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Attachment C

## *Status of Technical Action Fund Projects July 2001*

AMSA's Technical Action Fund is currently supporting numerous projects that were approved by the Board of Directors during 2000-2001. A list of these projects and their current status follows:

### *Legislative Activities*

#### *Lobbying Activities for National Biosolids Partnership Appropriation*

Following the successful efforts of the past three years, AMSA and the Water Environment Federation (WEF) are actively pursuing an additional \$1 million Congressional appropriation through EPA's FY 2002 budget to provide continued funding support to the National Biosolids Partnership (NBP). Both organizations each contributed \$15,000 in 2001 to hire the services of a lobbyist to enhance our efforts to secure funding support. TAF resources are expected to be used through the end of the year, when the FY 2002 appropriations process is complete.

- AMSA TAF Budget Expenditure: \$ 30,000
- AMSA Commitment: \$15,000
- WEF Commitment: \$15,000

### *Regulatory Activities*

#### *Working with Your POTW<sup>®</sup> Document Nears Completion*

AMSA was approached in early 2000 by the Textile Rental Services Association (TRSA) to update their "Working with your POTW Guidance." The document is a "how to" guide for commercial laundries and the POTWs which service this sector. The document, originally written in the 1980s, was drastically out-of-date. TRSA funded AMSA's efforts to update the document and AMSA members have worked closely with TRSA staff to assure the document's viability. AMSA has spent \$20,000 revising and rewriting the document, the costs of which have been offset by a significant contribution from TRSA. The completed document will be made available in November at the *AMSA/EPA 2001 Pretreatment Coordinators' Workshop*.

- AMSA TAF Budget Expenditure: \$ 20,000
- TRSA Commitment: \$ 60,000

*AMSA Submits Comments on Metal Products & Machinery Rule*

AMSA's Board of Directors approved \$40,000 in September of 2000 and \$7,000 in May of 2001 for the Pretreatment & Hazardous Waste Committee to support AMSA's efforts to comment on EPA's proposed Effluent Limitations Guidelines, Pretreatment Standards, and New Source Performance Standards for the Metal Products & Machinery (MP&M) Point Source Category (January 2001). AMSA secured consultant services to assist the Association in re-surveying EPA's participants of the 150 POTW Survey of 1996, analyzing the data from the survey, and preparing draft comments. AMSA's comments outlined several key concerns with the proposal, including its reliance on outdated data, questionable science, and underestimated costs. In addition to providing detailed comments, AMSA has arranged an upcoming meeting with EPA officials to discuss potential alternative approaches for regulating the MP&M industry sector.

- AMSA TAF Budget Expenditure: \$ 47,000

*AMSA Awaits EPA's Proposed Rule on Sanitary Sewer Overflows*

In February of 2001, AMSA's Wet Weather Committee was provided \$30,000 in TAF funds from AMSA's Board of Directors to aid efforts refute EPA's cost benefit analysis of the Proposed Sanitary Sewer Overflow Rule. EPA has not yet proposed the rule and AMSA is ascertaining EPA's path forward before continuing with the project.

- AMSA TAF Budget Expenditure: \$ 30,000

*Update of Radioactivity Dose Model Nears Completion*

In February of 2001, AMSA's Board of Directors approved \$40,000 from TAF to assist AMSA in revising the current dose model using the latest version agreed to by the Interagency Steering Committee on Radiation Standards (ISCORS) and ensuring that the developed model provides a meaningful evaluation of the national survey results when released. With carry-over funds from 2000, this project has \$41,500 available for 2001. A contractor will identify scenarios for modeling, participate in discussions with ISCORS to ensure that AMSA's effort's parallel theirs, and produce two reports as soon as the results of the EPA/NRC study are published. The first will show the changes in the ISCORS model and the second will summarize the dose modeling results to facilitate understanding.

- AMSA TAF Budget Expenditure: \$ 41,500

*Dioxin Sampling Survey Findings Made Available at July 2001 Meeting*

In February of 2000, AMSA's Board of Directors approved \$25,000 of TAF funds to assist in surveying AMSA member's dioxin levels in municipal biosolids.

