording Hours Worked

Minimum Wage Requirements
Permissible Forms of Wage Payments
The Relation Between Payroll Deductions and the FLSA's Minimum Wage Requirements

Compensatory Time
Comp Time Not Governed by the FLSA
The Calculation of Comp Time
Agreement of Understanding on Comp Time
Limits on Comp Time
When Employees Can Use Comp Time

Computation of Cash Overtime
Special Problems in Computing
Improper Pay Plans
Special Plans to Reduce Cash Overtime Liability

Special Overtime Exemptions for Public Safety Employees
Exemption for Public Safety Agencies with Fewer than Five Employees
Section 7(k): The Partial Overtime Exemption for Public Safety Agencies with Five of More Employees
Volunteer Fire and Police Personnel
Special Rules for Determining Compensable Hours of Work
Joint Employment
Recordkeeping Requirements

Recordkeeping Requirements
Compensatory Time
Public Safety Employees
Executive, Administrative, and Professional Employees
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Union Employees
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Students and Handicapped Workers
Required Notices
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Antidiscrimination Provisions
Rules
Charges Under the FLSA

Enforcement of the FLSA
Employees Seeking Back Wages and Overtime
Department of Labor Actions
Criminal and Civil Penalties
Statute of Limitations
Employer Defenses to Charges
Burden of Proof
Settlement of FLSA Claims

As is apparent, the foregoing complaints about loss of flexibility pertain mainly to work schedules and the payment of overtime. Personnel directors talk about the need to be constantly vigilant to prevent practices that could build into a large back pay liability. The Snohomish personnel director and others reported that they must frequently remind managers and employees about seemingly acceptable practices that will run afoul of FLSA and create a potential liability. A work schedule calling for 48 hours of work one week and 32 the next could not be hazarded, the Alexandria, VA personnel director told us, because an overtime pay claim might result.

Payment of Overtime to Professional Employees. The second category or sub-category of complaints pertains to the payment of overtime at time-and-one-half for executive, administrative, and professional employees. Under FLSA regulations issued in 1987, such employees are exempt from the overtime pay requirement, but this exemption is not a blanket exemption. Rather, the exemption is subject to a "salary basis test" and a "duties test," which many state and local officials consider to be infuriating and an example of serious, costly overreach by the federal government. These controversies have worn on for years now with the Department of Labor and in the courts. A "1993 Legislative Priority Fact Sheet," issued by the National Governors' Association (NGA), National Conference of State Legislators (NCSL), U.S. Conference of Mayors (USCM), National League of Cities (NLC), National Association of Counties (NACo), and International City/County Management Association (ICMA), lays out their grievances and recommendations, and describes legislation pending in the House and Senate that would correct part of the problem as they see it. The complaints and recommendations set forth are in full accord with what we heard from personnel and public works managers during the field visits.

It is neither necessary nor possible for purposes of this report to cover comprehensively the problems local officials cite with reference to the FLSA overtime regulations for managerial employees. However, the degree of prescription and reasons local government officials object become apparent from just one part of two recent federal court decisions. In those decisions, the court expanded the list of practices that nullify the overtime exemption for salaried employees. The list includes: requiring employees to use annual or sick leave for absences of less than a full work day; requiring time sheets that show hours worked each day; requiring employees to work according to a regular work schedule; providing compensatory time off for overtime work; paying employees at their hourly rate of pay for overtime work; and subjecting employees to disciplinary actions.

The last chapter on this issue, however, has not been written; the controversy continues in the courts and Congress.

FLSA's Effects on Collective Bargaining. A final set of complaints relates to ways in which FLSA preempts or interacts with collective bargaining. Most of the public works departments we visited were fully unionized and operate under signed collective bargaining contracts. The Billings public works director noted that the FLSA requirements limit their collective bargaining flexibility, meaning that they are prohibited from adopting certain arrangements and practices that the city and the union would prefer. He was also voicing a standard complaint of local government management to the effect that collective bargaining is a trading process, and the city is disadvantaged when the federal or state governments, in laws such as FLSA, gives away their trading material.

Changes in FLSA Desired by Local Government. So what would the local officials we interviewed and the state and local public interest groups that represent them in Washington like to see happen with reference to FLSA? Two decades of conflict, attempts to change the law and ease the

regulations, and a series of lawsuits provide the basis for an answer to this question. First, they would hope to prevail in more of their requirement-by-requirement wrestles so as to gain the flexibility to adapt to local conditions and preferences. But, second, some nourish the hope that the Supreme Court will one day reverse the Garcia decision and return them to something resembling the NLC vs. Usery provisions, hopefully clarified and perhaps expanded. FLSA then would not apply to certain general government and other categories of state and local employees, including those in the public works departments we visited. Wages, hours, and working conditions would then be in the domain of state legislatures, local governing bodies, collective bargaining, and other forms of employer-employee negotiation. Local government officials argue that this arrangement would produce better results, and that they are modern, humane, are subjected to the full range of public and employee pressures, and are much closer to the problem. This position has long attracted substantial support. It bears remembering that Congress did not apply FLSA to state and local governments until 1974, and that both the 1976 NLC and 1985 Garcia cases were decided by five-to-four votes.

Commercial Motor Vehicle Safety Act. Under this 1986 act, state and local governments have been required to test and license operators of "commercial motor vehicles," which in public works departments has mainly meant motor vehicles with a gross weight of 26,001 pounds or more. The deadline for compliance was April 1992.

To qualify for a Commercial Driver's License (CDL), an operator must meet certain physical and medical requirements, and pass the prescribed knowledge and skills tests. Grand- fathering applied to the driving test, but all operators were required to take a written knowledge test or a substitute oral test. Difficulties arose in public works departments because, typically, some of their drivers were illiterate. The different departments we visited, for reasons not clear to us, dealt with this circumstance in varying ways. In Pittsburgh, for example, the CDL procedure was very disruptive because they were required to take more than 30 drivers off the trucks until they could be taught to read, whereas some other departments allowed them to continue driving while they attended classes.

Once a city or county has established its procedures and its drivers have qualified for their CDLs, satisfying this law will still entail some work and expense but should become routine. However, Billings expressed the lasting complaint with these words: "Thus, the provision of public works services is made many times more difficult, and/or expensive, because of the commercial drivers license requirements and the limitations imposed on the types of vehicles any driver can operate." Some public works directors almost certainly believe that this act, which seems directed mainly at over-the-road trucking, should not have applied to their operations.

Drug-Free Workplace Act. State and local governments, as federal grant recipients, are required by this 1988 act to undertake certain steps to rid their work sites of illegal drugs. The requirements are quite simple. Employers must establish a drug-free awareness program; must give each employee written notice of prohibited activities involving drugs in the workplace; must, as a condition of employment, require employees to report within five days if they are arrested, indicted, or convicted under a criminal drug statute; and must promptly impose a sanction on any convicted employee or require his satisfactory participation in a rehabilitation program. No drug testing of employees is required.

The cities and counties we visited reported no objections to the act or significant problems in implementing it. Several did express apprehension as to whether the federal government will eventually

require drug testing for certain work forces, as the Departments of Defense and Transportation already do with reference to certain critical or sensitive positions.

Miscellaneous Mandates

The preceding sections have dealt with environmental and personnel mandates. This section deals with the remaining federal mandates that affect local public works operations in some way or another. They comprise a truly miscellaneous group with no links between them.

Americans with Disabilities Act: The Public Accommodations and Public Services Provisions. A thumbnail description of ADA and some comments on its Title I personnel provisions were presented earlier under "Personnel Mandates."

State and local governments are also regulated by Title II of ADA and must comply with the related Section 504 of the Rehabilitation Act of 1973. Each service, program, or activity must be operated so that, when viewed in its entirety, it is readily accessible to and usable by individuals with disabilities, unless it would result in a fundamental alteration in the nature of the service, program, or activity or in undue financial and administrative burdens. A "Transition Plan," identifying the barriers, type of renovation, and approximate time of the barrier removal was required by July 1992. The cost impact on many communities will be especially severe during the next several years if they are forced to proceed with ADA projects on a crash basis.

The attentions of public works officials are concentrated on the sidewalk ramp and public buildings requirements. Local officials we talked to seemed to support giving high priority to access improvements. However, they complain, sometimes bitterly, about the magnitude of these expenditures to be incurred when their resources are severely strained and there is no federal participation. Projects that do not make sense, even in terms of improving access for disabled people, are especially resented, and there is widespread apprehension that the federal government and allied local organizations will insist on unreasonably accelerated retrofits.

Waukegan is spending about $3 million on sidewalk ramps, but the city can only afford to appropriate $40,000 per year for sidewalk replacements despite an endless backlog of needs and 50 percent contributions required of abutting property owners. L.A. County is being required to ramp intersections for wheelchairs where the sidewalks are not paved.

Another category of complaints stems from the extreme difficulties encountered and the high cost when a local government must bring antiquated buildings into compliance with more than 200 ADA requirements. Wakefield's estimate of the cost to retrofit its small, old, probably historic town hall is $900,000, but the chairman of the board of selectmen, who is in the construction business, harbors the hope that they can hold the cost to $300,000 by creating an all-service center on the first floor.

Federal Emergency Management Agency (FEMA) Requirements. Most of the jurisdictions we visited volunteered complaints about FEMA based on their experience with that agency in connection with disasters or items of infrastructure.

The paperwork and reporting required by FEMA of a local government to secure federal assistance came in for scathing and quite uniform criticisms. In L.A. County, a finance and administration official

reported, "They just finished compiling and submitting boxes of data required to substantiate claims from flood losses of 1983." He "believes the return realized by the County for all the paperwork is minimal." A Snohomish County official said they "have the documentation process figured out," but one of their council members complained that the difficulty for small businesses and individuals to make their claims is "not worth the paperwork." Wakefield, having suffered hurricane damage several years ago, said their town wasn't told by FEMA what to expect and "the paperwork was ridiculous."

Three complaints about items of infrastructure all made the same point: FEMA is inflexible when it comes to adapting to local needs or "best solutions." In Pittsburgh, FEMA wants to install an I-flow flood warning system. A more effective system exists but its cost exceeds FEMA's cap. FEMA therefore will not authorize the more effective system even if Pittsburgh pays the excess cost. In Snohomish County, after a 1990 flood ripped out some dikes, the county proposed an alternative water retention system which would work better and be cheaper. FEMA said no. And, in Foster City, they have had a major problem with FEMA over what they consider an arbitrary decision requiring a very expensive raising of the levee height.

Atlanta's quite different complaint was that FEMA's flood control regulations are not strict enough. FEMA should require that the 100-year flood line, which determines where development is permitted, should be revised as development accumulates and runoffs increase, they said.

Round Rock's comment on FEMA was less specific. They said merely, "It's a federal case to get anything modified -- they're impossible."

Davis-Bacon Act. The Davis-Bacon Act of 1931, the grandfather of all federal mandates, requires that employees on federal public works projects receive pay equal to the wages prevailing for similar classes of employees in that geographic region. State and local projects financed in part by federal grants are covered by the law. While the method for determining "prevailing wages" has been revised from time to time, the wage rates set are usually equal or close to union rates.

Davis-Bacon has little or no effect in most of the communities we visited because state and even local laws are at least as extensive as the federal law. California, Minnesota, Texas, Massachusetts, and probably some of the other states we visited have such state laws. Atlanta has a local ordinance that adopts the Davis-Bacon Act. The state laws often differ from Davis-Bacon on details such as the minimum contract that is covered, but their major effect in some states is to extend the prevailing wage requirement to state and even local government contracts. In Wakefield, we were told that the federal law was of little or no consequence because Massachusetts law requires prevailing wages on all town contracts. In Pittsburgh, the overriding fact seemed to be: "A council member who is very pro-labor pushes for the highest possible wage requirement on each contract."

Still, in some of the field visit communities, complaints almost as venerable as the Davis-Bacon law were expressed again. Lawrence chafes about Davis-Bacon raising their costs substantially because they are officially in the Kansas City labor market where wage rates are much higher. Lawrence is 50 miles from Kansas City. A Wakefield party noted, "Contractors don't like it because it causes trouble when they pay some employees at one rate and some at another."

Federal Communications Commission (FCC) Requirements on Splitting Radio Frequencies. Billings, the only isolated Western city we visited, made this objection to the FCC radio frequency splitting requirement.

> In radio communications for the Public Works Department we have identified that even though our existing system is working very well, it will be necessary to expend a large sum of money because the Federal Communications Commission has mandated the "splitting" of the radio frequencies available. Thus, our existing equipment will not meet the new Federal guidelines in 4 or 5 years. This federal action was brought about because of a shortage of radio frequencies on both the east and west coast.

Their opinions, as expressed to us, were stronger and unqualified. Frequency splitting and the related overhaul of their communications center would cost them a lot of money, and the expenditure is quite unnecessary. The FCC requirements are responsive to needs in highly populated areas. States such as Montana and Wyoming should be exempted, they said flatly.

Disadvantaged Business Enterprise Laws. The Surface Transportation and Uniform Relocation Assistance Act of 1982 requires that not less than 10 percent of all surface transportation contracts be awarded to small businesses owned and operated by socially and economically disadvantaged individuals. Many states have laws of this type where disadvantage is established by race, gender, or disability. The local officials we interviewed in several cases referred to features of their local ordinances and problems confronted, but exhibited little, if any, awareness of federal or state laws in this field. This subject is included here mainly because there were several mentions of ongoing or completed efforts to bring their law and practices into conformity with the 1989 U.S. Supreme Court decision in City of Richmond v. J.A. Croson.

SUMMARY OF FINDINGS FROM THE FIELD VISITS

The observations of local government officials on some 20 specific federal mandates, which were presented in the preceding long section, combine to form their general body of opinion on mandates. Certain themes and complaints cut across the federal programs at issue.

Here we summarize our general findings from the field visits in two ways. In a later section to follow this one, we will assemble our impressions on the types of changes the local officials we interviewed would support. However, the field visits were focused on problems and complaints, so we begin with this list of general findings which are mostly critical:

1. **No federal mandate is an absolute roadblock to implementing any of the more than 400 public works management practices in the APWA manual. That perception should be laid to rest.** However, federal mandates have expanded the missions of local public works agencies, complicated their service operations and construction projects, shifted heavy costs to their local governments, and substituted federal priorities for local priorities in the allocation of resources.

2. Local governments' overarching and foremost grievance about federal mandates is that they are imposing heavy financial burdens on them when their finances are already severely strained, and that federal grants are paying a decreasing share of the cost.

3. As federal mandates have preempted local resources, infrastructure construction and maintenance are the expenditures cut most often by local governments.

4. The environmental protection mandates on clean water, safe drinking water, resource conservation and recovery, clean air, and the ADA public accommodations and public services requirements are the "heaviest regulatory hits" in terms of the costs imposed on local governments.

5. Environmental protection mandates on asbestos, lead paint abatement, underground storage tanks, and endangered species also generate heavy costs in many communities.

6 Notwithstanding the costs and other burdens on them, local governments generally support the goals of the environmental protection and ADA programs. They, however, are very critical of many aspects of the federal strategies, priorities, timetables, processes, and the administration and enforcement of these programs.

7. Local criticisms of the environmental programs are frequently aimed at federal standards which are considered to be unrealistically high or for which the scientific underpinning is questionable, and at the lack of flexibility to adapt their construction and operational plans to local conditions.

8. In contrast to the environmental programs whose goals are generally supported by local officials, two other federal laws -- FLSA and the Davis-Bacon Act -- are considered by some local officials to be unnecessary, harmful, and examples of excessive intrusion by the federal government which drive up their costs.

9. For most local communities, the lion's share of the costs they would have to incur to comply with the current federal environmental mandates and ADA lie in the future. They cannot foresee where the resources will come from under current revenue and grant-in-aid systems to finance these federally-mandated costs while simultaneously meeting local infrastructure, police protection, social service, education, and other pressing community service needs.

10. The striking lack of information and widespread confusion about many of the federal mandates at the local government level underscores the need for expanded and improved communications and training activities by federal and state agencies, and by state and local public interest and professional organizations. These needs are especially acute in the smaller cities, counties, and towns.

CHANGES IN FEDERAL MANDATES DESIRED BY LOCAL GOVERNMENTS

Foregoing sections of this report have dwelled on local governments' complaints and problems pertaining to federal mandates. We shift now to the positive, prescriptive side, to what local officials believe should be done to improve the system. Actually, the format and objectives of our field visit interviews were such that no local official laid out a comprehensive vision or set of recommendations concerning federal mandates or federal-state-local relations. However, a composite picture emerges from proposals they made on specific federal programs and mandates, and from themes expressed during many

of the interviews. Attention centered, of course, on the environmental protection programs because that is where so large a portion of their problems and cost burdens are.

The following positions stand out as most important and close to unanimously held by the public works and other local officials we interviewed:

1. **Confidence-inspiring science and risk assessment.** *When the federal or state governments establish mandates, they need to be much more certain about what the threats to the environment and public health are, and the relative risks. Careful, peer-reviewed scientific determinations must be reached before very expensive courses of action are mandated. Because each increment of progress in cleaning up pollutants and contaminants is progressively more expensive and the cost curve becomes very steep at some point, they should also produce more reliable information on the health and cost effects of each increment.*

2. **Integrated approach to the environment.** *Federal programs should promote consideration of the environment as a whole. The present 15 or more separate air, water, drinking water, and other programs work against understanding the interconnected problems, and invariably result in spending scarce resources on less important problems while more serious needs are neglected.*

3. **A workable program for each community.** *Closely related to the previous point is the need for an arrangement for communities above a certain size to develop workable programs that would analyze their environmental risks and obligations to the environment within and beyond their borders, establish priorities, and design multiple-year spending plans. Such workable programs offer the best hope for badly needed flexibility to adapt to local needs and conditions. Approval of such workable programs would, of course, be the passkey to state and federal financial assistance.*

4. **Improved state administration.** *There are strong reasons why state administration of environmental programs is preferable to federal administration, but some of the states need to reorganize and develop additional competence so as to carry out their many civic education, training, planning, permitting, grant administration, and other roles effectively and without dispiriting delays.*

5. **Equitable, stable federal-state-local funding.** *Legal and historical considerations aside, each level of government has a clear interest in cleaning up and protecting the environment, and each level shares in the blame for past neglect. Each level also is under budgetary stress. However, local governments' revenue-raising powers are the most constrained, and they should not have to take up the slack if other levels reduce resources. Therefore, the premier need is commitments by the federal and state governments to equitable, stable cost shares calibrated to certain rates of progress.*

The purpose of this report is primarily to report what we heard and learned from local officials during the field visits. It was not to then add to the abundant analyses of the federal programs and related mandates involved. What is possible is to take note of several current, prominent efforts and recent

publications that address the same problems that local governments highlight. From this may emerge a sense of how much agreement and commonality of interest exists.

We begin with the National Performance Review, which contains a surprisingly large number of recommendations that speak directly to local government's expressed needs.

NATIONAL PERFORMANCE REVIEW RECOMMENDATIONS

President Clinton's National Performance Review (NPR), an effort led by Vice President Gore, "reflects a government-wide determination to 'reinvent' government - to create a government that works better and costs less." They examined federal agencies and issues that cut across agencies such as personnel, procurement, and budget policies. In their search for new practices and cost savings, they listened to citizens and experts from every sector, and they "learned from state and local leaders who have put many of these ideas into practice."[14]

Implementation of the following NPR recommendations on the domestic grant programs, on regulation, and on EPA would represent very substantial progress toward satisfying local government's needs:

Strengthening the Partnership in Intergovernmental Service Delivery:

Action: The President should issue a directive limiting the use of unfunded mandates by the administration. (FSLO2.2)

This directive would also order federal agencies to review their existing regulations and reduce the number of existing mandates.

Action: Consolidate 55 categorical grant programs with funding of $12.9 billion into six broad "flexibility grants" - in job training, education, water quality, defense conversion, environmental management, and motor carrier safety. (FSLO1.2)

This proposal was developed by the National Governors' Association (NGA) and the National Conference of State Legislatures (NCSL). Two of the proposed flexibility grants encompass almost all of the environmental programs administered by the public works departments we visited. A Water Quality Flexibility Grant would consolidate six programs for which the fiscal year 1993 appropriations totaled $2.662 billion. An Air and Land Environmental Management Flexibility Grant would consolidate ten programs for which the fiscal year 1993 appropriations were $392 million. States would have flexibility to allocate funds within each grant so as to reflect the environmental conditions and needs within the state.

Action: Give all cabinet secretaries and agency heads authority to grant states and localities selective waivers from federal regulations or mandates. (FSLO2.1)

As noted in Appendix F, the text supporting this recommendation excludes labor standards, and non-discrimination and affirmative action laws and regulations. It also excludes environmental laws and regulations. The exact language is "Waiver legislation should grant

broad waiver authority, with the exception of fair housing, non-discrimination, environmental, and labor standards." (underscoring supplied).

Improving Regulatory Systems:

Action: Encourage more innovative approaches to regulation. (REGO2)

"Lessons learned from states and other countries may help the government change from process-oriented regulations to performance goals and outcomes, with more state and local latitude...."[15] (GAO comment)

Action: Rank risks and engage in "anticipatory" regulatory planning. (REGO7)

Rank the seriousness of environmental, health or safety risks and develop anticipatory approaches to regulatory problems.

Action: Encourage consensus-based rulemaking. (REGO3)

Action: Encourage alternative dispute resolution when enforcing regulations. (REGO6)

NPR Recommendations for EPA:

"Appropriately, many of the recommendations implicitly acknowledge the limitations of traditional 'command and control' regulatory schemes and propose alternative approaches (e.g., economic and market-based approaches) for dealing with seemingly intractable problems in environmental management."[16] (GAO comment)

Action: Improve environmental protection through increased flexibility for local government. (EPA 01)

EPA should amend the regulations it determines are most troublesome for local governments.... The goal is to provide alternative, flexible approaches to meeting environmental mandates.

Action: Shift EPA's emphasis toward pollution prevention and away from pollution control. (EPA 03)

Action: Promote the use of economic and market-based approaches to reduce water pollution. (EPA 04)

Action: Establish measurable goals, performance standards, and strategic planning within EPA. (EPA 07)

EPA should draft measurable environmental goals for the range of problems the United States faces. The agency should also draft internal goals to provide direction for assessing and redirecting existing EPA strategies.

Action: Promote quality science for quality decisions. (EPA 10)

RECOMMENDATIONS FROM OTHER U.S. GOVERNMENT AND NATIONAL EVALUATORS

Like President Clinton's NPR, there are other federal agencies and national evaluators that have recently made recommendations on the federal programs and mandates criticized by the local officials we interviewed. We will outline the pertinent major recommendations from a select group that, taken together, has covered the issues quite comprehensively.

The General Accounting Office (GAO) has taken positions on these issues in dozens of reports on the environmental protection programs and other federal mandates. The Advisory Commission on Intergovernmental Relations (ACIR), as a part of a larger effort by the Corps of Engineers Institute for Water Resources (IWR), has undertaken research and convened six task forces for the purpose of developing a Federal Infrastructure Strategy. The Center for Resource Economics (CRE) in 1993 prepared the first in a series of yearly reports that evaluates EPA's major programs, and assesses the funding and resources the agency needs to implement the nation's environmental laws. And Dr. DeWitt John, Director of the Center for Competitive, Sustainable Economics at NAPA, wrote Civic Environmentalism: Alternatives to Regulation in States and Communities, a book based on pathbreaking environmental initiatives in Iowa, the Florida Everglades, and Colorado.

