



Association of  
Metropolitan  
Sewerage Agencies

President  
William L. Pugh  
Public Works Director  
City of Tacoma  
Public Works Department  
Tacoma, WA

Vice President  
Gurnie C. Gunter  
Director  
Kansas City Water  
Services Department  
Kansas City, MO

Treasurer  
Paul Pinault  
Executive Director  
Narragansett Bay Commission  
Providence, RI

Secretary  
Thomas R. "Buddy" Morgan  
General Manager  
Water Works & Sanitary  
Sewer Board  
Montgomery, AL

Executive Director  
Ken Kirk

March 5, 2001

Timothy Dwyer  
U.S. Environmental Protection Agency  
ICC Building (MC 4203M)  
1200 Pennsylvania Avenue, NW  
Washington, DC 20460

Dear Tim:

The Association of Metropolitan Sewerage Agencies (AMSA) appreciates the opportunity to provide comments on the U.S. Environmental Protection Agency's (EPA's) December 20, 2000 draft *Guidance on Implementing the Water Quality-Based Provisions in the CSO Control Policy* (draft guidance) (66 Fed. Reg. 364). AMSA commends the Office of Wastewater Management (OWM) for moving forward with this draft guidance. The document should serve as a useful tool for CSO communities.

The core process outlined in the draft guidance for integrating the CSO Long Term Control Plan (LTCP) with the state water quality standards (WQS) process is sensible and encourages greater participation by state and Regional EPA staff. If states are willing to approach this process flexibly and recognize that WQS should be revised to reflect CSO conditions, the guidance will significantly advance the water quality benefits of the LTCP process. We look forward to working with you to improve the guidance and advocate its use nationwide.

#### **GENERAL COMMENTS**

AMSA urges EPA to respond with the development of a specific program for implementing this guidance. As a general observation, although the coordination process envisioned in the draft guidance is reasonable, AMSA questions whether states will actively participate in widespread WQS review and revision even with the local communities taking a strong lead on monitoring and use attainability analyses

March 5, 2001

Page 2

(UAA) studies. Due to resource constraints and a historic reluctance to reexamine WQS for wet weather conditions, we are concerned that the concepts in this guidance will not be acted upon. Given the specific charge by Congress in EPA's FY 1999 Appropriations package to provide technical and financial assistance to states to conduct WQS and designated use reviews for CSO-receiving waters, progress will be limited without a national program which requires state action to conduct WQS reviews and revisions for CSO-receiving waters. This program should include monetary incentives as well as additional technical resources, consistent with the Congressional directive, to encourage state action on these WQS reviews. EPA should consider using its grant authority through Clean Water Act Sections 106, 205(g), and/or 205(j) to enlist state support and action on this guidance. Similar to the conditions developed for recipients of Section 106 funds relating to state total maximum daily load (TMDL) monitoring programs, EPA should add a requirement to the 2002 monies requiring states to incorporate how they will implement the relevant parts of this guidance into their workplan.

The draft guidance does not explain how communities which are already implementing the nine minimum controls and an approved LTCP will be able to take advantage of this WQS review approach. Communities that obtained state approval of their LTCP prior to the adoption of the 1994 *CSO Control Policy* will not have the advantage of following the coordination process as envisioned in the guidance. Presumably, there is a way to enable those communities to proceed with the appropriate coordination steps on a dual track or to retrofit the program within its implementation plan. Those communities need some flexibility for this process to function in a practical and workable manner. AMSA recommends that EPA revise the guidance to include language on how such a dual track would work. We also recommend EPA include a statement recognizing that communities whose LTCPs were approved prior to 1994 will not be able to follow this guidance as specifically outlined. Similarly, flexibility is needed in the document to accommodate states currently conducting WQS reviews for CSO-receiving waters to help ensure that this guidance is utilized.

The procedures outlined in this draft guidance also are directly applicable to SSO-receiving waters. Recognizing that national SSO regulations are under development, AMSA recommends that EPA revisit the broader application of this CSO process to SSOs once the SSO rule is finalized.

