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Sewerage Agencies

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March 17, 2005

Benjamin Grumbles
Assistant Administrator, Office of Water
U.S. Environmental Protection Agency
Ariel Rios Building (4101M)
1200 Pennsylvania Avenue, N.W.
Washington, D.C. 20460

RE: PRETREATMENT STREAMLINING RULE

Dear Assistant Administrator Grumbles:

AMSA is pleased that you and your staff remain committed to finalizing the pretreatment streamlining rule in a timely fashion. At a February 9, 2005 meeting with the Office of Wastewater Management (OWM), AMSA heard from Jim Hanlon, Director of OWM, that there are two key issues in the streamlining package that continue to be discussed within the Agency. As we understand them, these two issues are: (1) the flexibility to convert categorical, concentration-based pollutant limits to mass-based limits in order to allow industries to implement water conservation measures; and (2) the definition of a "non-significant" categorical industrial user. AMSA has advocated on behalf of these two issues since the streamlining effort began in 1996 and we remain committed to providing your office with the information it needs to include these important provisions in the final rule. AMSA believes that the Association's position on these two critical issues may have become less clear over the years. AMSA hopes this letter will clarify its position on these two issues and keep you informed of the additional information we have provided your staff.

Converting Concentration Limits to Mass Limits

It has long been AMSA's contention that Pretreatment Control Authorities should have the flexibility to convert traditional, concentration-based categorical pollutant limits to mass-based limits in certain circumstances. This flexibility would allow Control Authorities to promote water conservation for regulated industries that otherwise are wary to do so because of the likelihood of concentration limit violations. Allowing these limits to be converted to mass limits would not result in the release of any additional toxics to the environment. In fact, this flexibility would promote better environmental stewardship by helping to conserve precious water resources.

At the February 9 meeting, Jim Hanlon stated that AMSA had previously commented in the rulemaking effort for the Metal Products & Machinery (MP&M) effluent guideline that the Association did not support categorical mass-based limits. This was not the case. In AMSA's July 2, 2001 comments to the Agency, AMSA highlighted that EPA's expectation in the proposed rule that there would be no increased costs of administering pretreatment program requirements due to the MP&M rule for facilities currently holding mass-based limits was false. EPA estimated that the number of industrial facilities requiring MP&M permits to be 4,944 in the proposed rule – of which 3,667 had existing mass-based permits. AMSA did not advocate against mass-based limits in its comment effort. Rather, AMSA's comments (on page 37) refuted the claim of no additional burden for those facilities already holding mass-based permit limits:

These assumptions are completely invalid even if the mass-based discharge limits applicable to an industrial user would remain unchanged as a result of the rule, a highly unlikely scenario in itself. Discharge permits or other individual control mechanisms are enforceable instruments that must be legally correct on their face. As such, they must, at all times, accurately reflect the correct enabling statute or regulation. Any change in the categorical pretreatment standards applicable to an industrial user instantaneously requires the POTW to issue a revised discharge permit, even if the applicable mass discharge limits in the permit remain unchanged. If the POTW failed to properly revise an industrial user's discharge permit in a timely manner, the industrial user may have sufficient cause to challenge an enforcement action brought under the permit. Additionally, the POTW may be subject to enforcement action from the relevant Approval Authority for failure to conform to its approved Pretreatment Program.

The problem with the MP&M rule approach was its failure to account for the burden associated with updating the mass limits, not the mass limits themselves.

Additionally, AMSA has given OWM staff nine strong examples of industrial facilities around the country that have received concentration-based permit violations simply for implementing water conservation techniques. These examples are particularly hard to come to terms with, given the fact that EPA and others have always supported water conservation. One industry was even given a city-wide Water Conservation Award, only to be issued a Notice of Violation for concentration violations caused by the award winning conservation! Any EPA regulation that creates such a situation must be changed. It is imperative that EPA contact these facilities and learn firsthand of these problems.

Alternative Approach to Oversight of Categorical Industrial Users

The second critical issue that should be included in the pretreatment streamlining package is a more reasonable definition of "non-significant" categorical industrial users (NCIUs). AMSA maintains that the 100 gpd ceiling that EPA proposed is simply too low to reflect local conditions and significantly benefit publicly owned treatment works (POTWs). AMSA has long recommended that the Agency adopt a three-tiered classification system, with increasing amounts of oversight, to allow for an additional class of facilities that contribute minimally and have a good compliance history. As shown in AMSA's *2004 Pretreatment Streamlining Survey*, this option could potentially save POTWs over **\$174,000,000** annually nationwide.

