Applicability of State and Local Laws to NPS Activities

As a general principle, state or local governments may not directly enforce their laws against the National Park Service with respect to federal lands and activities within units of the National Park System. This principle originates in the U.S. Constitution.

The Property Clause

Article IV of the U.S. Constitution outlines the relationship between the states and the Federal Government, and each state and the others.

Article IV, Section 3, Clause 2, known as the Property Clause, grants Congress:

> *Power to dispose of and make all needful Rules and Regulations respecting the Territory or other Property belonging to the United States….*

This delegation of authority to Congress over federal lands, and the re-delegation of that authority to the various land management agencies, prevents states from enforcing their laws and regulations that pertain to lands, such as zoning, building permits, and land use regulations.

On the other hand, the Property Clause gives the United States and its executive branch agencies authority to regulate private lands when uses of or activities on those lands could have an impact on federal lands. Thus, the National Park Service and other land management agencies may regulate in-holdings and adjacent lands to some extent.

The Doctrine of Federal Sovereign Immunity

The Constitution provides that the laws of the United States, under which federal activities are undertaken, are "the supreme law of the land." The doctrine of Sovereign Immunity is an outgrowth of the Supremacy Clause (Article VI, Clause 2) and holds that the United States is not subject to state or local laws unless Congress has made explicit provision in legislation.

a) The doctrine of sovereign immunity prevents:
   - The United States from being sued, except as allowed by Congress;
   - The application of state and local laws to United States lands and activities;
   - states from asserting licensing requirements against the activities of federal employees, unless agencies require such licensing (for example: state requirements that a state-licensed engineer prepare and seal plans are not enforceable, and states cannot require that federal attorneys be a member of the bar in the state where they are located); and
   - A state from asserting its taxing power over the Federal Government. A growing number of environmental statutes assess fees for inspections and other activities that look like prohibited taxes;
     - federal agencies may not pay taxes assessed by state or local governments;
     - Agencies may pay the reasonable value of "services rendered." In some instances, an agency may pay reasonable inspection fees, storm-water user fees, or improvement district user fees.

b) The United States has waived its sovereign immunity in different contexts, such as:

- The United States may be sued for:
  - Taking private property in violation of the 5th Amendment to the Constitution
  - Making arbitrary and capricious decisions in an administrative setting
  - Negligently causing damage to persons or property
  - Breach of contract
- The United States may be subject to state and local laws and penalties where federal law has waived its sovereign immunity. Such waivers may be found in:
  - Clean Water Act (33 USC 1323)
  - Clean Air Act (42 USC 7418)
  - Underground Storage Tank Act (42 USC 6991f)
  - Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) (42 USC 9620)
  - Safe Drinking Water Act (42 USC 300j-6(a)
  - Resource Conservation and Recovery Act (RCRA) (42 USC 6961)
- A waiver of sovereign immunity must be strictly construed. Federal agencies need not submit to state and local laws unless the legislative waiver is clear. For example:
  - A state agency usually may not assert punitive damages for violation of state environmental legislation.
  - A Clean Water Act waiver does not apply to percolating discharges to groundwater, or cover state environmental regulations requiring that a state licensed engineer seal plans for wastewater facilities.
- Regulations state and local governments seek to enforce must have been promulgated to enforce state laws on the precise subject matter at issue—a state cannot use a RCRA-type regulation for a Clean Water Act violation.
- City ordinances and regulations are not included within the waiver of sovereign immunity.