

Subject Matter Code: L Anti-Backsliding

Comment ID: CTR-030-002
Comment Author: Utility Water Act Group
Document Type: Trade Org./Assoc.
State of Origin: DC
Represented Org:
Document Date: 09/25/97
Subject Matter Code: L Anti-Backsliding
References:
Attachments? Y

CROSS REFERENCES

Comment: B. UWAG Strongly Supports EPA's Position on the Application of Antibacksliding During Compliance Periods

UWAG applauds the Agency's decision to recognize that the antibacksliding provisions of section 402(o) of the Clean Water Act "do not apply to revisions to effluent limitations made before the scheduled date of compliance for those limitations." 62 Fed. Reg. at 42,189, col. 2. Permittees should not be subject to antibacksliding provisions until the limits in question come into force at the expiration of the compliance schedule.

Response to: CTR-030-002

EPA acknowledges this support and notes that its position regarding the application of Clean Water Act antibacksliding provisions in the CTR remains unchanged from that of the proposed rule.

Comment ID: CTR-060-003
Comment Author: San Diego Gas and Electric
Document Type: Electric Utility
State of Origin: CA
Represented Org:
Document Date: 09/26/97
Subject Matter Code: L Anti-Backsliding
References:
Attachments? N

CROSS REFERENCES

Comment: PROVISIONS SDG&E SUPPORTS

EPA has included in the proposed CTR provisions which are reasonable and with which SDG&E supports. These include:

Anti-backsliding during interim limits

The preamble states that the anti-backsliding requirements of CWA Section 402(0) do not apply to revisions to effluent limitations made before the scheduled date of compliance for those limitations (see

62 Fed. Reg. at 42188, Col. 2). SDG&E supports EPA's interpretation.

Response to: CTR-060-003

EPA acknowledges this support and notes that its position regarding the application of Clean Water Act antibacksliding provisions in the CTR remains unchanged from that of the proposed rule.

Subject Matter Code: M Re-Open Comment Period

Comment ID: CTR-005-010
Comment Author: Novato Sanitary District
Document Type: Sewer Authority
State of Origin: CA
Represented Org:
Document Date: 09/23/97
Subject Matter Code: M Re-Open Comment Period
References:
Attachments? Y

CROSS REFERENCES

Comment: 9. EPA should modify the CTR to reflect these and other comments and then repropose the rule. The above concerns are fundamental and the recommended modifications necessary to comply with applicable laws and regulations are substantial. For these reasons, the District recommends that EPA modify the rule to account for these and other comments and then re-propose the rule.

Again, the District appreciates the opportunity to comment on the proposed rule. Please contact me if you have any questions or if you need additional information

Sincerely,

Thomas S. Selfridge Deputy Manager-Engineer

Response to: CTR-005-010

In response to the comment to re-propose and re-open the public comment period based on the commenter's comments, EPA has responded substantively to the comments elsewhere in this comment response document. EPA has determined that none of the changes EPA has made warrants re-proposing and re-opening the comment period.

Comment ID: CTR-013-009
Comment Author: County of Los Angeles
Document Type: Storm Water Auth.
State of Origin: CA
Represented Org:
Document Date: 09/25/97
Subject Matter Code: M Re-Open Comment Period
References: Letter CTR-013 incorporates by reference letter CTR-027

Attachments? N

CROSS REFERENCES

Comment: In addition we would like to emphasize the followin concerns which greatly impact the Los Angeles County Stormwater Program:

9. The rule should not be adopted as proposed. It should be revised and then re-proposed. The above comments and concerns are fundamental and the recommended modifications are necessary for MS4s to achieve compliance with the proposed water quality criteria. We recommend that the USEPA modify the rule to account for the above comments and other comments received from other MS4 dischargers and then redistribute the rule for further review and comment.

Thank you, again for this opportunity. If you have any questions, or would like to discuss these comments or issues further, please contact Gary Hildebrand at (626) 458-5948, Monday through Thursday, 7:00 a.m. to 5:30 p.m.

Response to: CTR-013-009

In response to the comment requesting that EPA re-propose and re-open the public comment period, please refer to response to CTR-005-010.

