

A COMPILATION OF STORMWATER AND OTHER RELATED WATER NEWS

By S. Wayne Rosenbaum Foley & Lardner LLP

NATIONAL NEWS

USGS reports low pesticide levels in streams

(WaterWeek, 3/6) "[A 10-year study by the US Geological Survey \(USGS\) of pesticide levels in US streams and aquifers concludes that pesticides 'are seldom at concentrations likely to affect humans.'](#)"

Antarctica is shrinking

(Nature.com, 3/6) Thanks to **Sue Shimer** for this one: "[First Greenland, and now Antarctica. Research shows that both of these massive ice sheets are getting smaller.](#)"

Diazinon, Nonylphenol – EPA sets final criteria –

Over the years, U.S. EPA has published recommended water quality criteria for approximately 150 pollutants. These criteria are intended to prevent toxicity to aquatic organisms and also to decrease risks to human health from exposure: 1) indirectly through consumption of contaminated fish and shellfish and, 2) directly through water consumption. These recommended criteria do not have regulatory force until they are adopted as part of state water quality standards. EPA recently published final criteria for the protection of aquatic life for two constituents of interest to the storm water community:

■ **Diazinon**

This once popular insecticide is on the current 303(d) list as causing impairment for approximately 80 California waterbodies or segments. In some cases the waterbodies were contaminated via aerial deposition from agricultural sources. EPA has set both the acute (1 hr) and chronic (4 day) freshwater criteria at 0.17 micrograms per liter (ug/l). Both saltwater criteria are set at 0.82 ug/l. The California Department of Fish and Game had previously set an acute criterion of 0.08 ug/l (freshwater only) which has been used for 303(d) listing purposes. Many uses, particularly homeowner use, have been or are being phased out and diazinon impacts are expected to decrease significantly.

<http://www.epa.gov/waterscience/criteria/diazinon/>

■ **Nonylphenol**

This chemical is a breakdown product of several commonly used detergents and other products. It is routinely detected in surface waters and is considered an endocrine disrupter (either mimics or blocks hormones). A reconnaissance survey of 139 U.S. streams found that nonylphenol was one of the most commonly occurring pollutants and was also

For more information on the matters discussed in this issue of the *Stormwater News* please contact the following Foley & Lardner LLP professional, or the member of the firm who normally handles your legal matters.

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measured at higher concentrations than most other pollutants. Much of the nonylphenol in waterways comes from sewage treatment plant discharges. Another major source is thought to be car washing and the resulting runoff into storm drains. The acute criterion (1 hr exposure) is set at 28 ug/L for freshwater and 7.0 ug/L for saltwater.

<http://www.epa.gov/waterscience/criteria/nonylphenol/>

Feds oversteps bounds in water protections

(Arizona Daily Star, 3/2) **Opinion.** "[When the U.S. Supreme Court considered questions last week about the federal government's authority under the Clean Water Act, certain interest groups immediately trotted out their scare tactics, claiming any curtailing of federal power would leave our nation's water dirty and our rivers so polluted they would catch fire.](#)"

CALIFORNIA NEWS

Shifting flood cleanup liability stirs debate

(SD Union Tribune, 3/8) "[As a series of late-winter storms keeps Northern Californians on edge, lawmakers are piecing together a series of measures that could fundamentally shift the financial responsibility for flood cleanup to homeowners and local agencies.](#)"

Napa flood officials field concerns about creeks

(Napa News, 3/2) "[The meeting was meant to give residents near Napa Creek, especially those in the Behrens Street area, a chance to vent about flood problems and possible solutions.](#)"

EPA approves California's ocean plan

The 2005 California Ocean Plan was officially approved on February 14, 2006 by the United States Environmental Protection Agency, and is now available at <http://www.waterboards.ca.gov/plnspols/oplans/index.html>

The 2005 Ocean Plan amendments were previously adopted by the State Water Resources Control Board on January 20, 2005 (Resolution 2005-0013 at <http://www.waterboards.ca.gov/resdec/resltn/2005/rs2005-0013.pdf>) and on April 21, 2005 (Resolution 2005-0035 at <http://www.waterboards.ca.gov/resdec/resltn/2005/rs2005-0035.pdf>). The California Office of Administrative Law approved the amendments on October 12, 2005.

