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UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

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OFFICE OF CONGRESSIONAL
AND INTERGOVERNMENTAL RELATIONS

The Honorable Lisa P. Jackson
Administrator
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue, NW
Washington, DC 20460

Dear Administrator Jackson:

The Local Government Advisory Committee (LGAC) welcomes the opportunity to work with you and the U.S. Environmental Protection Agency on a wide range of issues of interest and concern to local governments. We share your commitment to science based policies and programs, adherence to the rule of law, and overwhelming transparency, and we will strive in our role as a spokesperson for local government for advancement of those critical benchmarks.

The LGAC and EPA have enjoyed numerous collaborative experiences resulting in environmental policy proposals with increased awareness of local government interests and concerns. In fact, one of the most important roles that we play is to express our collective opinion on regulatory proposals of common interest and to provide constructive feedback on such matters.

It is in that spirit that we submit these comments on a final rule published in September 2008 to implement a new National Pollutant Discharge Elimination System (NPDES) permit fee incentive allotment formula starting in fiscal year (FY) 2009. The Agency took this action despite strong opposition from numerous bodies of local government and their advocacy organizations and contrary to what LGAC construes to be a clear mandate from Congress barring such an action.

The rule establishes incentives for states to increase fees for NPDES permits and is intended to drive states to fully fund their NPDES Permit programs through permit fees or run the risk of having their Clean Water Act (CWA) Section 106 grant funds cut. Specifically, the rule, which EPA first proposed in December 2006, would provide a certain amount of

"incentive" funds from the Section 106 program to states that fund at least 75 percent of their NPDES permit program costs through user fees, with the highest incentives going to those states that fund 100 percent of their programs through fees.

The rule will only apply if total funding allotted to the states under the Section 106 program is increased above the FY 2008 level of $222 million. In that case, a percentage of the increased funds may be allotted to states with eligible permit fee programs. The incentive will never exceed $5.1 million. The rule is in effect for the FY 2009 grant cycle and beyond.

We respectfully request that EPA fully honor the will of Congress as reflected in report language which accompanied the Fiscal Year (FY) 2008 omnibus budget (which included EPA's funding) and barred the agency from moving forward with this permit fee proposal.

Moreover, these new permit fees will place a significant financial load on all clean water agencies – small, midsize and large – and further burden their ratepayers. As it is, these agencies are struggling to meet unfunded federal environmental mandates: a new federal rule mandating that their limited funding shall be spent to support permitting exercises rather than to promote important water quality programs is therefore particular inappropriate.

Finally, we note that the rule's promulgation is in direct contradiction to EPA's commitment to advance the spirit of federalism and strengthen renewed partnership as we work for the environmental betterment of our nation. The promulgation of this final rule undercuts the efforts to build that intergovernmental team. Accordingly, we therefore request that the final rule be rescinded.

We look forward to working with you as you undertake the important work of the new Administration in areas that are vital to our long term sustainability as a nation comprised of productive local governments committed to addressing our environmental challenges.

Sincerely,

Bruce Tobey, Chair
Regulatory Workgroup

Roy Prescott
Chair

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