Association of
Metropolitan
Sewerage Agencies

May 24, 2002

Mr. Allen Melcer
U.S. Environmental Protection Agency (WN -16J)
77 W. Jackson Blvd.
Chicago, IL 60604
melcer.allen@epa.gov

RE: Comments on Draft U.S. EPA Region 5 Mercury Phase Out Proposal (Version 4 – April 17, 2002)

Dear Mr. Melcer:

The Association of Metropolitan Sewerage Agencies (AMSA) is pleased to provide comments on the fourth draft of the *U.S. Environmental Protection Agency (EPA) Region 5 Mercury Phase Out Proposal* (*Proposal*). AMSA represents over 260 of the nation's publicly owned wastewater agencies (POTWs). Our members collectively serve the majority of the sewered population in the United States, and treat and reclaim more than 18 billion gallons of wastewater each day.

AMSA members have a long history of identifying, analyzing, and reducing sources of mercury in the environment, particularly in our nation's waters. Most recently, as part of a cooperative grant with EPA Headquarters, we released a report entitled *Mercury Source Control and Pollution Prevention Program Evaluation*.[1] This project was designed to evaluate the effectiveness of source control/pollution prevention for reducing mercury at POTWs.

We have reviewed the *Proposal*, and offer the following comments for your consideration as you work to complete the Region's mercury phase out policy.

[1] Prepared for AMSA under grant from U.S. EPA by Larry Walker Associates, March 2002. The report is available on AMSA's website at: http://www.amsa-cleanwater.org/advocacy/#special.

Permits and Pollution Prevention

The *Proposal* requires each state to enter into a Memorandum of Agreement or Understanding (MOA/MOU) with EPA Region 5 that contains a commitment to reissue or modify all NPDES permits by 2006 to include mercury limits based on the Great Lakes Initiative (GLI) standard (1.3 ng/l) for dischargers in the Basin, and the applicable mercury standard for dischargers outside the Basin. Variances may be included in state water quality standards and utilized by states as long as they are consistent with the state's procedures and the GLI variance provision, Procedure 2 of Appendix F of 40 CFR Part 132. For example, municipal dischargers could get variances if compliance is infeasible due to the widespread economic and social cost of mercury treatment, but may be required to take "aggressive" pollution prevention measures, including phasing out all commercial and industrial sources of mercury within five years.

AMSA has two concerns with this component of the *Proposal*. First, it will be virtually impossible for dischargers to obtain individual variances in four years (i.e., by 2006). Moreover, AMSA believes this time frame is even less feasible for states interested in developing a state-wide variance, as was done in Ohio. The use of variances is a very important permitting tool. However, obtaining a variance is a rather painstaking and time consuming process, even without accounting for the time needed for state and EPA approval, which is not within a discharger's control. Accordingly, we recommend that the *Proposal* be revised to allow for greater flexibility in pursuing a variance. For example, EPA or a state could extend the 2006 deadline if a discharger or state was legitimately pursuing a variance option, but final approval had not yet been granted.

Second, AMSA is concerned about how EPA Region 5 intends to implement the provision "requiring municipal wastewater treatment plants to design and implement aggressive pollution prevention measures that phase out within five years all commercial and industrial sources of mercury to the municipal treatment plant." See paragraph (4)(b)(I) on page 5, Version 4. Whether as a variance condition or as the narrative expression of an effluent limitation, we support the approach of utilizing pollutant minimization programs to achieve economically and technologically feasible reductions in mercury releases. However, to "phase out within five years all commercial and industrial sources" is not a reasonable goal for such programs.

Applying clean sampling techniques and the most sensitive analytical methods now approved by EPA, mercury is detected in virtually all wastewater. The result is that all commercial and industrial sources of water in a municipal wastewater collection system are sources of mercury. Although some of these sources are amenable to mercury reduction through pollution prevention measures, the vast majority contain detectable mercury due to its ubiquity at trace levels. For some commercial and industrial sources, human waste is responsible for the presence of mercury above trace levels. The elimination of mercury in discharges where it occurs incidentally or due to uncontrollable contributions is simply not feasible within five years or, for that matter, a much longer period.

Some sources where mercury is elevated due to its deliberate use, such as dental offices, are indeed capable, through pollution prevention, of achieving substantial reductions in the amount of mercury discharged. However, much higher than trace levels of mercury are expected to occur well beyond five

years into the future at many such sources, even where the most aggressive pollution prevention measures have been implemented. Consider, for example, that a dentist who has entirely ceased to perform amalgam restorations is nonetheless likely to perform amalgam extractions – a major source of mercury discharged from dental offices.

Rather than attempting to phase out all sources, pollutant minimization programs should instead focus on *minimizing uses* of mercury and target those uses that *significantly contribute to releases of mercury in wastewater*. Any program designed to achieve a complete phase out of mercury sources, especially one constrained to a limited timeframe such as five years, is likely to fail. A much more reasonable and practical pollutant minimization program goal would be the virtual elimination of all nonessential mercury uses that affect mercury levels in POTW effluent.

Monitoring Plans

The *Proposal* requires each state to develop a monitoring plan to assess the effectiveness of its program by 2004. The monitoring plan must identify the benchmarks necessary to demonstrate that progress is being made toward achieving the goal of no mercury impairments or fish consumption advisories for mercury. The plan also must explain how the data will be assessed to determine if progress is being made. If the benchmarks in the monitoring plan indicate that reasonable progress is not being made, then the state will need to initiate development of TMDLs on an expedited schedule.

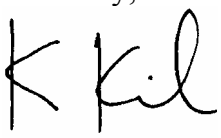
Given the limited time frame for implementation, AMSA is concerned that environmental monitoring plans will not be able to demonstrate that reasonable progress is being made. For example, POTWs that have implemented aggressive pollution prevention measures will still be able to measure mercury in their effluents and receiving waters due to uncontrollable contributions from residential wastewater and human wastes (urine and feces). Major reductions in human waste contributions will be achieved as the nation's dental health continues to improve due to better health care and fluoridation of water. However, improvements will take time and the current population with its existing amalgam fillings will continue to contribute mercury to POTWs. It is also unlikely that even with aggressive measures we will be able to meet fish consumption advisories for top-of-the-food-chain predator fish. The only way to accomplish that goal is to eliminate all combustion sources of mercury, which is unlikely to happen, and even then historical contamination may continue to cause problems.

While it is important to set performance goals to evaluate progress, using environmental monitoring for mercury will not work, and states will find themselves right back where they started – performing TMDLs. A better approach would be the use of programmatic performance measures to demonstrate progress, such as how many pollution prevention programs have been initiated and how many air emissions reduction programs have been put in place. This type of information could be used to show the trends in implementing programs for all media and that relative progress is being made.

We appreciate your attention to this matter. AMSA's member agencies in Region 5 are concerned that implementation of the *Proposal* as written would have a tremendous adverse impact on the communities they serve and realize little environmental improvement. If you have any questions or would like to

discuss AMSA's efforts to characterize sources of mercury at the national level, please do not hesitate to call me at 202/833-4653 or Chris Hornback of my staff at 202/833-9106.

Sincerely,



Ken Kirk
Executive Director