These national evaluators have made the following pertinent, important recommendations or suggested promising approaches under these five headings:

Integration of Federal Programs:

-- "One possible solution ... might be a single, unified environmental statute ... that better reflects the cross-cutting nature of environmental problems and offers greater flexibility in response to changing conditions and knowledge."[17] (GAO)

-- "Consider an appropriate structure for the new department. The commission might, for example, consider whether to reorganize the department entirely by function, so that instead of having program offices dedicated to environmental media, as is now the case, the department might have a single office of regulatory development, an office of enforcement, an office of science and research, and so on. Alternatively, the department might be organized by pollution sectors--industry, transportation, and municipalities, for example--or by geographic regions.[18] (GAO)

Improved Scientific Research, Risk Assessment, and Decision-support Tools:

-- "In order to assess environmental risks and address those that are most likely to cause the greatest harm, EPA needs to have better data on acute and chronic health effects." ... "(S)ome of the agency's highest priorities--pollution prevention, management for minimizing risks across multiple environmental threats, and coordinated enforcement--depend on using data in a much more integrated way."[19] (GAO)

-- "EPA's budget and staff resources are not allocated on the basis of risk. Consequently, more than 80 percent of EPA's resources are spent on pollutants considered to be relatively low risk by federal scientists. To correct this disparity between environmental problems and agency resources, EPA should develop accurate risk assessments and environmental outcome measurements, and then use the results to establish funding priorities that allocate resources to the greatest environmental dangers."[20] (CRE)

-- "This statement proposes ... (1) expanding the use of benefit-cost analysis by agencies that deal with federal, federally assisted, or federally regulated infrastructure; (2) improving the accuracy and credibility of benefit-cost analyses ...; and (3) promoting greater consistency in the use of this analytical method, thus enhancing its role in comparisons of diverse programs, projects, and regulations."[21] (ACIR-Corps of Engineers Task Force on Benefit-Cost Analysis)

-- Development of scientific and monitoring results or outcomes measures to replace or supplement activity-based measures for use in judging success of the environmental programs. The information system that EPA uses to monitor its performance generally reflects what EPA does, not what it achieves.[22]

Making Federal Regulation more Effective, Efficient, and Equitable:

-- "Congress and the federal agencies should adhere to the following principles when enacting or promulgating new regulations or revising existing statutes and rules:

1. Effective regulation in an intergovernmental framework requires mutual cooperation and genuine partnership among the federal, state, and local governments.

2. Limited resources at all levels of government require that Congress and the federal agencies clearly define their regulatory objectives, establish appropriate standards of performance, and seek the most efficient and scientifically sound methods of achieving their regulatory goals.

3. Congress should design, and agencies should administer, regulatory programs in ways that promote effective, flexible implementation and continuous improvement in achieving required outcomes. Among other things, this requires recognizing differences in state and local institutional structures, resources, conditions, and servicing responsibilities, and opportunities to offer incentives and use market mechanisms to help achieve required outcomes.

4. Citizens have a right to be treated fairly and equitably in the regulatory process. Protecting this right requires careful balancing between uniform protection of fundamental rights, deference to local democratic processes, public participation and accountability in the regulatory process, and freedom from unreasonable regulatory burdens."[23] (ACIR-Corps of Engineers Task Force on Federal Regulation)

Enlarging the Roles and Strengthening the Capacity of the States:

-- States "can be more than implementers of federal regulations and more than laboratories for testing ideas .... Specifically, states can design their own ongoing initiatives, focusing their efforts on non-regulatory tools like education, technical assistance, grants and other economic incentives ... to address the unfinished agenda of protecting endangered ecosystems, preventing pollution, and reducing nonpoint pollution."[24] (DeWitt John, NAPA)

-- "In early 1993, a joint EPA-state task force recommended several additional steps that could be taken to build state capacity for effective environmental management. The task force called for amending federal environmental statutes to say that EPA's mission includes building such capacity. Other recommendations included:

- Joint setting of goals and priorities by EPA and the states;
- Legal changes to allow state environmental officials to participate throughout the process of developing EPA regulations;
- State participation in the EPA budget process;
- Joint training by EPA and the states;
- Efforts to build state capacity for managing environmental data;
- More flexible EPA grants to the states."[25] (DeWitt John, NAPA)

Addressing Local Government Financing Needs:

-- "EPA, NGA, and others have all highlighted the need for the federal government to assist state and local governments in finding the additional funds necessary for local governments to implement federal environmental mandates....

"We therefore recommend that the Administrator, EPA, report to the Congress on (1) the nature of the costs these localities face in paying for federal environmental requirements, (2) the availability of financing from nonfederal sources for these localities, (3) their expected funding shortfalls after financing from nonfederal source, and (4) alternatives to reducing these shortfalls, including possible legislative or regulatory relief. Recognizing that the federal role in assisting small communities goes beyond EPA's responsibilities, EPA should work with these other agencies to make sure that federal assistance is properly coordinated and targeted."[26] (GAO)

CONCLUDING NOTE ON PROSPECTS FOR CHANGE

The recommendations emanating from the NPR and other national evaluators evidence much more consensus with state and local governments than would have existed, say, a decade ago. This drawing together presumably can be largely attributed to growing realizations that environmental progress has been disappointingly slow, and that the hard financial pinch calls for stronger efforts to devise more cost-effective approaches.

The NAPA project team believes that this growing consensus can be used by all parties to accelerate progress in developing mutually agreed upon programs and procedures for reaching common objectives. Therefore:

The NAPA project team endorses the proposals of local government officials calling for more confidence-inspiring science and risk assessment, an integrated approach to the environment, a workable program for each community, improved state administration, and equitable, stable federal-state-local funding.

The NAPA project team also supports the NPR, GAO, ACIR, and CRE recommendations set forth in the previous section of this chapter, and concludes that implementation of these recommendations would go a long way toward meeting local government's needs.

Obviously, there is opposition to the changes discussed, though that side of the subject has not been examined in this report.

Fortuitously, an overview on the obstacles and opposition to "reinventing the federal system," and some encouraging news on this front, has just become available in the form of a report on a recent conference. This report speaks directly to the intergovernmental relations and federal mandates problems discussed herein.

This one-day conference, attended by a group of high-level local, state, and federal officials, was held in conjunction with the presentations of awards for Innovations in State and Local Government, sponsored by the Ford Foundation and administered by the John F. Kennedy School of Government.[27] Their purpose was to explore these fundamental questions:

How can we move away from "competitive" federalism to "innovative" federalism?

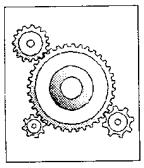
How can we move from the current situation in which states and localities fight over scarce federal funds for rule-bound programs to a relationship in which the federal government encourages states and localities to develop flexible, creative responses to the vast, varying and rapidly changing needs of their different jurisdictions?

Subsequent discussions endorsed, among other things, "bottom-up" discussion of goals and priorities by the three levels of government; state and local needs and priorities figuring significantly in the design of federal programs; and outcomes-based federal policies that outline goals but leave states and localities leeway to customize ways to achieve the goals. This is very much in accord with the proposals and hopes of the local officials we interviewed and the recommendations of national evaluators cited earlier.

Perhaps most heartening was a report that EPA has been funding some statewide and, more recently, some local projects to measure health risks within their jurisdictions. The immediate purpose of these comparative risk-analysis projects is to enhance environmental management, but the question naturally arose as to whether and when EPA will allow reallocation of moneys on the basis of the comparative risk findings. Colorado, Louisiana, Michigan, Vermont, and Washington, and the cities of Atlanta, GA, Jackson, MS, and Columbus, OH, are the governments currently proceeding with these analyses.[28]

The conference participants were perceptive and insightful in identifying the problems and obstacles to change, but, fairly enough, they pointed to well-known, long-standing tensions and failures in American intergovernmental relations. Flexibility/accountability tensions are the crux of the matter when it comes to granting state and local governments more flexibility. Trust is lacking and effective communication between the levels is far short of what is needed. Federal executive branch officials may be favorable toward new kinds of relationships with states and localities, but persuading Congress to loosen the regulatory reins is a different ballgame. And states and localities are not making their points effectively to federal agencies and Congress; in order to be heard, they must become much more active.

As the current Congress has considered amendments to the Clean Water Act and Safe Drinking Water Act and other major environmental legislation, observers are reminded that change comes hard in this intergovernmental public policy arena. Divisions between contending interests are deep, debates are often heated and even bitter, and state and local frustrations are manifest. However, as this report has evidenced, there are, on both sides of these issues, respected organizations and voices suggesting ways to progress by making feasible changes in funding, by removing unworkable requirements, and - more fundamentally - by finding better ways to set priorities and allow flexibility. There is therefore more room for optimism now than at any time in this era of federal mandating.



III. IMPROVING THE MANAGEMENT AND PERFORMANCE OF PUBLIC WORKS ORGANIZATIONS IN LOCAL GOVERNMENTS

It is time to radically change the way government operates--to shift from top-down bureaucracy to entrepreneurial government that empowers citizens and communities to change our country from the bottom up.[29]

--National Performance Review Report, September 1993

While the primary focus of the NAPA study has been to analyze the impact of federal mandates on local governments and to suggest modifications, it is clear that the ultimate results depend to a large measure upon the commitment and competence of local governments.

Cities and counties have their own priorities as chosen by the local political process, and the competition for tightly restricted local resources cannot forever be decided in favor of federally dictated priorities, no matter how strong the mandate or how threatening the federal sanctions. They are having great difficulty raising the resources to meet the demands of local citizens for such traditional and essential services as police, fire and streets and now must shoulder most of the costs of environmental protection. The EPA has estimated that state and local governments spent 82 percent of all the public spending on environmental programs in 1986 and that this will increase to 92 percent by the year 2000.

Most of the increased public costs will be passed on to rate payers and local taxpayers. EPA estimates that in constant dollars the annual cost of environmental programs per household will increase 54 percent from $419 to $647 (between 1987 and 2000). The increases will be particularly dramatic in small communities, where economies of scale are elusive. In constant dollars per household, charges in those locales will more than double, rising from $670 to $1,580. [30]

In order for these kinds of increases to be absorbed by the total federal system, ranging from the users to the federal government, there must be dramatic and wrenching changes in all parts of the system.

LOCAL PUBLIC WORKS AGENCIES VITAL

This chapter will focus on one of the most fundamental elements in the system, the public works organizations in local government, the kinds of agencies analyzed in depth in this study, varying in size and location from Los Angeles County, with a population of thirteen million, to Pittsburgh with a population of 375,000 to Wakefield, Massachusetts, with a population of 24,000. They are "big business" in every city and county. They are vital to their economies as the constructors, operators and

maintainers of the arteries of the community: streets, water supply, drainage, sanitary sewage, and waste disposal. Out there, "where the rubber hits the road," how do they cope, how must they adapt, what help can be brought to bear? How can the management of these organizations continue to meet the current demands and improve performance enough to meet the demands of the future?

The NAPA project team found, in fact, that most of the impediments to improved management of the public works agencies were within the power of the local governments to ameliorate, although many are caused or exacerbated by federal mandates that preempt limited local resources. As found in the site visits and questionnaires, the impediments are predominantly specific to the local government jurisdiction: 381, or 72.6 percent, of the 525 total impediments cited in the twelve jurisdictions. As Table 2 illustrates these impediments, at least 30 percent are attributable to lack of resources. The next most frequently mentioned impediment, at 17.5 percent of the total, was "Problems cooperating or communicating with other departments, agencies or jurisdictions."[31]

TABLE 2

LOCAL/ADMINISTRATIVE IMPEDIMENTS TO COMPLIANCE WITH THE MANAGEMENT PRACTICES

Local/Administrative Impediments	Number of Impediments	Percent of Reported Impediments
Funding & budget constraints	114	30.0
Shortage of personnel	20	4.9
Time/scheduling constraints	19	4.9
Insufficient computer resources	24	6.3
Problems cooperating or communicating with other departments, agencies, or jurisdictions	67	17.5
Local politics	9	2.4
Inflexible union rules or contract terms	4	1.0
Local bid process requirements	5	1.3
Liability concerns	3	<1.0
Inefficient permitting process	10	2.6
Elected officials unwilling or unable to fund training for staff	6	1.6
Other impediments	101	26.5
Total	382	100.0

"The survey of twelve assessment sites asked for a ranking of measures that would help to improve the performance and efficiency of public works agencies. The composite rankings of the twelve sites are shown below in order of importance:

1) New or increased funding for public works;
2) Use of computerized information management systems;
3) Education/training of employees;
4) Development of new technologies;
5) Regulatory or administrative relief;
6) Increased access to public works information resources;
7) Better cooperation and communication with other agencies or departments;
8) Better communications with the public; and
9) Greater collaboration with and involvement of private sector in delivering services."[32]

The themes of these measures are not new. Many of these have been identified in previous studies, including reports from the National Council on Public Works Improvement, and America in Ruins: The Decaying Infrastructure. Authors of some of these well-known earlier studies of infrastructure, such as Pat Choate of America in Ruins, revisited and softened their sense of a crisis mentality in a Brookings forum in 1993, and foresaw a shift in emphasis from construction to better operation and maintenance. Further, they saw another possible change in emphasis: **"A shift in paradigm...It may primarily be a state and local responsibility rather than a federal one."** [33]

Having learned that local public works management is most severely impeded by local problems, and having learned the kinds of help that public works officials believe would improve their management, what then are the prospects for such assistance? This chapter will address that question in two ways:

- Analysis of APWA's Public Works Management Practices. It served as the principal framework for the interviews in the site visits and was thoroughly tested by these front-line practitioners, the local public works executives. One of NAPA's roles in this study was to make an independent analysis of the Practices and to suggest possible modifications and enhancements.

- Suggestions for other ways beyond the Practices to encourage or motivate further improvements in public works management.

REVIEW AND ANALYSIS OF THE APWA PUBLIC WORKS MANAGEMENT PRACTICES MANUAL

The Considerable Potential of the Practices

In its 29 chapters, the practices presents over 400 uniform criteria and procedures for the performance of public works services. APWA, with its membership of 27,000 public works engineers and administrators, and private industry representatives, developed the practices as a tool for improving public works management on a wide scale through local public works organizations. The practices has been APWA's best seller, evidence of the importance of the concept to public works executives.

The practices is an useful practical guide, checklist or benchmark of basic, well tested management techniques as they relate specifically to local public works activities and services. It creates an organized

system to minimize oversights, mistakes and potential liability. It can motivate public works executives and their staffs to evaluate their own operations and to raise their standards of acceptable management practices.

It also can be used to recognize and reward those officials who make the effort to conduct a self-evaluation of their management practices. It can improve agency performance by providing better service to the public, and it can increase the interest and understanding of the public and elected officials in good management. The practices is also being considered as the basis for a process of accrediting those agencies that successfully complete a rigorous self-assessment and improvement program.

The practices can bring public works agency management up to a solid journeyman level. To do this on a broad scale with the thousands of public works organizations in America would enhance considerably the construction, operation and maintenance of the nation's infrastructure. Depending on the strategy adopted for implementation, it could make a big difference, and given some enhancement to its coverage of management methods it could have a long-lasting effect.

The possibility remains, however, that a local public works department could be doing everything in the present edition of the practices and still not have an outstanding department. It is limited in its capacity to measure the achievement of professional standards above and beyond a "satisfactory" level or to encourage or motivate reaching for the excellent or outstanding level. The practices covers well the universe of public works functions and processes, but it treats all with seemingly equal significance, giving no sense of relative importance or priorities. The present edition of the practices needs greater emphasis on elements of management such as public participation, management analysis systems and employee involvement.

The practices covers the basics, which is just what most of the agencies need, but what can be added to give it greater potential impact on public works management?

Special Emphasis Warranted on Additional Elements of Good Management

In order to elevate the practices to a more advanced level, the following three aspects of generally accepted management practices justify more attention in the revised edition, either in separate chapters or as additions to existing ones.

1. Put top priority on enhancing citizen satisfaction with public works projects and services and on increasing positive citizen participation in public works.

The public's power to resist or block a new public works project or a change in a service program, along with their potential to give them viability and added quality, is possibly the most important single element of improved management to be dealt with by public works managers. Local citizens are extremely sensitive to construction projects, the quality of street and traffic controls, water supply and sewer service, solid waste collection and disposal, snow removal, and other public works activities. Public works executives need to become experts at satisfying citizens, a very difficult goal when operating constantly in the public spotlight.

> **...your buyers have changed enormously in the past few years. Their demands are lengthening; their patience is shrinking. Epochal shifts in the global economy have given**

them a sultan's power to command exactly what they want, when they want it, at a price that will make you weep. You'll either provide it or vaporize.[34]

The City of St. Paul, visited by the NAPA project team in May, 1993, has a very well-developed citizen participation process. Seventeen "citizen participation districts" were established by the city council after recommendations from a task force of citizens, and these districts range in population from 7,000 to 25,000. Each district selects its council at yearly elections.

The city has a full-time citizen participation coordinator (CPC) who works with the district councils. They in turn each hire their own community organizer. Districts raise some funds on their own, but receive an annual grant ranging between $33,000 and $43,000 from the city, based on a contract that includes the district's goals and objectives for the year.

Each neighborhood office serves as an information and referral resource, whether using a neighborhood newspaper or publishing and distributing its own newsletter. Each district council advises on physical, economic and social development of its area as well as on city-wide issues. They initiate neighborhood programs and recruit volunteers when needed by these programs.

The CPC notifies the neighborhood and citizens of pending city actions that will affect them. For actions involving public works projects, the Department of Public Works Information Office notifies affected citizens and conducts an information meeting in the neighborhood before proceeding further with the project. The Department also conducts an open house periodically, has "Grand Opening Celebrations" for such projects as completion of a new bridge, mails out focused explanations of service programs and generally works hard at informing citizens of their projects and activities.

St. Paul has extended its citizen participation process by developing methods of creating a "dialogue with customers." They have developed an internal capacity to conduct opinion surveys of representative samples of customers and to base service program decisions on the results. They find that citizens generally are in favor of the City conducting such surveys and some of the feedback indicates they are "hungry" to have the City reach out to them in this way.

Clients must be regarded as customers. This calls for giving them choices, surveying their attitudes, making services convenient, training employees in customer contact, test marketing, etc.[35]

St. Paul is a good example of what an increasing number of cities and counties are attempting to do to meet the increasing public demand for participation.

The City of Tempe, Arizona--a community of 150,000 on the border of Phoenix and the home of Arizona State University (ASU)--has conducted public opinion surveys periodically using ASU faculty. The latest in 1992 shows that 97 percent like living in Tempe, 81 percent rate the city government as honest and 73 percent as efficient, ratings that would delight any public official. Tempe also has organized neighborhood associations in addition to the existing homeowners associations, a total of about 80 such organizations. They conduct an annual forum where approximately 200 representatives of these associations meet. A city staff person is assigned full-time to work with these associations. The city envisions a "community-based government," similar in principle to the popular community-based policing. Conceptually, public problems are identified and the solution process starts at the neighborhood

level.[36] One of the key recommendations of the "Winter Commission"--the National Commission on the State and Local Public Service is for the establishment of "citizen liaison officers," to help citizens get plugged into government.[37]

The City of Glendale, Arizona, also adjacent to Phoenix, with a population of 160,000, focuses on the "systematic development of informed consent." They aim to tell the neighbors what is being considered before doing any engineering design: "Sell the problem before trying to sell any solution." On some particularly sensitive projects, they have retained an external third party facilitator, such as a partner in a local public relations firm, who carries the prime responsibility for neighborhood communications and negotiations.[38]

Using impartial third parties as negotiators between the local government and the neighborhood (often "up in arms") is one kind of "alternative dispute resolution" (ADR) which may become very helpful to besieged city officials. Many states have adopted a similar approach for their court system, using both arbitrators and mediators, and resulting in large numbers of disputes being settled out of court at minimum cost and little or no delay. A few cities like Glendale are using this approach to reduce the number and intensity of head-on collisions between local groups and city officials--such as public works executives. Both parties may end up completely satisfied while avoiding acrimony and thereby maintaining a harmonious community.

Public participation is so important that it warrants much more attention in the revised edition of the practices, and it should be further encouraged by other means beyond the capacity or role of the practices. With the exception of a few minor references to the topic elsewhere, this element of management is covered mostly in Chapter 6, Communications, in terms of responding to complaints in a well-organized, follow-up system and in terms of providing timely, accurate information that "enhances the image of the agency." The chapter also includes the following section titled Public Participation: "Public participation in agency programs is encouraged. Success of agency projects depends on an understanding of community needs. Agencies should seek and encourage public participation through a process that includes scheduled public meetings and public hearings on projects."

This chapter would benefit immensely from a considerable enlargement of the standards required of well-managed agencies in the field of public participation. It warrants a different chapter title that better focuses on this fundamental objective.

2. Develop more effective management analysis and decision-support tools.

The practices includes excellent but brief references to the planning of levels of service, setting goals and objectives, monitoring progress, cost of service and rate setting. However, it falls short of creating management standards which will meet the growing expectations of customers, elected officials and other governments. The agency that can best prove its case as to performance and costs is the one that will fare best in the competition for resources and for public support.

Members of city councils and county boards of supervisors do not have the luxury of saying yes to every need or demand that is presented to them; they are usually required by state constitutions or statutes to maintain balanced budgets. So they are forced to make tough choices based on the best data available. Directors of public works agencies need to develop the capability, for all their infrastructure and programs, to present to the governing body not only data but creative alternative solutions.

This phrase "management analysis" needs some definition in this context. It is used here to refer to a broad variety of rational analysis methods now being used--and increasingly expected--in local governments, including problem definition and statistical analysis of options, data-based comparisons of probable outputs and relative costs, the pricing of products and services that may be marketable or competitively bid, performance measurement, and other applications mentioned below. The common characteristic that distinguishes management analysis today from methods used in the past is the evolution of the computer as a tool readily available on the desk to every level of an organization. In the context of this report, this is referred to as information technology (IT), and because of its central role in management analysis will be discussed first.

IT as applied in local government has leaped forward in just a few years far beyond the calculators, slide rules, drafting tables and centralized computer systems of the recent past. Some of those public works agencies visited in this project are well enough supplied with the hardware and software to give nearly every engineer and public works supervisor immediate access to all the relevant data and analysis tools needed for design, construction, operation and maintenance. This has made possible the flattening of organizational structure. Possibly most important is the public responsiveness that becomes possible when the IT is in place.

However, somewhat surprising in other visits was the lack of adequate IT as a common tool, while at the same time a hunger was expressed to have it. The reason given was often lack of resources, another example of the tight squeeze on local budgets. However, there is undoubtedly some lack of appreciation for the potential of IT; given sufficient understanding of its value the resources might be found to get it.

The impacts of IT will spread, not only to the working levels of the organization but throughout the policy-formulation level. The mayor and chief executive officer (CEO) have had, almost as a matter of practical necessity, great control over the flow and analysis of basic data, financial and operational. Members of the city and county councils will reshape their roles as their access to information is widened. The public will have access far beyond what they have or expect now. With a large number of computer on-line service companies now, all booming in the number of subscribers, the public will certainly soon have access to local government data bases. The consequence for policy formulation and for public participation is unclear, but it will be considerable. The practices needs to give greater emphasis to IT and its specific applications for management analysis in public works agencies.

Management analysis can be costly to initiate and it often may be sacrificed for more tangible, short-range budget items, especially in smaller agencies. But it is an investment that will pay big dividends. One of its most direct benefits is in setting fees for services, fees that can be justified to the public in this era of shifting more local government service costs from general revenue sources to quid pro quo financing. For example, the relatively recent adoption of "development impact fees" as a means of collecting up-front the allocable cost share of existing infrastructure makes such records absolutely essential.

Management analysis and decision support tools need to be given greater emphasis in chapter 3, 4, 10 and 17 to achieve the following:

- For capital equipment and facilities, making the choice between repair and replacement;

- In capital improvement program budgeting, incorporating life-cycle costing to include future operating and maintenance costs as part of the decision process;

- Quantifying the return on investments, so that decision makers can better measure costs against benefits;

- Costing and pricing systems that offer customers a choice as to the kind and level of services to be provided; and

- Establishment of quantified service objectives for the agency along with a system to measure the performance, outcomes or accomplishments.

The Governmental Accounting Standards Board has recently entered this arena, stating that what is generally known as "performance auditing" has become part of the regular audit process of some states and local governments: "It goes beyond the question of how much and on what a governmental entity spends its resources and into the questions of what its citizens are getting for the use of public funds and how efficiently and effectively these funds are being used."[39]

On August 3, 1993, President Clinton signed the Government Performance and Results Act of 1993. This requires federal agencies to develop and utilize a comprehensive system of strategic planning and performance measurement. Its success depends not only on presidential follow-through but also on the successful development of effective performance analysis and measurement techniques, similar to those suggested here for local public works agencies. If implemented, this process at the federal level will eventually be required of all local governments carrying out federal environmental mandates. The NAPA project team believes it makes common sense and needs to be addressed regardless of potential mandates.

> **The Law...requires that we chart a course for every endeavor...see how well we are progressing, tell the public how we are doing, stop the things that don't work, and never stop improving.** [40]

3. Build employee trust and participation.

The personnel management chapter of the practices, covers very well all the basic building blocks of good human resource management, such as compensation plans, training programs, affirmative action, etc. However, it could be improved considerably by including some of the basic elements of employee participation, such as those involved in total quality management (TQM).

