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April 25, 2003

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General Manager  
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Virginia Beach, VA

Re: *Draft Fiscal Year 2003-2008 Strategic Plan*

Executive Director  
Ken Kirk

Dear Sir or Madam:

The Association of Metropolitan Sewerage Agencies (AMSA) is pleased to have the opportunity to review and comment on the U.S. Environmental Protection Agency's (EPA) *Draft Fiscal Year 2003-2008 Strategic Plan* (the *Plan*). Founded in 1970, AMSA represents the interests of nearly 300 of the nation's publicly owned treatment works (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. They are the frontline leaders in cleaning up the nation's waters and in understanding the clean water challenges facing the nation in the years ahead. AMSA has confined its comments to clean water issues as contained in Goal 2 of the *Plan*.

### **Overview**

AMSA's most fundamental concern with the *Strategic Plan* is that it sets some very aggressive clean water goals and timelines, but offers little in the way of specifics as to how these goals will be attained. As such, this makes it difficult to determine the extent of the responsibility POTWs will shoulder, and whether these goals are realistic, feasible and make sense on a cost-benefit basis. AMSA's foremost recommendation is that EPA's strategic planning process contain more specific information relative to the responsibilities POTWs, industry and nonpoint sources (NPS) will likely bear under the *Plan*. Also, in developing EPA's strategic objectives, AMSA believes it is critical to allow for increased input from relevant

stakeholders, including AMSA, in the development process of the *Plan* to determine the feasibility of its goals.

From AMSA's point of view, the *Plan* constitutes a list of general objectives with no prioritization. A prioritized listing of objectives would provide a better sense of the Agency's direction over the next five years and would facilitate the comment process. Throughout the *Plan*, EPA consistently references moving toward watershed planning — which AMSA supports and believes over time could dramatically improve water quality. In the meantime, however, POTWs continue to face a forthcoming blending guidance and a sanitary sewer overflow rule that could cost municipalities hundreds of billions of dollars, but, remarkably, remain virtually unmentioned in the *Plan*. Similarly, EPA's draft watershed rule also receives little, if any, specific attention in the *Plan* and there is little clarity on the relationship between this rule — which AMSA strongly supports — and the broader watershed initiative at EPA.

Furthermore, to the extent EPA's top priority is the development of a watershed approach for carrying out the provisions of the Clean Water Act, the *Plan* should mention the Agency's own statistic that 60% of the nation's water impairments are caused by NPS pollution. Given this startling data, the success of EPA's watershed strategy depends largely on nonpoint pollution abatement, yet the *Plan* provides few details on how it will accomplish this critical objective.

In fact, one of the few strategies EPA does discuss as part of its effort to control nonpoint source pollution is to increase funding of voluntary nonpoint programs through the Clean Water State Revolving Fund (CWSRF). This means that despite the cost of multiple regulations falling squarely on the shoulders of POTWs, the CWSRF's already limited funds will be shifted even further away from core infrastructure projects to the unregulated and already well-funded NPS community. Simply put, AMSA believes this is a flawed strategy.

In an effort to provide as succinct a set of comments as possible what follows below is AMSA's section-by-section response to specific elements of the draft *Plan* that are of greatest concern to the POTW community.

#### *Fish and Shellfish Safe to Eat (Sub-Objective 2.1.2)*

The reduction of mercury in the nation's waters forms the cornerstone of sub-objective 2.1.2. While the reductions targeted appear small, they are quite aggressive. AMSA has spent considerable resources evaluating mercury sources and discharges to examine the feasibility of controls to reduce the release of mercury. These studies indicate that meaningful reductions from permitted point sources will be very difficult to attain. As a result AMSA has consistently advocated for EPA's support of a national mercury plan that takes a holistic approach to solving the mercury problem by taking into account the complex relationship between domestic and commercial sources of mercury as well as the fact that, as the *Plan* states, most mercury in fish originates from sources such as coal-fired power plants that release mercury into the air.

AMSA is also working closely with EPA regarding its concerns over the *Plan*'s aggressive objective that all states should adopt new mercury fish tissue criterion by 2008. As EPA continues to develop guidance

for implementing the new criterion, AMSA believes EPA should add to the *Plan* its intention to work closely with AMSA and other stakeholders, and to perform the painstaking research necessary to ensure these criteria are based on sound science.

Improving water and sediment quality is cited as another key element of this strategy and targets a number of sources such as storm water, combined sewer overflows (CSOs) and NPS pollution. Unfortunately, the *Plan* is silent on the relative contributions of each of these sources for which data are available. Again, the *Plan* also fails to discuss how, in the face of a lack of regulatory authority, the Agency will reduce NPS sources. Also, AMSA would like the *Plan* to reference the fact that POTWs discharging to shellfish waters are already regulated and are disinfecting effluents to meet Shellfish Sanitation Requirements. Therefore, it is difficult to understand how the reissuance of permits that already contain discharge limits to protect shellfish will assist in attaining this goal.

### ***Water Safe for Swimming (Sub-objective 2.1.3)***

AMSA supports the goal of reducing the risks associated with water recreation contained in this objective. However, the strategic target of reducing beach closures will be difficult to attain with the current emphasis on the newly required "single sample maximum" bacterial criteria. AMSA has provided EPA with extensive comments that question the technical credibility of both the geometric mean and single sample maximum aspects of the new bacterial criteria. The single sample maximum concentration is particularly unsupported and will lead to unnecessary beach closings and negatively impact local economies dramatically.