The Board supplemented this amount with \$30,000 in February 2001. Only \$9,145 was spent in 2001, bringing a 2001 budget balance of \$45,855. The survey will provide valuable information as EPA continues work to develop a dioxin limit for biosolids. On December 23, 1999, EPA proposed to limit dioxin and dioxin-like compounds in biosolids that are land applied. EPA's proposed rule used historical dioxin data from EPA's 1988 National Sewage Sludge Survey and AMSA's 1994 Survey of Dioxins in Municipal Biosolids. While EPA's risk analysis for the proposal assumed that dioxin levels in municipal biosolids are remaining constant or diminishing, there was relatively little data from these historical surveys that support this assumption. Without additional data, EPA's risk analyses could be challenged and the scope of the rule broadened to remove the exemption of incineration and land disposal from dioxin limits. Additional dioxin data could also support AMSA's comments and position on other issues in the proposed rule (e.g., application rates, thresholds for increased monitoring, use of detection levels, etc.).

Starting in 2000, contractor services were utilized to assist AMSA in designing the sampling program, helping identify potential laboratories, receiving analytical data from the laboratory, conducting statistical analyses of the data, and preparing a report for AMSA. The survey announcement and request for participation in the survey was distributed in November of 2000. The preliminary findings will be presented at AMSA's 2001 Summer Conference.

- AMSA TAF Budget Expenditure: \$ 45,855

#### *Technical Review of EPA Whole Effluent Toxicity Guidance*

AMSA's Board of Directors approved \$2,000 for 2000 and an additional \$5,000 for 2001 to hire a consultant to review EPA's *Preliminary Report: Interlaboratory Variability Study of EPA Short-term Chronic and Acute Whole Effluent Toxicity Test Methods* and provide follow-up support activities during 2001. Work on the project has been completed with AMSA expecting the final product soon.

- AMSA TAF Budget Expenditure: \$ 7,000

#### *Review of EPA Nutrient Guidance Documents*

On June 18, 1998, in response to a Clinton administration directive to implement a criteria system for nitrogen and phosphorus runoff for lakes, rivers, and estuaries by the year 2000, EPA released a national strategy outlining the process and approach for the development of numeric criteria for nutrients and adoption of nutrient provisions as part of state water quality standards. Under the approach described in the new nutrient strategy, EPA will develop nutrient guidance documents for various types of water bodies (e.g., rivers, lakes, coastal waters, and wetlands) over the next several years. States will be able to use these guidance documents and target ranges as they develop numeric criteria for nutrients as part of state water quality standards. States will be required to adopt numerical

nutrient criteria into their water quality standards by 2004.

AMSA's Nutrients Workgroup is tracking the development of the nutrient criteria closely, and received approval in 1999 from AMSA's Board of Directors for use of up to \$50,000 for technical support in 2000 for reviewing EPA's technical guidance documents. In May of 2001, AMSA's Board of Directors approved an additional \$15,000 to provide comments on EPA's Nutrient Database. And an additional \$15,000 has been authorized if it is determined that additional assistance is needed to review EPA's Estuarine and Coastal Guidance scheduled for comment in late 2001. Through 2000, \$38,700 was spent; the 2001 budget, including 2000 residual newly authorized funds, is \$41,300.

- AMSA TAF Budget Expenditure: \$ 41,300

### *Litigation Activities*

#### *Effluent Monitoring Requirements: Bishop & Jarrett v. City of Montgomery*

In 2000, AMSA's Board of Directors approved the filing of an amicus brief in the *City of Montgomery* case in the Alabama District Court. In this case, a citizens group argued that a POTW's permit provision requiring the submission of monthly summaries of discharge data in fact required reporting of all individual data points. AMSA believed this unreasonable expectation directly conflicted with the permit, which was modeled after standard regulatory NPDES provisions. Using outside counsel AMSA filed the *amicus* brief in December 15, 2000 at a cost of \$2,400, arguing that the plain language of the permit requires summaries only. The case settled the day before oral argument in February 2001, meaning that the Alabama District Court did not rule on the merits of the citizens groups' claims. AMSA member Montgomery Water Works and Sanitary Sewer Board reimbursed the TAF for the \$2,400 expenditure.

