



Association of
Metropolitan
Sewerage Agencies

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Executive Director
Ken Kirk

April 22, 2002

Benjamin Grumbles
Deputy Assistant Administrator for Water
U.S. EPA, Ariel Rios Building (4101M)
1200 Pennsylvania Avenue, NW
Washington, DC 20460

Diane C. Regas
Acting Assistant Administrator for Water
U.S. EPA, Ariel Rios Building (4101M)
1200 Pennsylvania Avenue, NW
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RE: STATUS OF THE PROPOSED SSO RULE

Dear Ben and Diane:

On November 7, 2001, Assistant Administrator for Water Tracy Mehan announced a plan for moving forward with a proposed sanitary sewer overflow (SSO) rule. The plan called for proposing the regulatory text from the January 2001 draft, and revising the preamble discussion to invite comment on potential alternative regulatory options. The Association of Metropolitan Sewerage Agencies (AMSA) supports this plan as a reasonable way to move forward with the development of an SSO rule. I write to urge you to renew efforts to propose an SSO rule based on the Assistant Administrator's plan.

Notwithstanding AMSA's continued belief that several of the key provisions in the draft regulation are flawed, we have a genuine interest in developing a workable rule with consistent, national standards for controlling overflows. We must emphasize, however, that our support for continuing the rulemaking process is based on and tied to EPA successfully following through with the Assistant Administrator's plan. Thus, AMSA opposes any attempt to break up the different parts of the SSO rule and propose them in a piecemeal fashion. Such an approach would be fatal to the rulemaking process.

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The history of this rulemaking and the negotiations surrounding it demonstrate that collection system owners and operators wish to comprehensively understand all requirements affecting them. In many cases, the lack of substantial progress in SSO control can be attributed solely to the absence of a single federal rule which spells out all applicable requirements and compliance standards. For that reason, AMSA has repeatedly insisted that this rule be developed in an integrated and holistic manner, and that it not be divided into separate parts. Far from making the rule less controversial as some may argue, dividing the rule into two or more distinct parts would actually undermine EPA's attempt to trigger national improvements in SSO control. For example, the proposal would impose new permit requirements for the estimated 5,000 satellite communities that are currently unregulated. Proceeding with a rule that only addresses reporting, notification, and recordkeeping apart from the satellite collection system provisions would mean that a significant portion of the collection system not owned by a permitted publicly owned treatment works (POTW) would not be covered by the new provisions. As a result, the quality and amount of SSO reporting and notification would not significantly improve. Many other similar unintended consequences would result from a two-phased SSO rule.

We also wish to emphasize the critical importance of EPA requesting comment in the preamble on various alternative regulatory standards. AMSA will not support a proposal that simply publishes the withdrawn January 2001 rule package. We have consistently advised the Agency that its current draft rule provisions are flawed, primarily because of the inclusion of a zero overflow standard for SSOs, and that a new, more realistic standard based on the implementation of the widely-accepted CMOM plans should be considered. AMSA believes that relatively few changes would need to be made to the January 2001 preamble in order to accommodate the consideration of regulatory alternatives. Expanding the preamble to invite comment on alternative SSO standards should benefit EPA by giving staff additional information from which to develop the final rule. Furthermore, encouraging additional discussion in the preamble will have no effect on the proposed rule language since, as announced by the Assistant Administrator, the January 2001 rule language would be proposed without change.

Thank you for your consideration. I hope this letter clarifies AMSA's position in support of moving forward with the proposed SSO rule. I would be happy to meet with you to discuss these issues further. Please feel free to contact me directly at 202/833-4653.

Sincerely,

Handwritten signature of Ken Kirk in black ink.

Ken Kirk
Executive Director

cc: Marcus Peacock, Associate Director, Office of Management & Budget (OMB)
Paul Noe, Counselor to the Director, Office of Information & Regulatory Affairs, OMB