

Federal Water Quality Coalition

**COMMENTS OF FEDERAL WATER QUALITY COALITION
ON EPA PROPOSED PERMIT FEE INCENTIVE RULE**

The Federal Water Quality Coalition (the “Coalition”) hereby submits the following comments on EPA’s proposed permit fee incentive rule (the “Proposed Rule”). 72 Fed. Reg. 293 (Jan. 4, 2007).

The Coalition is a group of industrial companies, municipal entities, agricultural parties, and trade associations that are directly affected, or which have members that are directly affected, by regulatory decisions made under the Federal Clean Water Act (the “CWA” or the “Act”).

The Coalition’s members, for purposes of these comments, are as follows: Alcoa, Inc., Alliance of Automobile Manufacturers, American Chemistry Council, American Coke and Coal Chemicals Institute, American Forest & Paper Association, American Iron and Steel Institute, American Petroleum Institute, Asarco LLC, Chlorine Institute, City of Fort Wayne (IN), City of Lafayette (IN), City of Superior (WI), Coeur D’Alene Mines Corporation, Edison Electric Institute, General Electric Company, Hecla Mining Company, Indiana Coal Council, Mid America CropLife Association, National Association of Clean Water Agencies, National Association of Home Builders, Pharmaceutical Research and Manufacturers of America, Phelps Dodge Corporation, Rubber Manufacturers Association, Synthetic Organic Chemical Manufacturers Association, Utility Water Act Group, Western Coalition of Arid States, and Western States Petroleum Association.

Coalition member entities or their members own and operate facilities located on or near waters of the United States, many of which operate pursuant to individual and/or general NPDES permits for discharges into those waters. If EPA issues the proposed permit fee incentive rule in final form, many of those facilities would pay substantially higher NPDES permit fees – or, in some cases, would begin paying significant fees in States that do not currently charge such fees. The Coalition therefore has a direct interest in the matters addressed in the Proposed Rule, which is why we are filing these comments.

The Coalition has serious concerns regarding the Proposed Rule, which we believe is flawed on factual, policy and legal grounds. Due to these concerns, we recommend that EPA not finalize the rule. Instead, EPA should work cooperatively with State agencies, regulated parties and other stakeholders to address funding needs for the NPDES program

The Coalition's concerns about the Proposed Rule include the following:

1. **LACK OF AUTHORITY:** The Proposed Rule lacks clear legal authority in the CWA. Section 106(b) directs EPA to make grant allotments “in accordance with regulations promulgated by him on the basis of the extent of the pollution problem in respective states.” Basing allotments on the extent that states use permit fees for program funding would be inconsistent with that statutory requirement: it has nothing to do with the “extent of the pollution problem.”

2. **LACK OF NEED:** EPA has not shown a need for the changes to the Section 106 program that would be accomplished by the Proposed Rule, or that the Proposed Rule would directly address an identified problem in the program. If EPA believes that the CWA programs being implemented by the States are not adequately funded, then it has the ability to address that concern, including by asking Congress to appropriate more funds for those programs. The Proposed Rule, which addresses an amount equal to only 3% of the total Section 106 funding allotment, would not do anything significant to address those funding concerns.

3. **NO CLEAR FUNDING INCREASE:** EPA has not shown that the Proposed Rule will result in more total funds being spent in State NPDES programs. While some States may receive slightly larger Section 106 allotments, it is very possible that the legislatures of those States will then reduce funding from general revenues accordingly, leaving the permitting agencies no better off than they were without the Proposed Rule.

4. **POSSIBLE DECREASES IN FUNDING:** While the Proposed Rule is structured to apply only if the total Section 106 funding increases, this does not guarantee that States will not actually suffer decreases in their Section 106 allotments due to the rule. As EPA is aware, in the last several years, substantial portions of the total Section 106 allotment have been earmarked for specific purposes, such as monitoring activities, leaving less money for other, fundamental State CWA activities, such as permitting and compliance. The Proposed Rule would lead to another amount being subtracted from the overall funding pool, to be divided up among a small number of States. Even if there is an increase in the overall allotment for this coming year, or any subsequent year, a given State could still receive less money than it did before, due at least in part to its not meeting EPA's definition of an “adequate” permit fee program.

5. **REDUCED STATE CHOICES:** The Proposed Rule intrudes on the States' flexibility to make their own choices as to how best to fund their CWA programs. Each State government has to make those decisions based on a number of factors that are specific to its situation, and EPA has no basis for making States change those decisions. The Act provides, in Section 101(b), that “[i]t is the policy of the Congress to recognize, preserve, and protect the primary responsibilities and rights of States to prevent, reduce, and eliminate pollution...” As long as a State is performing its environmental responsibilities adequately, EPA should not tell the State how to collect the funds needed for the permitting agency to do its job.



6. NO MEASURES TO IMPROVE PERMITTING PROGRAMS: The Proposed Rule does nothing to ensure that any additional funding to State permit programs is directed to improve the quality, effectiveness and/or efficiency of the services provided by the permitting agency. The basis for the Proposed Rule appears to be that the “users” of the permitting services should pay more than they do now. We disagree with the concept that the regulated parties are the only “users” who benefit from the permitting agency’s activities: all stakeholders, including the public at large, benefit from cleaner water. Moreover, the products and services provided by the regulated parties benefit the public at large. Nevertheless, if the regulated permit holders are considered as the prime “users,” whose fees need to be increased, then it would stand to reason that the services provided to those users should improve as a result. It is in the best interest of the regulated parties – as well as all other stakeholders – for the State to have competent, well-trained permit writers and other staff, so the program can be administered effectively and in a timely manner. However, EPA has taken no action in the Proposed Rule, or in any other initiative that is connected to the rule, to ensure that any increased funding for permitting is directed to processing permits and permit modifications more quickly, or to hiring more experienced permit writers, or to conducting technical studies that will help the State agencies make permitting decisions that are more soundly-based. Without some accountability for the increased funds, EPA has no basis for imposing additional financial burdens on the regulated parties.

7. CONCLUSION: For all of the above reasons, including lack of authority, lack of need, adverse impacts to States and adverse impacts to permittees and other stakeholders, EPA should withdraw the Proposed Rule.

March 5, 2007

