



The June 13, 2002 meeting will be held at:

**Holiday Inn Oakland Airport  
500 Hegenberger Road  
Oakland, CA 94621  
(510) 562-5311**

**General Meeting & Water Committee – Athletics 1&2, Warriors 1  
Land Committee – Coliseum 3  
Air Committee - Boardroom**

# TRI-TAC MEETING

THURSDAY, JUNE 13, 2002

9:00 A.M. – 12:00 P.M.

HOLIDAY INN OAKLAND AIRPORT  
500 HEGENBERGER ROAD  
OAKLAND, CA 94621  
(510) 562-5311

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## 9:00 A.M. – GENERAL MEETING

## ATTACHMENTS

1. INTRODUCTIONS
2. APPROVAL OF THE MAY 9, 2002 –  
TRI-TAC MEETING SUMMARY/ACTION ITEMS PAGES 6-15
3. FUTURE MEETING SCHEDULE PAGE 16-17
4. TRI-TAC ROSTER PAGES 18-23
5. COMMITTEE ASSIGNMENTS PAGE 24
6. COMMITTEE ISSUE SUMMARIES PAGES 25-51
7. OTHER BUSINESS/NEW ISSUES

## 9:00 A.M. – 11:30 A.M. – COMMITTEE MEETINGS

ALL COMMITTEES WILL MEET SEPARATELY

## 11:30 A.M. – GENERAL MEETING REPORT

### COMMITTEE REPORTS

- A. AIR
- B. LAND
- C. WATER

12:00 P.M. - ADJOURN

# **Air Committee Agenda Items**

- 1. Review of Annual Meeting w/ARB**
- 2. Need for Another Meeting w/ARB RE: PM2.5 Std., Formaldehyde Emissions from Digester Gas Fueled Engines, etc. (FTIR/CARB 430)**
- 3. ARB Stationary Diesel Engine Retrofit Regulation**
- 4. SCAQMD Proposed Rule 1133 Regulating Composting Operations & SCAP Aerated Static Pile Compost Emissions Study - Update**
- 5. WERF Odor Study - Update**
- 6. New PM 2.5 Standard**
- 7. ARB's Enhanced Vapor Recovery Program**
- 8. Walk-in Topics**

**LAND COMMITTEE AGENDA**  
**June 13, 2002**

	<u>Who</u>	<u>Time</u>
<b><u>A. Agenda Review and Approval</u></b>		
<b><u>B. Committee Action Items</u></b>		
1. Biosolids Recyclers of CA, status, flyer	Ed McCormick/Bobbi Larson	30 min.
2. SWRCB Biosolids Final EIR & Lawsuit	Layne Baroldi/Bobbi Larson	5 min.
3. POPS/Biosolids Calendar for EPA/CASA	Bob Gillette/Layne Baroldi	5 min.
4. Model Biosolids Contract/RFP	Ann Briggs	5 min.
5. 40CFR 503 Dioxin Regulations/Data	Diane Gilbert	5 min.
6. Radioactivity Testing, Dose Modeling & Guidance	Diane Gilbert	5 min.
7. CIWMB Compostable Organic Mtls. Regs.	Dianne Gilbert	10 min.
8. SCAQMD Proposed Rule 1133-Composting Opns.	Layne Baroldi	5 min.
9. Sierra Club Position Paper	Layne Baroldi	5 min.
10. DTSC Mercury Regulations	Layne Baroldi	5 min.
11. AB 2356	Layne Baroldi	5 min.
<b><u>C. Information and Discussion Items</u></b>		
Local Ordinances		
• Kern County	Layne Baroldi	5 min.
• Kings County	Layne Baroldi	5 min.
• San Luis Obispo County	Bob Gillette/Diane Gilbert	5 min.
• Riverside County	Anne Briggs/Layne Baroldi	5 min.
• Synagro Facility	Anne Briggs/Layne Baroldi	2 min.
• Alameda County Composting	Ed McCormick	2 min.
New Biosolids Contracts	Ed McCormick	5 min.
NAS Review of Sewage Sludge Regulations	Layne Baroldi/Mike Moore	10 min.
OIG Report	Layne Baroldi	5 min.
UBC Dioxin Study	Layne Baroldi	5 min.
<b><u>E. Other</u></b>	All	<u>10 min.</u>
		120 min.

**WATER COMMITTEE AGENDA**  
**June 13, 2002**

	<b>Estimated Duration (minutes)</b>	<b>Further <u>Information</u></b>
<b>A. Committee Action Items</b>		
1. Endocrine Disruptors and Pharmaceuticals	5	
2. Wet Weather/Blending Guidance Comments	5	Attachment 1
<b>B. Updates</b>		
3. NPDES Permitting	20	
➤ EBMUD		
➤ Vacaville		
➤ Napa		
➤ City of San Diego		
➤ LACSD		
4. 303(d) List and Total Maximum Daily Load Issues	25	
➤ State Litigation		
➤ SWRCB/RWQCBs 303(d) Listing Process		
• CASA/Tri-TAC Comments		Attachment 2
• SWQTF Comments		tritac.org *
• USEPA Comments		tritac.org *
➤ Nonpoint Sources: Prosolino 9 <sup>th</sup> Circuit Court of Appeals Decision		tritac.org *
➤ Notice of Extension for 303(d) Data Collection		Attachment 3
5. Water Quality Standards	30	
➤ Effluent Trading – EPA Draft Policy		Attachment 4 & tritac.org *
➤ Nutrient Criteria Development by EPA		
➤ EPA Symposium on Designated Uses		
➤ Draft Strategy for Water Quality Standards and Criteria		Attachment 5 & tritac.org *
➤ Mercury Rule from DTSC		
➤ Ocean Plan Update		
6. Sanitary Sewer Overflows	10	
➤ AMSA May 19 SSO Work Group meeting		
7. Enforcement	15	
➤ Mandatory Minimum Penalty Reform		Attachment 6
<b>C. Announcements</b>		
8. New State Water Quality Control Board Member	5	Attachment 7
9. USEPA Draft Report: Paying for Water Quality: Managing Funding Programs To Achieve the Greatest Environmental Benefits; Report to Congress	2	tritac.org *
10. U.S. Supreme Court declined to hear 4 <sup>th</sup> Circuit Decision on Piney Run "Permit Shield" Case	2	
11. CalEPA Report: Environmental Indicators for California	1	tritac.org *
Total estimated duration	120	

\* Attachments are in electronic format and can be found by going to <http://www.tritac.org> and looking at either the whole package or under the subheading "attachments".

MEETING SUMMARY  
THURSDAY, MAY 9, 2002  
HILTON ONTARIO AIRPORT  
ONTARIO, CA

**SUBCOMMITTEE ISSUES AND GENERAL MEETING**

THE FOLLOWING MEMBERS AND INTERESTED PARTIES WERE PRESENT:

Monica Oakley, LWA	Tom Grovhoug
Jim Colston, OCSD	Gail Chesler
Dave Williams, EBMUD	Tom Hall
Sharon Landau, LACSD	Jackie Kepke
Don Rebeck, SCAP	Joyce Clark, MWD
Ray Miller, SCAP	Steve Medberry, SFPUC
Rod Cruze, City of Riverside	John Schroeter, EBMUD
Bonnie Teaford, City of Burbank	Anant R. Mokashi, City of Los Angeles
Rodney Anderson, City of Burbank	Jack Nelson, Yucaipa Valley WD
Sharon Green, LACSD	
Chuck Weir, EBDA	
Bobbi Larson, CASA	
Margie Nellor, LACSD	
Jerry Troyan, SRCSD	
Ruben Robles, SRCSD	
Ben Horenstein, EBMUD	
David W. Tucker, San Jose	
Stacey Aldstadt, San Bernardino Water	
Valerie Housel, San Bernardino Water	
Roger W. Turner, EMWD	
Diane Gilbert	

**Announcements and Discussion Items**

**Approval of Last Meeting's Action Items**

**Future Meeting Schedule**

**Announcements**

**AIR COMMITTEE MINUTES FROM APRIL 11, 2002 MEETING – DANIEL MCGIVNEY AND JAY WITHERSPOON**

1. **Diesel Engine Survey** – The air committee has completed the survey for diesel engines and is now reviewing the data in support of our upcoming meeting with the ARB. At a workshop held last Thursday, the ARB released draft rule language for the retrofit of stationary diesel engines. A second draft will be out in early June. Right now we're putting together our issues and discussion topics and we're planning to meet with ARB in mid to late May. The draft rule requires all existing stationary engines to meet new emission rates either by retrofit or replacement of the existing engine or, if you have purchased a new engine over the last 2-3 years, the engine may already be able to meet the emissions standards and then you just have to show manufacturer data as proof, as long as it is available.
2. **ARB Stationary Diesel Engine Retrofit Regulation** – The ARB is developing air toxic control measures (ATCMs) which will require the retrofit of most diesel engines to include stationary and portable engines, and those engines driving on- and off-road vehicles. If a retrofit is required, a baseline emissions test and a post retrofit control emissions test must be done. Each test could cost approximately \$6,000 per engine (for a total of \$12,000). The stationary engine retrofit ATCM applies to engines 50 horsepower and above. One exemption is written into the draft regulations right now but no one could meet the requirements to get the exemption. Basically, you have to operate the engines less than 50 hours per year and there can be no receptors located within a radius of 5 miles. The exemption as written isn't very useful at this point in time. There is also a draft ATCM out right now for refuse vehicles which could be viewed as a possible model rule for other affected fleet vehicles.
3. **AB2479 Response to September 11** – This bill requires sources to do alternative technology assessments – terrorism risk reduction audits to address security issues. Cal EPA asked to look at all categories and rank. Chlorine is usually high on the list. CASA is opposing this bill.
4. **Toxic Air Pollutant Inventory** – There was a recent workshop on a new program for AB2588 (Air Toxic Hot Spots), which is called "HARP" for Hot Spots Analysis and Reporting Program. OEHHA is developing new risk assessment guidelines. ARB is packaging all of this up so that you will be able to do your modeling, reporting, and analysis all in one package. The biggest significant issue is the risk assessment procedure. The new procedures for air cancer risk will increase a facilities risk by as much as 30% which could trigger other regulatory requirements. We will discuss identified issues regarding this new program with the ARB.
5. **BACT Standards** – Once one BACT standard is established in one area of the country major sources in other areas of the country can be required to meet that standard when permitting equipment. The South Coast has now released for a 30-day public comment period, a new BACT standard for emergency diesel engines that require the use of ultra low sulfur fuel (sulfur content <15 ppm). This means that in

the future, anyone who permits a new stationary emergency generator (powered by a diesel engine) or modifies an existing one, could be required to use ultra low sulfur fuel. Currently ultra low sulfur fuel is not being produced in any large amount and would have to be purchased directly from the refinery manufacturing it at a higher cost. Additionally, there may be infrastructure costs involved since you cannot store this fuel in a tank previously holding regular diesel fuel without first cleaning it somehow.

**LAND COMMITTEE MINUTES FROM MAY 9, 2002 MEETING**  
**LAYNE BAROLDI AND ROBERT GILLETTE**

**Committee Action Items**

1. **Regional Biosolids Organizations(s)** – Ed McCormick has worked very hard with the other members of this committee to get this organization going. They worked with Bobbi Larson to prepare a letter to the CASA Executive Committee that developed the entire organization. The committee also prepared a second letter that went to EPA requesting funding. CASA's Executive Committee approved, in concept, the idea of a regional biosolids organization tentatively named the Biosolids Recyclers of California (BRC). The next step is for CASA to develop the funding for BRC.  
**Contacts: Ed McCormick of EBMUD and Bobbi Larson of CASA**
  
2. **SWRCB Biosolids Final EIR & Lawsuit** – The Kern County and Delta Water Agency briefs were submitted on May 2nd. CASA's brief is due on June 2<sup>nd</sup>. The court date has not been set.  
**Contacts: Layne Baroldi of OCSD and Bobbi Larson of CASA**
  
3. **Dioxin** – The World Health Organization and USEPA have quite different findings related to dioxins. As a result of these differences, Congress has asked for further review. EPA is trying to figure out how to resolve these differences. EPA has decided to go through both internal peer review and national peer review of the regulations to try to achieve consensus as to what dioxin limits should be. As a result of law suits, EPA was originally directed by court orders to have the dioxin regulations adopted by December 2001. This date was extended until March 2002, and has been recently extended until October of 2003 by agreement with the parties of the law suit.  
**Contact: Diane Gilbert of the City of LA**
  
4. **CIWMB Composting Regulations** – We are putting together a letter to the CIWMB requesting that the selenium concentration limit be raised from 36 mg/kg to the current 503 regulation limit of 100 mg/kg. The letter has to be in by May 14, 2002. (Note: Due to Tri-TAC's desire not to be a lobbying organization, this was subsequently changed and CASA sent in the letter)  
**Contact: Diane Gilbert of the City of LA**
  
5. **AB2356** – This is proposed legislation dealing with pesticides in compost and specifically chlopirolid now. This law will help to regulate chlopirolid, study it, and determine what the problems are and what ought to be done to keep it and other pesticides from causing problems with compost. We encourage everyone to get copies of the bill, review it, and support the bill. It hasn't been moved to committee yet, but it is close to going to the appropriations committee for hearing and we need to support this bill.  
**Contacts: Layne Baroldi of OCSD**

6. **South Coast AQMD PR 1133** – The AQMD recently held a workshop on PR1133. The AQMD broke this proposed rule into three basic phases. The first phase will regulate biosolids composting and it appears that they will require enclosure of the active composting and possibly full enclosure of curing and storage. In addition, the AQMD is starting to look into regulating odor, noise, and vibration. The measurement of these associated parameters has been added to the SCAP study of composting. In addition, the AQMD is also saying that they're looking at requiring negative pressure aerated static pile inside an enclosed facility. This would be regulating the techniques to meet their requirements. Finally, it appears that the AQMD is moving ahead with this Phase 1 before SCAP will have a chance to complete the study and present all of the data developed for them. It would make a lot of sense for the AQMD to hold off on the action until at least the SCAP studies are complete.

It appears that the final regulations will not be based on their technical evaluation, it will all be political. Based on this, there is a strong need for political pressure to forestall the issue of enclosing the curing and storage, stop the evaluation of odor, noise, and vibration that are not under the AQMD's jurisdiction, and not dictate processes to achieve requirements.

**Contacts: Dan McGivney of EMWD or Layne Baroldi of OCSD**

7. **DTSC Mercury** – It appears that DTSC will revise their proposed approach to regulating mercury in the environment. We are waiting to see what new regulations or new proposed approach will be.

**Contacts: Layne Baroldi of OCSD, Margie Nellor of LACSD**

### **Information and Discussion Items**

8. **Local Ordinances**

- **Kern County** – The lawsuit briefing dates are being postponed. The summary judgment and motions have been postponed until May 22. It appears that the June trial date will also be moved back.

**Contacts: Layne Baroldi of OCSD**

- **Kings County** – There's a lot of action in Kings County. This includes an appeal of the ruling on CEQA, Orange County is filing an appeal on the Board decision to not extend their use of Class B biosolids, and McCarthy Farms is asking for an extension of their use of Class B application. There is also a composting facility that is presently going through the CEQA process. Finally, there are hearings on the dairy elements of programmatic EIR where pathogen issues are or should be related biosolids.

**Contacts: Layne Baroldi of OCSD**

9. **National Academy of Science** – It appears that the study will be out at the end of July. We need to make sure that we're ready to push to get further research if needed to respond to anything that the new study indicates needs to be looked at.  
**Contacts: Mike Moore of OCSD**

# WATER COMMITTEE MINUTES FROM MAY 9, 2002 MEETING

## JIM COLSTON AND MONICA OAKLEY

### A. Committee Action Items

1. **303(d) List Comments** – There will be an afternoon session where we will discuss in more detail some of the specific concerns that you have about your own water bodies. We will have a chance to discuss and select some water bodies that, for better or worse, represent comments that we want to make to SWRCB. Bobbi Larson has committed to the first cut of our comment letter then she will send out for the water committee to review and provide comments on next week. She needs comments no later than Monday. The letter will be submitted by the original comment due date.
2. **FOG Survey** – The FOG workgroup has been hard at work and recently finalized a questionnaire for the members of the workgroup. The idea is to get a sense of the type of information that is being collected, and to determine if sufficient information is being collected to make some preliminary conclusions about whether or not there are any commonalities regarding grease blockages. We're going to discuss the survey at our June 6 meeting at the Hyperion Wastewater Treatment Plant. Contact Monica Oakley if you want more information. The survey is due to Monica Oakley on June 3.

The website clearing house has 55 documents related to grease and we've split it into specific categories. The website can be accessed through tri-tac.org.

3. **Endocrine Disruptors and Pharmaceuticals** – We put out a request to see if there was interest in this issue and we received a good response. There is quite a bit of interest and we've also learned that there's already quite a bit of information that's been developed on this issue. Jim suggested considering putting together a listing of resources and information that's currently available in the community and then develop a workgroup to evaluate and make recommendations for the future in terms of the development of other information or efforts to support. Margie, Bobbi, Sharon, Roger, Steve, Valerie, Jackie, Dave Tucker, and Jim agreed to work together on this issue. Jim will take the lead to coordinate the work group.
4. **Wet Weather/Blending Guidance Comments** - Ben Horenstein distributed a draft letter from Tri-TAC to EPA for review. The focus of the letter is on the blending language. Comments should be given to Ben by May 15.

### B. Updates

#### 5. NPDES Permitting

- **EBMUD** - EBMUD received an NPDES permit last summer, and they appealed. Two weeks ago EBMUD received notice that the appeal was to be heard. Some of the issues include: effluent limitations, interim performance based limits, mass limits, elimination of discharge would not improve water quality, concentration and mass interim limits, implementation policy supercedes basin plan, and discretion regarding dilution. The hearing is scheduled for June 6.
- **Vacaville** - Nothing to report.
- **Napa** – Procedural hearings scheduled for May and October.
- **City of San Diego** – The Regional Board adopted the permit unanimously with a reduction from the 15,000 metric tons/year of TSS to 14,000. Also, the Coastal Commission has

denied their consistency determination. The Coastal Commission has been asked to reconsider this decision and they did schedule reconsideration for this week. In the meantime, the City of San Diego decided to appeal the permit on the basis of the reduction of the mass and the Coastal Commission subsequently pulled their reconsideration; they're going to wait until the Regional Board appeal is done. The EPA permit adoption cannot be completed until the consistency determination has been completed.

- **LACSD** – Decision language regarding basin plan approved by EPA. Sharon Green distributed a letter sent to RWQCB regarding draft permits for Long Beach and Los Coyotes Water Reclamation Plants. Issues include: nitrate and nitrite limits; numeric limits; time schedule order v. compliance schedule; exemption on limits because of modifications; interim limits, mass limits; monitoring costs. The hearing before the Regional Board is scheduled for May 23.

## 6. **303(d) List and Total Maximum Daily Load Issues**

### ➤ **State and Federal Litigation**

**State** – The appeal of the challenge of the 1998 list and the State Board's approval of the list has been fully briefed, but we have not yet received notice from the court that they've completed their review. Oral argument will be scheduled after that review.

**Federal** - WaterKeepers sued US EPA for failure to develop TMDLs in California. They argue that the State has failed to do so. The trial court issued a decision in favor of EPA. Saying that while the state may have been negligent in the past, they are doing something now. This case was consolidated with CASA's similar claims, and we did not file briefs on these issues in the 9<sup>th</sup> circuit which is where the case was appealed. The 9th circuit agreed with the trial court, and they said there's enough here that we're not going to say that it would be appropriate or necessary for EPA to step in. CASA has dismissed the remaining claims in this case.

