



Association of
Metropolitan
Sewerage Agencies

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Executive Director
Ken Kirk

February 22, 2001

The Honorable Christine Todd Whitman
Administrator
U.S. Environmental Protection Agency
Ariel Rios Building 1101A
1200 Pennsylvania Avenue, N.W.
Washington, DC 20460

Dear Administrator Whitman:

The Association of Metropolitan Sewerage Agencies (AMSA) congratulates you on your appointment as Administrator of the U.S. Environmental Protection Agency (EPA). AMSA represents the interests of the country's publicly-owned wastewater treatment agencies. AMSA member agencies serve the majority of the sewered population in the United States, treating and reclaiming more than 18 billion gallons of wastewater each day. AMSA member agencies play a major part in local communities, often leading watershed management efforts, promoting industrial/household pollution prevention and water conservation, and developing urban stormwater management programs. For over 30 years AMSA has worked with EPA and Congress to promote science-based, technically sound, and cost-effective approaches to the development and implementation of our nation's key environmental programs. We look forward to working with you and your staff on a broad range of issues concerning water quality, the environment, and public health.

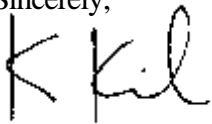
We are pleased to enclose AMSA's *Regulatory Priorities* for your review and consideration. This summary document contains AMSA's recommendations on important issues impacting our progress toward cleaning the nation's waters. The interrelated issues in AMSA's *Regulatory Priorities* highlight several challenges that must be addressed to ensure the future success of America's clean water programs. In particular, our *Regulatory Priorities* identify infrastructure funding, total maximum daily loads, and the signed proposed sanitary sewer overflow rule as time-sensitive, critical issues that EPA must address in the near future. AMSA is committed to working with EPA and other stakeholders to develop innovative and effective solutions to these complex challenges.

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We will contact your staff to schedule an appointment to discuss our *Regulatory Priorities* with you. You also will receive an invitation to speak during our annual National Environmental Policy Forum, May 19-23 in Washington, D.C. We look forward to introducing our members to you and engaging you and your staff on these significant issues. In the meantime, should you have any questions regarding AMSA's *Regulatory Priorities*, please contact me at (202) 833-4653. Again, congratulations and best of luck in the coming years.

Sincerely,

A handwritten signature in black ink, appearing to read "K Kirk". The signature is written in a cursive, somewhat stylized font.

Ken Kirk

Executive Director

AMSA's Regulatory Priorities for the New EPA Administration

AMSA is pleased to outline for the U.S. Environmental Protection Agency our regulatory priorities. First, we highlight three issues of critical importance that EPA should address in the near future. Then, we list additional issues of significance to our membership. We look forward to discussing these issues with the new EPA Administration in the near future.

Three Issues of Critical Importance

1. Infrastructure Funding

AMSA recommends that EPA support the water and wastewater infrastructure funding recommendations of the Water Infrastructure Network and any new legislation to finance clean and safe water for America that:

- # Creates a long-term, sustainable, and reliable source of federal funding for clean and safe water;
- # Authorizes capitalization of the next generation of state financing authorities to distribute funds in fiscally responsible and flexible ways, including grants, loans, loan subsidies, and credit assistance;
- # Focuses on critical “core” water and wastewater infrastructure needs and non-point source pollution;
- # Streamlines federal administration of the funding program and encourages continuous improvement in program administration at both the federal and state levels; and
- # Adequately finances strong state programs to implement the Clean Water Act and the Safe Drinking Water Act.