The Ocean Plan was amended to:

1. revise bacterial water quality objectives for ocean waters in Chapter II, Section B(1), and revise implementation provisions for bacterial characteristics in Chapter III, Section D;
2. delete existing language in Chapter III, Section G(2) that allows discharger certification in lieu of monitoring, and add general reasonable potential language in Chapter III, Section C, and add a reasonable potential analysis procedure in a new Ocean Plan Appendix VI;

3. incorporate the classification of Areas of Special Biological Significance (ASBS) as State Water Quality Protection Areas (SWQPAs), according to the Public Resources Code, rename certain ASBS to coincide with name changes in other corresponding Marine Managed Areas, clarify that all exceptions are subject to Triennial Review, and add a new Appendix VII with a Table VII-1 listing exceptions to the Ocean Plan.

CBIA Launches Coalition to Promote Responsible Flood Protection

CBIA is supporting a coalition organized to establish a comprehensive and common-sense flood policy for California. Dubbed "Californians for Responsible Flood Safety Protections," the coalition has been formed to promote a comprehensive plan to protect against the risk of floods in certain parts of the state. The Coalition is building support for the plan that includes a thorough assessment of flood risks statewide; investments to repair and fortify the state's 1,600-mile levee system and to capitalize an ongoing preventive-maintenance program; increased public awareness; reasonable land-use safeguards; and expanded flood insurance. The Coalition's statement of principles is found at www.cbia.org.

Wetland Restoration – *Methylmercury concerns*

Major wetland restoration programs are currently underway around San Francisco Bay and in other parts of the state. One concern with these projects is that new wetlands are capable of increasing the conversion of elemental mercury to methylmercury, which is more toxic and tends to bioaccumulate through the food chain. Conversely, by opening up new areas to tidal action, the overall tidal flushing activity of the Bay will increase and thereby decrease pollutant concentrations. Restoration managers are examining possible strategies to minimize mercury methylation.

Article: <http://www.contracostatimes.com/mld/cctimes/news/local/13966726.htm>

Bay Area restoration programs: http://www.southbayrestoration.org/Project_Description.html and <http://www.sfwetlands.ca.gov/>

State Board releases new search tool to review and down load grant information

The State Water Board has released a new tool on the DFA main web page (www.waterboards.ca.gov/funding/index.html) where you can view and download applications that were submitted through FFAST.

Tahoe Detention Basin – *Groundwater impacts minimal*

The Cattlemans detention basin in South Lake Tahoe was designed to remove sediment and nutrient loads from surface runoff into nearby Cold Creek, whose waters eventually enter Lake Tahoe. The basin receives runoff from residential areas and a major roadway. It can hold 22,000 ft³ of water without surface discharge. Excess runoff overflows to an adjacent meadow. The U.S. Geological Survey and the El Dorado County Department of Transportation completed a study to determine if nutrients infiltrated from the detention basin were transported through ground water to Cold Creek. The study

concluded, “The chemical composition of ground water for two years after completion of the detention basin did not change from the chemical composition of ground water before completion of the detention basin.”

http://pubs.usgs.gov/sir/2005/5260/PDF/SIR2005_5260.pdf

Air Pollutants to Water Pollutants – SWRCB & ARB discuss cross-media issues

In a meeting described as “historic,” the Air Resources Board and the State Water Resources Control Board conducted a joint workshop to discuss the exchange of pollutants between air and water. In general, aerial deposition of contaminants results in water pollution by direct deposition onto waterways or indirectly via storm water runoff. However, some pollutants go the other way: the amount of mercury volatilizing from San Francisco Bay is estimated to about equal the inputs from direct deposition and urban runoff.

