



CALIFORNIA ASSOCIATION of SANITATION AGENCIES

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U.S. Environmental Protection Agency
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Washington, DC 20460
Attention Docket ID No. EPA-HQ-OECA-2009-0274

Subject: **Further Comment on NPDES Electronic Reporting Rule:
EPA Docket ID EPA-HQ-OECA-2009-0274**

The California Association of Sanitation Agencies (CASA) appreciates the opportunity to provide further comment to the U.S. Environmental Protection Agency (USEPA) on the proposed National Pollutant Discharge Elimination System (NPDES) Electronic Reporting Rule (Reporting Rule). CASA is a statewide association representing more than 100 municipalities, special districts, and joint powers agencies that provide wastewater collection, treatment, clean energy and water recycling services to millions of Californians.

First and foremost, CASA appreciates USEPA's supplemental notice to clarify and seek further comment on the proposed Reporting Rule. In response to the initial notice for the proposed Reporting Rule, CASA submitted a comment letter requesting further clarification and highlighting our concerns.¹ At that time, one of our major concerns was regarding the State of California's status on receiving Cross-Media Electronic Reporting Regulation (CROMERR) approval for the Discharge Monitoring Report (DMR) portion of the state's reporting tool, the California Integrated Water Quality System (CIWQS) eSMR. Since our comment letter was submitted, however, California has obtained CROMERR approval for CIWQS eSMR. CASA would like to thank USEPA for quickly addressing this important issue prior to final approval of the Reporting Rule.

Although one of our primary issues has been addressed, CASA remains concerned about the electronic spill reporting requirements and the biosolids reporting requirements. The State of California already requires extensive electronic reporting for spills, and we would like to reiterate the importance of avoiding duplicative reporting requirements. This topic was discussed in great detail in CASA's previous comment letter, which we have included as an attachment to this letter for reference. Many questions remain relative to biosolids reporting, and

¹ "EPA-HQ-OECA-2009-0274, NPDES Electronic Reporting Rule"; CASA and Tri-TAC; December 11, 2013.
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those issues are included in our original letter (attached) and further articulated below. Furthermore, CASA would like to note that the compliance information comments and specific comments included in Attachment 1 of our initial letter are still applicable. Lastly, in the supplemental notice, USEPA requests further comment on the State Readiness Criteria and Biosolids reporting. Each of these items are discussed in greater detail below.

1. Spills and Bypasses

The proposed Reporting Rule requires electronic reporting of sewer overflow and bypass events, as specified by NPDES permits, and incidents of noncompliance under 40 CFR 122.41(l)(6). In California, the State Water Resources Control Board (State Board) already requires electronic reporting of sewer overflow events under the Statewide General WDR for Sanitary Sewer Systems, WQO No. 2006-0003 (SSO WDR). Under the SSO WDR, permittees are required to report sewer overflows through the CIWQS database. The CIWQS database was intended to meet the reporting requirements of the State Board's SSO WDR and not NPDES permits; however, the SSO WDR is referenced in NPDES permits throughout California. If this reference is interpreted to mean that electronic reporting will be required for sewer overflows, the State Board and USEPA should work together so that NPDES permittees are only required to supply information to one database. Based on discussions with members of the State Board CIWQS team, the State Board may seek CROMERR approval for the SSO portion of the CIWQS database. Security on the SSO portion of CIWQS does not meet CROMERR standards, so the State Board would have to update its security to meet these standards. If the State Board does not obtain approval for their system, NPDES permittees would be required to submit data both directly to USEPA and the CIWQS database, which is unnecessarily duplicative and an inappropriate use of public funds. When sewer overflows occur, staff time should be dedicated to stopping the overflow, cleaning it up, and preventing future occurrences rather than duplicative reporting.

Further, the proposed Reporting Rule will require electronic reporting for 40 CFR 122.41(l)(6) and (7) – sewer overflow 24 hour and 5 day reports and 40 CFR 122.41(m)(3)(i) – bypass reporting. As stated above, California SSO WDR permittees are already required to complete electronic reporting for overflow events and duplicative reporting should not be required. In regards to electronic reporting of bypasses, several regions throughout California include an NPDES permit requirement for a 5-day written notification to the appropriate regulator(s). If USEPA electronic reporting is going to be required for either overflows or bypasses, the data fields in Appendix A of the Reporting Rule need to specify what information is required for the 24 hour report and the 5 day report. Much of the information requested in Appendix A is not known immediately following an overflow or bypass, and therefore should not be required in the initial 24 hour notification.

Notwithstanding the above comments, if USEPA does not accept CIWQS as an approved method to report spills, then data items in Appendix A regarding 40 CFR part 127 are not sufficient. A significant amount of resources and effort are spent to recover spills and bypasses, monitor their impacts, and prevent them from reaching receiving waters. This information is important to characterize the event and should be included in the data. Additionally, there are

several items in Appendix A that do not help to characterize the event and should be removed. These are further outlined in the detailed list of comments in Attachment 1.

