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December 1, 1997

DEC 1 11 55 AM '97

Federal Election Commission  
Office of the General Counsel  
999 E Street, N.W.  
Washington, D.C. 20463

Re: Request for an Advisory Opinion

Dear Sir or Madam:

On behalf of the Association of Metropolitan Sewerage Agencies ("AMSA"), we are writing to request an advisory opinion pursuant to the Federal Election Campaign Act and Section 112.1 of the Federal Election Commission's (the "Commission's") Rules. More specifically, we would like the Commission's opinion whether a political action committee that is organized and operated in the manner described below will be considered a separate segregated fund of AMSA or whether, as intended, it will be considered a "non-connected" committee.<sup>1</sup>

AMSA is a non-profit trade association organized to advance the interests of the Nation's publicly owned treatment works ("POTWs"). With approximately 180 public members and another 40 subscribers, AMSA is involved in a broad array of environmental matters. These include the entire scope of ecosystem issues associated with the implementation of the Clean Water Act and Clean Air Act as well as the laws related to the cleanup of hazardous waste sites and the protection of endangered species. In addition to hosting several technical conferences and policy forums each year, AMSA also provides its members and other interested stakeholders with timely reports, publications, and surveys.

AMSA has not established a separate segregated fund. A group of individuals that will include AMSA's Executive Director, however, intends to organize a non-connected political action committee that will be established, operated, governed, and financed

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<sup>1</sup> See 2 U.S.C. § 431(7); 11 C.F.R. § 100.6(a).

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independent of AMSA. This committee will be named the Clean Water Political Action Committee ("CWPAC") and be incorporated under the laws of the District of Columbia. In establishing this committee, these individuals will not act as agents of AMSA or its members. Rather, they will organize and establish CWPAC in their capacity as individuals. All of the initial costs of organizing CWPAC will be covered by contributions from CWPAC's organizers. The initial Board of Directors will include: only one individual who is an employee, officer or director of AMSA; two individuals who are representatives of AMSA members; and two individuals who are neither employed by AMSA nor by AMSA members.

Once organized, the primary goal of CWPAC will be to support the nomination of qualified candidates to federal office in the United States and to influence environmental legislation. In particular, CWPAC will focus on the reauthorization of the Clean Water Act, including non-point source pollution control, watershed management, funding for the clean water program, and other issues related to the clean water program. CWPAC also is considering publishing a newsletter.

In connection with these efforts, CWPAC will solicit otherwise permissible contributions from all members of the general public. Although this may include individuals associated with members or subscribers of AMSA, CWPAC will not limit its solicitation efforts to such persons. To the contrary, CWPAC will actively solicit contributions from a wide variety of individuals with an active interest in clean water issues, including, but not limited to, environmental consultants, contractors, equipment manufacturers, ratepayers, regulators, and persons affiliated with the more than 18,000 POTWs that are not AMSA members.

In soliciting contributions, CWPAC also will not imply any connection with AMSA. For example, CWPAC will not use AMSA's letterhead for solicitation purposes. Nor will CWPAC use AMSA's membership list for solicitation purposes, unless the list is made available to other organizations for the same charge and on the same terms and conditions.<sup>2</sup> CWPAC also will not conduct any fundraising in connection with AMSA events.

CWPAC's draft bylaws establish that it will be governed and operated entirely independent of AMSA or any other organization. The bylaws provide that a majority of the individuals that serve on CWPAC's Board of Directors at any given time may not be employed by AMSA. Thus, although some of the individuals that serve on CWPAC's board may be employed by AMSA, such employment will not be a requirement for board membership. As

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<sup>2</sup> See 11 C.F.R. § 100.7(a)(1).

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noted above, only one of the individuals serving on CWPAC's initial board of directors will be an officer, director, or employee of AMSA. CWPAC expects that its Board will diversify as support for its operations grow. CWPAC's Board will determine which candidates for federal office will receive support from the committee.

CWPAC also will be financially independent of AMSA. CWPAC will not lease space from AMSA or from the entity that leases space to AMSA. Rather, CWPAC has made arrangements for office space and facilities at a separate location and will be responsible for the rent. CWPAC also does not expect to receive administrative services from AMSA. In the event that CWPAC does obtain any support from AMSA, such as the use of AMSA's facilities, it will pay the usual and normal charges for such support within a commercially reasonable period of time.<sup>3</sup> All of CWPAC's operating expenses will be paid solely from the contributions that it receives.

The Commission has previously permitted individuals associated with membership organizations to form non-connected political committees that are operated and financed independent of the membership organizations.<sup>4</sup> Consistent with these opinions, the Commission should conclude that AMSA will not be deemed the connected organization of CWPAC.

