



The June 12, 2003 meeting will be held at:

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

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

TRI-TAC MEETING

THURSDAY, JUNE 12, 2003

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 MAY 8, 2003 –
TRI-TAC MEETING MINUTES SUMMARY/ACTION ITEMS PAGES 7-13
3. FUTURE MEETING SCHEDULE PAGE 14
4. TRI-TAC ROSTER PAGES 15-21
5. COMMITTEE ASSIGNMENTS PAGE 22
6. COMMITTEE ISSUE SUMMARIES PAGES 23-51
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. AIR
- B. LAND
- C. WATER

Air Committee Agenda

June 12, 2003

- 1. ARB Diesel Engine ATCMs (Stationary & Portable ICEs, H/D Fleet Vehicles)**
- 2. New Risk Assessment Procedures for AB2588 (HARP)**
- 3. WERF Odor Study**
- 4. EPA Water 9 Model Development**
- 5. BASTE Air Toxics Model Revisions**
- 6. SCAP Coatings Technology Assessment**
- 7. Environmental Justice**
- 8. RMP/CAL-ARP 5 Year Submittal**
- 9. Annual Tri-TAC/ARB Meeting**

LAND COMMITTEE AGENDA
June 12, 2003

	<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 & Planning	Marlaine Hudnall	30 min.
2. SWRCB Biosolids Final EIR & Lawsuit	Marlaine Hudnall	5 min.
3. 40CFR 503 Dioxin Regulations/Data	Diane Gilbert	2 min.
4. Radioactivity Testing, Dose Modeling & Guidance	Diane Gilbert	2 min.
5. Ongoing Biosolids Litigation Discussion	Layne Baroldi	2 min.
6. Biosolids Legislation	Layne Baroldi	10 min.
7. NAS Report EPA Response Comments	Mike Moore/Layne Baroldi	10 min.
8. WEF Residual & Biosolids Committee Relationship	Mike Moore	2 min.
9. Environmental Justice	Liz Ostoich	2 min.
10. CIWMB Landfill ADC Regulations	Mike Sullivan	5 min.
<u>C. Information and Discussion Items</u>		
11. New Biosolids Contracts/Technologies	Ed McCormick	10 min.
12. Regional biosolids management facilities	Layne Baroldi	5 min.
13. Research	Ed McCormick	5 min.
14. Local Ordinances		
• Kern County	Layne Baroldi	5 min.
• Kings County	Layne Baroldi	5 min.
• San Luis Obispo County	Bob Gillette/Diane Gilbert	2 min.
• Riverside County	Anne Briggs/Liz Ostoich	5 min.
• Solano County	Ed McCormick	3 min.
• La Paz/Yuma/Mojave AZ	Layne Baroldi	10 min.
<u>E. Other</u>	All	<u>5 min.</u> 120 min.

WATER COMMITTEE AGENDA
June 12, 2003

<u>Priority</u>		<u>Estimated Duration (minutes)</u>	<u>Further Information</u>
	Items of Highest Priority:		
1	EPA Stakeholder Meeting – CSOs/SSOs	5	Attachment 1
2	LACSD Permit Appeal	15	
3	DHS Guidance on Pharmaceuticals/RCRA Wastes	5	Attachments 2 & 3
4	EPA's Permit Tracking System - Article	10	Attachment 4
5	SWRCB Fees Update	5	
6	Chlorine Implementation Report	10	Tritac.org
7	DHS: Pb and Cu limits for Drinking Water	10	
8	SWRCB 303(d) List (as necessary)	5	
9	SWRCB Enforcement Q&A	10	Attachment 5
10	Tesoro/North Bay Permit Decisions	10	Tritac.org
	Pre-Regulatory Issues		
10	Enforcement: MMP Legislation	10	
11	Storm Drain Diversions	5	
12	Blending Update	5	
13	EPA Regs: Risk Assessment & Regulatory Agenda	10	Tritac.org
14	Potential Legislation Regarding Due Process For Non-NPDES Reqt's (WDRs, CDOs, TSOs, etc.)	5	
15	Other Permit Appeals (as necessary)		
16	PAG Update (as necessary)		
	If Time, We Will Also Discuss:		
17	Legislation of interest	10	

2 hours

MEETING SUMMARY
THURSDAY, MAY 8, 2003
HILTON ONTARIO AIRPORT
ONTARIO, CA

SUBCOMMITTEE ISSUES AND GENERAL MEETING

THE FOLLOWING MEMBERS AND INTERESTED PARTIES WERE PRESENT:

Margie Nellor, LACSD	Marlaigne Hudnall, CASA
Sharon Green, LACSD	Kim Toepfer, City of Fresno
Jackie Kepke, CH2M HILL	Gary Hackney, IEUA
Anant R. Mokashi, City of LA	Bob Gillette, Carollo Engineers
Bonnie Teaford, City of Burbank	Layne Baroldi, OCSD
Rodney Andersen, City of Burbank	Liz Ostoich, Synagro
Joyce Clark, MWD	Jack Nelson, Yucaipa Valley WD
Larry Maston, UCR	
Lisa Ohlund, SCAP	
Roger Turner, SCAP	
Jim Smith, Ray Miller Assoc.	
Thierry Montoya, Morris, Polich & Purdy	
Donna Chen, City of LA	
Traci Minamide, City of LA	
Jim Marchese, City of LA	
Jeff Berlin, Carollo Engineers	
Bobbi Larson, CASA	
Valerie Housel, San Bernardino MWD	
Rod Cruze, City of Riverside	
Monica Oakley, LWA	
Jim Colston, OCSD	
Dave Williams, EBMUD	
Mike Sullivan, LACSD	
Alan Harrell, Coachella Valley WD	
Ed McCormick, EBMUD	
Rebecca Bjork, City of Santa Barbara	

Announcements and Discussion Items

Approval of Last Meeting's Action Items

Future Meeting Schedule

LAND COMMITTEE MINUTES FROM MAY 8, 2003 MEETING
LAYNE BAROLDI AND ROBERT GILLETTE

1. CASA Biosolids Program

Marlaine Hudnall, CASA Biosolids Manager, attended the meeting and gave a presentation on the strategic plan and some of the efforts that she's working on. Marlaine Hudnall discussed the mission of the Biosolids Program, which is:

- To promote sustainable recycled biosolids in California,
- Foster cooperation among government agencies, regulators, private corporations, agricultural community, general public, in the management of biosolids,
- Developing and maintaining a system of sharing up-to-date, accurate, science-based information on biosolids with the CASA members, local, state, and federal regulatory agencies, and the general public.
- Sponsor and/or support research in the area of biosolids, and help avoid county recycling land application bans for biosolids.
- Helping to avoid county biosolids recycling bans.

The Committee discussed this in conjunction with a contribution towards the business plan. It appears that there are a lot of different definitions of what sustainable biosolids recycling is. Marlaine asked Land Committee members to send her a list to of their definitions. Marlaine Hudnall mhudnall@mfdillon.com; cell 562-212-5330; ph 714-593-7852.

The Land Committee discussed the grant proposal from EPA providing partial funding for this position. Marlaine will work with Bob Gillette on revisions to a proposal for funding from EPA regardless through either EPA or EPA and WEF and changing the emphasis more to EMS.

2. General Order

Two issues that need to be included in the amendment to the EIR are restricting land application to Class A biosolids only and restricting land application to non-food crops. There is going to be a meeting in Sacramento at the SWRCB, Bob Gillette and Ruben will attend. One of the issues is the definition of food crops within the EIR amendment and it is hoped that the 40 CFR 503 definition can be used. That is, what does the court mean by food crops? The proposal could take one year to do complete CEQA review of these two issues. At their meeting last week the CASA Executive Board approved working with the SWRCB to fund the efforts to amend the EIR. The amendment will be prepared by the consulting firm of Jones and Stokes. Fundraising efforts to provide for the fees of the consultant and the State staff have begun. We have our first commitment of funds from Synagro.

One of the issues is what will happen to the permits that are in process? The SWRCB has told the RWQCB not to do anything with them. They are looking at existing sites to determine how they will be handled. The State Board has petitioned the court to be allowed to keep existing sites in operation like they did during the first phase of the EIR.

3. CIWMB ADC Rule

The CIWMB has proposed revisions to the rule governing minimum standards for solid waste handling and disposal for alternative daily cover and cover material and beneficial reuses. The Land Committee will be looking at this. Comments are due June 17.

4. SCAQMD Rule 1133-Implementation

No regulatory changes; however some facilities were grand fathered to October 9, 2007, beyond the for it to be implemented date of January 1, 2007,. Since both of these facilities will cease operation by this date, there are no existing facilities that have to implement changes comply with this regulation.

5. NAS Report Update

EPA issued a federal register notice on April 9 with their comments on what they plan on doing in response to the National Academy of Science report on the 40CFR 503 regulations. The Water Environment Federation has circulated the request to help them formulate comments to respond to the request for comments. Tri-TAC with work with WEF to get comments out by July 8.

6. Technology

A lot of the emphases of the agencies throughout the state are how do we not step on each others' toes, how to market, how do we not flood the market, how to avoid Class B routine.

7. Kern County

The Kern County Water Committee, appointed by the Board of Supervisors is still looking at the issue of using biosolids over groundwater. The SWRCB general order specifically reviewed groundwater issues and found that there is no legitimate concerns.

8. Riverside County

Staff and a committee is going to their Board of Supervisors on May 13 with their proposed ordinance revisions based on nuisance potential. The committee (farmers, scientists, biosolids producers) worked well together for two meeting per week and came up with good regulations.

9. Solano County

Solano County is the one successful county with Class B. They had some additional ordinance developments; they're looking at fees for inspections and fees for research. They reached a reasonable compromise on land application times that will be limited to 6 AM to 6 PM five days per week.

WATER COMMITTEE MINUTES FROM MAY 8, 2003 MEETING
JIM COLSTON AND MONICA OAKLEY

1. Finance Subcommittee

The Finance Subcommittee will now be led by Dave ??? from LACSD. Please contact him for information or to participate in the committee's activities. Reports from the committee will be made on an as needed basis. Topics of primary interest include the State Revolving Loan Fund and Priority List. Sharon Green will check with Dave regarding the most recent proposed funding cap and priority list by the SWRCB.

2. Bounty Hunter Legislation

This is an information item that was discussed at the CASA Federal Legislative Committee and the suggestion was made to make Tri-TAC members aware of it. This is occurring in the first congressional district in the wine country – Congressman Mike Thompson's area – and he's had some experience where an environmental group, River Watch, is utilizing the 3rd party lawsuit provisions of the Clean Water Act to extract money. The CASA Attorney's Committee is looking at this, and the committee will work to develop appropriate language that could be used to maintain the spirit of the CWA with out allowing for extortion. See Bobbi Larson with your ideas.

3. EPA's Water Quality Standards Academy

EPA is planning to hold it Water Quality Standards Academy in Sacramento. We don't have any of the details yet, but to sign-up to receive information, go to <http://www.epa.gov/waterscience/standards/academy.html>.