- **SWRCB/RWQCBs 303(d) Listing Process** – The Santa Ana Regional Board is moving forward with completing TMDLs that EPA has a consent decree for with Defend the Bay, but they did not complete them on time. EPA has released a draft TMDL for toxics and has indicated that a TMDL will be established for a constituent that meets the chosen threshold for meeting the water quality standards. The loading will be based on the current loading which is substantially lower than what the water quality threshold would be, probably about 2 or 3 times lower. The rationale was that they didn't want it to get worse. Comments on the draft are due in early June.
- **Chloride** – The EPA issued a final TMDL for chloride on March 22. The stakeholders had put forth an alternative plan for lots of TMDLs; they want local control over watershed issues and are now negotiating with the Regional Board and the EPA. The outlook is positive.

## 7. **Water Quality Standards**

- **Effluent Trading – EPA Draft Proposal** – In February, EPA issued a draft trading policy. AMSA has had several meetings and sessions about the policy. EPA plans to make substantial revisions to the policy and their bottom line is maintaining the integrity of the NPDES permit re trading policy, i.e., you only get credit if you make reductions beyond that which is required. The trading policy focused on nutrients, where the EPA thinks they have the greatest opportunity for trading but they are leaving the door open for other things

like flow, temperature, solids, mercury, and selenium. The draft revised policy should be out in June for comment. The environmentalists are unhappy with the trading policy. AMSA sent a letter to EPA encouraging them to get the draft policy out.

- **Nutrient Criteria Development by EPA** – Michelle Buzbee and Sharon Landau wrote a letter re two nutrient criteria documents recently released. The main points included in the letter are: criteria are scientifically unsound; purpose of nutrient criteria; percentile of water bodies. Asking EPA to rescind the 304(a) criteria and refocus the program to developing numeric criteria that can be used for monitoring.

**California Strategy to Develop Nutrient Criteria** – A proposal, which was developed from the discussion at the last meeting, was distributed. This proposal should be submitted to the RTAG group within 1 week. The main point is that we think that, if numbers are going to be developed, they should only be developed for response variables – algae and dissolved oxygen. The State Board doesn't want a detailed work plan. They just want a general framework on how the RTAG is going to proceed.

- **EPA Symposium on Designated Uses** – Abstract from LACSD was accepted, but the others from Vacaville and LWA were rejected.

## 8. **Sanitary Sewer Overflows**

- **Santa Ana Region General Orders on SSOs** - Up for adoption in April. It was unanimously adopted by the Regional Board. There were no comments submitted by any of the environmental groups, either written or verbal. At a later date Jim Colston will describe the process from this point forward and where we are with it.
- **AMSA Letter on SSO Rule** – AMSA wrote a letter to EPA on the anticipated draft SSO Rule. Background: There is a desire to have a national standard in terms of SSOs and so a FACA was formed years ago and they came up with 5 papers that addressed the main components of SSOs. Those papers dealt with satellite collection systems, the CMOM regulations, the prohibition against overflows, required record keeping and peak excess flow treatment facilities. EPA took those 5 papers and consolidated those into an SSO rule that they unveiled in January, but the Bush administration put a hold on the rule. The rule that people got a glimpse of addressed the satellite, CMOM, prohibition and the record keeping issues in the actual rule and addressed the peak excess flow treatment facilities in the preamble. With that rule being held back by Bush administration, EPA is in a quandary and they were going to publish to rule, but in the preamble would make some very significant statements about requesting additional comments with respect to the rule. The concern from the POTW community was it was just re-released as originally envisioned and many things in there were problematic. AMSA said they would support the approach, but want to be absolutely sure that the opener in the preamble invites comments so that we can address our main concerns and the most important one being the prohibition against overflows. AMSA is opposed to any proposal to break-up the rule into separate regulatory pieces. The rule should be released before the end of the year.

## 9. **Enforcement**

- **Mandatory Minimum Penalty Reform** – A copy of the latest version of the bill is in the packet. The key issues for the environmental community include the proposed 180-day timeframe for reconstruction process startup. They think it's too long. The new proposal is 60 days with possibility of an extension of another 60 days. Exemption time period for

single operational upset; suggestion for 30 days, environmentalists think this is too long.  
Comments should be submitted to Bobbi Larson by Monday, May 13.

***C. Announcements***

10. **Fiber Optic Cable in Sewers**

11. **Guidelines for Disseminating EPA Information** - May 31 is deadline for comments.

**TRI-TAC MEETING LOCATION & SCHEDULE 2002**

<b>TRI-TAC MEETING DATE<sup>1</sup></b>	<b>LOCATION/HOTEL</b>	<b>AFTER TRI-TAC MEETINGS<sup>2</sup></b>
JANUARY 16, 2002 (WEDNESDAY)	HILTON ONTARIO AIRPORT 700 NORTH HAVEN AVENUE ONTARIO, CA 91764 909-980-0400	Land Committee Meeting 1:00-3:00
*FEBRUARY 14, 2002	HOLIDAY INN AIRPORT 500 Hegenberger Road Oakland, CA 94621 510-562-5311	
MARCH 14, 2002	SACRAMENTO INTERNATIONAL AIRPORT 6900 AIRPORT BOULEVARD SACRAMENTO, CA 95837 TELEPHONE (916) 874-0917	WATER COMMITTEE MEETING 1:00-3:00
*APRIL 11, 2002	SACRAMENTO INTERNATIONAL AIRPORT 6900 AIRPORT BOULEVARD SACRAMENTO, CA 95837 TELEPHONE (916) 874-0917	Water Committee Meeting 12:30-3:00 1. 303(d) List 2. Nutrients 3. SRF
MAY 9, 2002	HILTON ONTARIO AIRPORT 700 NORTH HAVEN AVENUE ONTARIO, CA 91764 909-980-0400	WATER COMMITTEE MEETING 1:00-3:00 1. STATE WATER RESOURCES CONTROL BOARD DRAFT 303(D) LIST
*JUNE 13, 2002	HOLIDAY INN AIRPORT 500 Hegenberger Road Oakland, CA 94621 510-562-5311	

JULY 11, 2002	HOLIDAY INN AIRPORT 500 Hegenberger Road Oakland, CA 94621 510-562-5311	
AUGUST 8, 2002	<b>No MEETING</b>	
*SEPTEMBER 12, 2002	SACRAMENTO INTERNATIONAL AIRPORT 6900 AIRPORT BOULEVARD SACRAMENTO, CA 95837 TELEPHONE (916) 874-0917	
OCTOBER 10, 2002	ONTARIO	
NOVEMBER 14, 2002	SACRAMENTO	
DECEMBER 12, 2002	OAKLAND	

<sup>1</sup> IF YOU WOULD LIKE TO ADD AN AGENDA ITEM OR SCHEDULE A PRESENTATION FOR AN UPCOMING MEETING, PLEASE CONTACT ONE OF THE COMMITTEE CO-CHAIRS AT LEAST 14 DAYS BEFORE THE DESIGNATED MEETING DATE.

<sup>2</sup> If you would like an “after Tri-TAC” meeting noted in the agenda package, please contact Dave Williams at least ten days before the designated meeting date.

\*The Air Committee will meet on this date.

## Tri-TAC Roster

<b>Name</b>	<b>Company</b>	<b>E-mail Address</b>	<b>Phone Number</b>	<b>Fax Number</b>
Gregory Adams	Los Angeles County Sanitation Districts Air Quality Engineering 1955 Workman Mill Road Whittier, CA 90601-1400	gadams@lacsds.org	<b>562-699-7411 x2113</b>	562-692-9690
Rodney Andersen	City of Burbank 275 E. Olive Avenue Burbank, CA 91502	Randeren@ci.burbank.ca.us	<b>818 238-3931</b>	818 238-3918
Layne Baroldi	Orange County Sanitation District P.O. Box 8127 Fountain Valley, CA 92728-8127	lbaroldi@ocsd.com	<b>714 593-7456</b>	714 962-2591
James Bewley	South Bayside System Authority 1400 Radio Road Redwood City, CA 94065	jbewley@sbsa.org	<b>650 594-8411 ext 124</b>	650 591-7122
Phil Bobel	Water Quality Control Plant 2501 Embarcadero Way Palo Alto, CA 94303	phil_bobel@city.palo-alto.ca.us	<b>650 329-2285</b>	650 494-3531
Maura Bonnarens	East Bay Municipal Utility District 375 11 <sup>th</sup> St., MS 702 Oakland, CA 94623	mbonnare@ebmud.com	<b>510 287- 1141</b>	510 287-1530
Anne Briggs	Eastern Municipal Water District P.O. Box 8300 Perris, CA 92572-8300	briggsa@emwd.org	<b>909 928-3777 ext. 6327</b>	909 928-6177
Dan Bruinsma	City of San Jose 777 North first Street Suite 300 San Jose, CA 95112	Dan.Bruinsma@ci.sj.ca.us	<b>408 277-5423</b>	
Fred Burnett	Calaveras County Water District O&M Superintendent 423 E. St. Charles St. San Andreas, CA 95249	fredb@ccwd.org	<b>209-754-3543</b>	209-754-1069
Michelle Buzbee	Larry Walker Associates 250 Lafayette Circle, Suite 200 Lafayette, CA 94549	michelleb@lwa.com	<b>925 962-9700</b>	925 962-9701
Paul Causey	Delta-Diablo Sanitation District 2500 Pittsburg-Antioch Highway Antioch, CA 94509	paulc@ddsd.org	<b>925 778-4040 x204</b>	925 778-8513
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### Tri-TAC Liaison Representation

BACWA	Dave Williams
CASA	Roberta Larson; Sharon Green
SCAP	Ray Miller; Don Rebeck

### COMMITTEES

<b>AIR</b>	<b>LAND</b>	<b>WATER</b>	
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Gregory Adams James H. Clark Joyce Clark Alex Coate Margaret Figeroid Preeti Ghuman Jacqueline Kepke John Schroeter Jennifer Smith Brian Whitaker	Anne Briggs Nancy Evan Don Gabb Diane Gilbert Lesley Lundgren Ed McCormick Mike Moore Don Rebeck Rueben Robles Mike Sullivan Kimberly Toepfer	Jim Bewley Phil Bobel Fred Burnett Michelle Buzbee James Chen Gail Chesler Joyce Clark Jim Colston Rod Cruze Stan Dean Nancy Evans Tad Foster Jackie Gambl Robert Ghirelli James Gratteau Sharon Green Tom Grovhoug Tom Hall Ben Horenstein Val Housel Jim Kelly Jacqueline Kepke Wendell Kido Roberta Larson Kris Lindstrom Rich Luthy Steve McDonald	Patricia McGovern Steve Medbery Traci Minamide Terrie Mitchell Mike Moore Arleen Navaret Margie Nellor Jack Nelson Monica Oakley Michele Plá Bob Reid John Schroeter Jennifer Smith Roxanne Stachon Herb Stone Warren Tellefson Dave Tompkins Melissa Thorme Jerry Troyan David Tucker (SJ) David L. Tucker Roger W. Turner Ray Von Dohren Larry Wasserman Penny Weiand Chuck Weir Dave Williams

**TRI-TAC AIR COMMITTEE  
JUNE 13, 2002 MEETING**

**ISSUE SUMMARY**

**1. SCAQMD CLEAN FLEET INITIATIVE**

SCAQMD has adopted regulations (see the SCAQMD web-site at [http://www.aqmd.gov/news1/Fleet\\_Rule\\_Home.htm](http://www.aqmd.gov/news1/Fleet_Rule_Home.htm)) that require a public fleet operator with 15 or more vehicles, when replacing or purchasing new vehicles, to purchase either a low-emitting gasoline or alternative-fueled vehicle. Under SCAQMD's clean fleet strategy, a total of eight separate rules have been adopted by the Governing Board:

- Rule 1191 (Clean On-Road Light and Medium-Duty Public Fleet Vehicles)
- Rule 1192 (Clean On-Road Transit Buses)
- Rule 1193 (Clean On-Road Residential and Commercial Refuse Collection Vehicles)
- Rule 1194 (Commercial Airport Ground Access)
- Rule 1195 (Clean On-Road School Buses)
- Rule 1196 (Clean On-Road Heavy-Duty Public Fleet Vehicles)
- Amended Rule 431.2 (Sulfur Content of Liquid Fuels)
- Rule 1186.1 (Alternative Fuel Street Sweepers)

*Update:* Rule 1191 became effective on July 1, 2001. Affected agencies in the South Coast Air Basin are now limited to purchasing rule compliant vehicles for any planned replacements or new additions to the light- and medium-duty portions of their fleets. Rule 1196 becomes effective on July 1, 2002.

*Contact:* Greg Adams, LACSD

**2. WERF ODOR CONTROL TECHNOLOGIES ASSESSMENT**

LACSD and CH2M HILL received a WERF Odor Assessment grant for a two-year research program. The primary purpose of this study is to provide a working definition of odors, determine POTWs odor sources, list known odor compounds of concern, provide odor assessment approaches, provide modeling techniques for odor emissions estimating and odor dispersion, and conduct field research on the more promising control technologies. The first year is primarily a literature search which will be used to develop a field research agenda for the second year studies. This study will also be looking at what has been successfully used at industrial and agricultural sites to control odors and whether there is any application to POTWs. Other technical areas to be addressed include all potential

POTW odor sources - collection system, processes, biosolids handling facilities and combustion sources; odor characterization; the public's perception of odors and complaint trigger levels; and measurement and analysis approaches. This study will be characterizing, assessing, and determining optimal control technologies for odors from collection system influent to final effluent discharges, including biosolids processes associated with each POTW wastewater treatment and collection system.

*Update:* The Phase I literature search has been completed and WERF has agreed to fund our highest priority research item in the Phase II portion of the project. This research will attempt to determine odor generation within anaerobic digestion biosolids process units and related storage, dewatering, and conveyance processes. Ideally, this research will determine methods that will minimize the production of odorous products.

Under Phase II, we have developed general field and laboratory testing protocols that will be converted to site-specific protocols for all facilities that take part in the project. This protocol may be available to others to use on their own to help compliment our research program. WERF issued a formal request to its members to join in this effort through their targeted collaborative research program, and to date, ten facilities are anticipated to be taking part in the program.

We have produced a Letter of Understanding with similar groups on the East Coast that are also doing studies regarding biosolids and odors research so that information and findings may be shared on a common platform.

A trial run of the general testing protocol and corresponding site-specific protocol has recently been completed at one of the facilities taking part in the project. Lessons learned from this experience will be incorporated into the site-specific protocols and testing of all facilities, which will take place this summer. A final product will be available by the end of 2002.

*Contact:* Jay Witherspoon, CH2M HILL; Greg Adams, LACSD

**3. CARB ENHANCED VAPOR RECOVERY (EVR) REQUIREMENTS FOR MOTOR VEHICLE GASOLINE REFUELING**

On March 23, 2000, the CARB adopted amendments to current regulations governing vapor recovery at gasoline refueling stations. These requirements are applicable to fuel dispensing facilities owned and/or operated by public agencies (see attachments in May 2000 agenda packet). There are a number of new requirements, which must be implemented over the next eight years. The new requirements have been categorized into six modules. The six modules are Phase I Vapor Recovery improvements, Phase II Vapor Recovery improvements, Onboard Refueling Vapor Recovery Compatibility, Liquid Retention and Spitting, Spillage and Dripless Nozzles, and finally, In-Station Diagnostics (ISD). CARB's staff report states that "this could result in significant costs" for existing stations. One of the most costly of the mandated retrofits, will be the installation of an computerized in-station diagnostics system which will monitor EVR systems and notify the operator of system failures and vapor leaks (and in some cases, shutdown the pump) such that remedial action can be taken. Facility's which have a throughput of less than 160,000 gallons per year are exempt from the ISD requirements (it is not known at this time whether that threshold is an actual historical throughput or a permitted throughput). Some of the requirements are not even technologically available today and will have to be developed. CARB is scheduled to review the program in 2002 to ensure that technology is advancing to enable implementation of the required EVR improvements. More detailed information can be obtained from the CARB's web-site at <http://www.arb.ca.gov/vapor/vapor.htm>.

*Update:* The ARB has released for public review, a draft technology review regarding control measures proposed as part of the EVR program. All of the control measures reviewed were determined to be technologically feasible except the dripless nozzle standard. The ARB has scheduled a workshop for June 18 at 10:00 a.m. in Sacramento to present and take comment on the technology assessment. The ARB is proposing to take these EVR amendments to their board in September 2002. The document is available at the ARB's web site listed above.

*Contact:* Daniel McGivney, EMWD

## **5. SCAQMD RULE 1113 ESSENTIAL PUBLIC SERVICE TECHNOLOGY ASSESSMENT**

SCAQMD Rule 1113 provides for a higher interim VOC limit to essential public services to allow time for these agencies to test low-VOC coating performance. The Southern California Alliance of POTWs (SCAP) has formed a committee to evaluate the performance of low-VOC coatings suitable for wastewater environments. The SCAQMD has an Essential Public Service Coating

Technology Assessment Committee with the purpose of evaluating the test results of these coatings, and SCAP is represented on that committee.

*Update:* Field evaluations of the atmospheric and immersion coupons took place on March 26-28, 2002. Some failures of coating systems are being noted. Field testing will continue until December 2002.

*Contact:* Preeti Ghuman, LACSD

## **6. CARB DIESEL RISK REDUCTION PLAN**

In September 2001, the CARB adopted a plan which would lead to the reduction of health risk associated with the combustion of diesel fuel in internal combustion engines. The plan lays the groundwork for a number of comprehensive measures to be developed over the next two years, which will reduce the particulate matter fraction of engine emissions. The measures developed will impact stationary engines, portable engines, and on-road and off-road mobile engines. The program will have significant impact on all water and sanitation agencies in the state. Retrofit control costs could be substantial. Additional information regarding this program can be obtained by visiting the CARB web-site at <http://www.arb.ca.gov/diesel/dieselrrp.htm>.

*Update:* On April 4, the ARB released for public review, draft air toxic control measures (ATCMs) for existing and new stationary diesel engines. These measures require the retrofit control of existing diesel engines to reduce toxic particulate matter emissions. The Tri-TAC air committee met with the ARB regarding these measures on June 3 and submitted comments and recommendations. ATCMs still under development include those for portable diesel engines and mobile (on- and off-road) engines.

*Contact:* Daniel McGivney, Eastern MWD

## **7. CALIFORNIA CLEAN AIR PLAN**

The CARB is preparing a state-wide plan which will document all feasible emissions control measures which may be used in order for all air basins in the state to attain federal and state ambient air quality standards. The measures contained in the plan will cover stationary, area, and mobile source emissions for both criteria and toxic pollutants. These measures may have significant impact

upon the operations of water and sanitation agencies. For further information, visit the CARB website at <http://www.arb.ca.gov/planning/caplan/caplan.htm>.

*Update:* The ARB has released for public review the draft CAP. The CAP contains over 100 proposed control measures to be implemented over the next 15 years. Many of the measures will impact public water and sanitation agencies. The plan has now been pulled off the ARB's web site and appears to be in limbo at this time. Apparently, the plan received a lot of late opposition from the agricultural sector, which may have contributed to the plan being set aside for the time being. It is speculated that the plan will not resurface until after the gubernatorial elections.