2. State Readiness Criteria

The previous letter CASA submitted contained detailed comments on the State Readiness Criteria. Since the submission, the DMR portion of California's state reporting tool has received CROMMER approval; therefore, CASA only has comments relating to Part (1) of the State Readiness Criteria—the 90% acceptance rate. First, the supplemental notice seeks further comment on how the 90% acceptance rate should be calculated. If USEPA chooses to implement the percent criteria, CASA believes that the calculation should be completed by data group (i.e. participation rates are calculated separately for individual permitted facilities and general permit covered facilities), as suggested. Second, we request that USEPA clarify the process that will follow if a state does not meet Part (1) of the criteria. Specifically, if 90% acceptance is not attained within the time specified in the Reporting Rule, CASA believes that USEPA should only use its Clean Water Act Section 308C authority to obtain the required information directly from NPDES permittees submitting paper DMRs. Further, entities reporting electronically via a CROMMER approved state system should continue to do so and not be required to use USEPA's national system. Although it seems this is the intention of the proposed Reporting Rule, CASA wishes to confirm the process. In the event the State Readiness Criteria is not met, we would strongly oppose any reporting changes to entities using a state CROMMER approved system since significant resources has been expended developing and implanting these programs. Lastly, USEPA is seeking comment on implementing the Reporting Rule through the NPDES permit renewal process as opposed to applying the State Readiness Criteria. CASA believes using the permitting process this is a better option and supports this alternative.

3. Biosolids

First, we appreciate the clarification that only the Initial Recipient must receive CROMMER approval and not each entity reporting biosolids information. However, the remainder of our comments in the original letter remain unanswered, and therefore we look forward to clarification and resolution on those issues. Without those original issues being resolved, it is difficult to provide further comments given that we are proceeding without that knowledge. The supplemental notice requests comment on three topics: a) whether the DMR developed in Region 6 should be used for all electronic reporting; b) whether a state eDMR should be used for reporting in states lacking delegation for the biosolids program; and c) whether the implementation period for the biosolids reporting should be moved from phase 2 (two years from effective date) to phase 1 (one year from effective date). In response to this comment request we offer the following:


- a) The Region 6 DMR collects much useful information but does not appear to capture the many nuances of diversified programs. If a POTW produces multiple biosolids products (liquid and cake; Class A and Class B; etc.) it is unclear how this DMR would capture the data unique to each product type. Furthermore multiple end uses may be employed with different monitoring requirements and limits for each biosolids product or type, but it is unclear how the electronic reporting database would distinguish these differences. In

addition, the DMR allows for cumulative loading reporting as required when a site reaches 90% of the Table 2 limits, but since many different land application sites are often utilized, it is completely unclear as to how loadings for each site might be reported and recorded. There is also a dearth of information collected on requirements for end uses such as incineration. As such, we do not believe that any determination of compliance will be possible via the proposed reporting tool. It can serve as a first step to further dialogue but will be inconclusive on the question of compliance. Given the reduced staffing level within the agency, this seems to be an unwise decision.

- b) Many states, including California, whether delegated authority for the biosolids program or not, have adopted additional requirements beyond those required by 40 CFR part 503. Is it unclear how those requirements will be incorporated into the federal electronic reporting rule. Will states have to edit and modify the reports prior to downloading them to the federal database if state DMRs are utilized? Further explanation and detail is needed before a reasonable determination on the acceptance of state DMRs can be made.
- c) Given the outstanding questions to the both the originally proposed rules and this supplemental rule, it seems prudent to understand the true implications and reporting requirements before determining whether they can be achieved in one year or two years. CASA remains in agreement that electronic reporting will provide many benefits but is also aware of the many unanswered questions that must be resolved prior to implementation. Given what we currently know, we would recommend retaining the biosolids reporting requirements in phase 2.

Thank you for the opportunity to provide input on the proposed Reporting Rule. If you have any questions or require additional information pertaining to biosolids, please contact Greg Kester at (916) 446-0388 or gkester@casaweb.org and for the remaining topics Adam Link at (916) 446-0388 or alink@casaweb.org.

Sincerely,



Adam D. Link
CASA Director of Government Affairs

ATTACHMENT 1: Specific Comments with Corresponding Page Numbers

Spills and Bypasses

Current Information Proposed in Appendix A Not Needed to Characterize SSOs and Bypasses

1. Page 46030, Should overflow reports be limited to sewer overflows at a threshold volume or include de minimum releases? – Sewer overflow reporting requirements should not only be limited based on volume, but whether or not the spill reaches surface water. According to the California Water Code Section 13271, Cal-EMA must be contacted for spills greater than 1,000 gallons that may likely make their way to waters of the State. Therefore, we propose that de minimus releases not be included in sewer overflow reports. Only overflows greater than 1,000 gallons that may likely reach receiving waters should be included in the reports.
2. Page 46037, Electronic submission of follow-up reports under 40 CFR 122.41(1)(6) and (7) not required – the only reporting discussed under 40 CFR 122.41(1)(6) and (7) are the 24 hour and 5 day written reports. Therefore, electronic reporting of the 5 day written report would not be required. However, pages 46038 and 46039 of this proposed rule do not consider the 5 day report (a follow-up report) and require electronic reporting. Clarification should be provided as to what follow-up reports under 40 CFR 122.41(1)(6) and (7) are not required.
3. Page 46085, Facility Site Longitude, Facility Latitude, Facility Site Source Map Scale Number, Facility Site Horizontal Accuracy Measure, Facility Site Horizontal Collection Method, Facility Site Horizontal Reference Datum, Facility Site Reference Point – This data should not be required because it is not relevant. If the overflow is not occurring at the facility, the facility name and address is sufficient. Overflow longitude and latitude are more appropriate information to collect and these are already questions on page 46112.
4. Page 46086, Permit Application Total Design Flow and Permit Application Total Actual Average Flow – This information is not relevant and should not be required. The design flow or actual average flow downstream of an overflow has no relation to a sewer overflow event.
5. Page 46087, Permit Application/NOI Received Date – This information should not be required as it is unnecessary and irrelevant to the event. Other questions in the database ask for the permit effective date and the permit number, which is much more useful information.
6. Page 46087, SIC and NAICS Codes – The economic activity of the facility is irrelevant to the type of event and is also irrelevant in characterizing an overflow or bypass event. Economic information is more pertinent to enforcement, which is not covered in this proposed rule.
7. Page 46088, Narrative Condition and Permit Schedules Section – Clarification of this section is needed. Overflows and bypasses are unforeseen events. Therefore, there would not be a “scheduled event”.
8. Page 46104, Federal Regulatory Section(s) Requiring the Program Report – It is inappropriate to require the permittee to enter this information. In most cases, the person

submitting the report will not know this information and does not have the legal background to accurately provide this information.

