



# New York Water Environment Association, Inc.

*The Water Quality Management Professionals*

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2007

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## 80<sup>TH</sup> ANNUAL MEETING

NYC Marriott Marquis

February 4-6, 2008



5 March 2007

Water Docket

United States Environmental Protection Agency

Mailcode: 2822T, 1200

Pennsylvania Ave., N.W., Washington, DC 20460

Re: CWA § 106 NPDES Permit Fee "Incentive" Proposal: Docket ID No.  
EPA-HQ- OW-2006-0765

Dear Sir/Madam:

In the FY 07 Budget, OMB directed USEPA to issue a rule by the end of December 2006 providing incentives for States to adopt and increase their NPDES permit fees. This is one component of OMB's stated objective to have the entire NPDES program (from permit development through compliance and enforcement) 100% funded by fees. A parallel objective was to decrease and eliminate federal CWA § 106 funding to the States for supporting implementation of the Clean Water Act. This OMB directive never became effective.

Despite this, on Dec. 21, 2006, EPA proposed a rule "not to be effective prior to fiscal year 2008, [to] amend the State Section 106 allotment formula to incorporate financial incentives for States to utilize an adequate fee program when implementing an authorized NPDES permit program". For the reasons outlined below, the New York Water Environment Association (NYWEA) opposes the finalization of this rule and urges EPA to withdraw it.

Under the Clean Water Act, states have been given discretion as to how to run their programs to meet ever expanding requirements with limited funds. The approach used by OMB and EPA to proceed with this rulemaking disregards that CWA § 101(b) mandated state discretion, NYWEA suggests that:

- States should be able to decide what mix of fees and general revenue are used to provide adequate funding for a State NPDES program. States vary widely in their collection of fees for the NPDES program. Many technical, program and public policy issues are involved. Any prescriptive approach designed to force or penalize States under the auspices of "incentives" using section 106 funding or other mechanisms goes far beyond EPA's authority under the Clean Water Act.

- New York, as a matter of public policy, has decided that because all New Yorkers benefit from the public and private resources devoted to managing the SPDES permit program, that all New Yorkers should bear some financial responsibility for the State's SPDES program.
- New York already has a robust SPDES permit fee program which covers a substantial portion of the cost of administering its SPDES permit program. The State, in its pending 2007 budget proposal, has included a moderate increase in its SPDES annual fees, including first time proposed annual fees for several of its General SPDES permits.
- Despite this, we understand that New York State has estimated that it would have to raise its SPDES fees approximately 52% to have those fees fully fund the SPDES program.
- An incentive program of this type could shift the focus for measuring the success of a State NPDES program from water quality improvement to the amount of fees a State generates. Success should be measured in terms of water quality improvement.
- Municipalities especially would be hard hit by even modest SPDES fee increases, because many of them are already scrambling to provide the necessary funding to address such important wet weather water quality issues as CSO Long Term Control Plans, Sanitary Sewer Overflows, peak wet weather management and municipal stormwater management. At the same time, many of our municipalities are facing significant expenses to upgrade their existing wastewater treatment facilities and to install new facilities and/or implement programs necessary to meet new requirements and/or to further protect New York waters.

For these reasons, NYWEA objects to this proposal. In addition, it is concerned about the overall intent of the proposal. Many states have interpreted this initiative as being the next step in the federal government's steady withdrawal from providing some level of funding for the many existing and new CWA-related mandates. Rather than finalizing this proposal, NYWEA urges EPA (and Congress) to instead increase 106 funding. An increase is both appropriate and necessary due to increased national expectations being placed on the States.

On behalf of NYWEA, I urge EPA to withdraw to proposal and to allow States and tribes to continue to make their own decisions with respect to the best way to fund the administration of their S/NPDES permit programs. If you have any questions, please do not hesitate to contact me.

Sincerely,

A handwritten signature in cursive script that reads "Thomas J. Lauro".

President