



**Iowa Department of Natural Resources
Environmental Services Division**

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**STATES CONCERNED ABOUT EPA'S DRAFT NPDES
PERMITTING RULES**

DES MOINES — The U.S. Environmental Protection Agency (EPA) is currently drafting rules that may have a substantial impact on National Pollutant Discharge Elimination System (NPDES) permitting programs in Iowa.

The rules, related to Clean Water Act Section 106 grant funding, will create an incentive program for states that have adequate NPDES fees. EPA has created a workgroup composed of state NPDES program representatives to get input on the new program.

Many of the states in the workgroup, including Iowa, are concerned that the program would measure a state NPDES program's success by the fees it collects, not by its effect on water quality.

“We are concerned that this program could mean higher fees in Iowa,” said Chuck Corell, water quality chief for the Iowa Department of Natural Resources.

An Office of Management and Budget (OMB) request to Congress, included in Senate action on the 2007 EPA budget, mandated this rulemaking. Similar language was struck from the House version of bill. This request was based on the Performance Assessment Rating Tool (PART) review of Clean Water Act Section 106 where OMB concluded that states need to demonstrate a greater level of financial support for the NPDES program.

EPA plans

EPA has told the workgroup that it believes OMB's definition of “adequate” means state programs that are 100 percent fee-supported and that support would only include permit fees, not state general fund contributions. EPA is considering a threshold between 50 percent and 100 percent.

The amount of funding anticipated for the incentive program will most likely be between 3 percent and 5 percent of the total Section 106 funding allocation. So all states will see a 3 to 5 percent decline in Section 106 funds and only states that qualify for the incentives will see any potential increases. That means fees in Iowa may have to increase to cover the shortfall.

EPA has not conducted an economical analysis of the different program options or the costs to EPA of administering the programs. Nor has EPA compared the different options with regard to the expected change in behavior on the part of the states and the state legislatures once they are required to raise permit fees. In short, EPA is has not researched whether the program will have the desired results or any unintended negative results.

The bill requires rules to be in place by Dec. 31, 2006 but EPA has told the workgroup that it is likely that target will not be met. However, the EPA is still moving ahead with this as the intended deadline.

Although it expects some pushing from OMB, EPA has told the workgroup that it wants a 60-day comment period on the rules. Because the rules are related only to grant administration, no public hearings are required and the rules will go through an abbreviated rule making process.

State's concerns

The states in the workgroup feel the approach used by OMB and EPA to proceed with this rulemaking disregards state discretion provided for in the Clean Water Act. Furthermore, the approach bypasses the legislative process by which Congress makes funding decisions.

The states also question the legal authority of EPA to set aside Section 106 funds which Congress intended to go solely to state and interstate agencies for water pollution control.

“Defining ‘adequate’ as 100 percent fee-funded is inappropriate because it would consider a NPDES program supported by any amount of State general tax revenues, such as in Iowa, as inadequate,” said Corell. “The DNR feels strongly that states should decide what mix of fees and general revenues constitute adequate funding. Also, fees adopted are likely to be accompanied by reductions in general funds, making the revenue effort neutral.”

The EPA has responded to the states’ concerns and feels strongly about moving forward with the incentive program because of the program’s potential to help some states that are looking to establish permit fees or raise current fees. EPA recognizes that many states are experiencing budgetary problems. The incentive program is intended to create new revenue sources.

“The program will shift the focus for measuring the success of a state NPDES program from water quality improvement to the amount of fees a state generates,” Corell said. “Success should be measured in terms of water quality improvement attributed to NPDES activities.”