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February 27, 2003

Water Docket
Environmental Protection Agency
Mailcode: 4101T
1200 Pennsylvania Avenue, NW.
Washington, DC 20460
Attention Docket ID No. OW-2002-0020

Dear Sir or Madam:

Re: *Draft Strategy for National Clean Water Industrial Regulations, 67
Fed. Reg. 71165 (November 29, 2002)*

The Association of Metropolitan Sewerage Agencies (AMSA) is pleased to provide comments on the U.S. Environmental Protection Agency's (EPA's) *Draft Strategy for National Clean Water Industrial Regulations (Draft Strategy)*. Founded in 1970, AMSA represents the interests of over 280 of the nation's publicly owned wastewater treatment works (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. As key stakeholders in the effluent limitations guidelines (ELG) program, AMSA members continue to oversee implementation of EPA's categorical pretreatment standards and remain engaged in the national dialogue on the development of those standards. At the same time, AMSA members, along with thousands of other POTWs, continue to develop and implement local programs tailored to the water quality needs of their communities.

General Comments & Background

AMSA applauds EPA's efforts to develop a strategy for future effluent limitations guidelines (ELGs) that (1) reduces risk to human health and the environment and (2) provides a more transparent decision-making process.

As discussed in the *Draft Strategy*, the ELG Program is one of two approaches adopted by Congress in the Clean Water Act (CWA) to address the nation's water

quality goals. Since the CWA's passage in 1972, the quality of the nation's waters has improved dramatically. EPA estimates that, nationally, the ELG Program prevents the discharge into the nation's waterways of almost 700 billion pounds of pollutants annually, including 1 billion pounds of toxic pollutants such as heavy metals, 470 billion pounds of non-conventional pollutants such as nutrients, and almost 220 billion pounds of conventional pollutants such as suspended solids.

While the achievements of the ELG Program are recognized as one of the major accomplishments of the CWA, the ELG Program, by its focus on approximately 50 specific industrial categories, does not address all sources of water pollution. As EPA itself attests to in the *Draft Strategy*, our national water quality goals have not been fully attained because significant sources of pollutants remain unregulated, such as agricultural runoff, urban stormwater and groundwater seepage. Recognizing the need to address these non-industrial pollution sources, EPA continues to move forward with its Watershed Strategy to achieve water quality standards – an initiative AMSA strongly supports.

In the *Draft Strategy*, EPA is proposing a process for establishing priorities based on the greatest potential risk reduction, as it evaluates the need to revise existing, or to develop new, ELGs. AMSA concurs with EPA's desire to focus its ELG Program activities on refining existing, and developing new, ELGs which have the greatest opportunity for reducing human health and environmental risk. AMSA recommends that EPA focus more of its attention on revising and updating the existing ELGs that over the last 10 to 20 years have become dated and no longer function as they were originally intended.

AMSA believes the *Draft Strategy* provides an excellent opportunity to increase the amount of collaboration that occurs between EPA's ELG and pretreatment staffs and the POTW community in revising and drafting ELGs. AMSA strongly recommends that EPA's ELG staff actively engage EPA pretreatment experts as well as the large pool of experts in the POTW community throughout the entire ELG process.

Specific Comments

In the *Draft Strategy*, EPA sought comments from interested parties on five specific issues:

- Key factors for evaluating existing ELGs and for developing new ELGs
- Sources of water quality impairments
- Voluntary loading reductions
- Technology innovation, market-based incentives, and multimedia pollutant reduction
- Level of effort devoted to ELGs

AMSA has the following comments on these issues:

Key Factors for Evaluating Existing ELGs and for Developing New ELGs

In the *Draft Strategy*, EPA identified four key factors that it plans to consider in identifying existing ELGs for review and revision and for considering industrial categories for ELG development:

- Aggregate health and environmental risks posed by the industrial category

- New control technology, process changes or pollution prevention approaches that could substantially reduce remaining risk
- Technology cost
- Implementation and efficiency considerations, including alternative approaches to risk reduction

AMSA believes the four key factors identified by EPA for selecting existing ELGs for review and selecting industrial categories for new ELG development are all valid. The most critical of the four factors EPA has identified is the risk posed by the industrial category. If the industrial category is not discharging pollutants that pose a significant level of risk to human health or the environment, then revision or development of the ELG should not be considered regardless of the other three factors. Ultimately the risk posed and the cost to control that risk will dictate whether an ELG is the most appropriate tool to address the problem. However, before any of these factors can be considered, EPA must first identify the key threats to the environment, whether a particular pollutant or industrial process, where ELG development or revision will have the most impact. Identifying and focusing on specific environmental problems will (1) allow EPA to direct resources towards issues with meaningful opportunities for environmental improvement, and (2) enable EPA to determine before proceeding with the screening process, if a revised ELG or new ELG can have a beneficial impact on the environment.