4. Sediment Criteria

The final comment letter was sent to the State Water Board regarding the Sediment Criteria Workplan. Sharon attended and testified at the State Water Board hearing on behalf of Tri-TAC. The draft work plan is on the consent calendar for the May 21 State Board hearing. We found out before the hearing that there is a plan to form a public advisory committee to assist in the development of the criteria. Dave Williams will work with BACWA to determine if they can provide a POTW representative to the committee. The Workplan contains a schedule that includes draft and final criteria by 2005 and 2007, respectively.

5. LACSD Permit Appeal

The State Board has issued an unofficial revised draft order that did not include an effluent limit for chronic toxicity. Environmental groups protested the permit saying that it should have numeric limits. The State Water Board will accept briefs on this issue until June 2, and it will hold another workshop on July 2 and schedule the Board meeting for

July 15. Issues of concern were distributed in two handouts by LACSD staff, and they include: 1) how reasonable potential should be determined for chronic toxicity; 2) what the legal requirements are for chronic toxicity in the SIP and EPA regulations. LACSD is asking Tri-TAC members to provide comments on this permit if they are similarly situated.

6. SoCal SETAC Meeting

Southern California Society of Environmental Toxicology and Chemistry is hosting a meeting May 30-31 in Santa Barbara where they will discuss geographic information systems (GIS) for environmental managers as well as sediment toxicity.

7. Environmental Justice

Tri-TAC submitted a letter to Cal EPA expressing our concerns regarding the use of the precautionary principle in its EJ policy. It's unknown at this time how long it will take for Cal EPA to move forward with its policy and implementation.

8. New Appointee to State Water Board

Nancy Sutley was appointed to the State Water Board.

9. SWRCB Fees Update

No update on the schedule or process for the development of a new fee schedule. Sue Horn is taking over this issue as SWRCB staff.

10. OCSD – Draft Cease and Desist Order

OCSD has received a tentative cease and desist order to stop threatening waters based on the Santa Ana River Interceptor (SARI) line which is primarily a trunk line from the inland empire area in Riverside and San Bernardino Counties. The upstream interests own about 75% of the capacity of the line, and the remaining percentage for regional use in Orange County. Over the years, a portion of the line in the Santa Ana River streambed has been eroding, and OCSD knows, from its own studies, that in some areas there is as little as three feet of cover. Because of the upstream interests and because of community consternation about moving a line through their backyards, it hasn't been relocated or hardened in place yet. The Regional Board decided that to make it happen faster they would go head and issue this tentative cease and desist order. We have to have a plan by this fall and a final solution by 2006 to move a 5-mile segment of a 48" diameter pipe. At this point, the RWQCB has indicated that they will hold off on finalizing the order is an agreement is completed shortly to protect the line.

11. LA/Burbank NPDES Judicial Appeal

As of March, the case was officially submitted. A decision is due by the end of July.

12. SWRCB 303(d) List (as necessary)

Officially, the 2004 list is still due from all States next April, but the SWRCB and other states have already indicated that they want the listing process placed on the 4 year schedule included in the now repealed 2000 rule and new Watershed rule (see below)

13. New EPA TMDL Rule (as necessary)

It is under internal review by EPA. Its release may be delayed due to the 2004 election cycle. Delay in release of the rule will result in a legal requirement for states to submit a 2004 list of impaired waters.

14. Mercury

In 1989 EPA put out a draft action plan for mercury, which was a litany of projects that all EPA offices were working on. Tri-TAC sent a comment letter that went nowhere. They are now reactivating and revising it and holding listening sessions with different stakeholders. The municipal stakeholder listening session was May 6. Margie Nellor, one of three municipal representatives, participated by phone. Jim Pendergast says that they are still working on guidance documents for human health criteria with numerous options for states to use. There is concern that States would use easiest approach, i.e., a water column number as opposed to establishing a fish tissue criterion.

There will be a follow-up meeting July 8-9 in Washington, DC with all the stakeholders. The impression is that they're going through the motions and the document will be revised into a meaningless action plan that will not prioritize what needs to be done to deal with mercury contamination in the environment. EPA Region 9 wants to move ahead in the CTR with a Methylmercury criterion. This could be good if they use fish tissue number instead of a receiving water number.

Margie Nellor will schedule a conference call for the mercury workgroup; Margie, Ben, Roger, Valerie, Rod, Phil, Tom. Sharon, Nicole, Monica, and Dave Tucker will participate.

15. SIP

Bobbi Larson talked to Chris Bailey at the State Water Board about SIP revisions and was told that staff was compiling all comments received, and it will send them to management for review. We should not expect a major SIP overhaul because they received many conflicting comments.

16. California Ocean Plan

State Board staff are working on three areas of the COP: 1) AB 411 bacteriological standards; 2) marine protected areas and areas of special biological significance; and 3) the methodology for reasonable potential determination for effluent limits.

They are willing to meet with Tri-TAC to discuss some of these issues. A meeting will be scheduled in June. Tracie, Jim, and Margie will participate.

17. Pharmaceutical Wastes

DHS has not backed down on their interpretation of the law (i.e., that some pharmaceutical wastes can be put into sewer). However, they will issue additional guidance to go with their guidance. They asked Ann Heil to draft this guidance. A conference call has been scheduled for Monday, June 12, at 11:30am to discuss the draft. If you want to participate, contact Sharon Green.

18. Nutrient Criteria

Region 9 Regional Technical Advisory Group had a conference call on April 21. The RTAG workplan is for California and Nevada. Because of the state budget situation, they have scaled back the workplan to a pilot project, which is on a fast track for the next 4-6 months. The pilot project area includes the Southern California coastal area focusing on Regional Board areas 3, 4, 8, and 9. The purpose of the pilot is to test the procedures in workplan. A report is due September 30.

Sharon received an email from State Board staff saying that they would like to know if Tri-TAC can provide data for the pilot program. If you have receiving water monitoring for inland waters in this area, please contact Sharon Green to provide RTAG the information.

19. Storm Drain Diversions

This is one of the pre-regulatory initiatives we were looking at to get developed Tri-TAC's positions on diversions of urban runoff into sanitary sewer systems. Tri-TAC has developed a critical analysis of the impacts and problems these diversions pose. We will use this as an educational tool for regulators. Southern California is moving ahead with diversions at this time.

20. Sanitary Sewer Overflows

Santa Ana Regional Board will attend a meeting with SCAP to discuss the applicability of this type of order to other regions. SCAP is not seeking to create a statewide order, but there is a desire in Southern California to develop workable requirements. At this time, the San Diego RWQCB staff has indicated opposition to any approach that encourages stormwater diversions.

21. AB1248

CASA-sponsored bill relating to public notice and comments on waste discharge requirements and related time schedule orders for cease and desist orders. This would also apply for reclamation requirements. The bill unanimously passed out of committee last week. The State Board has not taken a position on the bill, but verbally they have said that it would probably be opposed because there is no need for this bill. We need to compile a list of examples where the Regional Board has given less than 30 days to comment on one of these types of orders. Submit these to Bobbi Larson or Sharon Green as soon as possible.

TRI-TAC MEETING LOCATION & SCHEDULE 2003

TRI-TAC MEETING DATE ¹	LOCATION/HOTEL	AFTER TRI-TAC MEETINGS ²
JANUARY 15, 2003	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	STORM DRAIN DIVERSIONS
MARCH 13, 2003	DELTA KING RIVERBOAT 1000 FRONT STREET OLD SACRAMENTO, CA 95814-3231 916-444-5464	SRF LOAN PROGRAM
APRIL 10, 2003	DELTA KING RIVERBOAT 1000 FRONT STREET OLD SACRAMENTO, CA 95814-3231 916-444-5464	SEDIMENT QUALITY OBJECTIVE
MAY 8, 2003	HILTON ONTARIO AIRPORT 700 NORTH HAVEN AVENUE ONTARIO, CA 91764 (909) 980-0400	CHANGES TO THE SB709 Q&A DOCUMENT
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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Tri-TAC Liaison Representation

BACWA CASA SCAP	Dave Williams Roberta Larson; Sharon Green Ray Miller
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**TRI-TAC AIR COMMITTEE
JUNE 12, 2003 MEETING**

Issue Summary

1. WERF ODOR CONTROL TECHNOLOGIES ASSESSMENT

Los Angeles County Sanitation Districts (LACSD) and CH2M HILL received a Water Environment Research Foundation (WERF) Odor Assessment grant for a two-phase research program. The primary purposes of this study are to provide a working definition of odors, determine POTWs odor sources, list known odor compounds of concern, provide odor assessment approaches, provide modeling techniques for odor emissions estimating and odor dispersion, and conduct field research on the most important odor issues. The first phase was primarily a literature search that was used to develop a field research agenda for the second phase studies. This phase also looked at what has been successfully used at industrial and agricultural sites to control odors and whether there is any application to POTWs. Other technical areas addressed in the Phase 1 work include all potential POTW odor sources - collection system, processes, biosolids handling facilities and combustion sources; odor characterization; the public's perception of odors and complaint trigger levels; and measurement and analysis approaches. In the second phase of the study, the WERF team will assess potential origins of odors from biosolids processes following stabilization by anaerobic digestion. The research aims at determining the means of odor generation in various dewatering, storage, and conveyance processes. This was determined to be the most important odor research need at the WERF workshop held at the 2001 WEFTEC Conference.

Update: In the summer of 2002 the WERF team completed an extensive testing program of eleven wastewater treatment facilities to produce data for Phase 2 of the project. The facilities represent a broad range in terms of size and treatment processes used. Technologies represented include dissolved air flotation thickening, gravity belt thickening, centrifuges for dewatering (and in one plant also for thickening), a plate-and-frame filter press, drying beds, and solids storage lagoons. Local labs conducted some analyses of collected samples, and onsite headspace test testing was conducted for NH₃ and H₂S. Bucknell University and Virginia Polytechnic laboratories conducted further headspace analyses and tests for organics, cations, anions, and residual biological activity. St. Croix Sensory measured odors from various points in the biosolids process train.

In late 2002, the WERF team produced a database of process parameters and general characteristics of all eleven plants in the study in its Request for Information (RFI) process. Preliminary Phase 2 findings were presented at a workshop at WEFTEC in

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October 2002. As of December 2002, the team had compiled all laboratory data and performed the majority of the regression the analysis to determine potential correlations of physical and chemical plant parameters and odor generation. Initial conclusions were reported in a March 2003 preliminary Draft Phase 2 Report to the WERF Project Sub-Committee (PSC). The Final Draft Phase 2 Report is anticipated to be submitted to WERF in June 2003.

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

2. EMISSIONS MODELS

As air districts become more stringent about requiring updated emissions inventories, accurate emissions estimation is becoming more important. Several computer models are used in practice, and efforts are underway to evaluate and improve these models. Two models commonly used for estimation of emissions from wastewater are the Bay Area Sewage Toxics Emissions Model (BASTE) and WATER9.