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## TRI-TAC LAND COMMITTEE

JUNE 13, 2002 MEETING

### ISSUE SUMMARY

#### 1. SWRCB BIOSOLIDS GENERAL ORDER (GO) & ENVIRONMENTAL IMPACT REPORT (EIR)

The Central & South Delta Water Agency filed a lawsuit regarding the Central Valley General Waste Discharge Requirements (WDR) for biosolids land application. The suit challenged the State Water Resources Control Board's (SWRCB) order that allowed grandfathering of land application projects under the WDR. The judge in the case accepted the proposal from the SWRCB for a statewide EIR, and approved a 3 year, 4 month time line for completion allowing sites permitted under the (WDR) to continue to operate. CASA approved a Memorandum of Understanding with the SWRCB and acts as the conduit of funds between contributing agencies and the SWRCB for the development of the EIR. Craig Lekven and Layne Baroldi were members of the SWRCB Technical Advisory Group (TAG) for this project.

The SWRCB and the TAG selected Jones and Stokes to prepare the EIR on the General Waste Discharge Requirements for the Discharge of Biosolids to Land for Use as a Soil Amendment in Agricultural, Silvicultural, Horticultural, and Land Reclamation Activities (GO), which was prepared by SWRCB staff. The draft EIR and draft GO were released to the public June 28, 1999. Public hearings were held on August 18<sup>th</sup> in Palmdale, August 17<sup>th</sup> in Bakersfield, and August 23<sup>rd</sup> in Sacramento. The 60-day comment period ended September 10, 1999.

Jones and Stokes completed the final EIR and prepared responses to comments on the Draft EIR. The SWRCB made minor revisions to the General Order to resolve comments. Public workshops were held on August 1 in Santa Clarita and August 3 in Sacramento. The SWRCB heard final testimony at their board meeting in Sacramento on August 17, 2000. The Board unanimously adopted the General Order and the Final EIR at this meeting. The Board did incorporate 27 changes from an Errata Sheet and several changes at the meeting before final adoption.

The most significant requirements in the adopted GO are:

- the prohibition that "The application of biosolids containing a moisture content of less than 50 percent,
- a restriction that biosolids less than 75% moisture shall not be land applied when surface wind speed is greater than 25 mph,
- if the ground water is less than 25 feet from the surface monitoring is required including Mo, As, Se,
- plant tissue testing for Mo, Cu, and Se,
- require that residual nitrogen be determined by annual soil testing at 18 inches deep.

The SWRCB incorporated the EIR mitigation measures, the changes contained in the Errata, and items added at the final hearing into the GO. The draft EIR, Final EIR, final GO (Water Quality Order No. 2000-10-DWQ) and Users Manual are available at [www.swrcb.ca.gov/programs/biosolids/index.html](http://www.swrcb.ca.gov/programs/biosolids/index.html).

Two lawsuits were filed over the EIR. One by the Central and South Delta Water Agency and one by Kern County. The State Attorney General provided the defense. The two lawsuits were combined and heard by Judge Ron Robie. CASA intervened in these lawsuits. Regional Boards are using the GO and the Lahontan and Central Valley Regional Boards have each issued one Notice of Applicability (NOA) using the GO.

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The SWRCB GO and associated EIR lawsuit hearing was held in front of Judge Ronald B. Robie on July 20, 2001 in Sacramento. The draft conclusion by the Court was that the lawsuits were denied. The Court then took testimony on the draft ruling. Following the testimony, Judge Robie took the case under submissions. Judge Robie made his final ruling on August 10, 2001. The final conclusion by the Court was that the lawsuits were denied. One interesting finding is that "The Court finds that there is substantial evidence to support the validity of the findings reached by the EPA in its development of the federal regulations (Title 40, Part 503 of the Code of Federal Regulations)."

On October 5, 2001, Kern County filed an appeal to the Court Ruling. Subsequently the Central and South Delta Water Agencies also appealed. Action on the appeal is not expected for sometime. CASA has intervened on behalf of the SWRCB. No dates have been set for the appeal hearing yet.

**Update:** The briefs from Kern County and the Central and South Delta Water Agency were submitted on May 2, 2002. CASA's brief is due June 2, 2002. Dates have not been set for the appeal hearing yet.

The Central Valley Regional Water Quality Board continues to receive Notice of Intents (NOI) and is apparently now processing them.

*Contact: Layne Baroldi OCSD, Bobbie Larson CASA  
Current as of: May, 2002*

**2. RADIOACTIVITY**

**Survey** - EPA and the Nuclear Regulatory Commission (NRC) conducted a survey of POTWs to obtain national estimates of the levels of radioactive materials in sludge and ash at POTWs, estimate the extent to which radioactive contamination comes from either NRC/Agreement State licensees or from naturally occurring radioactivity, and support possible rulemaking decisions by NRC and EPA. For the planned survey, NRC/EPA sent the questionnaires to some 600 POTWs associated with NRC licensees having the highest potential to discharge radioactive material to the sewer system. Using the information gathered, NRC and EPA was to identify approximately 300 POTWs for sampling. The NRC proposal states that POTW identities will be kept confidential.

In July 1998, the Office of Management and Budget cleared the joint NRC-EPA survey and has required the two agencies to establish a survey review committee. Two municipal representatives are on the committee: Kevin Aiello of Middlesex County Utility Authority and Tom Lenhart of Northeast Ohio Regional Sewer District. The committee will oversee and monitor the results of the survey.

Of the 366 that responded to the survey, at least 300 and possibly all of the responding POTWs have been selected for the sampling survey, this list will not be made public. Sampling kits were received by some California agencies, though the names are confidential. All of the sampling is

complete. The data has been analyzed and the results will be available this coming summer. The preliminary results are that there are no surprises.

**Dose Modeling Document** – Dose modeling is to be conducted to develop dose-to-source factors that can be used to help interpret the results of analyses of sewage sludge samples for radioactive materials. The consultant hired by AMSA has completed the dose modeling report. POTWs should be able to use the report to determine the level of radioactivity found in their biosolids from the samples forward to the NRC

**Guidance Document** - AMSA has developed a draft guidance document to assist POTWs in addressing radioactivity potential in sewage sludge and ash.

Draft documents have been developed and issued for public comment dealing with aspects of all three activities. Final reports will be issued in all three areas, hopefully by early 2002. These documents, along with Subcommittee meeting minutes will continue to be posted on the ISCORS website under the postings for subcommittees at "<http://www.iscors.org/sewage.htm>".

**Update:** As of this date there is nothing new to report.

*Contact: Diane Gilbert, City of LA*  
*Current as of: May, 2002*

### 3. DIOXINS

Draft 40CFR503 Round 2 Regulations, for Dioxins were issued December 15, 1999. The dioxin requirement is 300 ppt TEQ. Similar to the metals contained in the 503 regulation, the proposed dioxin concentration is based on the results of a risk assessment. However, unlike metals, only a ceiling concentration is proposed. The current proposal is 300 nanograms toxic equivalent per dry kilogram. If the dioxin content is over this concentration (0.0003 mg TEQ/kg) the biosolids cannot be used beneficially. The comment period was extended to March 23, 2000. WEF and AMSA are handling comments. The proposed regulations require a minimum of annual testing for dioxins in biosolids for the first five years. This testing costs between \$1,500 and \$2,500 per sample. The draft regulations allow for the test frequency to be extended to every five years if the sample results are below 30 ppt TEQ. The draft regulations include a new dioxin test method that requires that non-detect results be reported at a value of half the detection limit. Based on the current testing procedures this means that non-detects on all cogeners would return a TEQ result of 15 to 20 ppt. This will affect the ability to obtain results less than 30 ppt.

The EPA released a study indicating that dioxins are very carcinogenic. This has resulted in a reevaluation of the draft requirements. Data on the EPA dioxin health risk assessment were posted on their web site on June 12, 2000.

The new regulations must be promulgated by December 15, 2001 to meet a court mandate. The reevaluation will not be completed until some time next year. This has EPA in a dilemma.

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There is a lack of data concerning the concentrations of dioxin that will be reported with the new EPA test procedure. AMSA has conducted a dioxin testing program and survey. The data will be needed by each agency for land application when the new regulations are promulgated. It is now thought that the dioxin reassessment being completed by EPA could lower the acceptable limit from 300 to as low as 8 TEQ. Such a change would affect the ability to land apply biosolids. A recently released report is critical of the reassessment.

AMSA dioxin results were forwarded to participating POTWs in July. AMSA collected 199 samples from 171 POTWs located in 31 states and found dioxin concentrations ranging between 7.1-256 ppt-TEQ. A single outlier concentration of 3,590 ppt-TEQ was also found. AMSA is working with this particular POTW to re-test their biosolids to confirm this number. The following table presents the results of the analysis with non-detects set to one half of the detection limits:

	Total	(ppt-TEQ) Dioxin & Furans	PCBs
Average	48.5	38.4	10.0
Median	21.67	15.15	5.70

AMSA has finalized the report concerning the study and it is posted on AMSA's website ([www.amsa-cleanwater.org](http://www.amsa-cleanwater.org)).

On November 30, AMSA and other the consent degree parties agreed to allow the U. S. EPA to extend the deadline for finalizing the proposed dioxin Part 503 rule from December 15 to March 1, 2002. The extension would allow the U. S. EPA time to account for new information obtained from the ASMA survey results and on-going risk assessment.

On December 21, the U. S. EPA listed in the federal register a notice of its final determination that they will not impose numerical standards or management practices for dioxin and dioxin-like compounds in sewage sludge that is disposed of at a surface disposal site or incinerated in a sewage sludge incinerator. In the notice the U. S. EPA stated that the final action to amend the Part 503 regulations for sewage sludge that is applied to land would be published separately at a later date

**Update:** On April 1, 2002, all parties to the lawsuit agreed to a significant deadline extension for EPA to finalize regulations for dioxins in land-applied biosolids. After extensive negotiations and two interim extensions of the December deadline, the Joint Stipulation filed with the court this week allows EPA to take public comment on the new data, and gives the Agency until October 17, 2003 to finalize the regulations.

*Contact: Diane Gilbert, City of Los Angeles*  
*Current as of: May, 2002*

#### 4. CIWMB COMPOSTABLE ORGANIC MATERIAL REGULATIONS

New, draft regulations will make changes that require all composting facilities to have a full facility permit anytime there is any biosolids in the mixture. The question is what action to take next on this. The requirements do treat biosolids, manure, and every other product except green waste composting facilities the same. This was initially heard by the CIWMB on April 23, 2001.

The CIWMB chose not to do anything on these regulations at the April 23 board Meeting. They plan to hold a number of meetings to get more stakeholders involved. This will be brought up again at the Boards June 19, 2001 meeting.

The CIWMB discussed the proposed composting regulations in their August 14-15 meeting. The board decided to move forward with the proposed draft regulations and start the 45-day comment public period. The new draft regulations include biosolids, manure, and other municipal solid waste other than green waste in the same tier. This tier requires that any biosolids composted outside of the treatment facility would require a full solid waste facility permit. Biosolids composted at the treatment facility would require enforcement agency notification. Also research projects using biosolids would require only enforcement agency notification if 5000 or less yards are being composted.

*Update:* The CIWMB has proposed regulations that essentially treat biosolids like other organics. The only concern is that the proposed regulations include a new low concentration limit for selenium of 36 mg/kg. This should be increased to the current 503-regulation concentration limit of 100 mg/kg.

*Contact: Diane Gilbert, City of Los Angeles*  
*Current as of: May, 2002*

#### 5. SOUTH COAST AQMD PR 1133

The first draft of Proposed Rule 1133 require best available control technology of the PM10, VOCs, and ammonia for composting sludge drying beds and possibly storage areas. This would mean that all of these facilities would have to be enclosed and with off gas scrubbing.

The second version of the rule dropped sludge drying beds, but requires enclosure of everything at a composting facility. This proposed rule is of major concern to composters and the CIWMB, since it will significantly drive up the cost to compost, especially for green waste composters. The CIWMB met on October 24, 2001 at the SCAQMD to address PR 1133. Composters and POTWs provided comments at this meeting.

A PR1133 Working Group meeting was held on February 19th. This meeting assessed various scenarios for co-composting technologies. SCAP is performing its own studies on biosolids composting in order to provide the SCAQMD with accurate emissions data for the rule development. SCAP's Air Committee is actively involved in the rule development. SCAQMD staff will consider emission reduction effectiveness, costs, affordability, industry impact, public

nuisance, health impacts, siting issues, and current industry plans to formulate a proposed rule recommendation.

**Update:** The AQMD recently held a workshop on PR1133. The AQMD broke this proposed rule into three basic phases. The first phase will regulate biosolids composting and it appears that they will require enclosure of the active composting and possibly full enclosure of curing and storage. In addition, the AQMD is starting to look into regulating odor, noise, and vibration. The measurement of these associated parameters has been added to the SCAP study of composting. In addition, the AQMD is also saying that they're looking at requiring negative pressure aerated static pile inside an enclosed facility. This would be regulating the techniques to meet their requirements. Finally, it appears that the AQMD is moving ahead with this Phase 1 before SCAP will have a chance to complete the study and present all of the data developed for them. It would make a lot of sense for the AQMD to hold off on the action until at least the SCAP studies are complete.

*Contact: Dan McGivney, EMWD and Layne Baroldi, OCSD  
Current as of: May, 2002*

## **7. SIERRA CLUB POSITION PAPER ON BIOSOLIDS LAND APPLICATION**

The Land Committee became aware that the Sierra Club is developing a "Position Paper" on the land application of biosolids. Several Land Committee members met with Sierra Club (Sierra Chapter) representatives to discuss their concerns. A written response to those concerns was prepared with joint Tri-TAC and CASA signatures. The Sierra Club (national) has indicated that they will consider the letter when they develop the national position paper on biosolids land application.

Several revisions of the draft position paper have been released. None are any more realistic about biosolids options than the previous draft

**Update:** A Guidance document has now been posted on the Sierra Club Website. While it is not a position paper, and is counter to adopted Sierra Club positions, it does have the same effect. WEF is requesting that its member who are current Sierra Club members assist by signing a petition to the Sierra Club request a change in the guidance document.

*Contact: Layne Baroldi, OCSD  
Current as of: May, 2002*

## 8. NATIONAL ACADEMY OF SCIENCE REVIEW OF 503 REGULATION

The U.S. EPA is sponsoring an NAS Study to review the 40 CFR Part 503 Regulation relating to the management of Class B Biosolids.

The NAS Study Scope includes:

- Review the risk-assessment methods and data used to establish concentration limits for chemical pollutants in sludge to determine whether they are the most appropriate approaches. The committee will also consider the NRC's previous (1996) review and determine whether that report's recommendations have been appropriately addressed. Issues to consider include: (a) how the relevant chemical pollutants were identified; (b) whether all relevant exposure pathways were identified; (c) whether exposure analyses, particularly from indirect exposures, are realistic; (d) whether the default assumptions used in the risk assessments are appropriate; and (e) whether the calculations used to set pollutant limits are appropriate.
- Review the current standards for pathogen elimination in sludge and their adequacy for protecting public health. The committee will consider: (a) whether all appropriate pathogens were considered in establishing the standards; (b) whether enough information on infectious dose and environmental persistence exists to support current control approaches for pathogens; (c) risks from exposure to pathogens found in Class B sludge; and (d) new approaches for assessing risks to human health from pathogens in sludge.
- Explore whether approaches for conducting pathogens risk-assessment can be integrated with those for chemical risk-assessment. If appropriate, the committee will recommend approaches for integrating pathogen and chemical pollutant risk-assessments.

Susan Martel, is the National Academy of Sciences' liaison to the project. The Committee met on October 3 and 4, 2001 in Woods Hole, MA and began drafting the report.

The NAS has a working draft of the report in progress. The committee met on December 10-11 in Irvine, California to work on the draft. The meeting was closed to the public. The goal is to have the report ready for peer review shortly after the meeting. If the committee feels that an additional meeting is needed to complete the report, another meeting will be scheduled in January to complete the draft. It is anticipated that the report will undergo peer review in February. NAS expects to deliver the final report to EPA by the end of May 2002.

*Update:* EPA still expects the report out in June of 2002.

*Contact: Bob Gillette, Carollo Engineers*  
*Current as of: May, 2002*

## 9. CALIFORNIA DEPARTMENT OF TOXIC SUBSTANCES MERCURY REGULATIONS

The Department of Toxic Substances has prepared a Draft Mercury Report which shows that there is a significant problem with mercury in the environment especially in fish tissue. Though

the majority of the mercury is from legacy pollution i.e. gold and mercury mining they believe that there is a need for new mercury regulations. They have proposed five options:

1. Regulate all mercury containing waste as hazardous.
2. Regulate all waste with intentionally added mercury as hazardous waste.
3. Regulate all mercury containing consumer products—at the time they are discarded—as hazardous.
4. Develop a non-hazardous waste regulatory threshold number.
5. Status quo.

The staff prefers option 1. A hearing was held on November 19, 2001 in Sacramento, additional meetings to follow in Los Angeles – December 12, 2001, Oakland – December 3, 2001 and Fresno January 9, 2002. The Land Committee has submitted a letter and comments in support of sound science and option 4.

Tri-TAC members have provided verbal and written comments at the Sacramento, Oakland, and Los Angeles DTSC Mercury regulation workshops. It appears that DTSC understands the concerns

**Update:** DTSC is preparing a Mercury proposal for the Hazardous Waste Management Program. They are writing regulations that they plan to notice around July. They are making changes from the recommendations in the staff report. The changes have not been announced.

*Contact: Layne Baroldi, OCSD, Margie Nellor, LACSD  
Current as of: May, 2002*

## **10. AB2356**

This is proposed legislation dealing with pesticides in compost and specifically chlapirolid now. This law will help to regulate chlapirolid, study it, and determine what the problems are and what ought to be done to keep it and other pesticides from causing problems with compost. We encourage everyone to get copies of the bill, review it, and support the bill. It hasn't been moved to committee yet, but it is close to going to the appropriations committee for hearing and we need to support this bill.

**Update:** This is a new item.

*Contacts: Layne Baroldi of OCSD  
Current as of: May, 2002*

## **11. LOCAL ORDINANCES**

*Kern County* has developed a County Ordinance that will ban land application of all but exceptional quality biosolids by January 1, 2003. The Southern California Alliance of POTWs

(SCAP) and several major POTWs in Southern California tried to work with Kern County to assist with development of the ordinance that addresses the need for local control and oversight of biosolids land application in a logical manner. This effort has been largely unsuccessful. The permanent ordinance is available on the Internet at <http://www.co.kern.ca.us/rma/rma.htm>. Controversial provisions include: \$8,000/year fee, \$3.37/ton road impact fee, soil sampling every 40 acres, dioxin concentrations must be below 10 ppb, no class B application after January 2003, 10 mph wind limit for spreading, etc. Exceptional quality biosolids products are exempt from the provisions of the ordinance.

A draft negative declaration (County of Kern (R0027)) for the adoption of the Biosolids Ordinance began circulation on August 13, 1999. The Board of Supervisors met on October 5, 1999 and adopted the Negative Declaration. The Board adopted the ordinance on October 13, 1999 and it became effective on January 1, 2000. The ordinance has onerous requirements for soils background monitoring (which may include every 40 acres for dioxins, PCBs, phosphorus, potassium, etc). Some tests are annual, and some are once every three years.

The City of Los Angeles, LACSD, OCSD, CASA, SCAP, and Responsible Biosolids Management filed a lawsuit against the new Ordinance on November 8, 1999. On December 7, 1999, a motion was filed to transfer the case out of Kern County. The judge agreed to move the trial to Tulare County. The hearing date was originally scheduled for May 15, 2000.

