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

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Via Electronic and U.S. Mail

July 25, 2003

Arthur G. Baggett, Jr., Chair
State Water Resources Control Board
c/o Fee Revisions
Division of Administrative Services
State Water Resources Control Board
P.O. Box 100
Sacramento, CA 95814

**SUBJECT: COMMENTS ON PROPOSED REVISIONS TO THE STATE
WATER RESOURCES CONTROL BOARD'S ANNUAL FEE
SCHEDULE**

Dear Chairman Baggett:

The California Association of Sanitation Agencies (CASA) and Tri-TAC appreciate the opportunity to comment on the State Water Resources Control Board's (SWRCB) proposed revisions to the annual fee schedule for the core regulatory program. CASA and Tri-TAC are statewide organizations comprised of public agencies and other professionals responsible for wastewater collection, treatment, disposal and water recycling. Tri-TAC is jointly sponsored by CASA, the California Water Environment Association, and the League of California Cities. The constituency base for CASA and Tri-TAC collects, treats and reclaims more than two billion gallons of wastewater each day and serves most of the sewered population of California.

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We recognize that the SWRCB and regional boards face significant fiscal challenges in the current budget climate, and that the Legislature has determined that increased fee revenues should replace General Fund monies now dedicated to Board programs. Funding for local public agency programs is also limited, however, and the proposed fee schedule would impose significant increases—up to 300 percent on some POTWs-- over current levels. While CASA and Tri-TAC members are willing to pay their fare share to support the core regulatory program, we have a number of concerns about the fee schedule as proposed, as well as the specter of even greater fee increases in the future.

The Proposed POTW NPDES Fee Schedule is Less Equitable Than One of the Alternatives Considered by the Stakeholder Group.

The proposed fee schedule would cap NPDES fees for POTWs at \$50,000 (plus the pretreatment surcharge), except that POTWs discharging over 100 million gallons per day (mgd) would pay a \$100,000 annual fee. We question the fairness of raising the fees on these large POTWs by 400 percent, but assuming the “super-discharger” proposal will go forward, we do not understand why the other POTW fees should cap at \$50,000. This penalizes medium-sized POTWs. Under the SWRCB’s proposed schedule, all POTWs of approximately 15 mgd up to 99 mgd will pay \$50,000 per year. Under the alternative scenario presented to the Stakeholder Group, the fees would increase on a linear scale to a maximum of \$100,000 per year, with the result that POTWs with discharges of approximately 25 mgd or less would pay a fee less than \$50,000. Those between 25 and 99 mgd would pay some proportionate amount less than \$100,000. We request that the SWRCB consider implementing the alternative of a simple linear increase in fees to a maximum. While this will still result in fee increases of several hundred percent for many POTWs, there would be greater equity among the POTWs and would avoid unfairly penalizing those POTWs with permitted flows between 15 and 25 mgd.

The Cost of Ambient Monitoring Programs Should Not be Shifted to Core Regulatory Program Fees.

CASA and Tri-TAC have long advocated the implementation of a comprehensive ambient water quality monitoring program to assess California’s waters. A robust ambient monitoring program is critical to the success of many SWRCB efforts, including the TMDL program. The very nature of an ambient program, however, is that monitoring is not tied to specific discharges or regulated entities. Therefore, we do not believe it is appropriate to simply shift the cost of this statewide program of general benefit to the subset of Californians subject to core regulatory program fees. Instead, the SWRCB

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should work with the AB 982 Public advisory Group and other interested parties to devise a long term, stable, equitable funding source for ambient monitoring, perhaps through bond revenues or other sources spread across all who benefit.

In addition, many POTWs already support ambient monitoring programs within their regions. As an example, Bay Area POTWs and other point source dischargers have supported the San Francisco Bay Regional Monitoring Program for many years at a cost of \$2 million per year. Southern California POTWs participate in the Southern California Coastal Water Research Project. If the \$6.8 million cost of the SWAMP program were to be added to the fee burden, dischargers should be given a "credit" for monies contributed to other ambient monitoring programs. Otherwise, dischargers may decide they can no longer afford to support these worthwhile regional programs.

NPDES permit holders also conduct extensive monitoring programs mandated as part of the NPDES permit (through what is called the Monitoring and Reporting Program or MRP). Originally conceived to determine compliance with permit limitations, the MRPs traditionally have been focused on end-of-pipe effluent monitoring rather than on measurements of ambient waters throughout watersheds. At most, dischargers usually were required only to monitor immediately upstream and downstream of their discharge locations to assess the impacts of the discharge on ambient water quality. In recent years, this trend has been changing, with an increased focus on the development of regional or watershed monitoring programs. Additionally, increased effluent and ambient monitoring has been required as new water quality criteria are promulgated, such as the California Toxics Rule, and as recognition of the need for better ambient water quality data has spread. However, although dischargers are being required to spend ever-increasing amounts of money on monitoring and reporting programs, it is not always clear that more compliance monitoring equals more information. Often, monitoring requirements are retained simply because they are being carried over from previous permits. In some cases, dozens (or even hundreds) of data points demonstrate consistent compliance (i.e., no violations), and there is little to be gained from continued monitoring for the same parameter at the same frequency.

