

A COMPILATION OF STORMWATER AND OTHER RELATED WATER NEWS

By S. Wayne Rosenbaum Foley & Lardner LLP

NATIONAL NEWS

EPA Adds Six and Proposes Four Sites to Superfund's National Priorities List

(EPA News Release, 4/19) "[The U.S. Environmental Protection Agency is adding six new hazardous waste sites that pose risks to human health and the environment to the National Priorities List of Superfund sites. That brings the total of final sites on the list to 1,244. EPA is also proposing to add four other sites to the list.](#)"

USEPA to Study Water Use in New Homes

(WaterWeek, 4/17) "[USEPA announced that it will join with nine water agencies in eight states to conduct a 33-month study comparing water use in new homes using 'standard' and 'high efficiency' fixtures, appliances and irrigation systems.](#)"

CALIFORNIA NEWS

California Supreme Court Upholds Water Boards' Win In L.A. Trash Case: City of Arcadia v. State Water Resources Control Board (D043877)

SACRAMENTO – The State and L.A. Water Boards gained a major victory in California Supreme Court Wednesday when the justices refused to hear claims by a coalition of 21 cities that challenged the Water Boards' landmark trash reduction program in the Los Angeles River. The program upheld by the court is the "TMDL (total maximum daily load) program". The TMDL program is a vital cleanup plan designed to ensure that the nations' most polluted waters are cleaned up.

The case the Water Boards won relates to a TMDL to control trash in the Los Angeles River. Each year thousands of tons of trash washes through storm drains, down the L.A. River, into the estuary, and the Pacific Ocean where it blankets the water and beaches. The litter is unsightly and a potential health hazard. The City of Long Beach spends millions of dollars each year to clean up tons of garbage that starts as litter in the gutters of upstream cities.

In 2001 the Los Angeles Water Board adopted a 14-year program to eliminate trash discharges to the L.A. River. The program will require efforts by cities, the County of Los Angeles, and others to reduce trash through enhanced street sweeping, litter law enforcement, nets at the end of storm drains, and trash capture devices.

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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Twenty-one cities sued the Water Boards to stop the regulation. A San Diego-based Court of Appeal threw out 9 of 10 challenges to the Los Angeles Regional Water Quality Control Board's landmark trash reduction plan, and required the Water Board to improve its environmental analysis under CEQA (the California Environmental Quality Act). The cities appealed the entire case to the California Supreme Court, and asked it to set aside essentially the entire manner in which the water boards operate the TMDL program. The Supreme Court declined to review the case, leaving intact the entire Court of Appeal decision.

"This is a major victory for residents of southern California, for everyone who has ever visited a beach, for the environment and for clean water," said State Water Board Chair Tam Doduc. "This decision reaffirms the water boards' ability to require programs that actually improve water quality. The results will be cleaner streams, rivers, and beaches."

"We are extremely pleased with the Supreme Court's decision," said David Nahai, Chair of the Los Angeles Water Board. "Trash is an enormous problem in our waters," Nahai said. "Trash kills and maims fish and wildlife and degrades habitat. Moreover, it introduces bacteria and other harmful elements that threaten the health of surfers, swimmers and other individuals who come into contact with the polluted water." Nahai also said he hoped the decision would encourage the stakeholders to begin to cooperate. "Now that the litigation is over, we're looking forward to working together with all the stakeholders to address this problem and protect human health and the environment."

The Court of Appeal had found that the Water Boards considered the costs, scientific, and technical issues associated with the trash reduction program. Among others, the California Supreme Court rejected the cities' claims that a more-detailed cost-benefit analysis was required before the water boards could order the cities to reduce trash going to the river from their sewers, that the zero trash program is not achievable, and that a scientific "assimilative capacity study" is a prerequisite to determining that garbage harms the aesthetic values of the water body.

