



The December 12, 2002 meeting will be held at:

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

**General Meeting & Water Committee – Raiders
Land Committee – Athletics 1**

TRI-TAC MEETING

THURSDAY, DECEMBER 12, 2002
9:00 A.M. – 12:00 P.M.

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

9:00 A.M. – GENERAL MEETING

ATTACHMENTS

1. INTRODUCTIONS
2. APPROVAL OF THE NOVEMBER 14, 2002 –
TRI-TAC MEETING SUMMARY/ACTION ITEMS PAGES 5-11
3. FUTURE MEETING SCHEDULE PAGE 12
4. TRI-TAC ROSTER PAGES 13-19
5. COMMITTEE ASSIGNMENTS PAGE 20
6. COMMITTEE ISSUE SUMMARIES PAGES 21-27
7. OTHER BUSINESS/NEW ISSUES

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

COMMITTEES WILL MEET SEPARATELY

11:30 A.M. – GENERAL MEETING

COMMITTEE REPORTS

- A. LAND
- B. WATER

LAND COMMITTEE AGENDA
December 12, 2002

	<u>Who</u>	<u>Time</u>
<u>A. Agenda Review and Approval</u>		
<u>B. Committee Action Items</u>		
1. Biosolids Recyclers of CA, status,	Ed McCormick/Bobbi Larson	10 min.
2. SWRCB Biosolids Final EIR & Lawsuit	Layne Baroldi/Bobbi Larson	5 min.
3. POPS Meeting Discussion Items	Layne Baroldi	5 min.
4. Model Biosolids Contract/RFP	Ann Briggs	5 min.
5. 40CFR 503 Dioxin Regulations/Data	Diane Gilbert	10 min.
6. Radioactivity Testing, Dose Modeling & Guidance	Diane Gilbert	5 min.
7. CIWMB Compostable Organic Mtls. Regs.	Diane Gilbert	5 min.
8. SCAQMD Proposed Rule 1133-Composting Opns.	Layne Baroldi	5 min.
9. Ongoing Biosolids Litigation Discussion	Layne Baroldi	10 min.
<u>C. Information and Discussion Items</u>		
New Biosolids Contracts/Technologies	Ed McCormick	10 min.
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	10 min.
• Alameda County Composting	Ed McCormick	5 min.
• Solano County	Ed McCormick	10 min.
<u>E. Other</u>	All	<u>10 min.</u> 120 min.

**WATER COMMITTEE AGENDA
December 12, 2002**

<u>Priority</u>		<u>Estimated Duration (minutes)</u>	<u>Further Information</u>
Items of Highest Priority:			
1	SWRCB/RWQCBs 303(d) Listing Process	15	Attachment 1, plus document link at tritac.org
2	Changes to State Implementation Policy (SIP)	20	Attachment 2
3	Final Regulation for Whole Effluent Toxicity	15	tritac.org
4	Toxicity Testing of Root Control Chemicals	5	
5	Federal Antidegradation Standards	10	tritac.org
6	USEPA Enforcement and Compliance History Online	15	Attachment 3
7	Potential Legislation Regarding Due Process For Non-NPDES Reqt's (WDRs, CDOs, TSOs, etc.)	10	
Pre-Regulatory Issues			
8	Xenobiotics	5	
9	Mercury – Fish Tissue Criteria, Water Quality Standards	15	
10	Effluent Trading	5	
11	Storm Drain Diversions	10	
12	Nutrient Criteria	5	
If Time, We Will Also Discuss:			
13	Effect of Phase II Stormwater on Sewer Districts		
14	Wet Weather TMDL Policy		tritac.org
15	Agriculture Waiver Extension		
16	Appeal Decision on Use of MLs		tritac.org
17	EBMUD Permit Court Proceedings		
18	LACSD Permits		
19	Napa Permit		
20	Vacaville Permit		
21	PAG Listing Guidance		
22	FOG Work Group		
23	Federal SSO Regulations		

LAND COMMITTEE MINUTES FROM NOVEMBER 14, 2002
MEETING
LAYNE BAROLDI AND ROBERT GILLETTE

Committee Action Items

1. Biosolids Recyclers of California – Status

CASA has advertised the position of Biosolids Manager. The applications are due November 19, 2002. We are also in the process of requesting EPA funding. We have a draft proposal that we will be finalizing to request the EPA funding. We're asking for about \$45,000 on that.

CASA will also, as a part of their dues payment request, be requesting funding from the agencies as a contribution for the biosolids program. There will be suggested donation amounts which will be approximately \$500 for small agencies up to a maximum for large agencies of \$25,000. The suggestion for collection system agencies will be in the \$500 to \$1,000 range. CASA has already received one donation. At the same time CASA will be requesting funding from Cities and other agencies that are not members of CASA who have worked on biosolids issues in the past. This solicitation will take the form of letters with telephone follow-up.

Lead: Ed McCormick and Bobbi Larson

2. SWRCB Biosolids General Order and EIR Lawsuit

The General Order and EIR adopted by the State Water Resources Control Board was challenged in court, upheld, and the court decision was subsequently appealed. Oral arguments on the appeal are scheduled to be heard on December 19, 2002.

Lead: Bobbi Larson

3. CIWMB Compostable Organic Materials Regulations

There is still the issue with regard to the 36 mg/kg requirement for selenium. We continue to try to have this concern addressed. So far, California Integrated Waste Management Board staff has not responded to comments in this regard, though they have been submitted at every stage of the process.

Lead: Diane Gilbert

4. SCAQMD Proposed Rule 1133-Composting Opns.

It appears that the South Coast Air Quality Maintenance District has delayed the release of the final rule until January 6. But it still looks like they will require enclosure of all active composting and negative pressure aeration for curing. It does not appear that the SCAP study will help to change any of these requirements.

Lead: Diane Gilbert

Local Ordinances

5. Kern County

Kern County instituted the ban on Class B land application in 1999, this becomes effective in early 2003. This ordinance will only allow Class A biosolids to be land-applied. The ordinance also required inspection of the Class B land application sites in the interim. The County has now prepared an ordinance that would be effective January 1, 2003, which will regulate the Class, A land application. This draft ordinance is generally considered to be a pretty good ordinance. There is discussion about whether or not an independent lab should be the required for the testing, but, other than that, it really appears to be a fairly fair ordinance. The County is planning to take the ordinance to the Board for public hearing on November 26, 2002.

The Board did go ahead and approve the CUP for a composting facility. Board Members commented during the hearings that they felt this County ought to be headed towards a total ban of all biosolids land application, even Class A compost.

There was considerable discussion about regional solutions to biosolids. BACWA is in the preliminary stages of looking into taking a lead in Northern California or the Bay Area for some type of facility. The Santa Ana Watershed Project Authority in Southern California is also looking into taking the lead on that as well.

Lead: Layne Baroldi

6. Kings County

The Board of Supervisors has denied all requests to extend the application of Class B biosolids, even though their ordinance allowed this approval under certain conditions. All appeals of these actions have been denied it is our understanding that McCarthy Farms has filed a lawsuit over these actions.

Lead: Layne Baroldi

7. Riverside County

A draft Class A ordinance has been prepared and is undergoing review by a number of different committees. No dates as to when or if the ordinance will be heard.

Lead: Anne Briggs and Layne Baroldi

8. Solano County

The County Board has decided not to implement an interim ordinance. They decided that since land application is not allowed from October 15 to April 15 under their current ordinance, they would wait and hold public hearings in January, February, and March. The staff is working to try and schedule those hearings.

Lead: Maura Bonnarens or Ed McCormick

WATER COMMITTEE MINUTES FROM NOVEMBER 14, 2002
MEETING
JIM COLSTON AND MONICA OAKLEY

Items of Highest Priority

1. SWRCB/RWQCBs 303(d) Listing Process

A workshop was held with three board members present who heard testimony from interested parties. There wasn't a lot of dialogue. Highlights included the proposed 2002 list has about 675 impaired water quality segments on it which comes out to about 1850 water body segments pollutant combinations. In contrast or comparison, the 1998 list had 509 impaired water quality segments and 1471 combinations. It comes out to about 300 new listings. You have to keep in mind the numbers can be deceptive because in some places they have an entire watershed listed as impaired, and in other places they'll have 10 or 12 listings for that watershed. Obviously that makes it look like water quality is getting worse in the state because they have more things on the list than in 1998.

The State Board announced at the workshop an extension of the comment deadline to December 6. The public hearing for adoption is now scheduled for January 22. The things that people are paying attention to now are specific problems. In terms of global stuff that we've been commenting on, they know what we think about the logic. We will take this extra opportunity to provide more comments on cost impacts. If you have additional thoughts about this or want to help out, contact Jim Colston or Bobbi Larson.