BASTE is a liquid process emissions model that was originally developed for AB2588 compliance in 1990 by the Bay Area Air Toxics (BAAT) Group. The model is widely accepted by regulators as a tool for estimating VOC emissions, and it is also useful for estimating emissions of odorous compounds. The model's technology is, however, outdated, so an effort is underway by the Air Issues and Regulations Committee (formerly the BAAT Group) to update the model.

WATER9, which was recently released, is an EPA air emissions estimating model that is built off of WATER8 and WATER7 Models. It contains several new items, including a collection system model component that predicts VOC emissions for over 400 compounds from a sewer system. An AMSA Workgroup reviewing WATER9 is concerned that it overestimates emissions, as WATER8 and WATER7 were known to do.

Update: The BASTE Upgrade project is underway. CH2M HILL will be doing the upgrades, with matching funding from the AIR Committee. The Committee has selected the following improvements to the model:

- Conversion from DOS-based to Windows-based environment via .net format
- Input/Output File type alteration away from *.dat
- Create fully-searchable, indexed online help manual
- Upgrade model to analyze 400 compounds
- Create algorithm for Trickling Filter
- Alter existing manual for better definition of current method of modeling bar screens

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- Create algorithm for Septicity
- Account for variation in Henry's constant with temperature and pH

A beta version of the new and improved model is expected in October, with the upgrades complete by the end of this year.

In response to the concerns over WATER9, AMSA has contracted CH2M HILL to investigate WATER9 Model's collection system component for its accuracy in comparison to two proven POTW-specific collection system models – CH2M HILL's Interceptor Model and Coral Model from TOXCHEM. Scope items include a "paper" comparison of the three models, detailed evaluation of WATER9 Model's equations, strengths, and weaknesses, and in a 2nd Phase, direct source testing of a collection system to compare to WATER9 emission predictions.

Contact: Jackie Kepke, CH2M HILL; Jay Witherspoon, CH2M HILL

3. CARB DIESEL AIRBORNE TOXIC CONTROL MEASURES (ATCMS)

CARB is currently working on several Airborne Toxic Control Measures (ATCMs) for diesel engines that will have large impacts on POTWs. Workshops have been held to discuss draft regulations and regulatory concepts for stationary and portable diesel-fueled engines, and heavy-duty diesel vehicles. These rules have major implications for POTWs, as they have the potential to force retrofits of all existing diesel engines over 50 hp.

Tiered emissions standards have been proposed for stationary diesel emergency standby engines based on the number of hours they operate for maintenance and testing. Engines that operate fewer than 18 hrs/yr would not be required to meet specific standards. Emergency use of standby engines can be unlimited and does not count against these hour totals. Retrofits would be phased in, and older engines (pre-1989) would have to be retrofitted first. These engines would have to be retrofitted by January 1, 2006.

Portable engines are defined as engines that are not self-propelled but that change locations at least once every twelve months. Retrofits will not likely be required of portable engines, but there will be a mandatory phase-in of new portable engines by 2020.

CARB has also proposed a diesel control measure for on-road heavy-duty diesel-fueled publicly owned and operated fleets. This regulation would affect all on-road vehicles with gross vehicle weight ratings of greater than 14,000 lbs owned or operated by a public agency. The proposal requires the retrofit of these vehicles to decrease diesel PM. The retrofits would be done in phases according to engine model year, with all retrofits complete by 2009.

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Update:

A new draft of the stationary engine ATCM has been posted on the CARB website at <http://www.arb.ca.gov/diesel/documents.htm>. The new draft contains several changes from prior drafts. Previously, dual-fueled engines that operated primarily on digester gas but used diesel for pilot fuel were regulated by this rule. Thanks to the efforts of the POTW community, the new draft contains an exemption for digester gas- and landfill gas-fired engines.

Also, the ATCM has to date, precluded the use of diesel-fueled emergency engines to support participation in interruptible load shedding contracts. In the latest proposal, CARB has introduced language that would allow continued participation under certain conditions and with certain limitations. However, as currently written, it is still too restrictive to be of much use. On June 4, SCAP had a conference call with CARB and suggested a number of revisions. Those revisions concern adjusting the date by which the interruptible load contract needed to be in place and a request that the interruptible hours not be counted against the maintenance hours. Also, SCAP learned that CARB has already modified this language and has eliminated any future participation beyond January 1, 2008. SCAP has requested that CARB reconsider this.

CARB staff indicated that this item may need to be taken up with the CARB Governing Board. SCAP is now considering meeting with CARB Governing Board members and Catherine Witherspoon in an attempt to gain more support for this issue. SCAP member agencies believe that CARB (and other regulatory agencies) must appropriately weigh the benefits of the interruptible program to rate payers (especially those of limited income) as well as the benefit of helping to prevent rolling electrical outages which would negatively impact small business' and the elderly, among others, against the negatives of a minimal health risk exposure.

A workshop on this new stationary engine ATCM draft is being held in Sacramento on June 5.

The development of the portable engine ATCM is lagging behind the ATCM for stationary engines. No draft regulatory language is available yet, but "regulatory concepts" are available on CARB's website. The Portable Equipment Work Group will meet in Sacramento on June 5.

A workshop on the proposed regulation governing Heavy-Duty Diesel Public Fleets was held on April 3. Current concerns center around the fact that the regulation also covers vehicles that are operated under contract to public agencies. The definition of contract fleet is being debated, but the way it is currently worded,

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CARB would expect public agencies to be able to certify that any contractor they use is compliant with the rule.

Contact: Daniel McGivney, Eastern MWD; Jackie Kepke, CH2M HILL

4. Risk Assessment Guidelines

The California Office of Environmental Health Hazard Assessment (OEHHA) has embarked on a process to update Health Risk Assessment Guidelines. They began this process by updating the toxicity values used in risk assessments. This took place in 1999-2001 and yielded increases in the toxicity of some compounds and toxicity decreases for others. The next phase of the update involves an overhaul of the Health Risk Assessment Guidance Manual. This guidance manual will replace the 1993 CAPCOA Air Toxics Assessment Manual currently in use.

The assumptions contained in the new guidance manual have the potential to significantly raise project risks. Changes in breathing rate assumptions as well as exposure durations will raise residential receptor risk by about 30% and will raise worker receptor risk by about 32%.

Concurrently, CARB is in the final stages of developing its new computer software for risk assessment, the Hot Spots Analysis and Reporting Program (HARP). This software will allow for analysis and reporting of risk assessments, consistent with the new OEHHA Risk Assessment Guidelines.

CARB is also planning to put risk data, not just emissions data for AB2588 facilities on the web in the future. It will therefore be increasingly important to ensure that risk is calculated correctly and that data is right.

Update: OEHHA's Health Risk Assessment Guidelines have been approved by the Scientific Review Panel and are awaiting formal adoption by the Director of OEHHA. This adoption is expected sometime in Summer 2003. CARB plans to release the HARP Software concurrent with the adoption of the OEHHA Guidelines. Also in conjunction with that release, CARB will issue an Interim Policy for Risk Assessment. This policy will modify the assumptions for residential receptors contained in the OEHHA Guidelines. This will effectively keep risk for residential receptors similar to current levels. This Interim Policy will not modify assumptions for worker receptors, however, so project risks will likely be driven by risks to workers. The assumptions built into the HARP Software will reflect the Interim Policy.

Contact: Jackie Kepke, CH2M HILL; Preeti Ghuman, LACSD

TRI-TAC LAND COMMITTEE
ISSUE SUMMARY
June 12, 2003

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

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

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

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

The most significant requirements in the adopted GO are:

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

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

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

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

On October 5, 2001, Kern County filed an appeal to the Court Ruling. Subsequently the Central and South Delta Water Agencies also appealed. CASA has intervened on behalf of the SWRCB. No dates have been set for the appeal hearing yet. The briefs from Kern County and the Central and South Delta Water Agency were submitted on May 2, 2002. CASA’s brief was submitted in June 2002. The briefs by the State Attorney General were submitted in early August. The hearing was held December 19, 2002 with presentations made by the Attorney General and Brad Hogan representing CASA to uphold the ruling and appeal decision and lawyers for Central Delta Water Agency and Kern County. The ruling made by the appellate court reversed the ruling by Judge Robie and remanded the case back Superior Court with a finding that it needed to go back and look at two basic issues: 1) That biosolids not be applied to food crops, and 2) that the General Order only allow Class A biosolids to be land applied. The Superior court has to decide what it’s going to do. But it will probably take input from the State Board about what it would like to do

Update: The CASA Executive Board approved working with the SWRCB to fund the efforts to amend the EIR. The amendment will be prepared by the consulting firm of Jones and Stokes. Fundraising efforts to provide for the fees of the consultant and the State staff have begun.

SWRCB has instructed the RWQCBs not to do anything with pending GO permits. The SWRCB is also looking at existing permitted sites to determine how they will be handled. The State Board has petitioned the court to be allowed to keep existing sites in operation like they did during the first phase of the EIR.

Contact: Layne Baroldi OCSD, Marlaigne Hudnall CASA
Current as of: June, 2003

2. RADIOACTIVITY

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

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

Of the 366 that responded to the survey, at least 300 and possibly all of the responding POTWs have been selected for the sampling survey, this list will not be made public. Sampling kits were received by some California agencies, though the names are confidential. All of the sampling is complete. The data has been analyzed and the results will be available this coming summer. The preliminary results are that there are no surprises.

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

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

Draft documents have been developed and issued for public comment dealing with aspects of all three activities. Final reports will be issued in all three areas, hopefully by early 2002. These documents, along with Subcommittee meeting minutes will continue

to be posted on the ISCORS website under the postings for subcommittees at "<http://www.iscors.org/sewage.htm>".

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

Contact: Diane Gilbert City of LA
Current as of: June, 2003

3. DIOXINS

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

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

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

There is a lack of data concerning the concentrations of dioxin that will be reported with the new EPA test procedure. AMSA has conducted a dioxin testing program and survey. The data will be needed by each agency for land application when the new regulations are promulgated.

It is now thought that the dioxin reassessment being completed by EPA could lower the acceptable limit from 300 to as low as 8 TEQ. Such a change would affect the ability to land apply biosolids. A recently released report is critical of the reassessment.

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

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

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

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

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

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

EPA published in the June 12, 2002 Federal Register a notice of data availability for the Round 2 Part 503 sewage sludge regulations. This document summarizes the new sewage sludge data and risk assessment for dioxin. Based on a revised risk assessment

(probabilistic) for land application of sewage sludge, the Agency estimates that its highly exposed population to land-applied sewage sludge using the current cancer slope factor is very low, ranging from 2×10^{-5} to 1×10^{-6} . EPA had proposed a 300 ppt dioxin limit for land application of biosolids in 1999 and is inviting comment on whether setting such a limit would make no detectable difference in risk or if no further action or rulemaking should be taken. In addition, the Agency is inviting comment on whether a voluntary methodology should be used to identify, reduce, and eliminate sources of dioxin from entering wastewater facilities that contribute to occasional elevated levels of dioxin in sewage sludge.

