



Association of
Metropolitan
Sewerage Agencies

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September 10, 2001

W-98-31-III TMDL Comments Clerk
Water Docket
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue, NW
Washington, DC 20460

Re: *Delay of Effective Date of Revisions to the Water Quality Planning and Management Regulation and Revisions to the National Pollutant Discharge Elimination System Program in Support of Revisions to the Water Quality Planning and Management Regulations; and Revision of the Date for State Submission of the 2002 List of Impaired Waters, 66 Fed. Reg. 41,817 (Aug. 9, 2001)*

Dear Sir/Madam:

The Association of Metropolitan Sewerage Agencies (AMSA) is pleased to provide comments on the Environmental Protection Agency's (EPA) proposed 18 month delay of the effective date of the July 13, 2000 final Total Maximum Daily Load (TMDL) regulation under the Clean Water Act (CWA) (65 Fed. Reg. 43,586). We also are pleased to comment on the Agency's proposed revision of the due date for state submission of the 2002 CWA § 303(d) lists of impaired waters. Founded in 1970, AMSA represents the interests of over 260 of the nation's publicly owned wastewater utilities (POTWs). AMSA members serve the majority of the sewered population in the United States and collectively treat and reclaim over 18 billion gallons of wastewater every day.

AMSA's comments support EPA's proposal to extend the effective date of the TMDL rule until April 30, 2003 while EPA evaluates recent developments and resolves some of the more controversial aspects of the rule. These comments also support EPA's proposal to extend the date for state submission of the CWA § 303(d) lists, presently due April 1, 2002. Recognizing the existing significant TMDL backlog based on the 1998 lists, and EPA's need to develop listing guidance for states, AMSA supports an extension of the § 303(d) list due date of 24 months from the October 30, 2000 effective date of the July 2000 TMDL rule, with certain qualifications detailed below.

The following comments outline AMSA's interests in the TMDL program and its regulations, address AMSA's involvement in the D.C. Circuit litigation over the July 2000 rule, provide more detailed comments on both proposed extensions, and recommend several key TMDL issues for EPA consideration as the renewed public dialogue on this important water quality program moves forward.

I. The Impact of the TMDL Program on AMSA Member Agencies

The TMDL program has direct and significant consequences for AMSA member agencies, who are point source dischargers permitted to discharge treated effluent under the National Pollutant Discharge Elimination System (NPDES) permit program under CWA § 402. Approximately 80 to 85% of AMSA's POTW members are located on impaired waterbodies listed as "water quality limited segments" under CWA § 303(d). Many of these impaired waters are influenced significantly by both rural and urban nonpoint source pollution. The development of TMDLs for these waters and the calculation of load and wasteload allocations in order to achieve necessary pollutant load reductions directly affect the ultimate effluent limitations placed in AMSA members' NPDES permits. Accordingly, TMDLs developed pursuant to EPA's 1992 regulations, and any subsequent final regulations resulting from the public discussions contemplated in this proposal, will directly impact the terms and conditions of AMSA members' NPDES permits.

II. AMSA's Involvement in the TMDL Litigation

AMSA participated extensively in the activities leading up to EPA's July 2000 rule, including participating in the TMDL Federal Advisory Committee, presenting testimony before Congress, and submitting extensive public comments. When EPA finalized the rule, AMSA believed that several provisions of the rule would improve and advance the effectiveness and equity of the TMDL process. However, AMSA also had significant concerns with several other provisions of the rule, which would hinder and complicate TMDL listings and delistings. Accordingly, AMSA moved to intervene in the litigation that commenced in the D.C. Circuit Court of Appeals over the July 2000 rule, and in December 2000, the D.C. Circuit granted our participation in the case.

The litigation was one method for resolving problems with the July 2000 TMDL rule, and AMSA believes the case would have resolved both significant concerns with the rule as well as preserved beneficial provisions of the rule. However, we accept EPA's desire to commence a new public process through further rulemaking, and to stay the litigation, as an alternative means to make changes to the July 2000 rule. In the ensuing public discussions, we urge EPA to address the many issues raised by the litigants in their pleadings to date. AMSA remains committed to bringing the POTW community's views, expertise, and experiences to this dialogue.