Comment ID: CTR-027-013a
Comment Author: California SWQTF
Document Type: Storm Water Auth.
State of Origin: CA
Represented Org:
Document Date: 09/25/97
Subject Matter Code: M Re-Open Comment Period
References: Letter CTR-027 incorporates by reference letters CTR-001, CTR-036 and CTR-040
Attachments? N
CROSS REFERENCES O

Comment: OFFER OF ASSISTANCE

We appreciate the opportunity to provide comments to the proposed rule. Overall, we believe the rule should not be adopted as proposed. We would recommend that USEPA modify the rule and redistribute the rule for further review and comment.

During the development of the proposed rule, USEPA failed to meet with the California Stormwater Task Force or any other California group of MS4 dischargers to discuss the propose rule. We believe such a meeting would have been very beneficial for USEPA and the MS4 dischargers. We extend an offer to meet with EPA and other interested parties to resolve the above issues, and other significant issues prior to finalizing the rule.

Thank you again for this opportunity, if you have any questions or would like to discuss these comments or issues further please contact me at (510) 670-5563.

Response to: CTR-027-013a

In response to the comment requesting that EPA re-propose and re-open the public comment period, please refer to response to CTR-005-010. EPA was receptive to stakeholder issues concerning the CTR, during its development. For example, EPA sent out a newsletter to all stakeholders inviting discussion, including the storm water interest groups, during the development of the CTR; EPA also attended all of the State task force groups concerning the State's proposed implementation plan and was available for

discussion of issues at those meetings. EPA subsequently met with several stakeholder groups during the development of the CTR. Stakeholders concerned with storm water did not approach EPA during this time. Since the time the CTR was proposed, to ensure impartiality, EPA has limited its involvement with all stakeholder groups who wish to solely discuss the CTR and its finalization. Stakeholders concerned with storm water issues have approached EPA subsequent to the CTR proposal, and EPA has met with them to discuss permit and compliance issues. EPA is available to meet with you further concerning permits and compliance issues.

Comment ID: CTR-031-010

Comment Author: Fresno Metro. Flood Ctrl Dist.

Document Type: Flood Ctrl. District

State of Origin: CA

Represented Org:

Document Date: 09/25/97

Subject Matter Code: M Re-Open Comment Period

References: Letter CTR-031 incorporates by reference CTR-027

Attachments? N

CROSS REFERENCES

Comment: Above all, the District urges the EPA to: 1) incorporate language consistent with CWA section 402(p) into the proposed CTR, and 2) circulate the redrafted rule for further review and comment. This will also provide for review by those concerned to ensure that the proposed CTR when joined with the proposed State Plan does not lead to further inconsistencies.

Response to: CTR-031-010

In response to the comment requesting that EPA re-propose and re-open the public comment period, please refer to response to CTR-005-010.

Comment ID: CTR-034-017

Comment Author: SCAP

Document Type: Trade Org./Assoc.

State of Origin: CA

Represented Org:

Document Date: 09/25/97

Subject Matter Code: M Re-Open Comment Period

References: Letter CTR-034 incorporates by reference letter CTR-035

Attachments? N

CROSS REFERENCES

Comment: Again, we appreciate the opportunity to comment on the proposed California Toxics Rule. Due to the significant nature of the changes proposed, we request that EPA re-propose the CTR for public review and comment. Thank you for your consideration of our comments.

Response to: CTR-034-017

In response to the comment requesting that EPA re-propose and re-open the public comment period, please refer to response to CTR-005-010.

Comment ID: CTR-035-011b
Comment Author: Tri-TAC/CASA
Document Type: Trade Org./Assoc.
State of Origin: CA
Represented Org:
Document Date: 09/25/97
Subject Matter Code: M Re-Open Comment Period
References:
Attachments? N
CROSS REFERENCES E-01u

Comment: EPA's Economic Analysis is important not only for EPA's rulemaking, but for the SWRCB's promulgation of the State's Implementation Policy. Without significant improvements, we do not believe that EPA's Economic Analysis would comply with the requirements of the state Porter-Cologne Act if used by the SWRCB to support the State Proposal. We propose that EPA and the SWRCB undertake a collaborative process with interested members of the public to revise the Economic Analysis, based on methodologies and assumptions Jointly agreed 91 upon. Such a process was recommended by the Economic Considerations Task Force convened by the SWRCB in 1995, based on the process used in the Bay-Delta process. Guidelines for embarking on a collaborative process were proposed in the Task Force Report (SWRCB, 1995, Section VIII). We believe that this process could result in a mutually acceptable and defensible analysis that both EPA and the SWRCB could use to satisfy their respective rulemaking requirements for economic analysis.