Tri-TAC prepared a comment letter which was submitted on September 10, 2002. The primary focus of the tri-TAC letter was to push for regulations based on sound science. The letter also suggested that regulation is needed to assure the public that dioxins in biosolids are not a concern. There is also a need to “fix” the limits required for testing and the testing methods. This comment may be viewed along with all other comments on the NBP website www.biosolids.org.

Update: As of this date, EPA has taken no action and has not commented on what action it will take. On December 2, 2002, the White House delayed an interagency review of EPA's dioxin risk assessment in an effort to allow the agency more time to build a consensus with other federal agencies on the report's findings. Disagreements among federal agencies on some of the reassessment findings could prompt a review by the National Academy of Sciences, further postponing the release of the report.

*Contact: Diane Gilbert City of Los Angeles
Current as of: June, 2003*

4. CIWMB COMPOSTABLE ORGANIC MATERIAL REGULATIONS

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

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

The CIWMB discussed the proposed composting regulations in their August 14-15 2001 meeting. The board decided to move forward with the proposed draft regulations and start the 45-day comment public period. The new draft regulations include biosolids, manure, and other municipal solid waste other than green waste in the same tier. This tier requires that any biosolids composted outside of the treatment facility would require a full solid waste facility permit. Biosolids composted at the treatment facility would require enforcement agency notification. Also research projects using biosolids would require only enforcement agency notification if 5000 or less yards are being composted.

The CIWMB proposed final regulations in early 2002 that essentially treat biosolids like other organics. The only concern is that the proposed regulations include a new low concentration limit for selenium of 36 mg/kg. Tri-TAC believes that this should be increased to the current 503-regulation concentration limit of 100 mg/kg. Comments have been made on these regulations and the CIWMB is determining if the selenium limit will be changed.

The CIWMB held a hearing on May 14, 2002 to review the comments on the final regulation and after reviewing the comments decided to make some minor changes, but did not address our selenium concern. The Board decided to institute a 15-day comment period. The 15-day comment period extends from August 29 through September 13, 2002. Tri-TAC developed further comments which were submitted to the CIWMB on September 13, 2002. These comments again addressed the selenium issue.

The regulations were approved by the Board on November 19, 2002. They still contain the requirement that the final product have less than 36 mg/kg of selenium. Integrated Waste staff should begin the process soon to schedule Round II meetings to discuss that issue i.e. different types of constituents and/or concentrations of existing constituents that they plan to regulate.

Update: The rule went into effect in April 2003.

*Contact: Diane Gilbert City of Los Angeles
Current as of: June , 2003*

5. SOUTH COAST AQMD RULE 1133

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

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

A PR1133 Working Group meeting was held on February 19, 2002. This meeting assessed various scenarios for co-composting technologies. SCAP is performing its own studies on biosolids composting in order to provide the SCAQMD with accurate emissions data for the rule development. SCAP's Air Committee is actively involved in the rule development. SCAQMD staff will consider emission reduction effectiveness, costs, affordability, industry impact, public nuisance, health impacts, siting issues, and current industry plans to formulate a proposed rule recommendation.

The AQMD held a workshop in June on PR1133. The AQMD broke this proposed rule into three basic phases. The first phase will regulate biosolids composting and it appears that they will require enclosure of the active composting and possibly full enclosure of curing and storage. The three phases are: 1. Chipping and grinding, 2. Green waste composting, and 3. Co-composting and biosolids composting. In addition, the AQMD is starting to look into regulating odor, noise, and vibration. The AQMD is also saying that they're looking at requiring negative pressure aerated static pile inside an enclosed facility. This would be regulating the techniques to meet their requirements.. It would make a lot of sense for the AQMD to hold off on the action until at least the SCAP studies are complete. Tri-TAC agencies are actively commenting and working through SCAP on this issue.

The SQAQMD adopted Rule 1133 on January 10, 2003. The Rule 1133 requires composting facilities to be enclosed or have a technology that, for existing sites will result in 70% removal of ammonia and VOCs or a technology for new sites that will result in 80% ammonia and VOC removal. The enclosure is expected to be for active composting (which will be 21-22 days) then negative pressure on any compost curing after that. Rule 1133 is effective January-1-2007, with full compliance by existing facilities by January 1, 2010. There are only two existing facilities in the South Coast air basin that this will apply to, the IEUA site in Chino and the Synagro site in Temescal Canyon. Because they are both being phased out and they are grand fathered until such time as that happens this should not have a major impact on them. Any new sites would have to comply in order to begin operation.

Update: Nothing new to report.

Contact: Dan McGivney EMWD, Layne Baroldi OCSD
Current as of: June, 2003

6. NATIONAL ACADEMY OF SCIENCE REVIEW OF 503 REGULATION

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

The NAS Study Scope includes:

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

Susan Martel, is the National Academy of Sciences' liaison to the project. The Committee met on October 3 and 4, 2001 in Woods Hole, MA and began drafting the report. The committee met on December 10-11 in Irvine, California to work on the draft. The meeting was closed to the public. The goal is to have the report ready for peer review shortly after the meeting. If the committee feels that an additional meeting is needed to complete the report, another meeting will be scheduled in January to complete the draft. It is anticipated that the report will undergo peer review in February. NAS expected to deliver the final report to EPA by the end of May 2002.

The National Academy of Sciences' Report was released on July 2, 2002 entitled "Biosolids Applied to Land: Advancing Standards and Practices." The report's overarching finding are that "there is no documented scientific evidence that the Part 503 rule has failed to protect public health" further reinforcing what many years of operating

history at numerous biosolids facilities have shown. The report also finds that there is a need to update the scientific basis of the Part 503 rule and the report's key recommendations to: use improved risk assessment methods to better establish standards for chemicals and pathogens; conduct a new national survey of chemicals and pathogens in sewage sludge; establish a framework for an approach to implement human health investigations; and increase the resources devoted to EPA's biosolids program. The press release issued on this report was negative and is being used by anti-biosolids groups.

The Chair of the NAS Committee issued a second news release which somewhat softened the results, but does not undo the impact caused by the first press release.

On October 31, 2002 EPA Assistant Administrators for Water and Research & Development, Tracy Mehan and Paul Gilman, respectively sent a joint advisory letter to all ten regional administrators and state commissioners apprising them of the Agency's plan to respond to the National Academy of Sciences' biosolids report issued on July 2. The guidance includes recommendation that biosolids continued to be managed in full compliance with Part 503 rule, a commitment to conduct additional research, biosolids management practices are a local government choice, support for the NBP EMS program, and review of management practices during normal facility inspections and need to address violations of Part 503 through appropriate enforcement. In the letter the EPA stated that they plan to formally address and notice through the Federal Register a plan of action in response to the report. The notice should be available for public comments in April 2003. Based on public comments and other relevant information the EPA will finalize and publish the plan of action by January 2004.

Update: On April 8, 2003 EPA issued their proposed action in response to the National Academy of Sciences report. The Water Environment Federation has circulated the request to help them formulate comments to respond to the request for comments. Tri-TAC will work with WEF to get comments out by July 8.

*Contact: Bob Gillette Carollo Engineers
Current as of: June, 2003*

7. CIWMB ADC RULE

The CIWMB has proposed revisions to the rule governing minimum standards for solid waste handling and disposal for alternative daily cover and cover material and beneficial reuses. The Land Committee will be looking at this. Comments are due June 17, 2003.

Update: New Item.

Contact: Mike Sullivan: LACSD
Current as of: June, 2003

8. LOCAL ORDINANCES

Kern County has developed a County Ordinance that will ban land application of all but exceptional quality biosolids by January 1, 2003. The Southern California Alliance of POTWs (SCAP) and several major POTWs in Southern California tried to work with Kern County to assist with development of the ordinance that addresses the need for local control and oversight of biosolids land application in a logical manner. This effort has been largely unsuccessful. The permanent ordinance is available on the Internet at <http://www.co.kern.ca.us/rma/rma.htm>. Controversial provisions include: \$8,000/year fee, \$3.37/ton road impact fee, soil sampling every 40 acres, dioxin concentrations must be below 10 ppb, no class B application after January 2003, 10 mph wind limit for spreading, etc. Exceptional quality biosolids products are exempt from the provisions of the ordinance.

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

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

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

A trial date is set for June 3, 2002 to hear the non-CEQA causes of action. There is concern that regulation of Class A biosolids may not be far behind. Generator representatives have recently met with the County staff who indicate that there are concerns with issues related to land application of Class A biosolids.

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

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

2. Ordinance is invalid and unenforceable because it conflicts with state and federal regulations "permitting" application of biosolids and because it is barred by the Equal Protection and Due Process clauses of the U.S. and California Constitutions: The tentative ruling denied the claim that the ordinance is invalid and unenforceable because it conflicts with state and Federal regulations permitting application of biosolids. The court found that Federal and State law has not preempted this field. Federal and State law expressly authorize the local regulation of biosolids. The Federal Part 503 regulations set minimum standards for the use or disposal of biosolids. The Federal Clean Water Act states the determination of the manner of disposal or use of sludge is a local determination. Although there may be language in the cases cited about an outright ban is prohibited when regulated use is already permitted, the regulation being considered in those cases completely banned either firearms, fireworks, or electroshock. None of the cases cited on this issue pertained to the application of biosolids. Additionally, the ordinance herein does not completely ban the applications of biosolids, just Class B biosolids. Thus, the court does not find that the ordinance is in conflict with Federal and State law. The court finds that there was a rational basis to a legitimate state purpose. Kern referenced its health and safety concerns and the fact that a local road was having to be closed because of the damage caused by trucks hauling biosolids. A "study" determined the relationship of the damage to the road by the haulers of biosolids and the proposed fee to pay for the maintenance needed. Having found a rational basis for the ordinance, the court found that the ordinance did not violate the equal protection and due process clause.

3. The impact fees are invalid and unenforceable because it constitutes an illegal general and special tax, which required voter approval prior to adoption.: The third cause of action alleges the Biosolids Impact Fee provision of the Ordinance is invalid because it is a special tax, a general tax, an invalid assessment, improperly uses revenues for unrelated purposes, and violates the Equal Protection and Due Process Clauses of the

state and federal constitution. The tentative ruling found that the impact fees are bona fide regulatory fees, i.e., the record needed only demonstrate a reasonable relationship between the fees to be charged and the estimated cost of the service or program to be provided.

The trial was held on June 3, 2002. No oral testimony was taken and the administrative record was originally to be the basis of the decision. The judge then decided to allow a written brief, which was due July 15, 2002. Kern County had until August 9, 2002 to respond to the brief.

The County adopted a new ordinance on November 26, 2002 that went into effect January 1, 2003, which regulates the land application of Class A biosolids. This ordinance is generally considered to be a fair ordinance. The Class A biosolids ordinance was.

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.