At least three of the twelve governments the NAPA team visited in this project are implementing comprehensive TQM programs: St. Paul, Los Angeles County's division of Facilities Operations Service, and the Arizona Department of Transportation. These programs are intensive, time consuming and require a deep and long-term commitment by the top managers. Not all local governments, particularly the smaller ones, will want to make this commitment, but the essential elements of employee involvement can be developed, nevertheless. For example, Tempe, Arizona, has not launched a TQM program but they are using interdepartmental teams of employees not only to find ways to improve quality and enhance citizen satisfaction but to follow through in the implementation process.

Other elements of successful employee trust building might include the following:

- Written agreements with each individual setting forth mutually agreed performance standards;
- Coupling the agreements with performance evaluations and incentives, and
- Supporting creativity and innovation by tolerating the inevitable failures

St. Paul's Department of Public Works has adopted a vision statement, created by a team of employees and printed on department stationery and business cards, from which the following is excerpted:

A Vision of Public Works

This vision statement sets forth the things we intend to be known for; how we want to be seen by ourselves, our customers, and those we work with. It's the target we're aiming for.

**

Employee Pride

All employees in the Department see their work as meeting their own needs as well as citizen needs. They agree with the mission and are competent and enthusiastic. Every manager and supervisor sets consistently high work standards and meets or exceeds those standards themselves. All staff chooses to accept our vision and mission. Teamwork and innovation are the unquestioned Public Works approaches to accomplishing our mission. We are noted for our labor/management cooperation and the productivity that results."

This spirit of team building and employee involvement needs to be incorporated into the Practice as part of Chapter 2, "Personnel Management."

VARIETY OF OPTIONS FOR APWA TO MARKET THE PRACTICES MANUAL

The APWA Executive Board has recently authorized (January 1994) in their new budget the revision and reprinting of the practices. The new edition will be even better adapted to the needs of local public works executives after adding some of the important elements of management described above, as well as the many improvements found in the site-visit-process by APWA staff. The new practices will be an excellent product. It is the best publication currently available for improving local public works management, so it warrants an excellent marketing program. This section discusses the nature of the primary market and suggests some of the ways in which the practices might be adapted to penetrate that market.

The primary market for the practices is the public works executives who run public works organizations in local governments. These executives, in public works agencies giant and small spread around the nation, are not easily reached no matter how good the product may be. What are they like and what is the environment in which they work?

Public works executives are "can do" executives. They are well educated--80% with college degrees, mostly engineering, and 20 percent with masters degrees. They adapt well to the impediments

such as federal mandates that are imposed on them. They are part of complicated organizations, producing a wide variety of products and services that require attention to a mass of detailed processes employing a wide spectrum of diversified talents. They find it harder than ever to design, build and operate public infrastructure projects, primarily because of greatly increased public activism and higher public demands and expectations while forced to live with tighter budgets.

APWA is known and respected by a broad spectrum of the total market of public works executives, so they, the owner of the product, are the obvious prime mover in the marketing program, sometime in collaboration with organizations that have a common interest. Diversity of products and a variety of advertising promotion options should be developed to reach the different segments of this market. Following are product design and marketing options for consideration by APWA in the task of achieving maximum utilization of the practices. The suggestions begin with straightforward marketing of the full Practices manual, move through other options for marketing variations on the total publication, move on to self-evaluation and conclude with a comment on the APWA plan to create an accreditation program using the practices as a foundation.

1. Promote Sale of the Manual as a "must-have" reference for every public works agency. Already a best seller, it could do much better in the second edition. All the elements of good marketing need to be applied before finalizing the editing, printing and binding of the new publication, including size, format, typeface, cover, pricing, and distribution.

2. Develop and Market a Training Guidebook designed as a companion with the practices for use in group training within public works agencies. It should be conceived as a means of involving as many public works employees as possible, as well as top executive staff. Such a training package would have an immediate short-term payoff for the agencies and could serve as the foundation or starting point for subsequent steps, such as self-evaluation or accreditation.

3. Prepare Sub-products that Appeal to Segments of the Public Works Agencies. The manual is designed to cover practically every function that is ever assigned to a public works agency in order to be usable by any style of organization. It is therefore a comprehensive approach that should hit all possible targets. However, every local government visited in this study had organized its functions in a different way. For example, water and sewer services are a separate department in Billings, Montana; building and equipment maintenance are part of a department of central services in Los Angeles County.

Therefore, a more focused approach should also be available. Modular sections from the practices, aimed at the most important, popular, puzzling, or otherwise marketable targets should be printed separately, wrapped in appropriate covers and given separate introductions, suggestions for use, and training exercises. Two or more closely related chapters from the practices could be brought together in these modular sections for appeal to clearly defined segments of the public works market. There would be some advantages in grouping the functions to correspond as much as feasible with the existing institutes of APWA, such as the Institute for Water Resources, and the Institute for Municipal Engineering. The entire manual might be printed in this format as a package of separate modular sections. In this style, the practices would be adaptable to any form of public works organizations, could be used independently by the various divisions of the organization sections and be updated as needed.

4. Appeal to Funding Sources with Custom-designed Sub-products. APWA will have difficulty affording the cost of first-class publications of the types described above, unless they can find common

ground with foundations and federal agencies that are committed to similar parts of the public works-environment-infrastructure universe. APWA may be able to interest funding sources in several of the sub-products described in item 3 above, for instance, while at the same time maintaining a consistent design for the overall product.

5. Encourage Strong APWA Chapters to have Local Public Works Agencies Adopt Self-evaluation as a Project. The chapter could give recognition locally and recommend the best entries in their area to APWA for national recognition. One of the fundamental concepts of the practices is that it will serve as the guidebook for self-evaluation by agencies choosing to do so. However, rather than launching self-evaluation as a national program, this option would first use test marketing in one or more geographical areas, such as Kansas City, Chicago, or Washington. Sponsorship by a local chapter of APWA would provide volunteer personnel for the promotion, some of the administration, a sense of cooperation, and support---as well as competition, and the peer-recognition so vital to success. Such test marketing would prove the process and ease the administrative burden on APWA. To the extent that site visits to the public works agencies were deemed a necessary or desirable part of the process, they could be conducted by peers within the immediate vicinity at little or no cost to the participating jurisdiction.

6. Use the Incentive of National Awards and Recognition to Launch the National Self-evaluation Program. After the concepts and practices have been thoroughly tested and adjusted in item 5 above. Local agencies would submit their applications in a competitive judging process with peers as judges based on agreed-upon criteria. Entries could be wide open, limited to those chosen in local competitions, or a combination of the two. Awards would be presented at the annual APWA conference. In addition to the award for overall excellence in self-evaluation, awards might be made in each of the modular areas defined in item 3 above. Site visits by a team of peers for the national self-evaluation program is probably not feasible because of the expenses required for such visits.

The awards criteria might be developed to provide for building a ladder of achievement levels. There might be, for example, three levels of recognition ranging from good to excellent to outstanding. This would attract broader participation and serve as an inducement for continued improvement. The experience of developing such an approach might be very helpful in deciding if and how to start an accreditation program.

7. Consider Starting an Accreditation Program? This is an internal political question for APWA, based entirely on whether the membership can support the concept. It has already been the subject of debate on the Board and among members who have been involved in developing the practices. Whereas there is little doubt that most or all of the kinds of steps outlined in the six options above would be supported, accreditation is subject to the charges of elitism and as a kind of put-down for those who don't want to participate. In all probability the process of measuring qualifications for the accreditation would require site visits by an evaluation team, placing a potentially heavy expense on the association.

An advantage of going through some or all of the first six options is that they provide opportunity for thorough testing and experimentation before taking the final step of accreditation. By the time some of these options have been tried, the membership will be much better informed on how accreditation might work.

ESSENTIAL SUPPORT OF LOCAL ELECTED OFFICIALS, MANAGERS AND CHIEF ADMINISTRATIVE OFFICERS

As required in the charter for this study, this report has concentrated on the practices published by the APWA in terms of its substance and its strategy for dissemination. Promising as that publication is and ambitious as the objectives of APWA have been in creating it, the public works executives who have frontline responsibility for implementation of the nation's infrastructure system cannot meet local and national objectives without strong support.

The mayors and county executives, city managers and county administrators, presented to the NAPA project team in great detail the problems created by federal mandates, and they will undoubtedly continue to pursue alleviation of this burden. There is, however, much they can do within their own local governments to take further initiatives in developing the infrastructure system for their communities. In this final section, the NAPA team makes four suggestions for improving public works management, beyond use of the practices, for consideration by top local government officials.

1. Recruit, Develop, and Retain Professionally Competent Executives.

In addition to the impediments to good management cited above from the survey, the site visit team observed several more impediments that result from a lack of overall professional management of the total local government organization. As a result, public works executives in some local governments must live with management limitations beyond their control, such as:

- Antiquated, strongly centralized systems in areas such as personnel administration, financial management, purchasing, and computer management. (Some of this is due to prescriptive state statutes);
- Lack of financial incentives for achieving economies, efficiency and improved performance outputs;
- No support for the risk-taking that inevitably accompanies major management changes and innovation; and
- Inadequate commitment to professional competence when appointing executive leadership.

In most local governments the improvement of management practices in the public works agency is limited by the degree of understanding and support shown by the chief executive officer, who in turn must earn the trust and confidence of the elected officials. The chief public works official is seldom in a position to persuade the elected officials directly; the support of the CEO is critical in many vital areas such as winning appropriations, adoption of sound environmental policies, approval of major new projects, and decisions to concentrate on preventive maintenance. Most CEOs spend a major share of their time working with the public works executive on these kinds of problems. There needs to be, therefore, a competent overall professional CEO to whom the public works executive reports.

As this study of federal mandates and infrastructure clearly demonstrates, all aspects of local government management are becoming more complex, and success as a CEO is more and more correlated with directly related experience, academic preparation and professional competence. This applies

especially to the city manager or county administrator or mayor-appointed administrator. Former Mayor Henry Cisneros of San Antonio, now Secretary of the U.S. Department of Housing and Urban Development, has said that San Antonio's greatest successes "can be attributed directly to our council-manager form of government, characterized by top-flight professionals with a corruption-free, fiscally sound administration."[41] As a general observation from the site visits, local governments are less likely to recruit and retrain professional public works executives if there is no professional CEO.

The local government public works executives who manage the vital elements of a community's environment must be chosen, appointed and retained because of their overall management ability and their professional competence in this complex field. The probability of such appointments being made is much greater where the CEO is selected based on the same high standards. Quality at the top brings quality throughout the organization.

In too many of the local governments visited during this study, it was clear that top professionals in public works departments were dropped with a change in political leadership. Regardless of the form of government in a particular jurisdiction, professional management capacity must be fostered and developed or that city/county will not be able to perform effectively. The slogan that "good government is good politics" is increasingly valid as local governments struggle with the ever higher citizen expectations for a better quality of life.

2. Organize for Creative, Aggressive Negotiations and Problem-solving Internally and Externally.

Public works executives--and most other department heads--tend to concentrate their efforts within their own sphere of responsibility. Certainly they have many balls to juggle internally. The operation of other departments within the local government are the concern of others; the agendas of other units of government, including the federal agencies, are best avoided unless emergencies demand attention.

Such might have been the view of any public works director in the past, but most realize they will be run over unless they can take the initiative, demonstrate a cooperative spirit, and develop the capacity to deal from a base of knowledge and competence. These are the ones who seem to best control, or at least influence, the destiny of their community's infrastructure and environment in this age of interdependence. The attitude of public works executives towards their profession is moving in this direction. This approach by public works executives is welcomed by mayors and CEOs, who can't cover all the bases themselves.

A community-based government, such as envisioned in Tempe, Arizona, projects the image of a city that has its act together on behalf of its citizens. In such organizations, employees are induced to work across and over the old lines of demarcation. Police officers, for example, report directly to public works employees when they observe potholes, broken signs and traffic signals, water leaks and whatever other relevant problems that come to their attention while on patrol. Public works employees, who are also spread around the city in their activities, do the same for police officers in police-related matters. These community links are built at the lowest possible levels; kingdoms and chains of command are not suddenly dissolved but they are redefined.

Mayors and CEOs need to build this kind of internal networking and mutual support deliberately and consistently, finding ways to encourage and reward it and to project the public image that "we are a team serving you."

Externally the problems become somewhat easier to master if the local government has its internal act together and if it can enter the playing field with the answers to some questions like: What is the best total environmental infrastructure plan for our community? What are the highest priorities and what is a reasonable schedule for us to accomplish them?

Shifting from a reactive mode to a creative mode is the approach most likely to succeed. Local communities cannot forever allocate local resources as dictated by the entirely separate and uncoordinated mandates of a dozen or so federal agencies, plus those now emanating from the state. The country cannot get the job done that way. Most federal and state agencies know this and will welcome an informed and constructive show of strength and preparation from the local level. They know they don't have all the answers and that they ultimately need the willing cooperation of local governments.

Local officials need to approach the table as an equal, teaching federal, state and regional staff to practice what they officially preach about "citizen participation" by learning about "local government participation." Adequate staffing for this outreach responsibility is essential to protecting the best interests of the public works agency's clientele. Wherever possible, this responsibility needs the full-time attention of a highly competent person. The "intergovernmental relations officers" of the local governments, who in the past were concerned mostly with getting federal grants, have their hands full now dealing with mandate-related issues.

We cannot achieve the National Performance Review (NPR) broad goals--cutting red tape, putting customers first, empowering employees to get results, and cutting back to basics--without a new approach to intergovernmental partnership in delivering services to the public.[42]

3. Make Creative, Entrepreneurial Use of the Private and Non-profit Sectors.

Direct use of the private sector--or "privatization"--is nothing new to public works executives; a major part of all public works appropriations are contracted to private business for engineering design consulting, construction and maintenance contracts, equipment and materials purchases, etc.

In addition, local governments are contracting for operation of some of the labor-intensive functions such as solid waste collection and disposal. The challenge here is to have sufficient in-house capacity to fully protect the public interest with wisely crafted specifications, contracts, performance standards and measurements. Local government must be sure that the local market is providing high quality and fair competition.

Phoenix, Arizona, (population one million) is one of the best examples of this approach, having taken bids for refuse collection since 1978 in direct competition with their own city department. Bidding is done by districts of the city so that the competition remains viable. After losing two of the four districts to private contractors, the city's solid waste division won back one of the districts in 1986, after concerted cost reductions, a reorganization, management changes and productivity increases. In this competitive process the city bid is prepared by an independent party to maintain credibility.[43]

Also growing is development of the competitive, "free enterprise" system within government, where as many internal services as feasible are put on the block for open competitive bidding, bringing market forces to bear on such internal services as equipment maintenance, building maintenance, and computer

services. The Internal Services Department of the County of Los Angeles, one of the sites visited in this study, is an excellent example of this approach to privatization.

Another segment of the ongoing experimentation with public/private sector combinations is "public enterprise," defined by one of its leading developers and advocates, Public Technology Inc. (PTI), as:

> **Creating revenues, even profits, in service to the citizens. Public enterprise is recognizing and maximizing local government assets to produce a positive return on investment. Public enterprise encourages competitiveness, change and entrepreneurship in public organizations, all in service to the consumers of the local government services.**[44]

A local government quite possibly has the biggest asset base in the community: land for public rights-of-way and parks; buildings and recreational facilities for community use; police, fire and public works equipment; library and museum collections. If the local government conceptualizes the asset value in terms of market value rather than cost, possibilities emerge for profit and gain for the taxpayers. Some examples of this variety of entrepreneurship are:

- Hampton (VA) Real Property Data Services. On-line real estate information service for area realtors and others from computerized data developed by the city.

- San Diego City Store. Retail store selling city memorabilia, operated by the city in partnership with a retail firm.

- Hennepin County (MN) GIS-Ultimap. Software developed by the county for its needs, then licensed to a private firm for marketing, in return for royalties and commissions.

- Urban county governments often sell computer, law enforcement and fire services to local municipalities; in some cases, the county provides almost all services to small communities, virtually full-scale government by contract.

Implementing such a concept requires thinking of assets more as a business does, then creating methods to produce cash flow or capital gain from their most efficient use by sale, franchise, license, or leaseback. Local governments have always borrowed against future income with general obligation and revenue bonds for capital improvements, but only recently have they deliberately concentrated on the use of assets to produce current income. The American public may, of course, have a tendency to assume collusion on any public-private arrangement other than arm's length contracting through competitive bids, so full disclosure and open public processes are essential to success. There are enough examples around the country now to permit careful analysis of the best management practices for developing this kind of entrepreneurial enterprise.

Use of volunteers increased generally in the 1980s and has been used extensively in such local government services as libraries, hospitals, and fire departments (more volunteers than full-time firefighters), and is used to some extent in schools, police protection (neighborhood watch), public recreation programs (sports leagues), and services for the aging population (meals on wheels). This kind of initiative, with or without local government sponsorship, has benefits far beyond the cost savings, such as developing a sense of community through participation in community services. Some maintain this

is the most effective way to resolve the basic problems of urban society, such as crime and violence, and child neglect.

Local governments are also contracting with neighborhood associations or other non-profit organizations to perform maintenance services that are difficult and costly for city forces. Some examples include: maintaining median dividers, parkways, very small parks and playgrounds, and operating small recreation facilities. Again, this requires an entrepreneurial mind-set, breaking away from the traditional concepts that have required all such work to be done only by full-time employees of the city, operating out of a central city public works yard, and paying all the associated overhead costs.

STRATEGIC OPTIONS FOR MAYORS AND MANAGERS TO IMPROVE PUBLIC WORKS MANAGEMENT

It was apparent in the twelve site visits for this study that the best public works departments were in those places where the mayor and/or CEO gave direct, personal support to their public works officials on a regular basis. This is the first option for them to act upon.

In addition, there are immense possibilities for further developing the competence of intermediary institutions to represent and otherwise aggregate the policy interests of local governments at the state and federal level. These include as a minimum, the National League of Cities, the National Association of Counties, and the state leagues and associations of cities and counties. Seldom, however, does management reach the agenda of these associations, so they tend to depend upon the professional associations to concentrate on these issues. These include for public works management, the American Public Works Association, the International City/County Management Association, and Public Technology, Inc. (PTI) as the leading organizations specifically concentrating on management issues.

Dues for these organizations are among the best investments that local governments can make, but as with all voluntary non-profit organizations, the members must organize and push for what they want, while at the same time supporting them financially as long as they produce the results expected. Such institutions are also the best linkage to support from federal agencies and national foundations. From the mayor and CEO throughout city/county government, there is more faith in these institutions than in the federal representatives who try their best to implement Washington policy at the local level but who often do not have sufficient understanding of the realities of local government.

The following comments concerning federal and state representatives made by local officials to the NAPA project team on the site visits are typical:

- "We wish they'd set objectives and deadlines and then leave us alone to use our own ingenuity and competence to meet environmental goals in our own way."
- "They should have people with some common sense write and enforce the regs."
- "...intelligent but lacking in practical experience or judgment and unwilling to exercise discretion even in the most obvious cases...."
- "The city personnel can't keep up with changes in EPA personnel."

Undoubtedly federal and state agencies realize their representatives are not always welcomed or understood when they enter city hall. They have frequently chosen to use the intermediary organizations cited here to help translate their policies into workable local programs, or to conduct workshops on best management practices for local officials, or to test new ideas on a pilot basis so that they can minimize this kind of comment by local officials.

Some of the options emerging from these premises, for consideration by the top officials of local governments, are outlined below:

1. Assist an organization such as ICMA to arrange a project with EPA to develop and demonstrate selected aspects of infrastructure and environmental management in local governments. Among the most potentially fruitful possibilities is a focus on concepts derived from the NPR, such as citizen participation, media support, staff development, and performance output measurement. This organization would arrange with a few selected local governments to test, demonstrate and refine techniques; they would disseminate the results through workshops, peer exchange programs, publications and videos. The objective of such a program would be to discover examples of best practice in each management area and then spread the word. This approach aims at showcasing state of the art models using local governments as the laboratories.

2. Facilitate a foundation grant or contract with APWA. APWA is in the process of reorganization under new leadership and shows great promise for meeting some of the needs described in this study. They are very much worthy of support from their broad membership, from the top officials of local governments, and from appropriate national funding sources at this particular time. An investment by a national foundation would definitely pay big dividends. They need front-end financing for putting a modern technical information exchange system on line and for modernizing their management and technical training workshops.

3. Explore the possibilities of developing a federal outreach strategy aimed at providing training and technical support to local governments. Some federal agencies have extensive training and research facilities which might be adapted and made available to support local public works agencies in environmental infrastructure management. One example is the U.S. Army Corps of Engineers which has responsibility for the public works functions on their bases and which may be the biggest public works agency in the world. The Corps has several training and research centers dedicated to improving the efficiency and effectiveness of these functions. The training center at the University of Alabama at Huntsville, for example, has an extensive training program that could be directly applicable, and their Civil Engineering Research Center in Champaign, Illinois, might adapt its interactive network to the assistance of local public works agencies.

4. Request the local government associations (NLC, ICMA, NACo, USCM & PTI) to review this report and to act upon those recommendations they conclude would most effectively address the issues raised in this study.

CONCLUDING NOTE ON LOCAL PUBLIC WORKS MANAGEMENT

As Chapter II of this report made clear, the role of the federal government, particularly the Congress, in adopting environmental legislation during the last 25 years is the high profile headline. In the context is may seem almost irrelevant to worry, as the report does in Chapter III, over the details of

managing the thousands of departments in local governments that try to make these federal policies work. But in the hometowns of America, where most of us live, the words "environment" and "infrastructure" translate into major costs and complex management problems.

> **Heavy State and Local Responsibility for Funding. State and local government traditionally have been responsible for planning, designing, building, owning, operating, maintaining and financing most public works. As federal aid has declined in recent years, and unfunded federal mandates have increased, the financial responsibilities of state and local governments have increased even more.**[45]

This NAPA report starts from the premise that a careful study of local governments is essential in understanding what these federal programs are producing down at the end of the road where most public works are carried out. The project team has gone to local communities, and one state agency, in search of answers from their officials. The answer is that they are having a very hard time carrying out their part of the job, despite a basic commitment to the same goals as set forth in the federal policies. Chapter II summarizes the comments of these officials about the impact of each relevant piece of federal legislation on their local public works operations. Their complaints and prescriptions bring an intimate local perspective to the problem and are consistent with those of organizations such as ACIR that have studied the issue from a national perspective.

Chapter III turned the focus internally, from the impact of the federal legislation on local governments to what the local governments themselves are doing to improve their effectiveness. The NAPA project team analyzed the usefulness of the APWA publication, Public Works Management Practices, and suggested how it can be improved and marketed as a tool to improve public works management. The project team also suggested other methods beyond the practices that might enhance the performance of these vital parts of the nation's environmental protection and infrastructure.

One of the most unifying conclusions from this study is that and special efforts to help local governments play their full potential role in the environmental infrastructure areas will pay big dividends. It will require support for intermediary organizations that can help local governments contribute to a better understanding of the national perspective and become a more creative part of the solution. But above all else, the climate may now be right for the quality of communication that will be required in Washington and at the state and local level among all the players and at all stages of the game.

END NOTES

1. This definition is discussed in greater detail on page 9, paragraph 3.

2. This portion of the project was later abandoned in view of the findings from the site visits and the difficulties of developing a short but useful questionnaire.

3. Although this was the plan, all of the sites were within metropolitan areas.

4. Management practices clinics composed of interested APWA member organizations had been created by APWA in the development of their management practices manual.

5. For example, see the table on page 41.

6. The selection process was done by pairing cities; for example, St. Paul was paired with Snohomish County, etc.

7. Center for Resource Economics, "**Annual Review of the U.S. Environmental Protection Agency.**" (Washington, D.C.: Island Press, 1993), p. 124

8. Ibid., p. 126.

9. Ibid., p. 58.

10. Ibid., pp. 58-59.

11. Ibid., p. 184.

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13. U.S. Employment Opportunity Commission, "**A Technical Assistance Manual on the Employment Provisions (Title) I of the Americans with Disabilities Act.**" Washington, D.C., January 1992. pp. I-1 through I-8.

14. National Performance Review, Vice President Al Gore, "**From Red Tape to Results: Creating a Government that Works Better and Costs Less.**" September 7, 1993. Executive Summary, p. 1.

15. U.S. General Accounting Office, "**Management Reform: GAO's Comments on the National Performance Review's Recommendations.**" (GAO/OCG-94-1). Washington, D.C.: December 1993. p. 270.