Based on the extensiveness of the modifications we believe EPA should make to both the proposed rule and the accompanying Economic Analysis, we request that EPA re-propose the rule for public review and comment before publishing the CTR as a final rule.

Response to: CTR-035-011b

In response to the comment requesting that EPA re-propose and re-open the public comment period, please refer to response to CTR-005-010.

Comment ID: CTR-038-013
Comment Author: Sonoma County Water Agency
Document Type: Sewer Authority
State of Origin: CA
Represented Org:
Document Date: 09/25/97
Subject Matter Code: M Re-Open Comment Period
References:
Attachments? Y
CROSS REFERENCES

Comment: 12. EPA should modify the CTR to reflect these and other comments and then re-propose the rule. The above concerns are fundamental and the recommended modifications necessary to comply with applicable laws and regulations are substantial. For these reasons, the District recommends that EPA modify the rule to account for these and other comments and then repropose the rule.

Response to: CTR-038-013

In response to the comment requesting that EPA re-propose and re-open the public comment period, please refer to response to CTR-005-010.

Comment ID: CTR-043-011

Comment Author: City of Vacaville

Document Type: Local Government

State of Origin: CA

Represented Org:

Document Date: 09/26/97

Subject Matter Code: M Re-Open Comment Period

References:

Attachments? Y

CROSS REFERENCES

Comment: 11. EPA should modify the CTR to reflect these and other comments and then repropose the rule. The above concerns are fundamental and the recommended modifications necessary to comply with applicable laws and regulations are substantial. For these reasons, the City recommends that EPA modify the rule to account for these and other comments and then repropose the rule.

Response to: CTR-043-011

In response to the comment requesting that EPA re-propose and re-open the public comment period, please refer to response to CTR-005-010.

Comment ID: CTR-044-012

Comment Author: City of Woodland

Document Type: Local Government

State of Origin: CA

Represented Org:

Document Date: 09/26/97

Subject Matter Code: M Re-Open Comment Period

References:

Attachments? Y

CROSS REFERENCES

Comment: We have reviewed the proposed CTR and offer the following comments:

11. EPA should modify the CTR to reflect these and other comments and then repropose the rule. The above concerns are fundamental and the recommended modifications necessary to comply with

applicable laws and regulations are substantial. For these reasons, the City recommends that EPA modify the rule to account for these and other comments and then re-propose the rule.

Response to: CTR-044-012

In response to the comment requesting that EPA re-propose and re-open the public comment period, please refer to response to CTR-005-010.

Comment ID: CTR-052-022

Comment Author: East Bay Dischargers Authority

Document Type: Sewer Authority

State of Origin: CA

Represented Org:

Document Date: 09/26/97

Subject Matter Code: M Re-Open Comment Period

References: Letter CTR-052 incorporates by reference letters CTR-035 and CTR-054

Attachments? Y

CROSS REFERENCES

Comment: C. RECOMMENDATIONS FOR MODIFICATIONS TO THE CTR AND EA

EPA should modify the CTR and EA to reflect these and other comments and then re-propose the rule. The concerns cited by the Authority and other POTW organizations are genuine, and the recommended modifications necessary to resolve cost and attainability issues, as well as to insure EPA's compliance with applicable laws and regulations.

Response to: CTR-052-022

In response to the comment requesting that EPA re-propose and re-open the public comment period, please refer to response to CTR-005-010.

Comment ID: CTR-053-001

Comment Author: Heal the Bay

Document Type: Environmental Group

State of Origin: CA

Represented Org:

Document Date: 09/26/97

Subject Matter Code: M Re-Open Comment Period

References: Letter CTR-053 incorporates by reference letter 6 and the comments on Dioxin, copper, and the compliance schedule from letter CTR-002

Attachments? N

CROSS REFERENCES

Comment: The State of California has been without an ISW/EB&E Plan for too long because of administrative process and litigation delays. It is imperative for the protection and enhancement of the beneficial uses of the receiving waters of the State that these plans be implemented as soon as possible.

