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