If you have any questions concerning this request or require additional information, please contact the undersigned.

Sincerely,

*Herbert E. Marks/Bjm*

Herbert E. Marks

Brian J. McHugh

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<sup>3</sup> To the extent that CWPAC receives from AMSA any goods or services that AMSA does not provide in its ordinary course of business, CWPAC will pay a commercially reasonable rate for such good or services in advance. See 11 C.F.R. § 114.9.

<sup>4</sup> See Advisory Opinions 1997-15; 1991-37; 1984-12.

**DRAFT**

**BYLAWS**

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**ARTICLE I**

**Name and Definition**

The name of this Committee is the Clean Water Political Action Committee, (the "Committee" or "CWPAC"). CWPAC is a voluntary, non-profit, political action committee, incorporated for liability purposes only under the laws of the District of Columbia. The Committee is an independent organization and is not affiliated with a particular political party, candidate, or political action committee. Nor is CWPAC connected with any organization. CWPAC shall be established, operated, governed, and financed entirely independent of the Association of Metropolitan Sewerage Agencies ("AMSA").

**ARTICLE II**

**Principal Office and Address**

The Principal office of CWPAC shall be located at 1747 Pennsylvania Avenue, Suite 420, Washington, D.C. or such other address as may, from time to time, be designated as the mailing address for the Treasurer of CWPAC.

**ARTICLE III**

**Purposes and Powers**

**Section 1 -- Purposes**

The purposes of the Committee are:

- (1) To improve government by encouraging individuals to participate in the political process;
- (2) To educate individuals about important environmental issues, the nature and actions of their government, and the records of office-holders and candidates; and
- (3) To support the election of qualified candidates for federal office and to influence environmental legislation.

## Section 2 -- Powers

To carry out the foregoing purposes, CWPAC is empowered:

- (1) To solicit otherwise lawful contributions from any individual, group or committee, in order to further the nomination and election of candidates for federal and non-federal elective public office whose views, voting record, or issue positions indicate a positive orientation toward some or all of the purposes stated herein, and to do such other things not inconsistent with the foregoing as may be necessary or desirable for the attainment of these purposes. All solicitations will follow the rules and guidelines established by the Federal Election Commissions.
- (2) To make, expend, or forward contributions, within the limits imposed by law, to candidates for federal and non-federal elective office, to political committees supporting such candidates, and to national, state, and local committees of national political parties.
- (3) To maintain records, file reports, and engage in other activities required by law.
- (4) To engage in educational activities concerning issues of interest to the Committee.

## ARTICLE IV

### Membership, Dues and Contributions

#### Section 1 -- Members

Active and sustaining memberships shall be available to all individuals that are eligible to make contributions under applicable law. Membership in CWPAC will not be limited to individuals that are associated with AMSA or any other organization.

#### Section 2 -- Candidates for Membership

Candidates for membership shall be subject to approval by the Board of Directors and to the payment of the prescribed minimum dues annually.

#### Section 3 -- Dues

The dues shall be established annually by the Board of Directors, which shall have the authority to waive the dues for good cause.

## Section 4 -- Contributions

Contributions to CWPAC shall be subject to the approval of the Board of Directors, and such funds shall be disbursed at its direction in accordance with Article III.

## ARTICLE V

### Board of Directors

#### Section 1 -- Composition

The Board of Directors shall consist of no fewer than five (5) individuals who are members in good standing of CWPAC. At no time shall a majority of the individuals serving on the Board of Directors be employees of AMSA.

#### Section 2 -- Vacancies

Any vacancy occurring in the Board of Directors and any directorship to be filled by an increase in the number of directors, shall be filled by a vote of the Board of Directors.

#### Section 3 -- Duties

The Board of Directors shall have general supervision and control over the affairs and funds of the Committee and shall establish and carry out all policies and activities of the Committee. The members shall serve without compensation.

#### Section 4 -- Board Action

The act of a majority of the directors present at a meeting at which a quorum is present shall be the act of the Board of Directors.

## ARTICLE VI

### Officers

#### Section 1 -- Designations, Election, Terms

The general officers of the Committee shall be a Chairman, a Secretary, a Treasurer and an Assistant Treasurer. The Chairman and Secretary shall be elected by the Board of Directors from among the members of the Board at its annual meeting, and shall serve until the next annual meeting. No Chairman or Secretary shall serve for more than five (5) terms. The Treasurer and Assistant Treasurer shall be appointed by the Board and shall serve at its pleasure.