2. Total Maximum Daily Loads (TMDLs)

AMSA supports EPA's efforts to finalize revisions to the TMDL program and ensure that pollution control responsibilities are allocated to point and nonpoint sources in a fair and equitable manner. While we support many of the final rule revisions, should EPA reassess the recent TMDL rule to ensure that:

- # Designated uses of waterbodies and water quality criteria are reviewed as part of the TMDL process to ensure that water quality objectives are appropriate and attainable;
- # Pollution contributions from previously uncontrolled nonpoint sources are addressed;

- # All sources of pollution bear their equitable share of the cost of meeting the nation's water quality goals and objectives;
- # A broader range of nonpoint source control activities are covered under the definition of reasonable assurance, so that municipalities, which hold many of the nation's existing discharge permits, are not forced to remove increasingly minimal amounts of pollutants at significant expense;
- # EPA does not unduly restrict additional loadings from point sources during the time between TMDL listing and development, recognizing that point sources may be minimal contributors to impairment and that suspected impairment may be the result of a concentration-based toxicity rather than total mass of pollutants discharged; and
- # States are required to adopt a translator mechanism or methodology by which it will implement specific narrative standards prior to use of these standards for TMDL listing or development.

3. Proposed Sanitary Sewer Overflow (SSO) Rule

AMSA was an active participant in the Federal Advisory Committee process which led to EPA's signed, proposed SSO rule. AMSA believes the proposal falls short in some key respects. EPA should reevaluate the proposal before publication in the Federal Register. In particular, EPA should consider:

- # Providing adequate liability protection for unavoidable SSOs where a municipality is implementing its required Capacity, Management, Operation and Maintenance plan;
- # Expanding the types of wet weather conditions and other circumstances beyond the reasonable control of the POTW operator which cause unavoidable overflows;
- # Requiring reporting, notification and record keeping procedures only for those SSOs that reach waters of the U.S.;
- # Providing greater flexibility in remediation options, including peak excess flow treatment facilities;
- # Giving permitted POTWs sole discretion to determine whether responsibility for operating and maintaining satellite collection systems should fall under their discharge permit;

- # Incorporating the use of watershed management and integrated wet weather controls directly in the regulation; and
- # Providing the public with an accurate accounting of the costs and benefits that will result from this regulation.

Further, since the proposal sets out what will eventually be a holistic approach to regulating SSOs and related issues, EPA should retain the SSO proposed rule as a complete package, and not propose the rule in a piecemeal fashion.

Other AMSA Priority Issues

Administrative

- # **Reintegrate Enforcement and Program Offices.** As a result of the lack of integration of policies and priorities between EPA's Office of Enforcement and Compliance Assurance (OECA) and EPA's National Program Offices, POTWs favor consolidation of OECA with these offices.
- # **Improve Regional Office Coordination and Accountability.** Due to historical inconsistencies in the application of national policies and regulations, EPA should focus additional effort to improving regional office coordination and accountability.
- # **Enhance Coordination Between EPA Program Offices.** The new Administration has the opportunity to increase and improve coordination between various EPA programs and offices. For example, during the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) or the Toxic Substance Control Act (TSCA) approval process for products and chemicals, EPA can better ensure that their use and disposal is protective of water quality objectives. Many products and chemicals are disposed by households or businesses via sewer drains, leading to their presence in wastewater streams and receiving waters.

Biosolids Management

- # **Ensure Sound, Scientific Risk Assessment in Regulating Dioxins.** AMSA urges that any regulatory limit for dioxins in POTW biosolids (i.e., sewage sludge) that are land applied is based on a sound, scientific risk assessment. EPA is scheduled under court order to develop a dioxin limit for biosolids under 40 CFR Part 503 by December 15, 2001. The risk assessment for the final rule should ensure adequate protection of human health and the

environment. However, a dioxin limit for biosolids should not be based upon inappropriate, duplicative “worst-case” risk assumptions. Such assumptions will result in a overly conservative dioxin threshold that does not provide additional health or environmental protection and will threaten the viability of clean and safe biosolids reuse programs across the country.