## **SPECIFIC COMMENTS**

### **Section II. EXISTING PROGRAM FRAMEWORK**

#### **2. *Water Quality Standards Program Framework***

##### ***D. How do States protect recreational uses, particularly in urban areas?***

The Agency should discuss the options for considering storm flow conditions in this section. This section does not discuss the impacts of storm flow conditions on recreational uses. For many watersheds and particularly urban streams, during high flow periods and for a period of time after high flows, there will always be higher risk for recreational use and the added safety problem of fast currents. As land surfaces

continue to drain, contamination also poses high risks. Public health is best served by WQS that assure low bacteria concentrations during dry weather periods and also address the specific issue of wet weather conditions. There is a need to structure standards such that the collected data helps the community measure its progress in reducing the duration and magnitude of specific wet weather bacteria spikes.

In addition, the Agency should clarify the justification for using a secondary contact designated use for water bodies where primary contact does not occur by indicating that such a change would not require compliance with primary contact criteria. The last sentence of the third paragraph on page 17 reads: "Applying a less stringent criterion to a water body where only "secondary contact" activities occur should result in no greater risk of gastrointestinal illness *than do water bodies designated with primary contact recreation.*" Although we believe it was the Agency's intention to point out that there would be no additional risks posed by lowering the designated use to secondary contact waters, the sentence can be interpreted to require dischargers to still meet primary contact water criteria. Therefore, AMSA recommends that the Agency delete the italicized text from this sentence (i.e., "... *than do water bodies designated with primary contact recreation*").

***J. What steps are necessary to develop a system of tiered aquatic life uses and subcategories for urban streams?***

Table 7 lists necessary steps to establish subcategories for urban streams. Step 5 under Column B would require that a determination be made for each "urban impacted subcategory" as to whether "its biological criteria fall within the range of allowable change from *reference condition* and meet the 'fishable' goal of the CWA." EPA should clarify whether the term "reference condition" is to be used interchangeably with the concept of "biological condition" in Step 3, Column B. The reference condition in urban impacted streams should correspond directly to the conditions which are "achievable" given the realities of the urban environment. Urban impacted streams often have limited to negligible biological communities. Accordingly, WQS authorities need to recognize that urban impacted streams can only restore the biological functions that are achievable given the urban nature of the stream.

**Section IV. INTEGRATING CSO LTCP DEVELOPMENT AND IMPLEMENTATION WITH WATER QUALITY STANDARDS REVIEWS**

***I. How do you integrate development of CSO LTCPs by communities and reviews of water quality standards by States?***

AMSA recommends that Step 3 be modified to recognize that mid-course changes to the agreed upon "information and analyses" can and will occur. Step 3 of the coordination process indicates that "integrating water quality standards reviews with the development and implementation of an affordable level of CSO control necessitates that *all parties agree in advance on the information and analyses which are appropriate to support a water quality standards revision ...* ." Our members' experience has shown that the process is iterative by nature. Information needs may change as the LTCP is developed and implemented.

March 5, 2001

Page 4

**4. *On what basis would States generally justify their determination that a use is not attainable in CSO receiving waters?***

AMSA recommends that the guidance be modified to include a discussion on how to conduct a UAA which considers the realities of man-made or natural alterations as potential justifications for revising a WQS. The guidance indicates that WQS revisions will most likely be justified if the controls necessary to attain the current standard would cause “substantial and widespread economic and social impact.” AMSA recommends EPA widen its UAA standards to consider justifications based on human-caused conditions or sources of pollution which prevent the attainment of the use and cannot be remedied. Many UAAs will hinge on man-made or natural conditions that cannot be altered by CSO control remedies. For instance, the level of imperviousness in a watershed is a human-caused condition. Research shows that beyond a certain threshold imperviousness, mitigation measures will be unsuccessful in restoring full stream functions.

**V. THE WATERSHED APPROACH**

The draft guidance indicates that a TMDL analysis will often be the most effective strategy for managing multiple pollution sources. AMSA endorses the watershed approach and supports EPA’s efforts to develop a TMDL process that fairly and equitably addresses all sources of pollution. We caution that this guidance is intended to enable states and communities to proceed with WQS reviews and revisions on CSO-receiving waters separately and independently. This section might suggest that the WQS review and revision process should be stalled while the state develops its TMDL approach. EPA should clarify that the approach discussed in this guidance is distinguishable from the watershed process outlined in the guidance.

Again, AMSA thanks the Agency for developing this draft guidance. Please feel free to call Greg Schaner at 202/296-9836 if we can answer any questions about our comments.

Sincerely,



Ken Kirk  
Executive Director