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Association of
Metropolitan
Sewerage Agencies

February 27, 2002

Docket Number EC-2000-007
Enforcement and Compliance Docket and Information Center
U.S. Environmental Protection Agency
Mail Code 2201A
1200 Pennsylvania Avenue, NW
Washington, DC 20460

Re: *Establishment of Electronic Reporting: Electronic Records; Proposed Rule
66 Fed. Reg. 46161 (August 31, 2001)*

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) *Cross-Media Electronic Reporting and Records Rule* (CROMERRR). 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. For decades, POTWs have worked to improve water quality by treating the nation's wastewater and by overseeing the activities of industrial dischargers. Like many industries around the country, POTWs employ electronic means of managing information to streamline recordkeeping and improve the overall efficiency of their operations. Accordingly, the POTW community has an expressed interest in any EPA activities that will affect their ability to maintain information electronically.

While we applaud EPA's efforts to remove barriers to electronic recordkeeping and reporting in order to comply with the requirements of the Government Paperwork Elimination Act of 1998 (GPEA), AMSA has a number of concerns regarding the impact of the current proposal. POTWs understand the benefits of generating and maintaining information electronically. Ensuring protection of the environment

with limited resources requires POTWs to continually explore ways to improve the efficiency of their operations. Many POTWs have made substantial investments in off-the-shelf or customized electronic data management systems to maintain information generated and collected in support of the day-to-day operations at their plants.

The proposed requirements would apply to POTWs both as regulated entities, through the imposition of the recordkeeping provisions, and as regulators. POTWs administering approved pretreatment programs are responsible for overseeing the industrial users that discharge to the plant. POTWs manage a large volume of information obtained from industrial users, and in some cases, have implemented systems to receive information electronically from industrial users. Some POTWs, therefore, may incur significant costs to ensure compliance with both components of CROMERRR.

While AMSA fully supports the electronic maintenance and transfer of environmental records, we believe EPA's current proposal would hinder increased electronic recordkeeping and reporting. For some POTWs, the cost to comply with this rule actually may prevent them from moving to electronic systems. Those POTWs currently managing information electronically will be forced to choose between upgrading their systems at considerable expense, or reverting to paper-based systems. None of these alternatives reflect the spirit of the GPEA.

General Recommendations

AMSA recommends that EPA withdraw the proposed rule in its entirety and establish a meaningful dialogue among the EPA program offices and key stakeholders to address this issue. EPA must gain a better understanding of the extent to which electronic recordkeeping is already occurring in its program areas and the impact of the proposed regulatory approach. Such discussions also would help define what actions are warranted to address the Agency's concerns about fraud and record integrity. Following these discussions, AMSA recommends that EPA proceed as necessary by issuing guidance on electronic reporting and recordkeeping. Other federal agencies are already implementing the GPEA requirements with guidance instead of regulation. Undoubtedly, guidance, in lieu of a prescriptive regulation, will provide additional flexibility both for the Agency and the regulated community and ensure that technological innovation is not stifled.

Specific Comments and Recommendations

AMSA's specific comments on the recordkeeping and reporting provisions of the proposal are as follows:

Recordkeeping

- A. EPA states that the proposed requirements are voluntary. In reality, the requirements are only voluntary for members of the regulated community who are currently relying on paper-based recordkeeping systems. The rule does not require POTWs currently using paper-based systems to use electronic systems. However, in order to remain in compliance, any

agency that generates, calculates, or maintains information electronically would have to ensure that their systems meet the proposed requirements. EPA's proposal overlooks the fact that tremendous numbers of regulated entities, including POTWs, are already maintaining environmental information electronically and will have to expend additional resources to upgrade or replace their existing systems. One AMSA member estimated that the cost to bring their system into compliance could be as high as \$2 million per facility, with eight facilities needing upgrades.