9. Page 46114, Penalty Assessment – Please clarify who will be entering this information. This information comes from the entity assessing the penalty and should not be the responsibility of the permittee.

Additional Information Needed in Appendix A to Characterize SSOs and Bypasses

1. Bypass reporting – There should be a data item to indicate if all permit limitations were met. Often times there are tertiary filter bypasses at a treatment plant that are reportable; however, the permit limits were not violated. This is an important distinction that is not otherwise clear and would prevent confusion for both regulators and the public.
2. Volume Reaching Receiving Water and Volume Recovered – While there is a data question related to volume, a lot of money and effort is spent trying to recover spills and prevent them from reaching receiving waters. This effort should be recognized and permittees should be encouraged to take such actions. Also, this information would help to more accurately characterize the spill. As an example, a 10,000 gallon spill that was all recovered from a parking lot and properly disposed of is very different than a 10,000 gallon spill that all reaches a receiving water and discharges to the ocean.
3. Estimated Spill Time – While there is a question relating to discovery time, the spill time can be very different than the discovery time.
4. Monitoring – A question should be included asking if any monitoring was conducted. Monitoring is an important tool to assess impact of the event. If monitoring was conducted, this information could provide useful.
5. Overflow Location – The overflow location question should have room for multiple entries since sometimes overflows daylight in several locations.
6. Receiving Water Body – This question should allow for multiple water bodies to be entered.

ATTACHMENT 2: CASA INITIAL COMMENT LETTER



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December 11, 2013

U.S. Environmental Protection Agency
EPA Docket Center
Enforcement and Compliance Docket Center
1200 Pennsylvania Ave., N.W.
Washington, DC 20460
Attention Docket ID No. EPA-HQ-OECA-2009-0274

Submitted via Federal Rulemaking Portal

EPA-HQ-OECA-2009-0274
NPDES Electronic Reporting Rule

Tri-TAC and the California Association of Sanitation Agencies (CASA) are pleased to submit input to the U.S. Environmental Protection Agency (USEPA) on the proposed National Pollutant Discharge Elimination System (NPDES) Electronic Reporting Rule (Reporting Rule). As background, Tri-TAC and CASA are statewide organizations that represent municipal wastewater collection, treatment, biosolids recycling and management, and water recycling agencies that serve more than 90% of the sewered population in California. Tri-TAC is a technical advisory group for publicly owned treatment works (POTWs) jointly sponsored by CASA, the California Water Environment Association, and the League of California Cities. CASA is a statewide organization representing over 110 local public agencies providing wastewater services.

General Comments

The proposed Reporting Rule requires electronic reporting for current paper-based NPDES reports. Specifically, Discharge Monitoring Reports (DMRs), Notices of Intent to discharge in compliance with a general permit, other general permit waivers, certifications, and notices of termination of coverage, and program reports must be submitted electronically by NPDES-permitted facilities to USEPA through the National Environmental Information Exchange Network or to the authorized state, tribe, or territory NPDES program. USEPA states that the Reporting Rule will save time and limited resources for permittees, states, tribes, territories, and USEPA while also improving compliance and providing better protection of the Nation's waters. Tri-TAC and CASA support USEPA's effort to conserve time and scarce resources for permittees and regulatory authorities; therefore, it is essential that USEPA work with states, tribes, and territories that currently have electronic reporting in place, such as California, to ensure these programs are not adversely affected. In an ideal framework, dischargers located in states with electronic reporting programs in place should enter data into the state's system, which would submit the required data to USEPA; this process would both save resources and reduce data entry errors through duplicative efforts, consistent with USEPA's goals.

Even though Tri-TAC and CASA are in agreement with the intentions of the Reporting Rule, we are concerned that USEPA will use its Clean Water Act Section 308C authority to obtain the required information directly from NPDES permittees if states do not meet the State Readiness Criteria by the deadline specified in the Reporting Rule. Furthermore, we believe this is especially troubling for states that have existing, successful programs in place. The State Readiness Criteria has three criteria which the State must satisfy:

“(1) The authorized state, tribe, or territory has 90 percent acceptance rate by data group (i.e., NPDES-regulated entities submit timely, accurate, complete, and nationally consistent NPDES data using approved state, tribe, territory or third-party electronic reporting tools; and (2) The EPA, state, tribe, territory, or third-party electronic reporting tools used by the NPDES regulated entity meet all of the minimum Federal reporting requirements for 40 CFR part 3 (CROMERR) and 40 CFR part 127 (NPDES Electronic Reporting Rule); and (3) EPA lists the state, tribe, or territory as the initial recipients for electronic NPDES information from NPDES-regulated entities in that state on EPA’s Web site. Each authorized program will then designate the specific tools for these electronic submissions from their permittees. These designations are proposed to be made separately for each NPDES data group (see 40 CFR 127.2(c) and 127.27).”