2. Operator Certification

There is a requirement that operators of wastewater treatment plants be certified. The SWRCB has been certifying operators for the last 30 years. Prior to that there was an operator certification program that was run by the California Water Pollution Control Association. So, out of the blue about three weeks ago there was a letter that was signed by Celeste Cantu, the head of the SWRCB, that proclaimed that the operator certification program administered by the State would be defunct because they couldn't afford it anymore because of the budget issues. In short order, the information was circulated widely throughout the State, and the POTW community responded with a lot of letters and telephone calls. Tri-TAC sent a letter; CWEA had an emergency board meeting where they discussed this and CWEA, to their credit, stepped up and said we can't let this die and we would be willing to assume responsibility for the program. The State indicated that they were funding the program to about half of what the costs were. In the matter of about a week and a half another letter came out essentially recanting all that she had said in the first letter. They would continue to fund the program, however, everyone was on notice that the program would not be continued at its current funding rate and fees would have to be increased to recoup all the costs due to the State budget crisis.

3. Stormdrain Diversions – Draft Principles

An afternoon session was initiated last month based on the high level of activity in Southern California. There's movement from regulatory agencies to pressure POTWs to take a look at and in some cases allow for stormwater diversions into the local sewer system. A list of principles was developed, and two action items were proposed: 1) Develop a summary matrix of all the diversions that are taking place statewide (Gail Chesler will develop the initial fields); 2) Pull together historical data on wet and dry diversions so we can begin to understand what the impacts from these flows are in terms of toxic constituents (Tom Grovhaug).

4. SWRCB Petition Language Changes

CASA prepared written comments and they were discussed at the CASA's Attorneys meeting. Melissa Thorne and Bobbi Larson met with the Office of Chief Council staff who are working on the petition regulations and then submitted the written comments. The substantive changes were not incorporated into the final draft. We were successful at the 11th hour in getting that extension so the new comment deadline is December 13, and there will be a January workshop and board meeting.

There are two issues that are key. The first is defining what has to be in the official record before the State Board in order for a judge to consider it an issues raised before the Regional Board. Does that mean that every possible legal argument and every possible procedural argument, or will broader objections allow for more specific claims on appeal? It's overly broad and limiting in terms of your due process rights to have the water board give you a fair hearing. The second issue is that they're saying the State Board can consider anything it wants to on appeal, and it doesn't provide a right for the party to either rebut that evidence, challenge it, or cross examine the person who provided the information. We also gave them a proposal for an automatic stay for NPDES permits because of the mandatory minimum penalties you could be racking up for 90 days until they give you a denial. We got some changes in the law that say they can give you retroactive stays of the effective date of the permit. Art Baggett thinks that the stay regulations are in the APA so he doesn't know that this is within his control. That's the other issue that we need to talk to them about, that these stays aren't harming the environment. It's just keeping people out of enforcement jeopardy.

5. NPDES Permit Fee Increases

The final version of what the State Board adopted is in the package. The fees were generally doubled for POTWs, but agencies are affected differently depending on the volume (permitted flow) of the plant discharge.

6. San Francisco Hg TMDL

Last week there was a CEQA scoping session for the mercury TMDL. They announced the waste load allocations which would include 15 kg/year for POTWs in the Bay Area; there are

about 40 of them in aggregate and the compliance would be measured on a 5-year average. The schedule for adoption is that a draft basin plan amendment is scheduled to come out in December with a workshop before the Regional Board in February with final adoption by April. The deadline for comments on the presentation that was made on October 31 is today, and the Bay Area Clean Water Agencies put together some comments addressing various aspects of the TMDL including the notion that they want to have concentration limits in addition to a mass load.

7a. LA City Activity

There were three permits issued in 1998 for the LA City and City of Burbank. They were appealed to the State Board. and in December 1999 the petitions were denied without review. We went through the whole appeal process at the Superior Court. We won everything at the Superior Court level, and we received a decision in April 2001. The State appealed the decision. Yesterday we had the court of appeals hearing. What it came down to was the sole issue was of whether Clean Water Act Section 301(b)(1)(c) has any application today. Our argument was that it doesn't. That was the baseline that industry had to be at best practicable treatment and POTWs had to be at secondary treatment (or if the State had something more stringent back in 1972 based on either the 1965 Clean Water Act or some state law they could do that.). So whichever was more stringent the state had the authority to do it, but they had to let people know by about mid 1973 so that by the time that the deadline came July 1, 1977 everybody would have that national minimum baseline in place. And then you moved on to other areas of the CWA including TMDLs and other options. It's a pretty big issue and the problem is we have two 9th circuit cases court of appeals on the federal side saying that 301(b)(1)(c) still applies so the justices were saying how do we reconcile this 9th circuit opinion. One of the cases was a stormwater case, so they didn't really look at it. The other one was a mine case which had a 401 certification process because EPA was writing a permit that the state had to certify that it was meeting standards.

The judges really understood that it was a complicated case, and they said it sounds like the full employment act for lawyers. If we get a good decision out of this it will be huge. If we lose I don't know whether we'll be moving on to the Supreme Court which is a writ because they don't have to take it up, but they could.

7b. Blending Letter

Distributed a letter to the committee that was provided at October AMSA meeting. This has implications on blending and SSOs, the way we do effluent monitoring, and maybe even disinfection processes. It focuses on the proposals by EPA on blending and peak excess flow treatment facilities. AMSA is directly involved in this issue, and they are reviewing the letter. EBMUD has looked at potentially doing a study to try and quantify relative effectiveness of blending and disinfection versus secondary treatment disinfection to see what our numbers actually are.

Pre-Regulatory Issues

7. Infiltration and Inflow Report

They have a number of recommendations on what should be done starting with the facilities where they recommend asset management policies, regionalization of wastewater systems as a way to have better overall control of funding, public education campaigns, and rates based on the real cost of service to maintain the infrastructure. The report then recommends moving beyond the facility to include some things that should be done at the local, state and federal levels in regards to regulatory and funding issues. Jim Colston proposed developing a POTW/State partnership to discuss these issues, but the proposal was not moved by the committee.

8. Xenobiotics – Licensing of Pharmaceuticals

An issue about this came up at the AMSA legal affairs conference. It was recommended that permit applicants disclose everything that possibly could be in your wastewater so you get the permit shield. Xenobiotics and pharmaceuticals are some of the things that you want to say that could be in our wastewater. The permit shield only applies to things that you have disclosed but don't have a limit for.

9. Mercury – Fish Tissue Criteria, Water Quality Standards

The State Board is going to adopt methyl mercury criteria for the State, and the State Board will consider a variance for POTWs.

10. C-SAW National Mixing Zone Survey

The documentation has a table about mixing zones in each State. This is a proposal to ban mixing zones nationwide.

TRI-TAC MEETING LOCATION & SCHEDULE 2002

TRI-TAC MEETING DATE ¹	LOCATION/HOTEL	AFTER TRI-TAC MEETINGS ²
DECEMBER 12, 2002 Holiday Party	HOLIDAY INN AIRPORT 500 HEGENBERGER ROAD OAKLAND, CA 94621 510-562-5311	
JANUARY 15, 2003 Air Committee	HILTON ONTARIO AIRPORT 700 NORTH HAVEN AVENUE ONTARIO, CA 91764 (909) 980-0400	
FEBRUARY 13, 2003	HOLIDAY INN AIRPORT 500 HEGENBERGER ROAD OAKLAND, CA 94621 510-562-5311	
MARCH 13, 2003	HAWTHORN SUITES SACRAMENTO 321 BERCUT DRIVE SACRAMENTO, CA 95814 (916) 441-1200	
APRIL 10, 2003 BBQ @ Melissa's House	HAWTHORN SUITES SACRAMENTO 321 BERCUT DRIVE SACRAMENTO, CA 95814 (916) 441-1200	
MAY 8, 2003	HILTON ONTARIO AIRPORT 700 NORTH HAVEN AVENUE ONTARIO, CA 91764 (909) 980-0400	
JUNE 12, 2003 Air Committee	HOLIDAY INN AIRPORT 500 HEGENBERGER ROAD OAKLAND, CA 94621 510-562-5311	
JULY 10, 2003 Baseball?	HOLIDAY INN AIRPORT 500 HEGENBERGER ROAD OAKLAND, CA 94621 510-562-5311	

¹ 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.

² 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.

Tri-TAC Roster

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Arleen Navarret	San Francisco PUC Water Quality Bureau 3500 Great Highway San Francisco, CA 94132	anavarre@puc.sf.ca.us	415 242-2201	415 242-2285

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Tri-TAC Liaison Representation

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

COMMITTEES

AIR	LAND	WATER	
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Gregory Adams James H. Clark Joyce Clark Alex Coate Margaret Figeroid Preeti Ghuman Jacqueline Kepke Paul Pau John Schroeter Jennifer Smith Brian Whitaker	Jeffrey Bell Maura Bonnarens Anne Briggs Nancy Evan Diane Gilbert Lesley Lundgren Ed McCormick Mike Moore Rueben Robles Terry Schmidtbauer Mike Sullivan Kimberly Toepfer	Jeff Berlin 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 Jim Marchese 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 Keith 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 Weiland Chuck Weir Dave Williams

**Tri-TAC WATER COMMITTEE
DECEMBER 12, 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 2002 303(d) list was required to be submitted by October, 2002, however, the State is running a bit behind. 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 13th, 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: Until the 2002 list is adopted and approved, the 1998 303(d) list reigns. 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.