In evaluating risk levels and efficiency considerations, EPA should consider the extent to which a potential new regulated industrial category, or portion of the industrial category, is subject to existing regulation, under either the National Pollutant Discharge Elimination System or the National Pretreatment Program. For indirect dischargers, this regulation already includes imposition of water quality-based local limits. Through the technical development process for local limits, POTWs are already required to effectively address the human health and environmental risks of regulated pollutants. In other words, POTWs have already undertaken the investigations necessary to identify those dischargers that pose a risk to the treatment plant or the environment and have required those entities to comply with local limits. Thus, where many facilities in a target category are already subject to local limits under the National Pretreatment Program, the human health and environmental risks posed by the category are already attenuated, and imposition of a technology-based ELG to such facilities will not substantially reduce the risks further.

As well as consideration of risks and benefits to the environment, AMSA believes EPA should prioritize the promulgation of new ELGs based on the time, expense, and effort needed to develop and implement the ELG, in addition to considering the cost of the technology. EPA must be sensitive to the already tight budgets of the nation's POTWs, who will be responsible for implementing and enforcing any new categorical pretreatment standards.

Sources of Water Quality Impairments

As discussed in the *Draft Strategy*, EPA itself recognizes that many of the remaining water quality non-attainment problems are caused not by industrial dischargers, but by nonpoint sources of pollution. EPA must also remain mindful that revised and/or new ELGs for industrial dischargers will not address these nonpoint pollution sources, which are responsible for the majority of impaired waters.

With regard to the potential for indirect dischargers to be a source of water quality impairments, the National Pretreatment Program itself precludes indirect dischargers from contributing to water quality impairment. As discussed earlier, POTWs must develop and enforce local discharge limits that preclude interference and pass-through, and are fully protective of human health and the environment. Unless an individual indirect discharger is in violation of its discharge permit issued by its POTW, the discharger cannot be a contributor to water quality impairment. If an individual discharger is in violation of its permit, the appropriate regulatory response is a timely and effective enforcement action by the POTW. Revision of an existing ELG, or development of a new ELG, will not alone improve the environmental performance of non-complying indirect dischargers.

AMSA suggests that EPA look to the POTW community for sources of information on water quality impairments. Monitoring results collected by POTWs, including self-monitoring by industry could provide valuable insight into whether existing standards or limits are adequate and whether particular industrial discharges can potentially pass through POTWs contribute to such impairments. The industrial categories of interest will also be vital sources of information for EPA's decision-making. The more EPA involves stakeholders like POTWs and industry in the development process, the more access the Agency will have to the information it needs.

Voluntary Loading Reductions

AMSA continues to support programs that seek to reduce pollutant loadings voluntarily, such as the Agency's National Metal Finishing Strategic Goals Program (SGP). AMSA supports EPA's proposed approach to give source categories that have accomplished voluntary pollutant discharge reductions a lower priority for new or revised ELGs as an incentive to achieve further reduction. While AMSA is not suggesting a specific reduction amount, we do recommend that EPA consider not only an absolute goal, such as a 10% reduction, but also take into account the degree of effort involved in achieving those reductions. EPA should determine whether reductions were achieved using pollution prevention or treatment. True pollution prevention will save industry money, for example by reducing the amount of chemicals that must be purchased to support an operation, and therefore are more likely to be permanent reductions. Pollution prevention will also not cause transfers of the pollutants to other media. These considerations should factor into EPA's decision-making process.

EPA should also review the efforts and the results of its National Metal Finishing SGP. Participants in this program pledged to make voluntary progress towards a series of strategic goals that covered air and water emissions, hazardous and non-hazardous waste generation, and workplace safety, among others. Key components in the voluntary SGP goals were: (1) specific percentage reductions in environmental emissions, and (2) a specific timeline for achieving the pledged reductions. EPA might use the SGP as a framework to work collaboratively with willing industrial categories to develop additional voluntary reduction programs and as a baseline to assess the effectiveness of other voluntary initiatives, before considering revising existing ELGs and developing new ELGs.

Technology Innovation, Market-based Incentives, and Multimedia Pollutant Reductions

EPA should assess the usefulness of its current technology assistance programs such as the National Metal Finishing Resource Center, and the diffusion of innovative technology into the industrial sector, as

a result of these efforts. EPA should also evaluate the success of directed technology diffusion programs such as the Advanced Diffusion of Pollution Prevention Technology (ADOP²T) Program at the Illinois Waste Management and Research Center. ADOP²T and similar programs have been shown to substantially accelerate the adoption of new environmental technologies through in-plant demonstrations and peer-to-peer mentoring in a non-regulatory setting.

EPA is already encouraging the exploration of effluent trading as a market-based approach to achieving pollutant discharge reductions. However, effluent trading is currently limited to direct discharges to waters and to conventional and non-conventional pollutants. EPA should allow and encourage POTWs to explore the use of effluent trading systems for indirect dischargers to their systems to achieve additional pollutant reductions, and allow indirect effluent trading programs to address toxic pollutants, provided that implementation of such trading programs does not result in a net increase in the discharge of toxic pollutants to POTWs.

