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Linda Boornazian  
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Office of Water  
U.S. Environmental Protection Agency  
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*VIA FACSIMILE AND REGULAR MAIL*

Dear Linda,

The Association of Metropolitan Sewerage Agencies (AMSA) would like to thank you and your staff for taking the time to meet with us regarding EPA's Pretreatment Streamlining proposal (64 *Fed. Reg.* 39564) and your office's recent efforts to finalize this critical rule. AMSA continues to support the Agency's attempt to streamline key elements of the pretreatment regulations. This effort will reduce the unnecessary administrative burden that publicly owned treatment works (POTWs), industry, and regulatory agencies face under current pretreatment regulations. The recommendations that AMSA makes in this letter would free much-needed resources for use in other critical areas, would have no negative impacts on the environment, and result in no additional toxic discharges.

Efforts to streamline the pretreatment program began over seven years ago when in 1996, numerous stakeholders, representing the states, EPA regions, EPA headquarters, industry, POTWs, and environmental organizations, met in Leesburg, Va., to craft what would become a consensus agreement on how to streamline the pretreatment program and lessen the burden for all affected entities. Since 1996, AMSA has continued to advocate for these changes that were agreed upon by this broad range of stakeholders. Upon proposal in 1999, the rule made significant improvements, but fell short on many of the consensus issues. Due to limited staff resources, the rule has remained dormant for several years. EPA now has a valuable opportunity to reevaluate the pretreatment program, reduce burden, and allocate

saved resources to other programs that can achieve greater environmental benefit. AMSA urges the Agency to seize this opportunity.

As AMSA has explained in the past, most notably in its 1999 Pretreatment Streamlining White Paper, the Association's nearly 300 member POTWs believe EPA's 1999 proposal can be enhanced to provide even further burden reduction or otherwise improve the pretreatment regulations. AMSA notes that comments received from its membership indicated that initial burden reduction figures submitted to the Agency were vastly underestimated. In fact, one member POTW, upon recalculating burden numbers, found its early assessments to be underestimated by a range of 250 – 6300 percent. AMSA appreciates the opportunity to clarify its positions on these issues and offers the following summary of the issues discussed during our meeting on December 9, 2003. AMSA understands that the issues surrounding the definition of significant non-compliance (SNC) are enforcement-related, and has copied the appropriate EPA enforcement officials on this letter.

#### *Narrative Standard Loophole*

The current pretreatment regulations at 40 CFR Part 403.5, which deem any local limits, or pollutant parameters, to be national pretreatment standards, do not address narrative standards. AMSA would like the Agency to include reference to narrative standards (i.e., "no visible sheen"), which would then also be considered national pretreatment standards, and, therefore, subject to the SNC definition and enforcement action.

#### *Sampling for Pollutants not Present*

AMSA strongly supports providing Control Authorities with discretion to allow an industrial user subject to categorical pretreatment standards to not sample for a pollutant if the pollutant is not expected to be present in its wastestream in a quantity greater than the background level present in its water supply, with no increase in the pollutant due to the regulated process. AMSA members have nearly 30 years of POTW data that show the absence of certain pollutants. AMSA strongly recommends that EPA not limit the appropriate discretion granted to the Control Authority by excluding Organic Chemicals, Plastics, and Synthetic Fibers (OCPSF) facilities (or any other sources regulated by a categorical standard) from this proposed change. POTWs have been regulating the OCPSF sector since 1990 and can make appropriate decisions as to whether they can safely allow a reduction in sampling burden.

#### *Equivalent Mass Limits for Concentration Limits*

AMSA supports the proposed changes that allow Control Authorities flexibility in determining compliance with categorical parameters. This flexibility would spur Control Authorities to encourage water conservation practices, thus reducing hydraulic loading on the POTW. While not limited to water conservation opportunities, AMSA supports Control Authorities having the option to determine if an industry qualifies for equivalent mass limits on a case-by-case basis. Since it is clearly in their best interest, AMSA is confident that POTWs will ensure that no additional toxics are discharged.

#### *Definition of SIUs*

AMSA recommends that the definition of Significant Industrial User (SIU) be changed to reflect criteria based upon the potential to impact the receiving POTW. AMSA recommends deleting the existing 25,000 gpd flow designation for non-categorical SIUs. This flow number is arbitrary and would have vastly different effects on variably sized POTWs. AMSA instead supports having a 5% of flow standard

in all instances to determine if a facility is an SIU. This approach will still be protective since the majority of industrial users not considered to be SIUs are still regulated under POTW pretreatment programs through permits and/or local limits.