Development of California's 2002 303(d) List: On April 2, 2002, the State Water Resources Control Board issued a draft of the section 303(d) list for 2002. The SWRCB held three hearings on the proposed list in May and accepted written public comments through June 15, 2002. SWRCB staff is in the process of reviewing the comments and issued a revised draft list in late October, 2002, and held a workshop regarding the list on November 6, 2002. The public comment deadline on the list closes December 6, 2002, and the SWRCB is scheduled to consider adoption of the list on January 23, 2002 and forward the adopted list to the USEPA for approval.

Tri-TAC submitted three comments letters on the draft list (dated May 17, 2002 and June 17, 2002 and November 1, 2002) and presented testimony at the May 23, 2002 hearing and November 6, 2002 workshop.

Development of Listing Guidance: SWRCB staff is preparing a draft of formal guidance regarding listing and de-listing pursuant to section 303(d). The staff has shared a Listing Concepts Paper with the AB 982 Public Advisory Group and received detailed comments from

the environmental and regulatory caucuses. A draft policy is expected to be released for public comment in early 2003, with hearings scheduled later in the Spring.

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 appealed the decision of the Ninth Circuit, which upheld the trial court on appeal, and filed a motion for re-hearing. CASA has dismissed its remaining claims, bringing the lawsuit to a close.

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. The case is fully briefed and pending oral argument in 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. The 9th Circuit Court of Appeals upheld the trial court in a decision issued on May 31, 2002.

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-related Permit Issues: 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, placed in the Tosco refinery permits and several other Bay Area permits, were similar in many respects to positions advocated by the San Francisco Baykeeper in numerous appeals filed on Bay area permits. On March 7, 2001, the SWRCB issued its decision in the appeals of the Tosco permits (one refinery then owned by Ultramar). 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 and hearing is set for January 7, 2002 before Judge Moelk.

Update: A San Francisco Superior Court judge ruled that water quality based effluent limits were required under CWA §301(b)(1)(C) and 40 C.F.R. §122.44(d) and could not be deferred until the TMDL was performed. However, this decision has been appealed by Tesoro, the latest owner of the previous Ultramar and Tosco facility.

*Contacts: Melissa Thorne, Downey Brand; Margie Nellor, LACSD; Bobbi Larson, CASA;
Current as of: December 2002.*

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

The 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, and finalized on May 18, 2000. 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 developed the 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), which, after a lengthy comment and revision process, became effective upon USEPA promulgation of the CTR in May 2000 (*Federal Register*, May 18, 2000, following an extensive public review process). 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 was 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 appealed, and the Court issued a decision on October 24, 2002 upholding the use of Minimum Levels (MLs) for purposes of reporting and administrative enforcement.

In early May of 2000, EPA issued its a 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 schedules provisions which allows 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.

Update: The State Board recently developed a document that contains procedures for applying for a case-by-case exception to the SIP. The intent is to provide a roadmap so there are no surprises. The State Board also expects to release a draft of the SSO guidance for comment in Fall 2002. As for the EDW policy development, State Board staff expect to resume efforts on this front following a decision on the Vacaville permit appeal, which was adopted in October 2002. State Board staff are also beginning to work on the amendments to the SIP, including the development of an implementation policy for EPA's methylmercury fish tissue criteria, but do not

yet have a schedule for its completion. EPA is developing new criteria for cadmium and mercury, and plans to release a draft of the mercury criterion in September 2003 based on EPA Headquarters guidance on mercury (e.g., converting fish tissue methylmercury criterion to total ambient water criterion).

*Contacts: Bobbi Larson, CASA; Sharon Green, LACSD
Current as of: December 5, 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 28th, 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.

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 (we should put Bobbi's memo on the Tri-TAC website). Additionally, changes were adopted by the legislature regarding the requirements of SB 709. These changes, which take effect in January of 2003, allow larger use of the Supplemental Environmental Project (SEP) provisions and specify exceptions to MMPs for certain facility start-up activities.

*Contact: Margie Nellor, LACSD
Current as of: December 2002*

4. **PERMIT ISSUES UPDATE**

A. Appeals

The majority of recently issued POTW permits throughout the State have been appealed. The SWRCB reports nearly 200 appeals pending before them currently. Below are some of the administrative and judicial appeal updates.

LA/Burbank

The City of Los Angeles/Burbank appeals yielded a favorable initial ruling in 2001 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 on these issues were held on November 13, 2002. The AG did not appeal all of the issues decided in the case, including 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.

Napa Sanitation District

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 was 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. In October, the Regional Board adopted permit amendments removing many of the challenged effluent limits and making more reasonable several of the other interim limits, so the issues in the judicial appeal has been narrowed slightly. The hearing on the writ is scheduled for January 7, 2003. The main issues are the propriety of toxics limits for POTWs except in conformance with Water Code §13263.6, and the propriety of mass limits that act as growth control in the absence of a TMDL.

Vacaville

The SWRCB heard the City of Vacaville’s Permit appeal on September 11-13th. 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. On October 3, 2002, the SWRCB adopted its final order addressing many, but not all of the issues, and mostly in a manner unfavorable to Vacaville (e.g., improper beneficial uses, blending prohibitions, etc.). Both the City of Vacaville and CASA have recently appealed the SWRCB’s decision to Solano County Superior Court.

East Bay MUD

This permit, like so many other Bay Area permits, was appealed mainly on the issue of performance based mass limits and dilution credits. Because of an unfavorable SWRCB decision, EBMUD and the Bay Area Clean Water Agencies (BACWA) appealed the decision, which is currently in the CEQA division of the Alameda Superior Court. Settlement

discussions are ongoing and the parties are currently proceeding to prepare the administrative record for the case.

Los Angeles County Sanitation District

Three permits issued to the District's Water Reclamation Plants have been administratively appealed to the SWRCB. Because the compliance schedules were not included in the permit, and because the interim limits are not able to be complied with 100% of the time, the Districts requested a stay of the final and interim limits in two permits, which was denied by the SWRCB. Thus, these two permits were appealed to Superior Court. An interim stay is currently pending while the judge decides whether a permanent stay pending review is warranted.

Storm Water Permits

Numerous storm water permits are in various levels of appeal throughout the State. The San Diego permit, decided adversely in SWRCB Water Quality Order No. 2001-15 is currently pending review in San Diego Superior Court. The Los Angeles and Orange County permits are awaiting decision and review, respectively, at the SWRCB. Other appeals of the Stockton/San Joaquin County and Sacramento County permits are being added to the queue as well. The primary issues are lack of an explicit "safe harbor" for permit compliance, including following the "iterative process" whenever water quality standards are exceeded, and the limitation of Maximum Extent Practicable (MEP) on all municipal storm water requirements.

*Contacts: Melissa Thorne, Downey, Brand; Monica Oakley, LWA
Current as of: December 2002*



Winston H. Hickox
Secretary for
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State Water Resources Control Board

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November 8, 2002

Dear Interested Parties:

SECOND POSTPONEMENT OF THE STATE BOARD MEETING FOR THE 2002 CLEAN WATER ACT SECTION 303(d) LIST

The State Water Resources Control Board (SWRCB) at its November 6, 2002 Workshop postponed final adoption of the section 303(d) list until the Board Meeting scheduled for December 2, 2002.

Since the Workshop, the SWRCB has decided to allow more time to review the draft staff report and proposed section 303(d) list. Consideration of approval of the section 303(d) list is now scheduled for the Board Meeting scheduled for January 22, 2002. To be fully considered, written comments must be received no later than 5:00 p.m. on December 6, 2002.

Should you wish to discuss this letter, please do not hesitate to call me at (916) 341-5560.

