

Legal News is part of our ongoing commitment to providing legal insight to our Environmental Stormwater clients and colleagues.

If you have any questions about this alert or would like to discuss these topics further, please contact your Foley attorney or:

S. Wayne Rosenbaum

San Diego, California
619.685.6413
srosenbaum@foley.com

Elizabeth Cason

San Diego, California
619.685.4634
ecason@foley.com

Heidi Vonblum, Law Clerk

San Diego, California
619.685.4637
hvonblum@foley.com

A Compilation of Stormwater and Other Related Water News

National News

EPA Plans to Inspect Water Discharger Facilities More Often

(Marten Law Group, December 12, 2007) The United States Environmental Protection Agency's (EPA) Office of Enforcement and Compliance Assurance issued, *Clean Water Act National Pollutant Discharge Elimination System Compliance Monitoring Strategy for the Core Program and Wet Weather Sources*, which is guidance that calls for more frequent inspections of small industrial and municipal water discharge facilities. Prior to the new guidance, enforcement efforts had been focused on major National Pollutant Discharge Elimination System (NPDES) permittees and a few minor permittees in certain industry categories. In issuing the new guidance, EPA explained that the new inspection frequency goals are needed to address an "increased emphasis on ... water quality degradation, particularly stemming from wet weather discharges," at a time of limited governmental resources. Thus, rather than focus on major wastewater treatment facilities, major industrial dischargers, and sanitary sewer systems, the new guidance seeks to focus increased attention to minor Publicly Owned Treatment Works (POTWs), construction sites, Concentrated Animal Feeding Operations (CAFOs), and other wet weather sources. Facilities that have histories of noncompliance in these categories and facilities located near waters listed as impaired will be targeted.

Posted: <http://www.martenlaw.com/news/?20071212-more-epa-inspections>

Navy's National Security Interest in Using Underwater Sonar Must Be Balanced With Environmental Protections for Whales and Dolphins

(*Los Angeles Times*, January 4, 2008) A federal judge has ordered tough restrictions on the United States Navy's use of mid-frequency sonar off the Southern California Coast to protect whales and other marine mammals from underwater sonar blasts. To avoid a court-imposed ban on training missions with sonar that is linked to whale and dolphin harm, the Navy must refrain from using the powerful submarine-hunting sonar within 12 miles of the coast, where migrating gray whales, dolphins, and other marine mammals are commonly found. The Navy also must search for marine mammals in the area for at least an hour before starting their training missions. The Navy must cease use of its sonar immediately if marine mammals are spotted within 2,200 yards of a ship using sonar. In response to the federal judge's opinion, the Navy has asserted that the restrictions may hamper their ability to adequately train sailors and may put sailors and

national security at risk. The Natural Resources Defense Council (NRDC), one of the plaintiffs in the case, stated they do not want the Navy to stop training but rather that they increase protections against unnecessary harm to whales and other marine mammals.

Posted (requires free registration):

<http://www.latimes.com/news/science/environment/la-me-sonar4jan04,1,4907471.story?coll=la-news-environment&ctrack=7&cset=true>

Federal Mineral Management Service Approves Oil Drilling Off Alaskan Shore

(*Los Angeles Times*, January 2, 2008) The Federal Mineral Management Service (MMS) plans to hold a lease sale on February 6, 2008 for bids on almost 46,000 square miles of the outer continental shelf lands in the Chukchi Sea, part of the Arctic Ocean. Once finalized, the offshore oil and gas lease sale would be the first one in the Chukchi Sea since 1991. The MMS claims the area contains approximately 15 billion barrels of conventionally recoverable oil and 77 trillion cubic feet of conventionally recoverable gas. However, the area also is home to polar bears, whose existence may already be threatened by the impact of climate change-induced loss of sea ice.