#### *De Minimis CIUs*

AMSA supports exempting a newly defined class of “non-significant” categorical IUs (NCIUs) from the definition of SIU. However, the Association feels that the 100 gpd ceiling is too low to reflect the local conditions and/or concerns of POTWs. In fact, EPA estimated that only two percent of categorical industrial users (CIUs) nationally would qualify for the proposed NCIU class distinction. AMSA would like the Agency to 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. The first tier, called de minimis CIU (DCIU), would be those facilities that do not discharge untreated categorical wastewater and discharge less than 100 gpd of other process wastewater. The middle tier, or NCIU, would be those facilities that constitute less than 0.01% of POTW design flow and headworks loading of organics and categorically regulated pollutants. These NCIUs would also have to demonstrate a good compliance record (i.e., no SNC for 4 consecutive six-month periods). Lastly, any facilities not meeting these requirements would continue to be classified as CIUs, and would be subject to all categorical pretreatment standards. For the greatest burden reduction, AMSA proposes reduced oversight (both IU self-monitoring and Control Authority monitoring) for the DCIU and NCIU classes.

#### *Significant Non-Compliance Criteria*

AMSA is concerned that “bad actors” get hidden in large SNC publications, which include many industrial users that did not threaten or cause pass through, interfere with POTW operation, or endanger workers.

AMSA suggests the following fixes to the definition of SNC:

- The 30-day late reporting requirement should be extended to 45 days. If a report that is submitted late establishes compliance with all applicable pretreatment standards the late submittal will not be deemed SNC.
- EPA should develop Technical Review Criteria (TRC) that are more relevant to the objectives of the pretreatment program, developed in a manner that lends credence to the application of effluent guidelines and local limits, and are technically sound and defensible. The current TRC were “borrowed” from the National Pollutant Discharge Elimination System program and assume that discharges are immediately entering the environment, rather than passing through POTWs.
- SNC determinations should be based on static six-month periods and not on rolling quarters, due to the fact that some facilities are being classified unfairly as SNCs in two consecutive quarters for the same violation.

#### *Issues Regarding pH*

During our meeting on December 9, it was made clear that the Agency believes it cannot move forward with a streamlining package that includes a provision on pH without further data. However, AMSA continues to believe this issue is not nearly as controversial as it has been characterized. Simply stated, short term discharges with a pH between 4.0 and 5.0 are occurring. This is often due to the logarithmic nature of continuous pH monitoring devices and their inability to exactly pinpoint pH levels. Requiring

POTWs to issue Notices of Violation for minor excursions that are inevitable will not diminish their frequency. Instead, this requirement places yet another unnecessary administrative and oversight burden on POTWs, while providing no environmental benefit. AMSA supports collection of data and revision of the existing pH requirements immediately following the current streamlining effort, so that the discharge of wastewater with pH below 5.0 is not limited to municipal facilities that were originally constructed to accept such low pH discharges. AMSA is concerned with the level of detail and extent of justification currently required for any POTW to be able to accept a low pH discharge. AMSA suggests an alternative approach that allows for short-term discharges between 4.0 and 5.0 pH without requiring each POTW to make temporary site-specific demonstrations. However, POTWs would still need to determine that the occurrence was beyond control of the permittee and was not a part of a new problem, but merely an inability of the pretreatment equipment to respond. This clarification would not constitute an allowance of additional high or low pH discharges and would pose no threat to the environment or the nation's sewer infrastructure.

Again, AMSA appreciates the opportunity to meet with the Agency and clarify its position on these important issues. The Association believes it is important, as co-regulators of the National Pretreatment Program, for EPA and POTWs to work toward a more efficient pretreatment program that is less burdensome, while freeing up much-needed resources for additional environmental protection efforts. AMSA urges the Agency to seize this opportunity. The Association will forward this letter and pertinent background information to key staff in the relevant program offices and welcomes further discussion with the Agency on these issues. If you have any questions, please contact Chris Hornback, AMSA's Director of Regulatory Affairs, at 202/833-9106 or via email at [chornback@amsa-cleanwater.org](mailto:chornback@amsa-cleanwater.org).

Sincerely,



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#### ATTACHMENTS

cc:

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