On November 25, 2002, Judge Vortman ruled against LA County, LA City, Orange County, SCAP, CASA and Responsible Biosolids Management (the City of LA's biosolids management contractor) on all of the counts. On December 20, 2002, Judge Vortmann denied a 45-day stay in the enforcement of the ban on the land application of Class B biosolids.

On December 30, 2002 Tule Ranch (a Kern County biosolids management company for OCSD and LACSD) filed a lawsuit in Kern County challenging the Kern County Board of Supervisors denial of its request for an extension in the amount of time that Class B biosolids can be land applied. This case will be heard on January 8, 2003.

The Kern County Board of Supervisors directed Dave Price (Director of the Kern County Resource Management Agency) to study the issue of groundwater contamination associated with the new biosolids ordinance. The KCWRAC was asked to study the issue and provide Price with a report. The KCWRAC would like to have the new Kern County Class A biosolids ordinance amended to prohibit the use of Class A biosolids over "usable" water (as defined by TDS concentrations in the ground water). This would ban the use of Class A biosolids at Tule Ranch and the City of L.A.'s site.

Update: The Groundwater Committee has looked into whether or not biosolids application over usable groundwater should be banned. The original proposal was to ban the use of everything other than composted biosolids over usable ground water. Usable ground water was defined as groundwater having a total dissolved solids of less than 1000 ppm, which

encompasses most of the land application sites. A Committee meetings is scheduled on April 21; 2003. The Committee will come back to the Board in June or July with a recommendation of how to amend the ordinance, if at all

*Contact: Layne Baroldi OCSD
Current as of: June, 2003*

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

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

A lawsuit was filed against the ordinance. An appeal to the Board of Supervisors by the Orange Co. Sanitation District for extended time on their permit was heard on Nov. 6, 2001. The Orange County Sanitation District appeal for extended time on their permit was denied.

The lawsuit against the ordinance was heard, on November 16, 2001. The court found in favor of the County and the ordinance. The court decision on the adequacy of the CEQA compliance document was appealed. Orange County filed a lawsuit on the ruling on their appeal on the Board decision to not extend their use of Class B biosolids land application.

McCarthy Farms submitted a request for a Class B permit extension. This request was withdrawn by McCarthy Farms pending a tour of the ranch by the Kings County Supervisors.

The Board of Supervisors recently denied the McCarthy Farms requests to extend the application of Class B biosolids. A request for a stay was filed for this action. It is our understanding that McCarthy Farms has filed a lawsuit over these actions.

Tule Ranch challenged Kings County's use of an exemption from CEQA in the adoption of its biosolids ordinance. On December 17, 2002 the Court of Appeals ruled against Tule Ranch.

Update: Nothing new to report.

*Contact: Layne Baroldi OCSD
Current as of: June, 2003*

–Riverside County - In response to complaints and local demonstrations during biosolids land application at some sites, Riverside County is considering a revision of their ordinance that could possibly ban Class B biosolids. Regulators, generators, and applicators are meeting to address and resolve issues.

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

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

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

A draft ordinance banning land application of Class B biosolids was made available October 24, 2001. Staff implemented a policy requiring half-mile setback of application

of Class B material from all buildings. This effectively implemented a ban on all but 600 acres in the County. The final ordinance banning land application of Class B biosolids has been enacted. Land application in the County has ceased except for some in-County Class A solar dried biosolids. The Ordinance banning Class B biosolids land application was adopted in November 2001.

In response to local anti-biosolids activist comments on the National Academy of Science (NAS) biosolids Report, the Riverside County Board of Supervisors directed its Community Health Agency to review the NAS Report and to report back on August 13, 2002 on the Report's implications with regard to land application of biosolids in Riverside County. Specifically, staff recommended:

1. That the Prohibition of the land application of Class B Sludge, instituted under Riverside County Ordinance No. 812, and codified as County Code Chapter 8.129 remain in effect, and;
2. Riverside County Ordinance No. 812, codified as County Code Chapter 8.129, be amended, or an additional Ordinance be developed, to prohibit the land application of bulk (un-bagged) quantities of all Class A material.

Riverside County staff chose to emphasize the many "uncertainty" (i.e., need for additional research only, etc.) quotes found in the NAS report as a basis for their recommendation. These "uncertainties" included:

1. That the "unanswered questions about the safety, environmental effects and propriety of land application of sewage sludge" referenced in the 2001 Prohibition of Land Application of Class B Sludge remain unanswered, thus confirming support for the continued prohibition of the practice, and
2. Similar unanswered questions are raised regarding the safety of Class A sludge processing and application, which suggest consideration of restrictions, if not a similar outright prohibition.

In its staff report, Riverside County stressed that "additional scientific work is needed to reduce persistent uncertainty about the potential for adverse human effects from exposure to biosolids. There have been anecdotal allegations of disease, and many scientific advances have occurred since the Part 503 Rule was promulgated. To assure the public and to protect public health, there is a critical need to update the scientific basis for the rule to (1) ensure that the chemical and pathogen standards are supported by current scientific data and risk assessment methods, (2) demonstrate effective enforcement of the 503 rule, and (3) validate the effectiveness of biosolids management practices".

"In Summary [Riverside County stated]:

- 1 We are unable to determine that the practice is safe,

2 We are unable to determine that the practice is unsafe, unhealthy or is otherwise responsible for public health impacts,

3 Standards must be developed using currently accepted, up-to-date scientifically valid analytical methods.”

The staff report went on to say “while there are a wide variety of processes that can be used to achieve Class A standards, none reduce heavy metals or chemicals; and with regard to the adequacy of the chemical risk analysis, the Report makes no distinction between Class A and Class B sludge. Absent other restrictions, there is a real potential that past or future applications of Class A sludge may include harmful chemicals for which the standards have not been established using current risk analysis standards, or for which standards were never adopted.”

During the public comment period, the Board heard from several speakers in opposition to a ban on Class A biosolids. No anti-biosolids comments were made. The speakers represented Synagro, Coachella Water District, the City of Corona, the Riverside County Farm Bureau, the University of Arizona (Dr. Chuck Gerba), Industrial Recycling Services, and Precision Soil Products. The speakers stressed waste diversion, lack of biosolids management options, increase in truck traffic, adverse impact on business, increased costs, etc. The Board, especially Supervisor Buster, was concerned over the importation of Class A biosolids and stressed that each county should manage its own biosolids.

The Board concurred with Staff’s first recommendation to continue the ban on the land application of Class B biosolids but continued for 180 days a decision on the second recommendation, pending additional review of the NAS report by a yet to be assembled committee to be chaired by Dr. Gary Feldman, Director of the Riverside County Community Health Agency. It is expected that Dr. Ian Pepper, microbiologist from the University of Arizona and a member of the 16-member NAS Report team will be on Dr. Feldman’s committee. As with the Class B biosolids committee, the committee to consist of members from farming, local POTWs, anti-biosolids activist, Synagro, Riverside County staff, and academia.

Update: A Class A ordinance has been developed by a committee made up of farmers, scientists, biosolids producers. The committee worked well together for two meeting per week and came up with revisions to the ordinance. The ordinance has a tiered approach. The tiers are based on the nuisance potential - odors to be generated from the Class A biosolids to be land applied. Staff and the committee took the proposed ordinance to the Board of Supervisors on May 13, 2003 and it was adopted.

Contact: Anne Briggs EMWD, Layne Baroldi OCSD
Current as of: June, 2003

The *San Luis Obispo County* Board of Supervisors has instituted a six months process to develop an ordinance for land application of biosolids. The Board has established a committee made up of 27 individuals including County Staff, Cal Poly Academicians, farmers, business leaders, and several from a group in opposition to biosolids land application. They have hired several consultants to work with them in the preparation of this ordinance.

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

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

The recommendations will allow biosolids land application with some restrictions beyond the current requirements. The recommendations should allow reuse of all of the biosolids generated within the County on existing sites until a formal ordinance is prepared and adopted. The recommendations were be presented to the Board of Supervisors on March 12, 2002.

Staff has prepared a draft interim ordinance that has been circulated once for review. This interim ordinance sunsets in one year, limits land application to Class A EQ biosolids only, and limits the amount that can be applied to 2500 cubic yards a year.

Update: To our knowledge there has been no recent action on this issue.

Contact: Bob Gillette Carollo, Diane Gilbert City of LA
Current as of: June, 2003

Solano County, A local anti-biosolids activist has requested that the current County Ordinance be revised to prohibit land application of Class B biosolids. The Board of

Supervisors requested that this be brought back to them in August with staff recommendations.

The Solano County Board of Supervisors meeting August 27, 2002 ended with a 5-0 vote to impose a County moratorium on the land application of Class B biosolids, beginning October 15, 2002. This was despite Solano County staff's recommendation to continue the existing ordinance, which they consider as protective of public health. The Supervisors are placing the "onus" of scientifically demonstrating that biosolids do not cause public health issues on Synagro and the generators, before the moratorium would be lifted.

The County Board of Supervisors 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, 2003.

Through a lot of work from a lot of people, including EBMUD, San Francisco, Solano County, the Board of Supervisors voted 3-2 to make minor modifications to their current ordinance and have staff come up with a new ordinance that still allows Class B and Class A with some restrictions yet to be worked out.

Update: There will be some additional ordinance developments including fees for inspections and fees for research. Land application will be limited to 6 AM to 6 PM five days per week.

*Contact: Ed McCormick and Maura Bonnarens EBMUD
Current as of: June, 2003*

**Tri-TAC WATER COMMITTEE
JUNE 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 did not adopt its list until February 4, 2003.

EPA's TMDL Regulations: In March, 2003, U.S. EPA withdrew the controversial 2000 TMDL regulation, which had been promulgated but never implemented, due to a combination of congressional action and litigation. U.S. EPA is now working on a new proposed "Watershed Rule." The draft rule is still under internal review, but in its current form includes many positive changes from the POTW perspective. There is no firm date for release of the rule for public comment. In the meantime, U.S. EPA had told the states that they must submit the lists due in April 2004.

California's 1998 303(d) List: The 2002 list was adopted by the SWRCB on February 4, 2003 and sent to U.S. EPA region IX 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 July 2003, with hearings scheduled later in the summer.

- **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.

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.

On May 30, 2003, the California Court of Appeal for the First District reversed the lower court, holding that the permit did not have to include numeric effluent limitations for 303(d) listed pollutants in advance of the TMDL. (Tesoro v. CBE, Case No. A100327.) The Court held that a WQBEL “does not always have to be numeric, and that under the circumstances of this case the Regional Board did include valid WQBELs in the permit.” The Court noted that CBE’s arguments that numeric effluent limits were required “simply ignore the reality of a carefully conceived, agency-approved, long-term pollution control procedures for a complex environmental setting.”

Contacts: Melissa Thorme, Downey Brand; Margie Nellor, LACSD; Bobbi Larson, CASA; Jim Colston, OCSD
Current as of: June 2003.

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. A rudimentary economic assessment of the effect of the proposed standards (primarily looking at point sources) was also developed.

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.