III. *AMSA Supports EPA's Extension of the TMDL Rule's Effective Date and Recommends EPA Address Several Key Issues In Its Review*

AMSA supports EPA's proposal to extend the effective date of the TMDL rule until April 30, 2003 while the Agency evaluates recent scientific studies on the TMDL program, including the National Research Council's (NRC) June 2001 report *Assessing the TMDL Approach to Water Quality Management*; conducts a public dialogue with stakeholders including AMSA on better ways to construct the TMDL program; and subsequently finalizes new TMDL rules through a public notice and comment process.

AMSA believes this renewed public discussion must focus at a minimum on the important issues outlined below. We are pleased to note that many of our most significant issues are the same as those addressed in the NRC's report and recommendations. A *White Paper* providing further detail on each of AMSA's issues is available on our website at www.amsa-cleanwater.org.

- Ensuring that all impaired waterbodies regardless of the source of impairment – either nonpoint sources only, or blended point and nonpoint sources – are included on 303(d) lists; that load allocations are assigned to nonpoint sources and “reasonable assurances” maintained to ensure their implementation; and that states do not impose on point sources portions of the nonpoint source load not eliminated through implementation;
- Increasing the transparency of the listing and delisting process;
- Promoting state development of 1) processes to review and revise water quality standards (WQS) (designated uses and/or water quality criteria) to ensure the foundation of the TMDL program is on solid ground and limited resources are applied effectively; and 2) methodologies for considering and evaluating data and information to determine which waterbodies will be listed under § 303(d).
- Developing “interim permitting” guidance to allow existing NPDES permit limits to be upheld in the interim period before TMDLs are complete;
- Incorporating a “phased” or “adaptive” approach to TMDL development;
- Accounting for the benefits of existing wet weather programs and initiatives through the TMDL program;

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- Establishing minimum data quality and quantity standards for § 303(d) listings and an explicit preference for actual monitoring data over modeled data;
- Applying the same criteria and standards for listing and delisting;
- Streamlining § 303(d) lists by not requiring the listing of waterbodies impaired by “pollution”; waterbodies not making “substantial progress”; waterbodies expected to meet water quality standards or to become impaired by the next listing cycle; Tier 3 waters; or waterbodies impaired by atmospheric deposition;
- Setting reasonable goals and timeframes for developing TMDLs and attaining WQS; and,
- Eliminating overlap, duplication, and second-guessing between the federal government, state regulatory agencies, and permittees by clarifying each entities’ role in the TMDL process.

AMSA is committed to a TMDL program that is reasonable, equitable, scientifically sound, and maintains appropriate roles for EPA, states, and permittees. As renewed public discussions are carried out, AMSA will work with EPA and stakeholders to develop TMDL regulations that achieve these important goals.

IV. AMSA Supports A 24-Month Extension for State § 303(d) List Submission

AMSA supports EPA’s proposal to extend the date for state submission of the 2002 CWA § 303(d) lists, presently due April 1, 2002, to allow EPA to develop and issue guidance to the states regarding development of the lists that takes into account the NRC’s recommendations and other TMDL developments. However, AMSA suggests that EPA extend the date beyond the proposed six months to October 30, 2003, 24 months beyond the original effective date of the July 2000 rule. This additional time would provide states with six months beyond the April 30, 2003 date by which EPA intends to finalize modifications to the July 2000 TMDL rule to submit new § 303(d) lists. This extension also recognizes that six months may not be adequate to allow EPA to complete comprehensive listing and delisting guidance, and that any eventual guidance should take into account the final, revised TMDL rule’s requirements. We do not anticipate this delay would adversely impact the TMDL program. Most states already face a backlog of TMDLs to be developed under the previously submitted 1998 lists. Like EPA, we are confident that progress will be made to develop TMDLs for impaired waters during the extension. As EPA’s proposed rule notes, EPA expects to approve more than 1,500 TMDLs in FY 2001.

AMSA recognizes that some waterbodies will merit expedited attention during the extension. Accordingly, AMSA recommends that if at any time during the extension a state has data of sufficient quality and quantity to identify an additional impaired waterbody, the State be able to place that water on

a priority TMDL list. Similarly, if a state has data of sufficient quality and quantity to determine that a waterbody should be delisted, the state should be able to delist the water at any time during the extension.

Conclusion

Again, we appreciate the opportunity to comment on these important TMDL issues. We look forward to working with EPA and all stakeholders to ensure that the revised TMDL regulations further an equitable and effective program that will lead to improved water quality for all Americans. Please do not hesitate to contact me if you have any questions regarding our comments at 202/833-4653 or via email at kkirk@amsa-cleanwater.org.

Sincerely,



Ken Kirk
Executive Director