



December 20, 2006

Tom Sullivan
Chief Counsel for Advocacy
U.S. Small Business Administration
Washington, DC 20416

Dear Mr. Sullivan:

We are writing on behalf of the undersigned organizations to inform you of a forthcoming rule by the Environmental Protection Agency (EPA) which has the potential to adversely impact small communities and businesses nationwide. We ask that the Small Business Administration's Office of Advocacy (Advocacy) engage in the discussion of this important matter, which concerns how the Clean Water Act's National Pollutant Discharge Elimination System (NPDES) permit fee program is funded.

Under language contained in the President's Fiscal Year (FY) 2007 budget, EPA was directed to develop and issue a final rule by the end of the calendar year that could double or even triple the fees assessed to small communities and small businesses to obtain NPDES permits. Without such permits, communities cannot operate their wastewater treatment plants and businesses cannot manufacture their products. Notwithstanding the fact that no final FY 2007 budget has been adopted by Congress for EPA, EPA's proposed rule, as we understand it, will encourage states to raise their permit fees to the point where the fees would constitute the predominate funding source for the NPDES programs. This will mark a dramatic shift away from the historic way such programs are funded – on a carefully balanced, and state-specific, mix of state and federal resources and fees.

Today, 26 states use permits fees to cover no more than 50% of their program costs. Another five states use permits fees to cover up to 75% of the costs. As we understand it, the proposed rule will challenge these states to move to a much higher percentage of fees to cover costs, and in most of these instances this would be a very substantial increase. This change could threaten decades of cooperation between the states, the federal government, and permit recipients funding the NPDES program, and shift the burden in many cases to small entities.

Some of us and many other stakeholders like us have contacted EPA over the past several months about our concerns. We have not received substantive engagement from EPA in response. Failure to consult with all the affected stakeholders prior to the rule's issuance represents a marked departure from normal agency protocol and is inconsistent with the development of sound policy.

We are concerned that EPA now apparently plans to issue the rule imminently, perhaps within the next few days, and that the rule could result in a greater regulatory burden on small entities without due consideration of the flexibility that should be provided for small entities when possible. We believe that this rule is a significant regulatory action that deserves careful scrutiny before it is proposed under Executive orders 12866 (Regulatory Planning and Review), 13272 (Proper Consideration of Small Entities in Agency Rulemaking), and 13132 (Federalism). As you know, E.O. 13272 requires all agencies to thoroughly review draft rules and take appropriate account of the potential impact on small governmental jurisdictions, small businesses, and small organizations, as provided by the Regulatory Flexibility Act. The Order further provides for Advocacy comment on draft rules that the agency intends to propose, as well as for the agency to give due consideration to any comments provided by Advocacy. Moreover, E.O. 13132 states that no agency shall promulgate a regulation with federalism implications unless the agency consults with State and local representatives early in the process of developing the proposed regulation and informs OMB of the consultation.

Accordingly, we respectfully request that your office intervene as quickly as possible to help forestall EPA action to issue a rule until there is adequate consultation and the likely effects on small entities are evaluated. Please contact Deborah Atwood at C&M Capitolink, tel. (202) 508-8965, if you would like further information on this issue. We look forward to hearing from you.

Sincerely,

American Forest & Paper Association

American Iron and Steel Institute

American Public Power Association

Association of State and Interstate Water Pollution Control Administrators

Edison Electric Institute

National Association of Clean Water Agencies

National Association of Manufacturers

National Pork Producers Council

cc: Honorable Marcus Peacock
Honorable Ben Grumbles
Honorable David Anderson
Honorable Ruben Barrales
Honorable Steve Aitken