- # **Provide a Comparative Assessment of Radiological Exposures.** Over the past two years, EPA and the Nuclear Regulatory Commission (NRC) have been evaluating the potential exposure of the public and POTW workers to low level radioactive materials disposed into sanitary sewers and reconcentrated into POTW biosolids (i.e., sewage sludge). A final radiological assessment from EPA and NRC is expected in mid-2001. AMSA’s preliminary analysis from this effort indicates that potential doses from exposure to biosolids containing low levels of radionuclides are within the normal variation of radiation received by individuals from everyday activities (exposure to natural background levels, air travel, medical procedures, etc.). We are concerned that EPA and NRC’s analysis will not provide the public with a comparative assessment of radiological exposures resulting from biosolids versus other natural or anthropogenic sources. EPA should ensure that this type of assessment is included in the final radiological assessment presented by EPA and NRC.

- # **Continue Support of National Biosolids Partnership and EMS Programs.** In 1997, AMSA, the Water Environment Federation (WEF), and EPA founded the National Biosolids Partnership (NBP) to promote the safe and effective reuse of biosolids. The NBP is leading the development of an Environmental Management System (EMS) for biosolids. This set of national management protocols will be used by producers and applicators to advance environmentally sound and accepted biosolids management practices and demonstrate to their communities that biosolids products exceed market and regulatory standards. EPA should continue to support the NBP and the EMS concept through active participation and vocal support of biosolids reuse practices and other safe biosolids disposal methods.

Mercury Use and Disposal

- # **Develop A National Strategy for Mercury Compliance.** Due to commonality in the problems facing POTWs with regard to mercury, AMSA believes a national strategy should be developed so that each POTW does not have to develop an individual mercury compliance solution. In many parts of the country, POTWs are or soon will be faced with very low mercury effluent limits, due to application of stringent water quality criteria. Many POTWs are concerned that compliance will require the application of advanced treatment, which while costly, may not improve water quality. EPA indicates that under new analytical and sampling techniques and pollution minimization, POTWs should have no difficulty attaining these more stringent requirements. AMSA is concerned that such conclusions may be inaccurate, and

believes a national strategy is a better approach.

National Pretreatment Program

- # **Finalize the Pretreatment Streamlining Rule.** EPA should move quickly in 2001 to finalize the proposed streamlining changes to the 40 CFR Part 403 national pretreatment program regulations. The nation's POTWs play a lead role in the implementation of the program which controls industrial discharges to the nation's sewer systems. We recommend EPA consider the suggested improvements to the proposed streamlining rule outlined in AMSA's November 1999 comments. These recommendations will further reduce the administrative burden on POTWs implementing the program, while maintaining adequate control of industrial discharges.

- # **Review Proposed Effluent Standards for Metal Products Industry.** EPA should review the cost/benefit analysis of its January 3, 2001 proposed effluent guidelines for the Metal Products and Machinery industry sector. AMSA is not certain that the proposal will have measurable environmental benefits, and yet the requirements will be resource intensive for industry and POTWs. AMSA believes this proposed rule, and other additional new effluent standards for indirect dischargers, are unnecessary due to robust locally-implemented pretreatment programs that can ensure compliance with NPDES permits, high quality biosolids, and protection from inhibition of treatment processes.

Water Quality Standards

- # **Revise 18-Year Old Water Quality Standards Regulations.** The current water quality regulations at 40 CFR Part 131, last revised in 1983, are overdue for comprehensive revisions to reflect the future course of environmental protection in America. These revisions should promote watershed-based approaches; ensure flexibility in reviewing and revising uses and criteria; encourage the participation of unregulated nonpoint sources of water quality impairment; and guard against disproportionate controls on point source dischargers.

- # **Revise Whole Effluent Toxicity Regulation and Guidance.** EPA should revise its regulation and guidance to account for WET analytical variability during permit development; define the sufficiency of data required to include WET in permits (i.e., reasonable potential); and eliminate enforceable WET tests as permit limits. EPA should also adopt an alternative permitting approach to WET that uses WET test exceedences as a trigger for additional action (i.e., detect, find, and eliminate sources of toxicity), and bases legal liability on failure to address WET exceedences and not individual WET test failures.