## **Section 2 -- Additional Officers**

**Additional officers may be appointed from time to time by the Board to hold office for such period of time, to have such authority and to perform such duties as the Board may prescribe.**

## **Section 3 -- The Chairman**

**The Chairman shall be the chief executive officer of the Committee and shall be an ex-officio member of all committees. The Chairman shall preside at the meetings of the Board of Directors and shall appoint all chairmen and committee members subject to the approval of the Board of Directors.**

## **Section 4 -- Secretary**

**The Secretary shall perform such duties as are customarily performed by the Secretary of a committee or as shall be prescribed by the Board of Directors. In the absence of the Chairman the Secretary shall preside at meetings of the Board of Directors. Should the Chairman fail to act for any reason, the Secretary shall automatically become acting Chairman until the next meeting of the Board.**

## **Section 5 -- Treasurer**

**The Treasurer or Assistant Treasurer shall perform such duties as are customarily performed by the Treasurer of a committee or as shall be prescribed by the Board of Directors. The Treasurer shall: be the custodian of the funds and the records of the Committee; collect all duties and other funds of the Committee; deposit all contributions in the Committee's bank account(s) as required by law; disburse all monies of the Committee in accordance with the instructions of the Board of Directors; keep full and accurate accounts; present financial statements; and prepare, sign and file all reports to governmental authorities required by law or directed to be filed by the Board of Directors.**

## **Section 6 -- Assistant Treasurer**

**If the Treasurer is absent or disabled, then the Assistant Treasurer shall perform the Treasurer's duties until the Treasurer is no longer absent or disabled.**

## **Section 7 -- Resignations and Removal**

**Any officer may resign at any time by giving written notice to the Chairman of CWPAC. Any officer may be removed at any time with or without cause by the Board.**

**ARTICLE VII**

**Meetings**

**Section 1 -- Annual Meetings**

**The Annual Meetings of the Board of Directors shall be held at such time as may be determined by the Board.**

**Section 2 -- Special Meetings**

**Special meetings of the Board of Directors shall be called by the Chairman on his own initiative, or upon written request of three members of the Board. Notice of each special meeting shall be delivered in writing or orally to each member of the Board not later than the day before the meeting. Such notice shall state the time, place, and purpose of the meeting.**

**Section 3 -- Quorum**

**At least one-half of the directors then sitting shall constitute a quorum.**

**Section 4 -- Board Action Without Meeting**

**The Board of Directors may act without a meeting through a telephone or written poll of its membership. The results of the pole must be filed with the Secretary.**

**Section 5 -- Record of Proceedings**

**The Board of Directors shall maintain a record of its proceedings.**

**ARTICLE VIII**

**Committees**

**The Executive Committee shall consist of the general officers of the Committee, namely, the Chairman, Secretary, Treasurer and Assistant Treasurer.**

**The Committee shall establish any additional committees as the Board of Directors determines are necessary or desirable for carrying out its purposes and objectives. The Chairman and members of such committees shall be appointed by the Chairman subject to approval of the Board of Directors.**

**ARTICLE IX**

**Books, Records and Finances**

**Section 1 -- Books and Records**

**The Committee shall keep correct and complete books and records of account. The Committee's books of account shall be audited at least once a year. The auditor shall be named by the Chairman, with the approval of the Board of Directors.**

**Section 2 -- Deposits**

**The funds of the Committee shall be deposited to the credit of the Committee in such banks or other depositories as the Board of Directors may select.**

**Section 3 -- Costs**

**The costs of operating the Committee will be paid solely by contributions. The Committee will not receive any direct or indirect financial assistance from AMSA.**

**Section 4 -- Execution of Instruments**

**When CWPAC has authorized the execution of any pledge, contract, conveyance, loan, or other instrument, the Chairman of CWPAC or the agent designated by the Chairman may execute the instrument in the name and on behalf of CWPAC.**

**ARTICLE X**

**Amendments**

**These articles may be amended from time to time by a majority vote of the Board of Directors.**

*Squire, Sanders & Dempsey*

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December 11, 1997

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Federal Election Commission  
999 E Street, N.W., Room 657  
Washington, D.C. 20463

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FEDERAL ELECTION COMMISSION  
DEC 11 1997

Re: Association of Metropolitan Sewerage  
Agencies -- Advisory Opinion Request

Dear Mr. Levin:

In response to your recent inquiry concerning the advisory opinion request filed by this Firm on behalf of the Association of Metropolitan Sewerage Agencies ("AMSA"), I am writing to confirm (1) that AMSA and the Clean Water Political Action Committee ("CWPAC") will not have any common employees and (2) that two of the individuals serving on CWPAC's Board of Directors will not be employed by AMSA or by any AMSA members or subscribers. As you requested, I also am enclosing a copy of CWPAC's draft bylaws.

Please let us know if you have any further questions.

Sincerely,

*Brian McHugh*

Herbert E. Marks

Brian J. McHugh

Enclosure