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EXECUTIVE DIRECTOR

Ken Kirk

September 7, 2007

Dear Senator:

On behalf of the Nation's municipal clean water agencies, I am writing to encourage you to ensure that the final version of the Department of Interior, Environment, and Related Agencies Appropriations Act of 2008 include language to block implementation of the U.S. Environmental Protection Agency's (EPA) proposed National Pollutant Discharge Elimination System (NPDES) permit fee rule.

The rule, first proposed by the EPA earlier this year, would provide financial incentives in the form of additional federal money for the Section 106 grant program to states that fund at least 75% of their NPDES permitting program through user fees. The House version of the EPA fiscal year 2008 appropriations bill (H.R. 2643), which passed in June, included language to prevent implementation of this ill-conceived proposal, and NACWA strongly encourages the Senate to follow suit by making sure that any final package that gets sent to President Bush has the House language in it.

NACWA, which represents the interests of the nation's municipal wastewater treatment agencies, is concerned that the proposed rule 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, federal and state requirements are increasing and federal funding rapidly decreasing.

As a result of this ill-conceived proposal, utilities will be forced to take money from key water quality programs and redirect it towards permit fees, endangering further progress.

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.

In short, the permit fee proposal set forth by EPA does not take into account the financial realities faced by the municipal clean water agencies, and threatens to impose unnecessary financial hardship on communities across the nation. A number of your Senate colleagues already know this fact, and sent a strongly-worded, bipartisan letter on March 5, 2007 to EPA in March (see attached), expressing concern about the proposal and stating that it is not appropriate to ask the states to fully fund a federally mandated program through user fees. Additionally, EPA received numerous public comments opposing the rule, including from NACWA and municipal, state and industry groups.

Despite such opposition to the proposal, EPA has refused to withdraw the rule. It is thus imperative that the Senate endorse the language from the House Appropriations Committee report, blocking implementation of the rule.

Thank you for your consideration.

Sincerely,

A handwritten signature in black ink, appearing to read "K Kirk". The signature is stylized with a large "K" and a cursive "Kirk".

Ken Kirk
Executive Director

ATTACHMENT

United States Senate

WASHINGTON, DC 20510

March 5, 2007

Stephen L. Johnson
Administrator
U.S. Environmental Protection Agency
Ariel Rios Building
1200 Pennsylvania Avenue, N.W.
Washington, DC 20460

Dear Administrator Johnson:

We are writing to request that EPA reconsider promulgating a rule proposing changes in the manner that Clean Water Act (CWA) Section 106 funding is allocated to the states (72 Federal Register 293, January 4, 2007). This rule would fundamentally alter the way that Section 106 grants flow to the states and penalize those that fail to fund at least 75% of their National Pollutant Discharge Elimination System (NPDES) permit programs through user fees.

While the CWA is a federal mandate, states are primarily responsible for permitting, monitoring and enforcing their water quality management programs. Today, each state's NPDES program receives a portion of its funding from CWA Section 106 grants, based on the extent of the water quality problems in each state. States supplement EPA's 106 grants to meet their overall administrative funding needs with user fees and other discretionary funding.

We question EPA's authority to execute the proposed change. The Clean Water Act does not require the use of fees to fund state NPDES programs. While states may charge fees to pay for the cost of administering their programs, the authority to require such fees is under the jurisdiction of Congress, not EPA. In addition, EPA does not unilaterally have the authority to establish a national policy encouraging states to levy user fees on or tax municipal governments. Nor does EPA have the authority to divert program funds for a purpose – such as creating a set-aside for the sole purpose of promoting user fees --- that is not authorized by the Act.

EPA's proposed rule also strongly suggests that EPA plans to discontinue funding for state NPDES programs in the future. The proposed rule diverts funding above FY 2006 levels to a set-aside account. States could compete for a share of this set-aside only if more than 75% of their program costs are funded through permit fees. To receive the maximum incentive, states must fund 100% of their program costs through permit fees. It appears that the point of the incentive program is to wean states from federal funding for their NPDES programs. We recognize that the federal government cannot bear the entire burden of the NPDES permit program; however, it is not appropriate to ask the states to fully fund a federally-mandated program through a single "acceptable" mechanism – user fees.

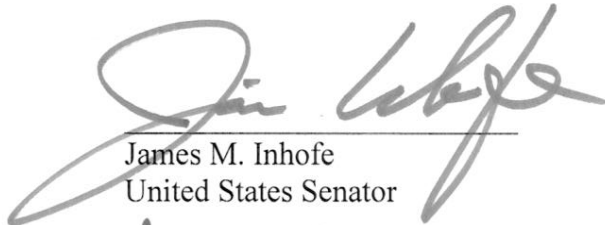
Many stakeholders have approached us with their concerns about EPA's proposed rule. Although the rule is currently in a public comment period, it is our understanding that they contacted the Agency earlier in the process to explain the undue burden it would impose on businesses and communities faced with higher user fees. EPA's proposal makes it clear that these concerns were not taken into account.

We therefore, respectfully request that EPA reconsider continued work on the proposed rule. If the Agency seeks to change the manner in which Clean Water Act programs are funded, then EPA has the burden of submitting a legislative proposal to Congress for its review and consideration.

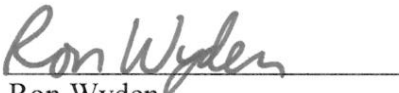
Sincerely,



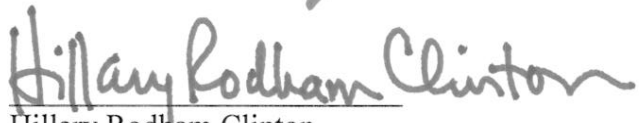
Richard J. Durbin
United States Senator



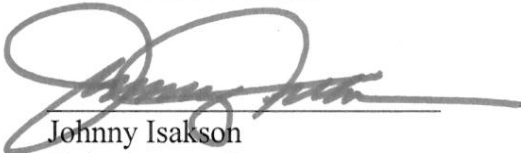
James M. Inhofe
United States Senator



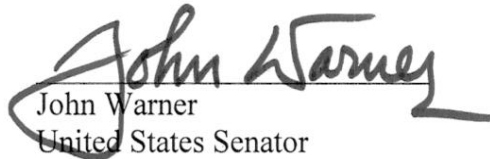
Ron Wyden
United States Senator



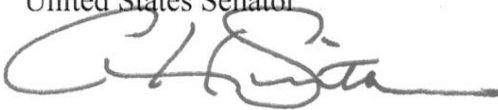
Hillary Rodham Clinton
United States Senator



Johnny Isakson
United States Senator



John Warner
United States Senator



Gordon Smith
United States Senator



Ken Salazar
United States Senator



Jon Kyl
United States Senator