Sincerely,

Craig J. Wilson, Chief
TMDL Listing Unit
Division of Water Quality

Via Electronic Mail

Ms. Dena McCann
Division of Water Quality

SUBJECT: COMMENTS REGARDING THE POLICY FOR IMPLEMENTATION OF TOXICS
STANDARDS FOR INLAND SURFACE WATERS, ENCLOSED BAYS AND
ESTUARIES OF CALIFORNIA

Dear Ms. McCann:

On behalf of the California Association of Sanitation Agencies ("CASA") and Tri-TAC, we are please to respond to the State Water Resources Control Board's invitation to offer recommendations for revisions to the Policy For Implementation of Toxics Standards For Inland Surface Waters, Enclosed Bays and Estuaries of California (the "SIP"). 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 sewerred population of California

We applaud the SWRCB's decision to review the SIP and to offer those in the regulated community an opportunity to provide recommendations regarding improvements. As you know, CASA and Tri-TAC were actively engaged in reviewing and commenting on the successive versions of the SIP prior to its adoption. During that process, we identified a number of provisions that we believed were overly conservative and that would result in significant compliance costs for publicly-owned treatment works ("POTWs"). As the SIP had yet to be implemented, our comments were based upon our best educated guess as to how the permitting process would look. We now have a few years of experience with permitting under the SIP, and this experience has demonstrated that the SIP and the California Toxics Rule operate together to generate permits that are unreasonable and do not reflect real world conditions.

In a nutshell, the overarching problem with the SIP is that the process the policy dictates does not adequately reflect reality. The policy sets forth a formula, or model, for determing and calculating requirements that are often inappropriate and even nonsensical in the context of individual permits. This occurs because the conservatism employed at one step in the process is multiplied at each successive step, until the resulting requirements bear little resemblance to what is actually required to protect water quality. This conservatism may have seemed acceptable to the SWRCB before its consequences were fully understood. Now that California has a full-fledged permitting crisis on its hands, however, these requirements bear careful and objective reexamination.

The purpose of this letter is to offer recommendations for amendments to the SIP that will yield a revised policy that is both fully protective of water quality and adequately reflective of reality. Most, if not all, of these recommended revisions have already been reviewed and analyzed as alternatives in the existing functional equivalent document, which will facilitate their incorporation into a revised policy.

We realize that this request for recommendations is only the first step in a revision process. For this reason, we have set forth detailed comments in the Attachment on those areas of the SIP that we believe warrant revision.¹ This letter highlights those issues that we believe to be most critical to developing a workable revised SIP. As the process moves forward, CASA and Tri-TAC offer our assistance in crafting revisions to the policy and providing information regarding specific permits that illustrate the problems with the current SIP.

The Process for Determining Reasonable Potential Must be Revised.

The SWRCB Must Proceed Expeditiously With Addressing the Harsh Impacts of the Policy on Dischargers to Effluent Dependent Waters.

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We realize that revising a major policy document such as the SIP is a major undertaking, and we appreciate the SWRCB's openness to undertaking an amendment process. Unfortunately, the SIP as currently drafted does not meet California's point source permitting needs. Refinement of the SIP to take advantage of the lessons learned through experience to date is of great importance to the POTW community, and CASA and Tri-TAC are pleased to offer our assistance to the SWRCB as you consider changes to the SIP.

Sincerely,

¹ To facilitate review, our detailed comments are presented in the order in which they appear in the SIP and do not reflect an assessment of priority.

ATTACHMENT 1

CASA/TRI-TAC COMMENTS REGARDING THE POLICY FOR IMPLEMENTATION OF TOXICS STANDARDS FOR INLAND SURFACE WATERS, ENCLOSED BAYS AND ESTUARIES OF CALIFORNIA

Introduction

The SWRCB Should Clarify that the SIP & CTR Do Not Apply to Groundwater

Since promulgation of the CTR and SIP, some question has arisen as to whether these regulations apply to permits for discharges that may affect groundwater, either through designation of the Groundwater Recharge (GWR) use or simply due to RWQCB concerns about the potential impacts of a particular discharge on groundwater.

The CTR “promulgates criteria for priority toxic pollutants in the State of California to inland *surface* waters and enclosed bays and estuaries (emphasis added).” See 40 CFR §131.38(a). More specifically, the CTR applies to “all inland waters of the United States or enclosed bays and estuaries that are waters of the United States” that either include or do not include a MUN use designation. See 40 CFR §131.38(d)(2). It is clear that groundwater is not a “water of the United States” based on the language and legislative history of the Clean Water Act (CWA) and accordingly should not be regulated as such. Therefore, although many groundwater basins throughout the State are assigned the MUN use designation, the CTR does not apply to those basins.² The groundwater recharge use is defined as “uses of water for natural or artificial recharge of ground water for purposes of future extraction, maintenance of water quality, or halting of saltwater intrusion into freshwater aquifers.” (See *e.g.* Los Angeles Region Basin Plan at page 2-1.) Municipal and domestic water supply is not specifically included as part of the GWR use. Rather, MUN is assigned as a separately-designated beneficial use for particular groundwater basins. See *e.g.* Los Angeles Region Basin Plan, pages 2-16 to 2-17 (Table 2-2). Thus, there is no basis in the CTR either to justify the applicability of CTR criteria to the GWR use, or to protect groundwater or its specifically-designated uses such as MUN.

There is no legal basis for the application of the CTR and SIP to groundwater. We recommend that the SIP be modified to clarify that neither the CTR nor the SIP apply to the protection of groundwater.³

² Instead, as generally explained in most if not all Regional Water Quality Control Plans, primary and secondary Maximum Contaminant Levels apply to protect groundwaters designated as MUN.

³ Alternatively, the SWRCB Office of Chief Counsel could issue an interpretive memorandum to regional board executive officers and SWRCB permitting staff stating that the policy does not apply to groundwater.

Section 1.2: The SIP should acknowledge and allow use of alternative cancer risk factors under the CTR/NTR.

The U.S. EPA, in promulgating the National Toxics Rule, stated, "EPA's Office of Water's guidance to the States has consistently reflected the Agency's policy of accepting cancer risk policies from the States in the range of 10^{-6} to 10^{-4} (see 45 FR 79323, November 28, 1980...)." 57 Fed. Reg. 60848 (Dec. 22, 1992). EPA agreed "establishing a single risk level for all States departs from Agency policy in the standards program." *Id.* Therefore, EPA set the NTR cancer risk level, and the subsequent CTR risk level, "as to each State's policy or practice regarding what risk level is, or should be, used in regulating carcinogens in surface waters." *Id.*; see also 65 Fed. Reg. 31699 (May 18, 2000). However, EPA expressly allowed States to adopt a 10^{-5} risk level when EPA promulgated a 10^{-6} level, and would withdraw the federal rule without notice and comment because EPA has "accepted both risk levels as meeting the requirements of the Act." 57 Fed. Reg. 60848, response to comment 107.

In the CTR, EPA cited the Ocean Plan's 10^{-6} risk level without recognizing that the Ocean Plan does not apply to inland or estuarine waters, and that ocean dischargers often receive dilution credits that result in attainable requirements. EPA also cited the withdrawn 1992 Inland Surface Waters Plan and Enclosed Bays and Estuaries Plans as authority for the 10^{-6} risk level, despite the fact that these Plans were overturned by a Superior Court as non-compliant with law, and were withdrawn by the SWRCB. Finally, EPA cited the NTR, which also chose the 10^{-6} risk level.

None of the sources cited by EPA provide adequate authority for a determination that 10^{-6} is the appropriate risk level for California. Instead, California has determined that a 10^{-4} risk level is appropriate for directly consumed drinking water, and that 10^{-5} risk level is appropriate for Proposition 65, which regulates toxic pollutants discharged into sources of drinking water. Clearly, EPA has recognized the State's discretion to utilize alternative risk levels, which EPA has deemed "as meeting the requirements of the Act." This discretion should be clearly identified in the amendments to the SIP.

CASA Tri- TAC RECOMMENDED AMENDMENT: Amend Section 1.2 at page 3 to add:

"When implementing the provisions of this Policy, the RWQCB shall ensure that criteria/objectives are properly adjusted for hardness or pH, if applicable, using hardness or pH values for the receiving water, and that translators are appropriately applied (in accordance with section 1.4.1), if applicable. The RWQCBs may also utilize an alternative cancer risk factor (i.e., 10^{-4} or 10^{-5} risk level in place of the EPA promulgated 10^{-6} level) when calculating effluent limitations for human health-based criteria/objectives. ..."

Section 1.3 Determinations of Priority Pollutants Requiring Water Quality-Based Effluent Limitations

1. The SIP should incorporate the express method set forth in the Water Code for calculating reasonable potential for POTWs.

In 1999, the State Legislature adopted Water Code §13263.6 to ensure POTWs are required to have effluent limitations for toxic pollutants under specified circumstances.

Water Code section 13263.6 specifies the following requirements for setting effluent limitations for POTWs:

(a) The regional board shall prescribe effluent limitations as part of the waste discharge requirements of a POTW for all substances that the most recent toxic chemical release data reported to the state emergency response commission pursuant to Section 313 of the Emergency Planning and Community Right to Know Act of 1986 (42 USC Sec. 11023) indicate as discharged into the POTW, for which the state board or the regional board has established numeric water quality objectives, and has determined that the discharge is or may be discharged at a level which will cause, have the reasonable potential to cause, or contribute to, an excursion above any numeric water quality objective.