Additionally, there is insufficient evidence linking swimmers' health to POTW operations. For example, there is little evidence that sewer overflows alone, rather than runoff or poor hygiene, are primarily responsible for any adverse human health impacts that necessitate beach closings. AMSA believes before EPA takes aggressive regulatory action to limit beach closings, the Agency should perform all the necessary studies on the causes of the adverse human health impacts and devote considerable resources to refining the bacteria criteria in order to associate the goal of reducing beach closings directly with the strategic objective of reducing swimmers' illnesses. Without doing this research, EPA may not only fail to reduce swimming illnesses, but will unnecessarily preclude the use of the beach at times when it would have been safe.

Also, while it is recognized that EPA allows states to develop site-specific standards and modify designated uses, such actions require a use attainability analysis (UAA). Unfortunately, EPA has failed to provide a strategic objective to develop and enhance its UAA guidance to states. EPA should make one of its key objectives the further development of the UAA concept and the issuance of clear guidance on how and when UAAs can be utilized.

### ***Protect Recreational Waters***

EPA states that the Agency will work with states to "assure that pathogens controls consistent with water quality standards are incorporated in 50% of permits for facilities that discharge pathogens." Currently it is AMSA's understanding that most, if not all, POTWs have water quality based limits for pathogens and

that most of these limits are for fecal coliform. Most state water quality standards are also for fecal coliform. In fact, most waters not meeting pathogen standards are impaired not by POTW discharges, but by NPS pollution. Therefore, it is unclear how such a permit program will assist EPA in meeting its strategic objective.

### *Improve Water Quality on a Watershed Basis (Objective 2.2.1)*

#### *Develop Effective Watershed Plans and TMDLS*

While AMSA agrees that watershed planning and watershed-based total maximum daily loads (TMDLs) can yield significant clean water improvement, the Association believes that part of any effective watershed/TMDL program must include a fundamental reevaluation of the adequacy of designated uses and the criteria for supporting those uses. EPA's *Plan* should acknowledge the conclusions of the National Research Council's (NRC) review of the TMDL program, which recommended that EPA refine designated uses in order to more explicitly describe the actual use of a given waterbody. The NRC concluded that the current "fishable/swimable" use is too broad to provide an effective description of what is to be protected. Refinement of uses is needed to describe exactly what type/s of fish must be present in the particular waterbody to satisfy the definition of fishable. It is only after that refinement is made that effective criteria can be developed. Again, it is imperative therefore that EPA provide more effective guidance on the UAA process.

Also, as stated in the "Overview" section above, AMSA strongly believes that any valid watershed program must begin with the Agency moving forward with its watershed rule. The watershed rule would serve to bring the idea of watershed planning from the conceptual into a regulatory framework that key stakeholders, including AMSA, could provide input into in order to make the watershed approach workable.

#### *Support Sustainable Wastewater Infrastructure*

This section was very troubling to AMSA. Although this section does an excellent job recognizing the enormity of the wastewater infrastructure funding gap, it also focuses on municipal responsibility to overcome the gap without referencing the need for an innovative federal-state-local partnership to meet this most critical of objectives. EPA again places its trust in the current funding levels for the CWSRF which provides benefits to many communities but which is not the answer to its own estimate of a shortfall in the hundreds of billions of dollars. Indeed, AMSA's *2002 Financial Survey* reveals that less than 20% of responding POTWs even use SRF funds, while POTW debt continues to expand. AMSA's *2002 Financial Survey* also reveals that wastewater service rates have increased on average nearly 2% annually above the rate of inflation since 1986, demonstrating that rate increases are not alone a silver bullet for solving the infrastructure funding crisis.

Also, EPA's *Plan* references that "another important approach to closing the gap . . . is to use sustainable management systems to assure that infrastructure investments are tailored to the need of the watershed." As EPA knows, public wastewater utilities do perform asset management and do think in terms of long-term infrastructure sustainability. It is, however, impossible to do so in the context of ever-shifting

*AMSA Comments on EPA's Draft Fiscal Year 2003-2008 Strategic Plan*

*April 25, 2003*

*Page 5*

federal regulations — an issue not mentioned in this *Plan*. The costs, for example, of a prohibition on blending and/or a zero tolerance policy for sanitary sewer overflows would be in the hundreds of billions of dollars. It is simply impossible for municipalities to be mind-readers of EPA's regulatory intentions and to plan ahead for unknowable regulatory contingencies. Additionally, EPA has added a new wrinkle here that asset management should be "tailored to the need of the watershed." AMSA would like some details on exactly how this could be done and what guidance EPA may plan on providing regarding this initiative.

AMSA appreciates the Agency's attention to the concerns of the POTW community relating to the *Draft Fiscal Year 2003-2008 Strategic Plan*. Thank you again for the opportunity to comment on this critical effort. AMSA looks forward to continued discussions with the Agency on this matter. If you have any questions about our comments please do not hesitate to call me at 202/833-4651.

Sincerely,

A handwritten signature in black ink that reads "Adam Krantz". The signature is written in a cursive, slightly slanted style.

Adam Krantz

Managing Director, Government and Public Affairs