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Sewerage Agencies

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Ken Kirk

November 12, 2002

Docket No. A-2000-47  
U.S. Environmental Protection Agency  
Mail Code 6102  
1200 Pennsylvania Avenue, NW.  
Washington, DC 20460

Re: *National Environmental Performance Track Program, 67 Fed. Reg.*  
*52,674 (August 13, 2002)*

Dear Sir or Madam:

The Association of Metropolitan Sewerage Agencies (AMSA) is pleased to provide comments on the U.S. Environmental Protection Agency's (EPA's) proposed amendments to the *National Environmental Performance Track Program (Performance Track Program or Program)*. Founded in 1970, AMSA represents the interests of over 270 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 is a strong proponent of environmental management systems (EMSs) as is evidenced by our co-sponsorship of the National Biosolids Partnership (NBP), which supports the development of EMSs for POTW biosolids programs, and our support of a collaborative effort with EPA and the Water Environment Federation (WEF) to develop an integrated EMS framework for public utilities.

The *Performance Track Program* is designed to foster the development of EMSs and to provide incentives for those who go beyond compliance with the regulations. AMSA supports these goals, but questions why regulatory provisions proposed by the Agency in 1999 to streamline the National Pretreatment Program for all POTWs, are now proposed as incentives for *Performance Track Program* participants only. AMSA's oral testimony, provided during the public hearing on the proposal, highlighted this issue and

noted that the proposed incentives, while substantial, would do little to encourage POTW participation in the *Program*.

Following the public hearing, AMSA was asked by the Agency to suggest incentives that might be used in the *Performance Track Program* in lieu of the streamlining measures. AMSA solicited input from its membership on potential incentives that might encourage a POTW to develop an EMS and join the *Program*. The list of incentives and opportunities for flexibility below is not comprehensive, but should facilitate continued discussion between EPA and the POTW community. AMSA notes that much of the detail needed to implement the provisions below will need to be filled in through future communication. We also anticipate that additional incentives may be identified at a later time and as the *Program* matures.

### ***Environmental Management Systems***

The following are obstacles often encountered by POTWs when exploring development of an EMS. While these are not necessarily incentives, some flexibility in these areas will encourage more POTWs to develop EMSs and participate in the *Program*.

1. POTWs are responsible for implementing a number of independently managed operations (e.g., Pretreatment Program, wastewater processing, and biosolids management). In some cases, these operations are managed by entirely independent entities through inter-governmental agreements or even by public-private contracts. In light of this diverse set of operations, it may be impractical or even impossible for a POTW to develop an EMS to cover all aspects of its operations. EPA recognized this issue in the NBP, where EMSs apply to the biosolids train alone, and not to the entire set of POTW operations. EPA should continue to recognize this modular character of POTW operations and allow POTWs to develop EMSs for only those components of their operations where it is feasible. A POTW that has developed an EMS for one of these operational components, such as biosolids management, should not be automatically excluded from the *Performance Track Program*.
2. The cost of obtaining ISO (International Organization for Standardization) 14001 certification can run from \$20,000 to \$50,000, or even more. Unlike the private sector, for which there may be a strategic market or competitive advantage to holding ISO certification, POTWs will derive no economic benefit from certification. As such, POTWs will have difficulty justifying the costs of certification to rate payers. Continued focus on the certification instead of the functionality of the EMS itself will preclude more POTWs from developing EMSs. EPA should recognize functional and successful EMSs developed by POTWs according to peer-developed best practices, without the need for ISO certification.

3. POTWs and other regulated entities that move beyond regulatory compliance should not be penalized for the progress they make through antidegradation provisions. Many POTWs believe that progress made by implementing an EMS (e.g., a decrease in the discharge of a toxic pollutant) will become the new compliance standard in their next permit. This type of antidegradation approach would pose a serious obstacle to EMS development for many agencies.

### *Permitting/Monitoring/Data Collection*

Many of the potential incentives identified by AMSA's members dealt with permitting, specifically the monitoring and associated reporting required by each discharge permit.