16. Ibid., p. 54.

17. U.S. General Accounting Office, "**Management Issues Facing the Environmental Protection Agency, Testimony of Richard L. Hembra before the Legislation and National Security Subcommittee and Natural Resources Subcommittee, House of Representatives Committee on Government Operations.**" March 29, 1993. (GAO/T-RCED-93-26). Washington, D.C. p.4.

18. Ibid., pp. 4-5.

19. U.S. General Accounting Office, "**Environmental Protection Issues.**" (GAO/OCG-93-16TR). Washington, D.C.: December 1992. P. 12 and p. 14.

20. Ibid., "**Annual Review of the U.S. EPA.**" p.1.

21. U.S. Advisory Commission on Intergovernmental Relations, "**High Performance Public Works: A New Federal Investment Strategy for America.**" (SR-16). Washington, D.C.: November 1993. p. 23.

22. Ibid., "**Management Issues Facing**" EPA, p. 5, and U.S. General Accounting Office, "**Environmental Protection: Meeting Public Expectations with Limited Resources.**" (GAO/RCED-91-97). Washington, D.C.: June 1991. pp. 25-26.

23. Ibid., "**High Performance Public Works.**" pp. 35-36.

24. John, DeWitt, "**Civic Environmentalism: Alternatives to Regulation in States and Communities.**" (Washington, D.C.: Congressional Quarterly, Inc., 1994). p. 289.

25. Ibid., p. 293.

26. Ibid., "**Environmental Protection: Meeting Public Expectations with Limited Resources.**" p. 42.

27. Jonathan Walters, "**Conference Report: Reinventing the Federal System.**" Governing. January 1994. pp. 49-53.

28. Arrandale, Tom "**Complaining Alone Won't Cure the Mandate Blues.**" Governing. September 1993. p. 80.

29. President Clinton and Vice President Gore, "**The National Performance Review.**"

30. "**The Public's Capital-- A Forum on Infrastructure Issues.**" Governing Magazine. January, 1992.

31. "**Identification of Road Blocks and Opportunities to Improve Public Works Performance.**" Draft Report. American Public Works Association. January, 1994.

32. Ibid.

33. Governing, the Magazine of States and Localities, July, 1993, **"The Public's Capital, A Forum on Infrastructure Issues--Whatever Happened to the Infrastructure Crisis?."** Brookings Institution.

34. **"The Tough New Consumer--Demanding More--and Getting it: How Smart Marketers Are Connecting With Today's Shrewd Buyers."** Fortune Magazine, The Autumn-Winter, 1993, Special issue.

35. **"Reinventing Government."** Osborne and Gaebler.

36. Site visit with City Manager and director of Public Works. Tempe, AZ. November 19, 1993.

37. Governing, The Magazine of States and Localities, August, 1993. **"Reforming Government: The Winter Commission Report--The Value of Blue Ribbon Advice"**

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40. President Clinton, August 3, 1993.

41. PM Magazine, **"International City/County Management Association."** January, 1994.

42. **"Report of The National Performance Review."** September, 1993

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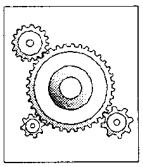


APPENDIX A - BIOGRAPHIES OF ACADEMY ADVISORY PANEL AND PROJECT TEAM

Advisory Panel

Royce Hanson, Chair - Dean, School of Social Sciences, University of Texas at Dallas. Former Associate Dean and Professor, Hubert H. Humphrey Institute of Public Affairs, University of Minnesota; Senior Staff Officer, National Research Council, National Academy of Sciences; Chairman, Montgomery County Planning Board and Chairman, Maryland National Capital Park and Planning Commission.

Henry Gardner - Senior Vice President, Donaldson, Lufkin & Jenrette, San Francisco, California. Former positions with Oakland City, California: Assistant Personnel Analyst; Administrative Assistant; Assistant to the City Manager; Assistant City Manager; City Manager.

Alan Kiepper - President, New York City Transit Authority. Former General Manager, Metropolitan Transit Authority, Houston; General Manager, Metropolitan Atlanta Rapid Transit Authority; City Manager, Richmond; County Manager, Fulton County, GA.

Theodore M. Schad - Consultant on Water Resources Management. Former Chief Water Resources Specialist and Deputy Director, Legislative Reference Service, Library of Congress; Staff Director, Senate Select Committee on Water Resources; Executive Director, National Water Commission; Deputy Executive Director, Commission on Natural Resources, National Academy of Sciences.

Richard Wegman - Partner, Garvey, Schubert, & Barer. Former Chief Counsel and Staff Director, Senate Committee on Governmental Affairs; Executive Director, President's Commission on a National Agenda for the Eighties.

Project Team

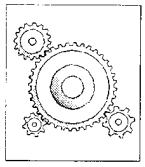
Emerson Markham, Director - Former Budget Director, Veterans Administration, ACTION, and the Airways Modernization Board; has held a variety of financial management and planning positions in eight Federal agencies over a 34 year period; Project Director on

numerous NAPA projects over the last six years including projects with the federal courts, Department of Veterans Affairs, General Accounting Office, Office of Personnel Management, and Treasury Department.

Wayne Anderson - Former Distinguished Professor of Public Administration, George Mason University; Secretary of Administration and Finance and Cabinet Chairman, Commonwealth of Virginia; Executive Director, U.S. Advisory Commission on Intergovernmental Relations; City Manager, Alexandria, VA and Evanston, IL.

Mark Keane - Former Distinguished Visiting Professor of Public Administration and Association Management, The George Washington University School of Government and Business Administration; Executive Director, International City Management Association; City Manager, Tucson, AZ, and Oak Park, IL; Deputy Assistant Secretary, Land and Facilities Development Administration, U.S. Department of Housing and Urban Development.

Carole Neves - Project Director at the National Academy of Public Administration since 1985, Former technical staff member of the MITRE Corporation and Urban Systems Research and Engineering Inc.; Adjunct professor at Virginia Polytechnic Institute and State University.



APPENDIX B - REPORTS OF FIELD VISITS

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APPENDIX B

INTRODUCTORY NOTE TO THE FIELD VISITS

The summary notes on the field visits were originally made for the internal use of the NAPA Project Team. We decided to publish them with the report because they contain material that we judged might be useful and interesting to those interested in the local views on federal mandates.

The summary notes contained attachments and other data to support many of conclusions of the NAPA Project Team. It was not possible to publish all of this material.

REPORTS OF FIELD VISITS

National Academy of Public Administration
Project With U.S. Army Corps of Engineers

To Identify Federal Mandates
That Are Impediments To
Effective Local Public Works Management

REPORT ON FIELD VISIT NUMBER 1
ST. PAUL, MINNESOTA

May 2-4 1993

THE LOCAL GOVERNMENT

St. Paul was the first of twelve field visits to be made under this project, and therefore was utilized as our opportunity to perfect our interview approach and its content. Accordingly, whereas future field visits will be conducted by a single staff member, in this case Emerson Markham, Mark Keane, and Wayne Anderson all participated, as they did in the preceding Self- Assessment Training/Orientation Program held on May 2. In addition, Robert Pietrowsky of the Corps of Engineers Institute for Water Resources participated in the St. Paul site visit.

Thomas Eggum, Director of St. Paul's Department of Public Works, and Edward Warn, Assistant to the Director, had set up interviews with exactly the types of officials we had specified, plus the three members of the City Council Public Works Committee. The agenda and interview schedule therefore satisfied our highest hopes and gave us an excellent opportunity to probe the impact of federal mandates.

We followed closely the Field Visit Interview Format we had developed in advance, and made a number of fairly minor changes in it on the basis of the St. Paul tryout and discussions with the Corps of Engineers (COE) and American Public Works Association (APWA) participants.

During the interviews, whenever our interviewee made reference to a federal mandate, we asked them to follow up by sending us a short memorandum on the specifics of their experience and complaint. We used this approach to capture more facts than we could during the interview and to ensure accuracy. Several such memoranda will be referred to later in this report and will be included as attachments.

FEDERAL MANDATES FEATURED IN THE INTERVIEWS

Our interview approach moved through three stages. First, without mentioning any specific federal mandates or otherwise "leading the witness," we asked each interviewee to identify any federal mandates that have been impediments to implementation of APWA's management practices or that have had other serious negative impacts on the community. This question's purpose was to extract those complaints that were uppermost in their minds. Then, we questioned them about specific federal laws generally

considered to be "major regulatory hits" that affect public works operations or city/county governments. Finally, with several catch-all questions, we asked whether they have anything else to tell us about federal mandates or thoughts they believe might merit inclusion in our final project report.

The federal mandates we specifically asked about fall under two headings: Environmental mandates and, broadly speaking, personnel and anti-discrimination mandates. These lists include:

Environmental Mandates

1. Water Pollution Control and Water Quality Acts.
2. Clean Air Act
3. Safe Drinking Water Act
4. Resource Conservation and Recovery Act

Personnel and Anti-Discrimination Mandates

1. Fair Labor Standards Act
2. Merit System Standards
3. Drug-Free Workplace Act
4. Hatch Act
5. Davis Bacon Act
6. Civil Rights and Equal Opportunity Employment Acts
7. Age Discrimination Act
8. Americans with Disabilities Act
9. Occupational Safety and Health Act

Though the St. Paul interviews were well-organized and responsive in nature, they identified no federal mandates as impediments that are not on the above-mentioned list. St. Paul officials, however, did make their points about some of these laws before we asked about them. The Human Resources Director named one additional federal law, namely the Educational Assistance Act, but his remarks indicated this law has no significant negative effects on them.

This project was designed so that each assessment site - that is, host city or county - completed a questionnaire in advance of the field visit, and the APWA Research Foundation then equipped us with findings from the questionnaire so that we can target and sharpen our interview questions. Their report summarizing St. Paul Survey Data is appended as Attachment 3. As "Federal Barriers," St. Paul identified only the Water Pollution Control Act and related National Pollutant Discharge Elimination System's (NPDES) planning, permitting, and enforcement provisions. More on this subject will be said later in this report.

ST. PAUL'S REACTION TO FEDERAL MANDATES

St. Paul's uncomplaining acceptance and even support of the federal mandates affecting them is a direct reflection of the relatively liberal, "green," and highly unionized political culture of Minnesota and St. Paul itself.

Federal mandates have imposed heavy financial burdens on St. Paul, have forced them to accelerate timetables and displace local priorities, and have embroiled them in costly disputes and litigation. These facts notwithstanding, St. Paul officials expressed support for the central objective of every federal mandate we discussed, and they frequently added that the mandate, by and large, had been a force for good. Even the city council member reputed to be the most conservative member of that body did not assert any serious complaints about any federal mandates. Opinions on this subject in St. Paul were notably and surprisingly monolithic.

When the subject was federal environmental or anti-discrimination mandates, or laws such as the Davis-Bacon Act or Fair Labor Standards Act, which affect their highly unionized employees, they often observed that Minnesota law predates the federal law and sets higher standards. The federal government is not seen as particularly progressive in these areas, they said.

As is true in state and local government generally, St. Paul officials do believe that federal funding should cover a larger part of mandated costs and should be more stable. Federal aid cuts have been unfair and very hard on them, they said, but even here they appeared resigned in view of the current federal deficits.

The following sections pertain to specific mandates that were of most importance to St. Paul officials, and on which they made points of apparent value to NAPA's project.

Water Pollution Control Act

The issue of sewer separation dominated many of our interviews. Small wonder given that St. Paul is separating its sanitary and stormwater sewers throughout the city, and that this project is costing about $350 million and is therefore the largest in St. Paul's history.

A history and description of this massive project is appended as Attachment 4.

Yes, St. Paul was required to undertake this project to comply with the federal law. Yes, they must complete the construction over 10 years but would have phased it in over 20 or 25 years if they had been allowed to do so. Yes, federal funding has been cut back and this project is a heavy burden.

But here the St. Paul attitude takes over. Everyone agrees that the Mississippi must be cleaned up, and that it's a good thing that they were pushed to separate sewers in 10 years. They evaluated alternative engineering approaches, even a deep tunnel, and are satisfied that they were allowed to proceed with the optimum alternative. Moreover, this sewer project is being used as their vehicle to renew streets, sidewalks, lighting, and other public facilities so as to rejuvenate their neighborhoods.

Safe Drinking Water Act

The Potable Water operation was not on our agenda because it is not a responsibility of the St. Paul Department of Public Works. However, concern was expressed by a number of our interviewees about the emerging federal requirements to remove lead and copper from water distribution systems and, as we understand it, potentially many chemicals, bacteria, etc., from the water supply.

This is just one of the concerns we learned about in St. Paul that we will focus on in later field visits. Fortunately, we were accompanied in St. Paul by Don Dodge, Director of Utilities for Sacramento, California, so we now know an authority who can help us understand these mandates.

Asphalt Plant Permit Requirements

After returning from St. Paul and writing most of this report, we received their detailed report on asphalt plant requirements. It describes myriad serious and, to date, unsolved problems they have faced in attempting to comply with EPA and Minnesota's requirements. Multiple permit requirements, multiple agencies to deal with, unreasonable and conflicting standards, excessive testing requirements, and very high compliance costs are among their complaints. Hence, this report is a marked exception to previous statements in this report that said St. Paul presented no serious complaints about federal mandates. Asphalt plant requirements, in their experience, are a regulatory maze and mess.

Escrow Funds for Construction Projects

One public works official described problems they encountered in connection with a small project contracted by the U.S. Army Corps of Engineers and financed by federal and St. Paul funds. The Corps, they alleged, over-estimated the cost to play it safe, and therefore required them to deposit in escrow an excessive amount, and also required them to deposit it far in advance of construction, and then waited months before returning their unspent balance to them.

These problems were referred to as small in St. Paul, but we will be alert to whether they are common and of larger proportions in the other cities/counties we visit.

The Various Anti-Discrimination Acts

Earlier comments have indicated that St. Paul accepts the objectives of the various federal civil rights, equal opportunity, and anti-discrimination laws. However, the Human Resource Director's responses verified that their burdens are heavy and suffuse every aspect of management. They have received many race, sex, age, and disability discrimination complaints. Most are settled before reaching court, but the city has paid some sizable court awards. Their police and fire examination process is under court supervision, and their liability frightens them. Still, their attitude is that these costs are the price of social progress as we move through this stage of American history.

National Academy of Public Administration
Project With U.S. Army Corps of Engineers

To Identify Federal Mandates
That Are Impediments To
Effective Local Public Works Management

REPORT ON FIELD VISIT NUMBER 2
SNOHOMISH COUNTY, WASHINGTON

May 9-11, 1993

THE LOCAL GOVERNMENT

Snohomish County is immediately north of King County (Seattle) and fronts on Puget Sound. Its county offices are located in Everett and the total county population is almost 500,000. The county is part of the Puget Sound Regional Council (PSRC), which contains three of the state's five million population.

Boeing is a giant presence in the area, being the "largest point of export in the U.S." Other major employers in addition to government are the Navy "home port" and a major pea processing industry. It's a strong union county, with AFSCME the leading representative in county government.

Snohomish County has operated under a home rule Charter since 1979, with an elected County Executive and five full-time elected members of the County Council. Other elected county officials are the sheriff, assessor, treasurer, auditor, clerk, and prosecuting attorney (county attorney).

The county executive is the former president of Everett Community College. He has appointed a deputy who serves in most respects as the chief administrative officer. She has served as a city manager and in other local government positions in Washington since 1975.

The Public Works Department (DPW) has 548 employees and a 1993 budget of $112 million, by far the largest organizational unit in the county government (total number of employees about 2,100, total budget $292 million).

THE SITE VISIT TEAM AND PROCESS

The team consisted of Andrew Radetski, Chair, DPW Director of Palatine, Illinois; Jim Thorne, APWA staff; Ed Warn, APWA representative and deputy director of DPW, St. Paul; and Mark Keane, NAPA representative. In addition to general orientation and evaluation meetings, the interviews by the full team included the county executive and deputy, the finance and risk management director, and the heads of all DPW divisions. Keane and Warn together had sessions with the personnel director, the prosecuting attorney, and two members of the County Council (chairs of the Utilities Committee, and the Transportation Committee).

At a working lunch, design and construction managers below the division head level had an opportunity to explain case studies they had prepared describing federal and state impediments.

Functions not performed by the county DPW and therefore excluded from the review process are: buildings and grounds, parking, potable water and wastewater.

PRELIMINARY COUNTY IDENTIFICATION OF IMPEDIMENTS

The advance preparation work done by the County, under the leadership of the DPW Director, Peter Hahn, and the Public Works Analysis Team Project Manager, Bill Cook, was outstanding. The entire organization that we had contact with was very well prepared for the site visit.

The questionnaire filled out by the county DPW before the site visit identified only one federal "barrier": "Funding to implement federal policies deriving from NPDES (National Pollutant Discharge Elimination System) regulations will be needed." (Relating to stormwater)

IMPEDIMENTS DISCUSSED IN INTERVIEWS AND WRITTEN CASE STUDIES

Water Pollution Control Act (WPCA) and related **National Pollution Discharge Elimination System (NPDES)** permit system.

"The mandates for testing, etc., in connection with the application process, along with potential criminal and civil penalties, constitute a form of 'blackmail'. Another example of sending the responsibility without the dollars, said one of the council members."

"Too much focus on process and not enough on objectives and results. Good example of how it should be done: Public Involvement in Education Act."

Intermodal Surface Transportation Efficiency Act (ISTEA)

"Federal road design standards in general are excessive--seem aimed at zero risk, such as no flooding vs. once in 50 years, etc. Needed: some flexibility and less required documentation."

"Preservation of the transportation system--the selection process for these funds requires meeting road design standards (lane width, shoulder width, drainage ditch design, etc.) which are way beyond reasonable requirements. Whereas we can do ten miles of preservation to our own standards for $1 million, they can only do one to four miles to these standards." "Federal requirements alone will add $1 million to each $1 million dollar project between 1985 and 1995. Inflation will add $1.75 million and increased right of way costs will add $1.25 million."

"The process requires increased time, confusion and paperwork. U.S. EPA requires twice the time of the state to clear an EIS (environmental impact statement)."

"Required some basic changes in how we think about transportation--good but not easy."

Federal Emergency Management Act (FEMA)

Whereas the County Risk Management Director has no problem with this claims process--"we have the documentation process figured out"-- one of the County Council members made a point of the difficulty for small businesses and individuals to make their claims--"not worth the paperwork."

The council members added, "There is no room for flexibility and creativity. For example, a 1990 flood ripped out some dikes. They had some good options that involved abandoning the old dike system and developing alternatives that would have worked better and/or cheaper, such as a relocated or different form of water retention system. FEMA said no."

Solution: make the system results--rather than process--oriented; offer some incentive for creative solutions.

Resource Conservation and Recovery Act (RCRA)

Collection is by private contractors while county does disposal by transfer stations and export system.

Although the county does not now operate any landfill sites, there are some 28 sites within the county that they are responsible for monitoring and testing. "The requirements are excessive. How clean is clean?"

"The feds push for 100%, while the incremental cost of each bit of improvement becomes geometrically greater until it seems prohibitive. Result, incentive is to litigate to hold off the action and the costs, one council member said."

The local health district and the state Department of Ecology are the enforcement agencies, and they both "seem very reasonable." The rigorous new federal regulations soon to be enforced, however, are going too far.

(See bulletin from The International City and County Management Association (ICMA) concerning their new video guide titled Deadline of D: A Landfill Update.)

Equal Employment Opportunity (EEO), Disadvantaged Business (DBA),Affirmative Action

As part of the Puget Sound Regional Council, this basically rural county is expected to conform to EEO employment and contracting goals that are designed for the urbanized area. For example, the county uses mostly small contractors for county work who are loaded by federal regulations with required reports and unrealistic mandates.

DPW Personnel Director is not sure what the law requires. For example, hiring or promoting the best qualified vs. all those who meet the minimum requirements.

Fair Labor Standards Act (FLSA)

Described by the Personnel Director as an "unseen liability." She frequently and officially reminds management and employees of the potential for back-wages claims that might arise from inadequate records or practices that are not in conformity with these regs. For example: time sheets are required, even from exempt employees. For example: even executives are not allowed to work over 40 hours a week without compensation.

The DPW Personnel Director sees "reduced flexibility...lost freedom to act like professionals...the place empties out at 5:00...ordinary employees are annoyed...overall, a negative."

American Disabilities Act (ADA)

Required rewriting all job descriptions and instituting training programs (the county has a very interesting tabulation of all the training mandates for all the different kinds of work in the county. Many, of course, required by Occupational Health and Safety Act (OSHA).

"Negative energy" consumed on claims--perhaps half a dozen a year, with 2000 employees--using federal regs as a weapon.

Remedy: U.S. should focus on setting minimum standards and allowing states to adapt to their particular situation.

NOTE: Prosecuting Attorney states that not many suits are filed about federal laws and regs. Those that are relate to discrimination, etc. "State laws generally more stringent and protective of the employees than federal."

Davis Bacon Act

No problem--"union town."

Growth Management Act (GMA)

Although this is an act of the Washington State Legislature, it was frequently mentioned as an example of action at the state level that impacts heavily on local government, apart from the federal mandates cited above.

CONCLUDING OVERVIEW

The elected and appointed officials that we interviewed are uniformly in support of the objectives of the federal mandates discussed. However, they were equally clear in their opinion that the regulations often go far beyond what is reasonably necessary for achieving these goals in their particular situation.

It is worth emphasizing that most of the old-style, anti-fed rhetoric is almost totally absent in the current discussions we had with county officials. Along with the points of difference they have with the Feds, there is frequent reference to the problems of coordination within the regional district and with the state government.

They would certainly welcome allowance for greater flexibility for local discretion in meeting unique conditions. And some system of negotiated agreements that specify results and timetables, rather than excess dependence upon process specifications, would seem to make achievement of common goals easier and more economical for the public purse.

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Project With U.S. Army Corps of Engineers

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REPORT OF FIELD VISIT NUMBER 3
WAUKEGAN, ILLINOIS

MAY 16-18, 1993

THE LOCAL GOVERNMENT

The City of Waukegan, Illinois, is 40 miles directly north of Chicago and fronts on Lake Michigan. It is an industrial, "working class" city served by its port which accommodates lake and ocean vessels. The City's land area exceeds 50 square miles and has been increased substantially by fairly recent annexations.

Waukegan's population, which numbers approximately 70,000 people is, we were told, one-third Afro-American, one-third Hispanic, and one-third non-Hispanic White.

The City's economy is diversified. There are many major firms in the area such as Abbott Laboratories, but they lie outside the city's boundaries. City officials are currently very concerned about the proposed closing of two nearby military bases - Fort Sheridan and the Great Lakes Naval Training Center - which employ large numbers of their citizens.

Waukegan operates under the mayor-council form of government and elects its mayor at-large and its council members by wards. The current mayor has appointed a chief of staff.

THE SITE VISIT TEAM AND PROCESS

The team consisted of Edward Warn, Chair, Assistant to the Public Works Director in St. Paul, Minnesota; Eric Melvin, APWA Staff; James Nuse, Public Works Director of Round Rock, Texas; and Wayne Anderson, NAPA's representative.

Paul Burke, Safety Administrator for Waukegan and a former member of its City Council, had scheduled the field visit interviews, and had coordinated the preparation of the city's reports on their implementation of the APWA management practices and mandates and other impediments.

We were able to interview every official, manager, supervisor, and technician we believed could contribute facts we were seeking. The agenda included the mayor, chief of staff, public works director, supervisors of all the public works divisions and operations, and the city's finance, personnel, risk management, and emergency management heads.

Waukegan undertakes every public works activity encompassed by the APWA manual, except for the four solid-waste activities. Collections are made by a private firm.

The first thing we were told was that our field visit "could not have come at a worse time." The chief of staff explained that elections had taken place a few weeks earlier; the new administration was still settling in, and many objectives and organizational and staffing matters were not yet settled. Most importantly, the "new" public works director was not reporting for duty until the next day. While the chief of staff did not say so, elections in Waukegan are often followed by organization chart changes and personnel turnover at ranks down to the foreman level and probably below that.

As it turned out, these unsettled conditions did not hamper our interviews. The "new" public works director was actually the "old" director who had returned from an eight-year sojourn with a Florida city, and he was knowledgeable and quite up-to-date about Waukegan's operations. Moreover, all of the supervisors from the prior administration, including one or two who were on their way out and others who expressed fears that they might be leaving, were fully available to meet with our team.

