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Association of  
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Sewerage Agencies

September 24, 2003

G. Tracy Mehan, III  
Assistant Administrator for Water  
U.S. Environmental Protection Agency  
1200 Pennsylvania Avenue, NW  
7<sup>th</sup> Floor, ICC Building, Mail Code: 4203M  
Washington, DC 20460

*VIA ELECTRONIC AND REGULAR U.S. MAIL*

**RE: DRAFT NATIONAL BLENDING GUIDANCE**

Dear Assistant Administrator Mehan:

I thank you for the time you took to meet with me on September 15 regarding the status of a U.S. Environmental Protection Agency (EPA) draft guidance on peak wet weather flow blending treatment (blending) at publicly owned treatment works (POTWs). We are encouraged to hear that the Office of Water recently provided a draft national blending guidance (draft guidance) to the Office of Management and Budget (OMB) for its review and comment. At this time, we wish to reemphasize the need for EPA to release a draft guidance for public review and comment as soon as possible, both to stem the tide of anti-blending enforcement and permitting activities nationwide and to remove the specter of illegality from this essential wet weather management practice.

AMSA has not seen EPA's draft guidance. However, based upon your description and prior publicly available information, the draft guidance will clarify that blending can be authorized in POTW National Pollutant Discharge Elimination System (NPDES) permits. It will state that the parameters of the 40 CFR § 122.41(m) bypass regulation, including its "no feasible alternatives" analysis, do not apply to blending at POTWs, so long as permittees and permitting authorities follow six criteria. As we understand them, EPA's contemplated criteria reflect current regulatory requirements and outline other considerations that directly respond to recent public concerns regarding the human health and environmental impacts of blending, and that will allow POTWs to move important wet weather treatment projects forward with confidence. EPA's described approach is consistent with the Agency's filings in the ongoing *Pennsylvania Municipal Authorities Association v. Horinko* case, which attest that restricting blending was not contemplated in the bypass rule's development, and which estimate the national cost of declaring blending a bypass at approximately \$300 billion.

As they have been explained to us, AMSA agrees that EPA's blending criteria will provide the public with improved information about how blending is used at POTWs and with more data regarding the pollutants contained in blended effluent. We strongly urge EPA, however, to include the following elements in the draft guidance to assure that it is workable and practical for POTWs:

- Apply any requirement that a POTW's NPDES permit specifically reference the blending treatment scheme *prospectively*, to allow commencement of the permit amendment or renewal process and to focus federal and state enforcement efforts on *future* non-conformance with the guidance;
- Authorize blending when the capacity of a POTW's biological unit *is expected to be exceeded* during wet weather events, to recognize that requiring a POTW to use 100 percent of all storage capacity before blending can begin would leave no available storage to capture a storm's peak and to prevent overflows;
- Include collection system requirements in a POTW's NPDES permit *only* where the POTW has legal authority over the collection system;
- Recognize blending as a method to maximize *existing* capacity and treatment during intermittent wet weather flows;
- Highlight that POTWs must disinfect all blended flows and meet all applicable permit limits; and
- Emphasize that the details of a POTW's blending treatment scheme should be discussed at the local level, to allow site-specific water quality issues, engineering factors, and public comments to be fully evaluated and addressed.

AMSA also looks forward to continuing our discussion with you regarding scientific research on blending that EPA and/or the wastewater community could conduct to collect information on pathogens in blended effluent, to study the effectiveness of various disinfection processes and the impacts of disinfection by-products, to review any special considerations for blending proximate to sensitive ecosystems, or to analyze how blending complements other wet weather management approaches such as storage, construction of treatment capacity, and collection system rehabilitation.

Again, we thank you for meeting with us on this critical issue. We urge EPA to continue to move the draft guidance through inter-agency review and to release it for public comment as soon as possible. If you have any further questions regarding AMSA's position on this issue, please call me at 202/833-4653.

Sincerely,

A handwritten signature in black ink, appearing to read "K Kirk". The signature is fluid and cursive, with the first letter "K" being large and prominent.

Ken Kirk  
Executive Director

Cc: John Graham, Administrator  
OMB Office of Information and Regulatory Affairs  
(Via Regular U.S. Mail)