Part (1) of the State Readiness Criteria, the 90 percent acceptance requirement, is inappropriate given that it is out of the state’s and NPDES discharger’s control how many regulated entities are submitting complete electronic reports. Therefore, Tri-TAC and CASA request that the State Readiness Criteria omit the percentage requirement and only include Part 2 and Part 3. Additionally, USEPA is pursuing an aggressive two-year implementation schedule that will be difficult to accomplish and will prove especially challenging for states that are now required to submit information from non-delegated programs with which they have no experience, such as biosolids in California. While Tri-TAC and CASA commend USEPA for its commitment to work with states, tribes, and territories to ensure that their eDMR systems are Cross-Media Electronic Reporting Regulation (CROMERR) (40 CFR 3) and Reporting Rule (40 CFR 127) compliant in a timely manner, it is likely that some states, tribes, and territories with their own electronic systems will not successfully meet the deadline. This will force the NPDES dischargers to duplicate reporting efforts to their state’s electronic reporting system and to USEPA’s electronic reporting system until the state’s system becomes certified by USEPA, an inefficient and unacceptable outcome. This also means that dischargers in such states will need to modify their reporting protocol twice, once when the proposed Reporting Rule comes into effect, and again when the state’s electronic reporting system is certified by USEPA. This potential situation is a misuse of discharger resources, all of who are powerless to ensure the timely implementation of their state’s electronic reporting system. Therefore, USEPA should not require dischargers to change their reporting protocols until their state has a CROMERR and NPDES Reporting Rule compliant electronic reporting system. The onus should be on the states and USEPA, not the dischargers, to implement and certify the systems to ensure they are in place for dischargers to comply with the proposed rule.

On a related note, Tri-TAC and CASA recommend that USEPA extend the two-year timeline. The extension will allow states the necessary time to implement the requirements of the Reporting Rule and is critical considering the time required for USEPA CROMERR approval. The proposed Reporting Rule specifies that Phase 1 (basic NPDES facility and permit information and discharge monitoring report information) and Phase 2 (information for general permits and program

reports) will be collected one and two years after the effective promulgation date, respectively. According to information posted on the CROMERR website, "Once an application is received, USEPA's first step is to review applications for completeness, a process that can take up to 75 days. Once the application is determined to be complete, EPA then has up to 180 days to approve or deny the application. However, USEPA approval of applications for existing systems could take up to 360 days. The approval becomes effective when USEPA publishes a notice of the approval in the Federal Register." Thus, it can take USEPA up to 15 months to approve an application for CROMERR certification at the current levels (March 2013) of submittals. The approval time alone would consume three months beyond the Phase 1 timeline and about two thirds of the Phase 2 timeline. As of March 2013, there is a backlog of 36 applications pending approval. Furthermore, there are only eight states with approved biosolids programs, so the number of applications for CROMERR approval for these programs alone will substantially increase following promulgation of the Reporting Rule. Therefore, Tri-TAC and CASA request that the two-year timeline be extended so the Phase 1 and Phase 2 timelines start after CROMERR certification is granted for states seeking approval.

As the last general comment, Tri-TAC and CASA recommend that USEPA not expand the scope of the rule. We do not believe the proposed Reporting Rule should be modified to require additional data beyond what is currently required pursuant to existing regulations for NPDES dischargers.

Tri-TAC and CASA's comments on specific topics such as discharge monitoring reports, spills and bypasses, biosolids, and compliance are outlined below, and a more detailed list referencing specific pages in the Federal Register Notice is attached hereto (Attachment 1).

Discharge Monitoring Reports

As noted previously, Tri-TAC and CASA recommend CROMERR approval be the first step in determining State Readiness, and dischargers should be given an additional year from the CROMERR approval date to report DMRs electronically. In California, the State Water Resources Control Board (State Board) requires reporting of permit monitoring data (except biosolids) through a state reporting tool, the California Integrated Water Quality System (CIWQS) eSMR. The State of California is currently in the process of seeking CROMERR approval for portions of CIWQS, and dischargers should not have to report electronically to USEPA while the system is pending approval. The State Board has already worked closely with USEPA and the discharger community through a public user group to incorporate electronic DMR data into the state reporting tool. Database modifications for data transfer to the Integrated Compliance Information System (ICIS-NPDES) and security upgrades for CROMERR approval have been in progress since mid-2012. Also, the state system was beta tested for DMR input by a limited number of dischargers and USEPA Region 9 representatives verified acceptable data was received in the ICIS-NPDES test system. Therefore, a significant amount of effort has already been put towards electronically reporting DMR data in California's system, which would be wasteful if CROMERR approval is not received by the proposed deadline and California dischargers are obligated to report directly to USEPA. Further, if the State Readiness Criteria is not modified as suggested, dischargers will be subject to duplicative time and cost intensive reporting requirements. For instance, dischargers with multiple facilities and extensive monitoring requirements can have as many as 5,000 parameters to report in a single month, which is the equivalent of 155,000 DMR fields. Since this is an unmanageable amount of data to enter by hand into an online data entry screen, capabilities would have to be developed and

maintained by the NPDES discharger to submit data via three potentially overlapping systems – paper DMRs, the State electronic DMR system, and the USEPA data entry tool, such as NetDMR. Since the Reporting Rule requires dischargers to wait until CROMERR approval is obtained to use any state's system, it is reasonable for the implementation deadline to be tied to that approval date for states awaiting CROMERR approval rather than an arbitrary regulatory mandate. If CROMERR approval is not forthcoming for California, then USEPA needs to notify the state and dischargers immediately and provide additional support and time so alternative implementation measures can be arranged.