Therefore, in recognition of the increased amount of fees being imposed on dischargers, the Regional Boards should be required to review MRP requirements for NPDES permit holders during the 2003-04 fiscal year to determine how their monitoring programs can be designed more cost-effectively. This should include reduced frequencies for those parameters that are consistently not detected or are detected but are in compliance with effluent limits (for example, if a parameter is monitored on a monthly

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basis for a year and is never detected, then the frequency of monitoring could be reduced to quarterly

The Pretreatment Program Surcharge Should be Assessed Per Agency Rather Than Per Treatment Facility.

Under the proposed regulations, NPDES permitted public wastewater treatment facilities with approved pretreatment programs subject to fees under Section 2200(b)(5) must pay a surcharge of \$10,000 per facility. We do not believe it is appropriate to apply this surcharge on a per-facility basis, as the example of the Los Angeles County Sanitation Districts (LACSD) illustrates. LACSD has an approved pretreatment program applicable to all of its seven treatment facilities. This program has been developed and is implemented on a uniform basis, and a single pretreatment annual report is prepared that applies to all of the treatment plants. When Regional Board and EPA staff audit LACSD's pretreatment program, a single program audit is prepared, and oversight of LACSD's pretreatment program is comparable to oversight of a single facility's program. CASA and Tri-TAC recommend that Section 2200(b)(5) of the proposed regulations be amended to state: *"For public agencies that own/operate multiple public wastewater treatment facilities with a common approved pretreatment program, the pretreatment surcharge shall apply on a per agency basis."*

Wet Weather Treatment Facilities Should Not be Assessed Fees Based Upon Permitted Capacity.

Calculation of NPDES fees based upon permitted flow is a reasonable approach for POTWs, as they generally operate at or near their permitted flow rate on a daily basis throughout the year. However, this model fails when applied to intermittently operated facilities. The actual flow of intermittently operated facilities (such as wet weather facilities operated by the East Bay Municipal Utility District (EBMUD)) may be a mere fraction of the permitted flow.

EBMUD has proposed two alternatives for your consideration, and CASA and Tri-TAC request that the SWRCB adopt one of the proposed approaches. Intermittently operated wet weather facilities could be included with a number of other of special categories of NPDES permits in Section 2200, (b)(8)(B), "de minimis" discharges. Another alternative would be to develop a new exception category for "Intermittently Operated Facilities." Intermittently operated facilities could be defined as "waste discharge facilities that operate at less than 10% or 5% of their permitted flow due to seasonal or other considerations. A proposed methodology for the fee calculation in this

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exception category is to utilize the prior year's actual flow (in place of the permitted flow) per the equation in Section (b)(5).

Either of these alternative approaches to this special category of facilities would be a more appropriate reflection of the true impact of the regulation of these facilities within the SWRCB's core regulatory program and is consistent with the intent and design of the draft regulations.

POTWs Bear a Disproportionate Burden Under the Proposed Schedule.

CASA participated in the Fee Stakeholder Group convened by the SWRCB to discuss revisions to the fee schedule. One of the themes of the group discussions was that the SWRCB should raise fees within each program area—POTW, municipal stormwater, dairies, WDRs, etc.—to cover the cost of implementing those programs. In other words, fees from one regulated sector should not subsidize regulation of another. It is our understanding that the proposed fee schedule attempts to match fee revenues to program costs, as requested by the Stakeholder Group. While we accept the logic of this approach, we are concerned that as long as fees are the source of funding, revenues will drive program choices into the future. Rather than assessing where the SWRCB should be spending its time and effort to achieve the greatest water quality benefit, our fear is that the SWRCB will continue to focus on traditional point source regulation and raise fees accordingly. We urge the SWRCB to work with CASA, Tri-TAC and other interested parties to explore alternatives for future fee structures that will facilitate implementation of programs that will lead to water quality improvement rather than devising increasingly complex and onerous permits for POTWs in order to rationalize assessing higher and higher fees.

The ability of POTWs and other dischargers to absorb greater and greater fee burdens is not limitless. It is critical that the SWRCB involve stakeholders in evaluating existing programs to identify opportunities for efficiencies and cost savings, and that the SWRCB proposals for Legislative funding authorizations be reviewed with stakeholders, as the annual budget process is now the only check on the amount of money that can be

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raised through fees. Rather than simply reacting during the budget deliberations, we prefer to work with the SWRCB in a proactive way to ensure that critical programs can be maintained without the imposition of onerous burdens on local public agencies and other fee payers.

Sincerely,

Roberta Larson
Director, Legal & Regulatory Affairs
CASA

David R. Williams
Chair
Tri-TAC

RLL/jlp

cc: Celeste Cantu, Executive Director, SWRCB
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