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United States Senate
COMMITTEE ON ENVIRONMENT AND PUBLIC WORKS
WASHINGTON, DC 20510–6175

December 20, 2006

The Honorable Rob Portman
Director
Office of Management and Budget
725 17th Street, NW
Washington, DC 20503

Dear Director Portman:

As you may be aware, the Environmental Protection Agency (EPA) may soon propose a rule to create an incentive fund from Clean Water Act section 106 funds for which states would be eligible if they raise fees on their National Pollutant Discharge Elimination System (NPDES) permittees sufficient enough to pay for up to 75 percent of their administrative costs. While we certainly agree with the goal of establishing a self-sustaining funding source for a portion of the 106 needs, we have very serious concerns regarding EPA's proposal.

First, the Clean Water Act is currently silent on how to fund to the NDPES program and at this time the Act does not envision a mandatory funding source for the administration of the program by the states beyond the federal appropriation of funds into the Section 106 account. The decision to create a mandatory funding source is one to be made by Congress, not the EPA.

We have also heard from numerous stakeholder groups who do not believe sufficient consultation has occurred with those who will be most affected by the proposed rule. Executive Order 13132 requires an agency to consult with State and local governments early in the process of developing a proposed regulation with federalism implications. The Agency must report such consultation to OMB. We are interested in hearing from you the level of discussions that have taken place and if they meet the requirements of E.O.13132.

Finally, we understand that many in the EPA are under the mistaken belief that they are legally obligated to publish a proposed rule by December 31, 2006. As you know, the Senate appropriations bill for the EPA includes a rider requiring a rule by this date. However, the Senate language is obsolete since the bill was not signed into law nor was it even considered by the full Senate.

Thank you for your time and attention.

Sincerely,

Hillary Rodham Clinton

Hillary Clinton, Ranking Member
Subcommittee on Fisheries, Wildlife
And Water

James M. Inhofe, Chairman
Committee on Environment
and Public Works

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