1. EPA could allow for a reduction in sampling/monitoring frequency in all areas of operation (e.g., biosolids, effluent) where a history of compliance has been demonstrated. This would allow permittees to redirect resources and examine parameters not covered by their permit. The current provisions for reduced monitoring do not go far enough to provide any real incentives. In addition, other frequency-related incentives could include less frequent self-reporting.
2. Current EPA policies require POTWs to report all data pertaining to final discharge, including those obtained outside of a permit monitoring schedule. This requirement has become a major disincentive for POTWs to collect any data beyond the permit-mandated parameters and frequencies. There is a common concern among POTWs that any data collected voluntarily may turn into a mandatory requirement. This impedes development of databases that could be of great value to POTWs, EPA and others, for use in planning and in making responsible environmental decisions.

EPA could allow POTWs to collect "in house only" effluent data which would not be subject to mandatory reporting requirements, provided certain conditions are met (e.g., POTWs have consistently met the permit required limits and frequencies of monitoring for a defined period of time, for the parameters in question; levels at which the data would become reportable may be established).

3. EPA could provide some enforcement relief for minor violations. Given the corrective action component of EMSs, *Program* participants could be given the opportunity to remedy minor, one-time compliance issues on their own. Consistent performers should be given some leniency in those rare instances where minor non-compliance occurs.
4. EPA should consider the use of longer permit terms (beyond 5 years) for *Program* participants. In some cases, permits that come up for renewal have no substantive changes and could be continued administratively with no adverse impact and without

requiring the permittee to go through the entire permit and administrative review process.

5. EPA could allow short duration excursions for parameters that are continuously monitored (e.g., dissolved oxygen), similar to the pH violation exceptions.
6. Both industrial users and Control Authorities are required to adhere to the strict sampling and analytical methods for pollutants established at 40 CFR Part 136, for wastewater. While these methods produce very accurate and legally defensible results, these analytical methods are costly to small businesses and time consuming, with results available two weeks or more after samples are first obtained. As a result, the analytical data has little or no value for actually improving an industrial user's environmental performance in real time.

Through implementation of Total Quality Management and EMSs, many industrial users and even POTWs employ statistical process control systems to ensure that their operations produce high quality goods in a cost-effective and responsible manner. Through these innovative management techniques, POTWs and industrial users may collect a variety of process performance data that could be used as reliable indicators of environmental performance. Yet use of this data for environmental performance monitoring and reporting is not allowed because of the constraints of 40 CFR Part 136, for wastewater. Similar constraints also exist for air emissions monitoring.

In order to address this issue, EPA could establish a program that would allow POTWs and industrial users to use alternative performance measurement systems where they are demonstrated to provide reliable indications of environmental performance even in the absence of traditional monitoring.

7. EPA could allow permits to be issued electronically. Electronic transmission of discharge permits would save time and energy and it would simplify recordkeeping and information sharing.

### ***Industrial Pretreatment Programs***

Many incentives associated with POTW Pretreatment Programs are related to the administrative burden of regulating industrial users. Like a number of the measures proposed in the Pretreatment Streamlining Rule, most of the provisions below would lessen administrative burden for the POTW, and may also benefit the industrial user.

1. EPA could provide some flexibility for POTWs to discontinue the labor intensive industrial survey (required once every 5 years) and allow POTWs to fulfill this requirement as an on-going, routine requirement.

2. EPA could eliminate the formal, labor intensive review process (once every 5 years) for POTW Enforcement Response Plans and POTW local limits.
3. POTWs should be allowed to use their best professional judgment when evaluating controls for low-flow categorical industrial users. POTWs should be able to write innovative permits for such users to scale back or eliminate monitoring requirements and to reduce the frequency of site visits/inspections, thereby reducing the associated administrative expenses.
4. POTWs are required to enforce categorical pretreatment standards (CPS) on select industrial user categories without regard to the actual environmental benefits of enforcement. The industrial user community has reported that the need to comply with technology-based CPS sometimes conflicts with environmental performance objectives for other media (e.g., air emissions).

EPA could allow select POTWs to not enforce CPS where the POTW is in compliance with applicable permit limits and other performance expectations, and the CPS restrains the industrial user from improving overall environmental performance (including other media) through installation of pollution prevention and/or innovative treatment technologies.

