



President
Kumar Kishinchand
Water Commissioner
Philadelphia Water Department
Philadelphia, PA

Vice President
William L. Pugh
Public Works Director
City of Tacoma
Public Works Department
Tacoma, WA

Treasurer
Gurnie C. Gunter
Director
Kansas City Water
Services Department
Kansas City, MO

Secretary
Paul Pinault
Executive Director
Narragansett Bay Water
Quality Management
District Commission
Providence, RI

Executive Director
Ken Kirk

Association of
Metropolitan
Sewerage Agencies

March 15, 2000

Carol M. Browner
Administrator
U.S. Environmental Protection Agency (1101)
401 M. Street, SW
Washington, DC 20460

Dear Administrator Browner:

On behalf of the Association of Metropolitan Sewerage Agencies (AMSA), I would like to express my great concern over EPA's decision to launch a municipal enforcement initiative targeting sanitary sewer overflows (SSOs). The Agency is currently preparing a proposed rule addressing municipal sanitary sewer collection systems and we understand that you plan to release the proposal in May 2000. AMSA questions the need for this major enforcement initiative prior to the finalization of the proposed rule. Until the nation's publicly owned treatment works (POTWs) are operating under consistent SSO regulations, the standard for managing such discharges will be in a state of flux. Holding municipalities responsible for regulations that can only be described currently as a moving target seems premature. AMSA strongly recommends against the commencement of this initiative.

As a first step, I wish to formally request that EPA provide AMSA with a copy of the draft enforcement guidelines. While I understand the need for keeping the initial working drafts of the guidelines from external review, it is no secret that the Agency has been working on this document for many months. Despite numerous requests to the Office of Enforcement & Compliance Assurance (OECA) to review a copy of the draft guidelines, the document has not been made available to us.

There is a real danger that a premature enforcement effort will handicap implementation of the new SSO regulations before they are even released. Despite the progress made during the Federal Advisory Committee (FAC) Subcommittee negotiations, which AMSA has supported and participated in from the beginning, we have a long road ahead until the publication of a final rule. The Subcommittee reached its current level of agreement only

March 15, 2000

Page 2

through open discussions with all parties, leading to a delicate balance between several opposing viewpoints. While OECA was involved in the negotiations, a new enforcement initiative beginning prior to the final rule was never discussed. AMSA fears that the spirit of cooperation that led to the current agreement will be disrupted by the release of the new enforcement guidelines at this time.

By beginning a new SSO enforcement program now, EPA is essentially sending the message that it is not seriously committed to the new regulations. As EPA realizes, implementing a brand new national program will take a considerable amount of time and resources, including a massive effort to educate and inform permitted agencies, conduct collection system studies, prepare short and long term remediation plans, and make the necessary infrastructure improvements. By casting the threat of enforcement over the regulated community prior to the rule's promulgation, EPA is indicating an unwillingness to let the regulatory process work. I urge you to demonstrate EPA's faith in the FAC and the SSO rulemaking process by foregoing new enforcement initiatives, and allowing municipalities to have the benefit of a final rule. Even after publication of the new rule, the timing of enforcement must coincide with the timetables established in the regulations and give proper deference to the longer term nature of most SSO control efforts.

It is critically important that any enforcement effort be consistent with the final regulations and tracks the same compliance standards, timetables, and other regulatory milestones that are contained in the rule. If EPA begins this initiative at this time, there are no guarantees that the standards used to assess compliance will be at all consistent with the final regulations. In fact, there is every reason to believe that any new enforcement action will be based on regulatory expectations that will soon be outdated. More specifically, AMSA's members know from first-hand experience that the compliance standard will be set at total elimination of SSOs — a standard that POTWs have insisted for years is impossible. Continuing the historic emphasis on zero tolerance for SSOs will only handicap municipalities from using watershed management principles in urban wet weather pollution control, an objective that is enshrined in EPA's *Clean Water Action Plan*. Due to the unpredictable nature of SSOs and the high cost of remediation, the Agency must allow local governments every opportunity to target the worst environmental problems first as envisioned in an urban watershed management approach and as embodied in the FAC negotiations to date.

I would be happy to discuss these issues further with you. Please feel free to call me directly at 202/833-4653. Thank you for your consideration.

Sincerely,

A handwritten signature in black ink, appearing to read "K Kirk". The letters are stylized and somewhat cursive.

Ken Kirk
Executive Director