AMSA believes that consideration of multimedia pollutant reduction opportunities is a worthy goal and believes EPA should look at the full (multimedia) effect of control technologies, process changes, and pollution prevention approaches, when screening industrial categories for ELG revision or development. Clearly, EPA should place more emphasis on developing or revising guidelines that have the most potential to benefit human health or the environment. The key to considering multimedia impacts is establishing a common metric by which this impact can be compared for different alternatives. For example, what degree of reduction of emissions of noxious odors and greenhouse gases would be equivalent, in terms of human health and environmental benefits, to reducing nutrient loadings by 20 million pounds of nutrients? To make that type of comparison, EPA would need to develop an “environmental impact equivalent” unit, similar to the toxic equivalent unit used to compare the toxicity of different toxic pollutants. If EPA is able to develop such a common metric, it should pursue a strategy that considers multimedia pollutant reduction opportunities when deciding which guidelines to develop or revise.

EPA may also want to consider the use of financial incentives in the form of tax breaks or grants, not only for the companies that develop innovative technologies, but also for companies that implement experimental or cutting edge technologies that go beyond the accepted best achievable technology.

Level of Effort Devoted to Effluent Guidelines

As discussed in the *Draft Strategy*, EPA recognizes that many of the remaining water quality non-attainment problems are caused not by industrial dischargers, but by nonpoint sources of pollution. EPA has already begun to change the focus of many of its clean water programs and is developing the tools and methodologies needed to effectively address water quality non-attainment on a watershed basis. AMSA believes that this holistic approach will likely succeed in making additional improvements in the quality of the nation’s waters. In light of EPA’s limited resources, AMSA recommends that EPA allocate fewer resources to the ELG Program, which is already mature and effective, and instead focus on those programs that are more capable of addressing the remaining causes of water quality non-attainment.

AMSA also suggests that EPA determine whether its human health and environment goals might be more efficiently attained by assisting POTWs in developing effective water quality based local limits rather than promulgating new technology based categorical pretreatment standards.

Additional Comments

As EPA moves to finalize its *Draft Strategy*, there are two additional issues that EPA needs to address to ensure that the ELG Program and the National Pretreatment Program remain effective tools that compliment the Agency's watershed approach.

Outdated Interference/Pass-through Data Set

An essential step used by EPA in determining whether the Agency should develop categorical pretreatment standards for indirect dischargers for specific pollutants is the interference/pass-through analysis. Where a pollutant is deemed to interfere with POTW operations and/or pass-through POTWs, EPA includes the pollutant in a categorical pretreatment standard. The data currently used by EPA to conduct this analysis was collected more than 20 years ago, during the late 1970s. In the intervening 20 years, both industrial activities and POTW operations have changed significantly. To ensure that future ELGs are based on sound science, EPA should update the data it uses in the interference/pass-through analysis. AMSA and EPA have already had discussions about how to proceed with updating the study and AMSA encourages EPA to set aside the funds necessary to complete the effort as soon as possible.

Pretreatment Streamlining

Since the mid-1990s, EPA and POTWs have been engaged in considerable discussions regarding streamlining the National Pretreatment Program. The purpose of the discussions has been to identify programmatic requirements and activities that POTWs and industry are mandated to perform, that do not contribute to environmental improvement. Those discussions resulted in EPA proposing amendments to the General Pretreatment Regulations (40 CFR 403) in 1997, and detailed additional recommendations by AMSA and the Water Environment Federation (WEF) in 1999. To date, EPA has taken no further action on this streamlining issue.

In the *Draft Strategy*, EPA intends to consider implementation issues before proceeding to revise existing ELGs and develop new ELGs. Among the implementation issues is the potential to address target pollutants through alternative approaches, including voluntary reduction programs and market-based incentives. During the pretreatment streamlining discussions over the past several years, many POTWs expressed their willingness to implement and test these alternative approaches to pollutant reduction, but also emphasized their need for flexibility to do so using existing resources rather than through new or additional resources.

Accordingly, AMSA again encourages EPA to implement the AMSA-WEF pretreatment streamlining recommendations made in 1999, to give POTWs the flexibility they need, through redirection of resources, to work collaboratively with EPA to implement and test alternative approaches to pollutant reduction.

Above everything else in the *Draft Strategy*, AMSA believes that EPA's commitment to transparent decision-making – namely communication with stakeholders early and often – is the most critical component to ensuring the success of the strategy and the future ELG program. AMSA looks forward to being an active participant in the 304(m) Plan development process and appreciates the opportunity to comment on the *Draft Strategy*. If you have questions or wish to discuss our comments further, please contact me at 202/833-9106, Guy Aydlett, Director of Water Quality at Hampton Roads Sanitation District and Chair, AMSA's Pretreatment & Hazardous Waste Committee at 757/460-4220, or Richard Sustich, Assistant Director of Research and Development at Metropolitan Water Reclamation District of Chicago and Vice Chair, AMSA's Pretreatment & Hazardous Waste Committee at 312/751-3030.

Sincerely,

A handwritten signature in black ink, appearing to read "Chris Hornback". The signature is fluid and cursive, with the first name "Chris" being more prominent than the last name "Hornback".

Chris Hornback
Director, Regulatory Affairs