



Association of
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Sewerage Agencies

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March 18, 2004

Water Docket
U.S. Environmental Protection Agency
Mail Code 4101T
1200 Pennsylvania Avenue, N.W.
Washington, D.C. 20460
Attention Docket ID No. OW-2003-0074

Dear Sir or Madam:

Re: *Preliminary Effluent Guidelines Program Plan for 2004/2005*

The Association of Metropolitan Sewerage Agencies (AMSA)¹ is pleased to provide comments on the U.S. Environmental Protection Agency's (EPA or the Agency) *Preliminary Effluent Guidelines Program Plan for 2004/2005*. As key stakeholders in the effluent limitations guidelines (ELG) program, AMSA members continue to oversee implementation of EPA's categorical pretreatment standards and remain engaged in the national dialogue on the development of those standards. At the same time, AMSA members, along with hundreds of other publicly owned treatment works (POTWs), continue to develop and implement local pretreatment programs tailored to the water quality needs of their communities. These local programs have successfully demonstrated their ability to protect water quality without the need for further categorical pretreatment standards.

In its 2002 *Draft Strategy for National Clean Water Industrial Regulations (Draft Strategy)*, EPA proposed a process for establishing priorities based on the greatest potential risk reduction, as it evaluates the need to revise existing, or to develop new, ELGs. AMSA, in its comments on the *Draft Strategy*, commended the Agency for its proposed approach, and agreed that the focus of the ELG Program should be on refining existing, and developing new, ELGs that present the greatest opportunity for reducing risk to human health and the environment.

¹ Founded in 1970, AMSA represents the interests of nearly 300 of the nation's publicly owned treatment works. 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.

Given the success of the local pretreatment programs that have been developed over the last twenty years to address community-specific needs, AMSA continues to recommend that EPA focus more of its attention on revising and updating the existing pretreatment standards that over the last 10 to 20 years have become dated and no longer function as they were originally intended.

AMSA Urges Update of 50 POTW Study

Above all else, the most critical tool EPA has for evaluating the need for pretreatment standards is its “50 POTW Study” (*Fate of Priority Pollutants in Publicly Owned Treatment Works*, September 1982), which provides the underlying basis for regulating pollutants under the current categorical pretreatment standards. The current study is more than 20 years old and the removal efficiencies, physical parameters, and process data that EPA must rely upon for evaluating pretreatment standards are no longer valid. Tremendous advances in the detection capabilities of analytical methods (e.g., mercury method 1631) since the original study was conducted could significantly change influent and effluent levels and, therefore, removal efficiencies. Before EPA considers updating or revising any specific existing ELGs, it must update the 50 POTW Study. AMSA and EPA have discussed this effort several times in past years and have agreed upon the study’s importance. As before, AMSA is committed to helping EPA conduct a new study to ensure that any effort to revisit the existing standards will account for the success of POTW pretreatment programs and acknowledge that many pollutants enter and exit POTWs at levels below detection, as well as reflect current POTW removal rates.

AMSA offers the Agency assistance in creating a scope for the study, identifying volunteer POTWs, and furnishing in-kind contributions from POTWs to ensure the study’s validity and appropriateness. AMSA welcomes further discussion with the Agency on this issue.

Stakeholder Involvement in Planning Process is Key

AMSA believes that EPA’s commitment to transparent decision-making – namely communication with stakeholders early and often – as outlined in the *Draft Strategy* is the most critical component to ensuring the success of the ELG program. AMSA believes the biennial planning process provides an excellent opportunity to increase the amount of collaboration that occurs between EPA’s ELG office, pretreatment program staff and the POTW community. To date, AMSA has been encouraged by the level of participation stakeholders have been provided in the process. Nevertheless, AMSA feels the level of involvement could be enhanced. Especially with pretreatment standards, it is critical for POTWs to be involved in the decision making process. POTWs are best positioned to provide EPA with information regarding existing pretreatment standards and the potential need for additional controls.

This type of communication would reduce the need to rely on estimated data from sources such as the Toxics Release Inventory, which, in some cases, has grossly overestimated the levels of pollutants entering POTWs (*EPA Should Take Steps to Improve Industrial Reporting to the Toxics Release Inventory System*, February 2004).

AMSA is providing the following comments regarding implementation issues associated with existing pretreatment standards that EPA should work to correct.

Specific Comments on Existing Effluent Guidelines

Organic Chemicals, Plastics, and Synthetic Fibers Category

Based on information from AMSA member facilities, it is apparent that there are numerous organic constituents regulated in the Organic Chemicals, Plastics, and Synthetic Fibers (OCPSF) category that appear not to be a discharge issue. In fact, at these member facilities the following organic pollutants have not been found above detection during the past five years: Carbon Tetrachloride, Chlorobenzene, 1,2-Dichlorobenzene, 1,3-Dichlorobenzene, 1,1-Dichloroethane, 1,1-Dichloroethylene, 1,2-trans-Dichloroethylene, 1,2-Dichloropropane, Diethyl phthalate, Dimethyl phthalate, 4,6-Dinitro-o-cresol, Fluorene, Hexachlorobenzene, Hexachlorobutadiene, 4-Nitrophenol, Phenanthrene, Tetrachloroethylene, 1,2,4-Trichlorobenzene, 1,1,1-Trichloroethane, and 1,1,2-Trichloroethane. AMSA requests that EPA reevaluate the list of organic pollutants for which indirect dischargers are regulated, in the hope of reducing the administrative, sampling and analytical burden for POTWs and the regulated industries. EPA might want to consider a Total Toxics Organics certification requirement, similar to the Metal Finishing Industry, for those organics that are still of concern. For this particular rule, AMSA would also ask EPA to consider allowing concentration limits in lieu of mass limitations in those circumstances where concentration limits would better suit the needs of the facility and maintain compliance, therefore, easing the administrative burden of violation determination.

