



December 18, 2006

THE
ENVIRONMENTAL
COUNCIL OF
THE STATES

444 North Capitol Street, N.W.
Suite 445
Washington, D.C. 20001

Tel: (202) 624-3660
Fax: (202) 624-3666
Email: ecos@ssso.org
Webpage: www.ecos.org

Robert W. King, Jr.
Deputy Commissioner
South Carolina Department of
Health and Environmental
Control
PRESIDENT

David K. Paylor
Director, Virginia Department of
Environmental Quality
VICE PRESIDENT

Stephen A. Owens
Director, Arizona Department of
Environmental Quality
SECRETARY-TREASURER

Stephanie Hallock
Director, Oregon Department
of Environmental Quality
PAST PRESIDENT

R. Steven Brown
Executive Director

Mr. Benjamin Grumbles
Assistant Administrator
Office of Water
U.S. Environmental Protection Agency
Ariel Rios Building
1200 Pennsylvania Avenue, N.W.
Washington, DC 20460

Dear Mr. Grumbles:

We are writing on behalf of the Environmental Council of the States (ECOS) to oppose the release of the U.S. Environmental Protection Agency's (USEPA) proposed rulemaking related to Clean Water Act Section 106 grant funding for National Pollutant Discharge Elimination System (NPDES) permitting programs. ECOS is the national, non-partisan, non-profit association of state and territorial environmental commissioners. Our mission is to improve the environment of the United States by championing the role of States in environmental management, providing for the exchange of ideas, views and experiences among States, and fostering cooperation and coordination in environmental management.

The Senate's FY2007 Appropriations bill, which has not been enacted into law, includes language that reads, "By December 31, 2006, EPA shall finalize a rule for the Federal Water Pollution Control Act, as amended, section 106(Water Pollution Control) grants that incorporates financial incentives for States that implement adequate National Pollutant Discharge Elimination System (NPDES) fee programs." As you are aware from previous discussions with ECOS about the proposed rulemaking, we are deeply concerned with this rule because it appears that its intent is to set aside a portion of State 106 funding in order to provide financial incentives to States with "adequate" permit fees. A set aside will result in 106 funding cuts to those States without "adequate" permit fees in place. ECOS does not support any funding cuts to 106 State grants that support clean water programs, particularly as USEPA is asking the States to assume an even larger share of the shared workload (e.g., USEPA has issued 255 new rules designated as having a "state impact" during the years 2000-2004, and has 140 more "state impact" rules currently pending).

The Clean Water Act gives the States discretion regarding how to best manage their programs to meet clean water requirements. This proposed rulemaking essentially revokes this discretion by requiring States to charge NPDES permit fees. The

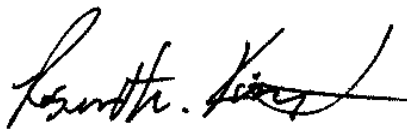
proposed rulemaking fails to recognize that States contribute non-permit fee generated funds to support their clean water programs; most notably, some States contribute substantial amounts of State general fund monies to support these important programs. It is also worthy to note that some States already fully or close-to-fully support their programs through NPDES fees and this rule would require unfounded and unwarranted increases in fees in these States.

In addition to funding issues, this proposed rulemaking interferes with how state legislatures conduct their business. Instituting permit fee programs and/or raising the amounts of permits fees are functions of state legislatures and it is up to individual States to decide if they want to raise NPDES permit fees, not the Federal government. That aside, increasing NPDES permit fees is a time-consuming and politically contentious process that can take years in state legislatures. Also, for those States that have recently raised NPDES permit fees; obtaining permission for yet another fee increase will be out of the realm of possibility.

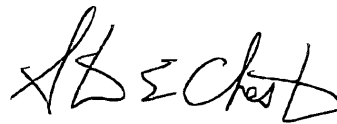
State environmental agencies are also concerned that this proposed rulemaking will shift the focus for measuring the success of State NPDES programs from improvements in water quality to the amount of permit fees generated. It is critical that we keep our eye on progress by continuing to focus on environmental outcomes. Moving money from core 106 funding areas will likely have negative consequences on environmental protection and this goes against our mission as protectors of public health and the environment.

If you have any questions or would like to discuss this further, feel free to contact us.

Sincerely,



Robert W. King
Deputy Commissioner, South Carolina DHEC
ECOS President



Steven E. Chester
Director, Michigan DEQ
Chair, ECOS Water Committee

cc: Pamela Luttner, USEPA Office of Congressional and Intergovernmental Relations