In its testimony, Caltrans suggested that car emissions testing be expanded to include not only traditional air pollutants but also airborne debris from brake wear, tires, and other automotive sources that may affect water as well as air quality. More joint meetings are expected in addition to staff-level contacts. Priorities include: 1) Identifying an inventory of the original sources of various pollutants and 2) Developing an action plan to deal with those pollutants at the source.

SWRCB press release: http://www.swrcb.ca.gov/press/docs/2006/06_004.pdf

Integrated Water Resource Planning – Bay Area IRWMP holds meeting

The first of four meetings leading to adoption of the *Bay Area Integrated Regional Water Management Plan* (IRWMP) will be held today in San Francisco. This plan is a multi-stakeholder, nine-county effort to coordinate water resource management in four functional areas: 1) water supply and water quality; 2) flood protection and stormwater management; 3) waste-water and recycled water; and 4) watershed management, and habitat protection and restoration.

Funding for development of the Bay Area IRWMP comes from Proposition 50. \$380 million has been set aside statewide for all IRWMP-related grants including implementation. More info on the Bay Area IRWMP <http://www.bayareairwmp.net/> Other IRWMPs are underway in the state but may or may not address storm water. Statewide info:

<http://www.waterboards.ca.gov/funding/irwmgp/>

Incentive-Based Measure on “Green Building” Introduced

After numerous discussions with CBIA regarding the homebuilding industry’s “green building” efforts, newly elected Assembly Member Ted Lieu (D-Torrance) opted not to pursue mandatory requirements to promote the policy but to, instead, advance an incentive-based approach. The bill, AB 2160, would direct several state agencies to work with interested parties – including the homebuilding industry – in the development of “voluntary, model statewide green building guidelines” for residential and commercial construction and promote their use through local and state incentives. This approach squares with CBIA’s long-standing policy of promoting voluntary programs through the use of incentives.

McClintock Introduces Legislation Requiring Streambed Alteration Agreement for Emergency Work

Existing law generally provides for the execution of lake or streambed alteration agreements by the Department of Fish and Game, and persons, state or local governmental agencies, or public utilities for the purpose of regulating the conduct of activities that affect a river, stream, or lake, and thereby affect the protection and conservation of fish and wildlife. Existing law prohibits an entity from substantially diverting or obstructing the natural flow of, or substantially changing or using any material from the bed, channel, or bank of any river, stream, or lake or from depositing certain material where it may pass into any river, stream, or lake designated by the Department of Fish and Game, without first notifying the department of that activity.

Existing law exempts from those provisions immediate emergency work necessary to protect life or property, immediate emergency repairs to public service facilities necessary to maintain service as a result of a disaster in an area in which a state of emergency has been proclaimed by the Governor, and emergency projects undertaken, carried out, or approved by a state or local governmental agency to maintain, repair, or restore an existing highway, within the existing right-of-way of the highway, that has been damaged as a result of fire, flood, storm, earthquake, land subsidence, gradual earth movement, or landslide, within one year of the damage. Existing law requires the entity performing the emergency work to notify the department of the work, in writing, within 14 days of beginning the work.

This bill would expand those emergency work exemptions to include emergency work declared by the governing body of a local governmental agency, by resolution adopted by a majority vote, to be necessary to prevent or mitigate immediate future loss, or damage, to life, health, property, or essential public services that, in the determination of the local governmental agency, is likely to occur as a result of fire, flood, storm, earthquake, land subsidence, gradual earth movement, or landslide.

SOUTHERN CALIFORNIA

Huntington Beach OKs Desalination Plant on PCH

A controversial proposal to build what would be the largest desalination plant in the nation along the Huntington Beach coast was approved early Tuesday after months of consideration. <http://www.calcoast.org/news/waterq.htm>

Coastal report faults Encinitas' blufftop hotel plan

ENCINITAS ---- Citing concerns over the availability of lodgings to the public, a California Coastal Commission staff report is recommending that the commission deny a hotelier's application to sell all 130 rooms of a planned hotel as condominiums. <http://www.calcoast.org/news/coast.htm>