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 TMDL-based compliance schedule provisions is unclear, although they should be grandfathered in as approved under the "Alaska Rule" since no other schedules were promulgated in their place by EPA.

Update: The State Board developed a document that contains procedures for applying for case-by-case exceptions to the SIP. The intent is to provide a roadmap so there are no surprises. The State Board also expected to release a draft of the SSO guidance for comment in Fall 2002, but none has thus far surfaced. As for the EDW policy development, State Board staff was expected to resume efforts on this front following a decision on the Vacaville permit appeal, which was adopted in October 2002, but again nothing has emerged.

State Board staff are also working on 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: June 4, 2003*

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.

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.

Update: The SWRCB Office of Chief Counsel is in the process of updating the MMP Question and Answer document. CASA and Tri-TAC provided the OCC with a list of proposed revisions to the Q & A document to improve implementation of the law and clarify provisions that operate unfairly. Legislation introduced in January 2003 would add new mandatory minimum penalties for failure to file reports. CASA and the League of CA Cities both have opposite positions on the bill and are meeting with the environmental sponsors to discuss concerns.

*Contact: Margie Nellor, LACSD, Bobbi Larson, CASA
Current as of: June 2003*

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 have 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. On December 24, 2002, the Court of Appeals issued an unpublished opinion reversing the trial court on all appealed issues. However, the Court vacated its decision after the Cities filed a Petition for Rehearing. While not taking up the Petition for Rehearing, the Court took the decision back up on its own motion and a new decision is expected the July 1, 2003.

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 was held on 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. A tentative decision was issued denying relief to Napa and BACWA. Objections were filed, and the parties are awaiting a statement of decision to be filed by the State, which is currently overdue.

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. It is expected that venue will be changed and a stipulation will be entered setting dates for briefing and hearing.

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

2003 Report to Congress on the Impacts and Control of Combined Sewer Overflows and Sanitary Sewer Overflows

Stakeholder Meeting Agenda

July 8, 2003

Huntington Beach Public Library ♦ 7111 Talbert Avenue ♦ Huntington
Beach, CA

Purpose

CSO and SSO stakeholders will gather to:

- ♦ Discuss the data, report methodology, and analyses of the 2003 Report to Congress;
- ♦ Discuss implications of the major analyses in the report; and
- ♦ Discuss participants' experiences in controlling impacts from CSOs and SSOs.

Tuesday, July 8

8:30 B 8:45

Welcome & Opening Remarks

Linda Boornazian B Director, Water Permits Division, U.S. EPA

8:45 B 9:00

Goals and Agenda for the Meeting

Linda Manning B Facilitator, SRA International

9:00 B 9:15

Background on the Report to Congress

Kevin DeBell, Office of Wastewater Management, U.S. EPA

Mr. DeBell will provide an overview of the legislative, regulatory, and programmatic background to the 2003 Report to Congress. He will provide an overview of the proposed methodology and key research questions.

9:15 B 10:15

Discussion of the Characteristics of Sewer Overflows

Kevin DeBell, Office of Wastewater Management, U.S. EPA

Mr. DeBell will present draft research and analyses on constituents, frequency, volume, and location of CSOs and SSOs. He will also present information on the major causes of CSOs and SSOs. Facilitated discussion to follow.

10:15 B 10:30

Break

10:30 B 12:15

Environmental Impacts of Sewer Overflows

Kevin DeBell, Office of Wastewater Management, U.S. EPA

Mr. DeBell will present draft research and analyses on the environmental impacts of CSOs and SSOs including: types of impacts, receiving water variability, and the national extent of impacts. Facilitated discussion to follow.

12:15 B 1:15

Lunch

1:15 B 3:15

Human Health Impacts of Sewer Overflows

Kevin DeBell, Office of Wastewater Management, U.S. EPA

Mr. DeBell will present draft research and analyses regarding human health impacts of

CSOs and SSOs including: pathogens present in overflows, exposure pathways, documented illnesses, and programs for monitoring, controlling, tracking, and reporting health effects of CSOs and SSOs. Facilitated discussion to follow.

3:15 B 3:30

Break

3:30 B 4:00

Technologies for CSO and SSO Control

Kevin DeBell, Office of Wastewater Management, U.S. EPA

Mr. DeBell will present draft research and analyses on technologies for controlling CSOs and SSOs, including effectiveness and cost. Facilitated discussion to follow.

4:00 B 4:30

Resources Spent on CSO and SSO Controls

Kevin DeBell, Office of Wastewater Management, U.S. EPA

Mr. DeBell will present draft research and analyses on costs municipalities have spent to date to control CSOs and SSOs, the relationship to operations and maintenance and infrastructure improvements. Facilitated discussion to follow.

4:30 B 5:00

General Discussion & Questions

Linda Manning B SRA International, Facilitator

Participants will have an opportunity to provide feedback and discuss topics related to the 2003 Report to Congress not otherwise covered in the meeting.

5:00 B 5:15

Closing Remarks and Next Steps

Linda Boornazian B Director, Water Permits Division, U.S. EPA

Ms. Boornazian will discuss the feedback received during the meeting and how the feedback will be incorporated into the final version of the report.

DRAFT

To: Directors of Environmental Health
Medical Waste Program Managers

From: Jack McGurk, Chief Environmental Management Branch

Subject: SEWER DISPOSAL OF PHARMACEUTICAL WASTE

The purpose of this memo is to clarify issues regarding the disposal of pharmaceutical wastes into wastewater sewerage systems. The discharge of waste to sewerage systems is highly regulated throughout California by the federal Clean Water Act and by the state's Porter-Cologne Water Quality Act as codified in the Water Code. California law also restricts the discharge of hazardous wastes to wastewater sewerage systems. California wastewater agencies (also know as publicly owned treatment works or POTWs) have additional local authority specified in ordinances to restrict the discharge of materials to their systems. Wastes from medical facilities may not be discharged to sewers without the prior authorization of the POTW operating the sewers.

Guidance

In order to obtain authorization to discharge waste pharmaceuticals to a sewerage system, *it is first necessary to contact the POTW* that provides sewerage services in your area. Wastewater treatment plants are designed to remove conventional pollutants such as suspended solids and easily biodegradable organic material, not other pollutants such as pharmaceuticals. Other pollutants are only accepted by POTWs if they are compatible with the POTW's operations and discharge requirements.

The POTW will evaluate your request to ensure that the discharge is in conformance with all applicable laws and regulations and will not cause a violation of any pertinent waste discharge and/or water reclamation requirement. The POTW will also evaluate your request to ensure that the discharge does not interfere with the operation of the treatment plant, including its biological treatment processes. The POTW may require a discharger to prove that the waste is non-hazardous and/or that the discharge of the waste to the sewerage system will not adversely affect humans or aquatic life prior to accepting a waste.

In general, specific written permission *must* be obtained from your POTW before any wastes, including pharmaceutical wastes, are sewerred.

Although each POTW has the right to deny a request to sewer a waste based on local conditions, the following wastes are generally **acceptable for sewerage**:

- 1) Solutions in IV bags containing *only* saline solution, lactate, nutrients such as glucose (e.g., D5W), added salts such as potassium, vitamins, and/or other electrolytes.

The following wastes are generally **not acceptable for sewerage**:

- 1) Any hazardous wastes, both California-only hazardous wastes and federal hazardous wastes regulated under RCRA.
- 2) Solutions in IV bags containing biologically active materials such as antibiotics, painkillers, and antineoplastics.
- 3) Liquid pharmaceutical wastes, including controlled substances
- 4) Solid pharmaceutical waste, including controlled substances

Many hospitals currently waste excess material in syringes into drains, where they pass into sewer systems. It is highly recommended that medical facilities adopt a best management practice of wasting excess material in syringes into a pharmaceutical waste container prior to administration of injections.

If you have any questions about the discharge of a specific waste into the sewerage system, please contact your local POTW.

Background Information

1. Why are pharmaceuticals in water and wastewater of concern to POTWs?

There is increasing concern that the pharmaceuticals present in surface waters could cause various disruptive environmental effects, including endocrine disruption in aquatic life and increased antibiotic resistance. Studies have identified pharmaceuticals and chemicals in personal care products in lakes and streams nationwide, and many of these pollutants are believed to be coming from wastewater discharges. The impact of pharmaceuticals in surface waters, including effects on aquatic life development and effects on human development, is still being studied. While these studies are occurring it is reasonable and prudent to be cautious about sewerage waste pharmaceuticals.

2. What is the Clean Water Act and how does it relate to the control of pharmaceutical wastes?

Section 307 of the Federal Water Pollution Control Act (more commonly referred to as the Clean Water Act) called for the Environmental Protection Agency to develop national pretreatment standards to control industrial discharges into sewerage systems. Included in this program are "Prohibited Discharge Standards," which are uniform national requirements that restrict the level of pollutants that may be discharged by nondomestic sources to sanitary sewer systems. All POTWs that are required to implement a Pretreatment Program must enforce the federal standards. Prohibited Discharge Standards specifically prohibit the discharge of pollutants that cause pass through or interfere with a POTW's operations. A pass through is a discharge that, alone or in conjunction with discharges from other sources, is a cause of a violation of any requirement of a POTW's discharge permit, per 40 Code of Federal Regulations,

Part 403.5(a)(1). Wastewater discharge permits issued by the California Regional Water Quality Control Board for POTWs pursuant to the Clean Water Act generally contain a requirement that wastes discharged shall not contain any substances in concentrations toxic to human, animal, plant, or aquatic life. This means that no pharmaceutical wastes may be sewered that in and of themselves, or in conjunction with other wastes discharged by businesses or households, could create a concentration of the pharmaceutical in the treatment plant effluent that, when discharged to surface or groundwater, adversely impacts humans or aquatic life. Individual POTWs have the authority to determine what wastes may adversely impact their own systems.

3. How do California's hazardous waste regulations apply to pharmaceutical waste discharges?

The California Environmental Protection Agency's Department of Toxic Substances Control (DTSC) implements hazardous waste regulations in California, along with various local agencies. California does not allow hazardous wastes to be sewered (California Code of Regulations, Sections 66261.3 and 66261.4). Hazardous wastes may be listed wastes or characteristic wastes. Listed hazardous wastes include epinephrine, nitroglycerin, and many chemotherapy agents. Characteristics that make a waste a hazardous waste include ignitability (including formulations with more than 24% alcohol, collodion, and oxidizers such as potassium permanganate and silver nitrate), corrosivity (having a pH less than 2 or greater than 12.5), reactivity (including nitroglycerin, which is generally exempt from federal hazardous waste regulations, but not California hazardous waste regulations), and toxicity.