FEDERAL MANDATE IMPEDIMENTS TO IMPLEMENTATION OF APWA MANAGEMENT PRACTICES

In advance of our field visit, Waukegan identified those APWA management practices whose implementation is affected by impediments or barriers. Each city and county in this study prepared this same kind of analysis.

Waukegan's reported findings were that there are minor, moderate, or substantial barriers (or impediments) to the implementation of 30 out of the 171 practices applicable in their city.

For purposes of the NAPA study, the most important fact was that not one of the federal mandates was identified as impediments or barriers to these good management practices.

Twenty-four practices are subject to local barriers; four are affected by state barriers, and three are impeded by requirements they did not specify. (These numbers do not add to 30, which is the number of practices subject to barriers, because one practice was impeded by both local and state barriers.)

Though Waukegan identified in advance no federal mandates that are roadblocks to implementing the APWA practices, we probed for such mandates during the interviews but still uncovered none. Waukegan, however, complained about federal mandates on other grounds, and these complaints are set forth in the next section.

FEDERAL MANDATE COMPLAINTS ON OTHER GROUNDS

Almost all of Waukegan's complaints, disagreements, and fears about federal mandates pertain to federal environmental laws that apply to their city. Their grievances actually stem from a combination of U.S. and Illinois laws and regulations, and the administration of those laws and regulations by the U.S. Environmental Protection Agency (EPA) and the Illinois EPA. The public works officials, as is typical and understandable, often are not certain about the source of a particular requirement.

Regarding complaints that cut across all the environmental programs, we once again heard about problems dealing with multiple state agencies causing delays, conflicts, frustration, and high costs. Several Waukegan interviewees also complained that the U.S. EPA and the Illinois EPA often say "do it" but then cannot provide specifics on "how." Just, "do it."

The following presentations of Waukegan's complaints about federal mandates appear in the order that these subjects are found in the APWA manual.

Americans with Disabilities Act

The interviewees expressed fear that the city's flexibility in assigning injured and aged employees to "light duty" or "alternative duty" assignments will be diminished, because disabled people will claim these jobs under this recently enacted federal law.

Fuel Tank Removals

A professional city engineer criticized the EPA requirements on fuel tank removals as "overkill" and "bizarre."

Recycling Requirements

With his knowledge and experience with Florida's recycling requirements, the public works director sharply criticized the recycling system in Illinois. From his comments and others, we gather that state requirements are more extensive and exacting than the federal mandates in certain states, and that the Illinois mandates are moderate but expected to be tightened. He is skeptical about the cost-benefit justification of recycling and said, for example, that "you can't give paper away" and "recycled paper is a lousy product." If the federal government wants to mandate recycling, he contended that they should "mandate markets for these materials" and "should do such things as mandate that all bottles must be brown so as to eliminate sorting by color."

Landfill Leachate Requirements

There are within Waukegan's city limits two inactive, closed landfills. The city is currently spending $300,000 per year to pump leachates from these landfills and transport this material to Chicago or Vickrey, Ohio. If future demands, as they understand them, are insisted upon, Waukegan's cost will be $50 million. Their outrage has been heightened by the fact that they were in full compliance as they filled the landfills. They see themselves as now having two alternatives under the mandates, one horrendous and the other foreclosed in their situation. The first alternative would be to remove the contents of the landfills and transport it elsewhere. Under the second alternative, they would capture the leachate and transport it by sewer to a treatment plant, but the North Shore Sanitary District's plant, which serves Waukegan, is not equipped to treat such leachates.

Handicapped Sidewalk Ramp Requirements

More as an observation than a complaint, it was stated that Waukegan was required to spend about $3 million in constructing handicapped ramps, but that the City can only afford to appropriate $40,000 per year for routine sidewalk replacements despite an endless backlog and 50 percent contributions required of abutting property owners.

Stormwater Requirements

Waukegan's representatives described no significant problems concerning stormwater requirements in the Federal Water Quality or Water Pollution Control Acts or the related National Pollution Discharge Elimination System (NPDES) provisions. They, however, are apprehensive about what may be coming down the pike relating to their ravine stormwater system and leakage from their stormwater sewers.

Potable Water Requirements

In Waukegan we once again received complaints about the Safe Drinking Water Act and expressions of fear about what the federal requirements on potable water will be in future years. Present concerns center on requirements to remove lead and copper from water distribution systems. The standard that limits lead in drinking water to 15 parts per billion was seen as excessively restrictive for purposes of safeguarding public health. Some wines, it was stated, contain over 300 parts. Objection was also expressed about EPA's publication of the names of non-complying jurisdictions, given the debatable standard and misunderstandings the publication caused. Finally, the EPA is seen as having a strategy to add to the list of problem components every year, and to ratchet up the standards with tremendous cost consequences for local governments. Doubt was voiced as to whether the American Water Works Association and other organizations representing local governments have the scientific competence and lobbying power to fend effectively for local governments against national environmental groups and other zealots.

Wetlands Delineation and Requirements

Wetlands delineations, it was charged, are imprecise, and this causes many problems for the city government and for property owners who want authoritative information on developing their properties. The situation is complicated by conflicts between federal, state, and local laws. One result of the wetlands requirements is that beach areas, which the City previously maintained as beaches, now must be allowed to grow up in weeds. They question the necessity for this requirement.

FEDERAL MANDATES THAT GENERATED NO COMPLAINTS

Our questions and conversations during the interviews touched on many federal laws and mandates where the Waukegan interviewees said, in effect, "no problem" or "no significant problem."

Questions on snow and ice control uncovered no respects in which federal mandates have complicated these operations. They still sometimes haul snow to the lakefront or ravines from which the melted snow runs into Lake Michigan or the Mississippi River.

OSHA was viewed as a positive development and a lever by which the Public Works Department got the safety equipment it needed.

The Manual on Uniform Traffic Control Devices, 1988, issued by the FHWA and enforced by the Illinois Department of Transportation, came into our review of the **Streets** chapter but generated no complaints.

Finally, discussions of the many federal anti-discrimination, civil rights, affirmative action, and other personnel mandates disclosed no major grievances. Waukegan was hit with a $125,000 award on a wrongful discharge verdict, and they have come to expect lawsuits when they discharge employees.

Otherwise, they have received relatively few claims. (This NAPA Fellow found himself wondering about the relative vulnerability of St. Paul with its highly protective civil service system and unionization up to department heads, versus Waukegan which has less of both.)

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REPORT ON FIELD VISIT NUMBER 4
LAWRENCE, KANSAS

June 6-8, 1993

THE LOCAL GOVERNMENT

Lawrence, Kansas, about an hour west and a bit south of Kansas City, MO, with the state capital Topeka 25 miles further west, has a population of 65-70,000, including a student body of about 25,000 at the University of Kansas (KU).

The city is experiencing strong growth, apparently drawn by the advantages of the university town and the opportunity to commute with relative ease to either Topeka or Kansas City. Lawrence city government is not unionized, having only IAFF (Firemen) and FOP (Police).

The mayor, John Nalbandian, elected by and from the city commission of five, is the former director of the widely respected masters degree program in city management at KU and still actively teaching and writing in the field. He has been mayor for two months and on the commission for 14 months. Lawrence has had the council-manager form since 1951. There are 535 employees in the city government.

THE SITE VISIT TEAM AND PROCESS

The team consisted of Brian Borgstadt, Assistant City Engineer of Billings, Montana; Chuck Owsley, Assistant City Engineer of Kansas City, MO; John MacMullen, APWA staff; and Mark Keane, NAPA.

The department interviewed in this site visit is the Department of Public Works (DPW), with 131 employees. There is a separate Department of Utilities, not covered in this site visit, which includes all potable water and wastewater operations, supported as an enterprise fund from fees. The city has solid waste collection and "reduction" (recycling) responsibilities but not solid waste disposal.

The full team interviewed all DPW executives plus the city personnel director. The City attorney was interviewed by Keane, accompanied by the DPW Director. Keane also interviewed the mayor, the city manager, and the finance director.

PRELIMINARY CITY IDENTIFICATION OF IMPEDIMENTS

The advance preparation work by the city under the direction of the DPW Director, George Williams, identified a total of 18 "barriers"--only one of which was "substantial" and all of which were "local-administrative" in nature. No federal barriers were identified. Typical comments in the questionnaire were instructive, indicating too tight a budget to permit implementing many of the practices which they agree are important to good management:

> "Specifications established, but because of inadequate staff, quality control cannot be assured."

> "No resources to implement planned or preventive maintenance program."

IMPEDIMENTS DISCUSSED IN INTERVIEWS

Intermodal Surface Transportation Efficiency Act (ISTEA)

Not much impact on the city so far. They report that the obligation falls on Kansas Department Of Transportation (KDOT), and that they're "not leaning too hard on us yet." As to enhancement funds, they would rather have a blanket percent grant, rather than the current project grant system of distribution.

Metric conversion, which apparently will apply to all federally-aided projects, was raised as a major issue for the near future, since some implementation is federally mandated for 1995. This will have a major impact on the whole construction industry.

Resource Conservation and Recovery Act (RCRA)

Good example of "how to do it right": an incentive program rather than a mandate for establishing the city's "household hazardous waste collection facility." US-EPA grants funds to states who want to try it: Kansas Environmental Protection Agency (KEPA), in turn, has made a grant to Lawrence.

EPA regulations often conflict at the local level. For example, the city tried to acquire a recycling site to improve its system, but was frustrated by EPA requirements for environmental assessments and learned it inherited the liability for any previous contamination of the site.

Recommendations to Feds from the solid waste Superintendent:

> Stop suing parties for past pollution events.
> Spend more on prevention of new problems.

The City Attorney commented "The law should be changed to provide for a statute of limitations on suits for the closing of landfills--they're currently researching the coverage under an old liability insurance policy of 20 years ago."

Water Pollution Control Act (WPCA), and National Pollutant Discharge Elimination System (NPDES)

The Director of DPW reports they haven't been hit hard by this yet (cities under 100,000 are exempt), but they may have to impose some form of new levy when their time comes. They might even have to consider going back to a combined sewer system, since both forms of wastewater (storm and sanitary) may have to meet the same high standards.

The Director of Finance reports sizable increases in their proposed fiscal 1994 budget for chemicals for the Utilities Department to meet the new regulations for surface water quality standards.

Mandates Affecting City Human Resources (Personnel)

As to minority business enterprise, city ordinance requires 12.9% of contract dollar amounts to go to minority contractors. All contracts go through the Office of Human Relations for review before award. They can set objective minimum standards, such as: current in payment of taxes, licensed contractor, etc. One suggestion offered was that there should be a time limit on such preferences; they should be required to "graduate," similar to the SBA provision.

The Director of Personnel reports minimal impact on Lawrence so far. OK on affirmative action, just getting into ADA, FLSA had a dramatic impact 15 years ago but once in line no great problem. As to FLSA, they don't give compensatory time, they pay for overtime. Davis Bacon has a big impact, since Lawrence is officially in the Kansas City-Topeka labor market, despite having considerably lower wage rates.

The Finance Director states that for them FLSA has done some good but that it is ridiculous as it applies to fire fighters. Needs clarification as it applies to executives. Gave an example of EEOC impact: the seasonal supervisor of kids hired for summer employment applied at the end of the summer for a regular job in the street department, was not appointed, filed complaint with EEOC which pressured the city to settle, giving this employee "something for nothing." He is concerned about the potential costs for ADA compliance, including especially how it may apply to a proposed city-operated bus company. Another case of added costs resulting from FLSA/ADA: truck driver injured his back, so they sent him to computer school, he flunked out, sent him to over-the-road drivers school, he passed---so now he's driving a truck when he "couldn't" drive for the city.

City Attorney fears a big adverse impact on cities from ADA. Problems relate to "reasonable accommodations" required for employees injured on the job.

The City Manager reports that Davis Bacon adds at least 15% to their costs for federally-funded projects.

CONCLUDING OVERVIEW

Mayor Nalbandian believes that federal mandates could be made acceptable, but so far the Feds are demonstrating:

1. No sense of the dollar impact at the local level.

2. Inadequate scientific evidence to justify the mandate--for example, no cost/benefit analysis; they want risk reduced to zero with no regard for the incremental costs.

3. They mandate the locals to do what state and federal governments don't do--for example, prepare a 20-year plan for transportation improvement.

The mayor's example: for lawn irrigation systems, the Safe Drinking Water Act requires a back flow device that costs between $500--$800 per home, even though there is absolutely no evidence that any case of backflow has ever occurred using the devices specified by the existing building codes. (This was researched by a KU professor.)

The mayor feels that the state doesn't trust local officials, so one of his goals is to educate them on the local impact of these federal and state mandates. The League of Kansas Municipalities has made mandates their top agenda item.

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REPORT ON FIELD VISIT NUMBER 5
LOS ANGELES COUNTY

June 13-15, 1993

THE LOCAL GOVERNMENT

Los Angeles County's population is over nine million, making it the largest county in the United States. If it were a state, it would be the ninth largest in the country. It has almost 30% of the total California population and it is the most racially diverse county in the country.

The County is governed by the County Board of Supervisors, with five members elected by district, three Democrats, two Republicans. The form of government is council-manager, having a fairly strong Chief Administrative Officer position. Other elected officials are the assessor, district attorney, sheriff, municipal and superior court judges.

The County has 86,000 employees. However, we were handed copies of the just released proposed budget for fiscal 1994, which proposes to cut 9,500 jobs based on budget cuts of $1.6 billion, or 11%. The state of California continues to go through the financial wringer throughout its state and local government system.

THE SITE VISIT TEAM AND PROCESS

The team consisted of Dwayne Kalynchuk, Director of Public Works, St. Albert, Alberta, Canada, Team Leader; Joe Spadafino, representing Arizona Department of Transportation; Eric Melvin, APWA staff; and Mark Keane, NAPA representative.

The organization interviewed in this site visit is the Facilities Operations Service (FOS), a sub-unit of the Department of Internal Services (ISD), a local government unit radically different from any of the other local units being visited. The Department provides many common central services for the operating departments, but does not itself provide any direct services to the public. The internal services it provides are purchasing, equipment maintenance, building construction and maintenance, real property acquisition, information technology, and some other administrative and finance services.

The organizational concept of a very large central services unit operating almost entirely as a private contractor, submitting bids to County public service departments in competition with private contractors, making level of service contracts with participating departments, was very interesting and worth further study, but not for our purposes in this analysis.

The Department of Internal Services was established in 1989. It has 3,800 employees with a 1992-93 budget of close to $400 million. We did not meet the Director or Chief Deputy of this Department, but we were very well hosted by Hildo Hernandez, Senior Deputy Director for the Facilities Operations Service (FOS), the unit studied in this visit.

In addition to executives of FOS and those of some other units of ISD, we were able to interview three executives from the street maintenance division of the Department of Public Works, the only direct service unit we had contact with. We also interviewed an attorney from the office of the County Counsel.

For this reason, the representatives of APWA had an opportunity to explore in greater depth the administrative aspects of public works, whereas NAPA and APWA both had very little opportunity to explore the effects of federal mandates on environmental-infrastructure programs.

PRELIMINARY COUNTY IDENTIFICATION OF IMPEDIMENTS

Of 103 APWA management practices which were deemed applicable to this unit, barriers were found in only two cases, one rated minor, one moderate, and both local administrative in nature. They related to records centralization and control practices, and are not relevant to our study.

IMPEDIMENTS DISCUSSED IN INTERVIEWS

Intermodal Surface Transportation Efficiency Act (ISTEA)

From the Department of Public Works we interviewed the Street Superintendent, who is responsible for maintenance of 5,000 miles of roads including some done on contract with cities, plus two of his district supervisors. They felt very strongly about the following two mandates, now pending clearance for implementation in January, 1994.

1) Required use of five percent of old tires in asphalt mix. Their data shows it will cost $20 per tire to process for this purpose, plus getting rid of the fabric and steel parts of the carcass. They currently can burn them for $2.50 per tire.

2) Required process to inventory pavement conditions. This would impose a much more costly process producing less reliable results. They consider it "ridiculous." It would require detailed computerized data collection in the first phase, rather than the subjective initial screening survey now done by their veteran supervisors, which they consider much more reliable. This is only one of six pavement management systems due to be imposed, with the other five apparently equally onerous and useless.

Water Pollution Control Act (WPCA), and National Pollutant Discharge Elimination System (NPDES).

So far they are sweeping streets more often and taking sweepings to landfills, a practice which they know will eventually not comply nor suffice.

Federal Emergency Management Agency (FEMA)

The County activated its emergency operations plan four times in 1992 for earthquake, flood, and civil unrest. They are well prepared now because of lots of practice. The finance and administration official who discussed this issue with us believes the return realized by the County from all the paperwork is minimal. They just finished compiling and submitting boxes of data required to substantiate claims from flood losses of 1983.

Mandates Affecting County Human Resources (Personnel)

We met with the personnel officer for the department, who has broad responsibilities because personnel management for the County is decentralized to a considerable extent. He is strongly in support of the federal personnel mandates and believes they are well adjusted to them, with the exception of the more recent ones, with which they are "learning their way." These are **ADA and sexual harassment.**

The man in charge of building construction and real property (400 general government facilities for 53 departments) absorbed a severe impact from **ADA** initially, but seems accommodated to it now. Mentioned by him and others was the mandate to ramp up to the judges' benches in all courtrooms in their giant court system, a very big expense which seemed unnecessary.

The street maintenance executives expressed concern about the requirements under **ADA** that all intersections be ramped for wheelchairs, a mandate costing the County millions without any dollars coming with the mandate. This is a special problem in the state of California where a sidewalk is defined as the space between property line and curb regardless of whether it is paved or not.

The attorney from the County Counsel's office referred to problems in complying with the contracting requirements under **Minority Business Enterprise (MBE) and Disadvantaged Business Enterprise (DBE)**, but was fully supportive of the concept.

CONCLUDING OVERVIEW

This site visit afforded very little opportunity to explore the impact of federal mandates on environmental-infrastructure programs because we were limited almost entirely to interviews with internal service units that provide no direct service to the public. It was apparent again, as with the other large jurisdictions we have visited, that they tend to make the adjustment to federal mandates better than the smaller jurisdictions. However, this giant county is suffering severely from the recent and impending financial cutbacks and has no room to absorb more mandated costs where the benefits are much less than for essential services that are being drastically cut.

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REPORT ON FIELD VISIT NUMBER 6
WAKEFIELD, MASSACHUSETTS

July 11-13, 1993

THE LOCAL GOVERNMENT

Wakefield is a suburb of Boston and is located about 12 miles north of that city's center. Founded in 1644, the modern Wakefield is residential in character and had a population of just under 25,000 in 1990. Its area is 7.5 square miles.

The town of Wakefield operates under the Board of Selectmen-Executive Secretary plan. While the latest Town Report implies that the selectmen direct and coordinate all departments, there is only weak central direction, and power is widely dispersed.

Voters elect a Board of Selectmen (which elects its own chairperson); a Moderator for town meetings; a Board of Public Works; members of seven other boards and authorities that administer specific operations; and five town officials. There are, in addition, 11 appointed bodies, one of which is the relatively influential Finance Committee, members of which are appointed by the Moderator. The Finance Committee recommends a proposed budget to the town meeting, monitors budget performance, and recommends appropriation transfers and other budget amendments. The Finance Committee has a Public Works Subcommittee, as well as 27 other subcommittees, for the other departments and purposes such as insurance and forecasting.

In 1992, the Annual Town Meeting, where the budget is adopted, laws are enacted, and other business is conducted, convened eight times in May and on June 1, and there were two or three special meetings held later in the year.

The town government, which includes an electric and gas utility, employs about 600 people. Three unions--an AFSCME "blue collar" union, a clerical union, and a supervisors union--represent all employees except department heads.

THE SITE VISIT TEAM AND PROCESS

Team members for this site visit were Robert Miller, Public Works Director of Schaumberg, Illinois, and chairman of the team; Sue Lee, an engineer from the Foster City, California Public Works Department; Eric Melvin, APWA staff; and Wayne Anderson, NAPA's representative.

The Wakefield Public Works Department undertakes every one of the public works activities encompassed by the 29 chapters of the AWPA manual.

The complex organization of the town necessitated more interviews, and interviews of different types, than was typical of our other field visits. The three public works specialists on the team concentrated on interviewing the public works director, his long-time predecessor, the Department's administrative officer, and the division heads. The NAPA representative participated in about half of these interviews, but devoted most of his time to interviewing the Chairman of the Board of Selectmen and its Executive Secretary, three members of the Public Works Finance Subcommittee, a member of the Board of Public Works, the Town Counsel, and the Town Accountant.

PRE-SITE VISIT IDENTIFICATION OF IMPEDIMENTS

Wakefield's survey on management practices, prepared in advance of our visit, identified 66 impediments or barriers to implementation of 60 of APWA's management practices. Fifty-eight of the impediments are local and four are state. None of the four federal impediments actually prevents adoption of the related good management practice. Each of the federal impediments identified in their survey and all other significant complaints about federal mandates that surfaced during our interviews will be described in the following section.

FEDERAL MANDATE IMPEDIMENTS DISCUSSED IN INTERVIEWS

There are four federal mandates that are or will be heavy burdens for Wakefield's citizens, the same four mandates that have usually topped the lists in the other cities and counties we have visited. We will start with these four and then move on to others that generated fewer complaints or mere comments of some type.

The Clean Water Acts and Boston Harbor

That Boston Harbor is the most polluted harbor in the United States became a widely known fact as presidential candidates Dukakis and Bush jousted on environmental issues during their 1988 campaigns. After a long series of efforts by various citizen groups and prime movers, and with a new EPA regional administrator taking strong action, the Massachusetts Water Resources Authority was created and began the construction required to clean up the harbor. An article titled "Boston's Floating Crap Game," handed to us by Wakefield officials and appended hereto, provides the 1987 cost estimates: $2 billion for a new primary treatment plant and a new secondary treatment plant, plus $1 billion to deal with the combined sewer outlets, CSOs. The impact on Wakefield, which is in the MWRA watershed and service area, comes in the form of skyrocketing water and sewer charges. A member of the Finance Committee told us that he now is paying about $500 per year for his fairly average home, occupied by only his wife and himself, and that these charges are projected to reach $2,000 in a few years. Water and sewer charges on many homes will equal the property tax bills. This is ominous for the town, but we heard no disagreements about the objective of cleaning up the harbor or about EPA's current resolute stance. What we heard repeatedly was bitter anger, directed personally at former Governor Dukakis, for his failure to act when, according to the article, "the federal government was busy dispensing $40 billion around the country for secondary-treatment plants."

Solid Waste Disposal

Wakefield, for some 23 years, has disposed of solid waste at a pioneering waste-to-energy plant some 10 miles away. Their current trauma is caused by negotiations to renegotiate their contract with the private operator for a period to begin when their original 25-year contract expires. The operator, to comply with all applicable federal and Massachusetts laws, must modify the plant to clean up its emissions and must make certain changes to the landfill adjoining the plant. Wakefield is therefore faced with demands that would raise their "tipping fee" from just over $25 per ton to $65 per ton. They are contending, among other things, that the landfill modification costs should not be loaded on them. Presumably, the federal clean air, clean water, RCRA, and perhaps other laws are involved, but this is a case where the local officials could not untangle federal law from Massachusetts law. They contended, for example, that the emissions standards are unnecessarily strict and costly, but they believe that the Massachusetts standards govern because they are stricter than the federal. They blame "one legislator from Saugus," who we gather represents the area near the plant.

Staying with the subject of solid waste, Wakefield has a recycling program and has been extending it to additional materials incrementally. Their cost has varied between $5 and $8 per capita in recent years. They were not clear on whether the recycling mandates are federal or state. Their complaint is the lack of effective markets for certain materials at certain times, and they contend that the federal government should "mandate these markets" by requiring manufacturers to use recycled materials to a greater extent.

Safe Drinking Water Act

Wakefield receives about 15 percent of its drinking water from a lake or pond within the town, which is filtered and treated in a small, ancient plant, and they purchase about 85 percent from the aforementioned Massachusetts Water Resources Authority, which supplies a large area in the eastern part of the state. Their concerns about the Safe Drinking Water Act are the same as those we've heard elsewhere. They are in violation of the lead standard and tend to question its scientific basis. They have instituted a corrosion-control program, which involved feeding zinc ortho phosphate into the water. But mainly they are fearful about future requirements and costs to be borne if, as they suspect, EPA mandates removal of additional contaminants from drinking water.