5. The formulaic system used by most POTWs, and encouraged by EPA, for developing local limits, often establishes negative local limits (the allowable headworks allocation to the industrial sector is *less* than zero). A negative local limit implies that the industrial sector must not contribute the regulated pollutant to the sewerage system in any amount.

In enforcing the General Pretreatment Regulations, some EPA Regions and states have interpreted local limits guidance as if it were regulation, requiring POTWs to impose "zero discharge" limitations on their industrial users, even when the POTW is in full compliance with its applicable NPDES permit limits and other performance expectations.

AMSA suggests that where a POTW is in compliance with applicable permit limits and other performance expectations, the POTW should be allowed not to enforce local discharge limits requiring "zero discharge." If some sort of discharge limit is necessary to ensure permit compliance, POTWs should have the option to use a narrative limit in lieu of a technically-based local limit.

6. EPA could allow POTWs to relax monitoring and inspection requirements based on the performance of a particular significant industrial user (SIU). For instance, where

an industry has no violations for the last three years, the POTW might be allowed to reduce inspection frequency to once every two years instead of annually.

*Other*

AMSA suggests that another incentive may be to provide reduced loan rates and extended pay back terms under the State Revolving Loan Fund Program.

AMSA looks forward to continued discussions with the Agency as it works to add incentives for POTWs to the *Performance Track Program*. If you have any questions about our comments please do not hesitate to call me at 202/833-9106.

Sincerely,

A handwritten signature in black ink, appearing to read "Chris Hornback", written in a cursive style.

Chris Hornback  
Director, Regulatory Affairs

ATTACHMENT



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Association of  
Metropolitan  
Sewerage Agencies

**TESTIMONY OF THE  
ASSOCIATION OF METROPOLITAN SEWERAGE AGENCIES  
(AMSA)**

**September 27, 2002**

**On  
Proposed Changes to the National Environmental  
Performance Track Program**

**Presented by**

**Guy Aydlett  
Director, Water Quality**

**Hampton Roads Sanitation District  
Virginia Beach, Virginia**

**Submitted to  
the**

**OFFICE OF POLICY, ECONOMICS, AND INNOVATION  
U.S. ENVIRONMENTAL PROTECTION AGENCY**

**WASHINGTON, DC**

1816 Jefferson Place, NW  
Washington, DC 20036-2505  
202.833.AMSA  
202.833.4657 FAX  
info@amsa-cleanwater.org

Testimony of Guy Aydlett  
Director, Water Quality  
Hampton Roads Sanitation District  
on behalf of the  
Association of Metropolitan Sewerage Agencies

Good morning, my name is Guy Aydlett and I am the Water Quality Director for the Hampton Roads Sanitation District in Virginia Beach, Virginia and Chair of the Pretreatment and Hazardous Waste Committee of the Association of Metropolitan Sewerage Agencies (or AMSA). AMSA represents the interests of over 270 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 is a strong proponent of environmental management systems (EMSs) as is evidenced by our co-sponsorship of the National Biosolids Partnership, which supports the development of EMSs for POTW biosolids programs, and our support of a collaborative effort with EPA and the Water Environment Federation (WEF) to develop an integrated EMS framework for public utilities. In principal, the Performance Track Program is designed to foster the development of EMSs and to provide incentives for those who go beyond compliance with the regulations. AMSA supports these goals, but questions why regulatory provisions proposed by the Agency in 1999 to streamline the National Pretreatment Program for all POTWs, are now only being made available as incentives under the Performance Track Program.

In 1999, EPA proposed to streamline the National Pretreatment Program after discussions with multiple stakeholders identified a number of areas where improvements could be made. Many of the changes proposed in 1999 are similar to, and some identical to, those proposed for use in the Performance Track program. In fact, the preamble to the August 13, 2002 *Federal Register* makes reference to a workshop on streamlining that AMSA cosponsored and cites the recommendations from that workshop as a source for the proposed changes to the Performance Track program.