The State Legislature recognized that the Water Code was silent on the manner in which the SWRCB and regional boards would determine whether effluent limitations would be required for POTWs. The Legislature apparently determined that the existing federal regulations were insufficient for determining reasonable potential for POTWs in California. *Industrial Welfare Commission v. Superior Court*, 27 Cal. 3d 690, 732 (1980) (“The Legislature is primarily the judge of the necessity of ... an enactment [and] every possible presumption is in favor of its [i.e., the statute’s] validity.”). Thus, the State Board should make sure that any POTW effluent limitations for priority pollutants are set in compliance with Water Code §13263.6(a).

CASA Tri- TAC RECOMMENDED AMENDMENT: Amend Section 1.3 at page 4 to add:

“For POTWs, the RWQCB shall determine whether effluent limitations are necessary in accordance with Water Code §13263.6(a). For all other dischargers, the RWRCB shall conduct the analysis in this section for each priority pollutant with an applicable criterion or objective, excluding priority pollutants for which a Total Maximum Daily Load (TMDL) has been developed, to determine if a water quality-based effluent limitation is required in the discharger’s permit. ...”

2. Ambient Background Concentration Alone Should Not Trigger Reasonable Potential

When a municipal discharger has never detected a concentration of a pollutant above an applicable water quality objective, and ambient background concentration is the sole basis for determining reasonable potential, there is no indication that the quality of the discharge for that pollutant has any relationship to the quality of the receiving water. However, when the ambient background concentration is used as the sole basis for reasonable potential, a municipal discharger must receive an effluent limit, and is then exposed to enforcement for violations of that effluent limit and subject to mandatory minimum penalties. Due to the lack of linkage between ambient concentration as the cause and changes in receiving water quality as the effect, we propose an alternative approach. If ambient background concentration is the sole basis for reasonable potential, the discharger should receive an "effluent trigger concentration," rather than an effluent concentration limit. The trigger would require further investigation into the cause of the elevated concentration seen in the effluent, coupled with a pollution prevention program where a consistent pattern emerges upon further investigation.

3. The Steps in the Reasonable Potential Analysis Should be Modified to Better Reflect Actual Conditions.

Step 3

Step 3 should define observed maximum pollutant concentration for the effluent as detections greater than MLs/RMLs or applicable reporting limits. This will prevent the use of estimated concentrations (Detected Not Quantified (DNQ)) in the reasonable potential analysis. DNQ values are not quantifiable, are based on extrapolations beyond the lowest calibration point and fall within a region where concentrations cannot be measured with known accuracy. Therefore, these estimated concentrations should not be used in the same manner as detected/ quantifiable concentrations.

CASA TRI-TAC RECOMMENDED AMENDMENT: Amend Section 1.3.__, Step 3 as follows:

Step 3: Determine the observed maximum pollutant concentration (concentrations greater than the applicable ML or reporting limit) for the effluent (MEC). If the pollutant was not detected in any of the effluent samples and any of the reported detection limits are below the C, use the lowest detection limits as the MEC and proceed with Step 4. If the pollutant was not detected in any of the effluent samples and all of the reported detection limits are greater than or equal to the C value, proceed with Step 5.

Step 4

Step 4 should allow effluent data to be adjusted to consider dilution, if applicable, since this would reflect the concentrations that will actually be observed in the environment. Step 4 should also consider that aquatic life criteria are based on concentrations not to be exceeded "once every three years on the average." (See 65

Fed. Reg. 31718.) This is not factored into the effluent limit calculations under the SIP and may therefore result in the application of a more stringent water quality criterion than intended in the CTR. Since Regional Boards will not include an exceedance frequency in permit limitations, the once-in-three years on the average exceedance basis should be considered during the reasonable potential analysis, since it is at this time that effluent data and the criteria are compared. When conducting the reasonable potential analysis for pollutants with aquatic life criteria, Step 4 should be modified to determine reasonable potential only if more than one effluent or receiving water concentration exceeds the aquatic life criteria in a three-year period.

CASA TRI-TAC RECOMMENDED AMENDMENT: Amend Section 1.3.__, Step 4 as follows:

Adjust the MEC from Step 3, if applicable, as described in section 1.2. Compare the MEC from Step 3 or the adjusted MEC to the C from Step 1. If the MEC is greater than or equal to the C, an effluent limitation is required and the analysis for the subject pollutant is complete. Reasonable potential based on exceedance of CTR aquatic life criteria should be determined only if more than 1 sample exceeds the criteria in any three-year period. If the MEC is less than the C, proceed with Step 5.

Step 5

Step 5 should define observed maximum ambient background concentration for the pollutant as detections greater than MLs or reporting limits so that estimated concentrations (DNQ values) are not used to determine reasonable potential.

CASA TRI-TAC RECOMMENDED AMENDMENT: Amend Section 1.3.__, Step 5 as follows:

Step 5: Determine the observed maximum ambient background concentration for the pollutant (B) as described in section 1.4.3.1 and proceed with Step 6. If the pollutant was not detected (i.e., at values greater than the ML or reporting limit) in any of the samples and all detection limits are greater than or equal to the C value, no reasonable potential exists. If B data are unavailable or insufficient, proceed with Step 7.⁴

Step 6

⁴ As we are recommending deletion of the existing Step 7, the existing Step 8, requiring additional monitoring, would become Step 7.

As discussed in comments for Step 4, this step should also consider that aquatic life criteria are based on concentrations not to be exceeded “once every three years on the average.”

CASA TRI-TAC RECOMMENDED AMENDMENT: Amend Section 1.3.__, Step 6 as follows:

Adjust the B from Step 5, if applicable, as described in section 1.2. Compare the B from Step 5 or the adjusted B to the C from Step 1. If the B is greater than the C, an effluent limitation is required and the analysis for the subject pollutant is complete. Reasonable potential based on exceedance of CTR aquatic life criteria should be determined only if more than 1 sample exceeds the criteria in any three-year period. If the B is less than or equal to the C, proceed with Step 7².

Step 7

The current policy encourages Regional Boards to use “other information” to reach a finding that effluent limits are required for a specific discharge. Factors that a Regional Board may use to reach this finding are: facility type, discharge type, solids loading analysis, lack of dilution, history of compliance problems, potential toxic impact of discharge, fish tissue residue data, water quality and beneficial uses of the receiving water, 303(d) listing of the receiving water, presence of endangered species or critical habitat, or other information. The SIP is written to give broad discretion to the Regional Board in some areas of NPDES permit writing. All parties are better served by a defined procedure that is acknowledged to be technically sound.

The open-ended wording of Step 7 allows unfettered discretion to permit writers. Allowing the regional board to consider virtually any information in order to make a reasonable potential determination leads to disputes, given the compliance and cost consequences of NPDES permit decisions. For this reason, we recommend that Step 7 be deleted. None of the factors currently listed in the SIP provide justification for going beyond the evaluation of effluent data to determine “reasonable potential.”

CASA TRI-TAC RECOMMENDED AMENDMENT: Amend Section 1.3.__, to delete Step 7:

Step 8

This step should be revised to specify that additional monitoring should be conducted in place of effluent limitations in cases where a pollutant is not detected in the

effluent and the receiving water and the reported detection limits are greater than or equal to the criteria.

CASA TRI-TAC RECOMMENDED AMENDMENT: Amend Section 1.3., Step 8 as follows:

If data are unavailable or insufficient to conduct the above analysis for the pollutant, or if all reported detection limits of the pollutant in the effluent and receiving water are greater than or equal to the C value, the RWQCB shall establish interim requirements, in accordance with section 2.2.2, that require additional monitoring for the pollutant in place of a water quality-based effluent limitation. Upon completion of the required monitoring, the RWQCB shall use the gathered data to conduct the analysis in Steps 1 through 7 above and determine if a water quality-based effluent limitation is required.

Sections 1.3 and 1.4: The Application of Metal Translators in RPA and Effluent Limit Calculations Should be Revised.

The SIP specifies that metal translators be applied to dissolved criteria before determining reasonable potential and calculating final effluent limits. A more logical way to apply the translator is to first compare the dissolved criteria with the ambient dissolved metal levels to determine reasonable potential and then, if reasonable potential exists, to use the translator together with the dissolved criteria and any dilution credit to calculate total metals effluent limits. The SIP methodology, because of potentially large swings in total metals levels, will likely lead to artificially increased reasonable potential and the requirement of unnecessarily conservative effluent limits.

Section 1.4: Calculation of Effluent Limitations

1. A Coefficient of Variation Should Not be Assumed in Cases Where Data is Insufficient.

Step 3 describes the use of the coefficient of variation (CV) of the effluent pollutant concentration data to calculate the long-term average discharge condition. A CV may be calculated or assumed if there are less than 10 data points available or if at least 80 percent of the data are reported as not detected. In addition, it specifies the use of one-half the detection limit in cases where the effluent data point is below the detection limit for the pollutant.