Posted (requires free registration):

<http://www.latimes.com/news/science/environment/la-na-chukchi3jan03,1,3996882.story?coll=la-news-environment&ctrack=8&cset=true>

California News

Wave Park Near Eureka to Begin Generating Electricity From Ocean Waves by 2012

(*San Francisco Chronicle*, December 17, 2007) In response to California's order to utilities to purchase more power from renewable resources, Pacific Gas and Electric Company (PG&E) has agreed to buy power from a Canadian company that proposes to build a wave park. The wave park would consist of eight buoys bobbing in the waters off the coast of Eureka, generating up to two megawatts of electricity as they rise and fall with the waves. Although this particular wave park would only generate enough power to light 1,500 homes, the use of waves to generate power may represent a potential front in

the fight against global warming. PG&E's promise to buy the renewable power will help the private Canadian company, Finavera, to obtain financing for its project.

Posted: [http://www.sfgate.com/cgi-](http://www.sfgate.com/cgi-bin/article.cgi?f=/c/a/2007/12/18/MNEKU05V9.DTL)

[bin/article.cgi?f=/c/a/2007/12/18/MNEKU05V9.DTL](http://www.sfgate.com/cgi-bin/article.cgi?f=/c/a/2007/12/18/MNEKU05V9.DTL)

Renewable Energy Plant to Turn Human Waste Into Electricity

(*The Bakersfield Californian*, December 20, 2007) California's largest sewage sludge composter proposes to generate renewable energy by burning treated human waste and other organic material. With Liberty Composting's contract to sell 20 megawatts of electricity to PG&E in place, construction of the plant is anticipated to begin in three years.

Posted: <http://www.bakersfield.com/102/story/316509.html>

California and Six Other Colorado River States Agree on Plan for Conservation

(*Arizona Republic*, December 9, 2007) The seven Colorado River states are expected to approve a regional drought plan. Shortages in the river's reservoirs could result in water shortages, loss of hydropower, and damage to riparian habitat and recreation sites. The conservation plan will guide management of the river through 2026 using reservoir levels to trigger rationing and a series of experimental conservation programs. The plan will not eliminate the risk of shortage but rather prolongs the period of time before one actually happens. Environmentalists say the plan fails to protect the river itself.

Posted: <http://www.azcentral.com/news/articles/1209colorriver-lakes1209.html>

Southern California

Quagga Mussel Threatens Southern California's Imported Water Supply

(*Los Angeles Times*, December 31, 2007) The quagga mussel multiplies so rapidly that it forms large masses that can clog water pumps and pipelines. The quagga mussel has been found in the Colorado River Aqueduct, which serves Southern California. There is no known method to eradicate the mussel and officials are now concerned that the quagga mussel infestation will spread to the State

Water Project that delivers water from Northern California to Southern California. The mussel infestation could lead to heavy and higher operation and maintenance costs for water operators.

Posted (free registration required):

<http://www.latimes.com/news/local/la-me-mussels31dec31,1,1825862.story?coll=la-headlines-california&ctrack=5&cset=true>

Orange County Turns Sewage Into Drinking Water

(*Los Angeles Times*, January 2, 2008) After a four-year construction period and a \$490 million expenditure, the Orange County Water District headquarters in Fountain Valley has begun operating a facility that can turn 70 million gallons of treated sewage into drinking water every day. The Orange County Sanitation District sends its treated sewage to the new water treatment facility where the finished product is injected into the county's groundwater basin to supplement drinking water supplies for 2.3 million people in Orange County. However, before the water is delivered to the tap, state health officials must certify that the reclaimed water meets drinking water standards; approval is expected to be granted before January 25, 2008. The new water treatment system would take treated sewage otherwise discharged back to the sea and runs it through an advanced filtration system, thereby lessening the region's dependence on outside sources. The treated effluent is said to be as clean as distilled water. In addition to the benefit of increasing local water supply, this reclamation process is said to use less electricity than moving the same amount of water to Orange County through the state's system of aqueducts.