American With Disabilities Act

Of very current interest is the federal requirement to retrofit their Town Hall so as to make it accessible to the handicapped. The cost estimate is $900,000, but the Chairman of the Board of Selectmen, who is in a construction business, harbors the hope that they can create an all-service center on the first floor and thereby hold the cost to $300,000. They recently had a good laugh when an inspector in his wheelchair "whipped right up" the one- foot-in-eleven ramp at the side of the Town Hall, and cited them with a violation because the standard is one-in-twelve.

Handicapped parking requirements pertaining to the percentage and location of spaces, aisle widths between spaces, and signing at four-foot heights rather than the normal seven-foot height, are all viewed as excessive by their public works people. We learned that they had to restripe a number of lots when the aisle width requirement was increased and thereby lost spaces.

Personnel Mandates

The various anti-discrimination and other mandates affecting the Town's personnel have produced minor irritations but nothing they regard as problems. The Town Counsel identified only one discrimination case, a sex discrimination case brought against the Town when hours were cut and all of the affected employees were female. The Executive Secretary was irritated because, despite several efforts on his part, he has been unable to secure full, official information on the Family Leave Act, which he understands goes into effect on August 5.

OSHA

As seems to be true of most of the local governments we visited, their public works officials are not clear on whether OSHA applies to their operations, but they view OSHA's provisions as well conceived, perhaps with a few exceptions, and they are guided by it when they have money to spend on safety. Wakefield interviewees volunteered that they must improve their practices regarding the wearing of hard hats and the confined space, trenching, and shoring requirements, which should be followed in, among other situations, the digging of graves in their town cemetery.

Davis-Bacon Prevailing Wage Act

This federal law is of little or no consequence because a more extensive Massachusetts law requires the payment of prevailing wages on all Town construction contracts. "Contractors don't like it because it causes trouble when they pay some employees at one rate and some at another," one interviewee observed.

FEMA

A hurricane that did some damage in Wakefield several years ago left in its wake some very poor opinions about FEMA, mainly because the Town wasn't told what to expect and "the paperwork was ridiculous." The bright side was that the town received $70,000 in assistance concerning their own preparation for emergencies. The Town's emergency management director is a retired, octogenarian fire chief who, when asked by the Public Works Director for a copy of the emergency plan, loaned him his personal copy, the only one still in existence. The Town conducts no training exercises.

CONCLUDING OVERVIEW

From the standpoint of the NAPA project, the most important finding is that Wakefield, like the other communities we have visited to date, identified no federal mandates that prevent implementation of any of the APWA management practices.

It would appear, however, that the overall impact of federal mandates on Wakefield will be well above average, mainly because the Clean Water Acts are forcing the Boston area and Massachusetts to finally pay the price for their scandalous neglect of the Boston Harbor and water quality in general.

Wakefield is the smallest of the 12 local governments to be visited as a part of this project and is therefore of special interest. More than 95 percent of America's counties, municipalities, and towns have populations smaller than Wakefield's, so it may well be our best indicator of the impact of federal

mandates on these tens of thousands of smaller units. There are many determinants of whether small communities even learn about federal mandates or whether they feel motivated or pressured to comply with them, but our Wakefield visit strongly suggests that such factors as form of government, organization, and availability of specialists are important, especially with reference to mandates where the locality largely acts or declines to act on its own. If the state or a regional entity dominates the decision-making and implementation, then it's a different picture.

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REPORT ON FIELD VISIT NUMBER 7
ATLANTA, GEORGIA

July 18-20, 1993

THE LOCAL GOVERNMENT

Atlanta is located in northwest Georgia and is the state capital. Though Atlanta itself has a population estimated to be 450,000 and an area of 134 square miles, it is also the central city of a metropolitan area that has 2,700,000 residents and spans 23 counties.

The Atlanta area has been one of America's most dynamic in recent decades. Already a sports center, the city, its business community, and the residents are now intently focused on readying the facilities and their infrastructure to host the 1996 Olympics.

The city government operates under the strong mayor-council plan. The mayor at the time of our visit was assisted by a chief administrative office, and the commissioner of public works reports to that CAO.

THE SITE VISIT TEAM AND PROCESS

Team members for this site visit were Tom Eggum, Director of Public Works in St. Paul, MN, and team leader; Ralph Krascewski, Deputy Director of Public Works for Operations in Pittsburgh, PA; Jim Thorne, Director of Research for APWA; and Wayne Anderson, NAPA's representative. Jim Thompson, the Corps of Engineers Institute for Water Resources contract officer for this project, also participated in the interviews throughout the visit.

The Atlanta Department of Public Works is responsible for 20 of the 29 central management and line public works activities covered by the APWA manual. The most notable exceptions are engineering, buildings and grounds operations, potable water, and snow removal and ice control. We assume they simply do not engage in the last of these activities in sunny Georgia.

In addition to the division heads and supervisors of all of the public works units, the NAPA representative and some of the other team members interviewed the chief administrative officer; the planning, finance, and human resource commissioners; the deputy city attorney who handles public works and environmental matters; the risk manager; and the council member who chairs the utilities committee.

PRE-SITE IDENTIFICATION OF MANDATES

In its questionnaire completed in advance of our field visit, Atlanta identified 69 impediments to implementation of the APWA management practices. Of these 69 impediments, 64 were local administrative impediments, one was state, and three were federal. The federal impediments mentioned were lack of funding for solid waste management and stormwater projects; some EPA effluent limits based on unsound criteria; and, with reference to pretreatment of wastewater, too much emphasis by EPA and the Justice Department on violations of paperwork regulations. Consistent with our findings in our field visits elsewhere, the impediments named by Atlanta, while important, do not prevent implementation of any of the APWA management practices.

Environmental Protection Mandates

The Atlanta deputy city attorney who handles the clean water and other public works matters made this general statement: the problem with most federal laws is that you're chasing a moving and changing target, and the priorities are ill-conceived.

Comments received on specific federal mandates follow.

Clean Water Acts (CWA). Atlanta is one of the Phase I localities that is proceeding under the NPDES permit procedure to correct deficiencies in its system. Wastewater is treated in advanced treatment plants that handle ammonia and phosphorus, as well as more ordinary pollutants. However stormwater flows through combined sewers are bypassed into creeks and ultimately reach the Chattahoochee River. They are building and upgrading a number of treatment plants now, and are completing their overall plan, which may or may not meet the federal standards.

Their main complaint predictably is the very high cost of the water quality and pollution control projects, but they have experienced a number of other problems, too. To them, the EPA metals standards, including the "dissolved metals" and " bio-available metals requirements," are controversial and of dubious validity, and the removal cost would be colossal. EPA's whole system is "paperwork intensive," and they place too much emphasis on pursuing insignificant violations of their paperwork requirements. Atlanta also labors under a court order regarding "exceedances" of stormwater flows into the Chattahoochee, which requires monitoring and subjects them to fines.

Resource Conservation and Recovery Act (RCRA). Atlanta disposes of its solid waste in landfills the city operates. One source of irritation for them was that EPA took several years before it issued the RCRA regulations, and then Georgia delayed in issuing its version. Atlanta meanwhile was foreclosed from making major decisions. Their 1974 Solid Waste Management Plan expires in 1994 and is being revised now. Their major contention with regard to the Subtitle D landfill regulations is the same one expressed by many localities. They do not believe their landfills are underlain by aquifers or other structures that transfer leachates to streams or other water supplies, so they believe EPA should recognize this fact and exempt them from the expensive requirements.

The city's risk manager fears future claims in regard to their landfill closures. Language in a federal law provides that governmental immunity does not prevail against pollution claims. Sovereign immunity is "otherwise tight in Georgia," he said.

Clean Air Act (CAA). Atlanta is in the early stages of preparing an "Advanced Traffic Management System." They have issued a request for proposals for traffic engineering studies of 70 intersections, and EPA is requiring a separate environmental impact statement (EIS) for each intersection, instead of one per corridor. Atlanta contends that EPA is feeling its way in this activity, which was opened up by the Intermodal Surface Transportation Efficiency Act of 1991 (ISTEA). In addition, EPA still has a great deal to learn about modern traffic engineering.

Underground Storage Tanks (UST). The director of motor transport vented his spleen about the underground storage tank requirements while granting that they may be desirable environmentally. The mandate came all of a sudden. Does it make sense? It will "require all of our nation's resources." Often the contaminants are the fault of prior owners. "The worst effects are the fines, even worse than digging out contaminated soil," the director said.

Personnel Mandates

The Atlanta officials and public works managers made few comments and no significant complaints about the anti-discrimination, health and safety, and labor practice mandates applicable to the city's employees.

OSHA does not apply to Georgia's local governments, but they are voluntarily complying with some of its provisions on a selective basis. The risk manager expressed appreciation for OSHA by opining that it will reduce workers' compensation claims over time and thereby will reduce costs.

Similarly, the commissioner of personnel and human resources said that implementation of the Commercial Driver's License (CDL) requirements required work and expense for physicals and drug tests, but that it has had positive effects. On the Fair Labor Standards Act, she mentioned transition and training demands, and time devoted to recordkeeping, but no persistent problems. She also had no complaints about any of the anti-discrimination laws, Americans with Disabilities Act, or the Drug-Free Workplace Act. Her support or calm acceptance of this considerable package of mandates, which is a major shaper of a personnel director's responsibilities, would seem to be partially attributable to the fact that she was previously a federal personnel officer.

Miscellaneous Mandates

One of the public works deputy directors uniquely asserted that a federal regulation is not strict enough. The FEMA flood control regulations, he said, should require that the 100-year flood line, which determines where development is permitted, must be revised as development accumulates and runoffs increase.

Finally, Atlanta's acceptance of the Davis-Bacon Act is confirmed by the fact that they adopted this federal law by local ordinance.

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REPORT ON FIELD VISIT NUMBER 8
ROUND ROCK, TEXAS

July 25-27, 1993

THE LOCAL GOVERNMENT

Round Rock is about 30 minutes north of downtown Austin, a rapidly growing town of 36,000 population with businesses moving over from Southern California. It has the council-manager form of government, with the mayor directly elected, working with six council members elected at large. The city employs 315. Texas is a "right-to-work state" and the city's only nationally affiliated union is IAFF (fire fighters). The city is working very hard at implementing TQM.

The mayor and council were especially hospitable, six out of seven of them joining us for various meals and meetings.

THE SITE VISIT TEAM AND PROCESS

The team consisted of Frank Chess, Waukegan (as head of the water department he was the only department head retained by the recently elected mayor); Richard Person, St. Paul's Public Works Department, Eric Melvin, APWA; and Mark Keane, NAPA representative.

The Department of Public Works of Round Rock was the unit interviewed in this site visit. It has about 100 employees providing services in water, wastewater, streets and drainage, engineering, and code inspections. It is responsible for the solid waste service but provides it through contractors.

All the interviews were conducted by the full team with the exception of the city manager, who was interviewed by Keane.

PRELIMINARY CITY IDENTIFICATION OF IMPEDIMENTS

The report submitted in advance by the city was not very helpful in identifying impediments to meeting the APWA practices, but the interviews uncovered several very interesting and relevant observations.

IMPEDIMENTS DISCUSSED IN INTERVIEWS

Safe Drinking Water Act (SDWA), Water Pollution Control Act (WPCA), and National Pollutant Discharge Elimination System (NPDES)

Round Rock is at the confluence of four creeks, so potentially has big stormwater problems. They've taken such measures on their own as constructing diversion channels to take flood water into quarries. And they do have their own drainage basin master plan.

As an illustration of their basic support for environmental controls, they told a story of two lakes in the Round Rock area. One is subject to runoff from Interstate 35 and from farmland ("EPA doesn't know how bad it is"), while the other has no such runoff and is the principal source of the city's water supply.

They also have taken initiative in protecting their additional water supply coming from wells by filtration of stormwater that enters their sensitive aquifer. On the other hand, the city manager sees the possibility they may have to inaugurate a drainage utility by the year 1996 to meet EPA requirements.

The city uses EPA to enforce regs against recalcitrant polluting industries and finds that they tend to comply promptly for fear their name will be blasted in the local newspaper. On the other hand, industries find the city their best advocate in meeting federal, state and local licensing requirements.

The kind of requirement that bugs the city manager is one that requires that they spend a quarter million dollars to remove the chlorine from wastewater, the same chlorine they put in the water supply during the purification process.

As to water testing (even though they think it's irrational), they do follow the requirement that they test for 28 new "constituents" (potential contaminants) each year and send in the samples, but they don't hear anything back. As to copper and lead requirements, they are convinced that 90% of the problem is in the homeowner systems on private property.

Comment on EPA in general: the city personnel cannot keep up with changes in EPA personnel, making cooperation very difficult, and the city's monthly reports just seem to get lost when they're sent in.

Federal Emergency Management Administration (FEMA)

"It's a federal case to get anything modified--they're impossible."

Mandates Affecting City Human Resources (Personnel) and Discrimination

FLSA is hardly known--one case only, from the police department, inquiry conducted by the Labor Department, case dropped.

ADA and sexual harassment--training courses being conducted.

Affirmative action--no problem cited (population is 5% black, 15% Hispanic).

Davis Bacon--almost unknown (closely tied to Austin labor market).

MBE--no impact.

OSHA--no sign of them or federal OSHA or State Labor Department enforcement regarding safety, although the city has called OSHA in to enforce against contractors.

CONCLUDING OVERVIEW

The Public Works Department is quite outstanding in their spirit of staff cooperation and support by the city manager, the mayor and the city council. As relates to our project, this reflects itself in a "can do" attitude about federal and state mandates. But they also wish the Feds would set deadlines and then leave them alone so they could use their own ingenuity, competence and confidence to solve problems and meet environmental goals in their own way.

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REPORT ON FIELD VISIT NUMBER 9
THE ARIZONA DEPARTMENT OF TRANSPORTATION (ADOT)

AUGUST 1-3, 1993

THE DEPARTMENT OF STATE GOVERNMENT

This is the first and only unit of state government included in the twelve site visits. As such, it gave a useful insight into the issues of state-local relations in mutual responsibility for a major public works service. We were able to discuss most of the standard practices of public works management common to local government, with the exception of solid waste.

ADOT has a Motor Vehicle Division and an Airports Division in addition to the Division of Highways, but the latter was our exclusive area of contact and in fact it constitutes by far the largest part of the department. The airport operation involves only the ownership and operation of the Grand Canyon Airport.

We spent about two hours with the chief engineer of the Division of Highways, and over an hour with the cabinet-level department director who is an ex-colonel in the Corps of Engineers and the fourth director during the governor's term. They both are ardent supporters of the TQM approach to management of the department and have a broad-gauged program underway. Our discussion with the director focused almost entirely on TQM.

THE SITE VISIT TEAM AND PROCESS

The focus of the visit was the Division of Highways of ADOT.

The visit was very well organized and managed by Joseph Spadafino, Engineer, Special Programs Section, Highways Division. He had participated as a team member in the Los Angeles County site visit.

Members of the team were Bill Cook, Snohomish County, Team Leader; Hildo Hernandez, Los Angeles County; Rita Knorr, APWA staff; and Mark Keane, NAPA representative. All members of the team participated in all the interviews.

A unique characteristic of Arizona was cited frequently during the discussions, namely that only 20% of the state's area is privately owned, the balance being under federal, state or Indian jurisdiction. The relations with Indian tribes on reservations, as sovereign nations, was cited as a frequent problem.

PRELIMINARY STATE IDENTIFICATION OF IMPEDIMENTS

The advance identification of barriers by ADOT was very well done, citing 53 cases, five of which specifically referred to as federal problems.

IMPEDIMENTS DISCUSSED IN INTERVIEWS

Intermodal Surface Transportation Efficiency Act (ISTEA)

ISTEA was, of course, the federal act most discussed during these interviews. The reviews were mixed, with many aspects considered very desirable but with some creating major problems. The chief engineer reports that their relations with the Federal Highway Administration are better than with any other federal agency.

They believe there should be fewer categories of funding so that the state and locals have more flexibility in the use of the total funds available.

The overlapping jurisdictions of as many as 7 federal agencies--FHWA, EPA, BIA, COE, BLM, Forest Service, Park Service--each of whom must approve the same project, creates major delays. One may approve, then the next disapproves. The chief engineer has an interagency meeting scheduled in San Francisco on Sept. 9 to address some of these issues. Especially needed is a common policy toward the Indian Reservations.

The Feds require design standards way in excess of what the state Division of Highways consider good design--the way they would do it themselves if free from these regs--so they don't get as much road for the money. They are hopeful that ISTEA may help.

The six management systems required under ISTEA find support in ADOT. They are in good shape in implementing two (pavement and bridge), are OK on safety, and expect to make the October 1994, deadline on congestion management, transit facilities and equipment, and intermodal.

ADOT believes it is working well with the seven COGS in the state (such as MAG--the Maricopa Association of Governments) and with local governments. Rita Knorr of APWA reported that it is her impression from meetings with Feds that they also see themselves as working well with the locals and giving them maximum flexibility.

An example of the impact of delay: a vital bridge on I-95 was severely damaged by the Gila River flood in February. The Department was able, under these emergency conditions, to complete the total process of replacement--from design to opening--in 5 months, a project that under the usual regulations would have required 3 - 3 1/2 years.

Safe Drinking Water Act (SDWA), Water Pollution Control Act (WPCA), and National Pollution Discharge Elimination System (NPDES)

A new term: "calibrated eye ball." Meaning: a state environmental quality inspector takes one look and shuts down a rock crushing plant on a project out in the middle of nowhere in the Arizona desert--it's "how the air looks."

There are problems with the application of these acts to restrooms in highway rest areas, of which the state has 27. The EPA and DEQ standards are not appropriate and their representatives cannot answer questions about how they might be applied. The regs prevent spraying the effluent on the open desert even though it is allowed on urban golf courses. The requirement to test drinking water for 30 new potential contaminants each year came in for the usual scorn here.

The stormwater regs (section 402 of the Clean Water Act) for state highway projects are a considerable problem, involving diversion dams, reseeding for 70% vegetation cover where there wasn't any vegetation in the desert previously, nor silt dams and or fences. "They in no way'" one official said "will save what it costs to install them." However, some say they had similar state regs before EPA and think this is all acceptable.

Section 404 of these regs, however, is another matter. This requires Corps of Engineers approval on all projects within the 20-year flood limits. The problem: delay. It often takes three months to get approval. EPA won't start their review till they get the final complete design plans, and since they have no state office everything must go the route of impersonal communications to San Francisco.

Maricopa County has taken the lead in drafting a Drainage Design Manual based on NPDES, which is gaining acceptance and use in the area.

The Equipment Administrator of ADOT has adapted to the many pollution control regs as they apply to the operation of a very large centralized equipment maintenance facility. "Some regs are ridiculous but it needs to be done--we're paying for past sins."

MANDATES AFFECTING HUMAN RESOURCES (PERSONNEL) AND DISCRIMINATION

They are well accommodated to federal regs on personnel, with the exception of **FLSA**, probably in part due to being a right-to-work state. They are just in the process of determining which positions are exempt.

ADA is a major concern of the ADOT risk manager, especially as a major unknown potential cost. Workmans Comp and ADA are not mutually exclusive; ADA regs are constantly changing.
OSHA seems completely supported, especially as it relates to safety of their workers on the open highways. A concern of the buildings maintenance staff is "SBS--Sick Building Syndrome." OSHA and EPA are both involved and there are still no definite standards set, but the staff is taking measures to cleanup the interior air by preventive maintenance measures on the air conditioning systems, etc.

CONCLUDING OVERVIEW

This was a very useful site visit as a means of hearing first hand the views of a major state agency that works intimately with local governments in the implementation of infrastructure programs and in the enforcement of federal regulations. It is a relationship that warrants further study through state associations of cities and some of the national state and local government associations that live constantly with the friction points of these interrelationships.

Immediately following conclusion of the ADOT interviews, a visit with the Director of the League of Arizona Cities and Towns, Jack DeBolske, (who also serves as director of MAG--the Maricopa

Association of Governments and is member of NAPA), revealed some very interesting viewpoints. For example, the League and MAG very much favor ISTEA as the right way to distribute federal highway funds because it gives discretion to the local governments through their COGs as to how the funds will be used.

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REPORT ON FIELD VISIT NUMBER 10
PITTSBURGH, PENNSYLVANIA

August 8-10, 1993

THE LOCAL GOVERNMENT

The City of Pittsburgh is located in southwestern Pennsylvania where the Allegheny and Monongahela rivers merge to form the Ohio River.

Pittsburgh's 1990 population was 375,000, but it is the central city of the metropolitan area that has a population of 2.2 million. Pittsburgh's population has gradually declined since World War II from a peak of over 600,000. This is an important fact for the public works operation because it means that an infrastructure built to serve a much larger population must now be maintained and renewed by fewer taxpayers and a smaller tax base. The city's area is 55 square miles.

The city operates under the mayor-council form, and the mayor at the time of our visit had appointed a chief administrative officer as her principal team member. The current mayor is not seeking reelection, so a new mayor will take office after the November elections.

In keeping with its industrial economic base, Pittsburgh is heavily unionized and has nine unions, two of them on a meet and confer basis.

THE SITE VISIT TEAM AND PROCESS

Team members for this site visit were Edward Warn, Assistant to the Director of Public Works in St. Paul, MN, and chairman of the team; Jacqueline Williams, Deputy Director for Management Services in the Atlanta, GA Department of Public Works; Jim Thorne, APWA's Director of Research; and Wayne Anderson, NAPA's representative.

The Pittsburgh Department of Public Works has responsibility for most of the activities covered by the 29 chapters in the APWA manual. The exceptions are municipal engineering, parking lots, and potable water, which are assigned to other city departments, and solid waste processing and disposal, which are private sector ventures.

Interviews scheduled for the team were very comprehensive and included the director of public works, the deputy director for operations, and all of the division heads. The NAPA representative and some of the other team members interviewed the chief administrative officer; the engineering and

construction, law, finance, personnel, planning, and general service department heads; and the chairman of the city council public works committee.

PRE-SITE VISIT IDENTIFICATION OF IMPEDIMENTS

Pittsburgh, like the other local governments we visited, completed a questionnaire in advance to identify any federal, state, or local impediments to implementation of the APWA management practices in their city. They identified 20 such impediments, but all 20 were classified as local administrative impediments. None pertained to federal or state mandates, though, as will be explained, the interviews disclosed many such impacts on their missions, resource allocations, progress in dealing with certain problems, etc.

FEDERAL MANDATES DISCUSSED IN THE INTERVIEWS

Pittsburgh officials raised complaints or made other points about the same federal mandates that were prominent in our nine other field visits, but their situation was different in a number of respects. They also brought to our attention several mandates and angles that were new to us. This report begins with the most important environmental mandates and then proceeds to the personnel and miscellaneous groups.

Environmental Mandates

For reasons that will be explained, Pittsburgh and its public works department are not currently facing as many problems under the environmental mandates as are the other large cities and counties we visited.

Clean Water Act (CWA). Near the well-known Golden Triangle downtown area of Pittsburgh, the Allegheny and Monongahela rivers merge to form the Ohio River. The city is served by combined storm and sanitary sewers, and there are 135 combined sewer outlets (CSOs) into these three rivers. Pittsburgh, however, along with 29 other cities over 100,000 population, was exempted from the requirement to obtain a National Pollution Discharge Elimination System (NPDES) permit because its population is wholly served by combined sewers. Consequently, the Allegheny County Sanitation Authority (ALCOSAN), the regional body responsible for wastewater treatment, and the city of Pittsburgh have not reached advanced stages in their studies and planning, and have not made decisions on improvements to the system and how to stop overflowing into the rivers.

Resource Conservation and Recovery Act (RCRA). The Pittsburgh public works department collects solid waste, but they dispose of it in privately-operated landfills. There are currently 11 such private landfills, all outside the city, and more potential landfill sites that were formerly coal strip mines. The city recently put its disposal contracts up for bid, and the price fell from $38.77 per ton to $16.15. The specifications require compliance with RCRA and all other federal and state laws. Hence, solid waste disposal is not a pressing problem for Pittsburgh. Looking to the future for Pittsburgh and suburban jurisdictions, Allegheny County is responsible for preparing a ten-year plan.

Despite its enviable landfill capacity, Pittsburgh has been aggressive in the development of a number of recycling programs, and has received two national awards for its "Blue-Bag Program." One of the 1993 goals of the public works department was to further improve the enforcement program for solid waste regulations. While they believe they have been conscientious in trying to comply with applicable federal laws, they nevertheless expressed the belief that the federal government should exercise restraint and leave the municipal solid waste field to the states to the maximum extent possible.