Kern County has filed a lawsuit against the agencies applying biosolids in the county for failing to perform an adequate EIR before application began. Judge Paul Vortmann ruled that Kern County complied with CEQA requirements during the development of the ordinance. The judge also ruled that the agencies had complied with CEQA. The judge has yet to rule on the other aspects of the case related to the validity of the ordinance. The generators have not decided whether to appeal the court's CEQA ruling.

A trial date is set in June 2002 to hear the non-CEQA causes of action. There is concern that regulation of Class A biosolids may not be far behind. Generator representatives have recently met with the County staff who indicate that there are concerns with issues related to land application of Class A biosolids.

The large Southern California agencies and SCAP have filed their motion for summary judgment and issued requests to depose about 15 people in Kern County. The trial date was set for June 2, 2002.

**Update:** The draft summary judgment and motions was issued on May 22. Judge Vortmann provided a tentative ruling against all three of our causes of action. The case began to be heard on May 23 in Visalia. The following is a brief description of the causes of action and the court's tentative ruling. The entire tentative ruling is also attached:

1. The ordinance is invalid and unconstitutional because it violates the Commerce Clause: The tentative ruling said that the application of the ordinance to only unincorporated land reflects the constitutional limits

on Kern County's police powers, and as such does not have a discriminatory effect on interstate commerce. The tentative ruling also stated that Kern County's decision to allow only EQ biosolids to be land applied cannot run afoul of the commerce clause because this legislative policy choice is explicitly authorized by the federal Clean Water Act, Part 503, and state law. The Commerce Clause protects the interstate market, not particular firms, from burdensome regulations.

2. Ordinance is invalid and unenforceable because it conflicts with state and federal regulations "permitting" application of biosolids and because it is barred by the Equal Protection and Due Process clauses of the U.S. and California Constitutions: The tentative ruling denied the claim that the ordinance is invalid and unenforceable because it conflicts with state and Federal regulations permitting application of biosolids. The court found that Federal and State law has not preempted this field. Federal and State law expressly authorize the local regulation of biosolids. The Federal Part 503 regulations set minimum standards for the use or disposal of biosolids. The Federal Clean Water Act states the determination of the manner of disposal or use of sludge is a local determination. Although there may be language in the cases cited about an outright ban is prohibited when regulated use is already permitted, the regulation being considered in those cases completely banned either firearms, fireworks, or electroshock. None of the cases cited on this issue pertained to the application of biosolids. Additionally, the ordinance herein does not completely ban the applications of biosolids, just Class B biosolids. Thus, the court does not find that the ordinance is in conflict with Federal and State law. The court finds that there was a rational basis to a legitimate state purpose. Kern referenced its health and safety concerns and the fact that a local road was having to be closed because of the damage caused by trucks hauling biosolids. A "study" determined the relationship of the damage to the road by the haulers of biosolids and the proposed fee to pay for the maintenance needed. Having found a rational basis for the ordinance, the court found that the ordinance did not violate the equal protection and due process clause.
3. The impact fees are invalid and unenforceable because it constitutes an illegal general and special tax, which required voter approval prior to adoption. The third cause of action alleges the Biosolids Impact Fee provision of the Ordinance is invalid because it is a special tax, a general tax, an invalid assessment, improperly uses revenues for unrelated purposes, and violates the Equal Protection and Due Process Clauses of the state and federal constitution. The tentative ruling found that the impact fees are bona fide regulatory fees, i.e., the record needed only demonstrate a reasonable relationship between the fees to be charged and the estimated cost of the service or program to be provided.

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*Contact: Layne Baroldi, OCSD  
Current as of: May, 2002*

*Kings County* has decided to implement local regulation of biosolids. *Kings County* has 23,000 acres permitted for biosolids land application. The *Kings County* Agricultural Commissioner initially proposed a form of agreement between his office and land appliers to allow local inspection and record keeping. *Kings County* only has two permitted biosolids land application sites. *Kings County* circulated a draft ordinance among staff which allow land application of Class B biosolids. The Draft Ordinance did restrict biosolids application to sites in only a portion of the County and at least 2 miles away from schools and sensitive receptors. *Kings Co.* Agricultural Commissioner held a meeting with the *Kings Co.* Farm Bureau, County Counsel, Biosolids appliers, and water interests on September 26, 2000 to discuss the ordinance.

The ordinance was drastically changed so that it now bans Class B biosolids in February 2003. The current ordinance allows for the use of Class A EQ biosolids until February 2006 and then only Class A EQ Biosolids in the compost form will be allowed. This was essentially adopted pending completion of CEQA documentation.

A lawsuit was been filed against the ordinance, which was heard on November 16, 2001. An appeal by the Orange Co. Sanitation District for extended time on their permit was heard on Nov. 6, 2001, and in December.

There is discussion that the ordinance's definition of Class A EQ biosolids could be expanded from having compost being the only type of acceptable Class A EQ biosolids to include any of the initially adopted 503 Appendix B PFRP processes.

The lawsuit against the ordinance was heard, on November 16, 2001. The court found in favor of the County and the ordinance. The Orange Co. Sanitation District request for extended time on their permit was denied. The court decision on the adequacy of the CEQA compliance document was appealed.

**Update:** McCarthy Farms has submitted a request for a Class B permit extension. Orange County is filing an appeal on the Board decision to not extend their use of Class B biosolids land application. There is also a composting facility that is presently going through the CEQA process. There are also hearings on the dairy elements of programmatic EIR where pathogen issues could be related biosolids.

*Contact: Layne Baroldi, OCSD  
Current as of: May, 2002*

In *Riverside County*, there are two basic issues the Synagro composting facility and the County ordinance.

**Synagro Compost Facility** - The Board of Supervisors told the Synagro composting facility in Corona to reduce the amount of biosolids it composts from 500 to 250 tons per day. This was due to complaints from local citizens about odors. Synagro went to court and was granted a

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temporary injunction to be able to continue to process 500 tons per day. Some of the agencies using this facility are looking into alternatives. This raises the question as to whether biosolids should be sent to a facility that has complaints against it and how to stop operators who are giving biosolids a bad name.

Thirty-seven individual homeowners adjacent to the Synagro facility filed suit in small claims court claiming it is a nuisance. The judge ruled in favor of 21 individual home owners adjacent to the Synagro that filed suit, but not those who are only occupants. Synagro is deciding if they want to appeal.

The Synagro facility is working to reduce complaints and continue as the only biosolids composting facility in Riverside County. A recent Grand Jury Report said the site was essential to the management of residuals, but a June Citizens Advisory Group Meeting made the recommendation that the site needs to be moved because of public health and nuisance concerns. The County Board of Supervisors was critical of the Grand Jury's findings. Synagro is exploring ways to reduce or eliminate the odors, but all options are expensive and they are seeking ways to fund the needed improvements. Synagro is also reluctant to make the improvements if the County does not commit to long term use of the site.

The RWQCB has required that a storm water retention basin on the site be lined. The County is requiring that a permit be issued for the construction, but is refusing to issue a permit. This has lead Synagro to file another lawsuit against the County.

Synagro began preparing a design for modifications to their facility including enclosure of at least the basic composting facilities. They are looking for financial support for the needed improvements in exchange for capacity rights. At a public hearing on June 19, 2001 options to enclose the facility, limit the capacity and resolve the pending lawsuits were discussed. On June 26<sup>th</sup> the Riverside County Board of Supervisors offered to settle the litigation.

On a 5:0 vote the Board of Supervisors voted to work with Synagro to move the composting facility to a landfill site in Lambs Canyon.

On a 3:2 vote the Board of Supervisors voted December 11, 2001 to tentatively approve the concept of a composting facility at a landfill site in Lambs Canyon. The processes of the composting facility that will be covered is being determined.

**Update:** The facility, which would be a great help to Southern California municipalities, is going to have to be created by a JPA led by Eastern MWD. The Riverside County Board of Supervisors has refused to allow such a compost facility to be developed by Synagro as the lead. The proposal calls for composting up to 800 ton per day of biosolids.

**County Ordinance** - In response to complaints and local demonstrations during biosolids land application at some sites, Riverside County is considering a revision of their ordinance that could

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possibly ban Class B biosolids. Regulators, generators, and applicers are meeting to address and resolve issues.

On March 20, 2001, after almost three hours of testimony, the Riverside County Board of Supervisors (Board) postponed their vote on two biosolids related agenda items; the approval of the Riverside County Health Services Agency's report on the "Health Effects Related to the use of Pesticides and Sewage Sludge" (Report), and the proposed prohibition of land application of biosolids on County owned land. The Report affirmed that the existing regulations provided adequate health and safety measures to protect the citizens of Riverside County finding that "[t]he minimal risk of disease transmission or causation makes the adoption of any additional mitigation, up to and including a full ban, a policy decision based on the quality of life issues as opposed to a Public Health necessity." The Report also determined that the quality of life issues "apply equally to the similar uses of manure." Subsequent to the Report, Riverside County staff concluded that virtually all complaints attributed to biosolids were the result of manure use.

The Board instructed staff to form a "Blue Ribbon Committee" to address the issues surrounding the land application of biosolids. The Committee will be limited to eight individuals, formed by the Board, from a pool of representatives of the Riverside County Farm Bureau, scientist from the University of California at Riverside, Riverside County regulators, concerned citizens and the biosolids industry. It is anticipated that the committee will provide a report to the Board within sixty days of its formation.

The "Blue Ribbon Committee" was to look at two issues: 1) a ban on land application of biosolids on publicly owned land and 2) a review of the Health Department Report. A preliminary report was due out of the group by June 5 2001 with the final due June 15, 2001.

A draft ordinance banning land application of Class B biosolids was made available October 24, 2001. Staff implemented a policy requiring half-mile setback of application of Class B material from all buildings. This effectively implemented a ban on all but 600 acres in the County. The final ordinance banning land application of Class B biosolids has been enacted. Land application in the County has ceased except for some in-County Class A solar dried biosolids. Riverside County is in the process of developing a Class A biosolids ordinance which will probably include buffer zones. The County would like to do is distinguish between Class A biosolids that is objectionable to neighbors and Class A biosolids that is not objectionable.

**Update:** A draft Ordinance regulating Class A has been drafted and is being reviewed.

*Contact: Anne Briggs, EMWD and Layne Baroldi, OCSD  
Current as of: May, 2002*

The *San Luis Obispo County* Board of Supervisors has instituted a six months process to develop an ordinance for land application of biosolids. The Board has established a committee made up of 27 individuals including County Staff, Cal Poly Academicians, farmers, business leaders, and

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several from a group in opposition to biosolids land application. They have hired several consultants to work with them in the preparation of this ordinance.

The County Department of Environmental Health is charged with putting out regulations of land application of biosolids. They have put together a panel that is very divided and covers the range from anti biosolids activists to land appliers. All of these will have a vote. They have recently brought in a new facilitator, John Wallace. It appears that as a minimum the final ordinance will be more restrictive then the 503 regulations and the Statewide General Order.

The Task Force has completed their work, and the facilitator has prepared draft recommendations for submission. The draft recommendations were voted approval at a September 19, 2001 meeting. The recommendations have been given to the Environmental Health Department for presentation to the Board of Supervisors and development of an Ordinance. The recommendation should be going before the Board of Supervisors in December.

The recommendations will allow biosolids land application with some restrictions beyond the current requirements. The recommendations should allow reuse of all of the biosolids generated within the County on existing sites until a formal ordinance is prepared and adopted.

***Update:*** The recommendations will be presented to the Board of Supervisors on March 12, 2002.

*Contact: Bob Gillette, Carollo, Diane Gilbert, City of LA  
Current as of: March, 2002*

**Tri-TAC WATER COMMITTEE  
JUNE 13, 2002 MEETING**

**ISSUE SUMMARY**

**1. 303(d) LIST/TOTAL DAILY MAXIMUM LOAD (TMDL) ISSUES**

**Background:** Under Section 303(d) of the Clean Water Act and associated USEPA regulations, States are required to list water bodies for which water quality standards will not be met after application of technology-based controls, establish priorities for action among the listed water bodies, establish total maximum daily loads (TMDLs) that each listed water body can receive to meet water quality standards, and determine reductions in pollutant loads from point and non point sources to achieve the TMDL. The next 303(d) list is required to be submitted by April, 2002. Under the new regulations (which are expected to go into effect by that time) the 303(d) lists will be prepared every 4 years.

**EPA's TMDL Regulations:** EPA issued draft regulations pertaining to 303(d) listing and TMDL development in August 1999. Numerous changes to the existing TMDL program have been proposed in the draft regulations. Comments on the draft EPA regulations were made in January 2000. EPA received an enormous volume of comments on the proposed regulations. A number of congressional hearings have been held to hear testimony on this topic. EPA issued the final regulations on July 13<sup>th</sup>, 2000 and a 60-day Congressional Review period went into effect after the regulations were issued. The regulations have a delayed effective date of April 30, 2003. In 2001, EPA held numerous listening sessions throughout the Country to get input on potential revisions to the adopted regulations. Draft regulations are expected to be released sometime in 2002 for review. With regard to listing, in November 2001, EPA released its *2002 Integrated Water Quality Monitoring & Assessment Report Guidance* ("integrated report guidance") that for the first time integrates state development and submission of the Clean Water Act's 305(b) water quality reports and 303(d) lists of impaired waters. The release of the integrated report guidance was one of several reasons EPA listed for extending the deadline for the next state 303(d) lists until October 1, 2002.

**California's 1998 303(d) List:** The SWRCB adopted the statewide 1998 303(d) list on May 27, 1998. EPA took final action on California's 1998 303(d) list in May 1999, adding 37 water bodies and 12 pollutants for other water bodies, including dioxin for San Francisco Bay.

**California 303(d)/TMDL Lawsuits:** In December 1997, the Natural Resources Defense Council (NRDC) and two other environmental groups sent a Notice of Intent to Sue the EPA over the failure of the Los Angeles RWQCB to adequately implement the 303(d) and (e) program. As a result of a settlement agreement between the parties, EPA adopted a consent decree establishing a schedule for completion of TMDLs in Region 4.

In northern California, the San Francisco Baykeeper filed a similar Notice of Intent to Sue with EPA Region 9 in October 1998 for the San Francisco and Central Valley Regions. On January 12, 2000, the San Francisco Baykeeper, San Diego Baykeeper and CalPIRG filed a lawsuit against EPA alleging failure to properly implement the TMDL and NPDES permit programs in California. CASA filed a similar suit against EPA regarding a failure to properly implement Section 303(d), 305(b) and other sections of the Clean Water Act. The Cases have been consolidated by the Court, which denied the BayKeeper's Motion for Summary Judgment to establish TMDL schedules for all waters in California that are not already subject to consent decrees. BayKeeper has appealed the decision.. CASA's remaining claims are scheduled to be briefed this Fall.

In June 1998, Sacramento Regional County Sanitation District (SRCSD) filed a lawsuit against the SWRCB and Central Valley and San Francisco RWQCBs, alleging that the 1998 303(d) list is invalid due to the states failure to comply with provisions of the Clean Water Act, the Porter-Cologne Act, the Administrative Procedures Act, and the California Environmental Quality Act. CASA and SCAP joined as plaintiffs in this lawsuit; NRDC intervened on behalf of the State. A hearing for summary adjudication on two issues emerging from the CASA/Sacramento lawsuit against the SWRCB over the 1998 303(d) list was held in Sacramento Superior Court in November 1999. The court ruled in favor of the State on both issues. The remaining issues were heard by the court in August 2000, and the court ruled in favor of the State on all issues. CASA, SCAP and Sacramento have appealed, and filed their opening briefs with the Court of Appeal.

The Farm Bureau filed a federal lawsuit seeking to have a TMDL for the Garcia River (north coast of California) overturned, based on the Administrative Procedures Act. This lawsuit questioned whether non-point sources fall under the 303(d) and TMDL regulations. AMSA intervened in the lawsuit in support of EPA's authority to address non-point sources under the TMDL program. Forestry associations also intervened, in support of the Farm Bureau. A federal court found in favor of EPA in March 2000. The Farm Bureau's appeal in the 9th Circuit Court of Appeals is proceeding.

***TMDL Legislation:*** State legislation (AB 982) was enacted requiring the formation of an advisory group to evaluate the California TMDL program. A Public Advisory Group (PAG) has been established under this authority. Bobbi Larson of CASA and Vicki Conway of LACSD are the POTW member and alternate, respectively. The group is has developed consensus recommendations regarding a statewide ambient monitoring program and is finalizing its report on other elements of a TMDL program for California. The PAG submitted its report evaluating the State's program to the Legislature in February 2001. The PAG is continuing to meet, including subgroups who are offering recommendations to the SWRCB on the listing process.

CASA is working to develop proposed language for a federal Clean Water Act amendment to address TMDL issues.

***TMDL Guidance in California:*** EPA Region IX released a public draft of TMDL guidance for California. Tri-TAC provided formal comments on the draft TMDL guidance document in a letter dated November 30, 1999. The guidance reflects EPA's legal view of minimum federal requirements for TMDLs and fails to require or endorse positions advocated by Tri-TAC and CASA.

***TMDL-related Permit Issues:*** New NPDES permitting procedures emerged in the San Francisco Bay region for pollutants contained on the 1998 303(d) list. EPA Region IX indicated that it would object to permits issued by the Regional Board that did not contain the following elements: (1) no dilution allowance for 303(d)-listed pollutants in performing reasonable potential analyses or setting final effluent limits; (2) mass limits for bioaccumulative 303(d)-listed pollutants based on current performance; and (3) final mass limits of zero ("no net loading") for bioaccumulative pollutants. These requirements are similar in many respects to positions advocated by the San Francisco Baykeeper in numerous appeals filed on Bay area permits. In February and March, 2000 two Tosco refinery NPDES permits were adopted with these provisions in place. Each of these permits was appealed.

The San Francisco Regional Board has included in many subsequently issued NPDES permits for POTWs provisions similar to those contained in the Tosco permit. The Central Valley Regional Board placed similar requirements in Sacramento Regional's permit, and draft permits prepared by the LA Regional Board have proposed even more onerous requirements. It is hoped that these provisions will be removed upon remand or permit modification.

USEPA Region IX issued draft permit guidance dated April 20, 2000, which sought to codify the above-described permitting approach for California for 303(d)-listed pollutants prior to the adoption of TMDLs. Tri-TAC submitted comments on the draft guidance. Western State Petroleum Association (WSPA) filed a federal lawsuit challenging EPA's draft guidance document for NPDES permitting procedures prior to adoption of a TMDL. In addition, both Congress, Chuck Fox, the former Assistant Administrator for Water, directed EPA regions not to implement regional guidance in advance of a national policy/guidance on interim permitting, but Region IX has ignored these directives. At that time, EPA indicated it intended to issue national guidance on this topic, but this effort wanted in 2001. However, in the Spring of 2002, EPA intends to issue guidance on development of ambient mercury criteria, which will include a section devoted to interim permitting.

The SWRCB conducted a two-day evidentiary hearing on the challenged "Tosco" permits in September 2000. On March 7, 2001, the SWRCB issued its decision in the appeals of the Tosco permits. The decision addressed the interim permitting issues in a way generally favorable to the regulated community's positions. The findings included:

- The no-net loading and criterion end-of-pipe limits in the findings of the permits are inappropriate; instead, the permit findings should simply state that the final WQBEL will be based on the TMDL.
- 303(d) listing alone is not a sufficient basis to conclude that a water body lacks assimilative capacity
- The arguments related to allowing dilution in the reasonable potential analysis have been mooted by the adoption of the SIP;
- Interim, performance-based mass limits for refineries are appropriate, but should be calculated using different statistical methods that account for historic variability in the effluent.
- The decision left open the question of whether interim performance-based mass limits are appropriate for POTWs, as that issue was not specifically before the SWRCB in the appeal of these industrial permits. However, in the subsequent Napa Sanitation District appeal decided Dec. 5, 2002, the SWRCB held that interim performance-based mass limits are appropriate for POTWs. That decision has been appealed to Superior Court.