AMSA believes that our position on this issue also has been misinterpreted and significantly confused over the many years of the streamlining effort. Particularly, the idea that AMSA supports up to a 25,000 gpd ceiling for “non-significant” CIUs – which is simply incorrect. The following excerpt from the Association’s November 19, 1999 comment effort on the original July 22, 1999 proposed pretreatment streamlining rule clearly defines AMSA’s proposed three-tiered classification system. This system allows the POTW to use a 1,000 gallon/million gallons per day (MGD) criteria up to 10,000 gallons per day (GPD). For example, a five MGD POTW could designate CIU’s as non-significant up to 5,000 GPD. POTW’s over ten MGD would still only be able to use 10,000 GPD as their maximum NCIU size. As AMSA’s 1999 comments stated:

AMSA is proposing an alternative approach to Control Authority oversight of CIUs that have little or no potential to impact the operation of their receiving POTWs. Specifically, AMSA is proposing a three tier classification system that incorporates both the current CIU classification and the EPA’s proposed NCIU classification, albeit re-named “de minimis CIU” (DCIU). In addition to the two classes proposed by EPA, AMSA suggests adding a new class identified as NCIU, under the following definition:

A non-significant CIU (NCIU) is defined as any industrial user subject to categorical pretreatment standards that meets all of the following conditions:

- The discharge of process wastewater subject to Categorical Pretreatment Standards from the CIU does not exceed 0.01 percent of the design hydraulic capacity of the receiving POTW, nor does it exceed 10,000 gallons per day.
- The discharge of process wastewater subject to Categorical Pretreatment Standards from the CIU does not exceed 0.01 percent of the design organic treatment capacity of the receiving POTW.
- The discharge of process wastewater subject to Categorical Pretreatment Standards from the CIU does not exceed 0.01 percent of the maximum allowable headworks loading (MAHL) for the receiving POTW of any pollutant detected at the POTW headworks for which the CIU is subject to a Categorical Pretreatment Standard.
- The CIU has not been in significant noncompliance with applicable effluent discharge standards for the most recent four consecutive six-month periods.

Conformance with the conditions set forth in the NCIU definition would be reassessed at least annually by the POTW. If a facility no longer qualifies for NCIU status because of a change in the nature of its operations or if the facility is found in significant noncompliance, the facility’s status as a NCIU would be revoked and the facility would revert to full SIU status.

Proposed Oversight Flexibility for DCIUs and NCIUs

In conjunction with the three-tier CIU classification system discussed above, AMSA is proposing a three-tier approach to CIU self-monitoring, CIU period reporting and Control Authority monitoring.

The three-tier CIU classification envisioned by AMSA is depicted in the following table:

	De Minimis CIU	Non-Significant CIU	CIU
Qualification	No discharge of untreated categorical wastewater and <100 gpd other process wastewater discharge; or subject to certification requirements only	<0.01% of POTW design flow, 0.01% of POTW headworks organic load, 0.01% of headworks load of categorically regulated pollutants, no SNC for 4 consecutive six-month periods	Subject to categorical pretreatment standards and not qualified as DCIU or NCIU
Self-monitoring requirements	Control Authority discretion	Once/year	Twice/year
Reporting requirements	Annual DCIU certification	Annual Periodic Compliance Report	Twice annual Period Compliance Report
Control Authority monitoring	Control Authority discretion	Once every two years	Annually

As shown on the table, non-significant CIUs would be eligible for a 50% reduction in reporting and oversight requirements.

AMSA understands that the Agency’s main concern is that these NCIUs will “fall through the cracks” if they are no longer CIUs. Proof positive that this will not happen is evident in EPA’s final decision on the MP&M Rule. The wastewater treatment community proved conclusively that the small dischargers that were to be regulated under the proposed MP&M rule were already successfully regulated by POTWs under their local program requirements for small dischargers. This was one of the main reasons that the MP&M rule was found to be unnecessary. Please note in our table previously shown in this letter that there are suggested minimum requirements for POTWs in “keeping up” with their existing NCIUs. Additionally, it should be noted that many POTWs have oversight requirements for NCIUs which are more stringent than those proposed in the referenced table yet still provide cost savings over their very rigorous requirements for CIUs. This is because, as we have shown numerous times during the “effluent guidelines” process, most POTWs have adopted many more requirements for all IUs than required by the 403 Regulations.

Again, these two remaining issues are critical to the success of the pretreatment streamlining rule. These issues offer the greatest chance for reduction of burden for POTWs and industrial facilities alike, while not allowing for *any* additional toxics to be discharged. These two issues also promote environmental stewardship and make good business sense. AMSA urges the Agency to consider the recommendations included in this letter and in past Association letters and comment efforts. AMSA respectfully requests further clarification on the timing and progress of the rule. We look forward to your reply and would welcome the opportunity to further discuss these issues with you.

Sincerely,

A handwritten signature in black ink that reads "K Kirk". The "K" is large and stylized, followed by "Kirk" in a cursive script.

Ken Kirk
Executive Director

CC:

Stephanie N. Daigle, Office of Policy, Economics, and Innovation, U.S. Environmental Protection Agency

Thomas V. Skinner, Office of Enforcement and Compliance Assurance, U.S. Environmental Protection Agency

Paul Noe, Office of Information and Regulatory Affairs, Office of Management and Budget

Thomas M. Sullivan, Office of Advocacy, Small Business Administration

Dan Engelberg, Office of Program Evaluation, Office of Inspector General, U.S. Environmental Protection Agency

James A. Hanlon, Office of Wastewater Management, Office of Water, U.S. Environmental Protection Agency

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