A CV value should not be assumed in cases where there are not sufficient data or all data are not detected (i.e., DNO or ND). A CV of 0.6 will result in a monthly average limitation for protection of aquatic life that is lower than the CTR criterion. A CV of 0.6 is "typical of the range of variability of effluents measured by EPA." (TSD

(Chapter 5, Section 5.5.2, page 107.) Since the CV of 0.6 is an assumed value, it bears no relationship to effluent variability.

In other words, a permit may include effluent limits that are lower than the criterion due to an artifact of the calculation procedures, not because they are necessary for the protection of aquatic life. It is recommended that in cases where it is not possible to calculate a CV, the monthly average limitation be set at the chronic criterion and the daily maximum be set at the acute criterion values until sufficient data are available to calculate a CV. The calculated CV can then be used to recalculate the monthly average and daily maximum limitations. In no case should the calculated limits be lower than the criterion.

In addition, when calculating the CV, only measured concentrations (greater than the ML or reporting limit) and not DNO data should be used in the calculations as “detected” data. If non-detected data (i.e., data lower than the ML or reporting limit) are used, these should be set at the detection level (i.e., ML or reporting limit value) not at one-half the detection values, since this creates the appearance of greater variability between detected and non-detected values. For example, the measured values and ML/RMLs would be closer in magnitude or value than if compared to measured values and one-half the ML/RML.

2. Effluent Limitations Derived from Human Health Criteria Should be Expressed with Appropriate Averaging Periods.

Maximum daily effluent limitations should not be calculated from human health criteria. Human health criteria are intended to protect human health from carcinogenic effects and are based on long-term exposures similar to drinking water requirements. Since the California Department of Health Services applies drinking water standards (MCLs) at the point of use and typically compliance is determined over a 12-month averaging period, it would be appropriate for compliance with CTR human health criteria to be consistent with MCLs and be based on longer term averaging periods.

3. Performance of a practicability analysis Should be Required before the imposition of daily/instantaneous maximum limits in POTW Permits.

The federal regulations are clear; effluent limitations other than monthly average or weekly average limits shall not be imposed on a POTW unless demonstrated to be impracticable. 40 C.F.R. §122.45(d)(2). A recent State Board decision (Order No. WQ 2002-0012) remanded the East Bay Municipal Utility District’s permit for the required impracticability analysis. Consistent with the federal rule requirements and the State Board’s recent precedent, the SIP should explicitly require the Regional Boards to include findings and evidence explaining and demonstrating the impracticability of longer-term limits for POTWs. Longer-term effluent limits are valid for implementing human health standards since these standards are set for chronic exposure over a 70-year lifetime.

CASA TRI TAC RECOMMENDED AMENDMENT: Amend Section 1.4 at page 8 as follows:

"...~~For this method only,~~ Instantaneous and daily maximum ~~daily~~ effluent limitations shall not be used for publicly-owned treatment works (POTWs) in place of average weekly or monthly effluent limitations, unless demonstrated by the RWQCB to be impracticable. 40 C.F.R. §122.45(d)(2); SWRCB Order No. WQ 2002-0012.

4. Step 2 of Section 1.4.3 should be deleted, as reasonable potential does not exist in cases where a pollutant is not detected in either the effluent or the receiving water.

Based on Step 2, reasonable potential may be determined if all data are non detects (ND) and the lowest detection level is greater than the criteria. In these cases, a permit limit would be required merely because an analytical method is not sensitive enough rather than for protection of water quality. NDs for receiving water should be treated as effluent NDs, which are not used to determine reasonable potential (See Section 1.3, Step 3). Step 2 also identifies detected concentrations as either measured or estimated and specifies the use of the maximum measured or estimated concentrations to determine reasonable potential. Ambient DNQ data should not be used to determine reasonable potential since these results are not quantifiable and are extrapolated below the lowest calibration point. A more reasonable approach would be to set interim monitoring requirements in cases where both effluent and receiving water results are ND and the criteria are lower than the ML.

5. Either the chronic or the acute lowest long-term average discharge condition should be used as Appropriate for Calculating Effluent Limits.

The SIP produces overly conservative effluent limits by basing both the chronic and acute effluent limits on the lowest long term average discharge condition (LTA), meaning that both acute and chronic final effluent limits are based on either the chronic LTA or the acute LTA, whichever is lower. Instead, the respective acute and chronic LTAs should be used as appropriate.

SECTION 1.4. _: MIXING ZONES

SECTION 2.2. COMPLIANCE SCHEDULES

SECTION 2.2.1 INTERIM REQUIREMENTS

SECTION 2.4.5.1: Pollutant Minimization Programs (PMPS)

1. The SIP should require reasonable PMP activities, tailored to the category of pollutant in question.

CASA and Tri-TAC have long been supportive of reasonable source control activity as a first step in any compliance program. However, realistic expectations must be incorporated into the process. The effectiveness of PMP activities in reducing effluent concentrations of specific pollutants must be considered to avoid unnecessary PMP expenditures by individual dischargers. POTWs should not be required to conduct PMPs for situations where they will not be able to quantify effluent quality improvement (i.e., situations where effluent concentrations are DNQ or non-detects).

Under the SIP, to secure interim effluent limits where compliance with final effluent limits is not possible, the discharger is required to document past source control activities and commit to performance of additional pollutant minimization program elements. Also, per Section 2.4.5, PMPs are required where data above the laboratory MDL is reported and the effluent limit is below the MDL.

The problem with the current requirement is that no boundaries are placed on the requirement for permittees to perform PMPs. The effectiveness of PMPs to achieve compliance is assumed, yet certain classes of pollutants do not lend themselves to extensive PM activity. As an alternative, we recommend that the SIP be revised to require reasonable PMP activities, tailored to the category of pollutant in question. The determination of reasonable PMP activities should include an evaluation of the relationship of influent concentrations to effluent concentrations for the pollutant in question. The criteria for defining reasonable activities should reflect expected reductions in effluent concentrations at a cost commensurate with the anticipated reduction.

2. A Single Sample Result Should not Trigger Preparation of a PMP.

Dischargers must conduct a Pollutant Minimization Program (PMP) when there is evidence that the pollutant is present in the effluent above an effluent limit and either:

- A sample result is reported as DNQ and the effluent limitation is less than the reported ML; or
- A sample result is reported as ND and the effluent limitation is less than the MDL.

A single sample result should not trigger the requirement to prepare a PMP. The requirement for multiple samples is consistent with the use of plural results embodied in the PMP requirement for determining where there is sufficient evidence that a pollutant is present in the effluent above a limit (e.g., "**sample results** reported as DNQ" [emphasis added]).

CASA TRI TAC RECOMMENDED AMENDMENT: Amend Section 2.4.5.1 as follows:

"~~A~~ Sample results ~~are~~ is."

3. Non-Detects Should Not Trigger a PMP.

The SIP currently requires preparation of a PMP even where all the data consist of reported non-detects (ND). Not only does this provision have nothing to do with water quality, it also makes no sense from a practical standpoint. If you can't find something, how can you do a PMP to reduce it? Pollution prevention programs are effective in achieving reductions if a number of conditions can be met, including:

“The pollutant can be found at measurable levels in the influent and collection system. If there are no identifiable sources, then pollution prevention is not a viable approach.” See Testimony of Betsy Elzufon Related to Effectiveness of Source Control and Pollution Prevention in Meeting Proposed Permit Limits for Tentative NPDES Permits for the County Sanitation Districts of Los Angeles County, August 17, 2001.

In cases where a discharger has ND results in the effluent *and* influent, no PMP should be required..

4. Small Dischargers Should Not be Required to Conduct PMPs except under unusual circumstances.

Small dischargers should not be required to conduct PMPs except under unusual circumstances because the cost to such dischargers would be disproportional to the potential benefits. The SIP should generally require PMPs only for dischargers with permitted capacities in excess of 5.0 mgd, unless the discharger has been required to implement an industrial pretreatment program.

SECTION 5.2: SITE-SPECIFIC OBJECTIVES

The Policy Should be Amended to Clarify that Water Effects Ratios May be Approved as a Permit Modification.

One method of modifying water quality criteria to ensure that they are appropriate for the chemical conditions under which they are applied is the water-effect ratio (WER) procedure, which compares bioavailability and toxicity of a specific pollutant in receiving waters and in laboratory waters. Section 5.2 of the SIP identifies the WER procedure as one method of deriving site-specific objectives (SSOs). However, the process of developing and adopting an SSO can be very onerous, particularly when the objective being modified is a criterion from the CTR – meaning that the CTR must also be modified by EPA to effectuate the change. Another option is to allow WERs to be approved as part of the permit process. In the Preamble to the CTR, EPA indicates that this approach is permissible. See 65 Fed. Reg. 31691 (“[D]ischarger specific WERs for individual NPDES permit limits are possible and potentially efficient where the NPDES discharger is the only

point source discharger to a specific water body.”). Therefore, we recommend that the SWRCB clarify in the SIP, or through guidance to the Regional Boards, that WERs may be approved as part of the permit process, and that adoption of an SSO is not necessarily required.