***Update:***

The RWQCBs were directed by the SWRCB to submit their draft 2002 303(d) lists to the SWRCB by the end of October, 2001. The RWQCBs submitted their lists as compiled by the staffs of each of the RWQCBs without formal action by the individual boards. The SWRCB is expected to put the final list out in early 2002 for public comment, and make an October 1, 2002 deadline for submission to EPA.

WSPA dismissed its lawsuit on the interim permitting guidance after the Tosco decision and EPA's subsequent "repeal" of its guidance.

*Contacts: Melissa Thorme, Downey Brand; Margie Nellor, LACSD; Bobbi Larson, CASA;  
Current as of: March 6, 2002.*

## 2. CALIFORNIA TOXICS RULE (CTR) / PROPOSED STATE IMPLEMENTATION POLICY (SIP)

The State Water Resources Control Board (SWRCB) was required to adopt water quality objectives for priority pollutants under the Clean Water Act, Section 303(c)(2)(B). SWRCB originally adopted the Inland Surface Water Plan/Enclosed Bays and Estuary Plan (ISWP/EBEP) in 1991, but both plans were rescinded in 1994 in response to a court order. As a result, USEPA began efforts to promulgate the California Toxics Rule (CTR), which was published a draft in the Federal Register on August 5, 1997. The draft CTR included proposed numeric water quality standards for those EPA priority pollutants, which were not covered by the 1992 National Toxics Rule. An economic assessment of the effect of the proposed standards (primarily looking at point sources) was also developed.

EPA conducted a formal consultation process with the U.S. Fish & Wildlife Service and the National Marine Fisheries Service to resolve issues regarding the draft CTR for several years. This protracted process was the result of a finding by the Services that the CTR standards would be likely to jeopardize the continued existence of numerous endangered and threatened species found in California.

In conjunction with the CTR, the SWRCB released a draft Policy for Implementation of Toxics Standards for Inland Surface Waters, Enclosed Bay, and Estuaries of California (State Implementation Policy, or SIP) and functional equivalent document (FED) for public comment during Fall 1997.

SWRCB issued a Second Draft SIP and FED in November 1999 for public review. The SWRCB prepared a revised economic analysis for the Second Draft SIP. SWRCB issued a Third draft of the SIP in January 2000. A fourth draft of the SIP was provided to attendees of a March 2, 2000 Board meeting, at which time the SWRCB adopted a Revised Version of the fourth draft, which became effective upon USEPA promulgation of the CTR in May 2000 (*Federal Register*, May 18, 2000). NPDES permits now must be written to incorporate the provisions of the SIP and CTR.

When the SIP was adopted, dischargers raised concerns about their inability to find laboratories that could perform analyses that met all of the minimum levels (MLs) adopted in the SIP. The SWRCB conducted a survey of laboratories in October 2000 to gather additional information about this issue. This is also a concern for the California Ocean Plan amendments adopted by the SWRCB in November 2000.

Environmental groups filed a lawsuit against the SWRCB in May 2000 challenging the SIP. CASA and the Western States Petroleum Association both joined the suit as intervenors on the side of the State Board. The judge ruled in favor of the SWRCB, CASA and WSPA on all claims. The environmental groups have appealed.

In early May of 2000, EPA issued its letter conditionally approving the SIP. EPA approved most provisions of the SIP, subject to its understanding of the proper interpretation, but withheld action on the compliance schedule provisions which allow up to 15 years for a TMDL to be developed and 5 years for compliance with the wasteload allocations derived from the TMDL (for a total of up to 20 years). In light of EPA's action, the status of these compliance schedule provisions is unclear.

State Board staff began work on Phase II of the SIP, which will include policy provisions relating to effluent dependent waters (EDWs), as well as the development of technical guidance regarding site-specific objectives and mixing zone delineation. Two public meetings were held regarding

EDWs on February 28, 2001 in Los Angeles and March 14, 2001 in Sacramento. Additional information about Phase II efforts can be obtained from Chris Bailey, SWRCB Freshwater Standards Unit, 916/341-5571.

*Update:* None

*Contacts: Bobbi Larson, CASA; Sharon Green, LACSD;  
Current as of: March 6, 2002*

### 3. **ENFORCEMENT ISSUES – Mandatory Minimum Penalties**

**SB709:** SB 709, which established discretionary pollution prevention programs and mandatory minimum penalties for NPDES violations, became effective as law on January 1, 2000. SWRCB issued guidance on SB 709 implementation in December 1999.

Tri-TAC sent a letter to the SWRCB regarding chlorine residual limit compliance determinations and reporting. SWRCB has responded to say they are considering this issue. In the Bay Area, Regional Board staff has indicated a willingness to consider additional monitoring information (e.g. sulfur dioxide or bisulfite monitoring) in defining chlorine violations.

**SB 2165:** The follow-up legislation, SB 2165 (Sher) was chaptered on September 28<sup>th</sup>, 2000. This bill modified the original law by allowing for some relief for dischargers issued Time Schedule Orders. The SWRCB issued an updated Question and Answer memorandum for the implementation of Minimum Mandatory Penalties in 2001. The document is located on the SWRCB website at [http://www.swrcb.ca.gov/water\\_laws/index.html](http://www.swrcb.ca.gov/water_laws/index.html).

In October 2000, the SWRCB issued a draft enforcement policy. Tri-TAC and CASA submitted extensive comments and testified a hearing in early 2001. In October 2001, the policy was re-released with extensive revisions, many of which incorporated Tri-TAC and CASA's recommendations. The document was revised again in December 2001, in advance of a hearing held in January 2002. Tri-TAC and CASA submitted comments again, including specific wording changes for the remaining issues of concern.

*Update:*

The SWRCB adopted amendments to the Enforcement policy on February 19, 2002. The final version can be viewed at <http://www.swrcb.ca.gov/plnspols/index.html#waternews>. It incorporated essentially all of the Tri-TAC and CASA recommendations. A summary of the key provisions can be found on the Tri-TAC website.

*Contact: Margie Nellor, LACSD  
Current as of: March 6, 2002*

### 4. **OFFSETS/POLLUTANT TRADING**

The concept of pollutant offsets and/or pollutant trading has re-emerged in numerous forums as a by-product of the 303(d) and TMDL process. Pollutant offsets are being discussed as one of several options that dischargers may have to comply with restrictive wasteload allocations resulting from TMDLs. A major issue is whether pollutant offsets will be voluntary or required. In its proposed NPDES regulations to address permitting while TMDLs are being developed,

USEPA proposed a mandatory offset program. Some NPDES permits in the San Francisco Bay area still include a finding that suggests that “no net loading” is a feasible wasteload allocation decision for specific pollutants. The concept of “no net loading” presumes that existing and future loadings from a discharger to a 303(d)-listed water body would be offset by reductions in other sources of the pollutant in question. For practical purposes, this is being viewed as a mandatory offset approach for many dischargers. A draft mercury TMDL wasteload allocation document prepared by Regional Board staff includes a discussion of a pollutant offset program that may be considered for the San Francisco Bay area.

Tri-TAC formed a workgroup to produce a position paper on pollutant offsets. The work group started with the 1996 Tri-TAC pollutant trading document and modified it to address current issues and approaches. Workgroup meetings have been held and drafts produced for comment. The current draft of the offset position paper is dated September 11, 2000.

Based on the actions of some regional boards to place offset requirements in discharge permits, the Tri-TAC Water Committee addressed this issue to the SWRCB at its presentation to the Board on October 4. Terry Oda, from EPA Region IX, has asked members from POPS to discuss the development of an offset program with EPA and the USGS. No meeting dates have been set yet.

At this time, the SWRCB is not planning to adopt an Effluent Trading Program; however, the Office of Chief Counsel drafted guidelines for trading. Tri-TAC will work from our set of principles in hopes of helping the state to develop reasonable guidelines for effluent trading in California. These guidelines could then be used for the voluntary development of site specific trading plans to approach specific problems. Meanwhile, EPA is developing a water quality trading policy that may be modeled after regulations being developed in Michigan. Tri-TAC provided input to AMSA on key issues that should be addressed in the policy. It is expected that that EPA policy will be released in the summer of 2002.

**Update:** The SWRCB Office of Chief Counsel has published a memorandum detailing the circumstances under which effluent trading could occur. In general, the memorandum supports trading mechanisms within the context of the Clean Water Act and the Porter-Cologne Water Quality Act. Tri-TAC is preparing a letter to the SWRCB in response to the memorandum commenting on the positions of the Chief Counsel and in support of pilot trading programs. The EPA has also released a draft trading proposal which will be discussed and commented on by a subcommittee.

*Contact: Monica Oakley, LWA; Phil Bobel, Palo Alto; Jim Colston, OCSB  
Current as of: March 29, 2002*

## **5. CALIFORNIA OCEAN PLAN AMENDMENTS/FUNCTIONAL EQUIVALENT DOCUMENT**

The Draft California Ocean Plan Amendments were issued for public comment during early September, 2000. Issues included the adoption of an Acute Toxicity Objective to replace the current acute toxicity technology based standard; new water quality objectives, new compliance determination using minimum levels; formatting and administrative changes; and new uses and proposed use nomination process for ASBS, OSRW and ONRW. Tri-TAC submitted comments jointly with SCAP and CASA in September and October 2000 .

Tri-TAC members attended the adoption hearing which occurred on November 16, 2000. All draft amendments to the COP were adopted except those related to the development and

nomination of OSRW and ONRW. Tri-TAC, in conjunction with other interested dischargers, submitted detailed comments related to the development and nomination of OSRW and ONRW. This issue was held over for further consideration at a January, 2001 hearing, which was later extended indefinitely. The final COP did include replacing the former freshwater acute toxicity test with an updated marine acute test that uses a mixing zone.

*Update:* The amended COP was adopted by the SWRCB and approved by OAL. In December 2002, the EPA issued final approval of the plan. The amended plan is available at <http://www.swrcb.ca.gov/plnspols/oplans/op2001.pdf>.

*Contact: Margie Nellor, LACSD; Sharon Green, LACSD; Jim Colston, OCSD  
Current as of March 6, 2002*

## **6. PERMIT ISSUES**

### **A. Appeals**

The majority of recently issued POTW permits throughout the State have been appealed, challenging, among other things, the regional boards' use of narrative water quality objectives to impose stringent effluent limitations.

The City of Los Angeles/ Burbank appeals yielded a favorable initial ruling from a Los Angeles Superior Court judge, who determined that the regional board failed to consider economics, potential environmental impacts and other public interest factors when adopting the permits, as required by the Porter-Cologne Water Quality Control Act and Clean Water Act. The judge also found that the regional board failed to "bridge the analytical gap" between narrative standards and numeric limits, and failed to state how it intended to translate narrative water quality objectives into numeric permit limits, as required by federal regulations (40 CFR 131.11(a)(2).)

The Attorney General (AG), representing the SWRCB and LARWQCB, appealed of the LA/Burbank decisions. The cities has simultaneously filed an appeal of the judge's denial of attorney's fees. Hearings are expected late 2002. The AG did not appeal all of the issues decided in the case. Issues not appealed included the overruling of daily max permit limits for POTWs, the invalidation of language prescribing particular manner of compliance, and the determination that the regional board failed to "bridge the analytical gap" between narrative standards and numeric limits. These unappealed items are now "law of the case" and will apply to the reissued LA and Burbank permits (and arguably any other similar permits issued by the Regional Board (and State Board?) as they are parties bound by the decision. How this decision will be used by the state when issuing new permits remains to be seen.

Similar issues regarding the use of narrative criteria were at issue in a lawsuit filed by the University of California, Davis, challenging a permit issued by the Central Valley Regional Water Quality Control Board. The judge in that case upheld the permits, reaching a conclusion opposite to that in the LA/Burbank case. The judge ruled that the use of federal advisory [304(a)] criteria was "within the [regional board's] discretion," and that the permit was "an application of the narrative toxicity objective, not an interpretation of it."

The City of Turlock has filed a petition for writ of mandate with the Stanislaus County Superior Court and received a temporary stay and order to show cause why the stay should be lifted. The case and the judicial stay were dismissed because the State Board acted to

independently stay the permit pending decisions in other similar cases (e.g., Napa and Vacaville).

After receiving a dismissal of its stay request by the SWRCB, the Napa Sanitation District filed a petition for writ of mandate with the Napa County Superior Court along with a Motion for Stay of portions of the permit. The case was subsequently transferred to Solano Superior Court and the Bay Area Clean Water Agencies have been added as a Petitioner. An administrative stay from the SWRCB and a supplemental judicial stay are in place until the writ appealing the permit and the SWRCB's order on the permit is decided.

The SWRCB heard the City of Vacaville's Permit appeal on September 11-13<sup>th</sup>. CASA/SCAP/Tri-TAC were consolidated as one party in this evidentiary hearing. Other parties include the City of Turlock, LACSD, DeltaKeeper, and Heal the Bay/Southern California Keepers.

**Update:**

The Vacaville Permit Appeal continued with a site visit for State Board staff and Member Pete Silva. A draft decision is not expected until mid-2002.

Southern California dischargers sued EPA over approval/disapproval of the 1994 Basin Plan for Los Angeles. The favorable decision and subsequent re-issued EPA approval letter ruled the condition MUN use designation had no legal effect. Thus, permits in the LA region no longer require MUN-based effluent limitations. The decision and letter also reviewed the narrative standards for toxic pollutants. EPA upheld the PCB narrative, but disapproved the bioaccumulation narrative due to the lack of a translator required by 40 C.F.R. §131.11(a)(2). EPA also stated that the narrative toxicity standard was approved.

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Current as of March 7, 2002



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May 20, 2002

Mr. Kevin Weiss  
U.S. Environmental Protection Agency  
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Washington, DC 20460

Dear Kevin:

**SUBJECT: COMMENTS OF THE DRAFT MEMORANDUM “NPDES REQUIREMENTS FOR MUNICIPAL WASTEWATER TREATMENT DURING WET WEATHER CONDITIONS”**

Tri-TAC appreciates the opportunity to provide comments on the U.S. Environmental Protection Agency’s (EPA) December 21, 2001 draft memorandum titled, “NPDES Requirements for Municipal Wastewater Treatment During Wet Weather Conditions.” Tri-TAC is a California-based technical advisory committee comprised of members from public agencies and other professionals responsible for wastewater treatment. Tri-TAC is jointly sponsored by the California Association of Sanitation Agencies, the California Water Environment Association, and the League of California Cities. The constituency base for Tri-TAC treats and reclaims more than two billion gallons of wastewater each day and serves most of the sewered population of California. The following comments are presented for your consideration prior to finalizing the memorandum.

This letter provides comments on the third item in the memorandum - - Wet weather treatment scenarios at POTW treatment plants. Tri-TAC believes that this issue is critical and should be discussed and resolved through EPA guidance. Tri-TAC recommends that the first two items in the memorandum, “Discharges from emergency overflows” and “Discharges from PEFTFs”, continue to be discussed and ultimately resolved through the pending EPA Sanitary Sewer Overflow (SSO) Regulations.

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**Blending: A Critical Tool for Treating Peak Wet Weather Flows.**

The use of blending is absolutely essential for many Publicly Owned Treatment Works (POTWs) to treat wet weather flows and still meet secondary effluent limitations. A recent survey of AMSA members found that a large number of members operate facilities that are designed to utilize a blending process during peak flow conditions. Blending enables POTW operators to maximize the amount of wet weather flow that can be treated while fulfilling their important obligation to protect the treatment plant from property and treatment process damage.

During wet weather conditions, the treatment plant receives and treats flow volumes many times greater than normal dry weather flows. Collection systems and treatment plants were not designed to store and treat this excess flow, and it would be both inefficient and technologically infeasible and very expensive to redesign these facilities to accommodate all wet weather conditions. Thus the POTW is placed in a no-win situation. An operator who decides to force more flow through the plant than it is designed for, risks biological washout and extended treatment process failure. If the operator decides to protect the plant and not accept additional flow, he/she risks increased overflows from the collection system, basement flooding, and a potentially significant bypass around the entire treatment process. Other options, such as wet weather treatment facilities, do not provide the same level of treatment as that available at a POTW. In fact, EPA had to determine that primary effluent blending operations are appropriate wet weather flow management options in granting federal funds under the Construction Grants Program to build these facilities. These blending facilities were then incorporated into the plant operations and the NPDES permits. For these reasons, blending has always been used as a reasonable means for enabling POTWs to provide treatment to wet weather flows that achieves discharge standards and protects the plant processes.

**Tri-TAC's General Comments on Draft Blending Policy**

In general, Tri-TAC believes that the Agency is on the right track with its draft blending policy. We agree that the ultimate objective for POTWs during wet weather conditions is to meet secondary treatment standards and to protect the plant from wash-out and other types of wet weather-related damage. In accordance with this objective, the operator should continue to have the flexibility to change the treatment plant's internal process flows as required. Tri-TAC believes that the draft blending policy strikes the appropriate balance between these objectives, and affords the needed operational flexibility to maximize treatment. There are, however, certain areas where the draft policy should be strengthened and clarified prior to finalization.

We presume the purpose of EPA's memo is to provide guidance; additional specificity is necessary to avoid misinterpretation of the intent of EPA's bypass provisions by state permit writers. Tri-TAC contends that NPDES regulations do provide flexibility for permit writers to allow designed-in intentional diversion of wastewater around a treatment unit without triggering bypass, while meeting secondary discharge standards.

## **Specific Comments on Draft Blending Policy**

### **Definition of Terms**

Tri-TAC suggests that the use of terms such as “generally accepted practices and design criteria” (Principle #2) and “generally accepted good engineering practices and criteria” (Principle #43) be clarified through guidance. For example, it is not clear in the draft policy which entity will make the subjective determination of what qualifies as “generally accepted.” Tri-TAC understands that EPA is in the process of developing guidance to provide further clarification on how these terms will be applied in the field. Tri-TAC requests the opportunity to review and provide comments on this guidance when it is released as a draft or before finalized.

### **Introductory Paragraph #1**

Tri-TAC notes that POTWs use blending during certain peak flow events to protect not only biological units, but also other units from damage. Additionally, since there is no documentation from the promulgation of the bypass provisions indicating that the bypass rule was intended to preclude the use of blending as a wet weather flow management option, we recommend the second sentence of the first paragraph be revised to reflect this broader use of blending as follows:

“Peak wet weather discharges from POTWs that are comprised of effluent routed around *one or more* treatment units together with the effluent from the biological units prior to discharge could be approved... .”

### **Principle #3**

Tri-TAC is concerned about the practical implications of requiring the exceedance of capacity in these various units as a precursor to using blending. We caution that EPA

1. Clarify that having or building storage/equalization facilities is not a prerequisite to authorizing blending. Consistent with EPA guidance, where I/I is not excessive, reference 40 CFR Part 35.2005 (b)(29) (...flow which does not result in a total flow rate of more than 275 gallons per capita per day), additional storage capacity should not be required. Furthermore, such facilities may be unnecessary as Tri-TAC believes that the trigger to blend in most facilities is more dependent on the status of the secondary microorganisms than on strict hydraulic capacity.
2. Revise principle No.3 to include the term “or” *Alternative flow routing scenarios are only used when flows exceed the capacity of storage/equalization units and “or” biological units...* This revision clarifies that building storage/equalization was not EPA’s intention in this provision.
3. Provide greater flexibility in principle No.3, as stated in the draft letter, “Alternative flow routing scenarios are only used when flows exceed the capacity of existing or planned storage/equalization units and biological treatment units based on generally accepted good

Mr. Kevin Weiss  
May 20, 2002  
Page 4

engineering practices and criteria under the specific circumstances described in the permit application and defined in the permit.” In many cases, storage/equalization units are designed to be used *after* blending to protect public health and receiving waters from untreated SSOs. We feel this practice, if it is a part of a prudently designed wet weather flow management strategy, should be allowed to continue.