There are a number of considerations to determine if a waste exhibits the characteristic of toxicity under California standards. The material must not contain concentrations of certain chemicals above certain concentrations, as defined in the California Code of Regulations Sections 66261.24(a)(1) and 66261.24(a)(2). The material must also not have an acute oral LD₅₀ less than 5,000 mg/kg, an acute dermal LD₅₀ less than 4,300 mg/kg, an acute inhalation LC₅₀ less than 10,000 parts per million as a gas or vapor, or an acute aquatic 96-hour LC₅₀ less than 500 mg/L when measured in soft water using fathead minnows, rainbow trout, or golden shiners. Additionally, a waste is hazardous waste if "it has been shown through experience or testing to pose a hazard to human health or environment because of its carcinogenicity, acute toxicity, chronic toxicity, bioaccumulative properties or persistence in the environment." Violation of any of these criteria makes the waste a hazardous waste.

The generator of a waste has the responsibility to determine whether a waste is a hazardous or not. For pharmaceutical wastes, all criteria that may reasonably be expected to make a waste a hazardous waste need to be explored before contacting a POTW to seek authorization to discharge the waste. Improper determination of whether a waste is hazardous does not shield the generator from felony criminal liability for illegal hazardous waste disposal. For more information on hazardous waste regulations and disposal, please contact DTSC or your local hazardous waste authority.

DRAFT

To: POTW Pretreatment Coordinators and Managers

From: Tri-TAC

Subject: SEWER DISPOSAL OF PHARMACEUTICAL WASTE

Tri-TAC has prepared this memo to provide guidance to help you in making decisions regarding the disposal of pharmaceutical wastes into the sewer system. While there is increasing concern about the presence of pharmaceuticals in surface waters, there is also increasing pressure on medical facilities to minimize disposal costs by sewerage pharmaceuticals. Pharmaceuticals that are not seweraged must be sent out-of-state by medical facilities for incineration.

Guidance

Wastewater treatment plants are designed to remove conventional pollutants such as suspended solids and oxygen-demanding organic material, not other pollutants such as pharmaceuticals. Other pollutants should only be accepted by your POTW if they are compatible with the operation of your wastewater treatment plant(s), the quality of your receiving waters, and the needs of your water reuse customers.

When you receive a request to discharge a waste, you should always evaluate the request to ensure that the discharge will not cause pass through and that it complies with all applicable waste discharge laws, including hazardous waste disposal laws. You should also evaluate the request to ensure that the discharge does not interfere with the operation of the treatment plant, including its biological treatment processes. You may require a discharger to prove that a discharge will not adversely affect humans or aquatic life prior to accepting a waste.

In general, medical facilities must obtain specific written permission from you before any wastes, including pharmaceutical wastes, are seweraged.

Although each POTW has the right to deny a request to sewer a waste based on local conditions, the following wastes are generally **acceptable for sewerage**:

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The following wastes are generally **not acceptable for sewerage**:

- 1) Any hazardous wastes, both California-only hazardous wastes and federal hazardous wastes regulated under RCRA.

- 2) Solutions in IV bags containing biologically active materials such as antibiotics, painkillers, and antineoplastics (chemotherapy drugs).
- 3) Liquid pharmaceutical wastes, including controlled substances
- 4) Solid pharmaceutical waste, including controlled substances

Many hospitals currently waste excess material in syringes into drains, where they pass into sewer systems. It is highly recommended that medical facilities adopt a best management practice of wasting excess material in syringes into a pharmaceutical waste container prior to administration of injections.

Background Information

Pharmaceuticals in Water

There is increasing concern that the pharmaceuticals present in surface waters could cause various disruptive environmental effects, including endocrine disruption in aquatic life and increased antibiotic resistance. Studies have identified pharmaceuticals and chemicals in personal care products in lakes and streams nationwide, and many of these pollutants are believed to be coming from wastewater discharges. The impact of pharmaceuticals in surface waters, including effects on aquatic life development and effects on human development, is still being studied. While these studies are occurring, it is reasonable and prudent to be cautious about accepting pharmaceutical wastes into your sewer system.

The most extensive study of pharmaceuticals in surface waters thus far was performed by the United States Geological Survey during 1999 and 2000. (A copy of the study can be obtained at http://pubs.acs.org/hotartcl/est/es011055j_rev.html.) The study found that pharmaceuticals were present more commonly in surface waters than had been previously expected. Four antibiotics were found in over 10% of samples analyzed (erythromycin, lincomycin, sulfamethoxazole, and trimethoprim). Codeine was found in 11% of samples and the antihypertensive diltiazem was found in over 13% of samples. Acetaminophen was found in 24% of samples and ibuprofen was found 10% of the time. Caffeine was found in 65% of samples. Steroids and hormones were also commonly found, with 17 α -ethynyl estradiol (a hormone used in birth control pills) found in 16% of samples analyzed.

Safe levels for many of these pharmaceuticals have not yet been established. While they may not cause acute toxicity in aquatic organisms, they may interfere with endocrine systems, particularly when exposure occurs during developmentally sensitive times such as before birth.

Medical Waste Regulations

Disposal of medical wastes in California is regulated by the Medical Waste Management Act (MWMA), codified in the Health and Safety Code, Sections 117600 to 118360. This program is administered by DHS.

Under the MWMA, there are three types of waste pharmaceuticals:

- 1) RCRA-hazardous waste pharmaceuticals. If a waste pharmaceutical is a RCRA-hazardous waste, it must be managed as a hazardous waste. To determine if a waste pharmaceutical is a RCRA-hazardous waste, follow the usual procedures to determine if a waste is a RCRA-hazardous waste (i.e., seeing if it is a listed waste or has the characteristics of a hazardous waste).
- 2) Radioactive wastes. These are regulated under the Radiation Control Law.
- 3) Medical wastes. HSC Section 117635(g) defines all pharmaceutical wastes that are not RCRA or radioactive wastes to be biohazardous wastes. (Biohazardous wastes are a subset of medical wastes and must be disposed of in accordance with medical waste regulations.) Per HSC Section 118222, biohazardous wastes that are pharmaceuticals must be incinerated, steam sterilized, or disposed of by another method approved by DHS. (DHS has not yet approved of any alternative disposal methods.) Therefore, California law requires that all waste pharmaceuticals that are not RCRA-hazardous nor radioactive be incinerated. They may not be disposed of with ordinary trash or sewer.

DHS has chosen to interpret this law differently. DHS alleges that only pharmaceutical wastes that would meet the characteristics of a California-hazardous waste are regulated as medical wastes. DHS believes that waste pharmaceuticals that are not RCRA-hazardous wastes, California-hazardous wastes, or radioactives may be put in ordinance trash or sewer, with POTW authorization.

Pollution Prevention Programs for Medical Facilities

Hospitals for a Health Environmental (H2E) is a joint project of the American Hospital Association, the Environmental Protection Agency, Health Care Without Harm, and the American Nurses Association. The primary goal of the H2E effort is to educate health care professionals about pollution prevention opportunities in hospitals and health care systems. General information about pollution prevention for hospitals can be found on the H2E web site at www.h2e-online.org.

Clean Water Act Authorities

The Clean Water Act specifically prohibits the discharge of pollutants that cause pass through. A pass through is a discharge that, alone or in conjunction with discharges from other sources, is a cause of a violation of any requirement of a POTW's discharge permit, per 40 Code of Federal Regulations, Part 403.5(a)(1). Discharge permits for POTWs in California generally contain a requirement that wastes discharged shall not contain any substances in concentrations toxic to human, animal, plant, or aquatic life. This means that no pharmaceutical wastes may be sewer that in and of themselves, or in conjunction with other wastes discharged by businesses or households, could create a concentration of the pharmaceutical in the treatment plant effluent that, when discharged to surface or groundwater, adversely impacts humans or aquatic life. Individual POTWs have the authority to determine what wastes may adversely impact their own systems.

Hazardous Waste Regulations

The California Environmental Protection Agency's Department of Toxic Substances Control (DTSC) implements hazardous waste regulations in California. California does not allow hazardous wastes to be sewerage (California Code of Regulations, Sections 66261.3 and 66261.4). Listed hazardous wastes include epinephrine, nitroglycerin, and many chemotherapy agents. Characteristics that make a waste a hazardous waste include ignitability (including formulations with more than 24% alcohol, collodion, and oxidizers such as potassium permanganate and silver nitrate), corrosivity (having a pH less than 2 or greater than 12.5), reactivity (including nitroglycerin, which is generally exempt from federal hazardous waste regulations but not California hazardous waste regulations), and toxicity.

There are a number of considerations to determine if a waste exhibits the characteristic of toxicity under California standards. The material must not contain concentrations of certain chemicals above certain concentrations, as defined in the California Code of Regulations Sections 66261.24(a)(1) and 66261.24(a)(2). The material must also not have an acute oral LD₅₀ less than 5,000 mg/kg, an acute dermal LD₅₀ less than 4,300 mg/kg, an acute inhalation LC₅₀ less than 10,000 parts per million as a gas or vapor, or an acute aquatic 96-hour LC₅₀ less than 500 mg/L when measured in soft water using fathead minnows, rainbow trout, or golden shiners. Additionally, a waste is hazardous waste if "it has been shown through experience or testing to pose a hazard to human health or environment because of its carcinogenicity, acute toxicity, chronic toxicity, bioaccumulative properties or persistence in the environment." Violation of any of these criteria makes the waste a hazardous waste.

The generator of a waste has the responsibility to determine whether a waste is a hazardous or not. For pharmaceutical wastes, all criteria that may reasonably be expected to make a waste a hazardous waste need to be explored before a waste can be disposed of as non-hazardous. Improper determination of whether a waste is hazardous does not shield the generator from felony criminal liability for illegal hazardous waste disposal. For more information on hazardous waste regulations and disposal, please contact DTSC or your local CUPA.

Tri-TAC

Tri-TAC is a statewide technical advisory group for the California Association of Sanitation Agencies, the California Water Environment Association, and the League of California Cities. Together these groups represent approximately 90% of the POTWs that treat sanitary wastewater in California.

Further Information

The California Health and Safety Code may be found at www.leginfo.ca.gov/calaw.html. If you have any questions about this memo, please contact Ann Heil of the Sanitation

Districts of Los Angeles County by phone at 562/699-7411, extension 2950, or by e-mail at aheil@lacsdsd.org. ***[Should we add a Tri-TAC contact as well?]***

From: Monica Oakley [MonicaO@LWA.com]

Sent: Tuesday, May 27, 2003 5:45 PM

To: Arleen Navarret; Ben Horenstein (E-mail); Bob Reid (E-mail); Bobbi Larson (E-mail); Chuck Weir (E-mail); Dave Tompkins (E-mail); Dave W. Tucker (E-mail); Dave Williams (E-mail); David L. Tucker (E-mail); Fred Burnett (E-mail); Gail Chesler (E-mail); Herb Stone (E-mail); Jack Nelson (E-mail); Jacqueline Kepke (E-mail); James Chen (E-mail); James Gratteau; Jennifer Smith; Jerry Troyan (E-mail); Jim Bewley (E-mail); Colston, Jim; Jim Kelly (E-mail); John Schroeter; Joyce Clark; Keith Smith; Lindstrom, Kris; Larry Wasserman (E-mail); Margie Nellor (E-mail); Melissa Thorme (E-mail); Michelle Buzbee; Michelle Pla (E-mail); Moore, Michael; Monica Oakley; Nancy Evans; Patricia McGovern (E-mail); Penny Weiland; Phil Bobel (E-mail); Ray Von Dohren (E-mail); Richard Luthy (E-mail); Ghirelli, Robert; Rodney Cruze (E-mail); Roger Turner (E-mail); Shahrouzeh Saneie; Sharon Green (E-mail); Stan Dean; Steve McDonald (E-mail); Steve Medbery (E-mail); Tad Foster (E-mail); Terrie Mitchell; Tom Grovhoug; Tom Hall (E-mail); Traci Minamide; Valerie Housel (E-mail); Warren Tellefson; Wendell Kido (E-mail)

Subject: EPA/NPDES article in the New York Times Tuesday
FYI

U.S. Report Faults Efforts to Track Water Pollution

New York Times

May 27, 2003

By KATHARINE Q. SEELYE

WASHINGTON, May 26 - The computer system used by the Environmental Protection Agency to track and control water pollution is obsolete, full of faulty data and does not take into account thousands of significant pollution sources, according to a new government report.