Nahai noted that the cities' litigation in this and other matters has taken significant resources from both the cities and the state. "There are currently two other lawsuits pending by these same cities, which present comprehensive challenges to our basin planning and TMDL programs. I call on the cities to resolve their litigation, and work cooperatively with us to remedy the hundreds of water quality impairments in the Los Angeles Region." The Los Angeles River is only one of over 679 water bodies that California identified as impaired on the most recent 2002 report. As a result of a lawsuit brought by Heal the Bay and other environmental groups, a federal court had ordered the development of a trash reduction program.

The Court of Appeal decision requires the Los Angeles Water Board to revise the environmental document accompanying the trash reduction program. The analysis will require the Los Angeles Water Board to analyze potential issues with air and soil based on how the cities and county anticipate complying with the trash reduction program. "It is a technical fix that the board can readily address and that we were already prepared to fix following the appellate court's decision," said Jonathan Bishop, executive officer for the Los Angeles Water Board. "The Supreme Court's decision to reject the cities' claims is a big win, however, because it upholds our core authority to require not just these important and necessary trash reductions, but other programs to address the myriad pollutants impairing our region's waters."

Accord Near on Big Bond Proposal

(Inside Bay Area, 4/19) "[A \\$30 billion to \\$34 billion infrastructure bond deal for transportation projects, levee repairs and schools will be struck in coming weeks and put to voters in November, the Legislature's leaders assured the Bay Area business community Tuesday.](#)"

SF Bay Regional Stormwater Permit: Development Underway

(Water Quality News Flash, April 24, 2006) A steering committee including representatives from the Regional Board, environmental groups, and storm water agencies has begun work on a *Municipal Regional Permit* (MRP). This permit will consolidate six Phase 1 municipal stormwater permits (including one USEPA permit) into a single permit for a total of 76 co-permittees. A primary goal is to incorporate the details currently in Stormwater Management Plans (SWMPs) into the permit. This will include new performance standard tables establishing (1) the required activities, (2) how much of each activity is required, and (3) reporting and effectiveness evaluation requirements for each activity. Other goals include addressing 303(d) listed pollutants and TMDLs, and adding more specific and comprehensive stormwater monitoring. More information: <http://www.waterboards.ca.gov/sanfranciscobay/mrp.htm> (scroll to bottom of page, under "MRP Steering Committee," for the recently developed *New and Redevelopment Performance Standard Table* which discusses various options for the MRP).

Chlorine Residual in Discharges: State issues draft policy

(Water Quality News Flash, April 24, 2006) Chlorine and chlorine compounds are the most commonly used wastewater disinfectants. They are generally not used for storm water because storm water is not usually required to comply with bacteria standards. However, disinfection may be required for storm water in the future in order to implement bacteria TMDLs or possibly even to comply with water quality standards at the point of discharge.

The state is developing a *Total Residual Chlorine and Chlorine-Produced Oxidants Policy of California* in order to: (1) establish total residual chlorine (TRC) and chlorine-produced oxidant (CPO) objectives to protect aquatic life, (2) provide consistent procedures that apply to permits that contain one or more numeric water quality-based effluent limitations to regulate discharges, and (3) provide for equitable enforcement of violations of TRC or CPO effluent limitations. Comments are due June 5. Posted: <http://www.swrcb.ca.gov/iswp/chlorine.html>

Bacteria on Beaches: Ongoing Debate Regarding Sources and Health Significance

(Water Quality News Flash, April 24, 2006) As discussed in recent issues of the *NewsFlash*, some instances of elevated ocean shoreline bacteria appear to result from bacteria growth in the sand or wrack line (shoreline debris). High tides are capable of mobilizing these bacteria, which results in elevated bacteria levels in the water. These levels can then trigger beach postings or closure. A major outstanding question is whether the elevated levels of indicator bacteria are correlated to the presence of pathogenic organisms and elevated health risk. Caltrans is supporting work on methodologies to directly identify pathogenic

organisms in runoff – see *NewsFlash 06-05*. Storm water and overflows from sanitary sewers are also sources and a second question is the relative significance of the various sources. These questions are important for storm water control programs since bacteria TMDLs have the potential to become very costly if treatment becomes necessary to meet loading allocations.