Tri-TAC appreciates EPA’s consideration of the above comments. We would be happy to meet with staff to discuss Tri-TAC’s recommendations. Please contact me at 510/287-1496

Sincerely,

DAVID R. WILLIAMS, Chair

DRW:BHK:dlp

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cc: Greg Schaner, AMSA



**Tri-TAC**  
Jointly Sponsored by:  
**League of California Cities**  
**California Association of Sanitation Agencies**  
**California Water Environment Association**

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May 17, 2002

Arthur G. Baggett, Jr., Chair  
and Members  
State Water Resources Control Board  
1001 I Street  
Sacramento, CA 95814

**SUBJECT: COMMENTS REGARDING THE PROPOSED 2002 CLEAN  
WATER ACT SECTION 303(d) LIST**

Dear Chairman Baggett and Members:

The California Association of Sanitation Agencies (CASA) and Tri-TAC appreciate the opportunity to provide comments regarding the proposed 2002 Section 303(d) List. CASA and Tri-TAC are statewide organizations comprised of members from public agencies and other professionals responsible for wastewater treatment. Tri-TAC is jointly sponsored by CASA, the California Water Environment Association, and the League of California Cities. The constituency base for CASA and Tri-TAC collects, treats and reclaims more than two billion gallons of wastewater each day and serves most of the sewered population of California.

As you know, the composition of the State's 303(d) List is among the most important water quality regulatory issues facing California today. This list determines where total maximum daily loads (TMDLs) will be developed, and thus, where California's limited water quality resources will be directed over the next several years. Under the State Water Resource Control Board's (SWRCB) current practice, whether a water body is included on the List also affects NPDES permitting during the interim period between listing and TMDL development. In light of the consequences of listing, we believe it is critically important that the 303(d) List include only those water quality limited segments for which TMDLs are required.

Arthur G. Baggett, Jr., Chair  
and Members  
State Water Resources Control Board  
May 17, 2002

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This letter identifies those aspects of the proposed 2002 List that CASA and Tri-TAC support as well as our recommendations for further changes. Participation in the 2002 process has confirmed and highlighted the need for a clear, consistent and technically sound State policy to govern future listing and de-listing decisions. We look forward to assisting the SWRCB in developing a workable policy that will guide decisions during the next listing cycle.

### **CASA and Tri-TAC Support the Establishment of a “Watch” List.**

We concur with the SWRCB staff recommendation to establish a “Watch” List of water bodies where the information and available data are insufficient to warrant placement on the 303(d) List or where an alternative program is in place to address the impairment. The “Watch” list provides a mechanism to identify and track water bodies where more information must be collected to determine whether water quality standards (beneficial uses and water quality criteria or objectives) are attained. Water bodies on the “Watch” List should receive high priority for monitoring or further study before the next update of the 303(d) list. Formal criteria for placing water bodies on the “Watch” List should be developed as part of the Statewide Listing and De-Listing Policy.

**Placement on “Watch” List where Data are Insufficient:** We support the staff recommendations to place water bodies on the “Watch” List rather than the 303(d) List where the data are insufficient to show exceedance of a standard. Examples include the Gualala River (temperature) in Region 1; Robison Creek (nitrogen), Buckeye Creek (phosphorous) and Stampede Reservoir (pesticides) in Region 6; and Little Corona Beach (bacteria) in Region 8.

**Placement on “Watch” List where an Alternative Enforceable Program is in Place.** CASA and Tri-TAC support the recommendations to place certain water bodies on the “Watch List” rather than on the 303(d) List, or to move them from the 303(d) List of waters for which TMDLs are required to the “Watch List, where an alternative enforceable program is in place to achieve standards. TMDLs are a means to attainment of water quality standards, not an end in themselves, and it simply does not make sense to direct limited resources to development of TMDLs where another enforceable program is already in place to achieve the needed pollutant reductions. In Region 2, for example, the South Bay Basin/ Mission and Islais Creeks are proposed for the “Watch” List because these waters are part of the Bay Protection and Toxic Cleanup Program (BPTCP) Consolidated Cleanup Plan. Examples of impairments that were originally proposed for 303(d) listing in Region 4 that now appear on the “Watch” List include the San Gabriel River Estuary for Trash (the alternative enforceable program is the Municipal Stormwater Permit, which contains trash provisions), and some listings in Dominguez Channel and Consolidated Slip (alternative enforceable program is the BPTCP). We think that use of the “Watch” List in these instances makes sense.

**Placement on “Watch” List Where the Stressor is Unknown.** We support the recommendations to place waters on the “Watch” List rather than the TMDL development List when the cause of impairment, or stressor, is not known. In these waters, additional investigation and study is required to determine why the beneficial use is not being met, and whether, in fact, a pollutant is the cause of the impairment. In cases where stressors other than pollutants actually are causing the problem but a TMDL is pursued anyway, significant resources may be expended in hopes of solving the problem, but to no avail. For example, algae growth may be caused by sunlight in concrete-lined channels rather than by nutrient levels. In those cases, doing a TMDL for nitrogen and phosphorous that results in more stringent point source effluent limits may not solve the problem. In the Malibu Creek watershed, for example, the Las Virgenes Municipal Water District does not discharge for seven months of the year, yet there are “excess” algae levels both upstream and downstream of their treatment plant during the non-discharge period.

The “Watch” List affords the opportunity to gather needed information and determine the stressor before jumping in to the TMDL development process. Examples of appropriate placement on the “Watch” List include Cold Creek in Region 4 (unclear cause of algae growth), Lower and Upper Putah Creek in Region 5 (unknown toxicity) and Suisun Basin/Peyton Slough (sediment toxicity/effects-based listing and alternative enforceable program in place.) in Region 2.

**CASA and Tri-TAC Support the De-Listing of Waters Where Impairment is Due to Natural Conditions.**

In water bodies where standards are not met due to natural conditions, a TMDL is neither technically feasible nor practical. We believe it is appropriate to exclude from the TMDL development List those waters that are impaired due to natural causes. Examples include Alkali Lake (salinity and TDS), Grant Lake (arsenic), Crowley Lake (arsenic) and Heavenly Valley Creek (phosphorous) in Region 6.

**CASA and Tri-TAC Support De-Listing Where Data Show No Impairment of Beneficial Uses.**

In some cases, beneficial uses are not impaired even though water column or other measurements show exceedances above a water quality criterion. We support the recommendations to de-list waters where the weight of evidence shows no actual impairment. The most prominent examples are the proposed de-listings in San Francisco Bay for copper and nickel, where extensive scientific work shows that beneficial uses in the Bay are not impaired despite occasional exceedances of numeric objectives. Another example is the East Fork of the Carson River where 5 out of 26 measurements for pH were slightly outside the water quality objective, yet these deviations were not of sufficient magnitude to affect beneficial uses.

**CASA and Tri-TAC Support De-Listing Waters Where the Listings were Based on Elevated Data Levels.**

A number of waters were included on prior 303(d) Lists due to so-called Elevated Data Levels (EDLs) in fish tissue. The EDLs are informal criteria derived from the SWRCB's Toxic Substances Monitoring Program (TSMP) database. EDLs are internal comparative measures developed by SWRCB staff where concentrations of substances are presented as percentile rankings compared to a distribution of previous TSMP data. "EDLs are not directly related to potentially adverse human or animal health effects; they are only a way to compare findings in a particular area with the larger data base of findings from all over the state" (TSMP Data Report, 1994-1995).

CASA and Tri-TAC agree that such informal criteria are insufficient to warrant listing, and we support the recommendations to de-list waters that were originally listed based on these informal criteria. Examples of proposed de-listings include the Ventura River, Conejo Creek, Coyote Creek and Calleguas Creek R-1 in Region 4.

**CASA and Tri-TAC Support the Recommendation that Waters Be Listed Based on Water-Body-Specific Information.**

It may seem to be stating the obvious that a water body should not be placed on the 303(d) List for TMDL development on the basis of data not collected in the water body, or where beneficial uses and water quality standards have not been established. Yet, some regional board listing proposals are not based on water-body specific information. We support the SWRCB staff recommendations not to include these listings due to the absence of any confirmation of impairment. For example, the SWRCB staff recommends excluding from the list a series of creeks in Region 8 where no beneficial uses have been designated.

**CASA and Tri-TAC Support the Proposed Exclusion of Listings Where No QA/QC Procedures Were Used.**

CASA and Tri-TAC have long maintained that the SWRCB ought to establish minimum data quality and quantity standards for 303(d) listing. The SWRCB staff recommendation to exclude from the List waters listed solely on the basis of data lacking adequate QA/QC procedures is a step in the right direction. For example, several sites within the Santa Barbara Channel in Region 3 are not proposed for listing because "QA procedures were not used."

**CASA and Tri-TAC Support the Development of a “TMDLs Completed” List.** The 303(d) List is used to establish the priority and schedule for TMDL development. Just as waters for which more information is needed are tracked via the “Watch” List, it makes sense to inventory and track those waters where TMDLs have been completed but water quality standards have not yet been attained. This will allow the SWRCB and regional boards to follow the progress of TMDL implementation separately from the 303(d) List of TMDLs to be developed.

### **ISSUES OF CONCERN REGARDING THE PROPOSED 2002 303(d) LIST**

As discussed in detail above, there are many aspects of the proposed 2002 303(d) List that CASA and Tri-TAC believe reflect a constructive and technically sound approach to 303(d) Listing. There remain, however, a number of significant issues regarding the 2002 List that have not been adequately addressed, and we urge the SWRCB to make further revisions to the List prior to its adoption.

#### **Specific Listings Carried Over From the 1998 List Should Be Re-Evaluated to Ensure Consistency and Fairness in the Listing Process.**

Among the assumptions upon which the proposed 2002 303(d) List is founded is that the 1998 Section 303(d) List “forms the basis” for the 2002 submittal. (Staff Report, Vol. I, p.2.) As a result, SWRCB staff have not undertaken a critical review of listings carried over from the previous list. While we understand the workload challenges involved in reviewing each of the existing listings, it is the SWRCB’s obligation to prepare an appropriate and scientifically-based List. Many of the “grandfathered” listings suffer from the same flaws identified and addressed by the SWRCB staff in reviewing the regional boards’ proposed changes to the List—listings based on inadequate data, listings based on EDLs, impairments which will be addressed by alternative enforceable programs, and so on.

CASA and Tri-TAC urge the SWRCB to review, at a minimum, those 1998 Listings that have been identified in individual comment letters as warranting de-listing or placement on the “Watch” List, and those for which development of a TMDL is planned in the next several years. Waiting until the next listing cycle—which could be four or five years down the road—is not adequate, given the consequences of listing and TMDL development outlined above. If the SWRCB does not conduct this review, the outcome will be anomalous results and a misdirection of resources.

**Listing Should Not Be Based on Exceedances of Draft Guidance or Informal Criteria that are Not Adopted Water Quality Objectives**

CASA and Tri-TAC have long been concerned about the use of informal advisory criteria as the basis of listing decisions. If adopted objectives are not providing adequate use protection, those objectives should be revisited through the standard-setting process. The Clean Water Act and Porter-Cologne Water Quality Act have requirements that serve important purposes in establishing water quality objectives. Most notably, Water Code Section 13241 requires that specified factors be considered by a Regional Board in establishing water quality objectives. Listing waters based on some other criterion and proceeding with TMDL development constitutes an “end-run” around the statutorily-mandated standard setting process.

For example, the North Coast Regional Board and the SWRCB staff have proposed a new listing for Region 1 that is based on exceedances of Draft Department of Health Services Guidance for Fresh Water Beaches (see SWRCB Staff Report, pg. 1-8). This guidance has not been subjected to public review and comment. DHS is in the process of establishing a stakeholder group to evaluate and make recommendations for revisions to the draft. The Fact Sheet prepared by SWRCB staff indicates that the data are insufficient to show exceedance of the adopted REC-1 water quality objective for bacteria, but that the data do show exceedance of the levels set forth in the draft guidance. There are also several examples of listings proposed for Region 2 and Region 9 that were based on “Beach Closures.” The criteria used by the local health agencies to post beaches are not adopted water quality objectives and, at best, indicate a snap shot in time rather than an ongoing impairment. Beaches may be closed as a public health precaution following a sewer spill, or following major storm events that create substantial urban runoff flows. These closures may occur whether or not monitoring shows any elevated levels in the water body.

**Water Bodies Should Not be Included on the TMDL Development List Based Upon Inadequate Data.**

The draft 2002 303(d) List still includes several examples of proposed listings that are based on a single sample, or on very limited data, such as a small number of samples, or data that are not temporally or spatially representative. This issue is exacerbated because there are no guidelines or requirements for a minimum number of sampling events or frequency of exceedances to declare a water body impaired. In some cases, the SWRCB has proposed placement on the Watch List, instead of the 303(d) list, when the proposed listing is based on a single sample. For example, in Region 3, the SWRCB has proposed to place San Luis Obispo Creek on the Watch List instead of the 303(d) list because only 1 composite fish tissue sample (1 composite of 20 fish taken during a single sampling event) was used as the basis for listing. In this case, the State Board proposed placement on the Watch List because

there are “not enough samples to list” (see pg. 3-30). However, in Region 5 (pg. 5-6), the SWRCB recommended placement of the Upper Bear River on the 303(d) list based on samples from 3 fish taken during a single sampling event. The proposed listing of Little Deer Creek in Region 5 (pg. 5-28) is also based on fish tissue samples taken on a single day.

In Region 8, Bolsa Chica is proposed for the “Watch” List, because the data “does not meet minimum requirement of 10 samples for water chemistry data” and more monitoring is needed. (p. 8-26.) However, there are several examples of 303(d) listings in Region 9 that are based on less than 10 samples (see pgs. 9-1, 9-8, and 9-9). In Region 2, the San Pablo Basin/Petaluma River is proposed for listing based on four exceedances of the nickel criterion over a nine-year period. In addition, many waters recommended for placement on the 303(d) list lack temporal representation. For example, Aliso Creek in Region 9 is proposed for listing as impaired due to fecal coliform based on data collected during the month of October in 1998 (5 samples in a 30-day period). Samples collected over a short time period or during a single season may not be representative of the overall conditions of the water body. Listings based on data biased toward unusual conditions (such as flow, runoff, or season) should be removed from the 303(d) list until better temporal representation of water quality conditions can be established.

These types of limited data do not provide sufficient basis for development of a scientifically-sound TMDL and require additional monitoring before impairment determinations can be made. CASA and Tri-TAC recommend that water bodies for which there is inadequate data be placed on the “Watch” List and targeted for further monitoring.

**Water Bodies Should be Placed on the “Watch” List Where Site-Specific Objectives are Being Developed.**

We also recommend that, where site-specific objectives (SSOs) are being developed for a water body pursuant to the process set forth in the State Implementation Policy for Toxics (SIP), these waters be placed on the “Watch” List. The outcome of the SSO process may demonstrate that the water quality objective was inappropriate, the water body is not impaired, and obviate the need for TMDL development. We support the Region 2 recommendation to de-list the Santa Clara Basin for copper and place the water body on the “Watch” List due to the development of an SSO scheduled for adoption in Spring 2002. SWRCB staff recommended that listing be maintained because the SSO has not yet been adopted. We do not believe it makes sense to direct resources to TMDL development where the SSO process may render the TMDL unnecessary, and recommend that the SWRCB place the Santa Clara Basin/South San Francisco Bay on the “Watch” List for copper rather than the 303(d) List.

Arthur G. Baggett, Jr., Chair  
and Members  
State Water Resources Control Board  
May 17, 2002

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In summary, CASA and Tri-TAC applaud many of the SWRCB staff's proposed revisions to the 2002 303(d) List. We believe these changes signal an important policy direction to include on the 303(d) List only those waters where TMDLs are required—and where the TMDL process will yield potential water quality benefits. Given the limited resources for development and implementation of TMDLs, we believe it is critical that California focus its program on those waters where impairments and stressors are documented and understood. The addition of a "Watch" List ensures that water bodies where there is cause for concern but only limited information will receive the monitoring and investigation needed to determine whether a TMDL is required.

Thank you for your consideration of our comments.

Sincerely

David R. Williams, Chair  
Tri-TAC

Roberta L. Larson  
CASA

cc: Celeste Cantu, Executive Director  
Craig J. Wilson, SWRCB



# State Water Resources Control Board



Gray Davis  
Governor

Winston H. Hickox  
Secretary for  
Environmental  
Protection

## Executive Office

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*The energy challenge facing California is real. Every Californian needs to take immediate action to reduce energy consumption. For a list of simple ways you can reduce demand and cut your energy costs, see our website at <http://www.swrcb.ca.gov>.*

MAY 15 2002

To: Interested Parties

## NOTICE OF EXTENDED PUBLIC SOLICITATION FOR WATER QUALITY DATA AND INFORMATION

On April 2, 2002, the State Water Resources Control Board (SWRCB) issued a notice of a public hearing on the revision of California's Clean Water Act section 303(d) list of water quality limited segments. The original solicitation for information related to this matter was issued in March 2001, and the record was closed on May 15, 2001. At the request of the Assembly Bill 982 Public Advisory Group (PAG), SWRCB is extending the deadline for submittal of data and information to June 15, 2002. PAG is a diverse group of stakeholders that provides recommendations to SWRCB on ways to improve the Total Maximum Daily Load (TMDL) Program.

SWRCB is seeking to obtain all readily available water quality-related data and information that was not previously submitted to SWRCB or a Regional Water Quality Control Board (RWQCB) for the 2002 listing cycle. All new data and information must be received by June 15, 2002, and the hearing record will be closed as of that date. Any information that was already submitted to SWRCB or to a RWQCB by May 15, 2001, pursuant to the original solicitation in 2001, is already a part of the administrative record, and it should not be resubmitted.

For purposes of this solicitation, information is any documentation describing the current or anticipated water quality condition of a surface water body. We consider data to be a subset of information that consists of reports of measurements of specific environmental characteristics. The data and information may pertain to physical, chemical, and/or biological conditions of the State's surface waters or watersheds.

### Data and information provided should include the following:

- Name of the entity or person providing the information.
- Mailing address, telephone number, and email address for a contact person who can answer questions about the information provided.
- Two hard copies and an electronic copy of all information provided. Please specify the software used to format the information and provide definitions for any codes or abbreviations used.
- Bibliographic citations for all information provided.

*California Environmental Protection Agency*



- Bibliographic citations and any calibration and quality assurance information available for the model(s) used, if computer model outputs are included in the information.
- Data in spreadsheet, database, or ASCII formats. Please specify the format and define any codes or abbreviations used in the database.
- Metadata for the field data, i.e., when measurements were taken, locations, number of samples, detection limits, etc.
- Metadata for Geographic Information System (GIS) data. The preferred projection is Teale Albers, NAD27. If you need an explanation of Teale Albers projection, please see the Teale Data Center website: <http://www.gislab.teale.ca.gov/wwwgis/albers.html>. Otherwise, the metadata should detail all the parameters of the projection, including datum (e.g., NAD27, WGS84).
- A description of the data quality assurance procedures.
- A description of the extent to which the data quality requirements were met.
- A general description of the potential source(s) of pollutants, if known.
- For data from citizen volunteer water quality monitoring efforts:
  - The name of the group.
  - Indication of any training in water quality assessment completed by members of the group.