Efforts to modernize the program have been mismanaged for several years, said the report, issued last week by the E.P.A.'s inspector general. While the cost to fix the problem has been soaring, the amount of money dedicated to the project has been shrinking. The new system was supposed to come online this month, but because of its many problems it will be at least three years before the agency and the states can properly manage the enormous system of permits that is the basic tool for enforcing the Clean Water Act.

The report is the latest in a series of investigations over the years into the law's enforcement, many of them severely critical of the E.P.A. This time, the inspector general's office found that because of continuing mismanagement, "the future viability" of the system of permits "may be endangered."

J. P. Suarez, the agency's associate administrator for enforcement, disagreed with the report's characterization

of the system as endangered but acknowledged that it faced serious financing problems.

"The project design and cost are getting more expensive," Mr. Suarez said in a telephone interview. "In our most recent budget, we asked for \$5 million more to speed up the modernization effort, but costs continue to increase."

The permit system, known as the National Pollution Discharge Elimination System, was created decades ago in an effort to make the nation's waterways clean enough for fishing, swimming and other essential purposes. Despite some progress, the states have consistently fallen far short of that goal.

The computer system is supposed to allow the federal and state governments to check a facility's monthly discharge against its allowable amounts. Critics say the computer flaws could allow the mining and oil industries and developers to discharge vast quantities of pollutants into waterways undetected.

The permits are supposed to control discharge from more than 64,000 facilities, a number that has been increasing as new categories of runoff, like pollution from overflowing sewers and from large livestock operations, have been brought under the Clean Water Act.

But thousands of permits expire every year without being renewed, the backlog of permits to be issued has been reduced slowly, and tens of thousands of pollution sources have not been listed in the agency's database, rendering it largely useless.

"If these new areas are not included in the modernized system," the report warned, "information for hundreds of thousands of permittees will not be included."

The flaws in the system and the delays in fixing it are jeopardizing one of the E.P.A.'s main new water pollution control strategies, which calls for granting new permits only after considering how much pollution is already flowing into a watershed. Without comprehensive data, that approach is next to impossible.

"Delaying the project's rollout or reducing its functionality will hamper E.P.A.'s ability to achieve its goal of managing pollution sources on a watershed basis," the new report said. "The growth, variety and complexity of the regulated community has greatly outstripped the system's capabilities."

Critics of the agency said the faulty system undermined efforts to enforce the Clean Water Act.

"The deliberate neglect of this project is a perfect example of the Bush administration's effort to dismantle

the Clean Water Act with as little public awareness as possible," said Daniel Rosenberg, a lawyer for the Natural Resources Defense Council.

"Rather than investing in modernizing the system for tracking compliance and enforcing the law," Mr. Rosenberg said, "they are wasting money and resources on rewriting the rules to eliminate protections for tens of thousands of streams and wetlands, weakening essential programs and promoting various initiatives that range from useless to harmful."

Eighteen states use the system as their primary tool for enforcing the federal law, a responsibility that is often handled by state governments.

The system is so old, said Mr. Suarez of the E.P.A., that it requires the manual input of data from the reporting facilities. The goal is to have that data recorded automatically. Nonetheless, he said, "we have a very high level of confidence in the integrity of the data." The problem, he said, was that spending money on the manual input meant there was no money to update the system.

"We've got to fix the system," he said. "We can't continue operating the way it is."

The cost of modernizing the system is relatively small for a federal project - less than \$14 million as of two years ago, according to the report. But the report said that the E.P.A. Office of Enforcement and Compliance Assurance in its first analysis had "greatly understated the costs to finish the project." An analysis by the office just one month later put the cost 171 percent higher. A third analysis completed two months after that was 255 percent higher than the original.

The report said that the Office of Enforcement and Compliance Assurance had only two-thirds of the money needed to complete the project, which is scheduled for September 2006 if the financing sought in next year's fiscal budget is approved.

In a written statement to the inspector general, officials from the Office of Enforcement and Compliance Assurance said they were rushing to complete their draft design for the new system and would address the report more fully next month.

There have been other delays in enforcing the permit mechanisms since President Bush took office.

As part of a broad review of regulations, the incoming administration suspended a proposal by the Clinton administration that would have increased controls on pollution from overflowing sewers. The review is still under way.

And the administration has proposed to defer for two years requirements for permits under the Clean Water Act for certain activities of oil and gas producers, similar to those imposed on other developers to prevent contaminated runoff. The agency says that tens of thousands of sites might have been affected.

Peter H. Gleick, director of the Pacific Institute, a nonprofit, independent research institute in Oakland, Calif., that specializes in water, said the current system "permits polluters to abuse our clean water laws, apparently without penalty."

"The problem is more than just a failure to collect and manage information on polluters, or to enforce compliance with pollution permits that have been issued," Dr. Gleick said. "It is a failure of the administration to stop the thousands of polluters without permits."

<http://www.nytimes.com/2003/05/27/politics/27ENVI.html?ex=1055058629&ei=1&en=a884e05fa2e36047>

**CASA/Tri-TAC Recommended Revisions to
SB 709 and SB 2165 Questions and Answers
(April 17, 2001)**

Mandatory Minimum Penalty Law

1. Repeat Violations (Q & A Reference: Question 34)

Water Code section 13385(i)(1)(a) requires that a mandatory minimum penalty (MMP) be assessed where a discharger exceeds “a waste discharge requirement effluent limitation” four times in any period of six consecutive months.

The SWRCB’s existing interpretation of this provision is that any combination of effluent limitation violations triggers the penalty. In other words, a violation of a copper effluent limitation, a violation of a TSS limit, a violation of a temperature limit, and a violation of a coliform limitation would result in an MMP.

We think the better interpretation of this section is that the violations must be of the same pollutant parameter to result in liability, for several reasons:

- The statute refers to violations of “a” waste discharge effluent requirement. The use of the word “a” rather than the word “any” indicates that the Legislature intended to penalize repeat violations of a single effluent limitation.
- Each of the other three categories of violations under subsection (i)(1) are very specific—one must fail to file the same report four times, etc.
- The purpose of allowing three “free” violations is to allow the discharger to identify and correct the problem that led to the violations. Applying the provision to unrelated effluent limitations does not serve this purpose. Under this approach, a discharger could get a penalty for “repeat” or “chronic” violations based upon a single sample taken on a single day.

2. Violations involving effluent limitations expressed as “rolling” averages or medians (Q & A Reference: Question 40)

The SWRCB advises regional boards that where the permit specifies that an effluent limitation is to be computed on a rolling basis, there will be “violations for each new time period that the average or median was exceeded.” The problem with this approach is that a single sample result yields multiple penalties where the averaging period “straddles” the exceedance. At least one discharger received 21 penalties for a single sample because of the way in which the period of the rolling average was specified. To prevent the unfairness and double counting of this circumstance, the SWRCB should direct the regional boards to start over with a new rolling average

following an exceedance. This logic is similar to that applied with regard to repeat and serious violations, where the SWRCB has recognized the unfairness of “double counting” violations.

3. Single Samples Triggering Multiple Penalties (Q & A Reference: Question 37)

Under the current Q & A, a single monitoring event can result in multiple violations of the same pollutant parameter where the effluent limitation is expressed as both concentration and mass. We believe this should constitute a single violation.

4. Group 1 and 2 Pollutants (Q & A Reference: Question 24)

Water Code section 13385(h)(2)(A) defines a serious violation as any waste discharge that exceeds, by certain percentages, the effluent limitations contained in the permit for a Group I or Group II pollutant,” as specified in Appendix A to Section 123.45 of Title 40 of the Code of Federal Regulations.” The Q & A, however, directs the regional boards to consult a “more complete list” of Group I and II pollutants. The statute limits serious violations to those listed in Appendix A, and use of the broader list goes beyond what the Legislature specified.

5. Toxicity Discharge Limitations (Q & A Reference: Question 28)

Water Code section 13385(i)(1)(d) requires a mandatory minimum penalty (MMP) to be assessed where a discharger exceeds “a toxicity discharge limitation” four times in any six month period, where the permit does not include any pollutant-specific effluent limitations for toxic pollutants. The purpose of this provision was to ensure that where permits do not include numeric effluent limitations for toxics, and the only means of measuring compliance with toxicity requirements is a toxicity limit, MMPs could be assessed for repeat violations of that toxicity requirement. The environmental sponsors of the bill provided a specific example of a permit for a port in San Diego that included toxicity effluent limitations but no numeric effluent limitations for toxic pollutants. The vagueness of the term “discharge limitations” has led to differing interpretations among the regional boards. Some are relying on the Q & A to assess penalties for exceedances of toxicity effluent limitations under (i)(1)(a).

The Q & A should be revised to state that this is not appropriate. An “effluent limitation” is a subset of “discharge limitation,” which would also include prohibitions and certain provisions of the permit that govern the discharge (as opposed to receiving water quality.) The term discharge limitation encompasses effluent limitations, and thus MMPs for violations of toxicity effluent limitations can only be assessed pursuant to (i)(1)(d).

6. Single Operational Upset (Q & A Reference: Question 36)

We believe it would helpful to provide some clarification with regard to the requirement that an upset must be reported within 24 hours of "the incident." Some regional boards have taken the position that this means the discharger must report within 24 hours of the "slug" reaching the treatment plant. Some upsets are sufficiently subtle, however, that the POTW operator may not suspect an upset until after the monitoring results are received. The Q & A could assist regional boards in implementing the single operational upset provisions of the MMP law by clarifying that the discharge must report within 24 hours of discovery of the upset condition (e.g. when the discharger knew or should have known of the upset.)

7. Effluent Limitations Expressed as 0.0 (Q & A Reference: Question 32)

As you know, some regional boards (e.g., Regions 2 and 8) have developed workable approaches to dealing with determining violations of effluent limitations expressed as "zero." It would be helpful to reference these approaches in the Q & A, perhaps in a footnote, as acceptable alternatives to determining compliance.