- # **Allow State Flexibility in the Use of Mixing Zones.** EPA should allow states to

address mixing zones on a site-specific and scientific basis that considers relative information on the duration and exposure of species residing within the relatively limited mixing zone area. On November 2, 2000 EPA released a final rule which included a blanket prohibition on mixing zones in the Great Lakes. The cost-effectiveness of EPA's approach in achieving these overall reductions is questionable given the limited overall contributions of bioaccumulative chemicals of concern (BCCs) by POTWs and the ubiquitous nature of some BCCs (e.g., mercury). EPA's November 2, 2000 announcement also referenced a future nationwide ban on mixing zones nationwide for all pollutants. The Agency should reevaluate this approach due to the tremendous impact this type of ban would have on municipalities and businesses nationwide.

- # **Review and Revise Designated Uses of Waterbodies.** Designated uses define the direction of local water quality programs, and drive the selection and application of management practices and technologies that will be used to control pollution into a waterbody. Consistent with Clean Water Act requirements, water quality standards, including designated uses must be reviewed and revised as appropriate at least once every three years. In addition, EPA should incorporate water quality standards reviews as part of the total maximum daily load (TMDL) process. While reviewing the existing water quality standards, EPA and States should review the underlying rationale for uses.

- # **Review and Revise EPA Water Quality Criteria.** To ensure technically-sound decision making, EPA should review its water quality criteria at a minimum of every 10 years. EPA's water quality criteria consist of information regarding the concentrations of chemicals or levels of parameters in water that protect aquatic life and human health, and act as regulatory thresholds for determination of impaired waters. Many of EPA's current water quality criteria are outdated, and have not been developed using consistent methodologies.

- # **Nutrient Standards Should Be Used As Action Levels.** EPA should reevaluate its approach to adopting nutrient standards across the country. EPA's 1998 Nutrient Strategy outlines a process and approach for the development of numeric criteria for nutrients and adoption of nutrient provisions of state water quality standards. States are effectively required to adopt numerical nutrient criteria into their water quality standards by 2005. Given the magnitude and complexity of waterbody-specific nutrient criteria development, and the current focus by states on developing TMDLs, this deadline for criteria adoption is wholly unrealistic. In addition, EPA's recommended approach to developing nutrient criteria using existing reference stream data will needlessly identify waters across the country as "impaired" based simply on elevated nutrient concentrations or chlorophyll levels. EPA should revise its approach to better characterize the impact of nutrients upon aquatic ecosystems; clearly distinguish between nutrient enrichment and nutrient impairment; and utilize numeric nutrient criteria as action levels to identify areas for further site-specific study rather than a basis for

TMDLs or other regulatory action.

Wet Weather Programs

- # **Public Access to Regional CSO and SSO Enforcement Information.** OECA should provide access to SSO and CSO Regional enforcement plans and inventories when finalized. OECA should also provide AMSA and other municipal groups an appropriate opportunity to comment on all draft SSO compliance assistance documents for the Regions and States.

- # **Authorized Wet Weather Grant Programs Should Be Fully Funded.** EPA should provide all congressionally-authorized funding in its FY 2002 and 2003 budgets to support wet weather watershed pilot projects and sewer overflow grants as specified in the *Wet Weather Water Quality Act of 2000*.

- # **Wet Weather Blending Should Be Endorsed.** EPA should issue a policy statement supporting the long-standing POTW practice of wet weather blending as a cost-effective strategy that allows agencies to meet secondary treatment standards, maximize flow to the treatment plant, and protect sensitive biological treatment systems from damage from excessive wet weather flows.

Other

- # **Maintain “Non-restricted Use” Classification for Chlorine Gas Use.** EPA should reevaluate the need to modify the use classification for chlorine gas under federal pesticide labeling and application regulations. While POTWs fully agree that adequate training and safety procedures are critical to ensure the safe handling and application of chlorine gas, EPA’s September 18, 2000 *Federal Register* proposal to reclassify chlorine gas use for water and wastewater treatment as a “restricted use” would result in duplicative training and certification requirements for wastewater treatment operators, and would not result in additional improvements in the safe handling and application of chlorine gas.