



March 2, 2007

Water Docket
Environmental Protection Agency, Mailcode: 2822T
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Washington, DC 20460

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COUNCIL OF
THE STATES

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Attention: Docket ID No. OW-2006-0765

The Environmental Council of the States (ECOS), the national non-profit, non-partisan association of state and territorial environmental agency leaders, is writing to oppose the promulgation of the Environmental Protection Agency's (USEPA) proposed rulemaking entitled "Permit Fee Incentive for Clean Water Act Section 106 Grants; Allotment Formula".

ECOS is deeply concerned with the proposed rule because it utilizes a set-aside of state 106 grant funding to provide financial incentives to states that charge "adequate" NPDES permit fees as defined by USEPA. ECOS understands that the incentive amount will only be made available from increases in the state allotment above the FY 2006 level. Nevertheless, ECOS does not support any funding cuts to 106 grants to states 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. It also 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 their 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 to raise NPDES permit fees - not the federal government (barring specific congressional requirements). 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.

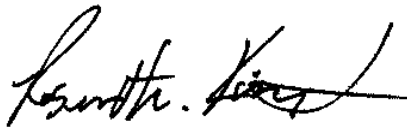
The annual certification requirements included in this proposed rule pose substantial new administrative burden for state environmental agency staff, particularly during a time of diminishing resources and increasing responsibilities and reporting requirements. In addition to this being an onerous requirement, it appears to be at odds with the new effort initiated by USEPA's Deputy Administrator Marcus Peacock that is aimed at reducing state reporting burden.

Also, ECOS is perplexed that USEPA will not be enforcing this rule in non-delegated states where it is responsible for issuing NPDES permits. USEPA has stated that it does not charge NPDES permit fees, nor does it plan to charge such fees in the future. The federal government should lead by example and not exempt itself from its own rules.

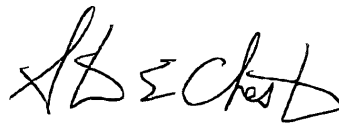
Lastly, state environmental agencies are concerned that this proposed rule would shift the focus for measuring the success of NPDES programs from improvements in water quality to amounts of permit fees generated. It is critical that we keep our eye on progress by continuing to focus on environmental outcomes. Moving money from core 106 funding areas is likely to have negative consequences on environmental protection. 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, Jr.
Deputy Commissioner, SC DHEC
ECOS President



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