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Water Docket

Environmental Protection Agency, Mailcode: 2822T

1200 Pennsylvania Avenue, NW,

Washington, DC 20460

Attention: Docket ID No. EPA-HQ-OW-2006-0765

NPDES Permit Fee Incentive for Clean Water Act Section 106 Grants

The National Association of Clean Water Agencies (NACWA) is pleased to provide comments on the Environmental Protection Agency's (EPA's) proposed rulemaking regarding user fees for the National Pollutant Discharge Elimination System (NPDES) permitting program. NACWA circulated the proposed rule to our over 300 public wastewater utility members for review and comment. We have received numerous responses from our membership, all of which expressed opposition to the proposal and deep concern over the proposal's intent and its likely consequences.

First and foremost, NACWA is concerned that the proposal will place a significant financial burden on municipal clean water agencies nationwide. Many of our members have informed us that the proposal could result in substantial annual fee increases for them, ranging from \$28,000 per year to almost \$400,000 per year. Municipal utilities are ill-equipped to deal with such dramatic fee increases at a juncture where costs are rising, requirements increasing and federal funding rapidly decreasing. As a result, utilities will be forced to take money from key water quality programs and redirect it towards permit fees, endangering further progress. Furthermore, many utilities may be forced to raise rates and/or taxes to pay for the higher permit fees; however, the proposed rule does not take into consideration those municipal clean water utilities that may be prevented from raising more money due to tax or rate caps. These utilities in particular will likely be the most highly impacted group of agencies, something not contemplated at all by the current proposal.

NACWA is also concerned about EPA's justification for the rule. EPA has stated in a variety of different contexts that the proposed rule is designed to have those entities which "benefit" from the NPDES permitting program pay for a greater share of the program. EPA has in fact pointed to utilities as the primary "beneficiaries" of the NPDES program. However, NACWA members strongly disagree with this premise, and believe that it is the public at large - and not individual permit holders - that benefit from the permitting program and the cleaner, healthier waters the program seeks to ensure. As an example of this approach, some NACWA members operate in states such as Colorado where the state legislature has made an intentional decision to fund its permitting program

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through a mix of general fund monies, fees, and grant monies, with approximately 1/3 of the total program cost coming from the state general fund. The state made this choice because citizens not served directly by the permitted clean water utility (such as individual sewage disposal systems, tourists, commuters, etc.) also benefit from clean water in the state, and thus should contribute to the effort via the state general fund. EPA's proposed rule will limit local/state flexibility in this regard through incentives to states to move to a fully fee based system. In short, NACWA believes the policy basis for the proposal as stated by EPA – i.e. the beneficiary pays – is flawed and urges the Agency to fully address the proposal's policy basis directly as this rulemaking moves forward.

Additionally, NACWA has significant questions about the ultimate objectives of the rule, including deep concerns that the rule will serve as a prelude to cutting Section 106 funds while simultaneously increasing the regulatory burden placed on state and local governments. Many NACWA members have expressed deep skepticism about the small amount of "incentive pool" money ultimately available to the states under the proposed rule – possibly as little as \$100,000 per state – and have questioned whether this is enough to encourage states to fully fund their permitting programs through user fees. As such, there is some question as to whether this proposal is laying the groundwork for future federal funding cuts in Section 106 grants. NACWA is particularly concerned about the extensive reporting requirements that states must comply with under the rule to qualify for the incentive monies. These requirements will force states to report significantly more financial information on their permitting programs than has been required in the past and this data could be used in the future to justify potential cuts in Section 106 funding. Such an approach would be unacceptable, and would face substantial opposition from NACWA and its coalition allies.

NACWA believes the best approach at this point is for EPA to withdraw the proposed rule, and then to engage with the states and regulated entities in a discussion about the most effective ways to appropriately fund the NPDES permitting program and ensure adequate Section 106 grants to the states. NACWA would look forward to participating in such a discussion, and is committed to working with EPA to address this important issue.

As a member of both the Coalition Against Permitting Unfunded Mandates (CAPUM) and the Federal Water Quality Coalition (FWQC), NACWA endorses the comments submitted on this issue by both organizations, and incorporates their comments for the record. NACWA also endorses the comments submitted by the Water Environment Federation (WEF).

Thank you for the opportunity to provide these comments.

Sincerely,



Ken Kirk
Executive Director