Data and information should be submitted to:

Craig J. Wilson, Chief  
Monitoring and TMDL Listing Unit  
Division of Water Quality  
State Water Resources Control Board  
P.O. Box 100  
Sacramento, CA 95812-0100

If you have any questions about this SWRCB notice, you may call Craig J. Wilson at (916) 341-5560.

Sincerely,

  
Thomas Howard  
Deputy Director

## EPA's Water Quality Trading Proposed Policy

The United States Environmental Protection Agency's (EPA's) Office of Water is renewing efforts to support the development and implementation of market-based approaches to improving water quality. This water quality trading initiative builds on EPA's efforts over the last seven years. In 1996, EPA issued an [Effluent Trading in Watersheds Policy](#) and [Draft Framework for Watershed-Based Trading](#). EPA has previously funded and provided support for a number of demonstration trading projects including those in Cherry Creek Reservoir, Colorado; Long Island Sound; the Fox Wolf Basin in Wisconsin; Kalamazoo River in Michigan; Lower Boise River in Idaho; and the Chesapeake Bay. These projects have provided lessons and approaches that EPA believes will be potentially useful in other efforts to restore and maintain water quality.

In the proposed policy on water quality trading presented here for public comment, EPA draws on these lessons and experience to provide policy guidance to states, tribes, and others for the design and implementation of trading programs. The purpose of the proposed policy is to signal EPA support for soundly designed water quality trading programs developed by states and tribes and to identify components that EPA believes are appropriate for programs to operate successfully and protect water quality.

EPA supports development of water quality trading programs by states and tribes to restore or maintain water quality, and believes that trading programs can potentially achieve these water quality goals more efficiently and at lower cost while providing additional benefits such as habitat restoration. Implementation of water quality trading programs occurs within the existing regulatory framework. The proposed policy is intended to be fully consistent with this existing framework and includes many provisions intended to ensure program consistency with regulatory requirements.

The proposed policy addresses trading to maintain water quality in unimpaired waters, trading in impaired waters before development of a TMDL, and trading to meet TMDLs. While the focus is on nutrients and sediment, the policy also discusses the potential for trading other pollutant reductions under certain circumstances. The policy acknowledges some of the challenges encountered in trading programs, such as estimation of nonpoint source load reductions, and offers possible approaches. The importance of monitoring and program evaluation are also emphasized.

### **Office of Water Contacts**

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# Draft Strategy for Water Quality Standards and Criteria

May 2002

## Why Is a Strategy for Water Quality Standards and Criteria Being Developed?

Water quality standards and criteria are the regulatory and scientific foundation of programs established under the Clean Water Act to protect the Nation's waters. As such, they are among the most critical clean water programs. They need renewed focus and priority-setting, particularly since the nature of water pollution problems and needed solutions have changed dramatically.

## How Is the Strategy Being Developed?

The draft strategy is the product of a wide-ranging review of the existing water quality standards and criteria program within the context of all clean water programs. The review covered clean water goals, mandates and authorities; EPA's current strategic goals for clean water and other strategic planning efforts; major needs of the current EPA standards and criteria program and key programs linked to it including total maximum daily loads (TMDLs), National Pollutant Discharge Elimination System (NPDES) permits, and source water protection; and current trends in water quality including emerging environmental problems. The review also considered the results of more than 50 listening sessions conducted for the draft strategy with over 350 people during April-September 2001 and recent recommendations from the National Research Council, the General Accounting Office, EPA's Inspector General, and EPA's National Environmental Justice Advisory Committee.

## What Does the Strategy Contain?

The draft strategy contains a vision for the future:

*All waters of the United States will have water quality standards that include the highest attainable uses, combined with water quality criteria that reflect the current and evolving body of scientific information to protect those uses. Further, standards will have well-defined means for implementation through Clean Water Act programs.*

Actions to achieve this vision will need to fill major program gaps, meet important needs of states and authorized tribes, establish key linkages with other programs, address new complexities, make creative use of resources, and most importantly, achieve environmental results. From an analysis of these factors and the listening session results, 28 strategic actions emerged as most important for the program to accomplish over the next seven years. These strategic actions are organized along five strategic directions:

1. Clarify program requirements where gaps and lack of clarity have led to uncertainty, inconsistency or inaction. Expanded guidance and targeted oversight will enable EPA, states, tribes and stakeholders to have the same understanding of how to apply the Clean Water Act's requirements for standards.
2. Enhance implementation guidance and integration with other programs linked to standards. Focused efforts will strengthen key linkages between standards and other programs including assessments, TMDLs, permits, drinking water protection, and protection of endangered and threatened species.
3. Strengthen and maintain the scientific foundation of water quality programs. These actions focus on developing and enhancing criteria for pollutants which cause the major impairments and threats to the nation's water quality, and continue to lead cutting-edge scientific advances in such areas as nutrient criteria, biological criteria and waterborne microbial criteria.
4. Link standards to watershed approaches at the state and local levels. These actions will support site-specific efforts to help solve water quality problems, and will strengthen ways for watershed stakeholders to understand the program, express community preferences for designated uses, and build support for control actions.
5. Build capacity and share information among EPA, states and authorized tribes. These efforts will increase interactions at key points such as triennial reviews, foster more exchanges between standards and criteria professionals and continue to build the capacity of regions, states, tribes and stakeholders to address standards and criteria issues.

The draft strategy focuses on what OST and other EPA offices need to accomplish to meet program needs of EPA, the states and authorized tribes. "Authorized tribes" means federally-recognized Indian tribes for which EPA has given approval to administer water quality standards programs. For Indian country as a whole, the strategy supplements, but does not replace, the goals and objectives for water quality standards expressed in *Protecting Public Health and Water Resources in Indian Country: A Strategy for EPA/Tribal Partnership*, EPA Office of Water, October 1998.

### **How Will the Strategy Be Implemented?**

The Office of Science and Technology (OST) in EPA's Office of Water will work closely with other EPA programs and with states, authorized tribes, and stakeholders to implement the strategy.

### **What is the schedule for the strategy?**

OST published the draft strategy for public review and comment on May 3, 2002. Comments received by July 15, 2002, will be considered in finalizing the strategy.

**For More Information:** Please contact Fred Leutner at (202) 566-0378 or [leutner.fred@epa.gov](mailto:leutner.fred@epa.gov)

## 28 Strategic Actions in the Draft Strategy for Water Quality Standards and Criteria

### 1. CLARIFYING PROGRAM REQUIREMENTS

a. Develop clear guidance and provide ongoing support for state and tribal programs to adopt the highest attainable designated uses.
b. Develop guidance on the recommended procedures for implementing antidegradation policies.
c. Target federal corrective actions to address key environmental problems, and streamline reviews, approvals and disapprovals of submitted standards.
d. Review and update the 1994 <i>Water Quality Standards Handbook</i> .

### 2. ENHANCING IMPLEMENTATION GUIDANCE AND INTEGRATION

a. Develop implementation guidance for new and existing water quality criteria where necessary, including guidance for measuring attainment and applying criteria in TMDLs and permits.
b. Develop implementation guidance on specific issues affecting the target levels in TMDLs and water quality-based effluent limits in NPDES permits.
c. Complete the national consultation with FWS and NMFS on existing water quality criteria and resolve recurrent issues concerning water quality standards and protection of endangered and threatened species.
d. Integrate drinking water, pesticides and other program needs with Clean Water Act needs when developing and revising water quality criteria.

### 3. STRENGTHENING AND MAINTAINING THE SCIENTIFIC FOUNDATION

a. Provide additional guidance and assistance in implementing criteria for bacteria.
b. Provide additional guidance and assistance in implementing criteria for nutrients and continue to publish additional nutrient criteria.
c. Coordinate research efforts on waterbody sedimentation and develop a criteria methodology.
d. Develop new and revised aquatic life criteria using the 1985 methodology and update important features of that methodology.
e. Provide technical guidance for implementing the 2000 methodology for human health criteria and develop new criteria for important pollutants based on that methodology.
f. Continue EPA's leadership role in advancing the development and implementation of biological criteria.
g. Complete and begin implementing the Strategy for Waterborne Microbial Disease.
h. Continually update analytical methods to enable reliable detection of pollutants at levels near the criteria values.
i. Encourage applied research that could lead to further guidelines for contaminated sediments and water quality criteria to protect wetlands and wildlife.

### 4. LINKING TO WATERSHED APPROACHES

a. Coordinate actions on standards and TMDLs and cross-train state, tribal, and EPA staff in the two programs.
b. Evaluate whether drinking water uses have been adopted in water quality standards for source waters where needed and take action if gaps are found.
c. Provide additional guidance and technical tools for making scientifically-valid site-specific modifications of criteria.
d. Address the issue of inter-jurisdictional differences in water quality standards on shared waters.
e. Encourage states to use watershed approaches and support early consideration of water quality standards in the watershed planning process.
f. Promote increased use of biological criteria and ecological evaluation with other criteria types to address watershed-level protection.

### 5. BUILDING CAPACITY AND SHARING INFORMATION

a. Obtain early EPA, FWS and NMFS involvement in state and tribal reviews of standards.
b. Sponsor meetings, workshops and electronic dialogues with stakeholders to assist in developing and implementing EPA policies and guidance.
c. Establish a clearinghouse for states, tribes and EPA to share information on policies, guidance, criteria and implementation approaches.
d. Expand Water Quality Standards Academies and other training.
e. Maintain and expand on-line services and data bases.

AMENDED IN ASSEMBLY APRIL 23, 2002

CALIFORNIA LEGISLATURE—2001–02 REGULAR SESSION

**ASSEMBLY BILL**

**No. 2351**

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**Introduced by Assembly Member Canciamilla**

February 21, 2002

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An act to amend Section 13385 of the Water Code, relating to water.

LEGISLATIVE COUNSEL'S DIGEST

AB 2351, as amended, Canciamilla. Water quality: civil liability.

(1) Existing law, the Porter-Cologne Water Quality Control Act, subjects persons who violate various provisions of the act or the federal Clean Water Act to certain civil penalties, including a mandatory minimum penalty of \$3000 for the first serious violation, as defined, and each additional serious violation in any 6-month period. The act, under certain circumstances, authorizes the State Water Resources Control Board or a California regional water quality control board, in lieu of assessing the penalty applicable to the first serious violation, to elect to require the discharger to spend an amount equal to the penalty for a supplemental environmental project in accordance with the enforcement policy of the state board and any applicable guidance document or to develop a pollution prevention plan.

This bill, instead, would authorize the state board or a regional board, in lieu of assessing that mandatory minimum penalty *and with the concurrence of the discharger*, to ~~elect to require the discharger to spend up to the amount of the penalty for~~ *direct a portion of the penalty amount to be expended on a supplemental environmental project or to develop a pollution prevention plan.*

(2) The act requires the state board and the regional boards, for the purposes of carrying out these civil liability provisions, to construe a single operational upset that leads to simultaneous violations of more than one pollutant parameter as a single violation.

This bill would require those agencies, *for the purposes of imposing certain mandatory minimum penalties*, to construe a single operational ~~occurrence~~ *upset* that leads to violations of one or more pollutant parameters, even if the ~~occurrence~~ *upset* lasts for more than one day, *but not more than \_\_\_\_ days*, as a single violation.

(3) The act provides that the requirements relating to the imposition of mandatory minimum penalties do not apply to certain types of violations.

This bill also would make mandatory minimum penalties inapplicable to violations caused by the operation of a new or reconstructed wastewater treatment plant unit or process during a defined period of adjusting or testing, *not to exceed \_\_\_\_ days*, if certain requirements are met, or, ~~under certain circumstances until January 1, 2008~~, to *certain* violations of effluent limitations for chlorine.

~~(4) The bill would impose requirements with regard to the hearing held for the purpose of imposing civil liability pursuant to these provisions and would authorize the state board or a regional board to waive the imposition of, or reduce the amount of, mandatory minimum penalties if certain requirements are met.~~

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: no.

*The people of the State of California do enact as follows:*

1 SECTION 1. Section 13385 of the Water Code is amended to  
2 read:  
3 13385. (a) Any person who violates any of the following  
4 shall be liable civilly in accordance with this section:  
5 (1) Section 13375 or 13376.  
6 (2) Any waste discharge requirements or dredged and fill  
7 material permit.  
8 (3) Any requirements established pursuant to Section 13383.  
9 (4) Any order or prohibition issued pursuant to Section 13243  
10 or Article 1 (commencing with Section 13300) of Chapter 5, if the  
11 activity subject to the order or prohibition is subject to regulation  
12 under this chapter.



1 (5) Any requirements of Section 301, 302, 306, 307, 308, 318,  
2 or 405 of the Clean Water Act, as amended.

3 (6) Any requirement imposed in a pretreatment program  
4 approved pursuant to waste discharge requirements issued under  
5 Section 13377 or approved pursuant to a permit issued by the  
6 administrator.

7 (b) Civil liability may be imposed by the superior court in an  
8 amount not to exceed the sum of both of the following:

9 (1) Twenty-five thousand dollars (\$25,000) for each day in  
10 which the violation occurs.

11 (2) Where there is a discharge, any portion of which is not  
12 susceptible to cleanup or is not cleaned up, and the volume  
13 discharged but not cleaned up exceeds 1,000 gallons, an additional  
14 liability not to exceed twenty-five dollars (\$25) multiplied by the  
15 number of gallons by which the volume discharged but not cleaned  
16 up exceeds 1,000 gallons.

17 The Attorney General, upon request of a regional board or the  
18 state board, shall petition the superior court to impose the liability.

19 (c) Civil liability may be imposed administratively by the state  
20 board or a regional board pursuant to Article 2.5 (commencing  
21 with Section 13323) of Chapter 5 in an amount not to exceed the  
22 sum of both of the following:

23 (1) Ten thousand dollars (\$10,000) for each day in which the  
24 violation occurs.

25 (2) Where there is a discharge, any portion of which is not  
26 susceptible to cleanup or is not cleaned up, and the volume  
27 discharged but not cleaned up exceeds 1,000 gallons, an additional  
28 liability not to exceed ten dollars (\$10) multiplied by the number  
29 of gallons by which the volume discharged but not cleaned up  
30 exceeds 1,000 gallons.

31 (d) For purposes of subdivisions (b) and (c), the term  
32 “discharge” includes any discharge to navigable waters of the  
33 United States, any introduction of pollutants into a publicly owned  
34 treatment works, or any use or disposal of sewage sludge.

35 (e) In determining the amount of any liability imposed under  
36 this section, the regional board, the state board, or the superior  
37 court, as the case may be, shall take into account the nature,  
38 circumstances, extent, and gravity of the violation or violations,  
39 whether the discharge is susceptible to cleanup or abatement, the  
40 degree of toxicity of the discharge, and, with respect to the



1 violator, the ability to pay, the effect on its ability to continue its  
2 business, any voluntary cleanup efforts undertaken, any prior  
3 history of violations, the degree of culpability, economic benefit  
4 or savings, if any, resulting from the violation, and other matters  
5 that justice may require. At a minimum, liability shall be assessed  
6 at a level that recovers the economic benefits, if any, derived from  
7 the acts that constitute the violation.

8 ~~(f) For purposes of this section, a single operational occurrence~~  
9 ~~that leads to violations of one or more pollutant parameters, even~~  
10 ~~if the occurrence lasts for more than one day, shall be treated as a~~  
11 ~~single violation.~~

12 *(f) (1) Except as provided in paragraph (2), for the purposes*  
13 *of this section, a single operational upset that leads to*  
14 *simultaneous violations of more than one pollutant parameter*  
15 *shall be treated as a single violation.*

16 *(2) For the purposes of subdivisions (h) and (i), a single*  
17 *operational upset that leads to violations of one or more pollutant*  
18 *parameters shall be treated as a single violation even if that upset*  
19 *lasts for more than one day, but not more than \_\_\_\_ days.*

20 (g) Remedies under this section are in addition to, and do not  
21 supersede or limit, any other remedies, civil or criminal, except  
22 that no liability shall be recoverable under Section 13261, 13265,  
23 13268, or 13350 for violations for which liability is recovered  
24 under this section.

25 (h) (1) Notwithstanding any other provision of this division,  
26 and except as provided in subdivisions (j) (k), and ~~(m)~~ (l), a  
27 mandatory minimum penalty of three thousand dollars (\$3,000)  
28 shall be assessed for the first serious violation and each additional  
29 serious violation in any period of six consecutive months, ~~except~~  
30 ~~that if no serious violation has occurred in the prior six months, the~~  
31 ~~state board or regional board, in lieu of assessing the penalty, may~~  
32 ~~elect to require the discharger to spend an amount up to the amount~~  
33 ~~of the penalty for a supplemental environmental project, or to~~  
34 ~~develop a pollution prevention plan.~~

35 (2) For the purposes of this section, the following terms have  
36 the following meanings:

37 (A) A “serious violation” means any waste discharge that  
38 exceeds the effluent limitations contained in the applicable waste  
39 discharge requirements for a Group II pollutant, as specified in  
40 Appendix A to Section 123.45 of Title 40 of the Code of Federal



1 Regulations, by 20 percent or more or for a Group I pollutant, as  
2 specified in Appendix A to Section 123.45 of Title 40 of the Code  
3 of Federal Regulations, by 40 percent or more.

4 (B) A “supplemental environmental project” means an  
5 environmentally beneficial project that a person agrees to  
6 undertake, with the approval of the regional board, that would not  
7 be undertaken in the absence of an enforcement action under  
8 Section 13385.

9 (C) A “period of six consecutive months” means the period  
10 beginning on the day following the date on which a serious  
11 violation or one of the violations described in subdivision (i)  
12 occurs and ending 180 days after that date.

13 (i) Notwithstanding any other provision of this division, and  
14 except as provided in subdivisions (j), (k), and ~~(m)~~ (l), a mandatory  
15 minimum penalty of three thousand dollars (\$3,000) shall be  
16 assessed for each violation whenever the person does any of the  
17 following four or more times in any period of six consecutive  
18 months, except that the requirement to assess the mandatory  
19 minimum penalty shall not be applicable to the first three  
20 violations:

21 (1) Violates a waste discharge requirement effluent limitation.

22 (2) Fails to file a report pursuant to Section 13260.

23 (3) Files an incomplete report pursuant to Section 13260.

24 (4) Violates a toxicity discharge limitation contained in the  
25 applicable waste discharge requirements where the waste  
26 discharge requirements do not contain pollutant-specific effluent  
27 limitations for toxic pollutants.

28 (j) Subdivisions (h) and (i) do not apply to any of the following:

29 (1) A violation caused by one or any combination of the  
30 following:

31 (A) An act of war.

32 (B) An unanticipated, grave natural disaster or other natural  
33 phenomenon of an exceptional, inevitable, and irresistible  
34 character, the effects of which could not have been prevented or  
35 avoided by the exercise of due care or foresight.

36 (C) An intentional act of a third party, the effects of which  
37 could not have been prevented or avoided by the exercise of due  
38 care or foresight.

39 (D) A bypass of a treatment facility located in the County of  
40 Los Angeles during the 2001 calendar year if the applicable waste



1 discharge requirements incorporate a provision for the bypass, and  
2 that bypass meets the conditions set forth in Section 122.41 (m)(4)  
3 of Title 40 of the Code of Federal Regulations and any more  
4 stringent conditions incorporated into the waste discharge  
5 requirements and the bypass has been approved by the regional  
6 board as meeting those conditions.