Spills and Bypasses

The proposed Reporting Rule requires electronic reporting of sewer overflow and bypass events, as specified by NPDES permits, and incidents of noncompliance under 40 CFR 122.41(l)(6). In California, the State Board already requires electronic reporting of sewer overflow events under the Statewide General WDR for Sanitary Sewer Systems, WQO No. 2006-0003 (SSO WDR). Under the SSO WDR, permittees are required to report sewer overflows through the CIWQS database. The CIWQS database was intended to meet the reporting requirements of the State Board's SSO WDR and not NPDES permits; however, the SSO WDR is referenced in NPDES permits throughout California. If this reference is interpreted to mean that electronic reporting will be required for sewer overflows, the State Board and USEPA should work together so that NPDES permittees are only required to supply information to one database. Based on discussions with members of the State Board CIWQS team, the State Board is not currently seeking CROMERR approval for the SSO portion of the CIWQS database. Security on the SSO portion of CIWQS does not meet CROMERR standards and the State Board does not have plans to update its security to meet these standards. Since this portion of the State Board's system does not meet USEPA's CROMERR criteria, NPDES permittees would be required to submit data both directly to USEPA and the CIWQS database, which is unnecessarily duplicative and an inappropriate use of public funds. When sewer overflows occur, staff time should be dedicated to stopping the overflow, cleaning it up, and preventing future occurrences rather than duplicative reporting.

Further, the proposed Reporting Rule will require electronic reporting for 40 CFR 122.41(l)(6) and (7) – sewer overflow 24 hour and 5 day reports and 40 CFR 122.41(m)(3)(i) – bypass reporting. As stated above, California SSO WDR permittees are already required to complete electronic reporting for overflow events and duplicative reporting should not be required. In regards to electronic reporting of bypasses, several regions throughout California include an NPDES permit requirement for a 5-day written notification to the appropriate regulator(s). If USEPA electronic reporting is going to be required for either overflows or bypasses, the data fields in Appendix A of the Reporting Rule need to specify what information is required for the 24 hour report and the 5 day report. Much of the information requested in Appendix A is not known immediately following an overflow or bypass, and therefore should not be required in the initial 24 hour notification.

Notwithstanding the above comments, if USEPA does not accept CIWQS as an approved method to report spills, then data items in Appendix A regarding 40 CFR part 127 are not sufficient. A significant amount of resources and effort are spent to recover spills and bypasses, monitor their impacts, and prevent them from reaching receiving waters. This information is important to characterize the event and should be included in the data. Additionally, there are several items in Appendix A that do not help to characterize the event and should be removed. These are further outlined in the detailed list of comments in Attachment 1.

Biosolids

Tri-TAC and CASA agree that electronic reporting can be beneficial for biosolids, but caution must be taken to ensure that the correct and necessary information is required. Table 2 in Appendix A of 40 CFR part 127 in the proposed rule contains reporting requirements that appear to be misinterpretations of 40 CFR part 503. The development of a biosolids reporting database is not simple and will require input from biosolids experts to ensure the regulations are accurately interpreted and reporting requirements are consistent with the regulations. Tri-TAC and CASA strongly urges USEPA to evaluate the Biosolids Data Management System (BDMS) developed by the University of Florida, USEPA Region 8, and USEPA Office of Water in the late 1990s.

General comments are as follow:

- Biosolids regulations (40 CFR part 503) set different and unique monitoring requirements and limits depending on the end use of the biosolids. This nuance is not captured in the proposed regulations.
- Since USEPA is expecting to be able to judge compliance from the reports, there must be a means to identify monitoring requirements based on the end use of the biosolids. The end use may change from monitoring period to monitoring period or even within a single monitoring period. The electronic reporting tool must be able to delineate those differences since different compliance requirements apply based upon the end use.
- Similarly a single permittee may produce multiple biosolids types (i.e., liquid and dewatered; Class A and Class B; anaerobically digested and lime stabilized; etc.) so the electronic reporting mechanism must be able to account for each and its associated requirements for every monitoring period and for every end use.
- In some states, including California, biosolids from multiple generators may be applied to the same land application site. If there is intent to track individual site information as when 503.13(b)(2) applies, then this needs to be captured.
- Due to the ready public availability of the electronic data to be collected, it is incumbent upon USEPA to collect the required data that can be verified in a regulatory context. The electronic reporting system should be able to alert one as to the need for further review but should not be viewed as the means to a final determination of compliance. In addition, POTWs should have a mechanism for submitting corrections or modifications to the electronic system if errors are found.
- The proposed rule states that all of the electronic reporting tools, whether already existing or to be developed in implementing this rule, need to be compliant with USEPA's CROMERR if it is transmitted to USEPA. Presently, California does not have delegated authority for the biosolids program, and its electronic reporting system (CIWQS) does not support biosolids monitoring data. As a result, POTWs are required to report directly to USEPA. Clarification is sought on whether POTWs need to be CROMERR certified to authorize electronic reporting directly to USEPA.
- USEPA appears to be eliminating the benefits and responsibilities for delegated authority by phasing out the annual summary reports now provided to USEPA and relying solely on

electronic reporting by permittees. While Tri-TAC and CASA agree that electronic reporting will yield many benefits and improve accuracy of biosolids management and quality data reported, we do not agree that it will allow determination of compliance in most cases.

Compliance

The Reporting Rule notes that USEPA has received feedback from states and public data users that the existing terminology and nomenclature for cataloguing effluent violations is too confusing and that the proposed rule will simplify and improve the transparency and utility of violation information. Tri-TAC and CASA disagree that the Reporting Rule will improve transparency for categorizing violations, and to the contrary, believe that the proposed additions to 40 CFR 123.45(a)(G)(2)(v) and (vi) are overly broad. Specifically, subsection (v) *Non-numeric Effluent Limit Violations* includes violations that “caused or could cause serious impacts on water quality”. This statement can be interpreted in many ways and therefore does not provide clarity how this type of violation is assigned. In order to provide the transparency that USEPA is seeking with the proposed Reporting Rule, 40 CFR 123.45(a)(G)(2)(v) should be revised to read:

“These include violations of non-numeric effluent limits (e.g., violations of narrative permit requirements or requirements to implement best management practices) that caused serious impacts on water quality. Examples of such serious impacts on water quality include, but are not limited to, discharges that caused exceedances in water quality standards, fish kills, oil sheens, beach closings, fishing bans, restrictions on designated uses, and pass through or interference with the operations of a POTW (see § 403.3 of this chapter).”