SECTION 5.3: CATEGORICAL EXCEPTIONS

1. Effluent Dominated Waterbodies (EDWs) Should be Categorically Exempt from the SIP.

A fundamental presumption underlying the CTR is that beneficial uses for surface waters have been appropriately designated uses. In practice, however, several regional boards have employed blanket or categorical designations of waters rather than considering the actual existing and potential uses of specific water bodies (e.g. the Central Valley Regional Water Quality Control Board “Tributary Statement.”) The result is that EDWs in the state are improperly designated as supporting municipal drinking water, cold water fishery, contact recreation and other uses. Under the SIP, dischargers to EDWs are receiving permits containing end-of-pipe effluent limitations derived from CTR human health criteria for consumption of water and organisms. Attainment of these very low limitations is both impractical and infeasible. Impractical, because compliance is not achievable without advanced treatment including reverse osmosis, and infeasible, because of widespread socio-economic impacts, negative public reaction and untested Department of Health Services (DHS) permitting issues..

Perhaps due to the uncertainty of the way in which the SIP would be applied in the real world, the economic analysis of the SIP did not adequately reflect the real range of potential cost impacts to EDW dischargers. One example is the SWRCB estimated that disinfection byproducts (DBPs) in effluent could be reduced through process optimization, including aeration, to meet CTR criteria. The foremost authorities in the country for wastewater treatment disagree. Data show EDW dischargers cannot meet end-of-pipe limitations for bromodichloromethane (0.56 µg/L) and dibromochloromethane (0.41 µg/L) by optimizing the process. Costly advanced treatment would be needed for reliable end-of-pipe CTR criteria compliance (one violation in three years).

Categorical modifications to the policy are appropriate for EDWs in the arid West. The implementation procedure should categorically exempt EDWs and should appropriately apply the criteria at the point of actual beneficial use, not at end-of-pipe. Specifically, we recommend that the exception encompass the following:

--Grant an exception from human health criteria for discharger.

--Require compliance with MUN derived effluent limitations at the point of use rather than at the end-of-pipe. A successful example of this approach is found in Ohio. Ohio’s point of application for protection of water supplies is within

500 yards of all public water supply surface water intakes. This method is approved by EPA, is consistent with 40 CFR Part 131.38 (c)(2)(i) and would adequately protect beneficial uses in California, where the use actually exists.

2. Groundwater De-Watering Discharges Should be Categorically Exempted from the SIP.

CTR and SIP requirements may be applied to groundwater dewatering by some regional boards (e.g. through a proposed general permit in Region 4). We are very concerned about the proposed requirements, which arbitrarily apply the most stringent and in many cases inappropriate requirements to every water body, regardless of differences between the water bodies that may exist in terms of water quality standards, the quality of the underlying groundwater, and the tenure of the dewatering project. Dewatering discharges are typically temporary in nature and therefore can be expected to have a limited impact on receiving waters, if any.

Demonstrating compliance with the CTR/SIP requirements is likely to be very costly, due to the large number of effluent limits that may be applied, many of which are extremely low, and the fact that an exceedance of any one of them could trigger the need for treatment of the discharge. For instance, it may cost as much as \$100,000 per month for each increment of 1,000 gallons per minute in rental reverse osmosis treatment.⁵ The actual cost is likely to be even higher once costs for electrical service, operational labor, and brine disposal are included. In some cases, this level of treatment may not even be required to protect the beneficial use (the use is not actually occurring). Therefore, we request that the SWRCB establish a categorical exemption for dewatering discharges in the SIP.

3. The SIP Should Include a New Categorical Exception That Encourages Use of High-Quality Reclaimed Water for In-Stream Habitat Restoration Projects.

It makes little sense to effectively “waste” recycled water resources by discouraging habitat restoration efforts. Members of the SWRCB have frequently noted in the last few months that the intersection of water supply and water quality issues in this state have never been more apparent. The SWRCB should recognize the value of high-quality recycled water effluent as a means to supply much-needed water for in-stream restoration.

Appendix 1: Definition of Terms

The Definition of New Discharger Should be Revised to be Expressly Consistent with the Federal Regulations.

Some regional boards have interpreted the definition of “new discharger” to encompass a change in outfall location within the same receiving water for an existing

⁵ Cost estimate received in Spring of 2002 from Ecolochem, located in Fontana.

discharger. This interpretation is inconsistent with the federal definition of new discharger, and we recommend that the policy be revised to clarify the definition.

The CTR defines “new discharger” as:

any building, structure, facility, or installation from which there is or may be a ‘discharge of pollutants’ (*as defined in 40 C.F.R. 122.2*) to the State of California’s inland surface waters or enclosed bays and estuaries, *the construction of which commences after May 18, 2000.* (40 C.F.R. § 131.38(e)(2) (emphasis added).)

The CTR also refers to the definition of “new discharger” in 40 C.F.R. § 122.2 in the general NPDES regulations. (See 65 Fed. Reg. at 31,703 (stating that “[t]hese definitions are modeled after the existing 40 C.F.R. §122.2 definitions for parallel terms”).) Section 122.2 of the federal regulations, in turn, defines “new discharger” to include:

any building, structure, facility, or installation:

- (a) From which there is or may be a “discharge of pollutants;”
- (b) That did not commence the “discharge of pollutants” at a particulate “site” prior to August 13, 1979;
- (c) Which is not a “new source;” and
- (d) *Which has never received a finally effective NPDES permit for discharges at that “site.”*

(40 C.F.R. § 122.2 (emphasis added).)

A critical issue under 40 C.F.R. § 122.2 is whether a wastewater treatment plant and its appurtenant facilities are considered a building, structure, facility, or installation that has never received a finally effective NPDES permit for discharges at the “site.”

The proper reading is that the CWA’s definition of “site” covers, at a minimum, the entirety of the facility. The CWA regulations define “site” inclusively, to cover adjacent land used in connection with the facility or activity. (See *id.*) The CWA regulations also define “facility” inclusively to be “any NPDES ‘point source’ or *any other facility* or activity (*including land or appurtenances thereto*) that is subject to regulation under the NPDES program.” (*Id.* (emphasis added).) Taken together, the broad definitions of “site” and “facility,” suggest that the USEPA intended “site” to include not only a particular point source outfall, but the entire treatment facility, and all related infrastructure and land.

The CTR preamble confirms that even material changes to existing permitted facilities would not create a “new” source. In the preamble, EPA refers to “existing dischargers” whose permits are being modified without restricting the nature or materiality of that modification. (See 65 Fed. Reg. at 31,703.) EPA also explains that increased discharges are included within the category

of “existing dischargers” because “increasing dischargers” are simply existing facilities with a change – an increase – in their discharge. (See *id.*)

structures compared to pyraflufen-ethyl. Although other protox inhibitors have a similar herbicidal mode of action, there is no information available to suggest that these compounds exhibit a similar toxicity profile in the mammalian system. We are aware of no information to indicate or suggest that pyraflufen-ethyl has any toxic effects on mammals that would be cumulative with those of any other chemical. Since pyraflufen-ethyl is relatively non-toxic, cumulative effects of residues and other compounds are not anticipated. Therefore, for the purposes of this Food Quality Protection Act (FQPA) document, there should be no consideration of cumulative risk that would require assessment.

E. Safety Determination

1. *U.S. population.* Based on the chronic toxicity data, the RfD for pyraflufen-ethyl is considered to be 0.172 mg/kg/day. This value is based on the NOAEL of 17.2 mg/kg/day observed in the chronic rat feeding study and a safety (uncertainty) factor of 100, the worse case estimate of chronic dietary exposure of pyraflufen-ethyl from cotton, potatoes, corn, or soybean will utilize less than 0.1% of the RfD for the general U.S. population. EPA generally has no concern for exposures below 100% of the RfD because the RfD represents the level at or below which daily aggregate dietary exposure over a lifetime will not pose appreciable risks to human health. The complete and reliable toxicity data and the conservative chronic exposure assumptions support the conclusion that there is a reasonable certainty of no harm from dietary (food) exposure to pyraflufen-ethyl and the acid metabolite residues. Moreover, as exposure to residues of pyraflufen-ethyl and the acid metabolite via water is negligible, there is a reasonable certainty of no harm from aggregate exposure to pyraflufen-ethyl and the acid metabolite residues.