Metal Finishing Point Source Category

AMSA requests that EPA consider revising the Metal Finishing regulations at 40 CFR Part 433 to exclude those phosphating operations that generate little or no metals. Instead, AMSA believes that these facilities would be more appropriately regulated by local limits. In addition, it is AMSA's belief that the regulation overlooks an opportunity to encourage certain pollution prevention practices associated with some chemical conversion coating operations.

Indirect dischargers that perform phosphating operations are subject to the Metal Finishing Point Source Category regulations under the current applicability provisions at 40 CFR Part 433.10. The regulation does not distinguish among the various types of phosphating operations. For example, while some phosphating baths contain categorically regulated metals such as zinc or nickel, other phosphating processes use a phosphoric acid or phosphate salt solution that contains no metals of concern. Iron phosphating is a commonly performed phosphating process that contributes little or no metals to the wastestreams of facilities that process metals.

It is clear that EPA, until recently, did not consider the fact that iron phosphating is not likely to contribute significant amounts of toxic metals as are other types of phosphate conversion coating operations. When developing the proposed Metal Products and Machinery (MP&M) rule, EPA did not distinguish between different types of phosphating processes in its statement, "Based on EPA's analytical database for this proposal, EPA believes that wastewater generated from phosphate conversion coating operations contains high levels of zinc and manganese," (*Development Document For the Proposed Effluent Limitations Guidelines and Standards for the Metal Products & Machinery Point Source Category*, EPA, 2000).

By the time that EPA published the MP&M Final Rule, it was apparent that iron phosphating was considered a special case. EPA reported receiving comments concerning the definition of “oily operations” used in the applicability statement for the Oily Wastes Subcategory of that rule. Commenters provided data on several proposed MP&M operations, including iron phosphate conversion coating, that were not considered “oily operations” in the proposed rule but should have been.

As a result of comments and data that showed that iron phosphate conversion coating (and several other unit operations) contains only low levels of toxic metals, EPA revised the definition of “oily operations” in the Oily Wastes Subcategory to incorporate these unit operations. The final rule included the following definition:

Iron Phosphate Conversion Coating is the process of applying a protective coating on the surface of a metal using a bath consisting of a phosphoric acid solution containing no metals (e.g., manganese, nickel, or zinc) or a phosphate salt solution (i.e., sodium or potassium salts of phosphoric acid solutions) containing no metals (e.g., manganese, nickel, or zinc) other than sodium or potassium. Any metal concentrations in the bath are from the substrate.

The MP&M Rule only applies to direct dischargers. Therefore, while iron phosphaters who discharge directly to waters of the U.S. are subject to Part 438 (with only two parameters and pH to monitor), indirect dischargers that perform the same operations are subject to Part 433. This unfairly and unnecessarily forces both the facilities and POTWs to sample for nine pollutants that are clearly not expected to be present in the wastestream.

Because iron phosphate conversion coating operations are unlikely to contribute significant concentrations of toxic metals, AMSA strongly urges EPA to revise the applicability statement in the current Metal Finishing regulations to specifically exclude iron phosphating from the list of operations that will automatically subject the discharger to this rule. By doing so, EPA might encourage some dischargers to consider switching from a phosphating process that contains zinc or manganese to one that contains iron, thus promoting a pollution prevention alternative.

AMSA understands that the Agency has some data on phosphating operations. However, the Association is willing to work with EPA to gather additional information to support this revision.

Pharmaceutical Manufacturers Point Source Category

The system for determining applicability of these regulations depends on Standard Industrial Classification (SIC) code². Biotech drug manufacturers are sometimes included, depending on their SIC code. Due to the nature of the biotech drug industry, the research & development and pilot phases can last years while awaiting Food and Drug Administration approval of developed drugs. During this time, no commercial drugs are being produced. Therefore, the effluents from these companies have insignificant pollutant levels that can be adequately addressed by local limits. Because of this unique

² Beginning in 1997, the SIC was replaced by the North American Industry Classification System (NAICS), which provides and reorganizes categories for new industries on a production/process-oriented basis. AMSA is not sure how the change ultimately may effect the ELG program, but suggests it be considered in future plans.

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circumstance, AMSA recommends that the Agency exempt biotech drug manufacturers from the Pharmaceutical Manufacturers Point Source Category.

AMSA appreciates the opportunity to comment on this important issue and will be contacting EPA in the near future to schedule a meeting to discuss these and other pertinent issues. If you have questions or wish to discuss our comments further, please contact Guy Aydlett, Director of Water Quality at Hampton Roads Sanitation District and Chair of AMSA's Pretreatment & Hazardous Waste Committee at 757/460-4220, or Richard Sustich, Assistant Director of Research and Development at Metropolitan Water Reclamation District of Chicago and Vice Chair of AMSA's Pretreatment & Hazardous Waste Committee at 312/751-3030.

Sincerely,

A handwritten signature in black ink, appearing to read "K Kirk". The signature is written in a cursive, somewhat stylized font.

Ken Kirk
Executive Director