



Association of
Metropolitan
Sewerage Agencies

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October 23, 2003

Mr. Patrick Bradley
Acting Municipal Branch Chief
Water Permits Division
Office of Wastewater Management
Mail Code 4203M
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue, N.W.
Washington, D.C. 20460

Dear Pat,

The Association of Metropolitan Sewerage Agencies (AMSA) appreciates the opportunity to comment on the August 2003 draft *Watershed-Based National Pollutant Discharge Elimination System (NPDES) Permitting Implementation Guidance (Guidance)*. AMSA generally supports the Agency's efforts to tackle water quality issues on a watershed level and is excited to see how a more holistic approach may help achieve further water quality improvements. At the same time the Association wishes to relay several broad concerns that it hopes will be further addressed via EPA's upcoming technical and implementation guidance documents, including the interaction between nonpoint source impacts and controls and watershed-based permits, and the vital importance of ensuring that permitting authorities view publicly owned treatment works (POTWs) as primary drivers of this initiative as it moves from the conceptual to the implementation phase.

As the guidance points out, POTWs in general and AMSA members specifically are leading the way on this issue as evidenced by their participation as "case study" communities. The Association believes that there is great promise in the watershed concept for streamlining the permitting process, saving and sharing resources across a watershed, providing greater opportunities for trading and other market-based approaches, and countless other benefits, in addition to achieving measurable improvements in water quality.

AMSA applauds the Agency's work so far, and looks forward to reviewing the forthcoming implementation guidance and future development of a technical

guidance. Again, while the *Guidance* clearly outlines the basics of watershed permitting, these additional documents will be critical to ensuring we can adequately address the challenges associated with watershed permitting.

AMSA would like to offer the following comments on the watershed permitting concept as described in the *Guidance* based on the experiences of our members who are exploring the use of watershed permits:

Benefits of Watershed-based Approach

- Watershed-based permits allow for integrated watershed monitoring, which is more cost-effective than traditional approaches. Watershed-based monitoring can yield much more relevant data that provides the foundation for sound scientific decision-making. The traditional approach to monitoring for discrete programs or solely at the end-of-pipe (at combined sewer overflow (CSO) or storm water outfalls) without the instream, high resolution water quality and stream flow data is inadequate and more costly in the long-term.
- AMSA believes implementation of total maximum daily loads (TMDL) in urban or urbanizing watersheds, because of the complex nature of these systems, including the multitude of potential sources of impairment, is difficult and costly and probably impossible without a tool like a watershed permit.

Areas Needing Improvement

- The integration of control and/or management strategies and Clean Water Act programs on a watershed basis will ultimately yield greater environmental benefits per unit cost. For municipalities, the *Guidance* should encourage that discrete programs, including CSOs, sanitary sewer overflows (SSO), stormwater, pretreatment, among others, be managed in an integrated fashion based on the receiving stream rather than on end-of-pipe limits, which would allow for a comprehensive evaluation of all sources of bacteria and other pollutants and a mechanism for prioritizing impacts and control strategies. AMSA suggests developing a watershed plan that prioritizes management and controls based on pollutant load reductions and reduction of instream water quality violations – an "internal" pollutant trading approach. For example, projects such as riparian restoration to increase shading, reduce temperatures, increase dissolved oxygen solubility, and shift the algal community to one that can be consumed by aquatic insects, may provide better immediate and long-term benefits than focusing entirely on traditional CSO and SSO controls.
- AMSA believes that the primary road block to a true watershed approach is a resistance to change among state, regional, and federal regulators. A comprehensive watershed approach will require permit writers to move beyond doing business as usual to find new and innovative ways to meet water quality goals. Watershed permits will not be truly integrated until they can address all potential pollutant sources and include a variety of solutions, including less traditional approaches (i.e., flow augmentation, habitat restoration, physical re-aeration, etc.).

- It is important that EPA clarify the issue of liability within watershed permits. Although the *Guidance* states that “it is important to consider how liability for any violations will be assessed,” and offers a plethora of liability options, this is an issue where EPA must be clear in order to ensure broad POTW buy-in. Additionally, this is an area where the Agency and permitting authorities must listen carefully to POTWs in order to provide them with a sufficient sense of legal/financial security to embark on watershed permitting.
- AMSA believes that the *Guidance's* focus on section 319 grants as a method to ensure nonpoint source pollution reductions — and, as such, potential reductions in point source dischargers' permit limits — is a benefit, but is one that already exists, at least to some extent, in the current TMDL and permitting environment. AMSA encourages EPA to continue to think creatively about how to engage nonpoints via innovative, market-based programs to provide added incentive for point sources to move toward watershed permitting.
- AMSA believes EPA needs to address the fact that many permitting authorities are already facing an enormous permit backlog and ensure that this backlog or other administrative burdens do not hamper efforts to develop watershed-based permits. AMSA believes that in many respects, watershed-based permitting could be a solution to permit backlogs if permitting authorities remain willing to work with those entities, including POTWs, that take the lead and initiate watershed permitting efforts.

Finally, the lessons learned and experiences of the watershed permitting case study communities will benefit EPA's development of additional guidance and future watershed permitting efforts. AMSA encourages EPA to use these lessons and experiences, as noted in Section Four of the *Guidance*, to continually improve the concept of watershed permitting.

Again, AMSA appreciates the opportunity to comment on this critical effort. If you have any questions do not hesitate to contact me at 202/833-9106 or chornback@amsa-cleanwater.org.

Sincerely,



Chris Hornback
Director, Regulatory Affairs