2. *Infants and children.* The conservative estimates, as described above, indicate that chronic dietary exposure of pyraflufen-ethyl and the acid metabolite from cotton and potato will utilize less than 0.1% of the RfD for non-nursing infants, less than 0.1% of the RfD for children ages 1 to 6; and less than 0.1% of the RfD for all populations examined. No developmental, reproductive, or fetotoxic effects were noted at the highest doses of pyraflufen-ethyl tested in guideline reproductive or developmental toxicity studies. Based on the current toxicological data requirements, the data base relative to prenatal and postnatal effects for children is complete, valid and reliable. Results from the teratology studies and

the 2-generation reproduction study support NOAELs for fetal/developmental effects or reproductive/offspring effects, respectively, equivalent to the highest concentrations tested. As such, there is no increased sensitivity of infants and children to residues of pyraflufen-ethyl. Therefore, an additional safety (uncertainty) factor is not warranted, and the RfD of 0.172 mg/kg/day, which utilizes a 100-fold safety factor, is appropriate to assure a reasonable certainty of no harm to infants and children.

F. International Tolerances

There is no Codex maximum residue level established for residues of pyraflufen-ethyl and the acid metabolite on any crops.

[FR Doc. 02-29330 Filed 11-19-02; 8:45 am]

BILLING CODE 6560-50-S

ENVIRONMENTAL PROTECTION AGENCY

[FRL-7410-5]

Notice of Availability of Enforcement and Compliance History Online Web Site for 60-Day Comment Period

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of information availability and request for comments.

SUMMARY: The Office of Compliance (OC), within EPA's Office of Enforcement and Compliance Assurance (OECA), announces the availability of and invites comments on its new Web site, Enforcement and Compliance History Online (ECHO), which contains searchable, facility-level enforcement and compliance information.

DATES: Comments must be submitted no later than January 21, 2003.

ADDRESSES: The Web site is available at <http://www.epa.gov/echo>. Comments may be submitted to echo@epa.gov as a Word or WordPerfect file or mailed to Rebecca Kane, Environmental Protection Agency, Office of Enforcement and Compliance Assurance, MC 2222A, 1200 Pennsylvania Avenue NW., Washington, DC 20460. Specific data errors should be submitted using the error correction process on the ECHO site.

FOR FURTHER INFORMATION CONTACT: Rebecca Kane at kane.rebecca@epa.gov or (202) 564-5960.

SUPPLEMENTARY INFORMATION:

I. ECHO Background

EPA is committed to public access to environmental information and has

worked to develop a format for providing Internet access to facility-level compliance and enforcement information contained in core EPA data systems. Though the data included within ECHO previously were available to the public primarily through Freedom of Information Act requests, the information was not available in a searchable Web format. This new e-government initiative makes it much easier for the public to obtain these data records on the Internet.

EPA has worked with State governments to develop the content of the site and ensure accurate data and has pilot tested Internet access. A Joint EPA-State Enforcement and Compliance Public Access Workgroup developed the template for the type, sources, and amount of data to be included within ECHO. This workgroup, developed in partnership with the Environmental Council of the States (ECOS), made its recommendations in June 2000. EPA has field tested the approach and the data through: the Sector Facility Indexing Project (<http://www.epa.gov/sfipmtn1/>), which shows data for a limited number of industrial sectors, and a four-State pilot in the Pacific Northwest (<http://www.epa.gov/idea/region10/>). Public feedback and lessons learned from these projects contributed to the development of the ECHO site.

To prepare for launch of ECHO, EPA and the States conducted a comprehensive data review to ensure high quality information. ECHO also includes on the site an online error reporting process that allows users to alert EPA and the States to possible errors. This notice announces a 60-day comment period, which is being provided to give interested parties, particularly those responsible for facilities included within the database, the opportunity to review ECHO's content, design, and accuracy of data.

II. ECHO Data

ECHO provides integrated compliance and enforcement information for approximately 800,000 regulated facilities nationwide. The site allows users to find facility-level inspection, violation, enforcement action, and penalty information for the past two years. Facilities regulated under the Clean Air Act (CAA) Stationary Source Program, Clean Water Act (CWA) National Pollutant Elimination Discharge System (NPDES), and Resource Conservation and Recovery Act (RCRA) are included. ECHO reports provide a snapshot of a facility's environmental record, showing dates and types of violations, as well as the State or Federal government's response.

ECHO reports also contain demographic information from the National Census.

Data included are drawn from the Aerometric Information Retrieval System (AIRS) Facility Subsystem (AFS), Permit Compliance System (PCS), Resource Conservation and Recovery Act Information System (RCRAInfo), and, for Federal enforcement actions, the Integrated Compliance Information System (ICIS), as well as Facility Registry System (FRS) and U.S. Census data. EPA, State, and local environmental agencies and the facilities collect/report the data that are submitted to these Agency databases.

III. Specific Questions for Consideration

EPA is soliciting comments on the usability of the site as well as the accuracy of the data. EPA is specifically asking for responses to the following questions:

(1) Does the site provide meaningful and useful information about the compliance and enforcement program?

(2) Is the site easy to navigate?

(3) Does the help text adequately explain the data?

(4) What additional features, content, and/or modifications would improve the site?

(5) For members of the regulated community:

A. Were your facility reports accurate?

B. If you did need to submit an online error report, was the error reporting process easy to use?

Please note that comments are requested for the project in general; specific data errors should be reported through the error correction process on ECHO. (This feature is on every facility report—click on the red button on the top right of the page.) Also, please include question numbers in responses.

IV. Response to Comments

EPA will analyze comments received and will use these to guide any modifications to this site.

Dated: November 13, 2002.

Michael M. Stahl,

Director, Office of Compliance.

[FR Doc. 02-29471 Filed 11-19-02; 8:45 am]

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ENVIRONMENTAL PROTECTION AGENCY

[OPPT-2002-0070; FRL-7281-8]

Certain New Chemicals; Receipt and Status Information

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: Section 5 of the Toxic Substances Control Act (TSCA) requires any person who intends to manufacture (defined by statute to include import) a new chemical (*i.e.*, a chemical not on the TSCA Inventory) to notify EPA and comply with the statutory provisions pertaining to the manufacture of new chemicals. Under sections 5(d)(2) and 5(d)(3) of TSCA, EPA is required to publish a notice of receipt of a premanufacture notice (PMN) or an application for a test marketing exemption (TME), and to publish periodic status reports on the chemicals under review and the receipt of notices of commencement to manufacture those chemicals. This status report, which covers the period from October 19, 2002, to November 1, 2002, consists of the PMNs pending or expired, and the notices of commencement to manufacture a new chemical that the Agency has received under TSCA section 5 during this time period.

DATES: Comments identified by the docket ID number OPPT-2002-0070 and the specific PMN number or TME number, must be received on or before December 20, 2002.

ADDRESSES: Comments may be submitted electronically, by mail, or through hand delivery/courier. Follow the detailed instructions as provided in Unit I. of the **SUPPLEMENTARY INFORMATION**.

FOR FURTHER INFORMATION CONTACT: Barbara Cunningham, Acting Director, Environmental Assistance Division, Office of Pollution Prevention and Toxics (7408M), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460-0001; telephone number: (202) 554-1404; e-mail address: TSCA-Hotline@epa.gov.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

This action is directed to the public in general. As such, the Agency has not attempted to describe the specific entities that this action may apply to. Although others may be affected, this action applies directly to the submitter of the premanufacture notices addressed in the action. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

B. How Can I Get Copies of This Document and Other Related Information?

1. *Docket.* EPA has established an official public docket for this action under docket identification (ID) number OPPT-2002-0070. The official public docket consists of the documents specifically referenced in this action, any public comments received, and other information related to this action. Although a part of the official docket, the public docket does not include Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. The official public docket is the collection of materials that is available for public viewing at the EPA Docket Center, Rm. B102-Reading Room, EPA West, 1301 Constitution Ave., NW., Washington, DC. The EPA Docket Center is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The EPA Docket Center Reading Room telephone number is (202) 566-1744 and the telephone number for the OPPT Docket, which is located in EPA Docket Center, is (202) 566-0280.

2. *Electronic access.* You may access this **Federal Register** document electronically through the EPA Internet under the "**Federal Register**" listings at <http://www.epa.gov/fedrgstr/>.

An electronic version of the public docket is available through EPA's electronic public docket and comment system, EPA Dockets. You may use EPA Dockets at <http://www.epa.gov/edocket/> to submit or view public comments, access the index listing of the contents of the official public docket, and to access those documents in the public docket that are available electronically. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the docket facility identified in Unit I.B.1. Once in the system, select "search," then key in the appropriate docket ID number.

Certain types of information will not be placed in the EPA Dockets. Information claimed as CBI and other information whose disclosure is restricted by statute, which is not included in the official public docket, will not be available for public viewing in EPA's electronic public docket. EPA's policy is that copyrighted material will not be placed in EPA's electronic public docket but will be available only in printed, paper form in the official public docket. To the extent feasible, publicly available docket materials will be made available in EPA's electronic public docket. When a document is selected from the index list in EPA Dockets, the