- B. EPA's definition of *electronic record* is too broad. During the public meeting in Washington D.C. (January 17, 2002), EPA stated that the Agency intended CROMERRR to only apply to records kept in an electronic recordkeeping system. However, the current definition of *electronic record* implies that CROMERRR would apply to any record or datum that involves a computer in its lifecycle, even if it has been printed out and is maintained in hardcopy. Rather than simply modifying the definition of electronic record, and applying the existing CROMERRR requirements to records meeting the revised definition, EPA should consider a less prescriptive approach through guidance.
- C. The provisions requiring regulated entities to prevent electronic signatures from being detached, copied, or otherwise compromised may require agencies to implement new systems designed solely to meet the CROMERRR regulations. Where current systems can be upgraded, CROMERRR would require POTWs to incur significant costs to gain minimal if any increase in security. There is no evidence to suggest that records currently maintained electronically suffer from lax security. AMSA believes that existing systems and management practices that limit access to records bearing electronic signatures are sufficient.
- D. The provisions requiring the use of secure, computer generated, time-stamped audit trails to automatically record the date and time of entries, modifications, and deletions may require POTWs to modify or upgrade existing systems at significant expense. Some systems may not be capable of handling such a function and may need to be replaced entirely. Again, there is no evidence to suggest that records currently maintained electronically are more vulnerable to manipulation than paper records. Existing systems and management practices that control access to a record and ensure a record's accuracy are sufficient.
- E. EPA's requirement that electronic records be searchable and retrievable for the entire length of their retention period goes well beyond current information technology back-up practices. Normally, data are backed up on tape drives or similar storage media. As systems age and go out of service, the data are maintained on the back-up media. In order for these data to remain searchable and retrievable for the life of the retention period, the old, outdated system would need to be maintained. AMSA believes that any requirement or standard for record retention should reflect current back-up practices.

- F. EPA's requirements for record archival, designed to preserve the context, metadata, and audit trail, are not compatible with existing archival systems. Depending on the complexity of the data and whether any calculations are performed, POTWs may be forced to maintain an outdated application to preserve the record as it was originally created. AMSA recommends that the Agency consider an approach that does not hold electronic systems to a higher standard than paper systems for record archival.

If EPA finalizes the rule as proposed, every piece of information or datum that is generated, calculated, or maintained by electronic means would be subject to the CROMERRR requirements. Many POTWs will be faced with costly upgrades to ensure compliance, while others may decide to avoid electronic recordkeeping altogether. This was obviously not the intent of EPA's Office of Environmental Information when they were developing the rule to implement the requirements of the GPEA. The Act directed EPA to ensure that its programs do not prevent the electronic maintenance or submission of information, nothing more. EPA has coupled provisions relating to security and fraud with the regulations designed to implement the GPEA, resulting in requirements that are unnecessarily overreaching.

Reporting

POTWs that administer approved pretreatment programs must oversee the activities of numerous industrial users and take actions necessary to ensure compliance with their own NPDES permits. POTWs must maintain information concerning compliance, permits, enforcement, monitoring, and other regulatory information for hundreds of industrial users discharging to their plant. For example, industrial users have a number of requirements to report to POTWs, including a requirement to update the POTW on a biannual basis (or more frequently as required by the POTW) with monitoring results and other compliance related information. POTWs are exploring and investing in information management systems to manage this large volume of information. For some POTWs, direct electronic reporting from industrial users may provide tremendous savings in program oversight costs. One AMSA member plans this year to require electronic submission of discharge monitoring reports from its industrial users. While the system that will receive these reports meets many of the proposed requirements, the software version currently employed may not be sufficiently upgradeable to ensure compliance with CROMERRR.

EPA's approach to electronic reporting must ensure that POTWs which currently have an electronic reporting mechanism in place can continue using that system without interruption and without being in violation. Rather than prescribing a set of conditions that must be met, EPA should set minimum standards that allow POTWs and other regulatory agencies to use their existing security safeguards to ensure submissions are secure. By allowing POTWs to use their existing systems, the cost and disruption to POTW activities will be minimized.

AMSA encourages EPA to open a dialogue with POTWs and state agencies to accurately gauge the level to which electronic reporting systems are already in use and to develop guidelines that take into account existing system architectures.

Thank you for the opportunity to comment on this proposal. AMSA looks forward to continued discussion with the Agency on this matter. If you have any questions about AMSA's comments please do not hesitate to contact me at 202/833-9106 or chornback@amsa-cleanwater.org.

Sincerely,

A handwritten signature in black ink, appearing to read "Chris Hornback". The signature is fluid and cursive, with a large initial "C" and a long, sweeping underline.

Chris Hornback
Director, Regulatory Affairs