

**IN THE UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT**

FRIENDS OF THE EARTH,)	
)	
)	
Petitioner,)	
)	No. 02-1124
v.)	No. 02-1123
)	
UNITED STATES ENVIRONMENTAL)	
PROTECTION AGENCY and)	
CHRISTINE TODD WHITMAN,)	
Administrator,)	
United States Environmental)	
Protection Agency)	
Respondents.)	
)	

**MOTION BY THE ASSOCIATION OF METROPOLITAN SEWERAGE
AGENCIES FOR LEAVE TO PARTICIPATE AS *AMICUS CURIAE***

The Association of Metropolitan Sewerage Agencies (“AMSA”), pursuant to Rule 29 of the Federal Rules of Appellate Procedure and D.C. Circuit Rule 29, moves for leave to participate as *amicus curiae* in support of the U.S. Environmental Protection Agency (“U.S. EPA”) and its Administrator, Christine Todd Whitman (“Respondents”), in this case brought by Friends of the Earth (“Petitioners”).¹ AMSA submits the following in support of this motion.

¹ EPA filed a motion to dismiss for lack of jurisdiction on May 20, 2002. AMSA concurs with EPA’s motion that these Petitions for Review should have been filed in the D.C. District Court. However, in the event this Court proceeds to hear the case on the merits, AMSA is filing this Motion for Leave to Participate as *Amicus Curiae*.

I. INTRODUCTION

AMSA has represented the interests of the nation's publicly-owned wastewater treatment agencies ("POTWs") since 1970. AMSA is comprised of over 270 POTW members, who serve the majority of the U.S. sewered population and collectively treat and reclaim over 18 billion gallons of wastewater each day. AMSA's members operate municipal wastewater treatment plants under federal and state laws and regulations in cities and towns across the United States, including in the District of Columbia, Maryland, and Virginia. As an organization, AMSA strives to maintain a leadership role in the development and implementation of scientifically-based, technically-sound, and cost-effective environmental and clean water programs to protect public and ecosystem health.

II. ARGUMENT

AMSA hereby incorporates by reference the District of Columbia Water and Sewer Authority's ("WASA") Motion for Leave to Participate as *Amicus Curiae* (the "Motion"). AMSA submits that should this Motion for Leave to Participate as *Amicus Curiae* be granted, WASA and AMSA would file a joint *amicus* brief.

Central to Petitioners' appeal of the total maximum daily loads ("TMDLs") for biochemical oxygen demand ("BOD") and total suspended solids ("TSS") in portions of the District of Columbia's Anacostia River are issues related to (1) the management and control of combined sewer systems (which convey both sanitary

wastewater and storm water) – particularly during heavy storm events; and (2) the technical expression of water body TMDLs. Like WASA, AMSA is uniquely qualified to provide the Court with useful analysis and insight on both these issues. AMSA’s membership includes the most comprehensive group of combined sewer communities in the country. More than one-third of AMSA’s member agencies operate combined sewer wastewater collection systems, like WASA. Together, AMSA’s combined sewer agency members serve an estimated 49.7 million of the U.S. population in all but two of the 32 states with combined sewers. AMSA’s combined sewer agency membership corresponds to the national concentration of these sewer systems in the northeastern, southeastern, and midwestern portions of the U.S., and in several west coast states. Accordingly, the issues raised in WASA’s Motion also concern many of AMSA’s member agencies. The outcome of this appeal will impact the wastewater collection system operations of AMSA members in many states.

AMSA also anticipates that Petitioners’ issues on appeal could establish significant precedent regarding the process for TMDL expression and implementation. This precedent will impact not only AMSA’s combined sewer member agencies, but also the remainder of AMSA’s membership who operate separate sanitary sewer systems. For example, Petitioners are expected to assert in this appeal that the TMDLs must be expressed in the form of daily, rather than

annual, loads. The loads established in TMDLs eventually are incorporated into state and federally enforceable numeric limitations in POTW Clean Water Act discharge permits under the National Pollution Discharge Elimination System (“NPDES”). If this Court finds that TMDLs may be expressed only in daily load form, EPA regional offices and state environmental agencies across the country are likely to follow this key precedent. Such precedent would require communities across the country to expend enormous financial resources to attempt to meet a true “daily” load for most pollutants – and there remains there is a serious question of whether daily loads are achievable for many pollutants, including for BOD and TSS, which are at issue in this case.

Accordingly, AMSA and its member POTWs have a significant interest in the outcome of these proceedings.

III. CONCLUSION

For the foregoing reasons, and for the reasons incorporated by reference as set forth in WASA’s motion, AMSA respectfully requests that this Court grant it leave to participate as *amicus curiae* in support of Respondents in this matter.

Respectfully Submitted,

ASSOCIATION OF METROPOLITAN
SEWERAGE AGENCIES

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Dated: June 11, 2002

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true copy of the foregoing Motion of the Association of Metropolitan Sewerage Agencies (AMSA) for Leave to Participate as *Amicus Curiae* was mailed, first-class, postage prepaid, this 11th day of June to the following:

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