- AMSA TAF Budget Expenditure: \$ 2,400
- Montgomery Water Works &  
Sanitary Sewer Board Contribution: \$ 2,400

#### *Protecting the Permit Shield: Piney Run Preservation Assoc. v. Carroll County*

The durability of EPA's permit shield policy, which defines CWA compliance by whether a discharger meets all effluent limitations and standards listed in the permit and supporting documents, is at issue in *Piney Run Preservation Association v. Carroll County*. In December 2000, AMSA and the Water Environment Federation filed a joint *amicus curiae* brief with the Fourth Circuit Court of Appeals using outside counsel. Our brief argued that the lower court improperly ignored the permit shield policy when holding a POTW responsible for an unregulated pollutant. While the plaintiff environmental preservation group in briefs acknowledged the validity of the permit shield, the Fourth Circuit still must decide whether the lower court erred in stating that the permit shield is a misinterpretation of the CWA. Oral arguments were held April 5, 2001. A ruling is expected in late

Summer 2001. Total costs for the brief were \$21,000. \$15,000 was paid in 2000 (\$10,000 from AMSA TAF; \$5,000 from WEF). \$6,000 was paid in 2001 (\$1,000 from AMSA TAF; \$5,000 from WEF). No further costs will be incurred.

- AMSA TAF Budget Expenditure: \$21,000
- WEF Contributions: \$10,000

#### *Clarifying The Role of Nonpoint Sources in TMDLs: Pronsolino v. Marcus*

*Pronsolino v. Marcus* is the next pivotal Clean Water Act (CWA) case. In 2000, AMSA invested \$86,000 in TAF funds with AMSA's counsel to file briefs in the District Court, which held that impaired waters should be listed under CWA 303(d) and be subject to TMDLs without regard to the source of the pollutants – point sources, nonpoint sources, or a combination of both. In the appeal of this decision, AMSA filed a brief December 1, 2000 as *Intervenor-Appellee* to support the government's defense of the District Court's decision. AMSA budgeted \$18,500 for the brief; \$8,500 was paid in 2000 and \$10,000 was paid in 2001. The case will be argued July 9, 2001 by the U.S. Department of Justice (DOJ). AMSA's in-house General Counsel assisted DOJ in a moot court preparation session on July 3, 2001. AMSA also allocated \$2,400 from the general legal support account for outside counsel to participate in the moot court session on July 3, and to meet with the DOJ attorney who will argue the case on July 5. No further costs are expected to be incurred in the case. If the Ninth Circuit overturns the lower court's favorable decision – a result described as unlikely by many familiar with the Ninth Circuit's practice – it is expected that *Pronsolino* will be appealed to the U.S. Supreme Court. Should the case progress to the Supreme Court, a new TAF proposal will be presented in 2002.

- AMSA TAF Budget Expenditure: \$18,500

#### *The Value of Notice and Comment: City of Anderson v. South Carolina*

On April 18, 2001 AMSA filed an *amicus* brief in the South Carolina Circuit Court in *City of Anderson v. South Carolina Department of Health and Environmental Control (DHEC)* using outside counsel. AMSA budgeted \$5,000 from the TAF for this brief. The case concerns DHEC's adoption – without any opportunity for public input or comment – of an index-based numeric translator for determining whether South Carolina's narrative water quality standard for aquatic life use is impaired due to phosphorus or pH. AMSA's brief explained that “affected parties (including members of AMSA) had no opportunity to comment on or participate in the development of a system that effectively determines the need for imposing more stringent effluent limits on individual dischargers to waterbodies identified as ‘impaired’”. AMSA emphasized that “rulemaking procedures established by federal and state administrative procedures acts are some of the most important procedures for seeking appropriate input to develop sound policies because they are designed to assure fairness and mature consideration of rules of general application”. DHEC's June 4 brief argued against AMSA, asserting that DHEC's

translator was a “tool”, “only one source of information”, that it was “never uniformly applied as a permit limit”, and “did not constitute rulemaking.” In a June 14 reply to DHEC, the City of Anderson, assisted by AMSA counsel, rebuffed DHEC’s arguments. A decision in the case is expected in late 2001. Actual costs to produce the brief and draft the follow-up language exceeded the \$5,000 cap AMSA placed on the project by over \$4,000. Given that the firm wrote that time off, AMSA agreed to pay for expenses, local counsel filing costs, and to provide additional payment for the follow-up work, bringing the total cost of the *amicus* activity to approximately \$6,500.

