



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C., 20460

OCT 23 2008

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OFFICE OF CONGRESSIONAL
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The Honorable Stephen L. Johnson
Administrator
U.S. Environmental Protection Agency
1200 Pennsylvania Ave. NW
Washington, DC 20460

Dear Administrator Johnson:

The Local Government Advisory Committee (LGAC) appreciates having the opportunity to work with you and the U.S. Environmental Protection Agency on a wide range of issues of interest and concern to local governments. LGAC has taken its role as a spokesperson for local government very seriously, and we are grateful that you have shared that perspective on our role.

The committee is especially grateful that you and your staff have engaged LGAC as a trusted advisor whose views are always welcome, even when those views do not align with prevailing agency policy. It is in that spirit that we submit these comments on the recently-published final rule to implement a new NPDES permit fee incentive allotment formula starting in fiscal year (FY) 2009.

On September 10, 2008, EPA published this final rule, which establishes incentives for states to increase fees for National Pollutant Discharge Elimination System (NPDES) permits. The agency took this action despite strong opposition from numerous bodies of local government and their advocacy organizations and contrary to what LGAC construes to be a clear mandate from Congress barring such an action. The rule is intended to drive states to fully fund their NPDES Permit programs through permit fees or run the risk of having their Clean Water Act (CWA) section 106 grant funds cut.

Specifically, the rule, which EPA first proposed in December 2006, would provide a certain amount of "incentive" funds from the Section 106 program to states that fund at least 75 percent of their NPDES permit program costs through user fees, with the highest incentives going to those states that fund 100 percent of their programs through fees. The rule will only apply if total funding allotted to the states under the Section 106 program is increased above the FY 2008 level of \$222 million. In that case, a percentage of the increased funds may be allotted to states with eligible permit fee programs. The incentive will never exceed \$5.1 million. The rule is in effect for the FY 2009 grant cycle and beyond.

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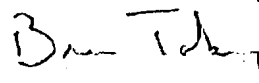
These new permit fees will place a significant financial load on all clean water agencies – small, midsize, and large – and further burden their ratepayers. As it is, these agencies are struggling to meet unfunded federal environmental mandates: a new federal rule mandating that their limited funding shall be spent to support permitting exercises rather than to promote important water quality programs is therefore particularly inappropriate. Moreover, we respectfully contend that EPA has overstepped its authority in moving forward with this rule by ignoring the will of Congress: a congressional directive inserted into report language accompanying the Fiscal Year (FY) 2008 omnibus budget (which included EPA's funding) bars the agency from moving forward with this permit fee proposal.

During your tenure as Administrator, you have demonstrated a keen appreciation of the issues faced by EPA's intergovernmental partners, particularly resource-related challenges. Your record is replete with actions that demonstrate a deep commitment to advance the spirit of federalism and strengthen renewed partnership as we work for the environmental betterment of our nation. The promulgation of this final rule undercuts the progress we have achieved in building that intergovernmental team. We therefore request that the final rule be rescinded.

Sincerely,



Roy Prescott
Chair



Bruce Tobey
Regulatory Workgroup