With this change, it is clear what constitutes a non-numeric effluent limit violation and will avoid potentially minor violations being classified as a “Category 1” violation. Similarly, subsection (vi) *Other Violations* includes “any violation or group of violations, which in the discretion of the Director or EPA, are considered to be of concern.” With this “catch-all” definition, any violation can be classified as a “Category 1” violation, which does not clarify the methods applied to categorize violations. As such, Tri-TAC and CASA recommend that this ambiguous subsection be removed from the proposed Reporting Rule.

Additionally, USEPA is soliciting comments on the need for establishing a policy-making process with states, tribe, territories, and the public to add or delete pollutants that are subject to Category 1 classification for permit effluent limit violations. Tri-TAC and CASA agree that the development of any policy or guidance should include an open stakeholder process. Furthermore, if subsections 40 CFR 123.45(a)(G)(2)(v) and (vi) are not modified or omitted as requested, then the application of these categories should be further clarified in the new policy or guidance. Lastly, USEPA states that the Technical Review Criteria (TRC) for Group I and Group II Pollutants identified in 40 CFR 123.45, Appendix A will remain unchanged. Tri-TAC and CASA support USEPA’s decision to retain the TRC unchanged in the Code of Federal Regulations, especially given the potential financial impacts on POTWs in California. Specifically, a discharger is assigned a mandatory minimum penalty of \$3,000 for every “serious” violation, which is defined in the California Water Code as “any waste discharge that violates the effluent limitations contained in the applicable waste discharge requirements for ... Section 123.45 of Title 40 of the Code of Federal Regulations...” Therefore, any modifications made to the TRC will have significant economic impacts to POTWs in California.

Accuracy of Compliance Information

Lastly, USEPA notes that the Reporting Rule will also enhance transparency and public accountability by providing the regulatory agencies and the public with more timely, complete, accurate, and nationally consistent sets of data about the NPDES program and potential sources of water pollution. Tri-TAC and CASA are in agreement with USEPA's goal to improve transparency and public knowledge and emphasize that, in order to achieve this goal, USEPA's Permit Compliance System (PCS), ICIS-NDPES, Enforcement and Compliance History Online (ECHO) database, and any other database created as a result of this rule must operate properly. For example, ECHO's "Known Data Problems" webpage lists numerous problems with the data displayed online. Specifically, the website notes that for the state of California, the ICIS-NDPES database contains a significant number of DMR late-reporting violations for dischargers that submitted the required monitoring documents in a timely basis. It is unacceptable for any of the systems to incorrectly show dischargers as out of compliance and all such problems should be addressed by USEPA immediately or removed from the websites until the problem is remedied.

Thank you for the opportunity to provide input on the proposed Reporting Rule. If you have any questions or require additional information pertaining to biosolids, please contact Greg Kester at (916) 446-0388 or gkester@casaweb.org and for the remaining topics Shannon Bishop at (562) 908-4288, extension 2843 or sbishop@lacs.org.

Sincerely,



Terrie Mitchell
Chair, Tri-TAC



Roberta L. Larson
Executive Director, CASA

ATTACHMENT 1: Specific Comments with Corresponding Page Numbers**Discharge Monitoring Reports**

1. Pages 46089-46091, Table 2 “Limit” – a field is necessary to contain a code indicating that a limit is a “wet” or “dry” limit. Wet and dry limits are included in various permits in California and data is reported as either wet or dry based on the conditions at the time of sampling. Currently, these are implemented inconsistently by using the codes (Effluent Gross and EG) available in the monitoring location. A comment field in ICIS-NPDES indicates the definition of wet/dry for that particular DMR. Since the codes change and are not defined across all of ICIS-NPDES, it would not be clear to anyone viewing data extracted from ICIS-NPDES (where the comment is not available) whether the data in the system corresponded to wet or dry limits.
2. Pages 46103-46104, Table 2 “Compliance Monitoring Activity (DMRs)” – a field is necessary in ICIS-NPDES to contain brief comments for each parameter that reports a value in the NO. EX (number of exceedances) data field or the capability to upload an attachment. The hard copy DMR form contains a blank field below the certification that states the field is for “COMMENTS AND EXPLANATION OF ANY VIOLATIONS (Reference all attachments here).” Dischargers have been diligently filling in this field not knowing that the data is not being entered into ICIS. This data should be input into ICIS-NPDES and go directly to ECHO as well. As an additional DMR field, the RNC resolution code and RNC resolution date could be entered to further characterize the violation.
3. Page 46113, Table 2 “Violation” – some violations can be generated in ICIS-NPDES based on DMRs; therefore, the discharger-provided information about the violation should flow directly to the Violations data set. Since the Quarterly Non-Compliance Reports (QNCR) are going to be generated directly from electronic DMR data, the Dischargers should have an opportunity to resolve the violation at the time it is entered into ICIS-NPDES. The RNC Resolution Code can be more quickly and efficiently determined and show the RNC resolution status thus closing numerous open violations. As it is now, dischargers must determine that a violation is in ECHO, submit corrections, and communicate directly with USEPA to clear up the RNC status of violations.