Article: http://www.ocregister.com/ocregister/news/atoz/article_1095053.php

State Water Resources Control Board: Water Quality Control Policy for Addressing Impaired Waters

This regulatory action summarizes a newly adopted policy containing guidelines to be used by SWRCB and the Regional Water Quality Control Boards in developing and adopting total maximum daily loads (TMDLs) for water bodies within the state. Where waters are not meeting their beneficial uses due to anthropogenic sources of pollutants, the State and Regional Boards will use the TMDL program to craft an implementation plan to ensure that the waters meet all applicable standards as soon as is practicable.

Farmers Seek Ways to Meet Stricter Water Rules

(LA Times, 4/26) "[Questions about new state water quality guidelines that for the first time require agricultural landowners to test runoff from their irrigated properties drew nearly 100 farmers, ranchers and other growers to a meeting in Oxnard on Tuesday.](#)"

Palco Permits Decision Put Off

(Eureka-Times Standard, 4/26) "[Water quality officials put off issuing permits that could regulate the Pacific Lumber Co.'s logging in Freshwater Creek and Elk River, and instead asked that two proposals be fused.](#)"

Risk Lurks in Sierra Waters

(Mercury News, 4/26) "[Bay Area hikers heading to the Sierra Nevada this summer should be extra careful about where they find their drinking water, particularly if cows are nearby. That's the upshot of a new study that found cattle-grazing in national forests between Lake Tahoe and Mount Whitney is the leading source of E. coli contamination in Sierra streams and lakes.](#)"

Pollution Rules Extend to Growers

(Ventura County Star, 4/25) "[Ventura County's \\$1.4 billion agricultural industry will face new regulations meant to staunch the flow of pesticides, fertilizers and other pollutants from area fields into surface water and groundwater.](#)"

SOUTHERN CALIFORNIA

Sierra Club Challenges Desalination Study

(NC Times, 4/28) "[A Sierra Club official said Thursday that a project to turn millions of gallons of seawater a day in Carlsbad into drinking water would hurt the ocean, even though a voluminous draft environmental study says otherwise.](#)"

Carlsbad's Desalination Plant is Perking Along

(San Diego Union-Tribune, 4/27) **EDITORIAL:** "[A desalination plant in Carlsbad to significantly augment North County's water supply is moving closer to reality. The project will go before the Carlsbad Planning Commission next week. It merits the panel's approval.](#)"

Lawsuit: Solana Beach Pollution Fee a Hidden Tax

(SD Union Tribune, 4/28) "[Riding the wave of a successful lawsuit against Encinitas that thwarted a pollution-control fee, the Howard Jarvis Taxpayers Association is suing Solana Beach for the same purpose.](#)"

Rainbow Directors to Discuss Wastewater Plan

(NC Times, 4/27) "[The Rainbow Municipal Water District's plans for dealing with the district's wastewater over the next several years will be the topic of a board workshop Friday, officials said.](#)"

Encinitas Residents to Get Refund Checks

(NC Times, 4/20) "[The City Council told its staff Wednesday to cut refund checks as quickly as possible to anyone who paid the now-defunct, \\$5-a-month clean-water fee.](#)"

Leucadia Wastewater District Dedicates Upgraded Pump Station

(Leucadia Wastewater District, 4/19) "[Leucadia Wastewater District's Board of Directors and General Manager Paul Bushee participated in a ribbon-cutting ceremony to officially dedicate the upgraded Batiquitos Pump Station on April 12.](#)"

More Answers Needed on Lake Elsinore Hydro Plant

(NC Times, 4/18) "[A controversial project since it was first proposed a decade ago, the \\$1.3 billion Lake Elsinore Advanced Pumped Storage project calls for the water stored in the reservoir to flow down the mountain toward the lake during the day to power electricity-producing turbines on hot summer days.](#)"

ANNOUNCEMENTS

Future of the Navy Broadway Complex

May 9th | 7:30 AM - 9:00 AM | University Club

The largest single property available for development on our downtown waterfront provides an opportunity to lift San Diego to a new level or miss one of the greatest opportunities for waterfront development we may have. The 1992 DDA places limits on the type and scale of development and the market may or may not be conducive to these uses. Unless a viable program is achieved by January 1, 2007, we risk losing this prime opportunity to the BRAC process.