Encinitas' clean water measure gets big response

ENCINITAS – A record number of property owners have voted on the controversial clean water fee ballot measure. http://www.signonsandiego.com/uniontrib/20060304/news_1mc4ballot.html

Foes mum on proposed hotel tax hike in Solana Beach

SOLANA BEACH – Two-thirds of the additional revenue would be used to replenish and retain sand on the beaches and to build public facilities at beaches, such as stairways and parks.

http://www.signonsandiego.com/uniontrib/20060302/news_1mc2sbtax.html

Border sewage pact done, but debate isn't

SAN DIEGO - As proponents of the Bajagua border sewage-treatment project celebrate the signing of a long-awaited development agreement, opponents vow to continue their fight for an alternative plan.

http://www.signonsandiego.com/uniontrib/20060226/news_1n26bajagua.html

Sea wall has wave of need

SAN DIEGO - No remedy appears to be on the horizon

http://www.signonsandiego.com/uniontrib/20060306/news_1m6seawall.html

A Farewell Wave to Beach Life

Tenants at El Morro Village trailer park, north of Laguna Beach, are leaving so the public can finally gain access.

<http://www.calcoast.org/news/beachrest.htm>

Carlsbad to dredge part of Agua Hedionda Creek

(SD Union Tribune, 3/4) "[The city received an emergency permit yesterday from the Army Corps of Engineers to dredge sand from Agua Hedionda Creek and reduce a threat of flooding at a senior-citizen residential community.](#)"

U.S. EPA orders three Southern California companies to limit wastewater discharges

(EPA News Release, 3/3) "[The U.S. Environmental Protection Agency has ordered three Santa Ana, Calif.-based companies to limit their wastewater discharges and establish a self-monitoring plan to correct violations of the Clean Water Act.](#)"

Water prompts suit over L.A. County growth

(LA Times, 3/2) "[Santa Clarita Valley water agencies can't deliver enough water for the rapidly growing northern frontier of Los Angeles County and increased demand will only reduce stream flows along the 100-mile Santa Clara River, a coalition of environmental groups charge in a lawsuit.](#)"

Escondido considers water, sewage rate hikes

(NC Times, 3/2) "[Whether a farmer or a family of four, everyone should pay for what they use. That's the philosophy behind a proposal to raise Escondido's water and sewer rates over the next several years.](#)"

SD Coastkeeper Welcomes New Director David A. Field

San Diego Coastkeeper welcomes **David A. Field** to our Board of Directors. David, who joined the Board in January, is the Vice President of General Lock and Security, where he develops and manages new business ventures on behalf of the largest independent vertically integrated security distribution company in North America. These business units range from technology affiliates (e.g., Perseus Wireless, Inc.) to the Company's government sales and order processing business. David is the founder and general partner of a California-based energy company that developed, owned and operated on-site power generation plants. He has established and managed a California-based joint venture to develop and operate water infrastructure projects involving municipalities and public agencies. David also served as a Principal of Bitter End Investments, LLC, where he provided mentoring and strategic development assistance to various for-profit and non-profit organizations.

As David joins the Coastkeeper team, two long-time Board members - **Richard Dittbenner and David Beckman** - recently retired from the organization after nearly twenty years of combined service as Directors. Richard and David have provided invaluable service to the Board, helping to establish and guide the organization since its inception. In particular, David (Senior Attorney for the Natural Resources Defense Council) and Richard (Law Professor at Southwestern College), have played a critical role in establishing Coastkeeper's legal program that has been pivotal in shaping environmental policy in San Diego over the past decade.

Coastkeeper is proud to welcome David to the team, and we express our sincere gratitude to David and Richard for their years of service to the organization and the San Diego community!

ANNOUNCEMENTS

Phase II Storm Water Regulation And Compliance In California

This one-day seminar is designed for engineers, project managers, presidents, vice presidents, owners, developers, property owners and managers, environmental professionals, compliance officers, public works and utilities directors, surveyors, operations managers, facilities managers, planners, architects and attorneys.