Posted (free registration required):

<http://www.latimes.com/news/local/la-me-reclaim2jan02,1,732425.story?coll=la-headlines-california&ctrack=6&cset=true>

San Diego Seeks Third Waiver From Federal Clean Water Act Requirements

(*San Diego Union Tribune*, November 21, 2007) The San Diego City Council voted to seek a third waiver from the Clean Water Act for its

Point Loma Wastewater Treatment Plant, which empties into the Pacific Ocean. The city's plan seeks to avoid or delay about \$1.5 billion in improvements to the facility. Currently, the treatment plant treats its sewage to levels less than the secondary standard required by the Clean Water Act. San Diego Mayor Jerry Sanders supports the exemption because he thinks the current treatment setup does not harm the environment. The waiver would provide the city with five more years to comply with the secondary treatment requirement.

Posted: <http://www.signonsandiego.com/news/metro/20071121-9999-1m21loma.html>

Schwarzenegger Appoints New Members to the San Diego Regional Water Quality Control Board

(*North County Times*, November 28, 2007) Governor Schwarzenegger appointed three people to four-year terms on the San Diego Regional Water Quality Control Board; two first-time members and the reappointment of Eric Anderson. The nine-seat board has been struggling for the last several months with only five members on the Board. However, these new positions and Mr. Anderson's reappointment brings the board back up to seven members.

Posted:

http://www.nctimes.com/articles/2007/11/29/news/sandiego/5_02_2011_28_07.txt

Announcements

California Stormwater Quality Association (CASQA) 2008 Stormwater Conference September 21 – 24, 2008

CASQA's 2008 Stormwater Conference will be held in Oakland, California, September 21 – 24, 2008. Mark your calendar and make your budget request now. Almost 600 stormwater quality professionals participated in this year's third annual conference in Costa Mesa and by virtually all accounts, the conference was a big success. The theme for this year's conference is "Collaboration and Innovation to Achieve Water Quality Goals." For more information, please visit <http://stormwaterconference.com/>.

ABOUT FOLEY

Foley & Lardner LLP continually evolves to meet the changing legal needs of our clients. Our team-based approach, proprietary client service technology, and practice depth enhance client relationships while seeing clients through their most complex legal challenges. The BTI Consulting Group (Wellesley, Massachusetts) recently recognized Foley as one of the top four law firms shaping the U.S. legal market, while *CIO* magazine has named Foley to its CIO 100 list six times for our client-focused technology. Whether in the United States or around the world, count on Foley for high-caliber business and legal insight.

Foley.com

Foley & Lardner LLP Legal News is intended to provide information (not advice) about important new legislation or legal developments. 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.

If you do not want to receive further issues of Legal News, please e-mail info@foley.com or contact Marketing at Foley & Lardner LLP, 321 N. Clark Street, Suite 2800, Chicago, IL 60610 or 312.832.4500.

Legislation

CA AB 1470, Solar Water Heating and Efficiency Act

Author: Huffman

Status: Approved, October 12, 2007

Summary: Promotes solar water and heating systems and other technologies that reduce natural gas demand. Requires the Energy Commission to evaluate data available from a specified pilot program, and if it makes a specific determination, to design and implement a program of incentives for installation of 200,000 solar water heating systems in homes and businesses throughout the state by 2017.

Posted: http://www.leginfo.ca.gov/pub/07-08/bill/asm/ab_1451-1500/ab_1470_bill_20071012_chaptered.pdf

CA AB 904, Plastic and Marine Debris Reduction, Recycling, and Composting Act

Author: Leno

Status: Last Amended June 1, 2007

Summary: Would prohibit take-out food providers, on and after July 1, 2010, from distributing single-use food service packaging to a consumer, unless the single-use food service packaging is either compostable packaging or recyclable packaging. Would also require take-out food providers to provide receptacles for collection of compostable and recyclable packaging. Would also provide for imposition of civil penalties up to \$100 per day for violations.

Posted: http://www.leginfo.ca.gov/pub/07-08/bill/asm/ab_0901-0950/ab_904_bill_20070601_amended_asm_v97.pdf