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April 22, 2002

Air and Radiation Docket and Information Center (6102)
Attention Docket Number A-96-46
U.S. Environmental Protection Agency
1200 Pennsylvania Ave., N.W.
Washington, DC 20460

Re: *National Emission Standards for Hazardous Air Pollutants; Publicly Owned Treatment Works, Proposed Amendments, 67 Fed. Reg. 13,496 (March 22, 2002)*

Dear Sir or Madam:

The Association of Metropolitan Sewerage Agencies (AMSA) is pleased to provide comments on the U.S. Environmental Protection Agency's (EPA's) *National Emission Standards for Hazardous Air Pollutants (NESHAP); Publicly Owned Treatment Works, Proposed Amendments*. Founded in 1970, AMSA represents the interests of over 260 of the nation's publicly owned wastewater utilities (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. AMSA has played a key role in collecting data and information related to Clean Air Act (CAA) POTW regulations, including the October 1999 POTW maximum achievable control technology (MACT) standards.

AMSA supports EPA's proposed amendments to the POTW MACT for area source industrial POTWs. AMSA also supports EPA's proposal to set generally available control technology (GACT) under the CAA's § 112(k) urban air toxics program at "no control" for area source new or existing non-industrial POTWs. Finally, we support EPA's proposal to require area source industrial POTWs to comply with the same MACT requirements of major source industrial POTWs, accompanied by an exemption from the CAA's Title V permitting requirements.

The following comments provide additional detail regarding AMSA's position on the issues addressed in EPA's proposed amendments.

Proposed POTW MACT Amendments for Industrial POTWs

In the proposal, EPA recommends changes to the POTW MACT for “industrial POTWs” as a result of litigation instituted by the Pharmaceutical Research and Manufacturers of America (PhRMA). Industrial POTWs accept waste streams from industrial dischargers regulated by a NESHAP, and provide the appropriate NESHAP treatment and controls as an agent for the industrial discharger. 40 C.F.R. 63.1595. As a result, the industrial discharger complies with its NESHAP via the treatment and controls located at the POTW. *Id.*

EPA’s proposal would rescind 40 C.F.R. 63.1580(c) which states “[i]f an industrial major source complies with applicable NESHAP requirements by using the treatment and controls located at your POTW, your POTW is considered to be a major source regardless of whether you otherwise meet the applicable [major source] criteria.” EPA also proposes to use its authority under CAA § 502(a) to amend 40 C.F.R. 63.1592 and exempt area source industrial POTWs from the CAA Title V permitting requirements (40 C.F.R Part 70). EPA may grant such exemptions where compliance with the CAA permitting requirements is impracticable, infeasible, or unnecessarily burdensome on the regulated party.

AMSA supports both of EPA’s proposals. Without modification, 40 C.F.R. 63.1580(c) improperly treats area source industrial POTWs as major sources and subjects them to CAA Title V permitting requirements without regard to their hazardous air pollutant (HAP) emissions. EPA’s proposal eliminates this arbitrary classification and the unnecessary permitting requirements for area source industrial POTWs. EPA’s proposal correctly recognizes that requiring Title V permits for area source industrial POTWs is “largely superfluous.” Industrial dischargers to area source POTWs are subject to CAA Title V permitting requirements. The wastewater treatment requirements under the industrial discharger’s MACT will be included in that facility’s Title V permit. Requiring an area source POTW to obtain an essentially duplicative Title V permit is unnecessarily burdensome.

AMSA suggests that EPA consider adding a provision to these POTW MACT amendments that encourages the discharging industry and the POTW to enter an agreement in which the parties clearly state that the POTW will fulfill the discharging industry’s MACT wastewater treatment obligations. This agreement would clarify that the POTW would now be classified as an industrial POTW. Such an agreement could eliminate misunderstandings between parties and regulators regarding compliance obligations.

Proposed Area Source Controls for POTWs

In the July 19, 1999 *Federal Register*, EPA listed POTWs as an area source category to be evaluated under CAA § 112(k) due to their emissions in urban areas of certain HAPs of concern. *See* 64 *Fed. Reg.* 38,706, 38,721. CAA § 112(d)(5) allows EPA to control area HAP sources via MACT or GACT. AMSA notes that EPA has proposed a rule of national applicability to all POTWs under CAA § 112(k). We question whether EPA has the statutory authority to apply regulations under this particular CAA section – designed to address Congress’ specific concerns about high air toxics concentrations in urban areas – to rural POTWs. The regulatory impact of

EPA's decision to propose a national rule on the majority of the POTW community is not great, as EPA has proposed no control as GACT for non-industrial area source POTWs, and the requirements of the POTW MACT for industrial area source POTWs. AMSA, however, does not concede that this approach is tenable under the CAA for POTW-related area source categories that EPA may regulate in the future, such as sewage sludge incinerators, and reserves its right to raise this legal issue in any subsequent rulemakings.

AMSA now offers the following comments regarding EPA's proposed area source controls for non-industrial and industrial POTWs.

1. Area Source Non-Industrial POTWs

AMSA supports EPA's proposal that new and existing non-industrial area source POTWs should be subject to GACT of "no control." AMSA also supports EPA's proposal to exempt non-industrial area source POTWs from the POTW MACT notification requirements at 40 C.F.R. 63.1590. We agree with EPA's finding that HAP emissions from existing area source non-industrial POTWs are typically low, that existing area source non-industrial POTWs do not have HAP controls, and that the cost of adding HAP controls to area source non-industrial POTWs would be prohibitively high. See *67 Fed. Reg.* at 13,498. The same facts would be true for new non-industrial area source POTWs and AMSA also supports EPA's proposal of GACT of no control for these new POTW sources.

2. Area Source Industrial POTWs

EPA proposes that area source industrial POTWs should meet the same control requirements as major source industrial POTWs. This means area source industrial POTWs would have to comply with the wastewater emission standards and control requirements of the MACT applicable to the industry from which the area source industrial POTW accepts wastewater and provides treatment. As noted above, EPA would exempt these area source industrial POTWs from CAA Title V permitting requirements. AMSA supports EPA's proposal as a reasonable, balanced approach to controlling HAP emissions from area source industrial POTWs.

Conclusion

AMSA appreciates the opportunity to comment on EPA's proposed amendments to the POTW MACT and proposals for POTW area sources under CAA § 112(k). If you have any questions regarding AMSA's comments, please do not hesitate to contact me at 202/533-1803 or at adunn@amsa-cleanwater.org.

Sincerely,



Alexandra Dapolito Dunn
General Counsel