Safe Drinking Water Act (SDWA). The public works department is not assigned the potable water function, so we did not review that chapter of the APWA manual in Pittsburgh. They, however, did acquaint us with a state mandate that is a dramatic example of a very expensive state requirement where there is no federal requirement, at least not yet. Pittsburgh, like a considerable number of other communities in the U.S., has some uncovered reservoirs in which they store "finished water" - that is, water that has been filtered and treated with chemicals and that will be further chlorinated before it enters the distribution system. Pennsylvania is requiring that these reservoirs be covered; this is a requirement that hits Pittsburgh hard because they have three such reservoirs that range from 16 to 18 acres in size. The original cost estimate for covers was $120 million, but they are exploring a tent-like alternative that might cut the cost to $10 million.

Asphalt Plant Requirements. Our report on the St. Paul field visit presented their detailed, serious complaints concerning difficulties they have experienced in operating an asphalt plant and attempting to comply with the federal and Minnesota emissions, scrubber water, and other requirements. Pittsburgh, on the other hand, operates a large plant that processes 250 tons per hour, but they presented no complaints when questioned. How much of this difference is traceable to differences between Minnesota law and enforcement and Pennsylvania law and enforcement, we could not determine.

Personnel Mandates

The city of Pittsburgh has been the defendant in many civil rights and discrimination cases, the deputy city solicitor told us, but not many have been brought against the public works department. Police brutality charges, for example, are more numerous. Nowadays, the personnel director said, reverse discrimination cases are becoming a larger part of their caseload. However, no one questioned the necessity for these federal laws.

Drug-Free Workplace Act. The act at present requires no routine or random drug testing, but several agencies within the U.S. Department of Transportation, in December 1992, requested comments on a proposed rule that would have required random testing for alcohol and drug abuse. The Pittsburgh personnel department objected, saying that 50 percent per year random testing would be excessively burdensome and that 25 percent would be adequate to curb abuses.

Commercial Driver's License (CDL). These requirements were initially very disruptive in Pittsburgh because they were required to take more than 30 drivers off the trucks until they could be taught to read. Other departments we visited allowed them to continue driving while they attended classes. We were not able to determine why Pittsburgh proceeded in a more drastic way.

OSHA does not apply to Pittsburgh because the state legislature has not enacted a law that would adopt this federal act. However, the Pittsburgh public works department has proceeded aggressively in some of the critical safety areas. Most notably and commendably, the deputy director for operations, drawing on earlier personal work experience and advice from a mining specialist friend, developed and conducted a thorough training program on confined space trenching and shoring, and later assisted some other jurisdictions in their training efforts.

According to the deputy city solicitor, the Fair Labor Standards Act (FLSA) has caused fire department problems but no particular problems in public works.

Unrelated to federal mandates, the director of engineering and construction described a Pittsburgh situation that is an extreme example of how a local impediment can frustrate recruitment and probably force contracting-out. Pittsburgh has a residency requirement for city employees, but the directory of engineers shows that only ten out of 1200 engineers in Western Pennsylvania have Pittsburgh addresses. Engineers I and II, moreover, are unionized.

Miscellaneous Mandates

FEMA came in for several mentions, the first because FEMA delayed for four years before paying Pittsburgh's bill for assistance to South Carolina in the aftermath of Hurricane Hugo. They, however, experienced no significant problems in connection with a more recent blizzard of their own.

Their other complaint concerned FEMA's inflexibility in connection with emergency installations -quite a common complaint. FEMA wanted to install an I-flow flood warning system in one of their stream valleys. Pittsburgh sought approval of a more effective system that exceeded FEMA's cost cap, but FEMA would not approve it even if Pittsburgh paid the excess over the cap.

Davis-Bacon was not considered a problem. Pennsylvania law overlaps this federal law to some extent, and, more importantly, "one of their council members who is very pro-labor pushes for the highest possible wage requirements on each contract." The Americans With Disabilities Act (ADA) access requirements also are not a problem yet, because they are just beginning to develop their plan. This work was begun earlier but the staff was let go.

A forthcoming federal mandate was brought to our attention by their facilities manager. The Energy Policy Act, she understands, will require that new buildings comply with the American Society of Heating, Refrigeration, and Air Conditioning (ASHRA) Standard 90. She fears that the standards are too complicated and certainly are more so than the existing Pennsylvania standards.

Our field visit interviews have not usually wandered into parks and playground equipment, so we heard for the first time in Pittsburgh about the Consumer Product Safety Commission's Handbook for Public Playground Safety. The handbook presents guidelines, not mandates, but Pittsburgh is complying with it as it equips and re-equips its parks. The costs, at least for certain items, are unbelievably high, and Pittsburgh's total cost is especially high because their system with its 228 park facilities was developed for a much larger population. To comply with guidelines on swing sets and the underlying surfacing that must be large enough to cover the recommended "fall zone" and "no-encroachment zone," Pittsburgh now spends $27,000 per installation.

CONCLUSION

Pittsburgh, more than any other city we visited, exemplifies the plight of many of the older central cities located mainly in the East and Midwest: declining population and tax base coupled with heavy federally-mandated and state-mandated costs that burden the years just ahead more than they have the years just past. During our orientation session in Pittsburgh, what they stressed was, "**There's no money for anything**."

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REPORT ON FIELD VISIT NUMBER 11
FOSTER CITY, CALIFORNIA

August 15-17, 1993

THE LOCAL GOVERNMENT

Foster City is located on the San Francisco-Oakland Bay in the Silicon Valley of the peninsula. Its population is 29,000 and it started 30 years ago as a "municipal improvement district," then incorporating as a city 10 years later. It is organized in a council manager form under a "City Council/District Board." The city is approaching full build-out, with an added potential population of about 10%.

Ethnic breakdown is 70% Caucasian, 20% Asian, 6% Hispanic, 4% Black.

Total number of employees is 200. Major line departments are police, fire, parks and recreation, community development, and public works. Support departments are city attorney, city clerk, finance, and general services.

There are five city council members elected at large, and they select the mayor from their members, usually rotating each year. The city manager has held this position since 1977.

THE SITE VISIT TEAM AND PROCESS

The team consisted of Dwayne Kalynchuk, St. Albert, Alberta, Canada, Team Leader; Richard Stinson, Wakefield, MA; Eric Melvin, APWA staff; and Mark Keane, of NAPA representation.

The organization interviewed in this site visit was the Department of Public Works (DPW), which has 48 employees. They provide a full menu of the usual public works services, with the exception that solid waste collection and disposal are provided by a regional government contract. In addition, they maintain an extensive system of dikes and lagoons.

The full site visit team interviewed all DPW executives plus the mayor, city manager, assistant city attorney, deputy and assistant city managers (general services and budgeting), community development director, and the fire chief.

PRELIMINARY CITY IDENTIFICATION OF IMPEDIMENTS

The advance preparation work by the city under the direction of the DPW Director, Chuck Loucks, identified a total of 37 impediments, 15 of which were federal. A more detailed analysis distributed at the site visit listed a total of 57, with 19 of these being federal including 4 as "substantial."

IMPEDIMENTS DISCUSSED IN INTERVIEWS

Intermodal Surface Transportation Efficiency Act (ISTEA)

Little impact on Foster City. Essentially "anti-car." Under regional control (Metropolitan Transportation Commission--MTC), so "all the money goes to regional projects" based primarily on the air pollution impacts of the options.

Resource Conservation and Recovery Act (RCRA)

Service provided by Browning Ferris, Inc. (BFI) under a contract with a joint powers agency, so the problems of dealing with state and federal regs is off-loaded to others.

Safe Drinking Water Act (SDWA), Water Pollution Control Act (WPCA), and National Pollutant Discharge Elimination System (NPDES)

Future availability of adequate water supply remains a major concern for most cities in the state, especially in view of the conflicts with environmental groups. Mandatory reductions in water allocations are being made, in some cases "just to meet the needs of an endangered fish species--the Delta Smelt," so there is a need for stress on conservation. "They tend to regulate the urban areas while the farmers are ruining the land with irrigation...they refuse to look at the cost/benefit...they should look at the realities ...there are 5-6 million people in the Bay area that need to be considered along with the Delta Smelt."

Modern instrumentation can detect the tiniest amounts of potential contaminants which now must be eliminated without concern for the cost or the degree of risk.

Filtration requirements for surface water will cost them big money "with no proven need for it." They can see the possibility that it may require return to the abandoned concept of combined sewer systems.

Federal Emergency Management Agency (FEMA)

"FEMA has been helpful" in providing good training programs. "The California mutual aid plan is the best in the country." However, the city has had a major problem with FEMA on what they consider an arbitrary decision requiring a very expensive raising of the levee height.

(Incidentally, sprinklers are required in their town for all single family homes, as well as commercials. The fire chief is convinced this will allow them to hold down on the number of personnel required for fire suppression in the future. Also, in what seems to be a unique program, they request fire insurance companies to reimburse the city for the cost of fire suppression up to a certain maximum and are experiencing about 40% payment.)

Mandates Affecting City Human Resources (Personnel) and Discrimination

FLSA was mentioned frequently and passionately as totally inappropriate to their local government, even though they are somewhat unionized by AFSCME, Teamsters, and IAFF. They are "forced to try to fit a good local government personnel system into the constraints of FLSA...employees' opportunity to exercise initiative is limited (we have to tell the ambitious employees to stop working overtime or else we have to pay them)...it just doesn't fit a modern workplace."

Even the fire chief finds it a major management impediment in setting the workweek and compensation for an organization that is much different from the typical work arrangement. (Incidentally, he informed us that the IAFF is lobbying for amendments that would set 43 hours as the basic fire workweek, something that would hit every local budget hard.)

ADA came in for its share of complaint, although there was general support for the objectives. The personnel office is revising all its job class specifications. The building maintenance division has retained a consultant and proceeded without state or federal enforcement to implement the plan. However, they use their own "initiative" in interpretations, e.g. converting two out of six bathrooms in a building with six. "No one has a handle on it yet...it's the lawyers' full employment act."

OSHA imposes mandates with no flexibility to meet local conditions. But very few formal complaints filed under this or the other personnel regulations.

CONCLUDING OVERVIEW

This is another small, efficient local government with a governing body and executive staff that seem totally dedicated to doing a top quality job for their residents. Clearly one of the most difficult parts of their job is to deal with the demands made on them by all the other levels of government. Being in the complex San Francisco Bay area, they have more than the usual assortment of these demands so their difficulties are by no means limited to the feds. The complexities of the area lead to overlapping jurisdictions which often result in several federal agencies competing for control. The permitting process sometimes requires approval of 10-15 regional, state and federal agencies, reviewing the plans serially and following different guidelines.

In general, the locals find the Feds to be intelligent but lacking in practical experience or judgment and unwilling to exercise discretion even in the most obvious cases. "They should have people with some common sense write and enforce the regs." For example, a development project that would produce $150,000 a year in additional city revenue has been held up for a long time by debate over application of wetlands regulations, a delay which is totally unwarranted in the opinion of local officials. They know that in some agencies there is a shortage of personnel to handle the responsibility, but in many cases "the agency's staff simply won't face up to the environmental groups and say no."

Unlike most private business, the city can't always raise the price of their product to pay the added cost of the regulations. The city manager has told the DPW director "no dollars will be spent without specific written mandates," because the Feds have no concept of what their regs are costing the local governments.

National Academy of Public Administration
Project With U.S. Army Corps of Engineers

To Identify Federal Mandates
That Are Impediments To
Effective Local Public Works Management

REPORT ON FIELD VISIT NUMBER 12
BILLINGS, MONTANA

August 18-20, 1993

THE LOCAL GOVERNMENT

Billings, which is located in south-central Montana, has a current population of 82,800 and is therefore the state's largest city. Its population has grown 24 percent in the last decade, and its area of 31.8 square miles will accommodate additional growth.

The City's economy is quite diversified, and its unemployment rates generally run below the national average. Oil and agriculture are their primary industries, and there is a strong federal presence.

Since 1977, Billings' city government has operated under the council-manager form, but they call it the council-administrator form and their chief executive's title is City Administrator. The mayor is elected at-large, and there are 10 councilmen, two elected from each of five wards.

Very tight tax limits, imposed during the national tax revolt commonly associated with California's Proposition 13, are the City's foremost problem. General Fund revenues grew only 32 percent in the last ten years. Public works expenditures increased 41 percent, but even that number falls far short of the general inflation rate coupled with Billings' growth rate.

From a public works point of view, Billings' climate is considered very favorable. Rainfall averages only 13 inches per year; snow rarely stays on the ground more than five or six days, which allows them to limit snow plowing to arterial and collector streets. And Billings has not been vulnerable to natural disasters.

THE SITE VISIT TEAM AND PROCESS

Team members for this site visit were Andrew Radetski, Public Works Director of Palatine, Illinois, and chairman of the team; George Williams, Public Works Director of Lawrence, Kansas; Jim Thorne, APWA's Director of Research; and Wayne Anderson, NAPA's representative.

The Billings city government undertakes every one of the public works activities encompassed by the 29 chapters of the APWA manual, but the Public Works Department is not assigned responsibility for buildings, grounds, parking lots, equipment, potable water, or wastewater. These subjects nevertheless inevitably came into our discussions.

This site visit, like the others in this series, was well arranged to meet our needs. Interviews were held with the Director of Public Works and all of his division and section heads, save one who was on vacation (not bad for a mid-August site visit), plus the Fire Chief and Communications Supervisor who are responsible for Emergency Management. The NAPA representative participated in most of the interviews focused on public works activities and conducted separate interviews with the City Administrator and his deputy, the City Attorney, the Director of Finance, the Director of Personnel, and the Risk Manager.

PRE-SITE VISIT IDENTIFICATION OF FEDERAL MANDATES

Billings was the last of the 12 field visits made under this project, and its pre-site visit efforts to identify federal mandate impediments were the most thorough of any local government visited. There were two explanations for this. Ken Haag, Billings' Director of Public Works and an APWA board member, had attended the Self-Assessment Training/Orientation Program held on May 2 that preceded the St. Paul field visit, so he heard the NAPA presentation on federal mandates and picked up our list of some 90 federal laws and mandates presumed to affect implementation of the APWA management practices. Hence, while the other field site jurisdictions essentially reported on mandates they had come to know on their own, Billings worked from a finder's list and searched diligently for federal mandate impacts. The second explanation was that Haag brought on board a temporary employee, Blaine Weston, who worked full-time on this project for several months and produced excellent and informative materials concerning both the APWA practices and federal, state, and local impediments to their implementation.

Twenty-four of the chapters in the APWA manual, which contain 341 of the practices, apply to the Billings Department of Public Works. Forty of these practices located in 16 of the chapters are affected by federal mandates, they found. However, as has been true in each of the cities, counties, and towns visited, they reported that state and local impediments, especially lack of funding or resources, were more numerous and formidable. State impediments appear to have more impact in Montana than in some of the other states we visited.

FEDERAL MANDATE IMPEDIMENTS DISCUSSED IN BILLINGS' REPORTS AND INTERVIEWS

The thoroughness of Billings' search for federal mandate impediments, in effect, made their work and our discussions there a check on the other 11 field visits. If we had missed any important federal mandates or misunderstood the effects of particular mandates, chances were good that Billings could correct the record. However, as things turned out, our two primary tentative conclusions continued to stand up:

1. There are no federal mandates that block or prevent implementation of APWA's recommended management practices. These mandates, however, do place heavy burdens on local governments and especially on their public works agencies.

2. There are only ten or a dozen federal mandates whose impacts are considered major by the local governments we visited. Billings did not add to the list but did supply additional helpful information concerning some of these mandates.

In the following comments on federal mandates that we discussed in our interviews, liberal use will be made of quotations from Ken Haag's report to the City Administrator on the Public Works' self assessment dated August 4, 1993. We start with the environmental mandates which in Billings, as elsewhere, are the "heaviest regulatory hits."

Clean Water Acts

Billings' obligations and costs under the Clean Water Acts appear to be the lightest by far of those in the six localities this NAPA representative has visited. They have separated sewer systems, they have only five storm water outlets into the Yellowstone River, and their storm water flows are relatively infrequent and small because the annual rainfall is only 13 inches. Nevertheless, Billings faces burdens and costs, which they described in this paragraph:

> With regard to the storm water conveyance system, the Public Works Department will soon be required to respond to federal and state permitting requirements. Currently, cities with populations greater than 100,000 are required to obtain permits for discharge of storm water to rivers and streams. Regulations are being drafted to require similar permitting procedures for smaller communities and may be available for review as early as October 1, 1993. The City of Billings may be required to obtain a National Pollutant Discharge Elimination System (NPDES) permit similar to the operation of the wastewater system or at least a state permit for the same purpose. This will add extensive study, monitoring, and record maintenance requirements for operation of the storm drainage system. In the worst case, it could also require the added burden of treatment of storm water flows before discharge with all the appurtenant manpower and expenses.

As the last sentence tends to imply, Billings shares with other communities concerns about future requirements on street dirt, which contains motor oil, heavy metals, asbestos, and other contaminants. These concerns extend to street sweeping and flushing requirements; disposal of sweepings, which Billings now deposits in its landfill; and conceivably even treatment of storm water flows because they contain street dirt.

Billings considered itself to be trapped by another clean water matter. They had reached the point where repairs to basins in their sewage treatment plant could not be delayed any longer, but they had to bypass the plant for five days to make the repairs. They are now expecting a citation for this violation. Preventing any need to bypass from time to time would require substantial and very costly building-in of redundancy -- that is, dual facilities.

Resource Conservation and Recovery

The most popular subject in Billings dealt with landfills. Why? Mainly because of Billings' enviable landfill circumstance and because the federal Subtitle D and other federal requirements are seen as a classic miscarriage and waste in their local situation.

Billings' 540-acre landfill is close to the City and has capacity to serve the City and five or six nearby counties until 2045. The geologic and clay profile is exceptionally well adapted for a landfill. The area is underlain by 250 feet of clay, including some bentonite, which is so favorable as a landfill sealant that a 6-inch layer is sometimes prescribed for placement between plastic liners. My dictionary defines

bentonite as "a clay formed by the decomposition of volcanic ash, having the ability to absorb large quantities of water and to expand to several times its normal volume." It was named after Fort Benton, Montana, says the dictionary, thereby confirming its local connection.

The long and short of it is that Billings believes its landfill does not pollute the groundwater and should be found to be in compliance. Their test wells, which they have had in operation for years, are essentially dry and show no leachate problem. They nevertheless have been required to drill additional test wells and change their testing in ways they consider to be inappropriate for their landfill.

But here we hit intergovernmental management problems in this field. Montana has claimed primacy under Subtitle D. Billings pays a per ton fee, which currently amounts to $62,000, for their annual landfill license. Montana intends to use this revenue to hire a 16-person staff but has made only limited progress toward this objective thus far. Sparsely populated states have difficulty in recruiting specialists in many fields.

With Montana's primacy, the state could, for example, find Billings' landfill to be in compliance and plastic liners to be unnecessary. The fear, however, is that a poorly staffed, unconfident state agency may play it safe by insisting on the U.S. EPA's standard prescription.

The City of Billings does no recycling, but some private enterprises in the community do some selective recycling. Billings, as a western city which describes itself as the largest city in that 1100-mile expanse between Minneapolis and Spokane, is a long distance from firms that recycle many of the commonly recycled materials. Transportation costs would further undermine the economics of recycling and increase costs borne by Billings residents. Billings therefore naturally questions the desirability of national or even statewide mandates. (Our field visits do seem to indicate that a relatively high degree of local discretion and experimentation is being allowed in recycling thus far.)

Safe Drinking Water

Potable water is a responsibility of their Utilities Department, not the Public Works Department, but we did inquire about their compliance with the lead and copper standards. They are not in violation but they are too close for comfort. They are therefore playing it safe by increasing the Ph in the drinking water so as to reduce corrosion.

Personnel Mandates

Discussion of the various federal mandates affecting personnel administration brought forth some minor and moderate objections, but Billings seems to be taking them in stride, by and large.

Civil rights, anti-discrimination, EEO, and other laws are seen as having made discharge, demotion, and disciplinary actions "very difficult to carry through."

FLSA requirements on minimum wage rates, overtime, compensatory time, etc., limit their collective bargaining flexibility, and OSHA regulations reduce their ability to negotiate progressive discipline for safety violations.

They anticipate that the ADA personnel requirements will cut back their flexibility in defining jobs and assigning people. As an example, they now require sign painters to drive snow plows as needed, but it seems probable that sign painter positions may "be saved for" capable handicapped persons in the future. Meanwhile, the city is readying itself for these changes. Consultants are in the process of revising their classification and pay plans, and the revised position specifications will include facts relevant to handicapped persons holding those jobs.

Affirmative action requirements apparently have been only a minor complication in Billings where the Native American, Afro-American, and Hispanic components of the population are all small. The effect of affirmative action, said one official, "is to make a minority hire more valuable." The Public Works Department is 95 percent white male, so "their major deviation from representativeness pertains to females."

Finally, here are their words on the CDL requirements:

> In an attempt to control highway traffic safety, the federal government passed a commercial driver's license provision which has then been required to be adopted by each state. Thus, the provision of public works services is made many times more difficult, and/or expensive, because of the commercial driver's license requirements and the limitations imposed on the types of vehicles that any driver can operate.

FCC Requirements on Splitting Radio Rrequencies

The Billings report describes in mild language their objections to the FCC frequency splitting requirement:

> In radio communications for the Public Works Department we have identified that even though our existing system is working very well, it will be necessary to expend a large sum of money because the federal communications commission has mandated the "splitting" of the radio frequencies available. Thus, our existing equipment will not meet the new federal guidelines in 4 or 5 years. This federal action was brought about because of a shortage of radio frequencies on both the east and west coast.

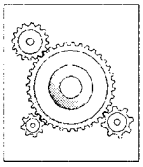
Their opinions, as expressed to us, were stronger and unqualified. Frequency splitting and the related overhaul of their communications center would cost them a great deal of money, and the expenditure is quite unnecessary. The FCC requirements are responsive to needs in highly populated areas. States such as Montana and Wyoming should be exempted, they said flatly.

MISCELLANEOUS COMMENTS ON FEDERAL MANDATES

Among the lesser comments that were not detailed were statements that Billings hasn't come to grips with OSHA and considers safety one of its neglected areas; that they are not clear or well informed about minority business contracting requirements; and that they replaced their underground tanks with new double-wall tanks and required controls, and did not have major disagreements with the requirements.

CONCLUDING OBSERVATIONS

The Billings field visit was educational and gratifying altogether, but it had a special significance for this NAPA representative. The five other communities I visited -- St. Paul, Waukegan, Wakefield, Atlanta, and Pittsburgh--are all in highly populated, major metropolitan areas. Billings, in contrast, is part of a much smaller metropolitan area that essentially sits all by itself on the range in one of our largest states in area but smallest in population. Billings' critical facts, especially those pertaining to environmental protection programs, were therefore notably different from those we found in the other communities. These differences underscore the need, in the intergovernmental management of federal mandates, for greater use of arrangements that decentralize administration to the states and flexibly adapt requirements to local needs and priorities.



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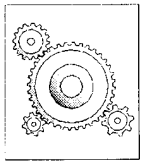


APPENDIX D - ANALYSIS OF ROADBLOCKS WHICH IMPEDE IMPROVEMENTS IN PUBLIC WORKS PERFORMANCE

JANUARY 1993

SUMMARY OF EFFECT OF FEDERAL LAWS, REGULATIONS, OR PRACTICES ON PUBLIC WORKS MANAGEMENT PRACTICES

A total of 417 public works management practices have been grouped by 29 major areas (chapters) in the Public Works Management Practices Manual developed by the American Public Works Association.

Federal laws, regulations, or other requirements have been specifically mentioned in 29 practices. While this was done to emphasize the importance of the federal role by those developing these practices, our review indicates an additional 49 practices which are definitely impacted by federal law or regulation even though these requirements are not specifically mentioned in the practices. In addition, we have identified 17 more practices which we suspect will be found upon closer inspection to be affected by federal laws, regulations, administrative or technical requirements.

In the introductory material in four chapters, federal laws or regulations were cited as having a general influence. In addition we identifed ten additional chapters in which such a general identification is applicable. The result is that we found only one chapter, Planning (3), in which we could not readily identify federal laws, regulations, administrative or technical requirements which would affect some practice within that chapter.