7 (E) The operation of a new or reconstructed wastewater  
8 treatment plant unit or process during a defined period of adjusting  
9 or testing, if all of the following requirements are met:

10 (i) The regional board has been notified *at least 30 days* in  
11 advance of the operation, including the estimated time, not to  
12 exceed ~~180~~ \_\_\_\_ days, required for the adjustment or testing.

13 ~~(ii) The regional board determines that the operation during~~  
14 ~~that defined period was the cause of the violation.~~

15 ~~(iii) The regional board determines that reasonable, good faith~~  
16 ~~efforts were made to avoid the violation.~~

17 (ii) *The discharger has submitted to the regional board an*  
18 *operations plan that describes the actions the discharger will take*  
19 *during the period of adjusting and testing, including steps to*  
20 *prevent violations.*

21 (iii) *The regional board has approved the operations plan.*

22 (iv) *The discharger demonstrates that the violations were*  
23 *caused by the operation of the new or constructed wastewater*  
24 *treatment unit or process.*

25 (v) *The discharger demonstrates compliance with the approved*  
26 *operations plan.*

27 (2) (A) Except as provided in subparagraph (B), a violation of  
28 an effluent limitation where the waste discharge is in compliance  
29 with either a cease and desist order issued pursuant to Section  
30 13301 or a time schedule order issued pursuant to Section 13300,  
31 if all of the following requirements are met:

32 (i) The cease and desist order or time schedule order is issued  
33 after January 1, 1995, but not later than July 1, 2000, specifies the  
34 actions that the discharger is required to take in order to correct the  
35 violations that would otherwise be subject to subdivisions (h) and  
36 (i), and the date by which compliance is required to be achieved  
37 and, if the final date by which compliance is required to be  
38 achieved is later than one year from the effective date of the cease  
39 and desist order or time schedule order, specifies the interim  
40 requirements by which progress toward compliance will be



1 measured and the date by which the discharger will be in  
2 compliance with each interim requirement.

3 (ii) The discharger has prepared and is implementing in a  
4 timely and proper manner, or is required by the regional board to  
5 prepare and implement, a pollution prevention plan that meets the  
6 requirements of Section 13263.3.

7 (iii) The discharger demonstrates that it has carried out all  
8 reasonable and immediately feasible actions to reduce  
9 noncompliance with the waste discharge requirements applicable  
10 to the waste discharge and the executive officer of the regional  
11 board concurs with the demonstration.

12 (B) Subdivisions (h) and (i) shall become applicable to a waste  
13 discharge on the date the waste discharge requirements applicable  
14 to the waste discharge are revised and reissued pursuant to Section  
15 13380, unless the regional board does all of the following on or  
16 before that date:

17 (i) Modifies the requirements of the cease and desist order or  
18 time schedule order as may be necessary to make it fully consistent  
19 with the reissued waste discharge requirements.

20 (ii) Establishes in the modified cease and desist order or time  
21 schedule order a date by which full compliance with the reissued  
22 waste discharge requirements shall be achieved. For the purposes  
23 of this subdivision, the regional board may not establish this date  
24 later than five years from the date the waste discharge  
25 requirements were required to be reviewed pursuant to Section  
26 13380. If the reissued waste discharge requirements do not add  
27 new effluent limitations or do not include effluent limitations that  
28 are more stringent than those in the original waste discharge  
29 requirements, the date shall be the same as the final date for  
30 compliance in the original cease and desist order or time schedule  
31 order or five years from the date that the waste discharge  
32 requirements were required to be reviewed pursuant to Section  
33 13380, whichever is earlier.

34 (iii) Determines that the pollution prevention plan required by  
35 clause (ii) of subparagraph (A) is in compliance with the  
36 requirements of Section 13263.3 and that the discharger is  
37 implementing the pollution prevention plan in a timely and proper  
38 manner.

39 (3) A violation of an effluent limitation where the waste  
40 discharge is in compliance with either a cease and desist order



1 issued pursuant to Section 13301 or a time schedule order issued  
2 pursuant to Section 13300, if all of the following requirements are  
3 met:

4 (A) The cease and desist order or time schedule order is issued  
5 on or after July 1, 2000, and specifies the actions that the  
6 discharger is required to take in order to correct the violations that  
7 would otherwise be subject to subdivisions (h) and (i).

8 (B) The regional board finds that, for one of the following  
9 reasons, the discharger is not able to consistently comply with one  
10 or more of the effluent limitations established in the waste  
11 discharge requirements applicable to the waste discharge:

12 (i) The effluent limitation is a new, more stringent, or modified  
13 regulatory requirement that has become applicable to the waste  
14 discharge after the effective date of the waste discharge  
15 requirements and after July 1, 2000, new or modified control  
16 measures are necessary in order to comply with the effluent  
17 limitation, and the new or modified control measures cannot be  
18 designed, installed, and put into operation within 30 calendar days.

19 (ii) New methods for detecting or measuring a pollutant in the  
20 waste discharge demonstrate that new or modified control  
21 measures are necessary in order to comply with the effluent  
22 limitation and the new or modified control measures cannot be  
23 designed, installed, and put into operation within 30 calendar days.

24 (iii) Unanticipated changes in the quality of the municipal or  
25 industrial water supply available to the discharger are the cause of  
26 unavoidable changes in the composition of the waste discharge,  
27 the changes in the composition of the waste discharge are the cause  
28 of the inability to comply with the effluent limitation, no  
29 alternative water supply is reasonably available to the discharger,  
30 and new or modified measures to control the composition of the  
31 waste discharge cannot be designed, installed, and put into  
32 operation within 30 calendar days.

33 (C) The regional board establishes a time schedule for bringing  
34 the waste discharge into compliance with the effluent limitation  
35 that is as short as possible, taking into account the technological,  
36 operational, and economic factors that affect the design,  
37 development, and implementation of the control measures that are  
38 necessary to comply with the effluent limitation. For the purposes  
39 of this subdivision, the time schedule may not exceed five years in  
40 length. If the time schedule exceeds one year from the effective



1 date of the order, the schedule shall include interim requirements  
2 and the dates for their achievement. The interim requirements shall  
3 include both of the following:

4 (i) Effluent limitations for the pollutant or pollutants of  
5 concern.

6 (ii) Actions and milestones leading to compliance with the  
7 effluent limitation.

8 (D) The discharger has prepared and is implementing in a  
9 timely and proper manner, or is required by the regional board to  
10 prepare and implement, a pollution prevention plan pursuant to  
11 Section 13263.3.

12 (4) (A) A violation of an effluent limitation of zero for chlorine  
13 residual occurring during continuous monitoring, if the waste  
14 discharge requirements do not include frequency and magnitude  
15 thresholds qualifying the zero limitation, except that a violation of  
16 any of the following thresholds is subject to subdivisions (h) and  
17 (i):

18 ~~(A)~~

19 (i) More than 3.3 milligrams per liter for any period of time.

20 ~~(B)~~

21 (ii) More than zero for more than 23.3 percent of any one day.

22 ~~(C)~~

23 (iii) More than zero for more than 5.2 percent of any one-week  
24 period.

25 ~~(D)~~

26 (iv) More than zero for more than 2.4 percent of any one-month  
27 period.

28 (B) *This paragraph shall become inoperative on January 1,*  
29 *2008.*

30 (k) In lieu of assessing all or a portion of the mandatory  
31 minimum penalties pursuant to subdivisions (h) and (i) against a  
32 POTW serving a small community, as defined by subdivision (b)  
33 of Section 79084, the state board or the regional board may elect  
34 to require the POTW to spend an equivalent amount toward the  
35 completion of a compliance project proposed by the POTW, if the  
36 state or regional board finds all of the following:

37 (1) The compliance project is designed to correct the violations  
38 within five years.

39 (2) The compliance project is in accordance with the  
40 enforcement policy of the state board.



1 (3) The POTW has demonstrated that it has sufficient funding  
2 to complete the compliance project.

3 ~~(t) The hearing in response to the complaint for the~~  
4 ~~administrative imposition of civil liability pursuant to this section~~  
5 ~~shall provide for a reasonable opportunity for the person accused~~  
6 ~~to meaningfully present issues relevant to the allegations in the~~  
7 ~~complaint. If the person served with the complaint anticipates that~~  
8 ~~the time for presentation of evidence may reasonably exceed 30~~  
9 ~~minutes, the person may request the matter be referred to a panel~~  
10 ~~of the regional board in accordance with Section 13223, or by~~  
11 ~~stipulation to a hearing officer, to alleviate the potential~~  
12 ~~congestion of the agenda. The hearing shall be governed by~~  
13 ~~Chapter 1.5 of Division 3 of Title 23 of the California Code of~~  
14 ~~Regulations.~~

15 ~~(m) (1) The state board or a regional board may waive the~~  
16 ~~imposition of, or reduce the amount of, the penalty for any~~  
17 ~~violation described in subdivision (h) or (i), with or without the use~~  
18 ~~of a supplemental environmental project or pollution prevention~~  
19 ~~plan, if the state board or a regional board determines, by a~~  
20 ~~majority vote of all of its members, that justice requires the waiver~~  
21 ~~or reduction based upon one or more of the factors specified in~~  
22 ~~subdivision (e). In making this determination, the state board or a~~  
23 ~~regional board shall identify the factor or factors and the~~  
24 ~~supporting facts underlying its determination.~~

25 ~~(2) Notwithstanding subdivision (e), for the purposes of~~  
26 ~~reducing the amount of a penalty pursuant to this subdivision, the~~  
27 ~~state board or a regional board need not assess liability at a level~~  
28 ~~that recovers the economic benefits, if any, derived from the acts~~  
29 ~~that constitute the violation.~~

30 ~~(n)~~

31 ~~(l) In lieu of assessing penalties pursuant to subdivisions (h)~~  
32 ~~and (i), the state board or regional board, with the concurrence of~~  
33 ~~the discharger, may direct a portion of the penalty amount to be~~  
34 ~~expended on a supplemental environmental project in accordance~~  
35 ~~with the enforcement policy of the state board. The portion of a~~  
36 ~~penalty that may be expended on a supplemental environmental~~  
37 ~~project may not exceed \_\_\_\_ percent of the amount of the penalty.~~

38 ~~(m) The Attorney General, upon request of a regional board or~~  
39 ~~the state board, shall petition the appropriate court to collect any~~  
40 ~~liability or penalty imposed pursuant to this section. Any person~~



1 who fails to pay on a timely basis any liability or penalty imposed  
2 under this section shall be required to pay, in addition to that  
3 liability or penalty, interest, attorneys' fees, costs for collection  
4 proceedings, and a quarterly nonpayment penalty for each quarter  
5 during which the failure to pay persists. The nonpayment penalty  
6 shall be in an amount equal to 20 percent of the aggregate amount  
7 of the person's penalty and nonpayment penalties that are unpaid  
8 as of the beginning of the quarter.

9 ~~(o)~~

10 (n) Funds collected pursuant to this section shall be deposited  
11 in the State Water Pollution Cleanup and Abatement Account.

12 ~~(p)~~

13 (o) (1) The state board shall report annually to the Legislature  
14 regarding its enforcement activities. The reports shall include all  
15 of the following:

16 (A) A compilation of the number of violations of waste  
17 discharge requirements in the previous year.

18 (B) A record of the formal and informal compliance and  
19 enforcement actions taken for each violation.

20 (C) An analysis of the effectiveness of current enforcement  
21 policies, including mandatory minimum penalties.

22 (D) Recommendations, if any, necessary for improvements to  
23 the enforcement program in the following year.

24 (2) The report shall be submitted to the Chairperson of the  
25 Assembly Committee on Environmental Safety and Toxic  
26 Materials and the Chairperson of the Senate Committee on  
27 Environmental Quality on or before March 1, 2001, and annually  
28 thereafter.

29

O



## **Governor Davis names member of State Water Resources Control Board**

News release, Governor's Office - 5/16/02

SACRAMENTO - Governor Gray Davis today announced the appointment of Gary Carlton as a member of the State Water Resources Control Board. Mr. Carlton, 53, of Placerville, is a registered civil engineer and is familiar with water quality issues in California. He serves as the Executive Officer for the Central Valley Regional Water Quality Control Board, and is the former President and CEO of McLaren-Hart Inc., an environmental engineering company that provides services domestically and abroad. Mr. Carlton also served as an environmental engineer with J.B. Gilbert & Associates and the Los Angeles County Flood Control District. He was also a member of the Board of Directors for MBT Environmental Laboratories, Puris Corporation, and ALTA Laboratories. Mr. Carlton earned a bachelor of science degree from the University of California, Davis, and a master of science degree from California State University, Sacramento. The State Water Resources Control Board and the nine Regional Water Quality Control Boards preserve and enhance the quality of California's water resources and assure their proper allocation and effective use. Members receive a salary of \$114,191. This position requires Senate confirmation.



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May 20, 2002

Mr. Kevin Weiss  
U.S. Environmental Protection Agency  
Office of Wastewater Management, Water Permits Division  
1200 Pennsylvania Avenue, N.W.  
7<sup>th</sup> Floor, ICC Building, Mail Code: 4203M  
Washington, DC 20460

Dear Kevin:

**SUBJECT: COMMENTS OF THE DRAFT MEMORANDUM “NPDES REQUIREMENTS FOR MUNICIPAL WASTEWATER TREATMENT DURING WET WEATHER CONDITIONS”**

Tri-TAC appreciates the opportunity to provide comments on the U.S. Environmental Protection Agency’s (EPA) December 21, 2001 draft memorandum titled, “NPDES Requirements for Municipal Wastewater Treatment During Wet Weather Conditions.” Tri-TAC is a California-based technical advisory committee comprised of members from public agencies and other professionals responsible for wastewater treatment. Tri-TAC is jointly sponsored by the California Association of Sanitation Agencies, the California Water Environment Association, and the League of California Cities. The constituency base for Tri-TAC treats and reclaims more than two billion gallons of wastewater each day and serves most of the sewered population of California. The following comments are presented for your consideration prior to finalizing the memorandum.

This letter provides comments on the third item in the memorandum - - Wet weather treatment scenarios at POTW treatment plants. Tri-TAC believes that this issue is critical and should be discussed and resolved through EPA guidance. Tri-TAC recommends that the first two items in the memorandum, “Discharges from emergency overflows” and “Discharges from PEFTFs”, continue to be discussed and ultimately resolved through the pending EPA Sanitary Sewer Overflow (SSO) Regulations.

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### **Blending: A Critical Tool for Treating Peak Wet Weather Flows.**

The use of blending is absolutely essential for many Publicly Owned Treatment Works (POTWs) to treat wet weather flows and still meet secondary effluent limitations. A recent survey of AMSA members found that a large number of members operate facilities that are designed to utilize a blending process during peak flow conditions. Blending enables POTW operators to maximize the amount of wet weather flow that can be treated while fulfilling their important obligation to protect the treatment plant from property and treatment process damage.

During wet weather conditions, the treatment plant receives and treats flow volumes many times greater than normal dry weather flows. Collection systems and treatment plants were not designed to store and treat this excess flow, and it would be both inefficient and technologically infeasible and very expensive to redesign these facilities to accommodate all wet weather conditions. Thus the POTW is placed in a no-win situation. An operator who decides to force more flow through the plant than it is designed for, risks biological washout and extended treatment process failure. If the operator decides to protect the plant and not accept additional flow, he/she risks increased overflows from the collection system, basement flooding, and a potentially significant bypass around the entire treatment process. Other options, such as wet weather treatment facilities, do not provide the same level of treatment as that available at a POTW. In fact, EPA had to determine that primary effluent blending operations are appropriate wet weather flow management options in granting federal funds under the Construction Grants Program to build these facilities. These blending facilities were then incorporated into the plant operations and the NPDES permits. For these reasons, blending has always been used as a reasonable means for enabling POTWs to provide treatment to wet weather flows that achieves discharge standards and protects the plant processes.

### **Tri-TAC's General Comments on Draft Blending Policy**

In general, Tri-TAC believes that the Agency is on the right track with its draft blending policy. We agree that the ultimate objective for POTWs during wet weather conditions is to meet secondary treatment standards and to protect the plant from wash-out and other types of wet weather-related damage. In accordance with this objective, the operator should continue to have the flexibility to change the treatment plant's internal process flows as required. Tri-TAC believes that the draft blending policy strikes the appropriate balance between these objectives, and affords the needed operational flexibility to maximize treatment. There are, however, certain areas where the draft policy should be strengthened and clarified prior to finalization.

We presume the purpose of EPA's memo is to provide guidance; additional specificity is necessary to avoid misinterpretation of the intent of EPA's bypass provisions by state permit writers. Tri-TAC contends that NPDES regulations do provide flexibility for permit writers to allow designed-in intentional diversion of wastewater around a treatment unit without triggering bypass, while meeting secondary discharge standards.

## **Specific Comments on Draft Blending Policy**

### **Definition of Terms**

Tri-TAC suggests that the use of terms such as “generally accepted practices and design criteria” (Principle #2) and “generally accepted good engineering practices and criteria” (Principle #43) be clarified through guidance. For example, it is not clear in the draft policy which entity will make the subjective determination of what qualifies as “generally accepted.” Tri-TAC understands that EPA is in the process of developing guidance to provide further clarification on how these terms will be applied in the field. Tri-TAC requests the opportunity to review and provide comments on this guidance when it is released as a draft or before finalized.

### **Introductory Paragraph #1**

Tri-TAC notes that POTWs use blending during certain peak flow events to protect not only biological units, but also other units from damage. Additionally, since there is no documentation from the promulgation of the bypass provisions indicating that the bypass rule was intended to preclude the use of blending as a wet weather flow management option, we recommend the second sentence of the first paragraph be revised to reflect this broader use of blending as follows:

“Peak wet weather discharges from POTWs that are comprised of effluent routed around *one or more* treatment units together with the effluent from the biological units prior to discharge could be approved... .”

### **Principle #3**

Tri-TAC is concerned about the practical implications of requiring the exceedance of capacity in these various units as a precursor to using blending. We cautioned that EPA

1. Clarify that having or building storage/equalization facilities is not a prerequisite to authorizing blending. Consistent with EPA guidance, where I/I is not excessive, reference 40 CFR Part 35.2005 (b)(29) (...flow which does not result in a total flow rate of more than 275 gallons per capita per day), additional storage capacity should not be required. Furthermore, such facilities may be unnecessary as Tri-TAC believes that the trigger to blend in most facilities is more dependent on the status of the secondary microorganisms than on strict hydraulic capacity.
2. Revise principle No.3 to include the term “or” *Alternative flow routing scenarios are only used when flows exceed the capacity of storage/equalization units and “or” biological units...* This revision clarifies that building storage/equalization was not EPA’s intention in this provision.
3. Provide greater flexibility in principle No.3, as stated in the draft letter, “Alternative flow routing scenarios are only used when flows exceed the capacity of existing or planned storage/equalization units and biological treatment units based on generally accepted good

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engineering practices and criteria under the specific circumstances described in the permit application and defined in the permit.” In many cases, storage/equalization units are designed to be used *after* blending to protect public health and receiving waters from untreated SSOs. We feel this practice, if it is a part of a prudently designed wet weather flow management strategy, should be allowed to continue.

Tri-TAC appreciates EPA’s consideration of the above comments. We would be happy to meet with staff to discuss Tri-TAC’s recommendations. Please contact me at 510/287-1496

Sincerely,

DAVID R. WILLIAMS, Chair

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cc: Greg Schaner, AMSA