Spills and Bypasses**Current Information Proposed in Appendix A Not Needed to Characterize SSOs and Bypasses**

1. Page 46030, Should overflow reports be limited to sewer overflows at a threshold volume or include de minimus releases? – Sewer overflow reporting requirements should not only be limited based on volume, but whether or not the spill reaches surface water. According to the California Water Code Section 13271, Cal-EMA must be contacted for spills greater than 1,000 gallons that may likely make their way to waters of the State. Therefore, we propose that de minimus releases not be included in sewer overflow reports. Only overflows greater than 1,000 gallons that may likely reach receiving waters should be included in the reports.
2. Page 46037, Electronic submission of follow-up reports under 40 CFR 122.41(l)(6) and (7) not required – the only reporting discussed under 40 CFR 122.41(l)(6) and (7) are the 24 hour and 5 day written reports. Therefore, electronic reporting of the 5 day written report would not be required. However, pages 46038 and 46039 of this proposed rule do not consider the 5 day report (a follow-up report) and require electronic reporting. Clarification should be provided as to what follow-up reports under 40 CFR 122.41(l)(6) and (7) are not required.

3. Page 46085, Facility Site Longitude, Facility Latitude, Facility Site Source Map Scale Number, Facility Site Horizontal Accuracy Measure, Facility Site Horizontal Collection Method, Facility Site Horizontal Reference Datum, Facility Site Reference Point – This data should not be required because it is not relevant. If the overflow is not occurring at the facility, the facility name and address is sufficient. Overflow longitude and latitude are more appropriate information to collect and these are already questions on page 46112.
4. Page 46086, Permit Application Total Design Flow and Permit Application Total Actual Average Flow – This information is not relevant and should not be required. The design flow or actual average flow downstream of an overflow has no relation to a sewer overflow event.
5. Page 46087, Permit Application/NOI Received Date – This information should not be required as it is unnecessary and irrelevant to the event. Other questions in the database ask for the permit effective date and the permit number, which is much more useful information.
6. Page 46087, SIC and NAICS Codes – The economic activity of the facility is irrelevant to the type of event and is also irrelevant in characterizing an overflow or bypass event. Economic information is more pertinent to enforcement, which is not covered in this proposed rule.
7. Page 46088, Narrative Condition and Permit Schedules Section – Clarification of this section is needed. Overflows and bypasses are unforeseen events. Therefore, there would not be a “scheduled event”.
8. Page 46104, Federal Regulatory Section(s) Requiring the Program Report – It is inappropriate to require the permittee to enter this information. In most cases, the person submitting the report will not know this information and does not have the legal background to accurately provide this information.
9. Page 46114, Penalty Assessment – Please clarify who will be entering this information. This information comes from the entity assessing the penalty and should not be the responsibility of the permittee.

Additional Information Needed in Appendix A to Characterize SSOs and Bypasses

1. Bypass reporting – There should be a data item to indicate if all permit limitations were met. Often times there are tertiary filter bypasses at a treatment plant that are reportable; however, the permit limits were not violated. This is an important distinction that is not otherwise clear and would prevent confusion for both regulators and the public.
2. Volume Reaching Receiving Water and Volume Recovered – While there is a data question related to volume, a lot of money and effort is spent trying to recover spills and prevent them from reaching receiving waters. This effort should be recognized and permittees should be encouraged to take such actions. Also, this information would help to more accurately characterize the spill. As an example, a 10,000 gallon spill that was all recovered from a parking lot and properly disposed of is very different than a 10,000 gallon spill that all reaches a receiving water and discharges to the ocean.
3. Estimated Spill Time – While there is a question relating to discovery time, the spill time can be very different than the discovery time.
4. Monitoring – A question should be included asking if any monitoring was conducted. Monitoring is an important tool to assess impact of the event. If monitoring was conducted, this information could provide useful.
5. Overflow Location – The overflow location question should have room for multiple entries since sometimes overflows daylight in several locations.
6. Receiving Water Body – This question should allow for multiple water bodies to be entered.

Biosolids

1. Page 46016 – it is stated that all of the electronic reporting tools, whether already existing or to be developed in implementing this rule need to be compliant with USEPA’s CROMERR (40 CFR part 3) if it is transmitted to USEPA. Presently, California does not have delegated authority for the biosolids program, and its electronic reporting system (CIWQS) does not support biosolids monitoring data. As a result, POTWs are required to report directly to USEPA. Clarification is sought on whether POTWs need to be CROMERR certified to authorize electronic reporting directly to EPA.
2. Page 46033 – it is stated that 40 CFR 503 requires data to be reported by certain agencies meeting size or class designations. However the data cited here is only required under one scenario of one disposition option. Specifically the proposed rule states that certain agencies must report monitoring data, quantity of biosolids managed, ultimate end use or disposal location, and vector and pathogen reduction measures. The specific end use or disposal locations are required only for land application and only when the biosolids fail to meet the requirements of 503.13(b)(3) and are within 90% of reaching the limits of 503.13(b)(2). Vector and pathogen reduction measures are only required for land application and in special cases of surface disposal.
3. Page 46034 – comments are sought on standardizing biosolids reporting in several areas. However, in Appendix A to 40 CFR part 127, requirements addressing these areas are already added even though they are not all required in 503 as explained below.

