

**UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT**

AMERICAN FARM BUREAU FEDERATION,)	
)	
Petitioner,)	
)	
v.)	No. 00-1320
)	and Consolidated Cases
CHRISTINE TODD WHITMAN, Administrator,)	
United States Environmental Protection Agency,)	
and ENVIRONMENTAL PROTECTION AGENCY,)	
)	
Respondents.)	
)	

**MOTION OF THE ASSOCIATION OF METROPOLITAN SEWERAGE AGENCIES FOR
LEAVE TO FILE A SEPARATE BRIEF AS INTERVENOR-RESPONDENT**

The Association of Metropolitan Sewerage Agencies ("AMSA"), an Intervenor in these consolidated cases, hereby seeks leave to file a brief as Intervenor-Respondent that is separate from that of the other Intervenor-Respondents.¹ In support of this motion, AMSA states the following:

1. These cases involve challenges to the U.S. Environmental Protection Agency's ("EPA's") final rule entitled "Revisions to the Water Quality Planning and Management Regulation and Revisions to the National Pollutant Discharge Elimination System Program in Support of Revisions to the Water Quality Planning and Management Regulation" ("Final Rule"), published on July 13, 2000 at

¹ In this motion, AMSA does not address the question of what would be the appropriate length for its brief. AMSA believes that this question would better be addressed later in the context of a briefing format for all parties.

65 Fed. Reg. 43,586. The Final Rule revises the regulatory requirements for establishing Total Maximum Daily Loads (“TMDLs”) for impaired waterbodies under section 303(d) of the Clean Water Act (“CWA”), 33 U.S.C. § 1313(d).

2. AMSA was granted leave to intervene in these consolidated cases by this Court’s order entered December 19, 2000. AMSA has represented the interests of the nation's publicly owned treatment works (“POTWs”) and municipal wastewater treatment agencies since 1970. AMSA strives to maintain a leadership role in the development and implementation of scientifically-based, technically-sound, and cost-effective environmental programs for protecting public and ecosystem health. AMSA's over 250 POTW members serve the majority of this country's sewerage population and treat over 18 billion gallons of wastewater each day. AMSA's members include point source dischargers permitted to discharge treated effluent under the National Pollutant Discharge Elimination System (“NPDES”) established pursuant to section 402 of the CWA, 33 U.S.C. § 1342.

Approximately 80 to 85% of AMSA's POTW members are located on impaired waterbodies listed as “water quality limited segments” pursuant to section 303(d) of the CWA. Many of these impaired waters are influenced significantly by both rural and urban *nonpoint* source pollution. The development of TMDLs for these waters and the calculation of load and wasteload allocations directly affect the protected interests of AMSA's members by changing the terms and conditions of their NPDES permits in order to achieve necessary pollutant load reductions. TMDLs developed pursuant to EPA's Final Rule (as shaped by the outcome of this action) will likewise directly impact the terms and conditions of the NPDES permits of AMSA's members.

3. AMSA intends to participate only as an Intervenor-Respondent in these proceedings.²

AMSA disagrees with those Petitioners that will argue that nonpoint sources should not be included in the TMDL process. For example, in its "Petitioner's Statement of Issues" (¶1, 3), the American Farm Bureau Federation indicated that it will challenge the position in the Final Rule that EPA may lawfully require the listing and development of TMDLs for waters impaired by *nonpoint* sources pursuant to CWA § 303(d). Unlike the Farm Bureau and several other Petitioners, AMSA believes strongly that the TMDL program must encompass *both point and nonpoint* sources of water quality impairment.

4. AMSA's interests as an Intervenor-Respondent in this litigation are unique and require the filing of a separate brief as Intervenor-Respondent. EPA and other Intervenor-Respondents will be concerned primarily with defending the foundations, policies, and provisions of the Final Rule rather than how it will impact the Nation's POTWs. EPA does not and will not represent the interests of municipal point source dischargers, and has so stated. Similarly, other Intervenor-Respondents, such as the Sierra Club, can be expected to broadly defend those portions of the Final Rule which with they agree but not to address the issues from the unique perspective of POTWs and municipal wastewater treatment agencies. It is vitally important that AMSA be able to set forth its distinct positions on the issues. If the Petitioners prevail on issues crucial to AMSA's members (particularly whether nonpoint

² AMSA disagrees with several positions expected to be taken by Petitioners in this litigation. However, this does not mean that AMSA fully supports all aspects of EPA's Final Rule, or that the interests of AMSA's members will be represented adequately by the Agency. On the contrary, AMSA objects to several provisions of the Final Rule expected to be challenged by certain Petitioners. However, AMSA has decided, on balance, to participate in this case as an Intervenor-Respondent. Thus, AMSA will *not* seek leave to file a brief as Intervenor-Petitioner in response to the Court's order of March 26, 2001.

sources should be included in the TMDL process), AMSA expects that EPA will focus the TMDL process on achieving water quality standards by imposing stricter wasteload reductions and corresponding discharge limits entirely on POTWs and other point source dischargers.

5. AMSA also has a special status in this litigation because its members are governmental entities. AMSA's members consist of local governmental agencies responsible for wastewater treatment. Among other things, AMSA members are responsible for enforcing pretreatment standards established by EPA and for issuing permits to dischargers. We note that Circuit Rule 28(e) provides that the requirement that Intervenor on the same side file a single brief "does not apply to a governmental entity." The term "governmental entity" is defined in that provision to "include" the "United States or an office or agency thereof, the District of Columbia, or a State, Territory, or Commonwealth of the United States." Although some of AMSA's members may not fall literally within the terms of that rule, it is clear that the same principle of recognizing the special status of governmental entities should apply in this matter.³ For example, one of AMSA's members is the District of Columbia Water and Sewer Authority. Because of the special governmental status of AMSA's members, AMSA should be granted leave to file an Intervenor's brief of appropriate length separate from that of the non-governmental Intervenor. Upon the granting of this motion, the undersigned counsel is prepared to submit a "certificate of counsel" with AMSA's brief pursuant to Circuit Rule 28(e)(4) that is consistent with the representations in this motion.

³ We also note that this motion is not based on any of the "unacceptable grounds" listed in Circuit Rule 28(e)(4), i.e., it is *not* based on a need for more pages than the rules allow, on coordination problems because of geographical dispersion, or on the fact that separate presentations were made in prior proceedings.

CONCLUSION

For the foregoing reasons, AMSA's motion for leave to file a separate brief as Intervenor-Respondent should be granted.

Respectfully Submitted,

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Dated: April 4, 2001

CERTIFICATE OF SERVICE

I hereby certify that I served copies of the foregoing Motion for Leave to File a Separate Brief as Intervenor-Respondent Association of Metropolitan Sewerage Agencies by first class mail, postage prepaid, on the following, this 4th day of April, 2001.

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