



# CALIFORNIA ASSOCIATION of SANITATION AGENCIES

1215 K Street, Suite 2290 • Sacramento, CA 95814 • TEL: (916) 446-0388 – FAX: (916) 231-2141 • www.casaweb.org

March 31, 2008

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Teresa Lasseter, Administrator  
Farm Service Agency  
United States Department of Agriculture  
1400 Independence Avenue, SW – Room 3086  
Washington, DC 20250-0506

Dear Ms. Lasseter:

On behalf of the California Association of Sanitation Agencies (CASA), I am writing to encourage USDA to appeal the decision of the United States District Court for the Southern District of Georgia in *McElmurray v. U.S. Department of Agriculture (USDA)*. CASA is a statewide nonprofit association of public wastewater treatment agencies serving 90 percent of the sewered population of California. As you may be aware, the Court reversed USDA's denial of a "prevented planting" subsidy to a farmer, who alleged contamination from sewage sludge applied to the land. This decision has received much national publicity since its issuance and, if allowed to stand unchallenged, may adversely affect the viability of the many wastewater programs across the nation that practice the beneficial recycling of biosolids via application to agricultural land.

There are approximately 7.2 million tons of biosolids produced each year in the United States, and more than half are applied to agricultural land as a fertilizer or soil amendment. The United States Environmental Protection Agency (EPA) regulates this practice under the risk based regulations established in 40 CFR 503. Virtually every state has also adopted a comparable program at least as restrictive as federal regulations. EPA, USDA, and other federal agencies adopted and published official policy and guidance documents (1981, 1991, 1993) promoting the beneficial use of biosolids on agricultural land. While the applications in question in this case pre-date the 1993 risk based federal regulations, the evidence collected on behalf of the City of Augusta and reviewed by EPA clearly support the administrative determination that the land was not contaminated in any way.

CASA has followed this case closely and thoroughly reviewed the Court decision. We have many concerns about the "facts" presented by the plaintiffs in this case and the discounting of relevant evidence in the record. We believe the scientific record adequately supports the administrative decision to deny the subsidy, and the Court erred in substituting its judgment for that of the federal agency. Not only do we believe that the Court decision was incorrect from a legal perspective, we are concerned that the ruling will fuel incorrect negative perceptions about this critical recycling program, and be cited as legal precedent that land was contaminated as a result of this practice. Farmers all across the nation have realized the benefits of

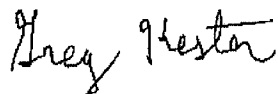
*Ensuring Clean Water for California*

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increased crop production and soil fertility from biosolids application, as well as fertilizer cost savings, for years. Major land grant universities across the nation have researched and subsequently supported this critical recycling program for decades.

CASA respectfully and strongly urges USDA to appeal this decision to the U.S. Court of Appeals for the Eleventh Circuit, working closely with EPA. CASA believes that the scientific facts in the administrative record that were before the agency support a successful appeal of this decision. CASA is prepared to assist USDA to the extent possible and would be glad to offer additional information on any aspect of these matters.

Sincerely,



Greg Kester  
Biosolids Program Manager  
[gkester@casaweb.org](mailto:gkester@casaweb.org)  
916-844-5262

Cc: Ben Grumbles – Assistant Administrator for Water, USEPA, Ariel Rios Bldg., 1200 Pennsylvania Ave., NW, Washington DC 20460  
James Hanlon – Director, Office of Wastewater Management, USEPA, Ariel Rios Bldg., Mail Code 4201, 1200 Pennsylvania Ave., NW Washington DC 20460  
Edmund A. Booth Jr., - United States Attorney, USDOJ, Southern District of Georgia, 100 Bull Street, Savannah, GA 31401  
Delora Kennebrew - Assistant United States Attorney, USDOJ, Southern District of Georgia, 100 Bull Street, Savannah, GA 31401  
Rufus Chaney - USDA-ARS, Bldg. 007 Barc West, Beltsville, MD 20705