Areas:

- a. Type and amount of biosolids generated and managed – agree that this is required and is appropriate but note that it is critical for the database to accept this data by monitoring period (one, four, six, or 12 per year) and for each different end use and type of biosolids managed within each monitoring period. Furthermore it is critical that compliance is tied to the end use and the associated monitoring requirements tied to that use.
- b. Sampling and analytical methods – 503 requires certain analytical methods be used but does not require the reporting of those methods. Appendix A does so. Appendix A also requires reporting of sampling method and location. This is not required in 503 and should not be. Every biosolids generator will have different sampling locations depending on their treatment type and location. The requirement is that sampling be “representative” and this will be uniquely variable. Reporting the location will not inform a regulator as to its representativeness and will be subject to incorrect interpretation.
- c. Location of biosolids disposal and management practices – based on Appendix A, it appears that location information for every land application site is required which is not a requirement of 503. Many states already require this data but 503 does not and it would be a new and burdensome exercise to do so. It also takes extensive database development and nomenclature to accept the data. Moreover, as stated above, many POTWs use contract land applicators to manage their biosolids; this requirement would necessitate that POTWs obtain and duplicate the reporting of their land application contractors. It is reasonable to require general information regarding the means of biosolids management (i.e.; land application, mine reclamation, public distribution, surface disposal, incineration, etc.). Please see Part d. below.
- d. Land application data – note that Appendix A does appear to require this for every application site, but as noted above 503 only requires application site

- information if and when a biosolids does not comply with 503.13(b)(3) and when the site has been loaded to 90% of the limits in 503.13(b)(2). This should change to remain consistent with 503.
- e. Surface disposal data – the requirements in 503.23 are required for unlined and no leachate collection system surface disposal sites and for those within 150 meters of property lines. Appendix A appears to require them in all cases. This should change to remain consistent with 503.
 - f. Incineration data – data as required in 503.48 is reasonable. Appendix A appears to have added data on the disposition of incinerator ash which is not now required and should not be added, as it does not relate to compliance with federal biosolids regulations.
4. Page 46046 – USEPA seeks comment on whether to eliminate the requirement for states, tribes, or territories delegated for biosolids to provide annual summary information regarding non-compliance and an inventory of generators and disposal facilities. This is made under the assumption that such data will now be readily available to USEPA from the electronic reports received directly from permittees. Since California is not a delegated state for biosolids, we are not directly impacted. However, as noted above, extreme caution should be taken in assuming that all non-compliance, or compliance, can be determined from the electronic reports. Any database will need to be complex in its underpinnings but readily understandable on its surface. At best, flags can be generated to alert a regulator to a need to investigate an anomaly or “apparent” violation further.
 5. Page 46091 – Table 2 in Appendix A of 40 CFR part 127 – The biosolids data required in this section for permit applications is reasonable and acceptable.
 6. Pages 46104-46106 – Table 2 in Appendix A of 40 CFR part 127 - Comments are offered for each entry of this biosolids section below:
 - a. Treatment Processes – It is unclear what this will actually require and whether it is currently required or a new requirement. Other than how pathogen control is achieved for land application and some surface disposal scenarios, it is unclear. While it is not disagreed that a complete picture of a POTW is desirable and would be instructive, without more detail it remains unclear as to whether this is a new entry point.
 - b. Biosolids Class – This data element only is applicable to land application scenarios but is acceptable for that situation. It is critical that any reporting be able to differentiate biosolids types and end use applicable during that monitoring period. For instance if a facility has a bimonthly monitoring frequency and does not land apply in January-February then the class is irrelevant during this monitoring period and no compliance for such should be connected to it. Moreover, multiple end uses may be utilized within a monitoring period so the appropriate monitoring requirements must be tied to each end use.
 - c. Management practice – This is reasonable and necessary information but again must be tied to each monitoring period and then tied to relevant management practices (i.e., if no land application during a monitoring period, or if multiple end uses are utilized within a monitoring period, then the appropriate monitoring requirements must be determined and tied to each end use). Furthermore, there are additional end uses allowed in California which must be accounted for in the regulation. These include:
 - i. Deep well injection
 - ii. Use as an alternative fuel for cement kilns
 - iii. Gasification
 - iv. Use for alternative renewable energy production

- v. Mine reclamation
 - vi. Fire ravaged land reclamation
 - vii. Other emerging technologies
- d. Sampling and Analytical methods – See above comment 2.b. This is not a current requirement and sampling point description will not be instructive.
 - e. Biosolids Volume amount – Reasonable and acceptable.
 - f. Biosolids Receiving Site Name (and site street address, site city, site state, site zip code) – It is unclear to what this and the following sections refer. If it is intended as a facility receiving biosolids for further treatment, a landfill, an off-site surface disposal site, or other similar facility then this and the following four sections may make sense. If it is intended to mean every land application site then please see comments 2.c. and d. above.
 - g. Biosolids receiving site latitude – This is not currently reported nor should it be.
 - h. Biosolids receiving site longitude – This is not currently reported nor should it be.
 - i. Biosolids Monitored Parameter – Reasonable and acceptable (but it must be for each biosolids type)
 - j. Biosolids Monitored Parameter Concentration and Unit – Reasonable and acceptable.
 - k. Actual Measured Cumulative Pollutant Loading Rate – Please see Comment 1 and 2.d. above. This appears to be a misunderstanding of the regulation. Cumulative pollutant loading rates need only be calculated if pollutant concentrations in biosolids are between the pollutant concentration limits (503.13(b)(3)) and the Ceiling Concentrations (503.13(b)(1)) and land applied. They need only be reported when the site is within 90% of the limit of 503.13(b)(2)).
 - l. Actual Measured Annual Application Rate – This is not currently required to be reported. Furthermore USEPA states that this is then compared to the limits in 503.13(b)(4) for compliance. This is a misunderstanding of the regulations. Section 503.13(b)(4) was developed for biosolids distributed for home use in containers less than 1 metric ton but which did not meet the requirements of 503.13(b)(3). It was assumed a homeowner would use such material at their home for no more than 20 years and thus the limits in 503.13(b)(2) were divided by 20. Section 503.13(b)(4) is only narrowly applied in this most unlikely scenario.
 - m. Disposition of Incinerator Ash – As noted above in comment 2.f. this is not currently required and should not be now.