- AMSA TAF Budget Expenditure: \$6,500

*Numeric Limits in Stormwater Permits: Tualatin Riverkeepers v. Browner*

AMSA had been prepared to file an *amicus* brief using outside counsel on behalf of municipal permit holders in this case where environmental groups challenged EPA’s decision to approve a municipal stormwater permit without numeric effluent limits. Our brief would argue that Congress did not intend to hold municipal stormwater permittees subject to numeric criteria. AMSA budgeted \$5,000 for the project, with \$3,000 to be contributed by other groups. On May 21, 2001 the case was dismissed by the U.S. District Court in Oregon for the second time, effectively ending the case. AMSA will incur no costs.

- AMSA TAF Budget Expenditure: \$0

*Numeric Limits in Stormwater Permits: EarthJustice v. EPA*

The *EarthJustice Legal Defense Fund v. EPA* case raises similar issues as *Tualatin* about numeric limits in stormwater permits. This case is still in its early stages before EPA’s Environmental Appeals Board. AMSA plans to file an *amicus* should the case proceed and has budgeted \$5,000 to file the brief using outside counsel. Other groups have agreed to join our brief and share costs in the amount of \$3,000. It is unlikely, however, that the case will move forward in 2001, meaning that AMSA may not expend the funds this year.

- AMSA TAF Budget Expenditure: \$5,000
- Stakeholder Contributions: \$3,000

*TMDL Rule Intervention: American Farm Bureau Federation v. Whitman*

The fate of the Clinton Administration’s July 2000 final TMDL regulations will be determined in part in this large D.C. Circuit case involving AMSA, EPA, environmental groups, industry, and nonpoint source interests. Using outside counsel AMSA intervened in this case in 2000 with the objectives of defending the aspects of the TMDL rule that put “teeth” into the TMDL program’s requirements for nonpoint sources (“reasonable assurances” and implementation plans), and opposing the rule’s provisions that would lead to an overly broad and complicated TMDL list, make delisting difficult, and

expand the scope of the TMDL program to “pollution”. AMSA expended \$2,000 in 2001 to pay outstanding year 2000 LeBoeuf, Lamb invoices. Since early 2001, AMSA has managed this case using our in-house General Counsel to file motions and necessary papers, incurring no further costs. On June 12, 2001, AMSA attended a DOJ meeting of the parties to discuss a path forward for the case. The meeting made clear that EPA is considering a number of options to make changes to the regulations – many of which will involve a delay in the litigation. Accordingly, AMSA expects to incur no further costs this year.

- AMSA TAF Budget Expenditure: \$2,000

### *General Legal Support*

With the retention of a new in-house General Counsel, AMSA set \$54,000 in TAF funds aside for general legal support matters. These funds will be used to consult when needed with outside counsel on various AMSA matters, including strategic advice, review of AMSA briefs, and regulatory counsel. AMSA used \$4,000 to transition in February and March 2001 between outside counsel LeBoeuf, Lamb, Greene and MacRae and AMSA’s General Counsel; and \$2,400 for the *Pronsolino* moot court. Given delays in the TMDL litigation (see above), AMSA anticipates utilizing no more than \$34,000 through the remainder of the year.

- AMSA TAF Budget Expenditure: \$34,000

### *Other Activities*

#### *Water and Wastewater Leadership Center*

As you may recall, in 1999 AMSA’s Board of Directors approved \$25,000 from the TAF to support a joint venture with AMWA, AWWA, and WEF to create the *Water and Wastewater Leadership Center*. Expenditures through 2000 of \$10,693 left \$14,307 available in the 2001 budget.

In 2001, AMSA incurred additional expenses associated with the *Leadership Center*. The first session of the Leadership Center was held March 12 - 23, and although the session was well attended there were several openings that went unfilled. Due to this shortfall of participants at the Spring session, AMSA (along with the other joint venture organizations) was responsible for a \$9,500 payment to the Kenan Flagler Business School.

In addition, AMSA staff took the lead in developing an attractive new brochure for the next session of the Center, to be held September 16 - 28, 2001. The costs associated with the design and printing of the brochure totaled \$5,613.62, which will be shared by all joint venture organizations. AMSA expects to

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recoup 75% of this expenditure from AMWA, WEF and AWWA through application fees for the September session.

- AMSA TAF Budget Expenditure: \$14,307