This analysis supports the general thrust of this project which is to suggest that the pervasive influence of federal laws, regulations, administrative and technical requirements in the public works area may cause impediments to effective public works management. However, the range is so great, from the Davis-Bacon Act of the 1930's to the environmental laws of the 1980's, that it is not possible from an analysis of the manual to identify the areas which may be judged most troublesome. This will have to wait for our site visits, and eventually the responses from the second questionnaire which will go to a wider audience.

We have identified the federal laws, regulations, administrative and technical requirements in three ways in the material that follows:

1. Those that are directly mentioned in the practice or in the introduction to the area (e.g., Personnel Management) where certain practices have been grouped (D, i.e., direct identification).

2. Those in which we are reasonably sure that federal laws, regulations, administrative or technical requirements exist (I, i.e., implied)

3. Those in which we suspect federal laws, regulations, administrative or technical requirements exist, but which need further verification. (S, i.e., we suspect the existence of federal laws and regulations).

Where possible we have identified the specific area within an explanation of a practice where we believe federal laws, regulations, administrative or technical requirements apply. It should be noted that in some cases the laws or regulations cited apply only to certain types of agencies, land areas or projects.

In other cases we have grouped a number of practices by title where they are all affected by the same law or body of laws.

Academy comments are shown in bold-face type.

ANALYSIS BY CHAPTER AND PRACTICE WITHIN THE APWA MANUAL

1. Organization

1.5 Agency has developed a code of ethics. The code may include such items as political involvement, acceptance of gifts, conflict of interest. **(S)**

2. Personnel Management

Managers are confronted by an array of diverse issues, for example ...Fair Labor Standards Act... **(D)**

OPM Merit Systems Standards apply generally to covered agencies. (I)

2.2 The classification plan is routinely reviewed and revised.

Fair Labor Standards Act and Social Security Amendments of 1983 and 1981 apply. (I)

2.3 A plan establishes employee compensation, including salary range surveys, promotions, overtime pay, compensation time, and bonuses.

Fair Labor Standards Act applies. (I)

2.4 A benefits package outlines employee benefits and provides employees updated descriptions of the program.

Fair Labor Standards Act and Social Security Amendments of 1983 and 1981 apply. (I)

2.5 Work space, equipment and tools are provided. Hours of work and shift schedules are defined.

Fair Labor Standards Act and Drug-Free Workplace Act of 1988 apply. (I)

2.7 Personnel Rules. Rules may be delineated concerning employee conduct; use of alcohol and drugs; acceptance of gratuities, bribes or rewards; abuse of authority; proper care and maintenance of equipment; safety regulations; participation in political activities; codes of ethics and other applicable regulations.

Hatch Act applies (I)

2.15 Employees are scheduled to receive job-related safety and health training.

Occupational Safety and Health and Hazardous Materials Acts apply (I)

2.16 Recruitment
2.17 Application Process
2.18 Hiring Process
2.19 Affirmative Action Plan

OPM Merit Systems Standards and Affirmative Action apply to practices 2.16-2.19. (I)

2.20 Equal Employment Opportunity Plan. Agency plan outlines Equal Employment Opportunities. An Equal Employment Opportunity plan ensures minority persons and women equal opportunities for employment. An analysis may be performed of the agency's present employment policies, practices, and procedures relevant to their effective impact on the employment and use of minorities and women. **(I)**

2.21 Sexual Harassment. The agency has a policy which specifically prohibits sexual harassment. **(S)**

4. Finance

Federal laws and regulations on federal aid accounting, reporting and auditing; the Cash Management Improvement Act of 1990; and federal laws and regulations on arbitrage apply generally to this chapter. (I)

4.6 Rate Setting. Prices are set for designated goods or services according to financial objectives, equity, efficiency and administrative feasibility. Determination of the rate or price for a given good or service should take the cost of service analysis into account along with applicable laws and regulations. ... **(S)**

4.13 Contracts. The provision of contracted goods and services is based on a written contractual agreement.

The Davis-Bacon Act and the various federal acts that comprise the "boiler-plate" attached to most local government contracts apply. (I)

5. Risk Management

...Risk management combines a legal audit of all procedures with engineering standards and practices. ... **(S)**

5.2 Worker Compensation Claims

Federal laws and regulations may affect state worker compensation systems. (S)

5.3 Accident Reporting Claims. Evidence in both property damage and personal injury incidents is reported and substantiated according to a set procedure.

Occupational Safety and Health Act applies (I)

5.4 Legal Review. Legal Counsel reviews all forms for contracts, permits, resolutions, ordinances and intergovernmental and lease agreements. Legal counsel reviews documents and provides counseling in all legal matters to ensure compliance with federal, provincial, state and local regulations. **(D)**

5.7 Contractual Form Review. All contractual forms executed by the agency are reviewed by legal counsel and periodically updated. Contractual forms should be reviewed by legal counsel to assure the agency of its compliance with all laws and regulations... **(I)**

5.8 Ordinance and Regulations Enforcement. Legal counsel reviews policies concerning the enforcement of ordinances and regulations. Legal counsel is consulted for direction and approval of notices and actions preliminary to prosecution of ordinances. **(S)**

5.9 Legal Review of Regulations. Legal counsel is consulted about the interpretation and impact of federal, provincial and state laws and regulations. With the frequent changes in federal, provincial, and state regulations, particularly regulations relative to environmental issues, legal counsel should be fully apprised of the financial and functional impact which enforcement of the regulations may have on the operation of the agency. In the event that claims are being filed by the federal, provincial, and state governments against the agency, legal counsel should be consulted and a strategy established for response to the respective governmental organizations. **(D)**

6. Communications

6.3 Public Participation. Public participation in agency programs is encouraged.

Citizen participation laws and regulations apply (I)

6.9 Regulations Compliance. Radio operators must comply with all federal, provincial or state telecommunications guidelines in radio operations. **(D)** Licenses should be renewed in a timely fashion.

6.13 Twenty-four-Hour telephone access is provided to the public for emergency assistance.

6.14 Communications personnel must have immediate access to a supervisor and a roster of crews and personnel.

6.15 Procedures are established for notifying appropriate services in emergencies.

6.16 A procedure outlines handling and routing (of) misdirected emergency calls.

6.17 Maps detailing the service area are readily available to communications personnel.

FEMA and Hazardous Materials laws and regulations apply to 6.13-6.17. (I)

7. Records

7.7 Complete personnel files are maintained in one centralized location for all employees.

7.8 The agency has a written policy which defines and determines access to personnel files.

7.9 The agency determines the content of personnel files and maintains a written statement defining that content.

7.10 The agency maintains a personnel leave reporting system.

Federal privacy, Fair Labor Standards Act, and EEOC laws and regulations apply to 7.7-7.10 (I)

8. Emergency Management

Federal Emergency Management, Nuclear Regulatory Commission, Department of Energy, and Hazardous Materials laws and regulations apply to this chapter. Specifically, the Emergency Planning, and Community Right to Know Act applies. (I)

9. Safety

The Occupational Safety and Health Act applies generally to this chapter. (I)

9.3 Safety Measures and Reports. Recordkeeping systems are prescribed by governmental regulatory agencies and insurance programs. ... **(I)**

9.5 Hazardous Materials. Hazardous materials handling, storage, identification, and disposal are performed according to approved directives.

Occupational Safety and Health, Nuclear Regulatory Commission and Energy laws and regulations apply (I)

9.7 Work Zone Safety. Minimum standards for work zone signing and barricading are defined in the Manual on Uniform Traffic Control Devices ... **(S)**

10. Municipal Engineering

10.1 Land Use Planning
10.2 Zoning Control
10.3 Subdivision Regulations
10.4 Plan Review

Coastal Zone Management, Wetlands, Historic Preservation, and certain other federal laws and regulations apply to land use, zoning, and subdivision controls over certain land areas. (I)

11. Engineering Design

11.20 Contract documents. Contract documents include advertising, final plans and specs, bid sheets (bid proposal), engineer's estimate, permits, easements, rights-of-way, insurance requirements, statements of disadvantaged business enterprise (DBE) participation, and statement of non-collusion, and other applicable state, provincial and federal requirements. **(D)**

12. Bid Process

Federal laws and regulations affect bidding (I)

13. Construction

Federal laws and regulations affect construction especially where federal aid is part of the financing. (I)

13.6 Work Zone Management. A single agency is responsible to administer and coordinate work in the public right-of-way. Responsibilities of work zone management include a procedure for permitting work in the right-of-way, for the administration of traffic control plans and for maintaining smooth traffic flow. The public deserves the most efficient management of construction projects in the public right-of-way. The agency responsible for construction oversees this coordination between public and project needs. **(S)**

14. Right-of-Way Permits

14.4 Permit Process. The permit process is in compliance with all applicable laws, codes, rules, and practices; and with federal, provincial, state, local and utility accommodation policies and practices. **(D)**

15. Utility Coordination

15.4 Long Range Planning. Federal, state, provincial and local regulations frequently require advance plan approval of major system changes in excess of specific cost or capacity levels. ... **(D)**

16. Buildings.

Architectural Barriers and Handicapped Improvements laws and regulations apply to this chapter. (I)

16.1 Regulations. Agency complies with all federal, provincial, state, or local building codes, regulations, and environmental laws with regard to the design, construction and maintenance of buildings. **(D)**

16.13 Inventory. An inventory should be maintained which details all facilities which satisfies federal, provincial, and state reporting requirements and which details major components in each facility.**(D)**

16.14 Renovation. All improvements, replacements, or renovations of building systems comply with federal, provincial, state and local building codes. **(D)**

Historic Preservation laws and regulations apply; Asbestos laws and regulations may apply to certain buildings.

16.15 Custodial Methods. Custodial methods are established for each facility. Custodial practices must meet federal, provincial, state, and local health codes. **(D)**

16.18 Life and Safety Systems. A routine inspection and testing program should be maintained and inspections and testing recorded on the following facility components: elevators, emergency generators, fire alarm systems, sprinklers, emergency fire extinguishers, and other fire suppressant systems. **(S)**

16.19 Security. Basic security measures include door locks, fencing, window grills, ultrasonic alarms, radioactive sensors, heat sensors, smoke sensors, infrared alarms, electronic eyes, silent alarms, fire alarm pull stations, safes and vaults, radio controlled openers, lighting, and public safety patrol. **(S)**

16.20 Handicap Access. Many agencies have policies covering handicapped access provisions in public facilities that exceed minimum mandatory code requirements. A policy, even if it is simply to abide by minimum code requirements, should be in place. **(I)**

17. Equipment

Occupational Safety and Health and Hazardous Materials laws generally apply to the chapter. (I)

17.5 Safety Improvement Reviews. Each agency has a responsibility to make certain that equipment performs its intended purpose, and meets all the agency's health and safety requirements. **(I)**

17.15 Fuels and Liquids Inventory. A fluids inventory tracks the use of fuels, oils, lubricants and automotive fluids. **(S)**

17.17 Parts and Materials Disposal. A procedure identifies the disposal method for parts and materials in an environmentally sound manner. **(I)**

17.22 Underground Storage Tanks. Underground tank installation, inspection, maintenance, and removal meet federal, provincial and local regulations. ... **(D)**

18. Grounds

Federal laws and regulations affect provisions on trees, fertilization, irrigations, and cemeteries. Specifically, the Federal Insecticide, Fungicide, and Rodenticide Act applies. (I)

18.6 Vision Clearance. Vision clearance is maintained at street, alley, and driveway intersections to prevent landscaping and foliage from restricting motorists vision. **(S)**

19. Parking Lots

19.1 Parking Lot Planning. Size and placement of parking structures may (**must?**) include...provisions for the handicapped... **(S)**

20. Solid Waste Management

...Factors that must be evaluated ...include...legislative restraints.. **(S)**

20.1 Solid Waste Policy. Agency has adopted an integrated solid waste management plan. **(S)**

20.2 Waste Minimization. Techniques appropriate for waste stream minimization range from packaging legislation to establishing recycling programs for the community. Packaging legislation is most effective at the national, provincial or state level. ... **(D)**

20.4 Environmental Compliance. Appropriate means of environmental control are required for all elements of the solid waste management program including such items as soil, air, ground water, and gas emission testing particularly in conjunction with disposal, transfer, and waste handling sites. **(I)**

21. Solid Waste Collection

21.7 Transfer Station. Transfer stations are designed to ensure sufficient capacity for the handling of solid wastes while meeting federal, provincial, state and local laws and directives. **(D)**

22. Solid Waste Processing

22.1 Recycling. A feasibility study of recycling programs is carried out based on available markets and participation rates in compliance with federal, provincial, state and local directives and is periodically updated. **(D)**

22.10 Composting
22.11 Compost Material Supply
22.12 Compost Market Development
22.13 Compost Collection
22.14 Compost Program Review
22.15 Compost Service Level

Environmental Protection Administration laws and regulations may apply to 22.10-22.15. (I)

Waste-to-Energy and Incineration

22.16 Material Supply
22.17 Waste-to-Energy Operations
22.18 Waste-to-Energy/Incineration Monitoring.
22.19 Ash Disposal

Clean Air and other Environmental Protection Agency Acts apply to 22.16-22.19. FERC and Energy laws may apply to sale of electricity produced. (I)

23. Solid Waste Disposal

...In the U.S., each state uses procedures developed by the Federal EPA. Each agency in turn complies with state and local regulations. ... **(D) The Endangered Species Act applies to this chapter. (I) Also while this chapter concentrates on landfills, the Ocean Dumping Ban Act of 1988 also applies. (I)**

23.1 Landfill Disposal. The design meets all applicable requirements set forth by federal, provincial, state and local directives; and describes appropriate construction, operation, maintenance and closure procedures. **(D)**

23.3 Incoming Wastes. Certain wastes are not allowed into the landfill due to their infectious and hazardous nature... **(I)**

23.5 Leachate Control. Leachate is contained and treated during landfill operation and after closure and is in accordance with federal, provincial, state, and local regulations. **(D)**

23.10 Landfill Design Monitoring. Landfill design includes monitoring requirements that comply with federal, provincial, state and local directives. **(D)**

23.11 Landfill Methane Recovery or Venting. Landfill design includes methane management requirements that comply with federal, provincial, state and local directives. **(D)**

23.16 Landfill Closure. Landfill closure requirements comply with federal, provincial, state and local directives to prevent uncontrolled movement of contaminants. **(D)**

23.17 Cover Material. The type, amount and placement of landfill cover material comply with federal, provincial, state and local directives. **(D)**

23.18 Landfill Landscaping. Plans for closure include landscaping, and compliance with federal, provincial, state and local requirements. **(D)**

23.19 Post-Closure Monitoring. Post-closure requirements comply with federal, provincial, state and local directives and ensure proper monitoring and maintenance of the site. **(D)**

23.20 Land Application. Standards are used to design, operate and maintain a land disposal facility in an environmentally responsible manner. **(I)**

24. Streets

24.1 Legal Authority. The agency has established and documented that local, state, federal, or provincial laws provide proper authority for the agency to carry out its transportation related responsibilities. **(D)**

24.3 Planning Participation. Local, state, and provincial transportation agencies support, attend and participate in local, state or provincial planning efforts. **(S)**

24.5 Planning Coordination. Transportation programs are coordinated with other local, state or provincial transportation and land use planning efforts. **(S)**

24.19 Traffic Control Devices. The Manual on Uniform Traffic Control Devices ... **(D)**

24.24 Pavement Markings. Pavement marking standards may reference the Manual on Uniform Traffic Control Devices and the Uniform Traffic Control Devices for Canada manual. ... **(D)**

25. Street Cleaning

25.1 Street Cleaning Management. Factors that must be evaluated ... include...legislative restraints **(I)**

25.2 Environmental Compliance. Appropriate means of environmental control are required for all elements of the street cleaning management program, including such items as contamination of air or groundwater, and particularly in conjunction with transfer and processing of materials discharged to waters or placed in disposal sites. **(I) The Clean Water Act may apply to some practices in this chapter. (S)**

26. Snow Removal and Ice Control

Corps of Engineers and Environmental Protection Agency laws and regulations may regulate dumping in navigable streams, lakes, etc. (I)

27. Stormwater.

...Stormwater control in the US is in part regulated by the Federal Clean Water Act. ... **(D)**

27.2 Floodplain Management. Corps of Engineers, federal flood insurance, and (possibly) Environmental Protection Agency laws and regulations apply. **(I)**

27.5 Allowable Discharge. Federal, provincial, state, and local regulations define allowable discharge to the stormwater system. **(D)** In the US only those flows which are included within the definition of stormwater as defined by the US EPA or which have a National Pollutant Discharge Elimination System (NPDES) are allowed into the system. Most dry-weather flows are prohibited.

Provisions to prohibit discharge or removal of some pollutants such as used motor oil and flows from commercial car wash facilities may be required.

27.12 Sediment and Erosion Control. A policy establishes a sediment and erosion control program. **(I)**

27.13 Pollution Mitigation. Pollution mitigation techniques, inspection criteria, and enforcement provisions are established to improve the quality of the receiving waters. **(S)**

28. Potable Water

The Safe Drinking Water Acts of 1975 and 1986 apply to this chapter, and various other laws and regulations apply in situations where the federal government operates or controls water supply sources and cross-connections. (I)

29. Wastewater

Collection and treatment of wastewater complies with local and state health regulations and federal and provincial environmental requirements, including Water Pollution Control Federation (WPCF) standards **(D)**

29.1 Defined effluent limits comply with federal, provincial, state and local directives. **(D)**

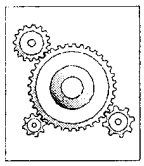
29.3 Pretreatment Program. The program contains components of permit application and issuance, inspection and surveillance, sampling, and billing regulations, federal and provincial requirements. **(D)**

29.9 Sludge Management. A program has been developed to properly dispose of sludge. **(S)**

APPENDIX E - ACRONYMS

ACIR	-	Advisory Commission on Intergovernmental Relations
ADA	-	American Disabilities Act
ADOT	-	Arizona Department of Transportation
ADR	-	Alternative Dispute Resolution
AFSCME	-	American Federation of State, County, and Municipal Employees
ALSOSAN	-	Allegheny County Sanitation Authority
APWA	-	American Public Works Association
ASHRA	-	American Society of Heating, Refrigeration, and Air Conditioning
ASU	-	Arizona State University
BIA	-	Bureau of Indian Affairs
BLM	-	Bureau of Land Management
CAA	-	Clean Air Act
CAO	-	Chief Administrative Officer
CEWRC	-	Corps of Engineers, Water Resources Council
CDL	-	Commercial Drivers License
CEO	-	Chief Executive Officer
CPC	-	Citizens Participation Coordinator
COE	-	Corps of Engineers
CRE	-	Center for Resource Economics
CSO	-	Combined Sewer Outlet
CWA	-	Clean Water Act
DBE	-	Disadvantaged Business Enterprise
DEQ	-	Department of Environmental Quality (Arizona)
DOL	-	Department of Labor
DPW	-	Department of Public Works
EEOC	-	Equal Employment Opportunity Commission
EIS	-	Environmental Impact Statement
FEMA	-	Federal Emergency Management Agency
FEPA	-	Fair Employment Practices Agencies
FHWA	-	Federal Highway Administration
FIFRA	-	Federal Insecticide, Fungicide, and Rodenticide Act
FLSA	-	Fair Labor Standards Act
FOS	-	Facilities Operations Service (Los Angeles County)
GAO	-	General Accounting Office
GMA	-	Growth Management Act (Washington State)
HIV	-	Human Immunodeficiency Virus
HSWA	-	Hazardous and Solid Waste Amendments
IAFF	-	International Association of Fire Fighters

ICMA	-	International City/County Management Association
ISD	-	Internal Services Department (Los Angeles County)
ISTEA	-	Intermodal Surface Transportation Efficiency Act
IT	-	Information Technology
IWR	-	Institute of Water Resources
KDOT	-	Kansas Department of Transportation
KEPA	-	Kansas Environmental Protection Agency
KU	-	University of Kansas
MAG	-	Maricopa Association of Governments
MBE	-	Minority Business Enterprise
MCL	-	Maximum Contaminant Level
MCLG	-	Maximum Contaminant Level Goal
MOU	-	Memoranda of Understanding
MSW	-	Municipal Solid Waste
MWRA	-	Massachusetts Water Resources Authority
NAAQS	-	National Air Ambient Quality Standards
NACo	-	National Association of Countries
NAPA	-	National Academy of Public Administration
NCSL	-	National Conference of State Legislatures
NESHAPS	-	National Emission Standards for Hazardous Air Pollutants
NGA	-	National Governors' Association
NLC	-	National League of Cities
NPDES	-	National Pollutant Discharge Elimination System
NPR	-	National Performance Review
OPM	-	Office of Personnel Management
OSHA	-	Occupational Safety and Health Act
PSRC	-	Puget Sound Regional Council
PTI	-	Public Technology, Incorporated
RAL	-	Removal Action Level
RCRA	-	Resources Conservation and Recovery Act
SBA	-	Small Business Administration
SBS	-	Sick Building Syndrome
SDWA	-	Safe Drinking Water Act
TCE	-	Trichlorethylane
TSCA	-	Toxic Substance Control Act
TQM	-	Total Quality Management
USCM	-	United States Conference of Mayors
UST	-	Underground Storage Tank
WPCA	-	Water Pollution Control Act



APPENDIX F - DEPARTMENT OF LABOR LETTER COMMENTING ON ACADEMY FINDINGS ON DAVIS-BACON AND FAIR LABOR STANDARDS ACT

U.S. Department of Labor

Assistant Secretary for
Congressional and Intergovernmental Affairs
Washington, D.C. 20210

JUL 20 1994

Mr. James Thompson
U.S. Army Corps of Engineers
Institute for Water Resources
Policy and Special Studies Division
7701 Telegraph Road
Alexandria, Virginia 22310-3868

Dear Mr. Thompson:

This letter is in response to your request for comments on the report you sent to us on the effects of Federal mandates on local government public works agencies.

In response to your request we circulated the report to all the relevant agencies within the Department of Labor. Based on the responses that we received, I must let you know that we do not agree with the highly critical conclusions about the Davis-Bacon Act (DBA) and the Fair Labor Standards Act (FLSA) contained in the report's executive summary. We do not believe that the conclusions that DBA drives up construction costs and that the FLSA regulations are inappropriate for application to local governments are supported by the reports of the interviews with State and local public works officials. In our view, the report appears to reach for a predetermined conclusion without the benefit of supporting documentation. We, therefore, recommend that the report's conclusions with regard to both statutes be revised to more accurately reflect the comments made by the local agencies.

One of the recommendations that the report makes to meet the needs of local governments is giving Cabinet secretaries authority to grant states and localities selective waivers from Federal regulations and mandates. The report ascribes this recommendation to the Administration's National Performance Review. However, it should be made clear that the Administration has supported excluding labor standards and non-discrimination and affirmative action laws and regulations from the waiver authority provisions in legislation that is currently under consideration to streamline the Federal acquisition process. We, therefore, urge that the report qualify this recommendation to make it clear that it does not support giving Cabinet secretaries the right to grant waivers of either Federal non-discrimination and affirmative action laws, executive orders and regulations, or labor standard laws and regulations.

Finally, I should let you know that we at the Department of Labor are very mindful of the needs of State and local governments. You may be interested to know that Secretary Reich recently announced the formation of a "Task Force on Excellence in State and Local Government through Labor-Management Cooperation." This thirteen member task force will examine ways in which State and local governments can deliver high-quality, cost effective services through labor-management cooperation and employee involvement. I am enclosing with this letter a copy of a news release and a mission statement related to the task force.

Sincerely,

Geri D. Palast

Enclosures (New Release "Reich Announces State and Local Government Task Force" and mission statement "The Secretary of Labor's Task Force on Excellence in State and Local Government Through Labor-Management Cooperation" are not included.)

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Consolidated Performance Report on the Nation's Public Works: An Update, Report FIS-94-13

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13. ABSTRACT *(Maximum 200 words)*

This report, "Public Works Management Practices-Volume II, Local Government Public Works Agencies: The Effect of Federal Mandates, on Their Activities and Improving Their Management Performance", is the second volume in a study that identified and analyzed impediments to improving the public management of local infrastructure facilities. This report provides an analysis of and proposes solutions to the impediments that limit the effectiveness of municipal public works agencies. The analysis, conducted by the National Academy of Public Administration (NAPA), includes information gathered from twelve local and state agencies who represented a broad range of populations, geographic locations, forms of governance, and public works functions. Specifically, the report identifies and proposes solutions to overcoming the legislative (Federal and state), administrative, and technical impediments to improving public works performance.

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