Join ULI for a presentation by Perry Dealy, President, Manchester Financial Group, the developer selected by the Navy. The program will be moderated by David Malmuth, Managing Director, Robert Charles Lesser & Company, the creative force behind Hollywood and Highland, Paseo Colorado and Disney's Times Square among others.

Speakers:

- **Perry Dealy**, Manchester Financial Group
- **David Malmuth**, Managing Director, Robert Charles Lesser & Comp

Please bring registration confirmation with you on the day of the event.

The Event Code is: 8132-0612

To register ONLINE, click [HERE](#).

To Fax or Mail-In a Registration Form, click [HERE](#).

To register by phone, call 1-800-248-4585.

Enviro Fair: Mark your Calendars for 2006!

June 10 & June 11, 2006

San Diego County Fair: Del Mar Fairgrounds

Hosted by the 22nd District Agricultural Association

Join us for the 7th Annual Enviro Fair! June 10 & 11 on Wyland Island at the San Diego County Fair. We invite you to learn more about the importance of recycling, buying recycled content and environmentally friendly products, green building, pollution prevention and conservation. There will be exhibitors with their environmental-friendly products, non-profit organizations and informative speakers. Admission is free with your Fair ticket.

For more information, please contact the Resource Conservation Office at 858-792-4298.

Changes to the City of San Diego's Contracting Process

Guest Speaker:

- Richard Haas, Jr.
Deputy Chief of Public Works
City of San Diego

Thursday, May 11, 2006

- 11:30 am - Registration
- Noon - Luncheon
- Town & Country
500 Hotel Circle North
San Diego, CA
- Directions: 619-291-7131

Flier with Registration Form can be obtained on the Chapter's web site under Calendar of Events at:

<http://chapters.cmaanet.org/chapters/sdc/>

Registration Closing Soon! Getting In Step with Phase II: A Workshop for Municipal Stormwater Program Managers

Local, state and federal stormwater managers need innovative tools and real-world examples in order to reduce pollutants in urban runoff and comply with National Pollutant Discharge Elimination System (NPDES) Phase II stormwater requirements. These two-day workshops provide in-depth training on Illicit Discharge Detection and Elimination, Post-Construction Runoff Controls, Construction Management, and Public Education and Involvement.

Registration closing soon for:

- Fort Worth, Texas - May 3 – 4, 2006
- Albany, New York - May 31 – June 2, 2006

To register, download the workshop announcement and fill out the form (www.epa.gov/npdes/training). Space is limited, so register early. A small fee will be charged to help cover the cost of conference materials, breaks, and lunches.

HEARINGS

Mercury Monitoring and Remediation

INTRODUCED: 02/24/2006

LAST AMEND: 04/19/2006

COMMITTEE: Assembly Environmental Safety and Toxic Materials Committee

HEARING: 04/25/2006 1:30 pm

SUMMARY

Enacts the Mercury Monitoring and Remediation Act. Authorizes the State Water Resources Control Board to expend money for grants for mercury monitoring, projects that reduce mercury levels, certain cost-sharing incentive payments, public education and outreach, and assistance to local public entities and nonprofit organizations for the development and implementation of mercury monitoring and remediation plans.

STATUS

- 04/19/2006: From ASSEMBLY Committee on ENVIRONMENTAL SAFETY AND TOXIC MATERIALS with author's amendments.
- 04/19/2006: In ASSEMBLY. Read second time and amended. Re-referred to Committee on ENVIRONMENTAL SAFETY AND TOXIC MATERIALS.

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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