San Diego, CA June 29, 2006

- Michael Adackapara
California Regional Water Quality
Control Board – Santa Ana Region
- Richard Gilb
San Diego County Regional Airport Authority
- A. Aiko Osugi & S. Wayne Rosenbaum
Foley & Lardner LLP

San Diego County Water Authority Invitation

We would like to invite your membership to tour some of Southern California's best 'California Friendly' landscapes located in the Winchester/Hemet area. The purpose of the tour is to view several model homes that are using state of the art water conservation practices in the proposed developments. This tour will provide an opportunity for Metropolitan Water District of Southern California and the Water Authority to demonstrate the success and importance of water conservation in new home developments. The tour will take place on Wednesday, March 22. We will meet at the Water Authority's office at 4677 Overland Avenue, San Diego at 7:45 a.m. returning by 3:30 p.m. that day. Breakfast and lunch will be provided.

Please RSVP by Wednesday, March 15 to Teresa Penunuri at the San Diego County Water Authority at tpenunuri@sdcwa.org or 858-522-6708.

CASQA Call for Papers

The California Stormwater Quality Association has issued a call for papers and presentations for its 2nd annual conference and exposition to be held in Sacramento this fall. Abstracts must be received by April 7, 2006. <http://www.casqa.org/>

California Stormwater Quality Association (CASQA)

CASQA is sponsoring a presentation/panel discussion on implementing Total Maximum Daily Loads (TMDLs) in California on Friday, March 10th, from 9 a.m. - 3 p.m. at the Hilton Ontario Airport in Ontario.

Website: <http://www.casqa.org/meetings/locations.html>

Contact information: Call 650-366-1042, or info@casqa.org

2nd National Water Quality Trading Conference

Mark your calendar for the 2nd National Water Quality Trading Conference May 23-25, 2006, in Pittsburgh, PA. This conference will highlight the economic and environmental benefits of water quality trading. A collaboration of the U.S. Environmental Protection Agency, the U.S. Department of Agriculture and Farm Foundation, this conference will explore opportunities and challenges associated with developing trading programs. If you're involved in water management issues, this conference is a must-attend. Please visit www.farmfoundation.org to see a tentative program. Also visit the site for more details on the conference and a free pre-conference workshop on the basics of water quality trading.

Stormwater Webcasts

EPA is announcing a new series of webcast training sessions for municipal stormwater managers. Designed for those unable to attend out-of-town or multi-day workshops, this series will provide a mix of basic and advanced topics in two-hour blocks. These webcasts will allow participants to listen to lectures and see presentations through their computers. Webcasts will be scheduled approximately every other month from now until September.

First Webcast

Post-Construction Overview and Introduction to Smart Growth and Low Impact Development. March 8, 2006, 1-3 pm EST. Nikos Singelis, U.S. EPA Stormwater Program, Instructor. Geoffrey Anderson, Director of EPA's Smart Growth Program, Guest Speaker.

More than 5,000 municipal stormwater permittees are required to develop a post-construction program to address stormwater runoff from new development and redevelopment. The post-construction programs must include requirements to install BMPs and ensure maintenance of those BMPs. To implement an effective program, municipalities need to look beyond the individual site to assess how post-construction controls will affect the entire watershed. This presentation will describe the post-construction program requirements and how innovative programs such as Low Impact Development and Smart Growth can be used to help meet these requirements.

Sign up for this webcast at www.epa.gov/npdes/training

Future Topics and Tentative Dates (final dates and speakers will be announced later)

Construction 101 – 5/10/06

Stormwater Utilities 201 -- 7/12/06

Illicit Discharge Detection and Elimination (IDDE) 101 – Program Development (with the Center for Watershed Protection) – 9/13/06

Foley & Lardner LLP bulletins are intended to provide information (not advice) about important new legislation or legal developments in the Stormwater area. The great number of legal developments does not permit the issuing of an update for each one, nor does it allow the issuing of a follow-up on all subsequent developments. This newsletter is not legal advice and should not be construed as legal advice. If you need legal advice please contact your attorney.

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