The pretreatment streamlining provisions being proposed as incentives for the Performance Track Program were developed by a multi-stakeholder process that included EPA's Office of Wastewater Management. It was agreed that every POTW in the nation should benefit from the changes, not a select few who may choose to meet the list of requirements for Performance Track. EPA must not ignore its stakeholders and its own staff by restricting the availability of these streamlining measures to Performance Track participants.

The streamlining provisions that AMSA has been advocating, and that are proposed as incentives for the Performance Track program, would result in greater public access to information and overall improvement in operational efficiency. Why then should these changes only be available to Performance Track participants? The provisions that EPA has



proposed to allow all POTWs to take advantage of under the pretreatment streamlining rule include, for example:

- A modified definition of significant non-compliance (SNC) that would provide some leniency in declaring an industrial user in SNC when paperwork is only a few days late. This requirement alone would save hours of needless paperwork management for the POTW, and result in no detrimental impact on the environment.
- Flexibility for POTWs to classify a categorical industrial user as non-significant, reducing the amount of required monitoring and paperwork. A provision identical to the one proposed for Performance Track.
- Relaxation of monitoring requirements for pollutants that are not present. A time saver for industry and the POTW.

These changes do not roll back environmental protection in any way. Rather, they allow POTWs to move precious resources away from burdensome paperwork management activities to those areas of the pretreatment program that can achieve real environmental improvements. All POTWs should be able to take advantage of these streamlining provisions.

If EPA decides to use the streamlining provisions in the Performance Track Program, AMSA believes that there will not be a significant increase in POTW participation in the program. Based on conversations with a number of POTWs, including one that has already gone through the EMS process for their biosolids program, the proposed changes to the Performance Track Program will do little to encourage POTWs to sign up. While the provision regarding nonsignificant categorical users could be extremely beneficial for a pretreatment program, the other provisions, including the option to use the Internet in lieu of a newspaper for announcing significant non-compliance, are not nearly as substantial. For a wastewater agency that may only save \$2,000 a year on newspaper ads, the incentives will not balance the tremendous effort required to join the program.

AMSA also notes that the POTWs EPA is trying to attract to the Performance Track Program with these incentives are the same stakeholders who envisioned the pretreatment streamlining provisions being available to all POTWs nationwide. Many wastewater professionals committed their time and expertise to develop these concepts and have worked hard ever since to see that they are available to the entire wastewater treatment community. This will undoubtedly be a major point of contention for many POTWs across the nation.

While AMSA understands that many POTWs have already completed or are moving forward with efforts to develop EMSs, AMSA believes that in order to attract additional POTW participants, the Performance Track Program will have to offer some substantial time and cost saving benefits and/or regulatory relief to offset the burden associated with EMS development and Performance Track Program participation. AMSA recommends that EPA look beyond the pretreatment program for potential incentives and examine the wastewater

treatment operation as a whole. Pretreatment programs, though a vital component of wastewater treatment, are not the largest drain on agency resources. EPA should provide flexibility for POTWs in the areas of National Pollutant Discharge Elimination System (NPDES) permitting, biosolids management, and air emission controls.

In the long run, AMSA believes that it will take more than incentives or regulatory relief to dramatically increase the number of public utilities who are participating in the Performance Track Program. The fact that only one POTW is currently in the Performance Track Program highlights a trend that is observed even in those countries where EMS development is outpacing the United States. EMS adoption by public utilities is limited. Compared to private industry, public utilities make up a small fraction of those entities that have adopted EMSs. There remains a substantial learning curve that must be overcome before we will see greater growth in EMS adoption by public utilities. There are a number of initiatives that wastewater utilities have been encouraged to embrace and many have found it difficult to discern how the initiatives interrelate and to identify opportunities to use them in an integrated, systematic way to improve utility performance. Reluctance among public utilities will remain until the true value of an integrated, EMS approach is more evident.

In conclusion, EPA must not restrict the pretreatment streamlining provisions to the Performance Track Program. These streamlining provisions were designed for all POTWs and EPA should commit the resources necessary to finalize the 1999 proposal and allow the POTW community to streamline their pretreatment programs. AMSA understands that EPA is already targeting additional pretreatment streamlining provisions as possible incentives for the Performance Track Program. These streamlining measures must not be locked up in the Performance Track Program where only one POTW will have access to them.

Thank you.