Response to: CTR-053-001

In response to the comment requesting that the State implement its new statewide water quality plans as soon as possible, EPA agrees with the comment. However, the State must comply with its administrative process requirements which take time. EPA believes the State is making progress and moving toward finalizing its implementation plans.

Comment ID: CTR-054-016
Comment Author: Bay Area Dischargers Assoc.
Document Type: Sewer Authority
State of Origin: CA
Represented Org:
Document Date: 09/25/97
Subject Matter Code: M Re-Open Comment Period
References:
Attachments? Y
CROSS REFERENCES

Comment: EPA should modify the CTR to reflect these and other comments and then repropose the rule. The above concerns are fundamental and the recommended modifications necessary to comply with applicable laws and regulations are substantial. For these reasons, BADA recommends that EPA modify the rule and its economic analysis to account for these and other comments and then re-propose the rule.

Response to: CTR-054-016

In response to the comment requesting that EPA re-propose and re-open the public comment period, please refer to response to CTR-005-010.

Comment ID: CTR-059-004b
Comment Author: Los Angeles County Sanit. Dist
Document Type: Sewer Authority
State of Origin: CA
Represented Org:
Document Date: 09/26/97
Subject Matter Code: M Re-Open Comment Period
References: Letter CTR-059 incorporates by reference letter CTR-035
Attachments? Y
CROSS REFERENCES E-01c

Comment: As others have commented, we also encourage EPA to build on its efforts over the past year to coordinate with the State Water Resource Control Board (SWRCB). In particular, we recommend that in the future the two agencies take such steps as the use of simultaneous comment periods, joint preparation of the economic analysis, and joint final promulgation, much as the "CAL-FED" agencies are doing. Simultaneous comment periods would greatly facilitate review by the public. Development of a joint economic analysis would greatly reduce the time and resources expended by the two regulatory agencies, as well as by stakeholders. Most importantly, EPA and the SWRCB should adopt the CTR and the

State's Implementation Policy at the same time. This will eliminate uncertainties for permit writers and the regulated community as to how the CTR should be implemented, and encourage greater statewide consistency in the implementation of the CTR.

Response to: CTR-059-004b

In response to the comment requesting that EPA re-propose and re-open the public comment period, please refer to response to CTR-005-010. In response to the comment that EPA and the State should jointly prepare an economic analysis and jointly finalize the CTR water quality criteria and the State implementation plan, EPA is proposing criteria and the State is proposing an implementation plan so that the State will have a comprehensive water quality control program in place as soon as possible. EPA and the State have coordinated on the criteria and implementation plan so that EPA believes the two phases of the program will work well together. However, it is more efficient for each agency to move forward with its part, to complete each phase as soon as possible.

Comment ID: CTR-059-005

Comment Author: Los Angeles County Sanit. Dist

Document Type: Sewer Authority

State of Origin: CA

Represented Org:

Document Date: 09/26/97

Subject Matter Code: M Re-Open Comment Period

References: Letter CTR-059 incorporates by reference letter CTR-035

Attachments? Y

CROSS REFERENCES

Comment: Finally, due to the extensive nature of the proposed changes to the rule and the economic analysis, we request that EPA re-publish the CTR and economic analysis for public comment before finalizing the regulation.

Response to: CTR-059-005

In response to the comment requesting that EPA re-propose and re-open the public comment period, please refer to response to CTR-005-010.

Comment ID: CTR-067-007

Comment Author: Ojai Valley Sanitary District

Document Type: Sewer Authority

State of Origin: CA

Represented Org:

Document Date: 09/26/97

Subject Matter Code: M Re-Open Comment Period

References:

Attachments? N

CROSS REFERENCES R

Comment: Based on these issues, OVSD strongly urges EPA to revise its Economic Analysis, and recommend that EPA and the SWRCB work together with stakeholders to develop a revised approach that is mutually acceptable. Due to the significant nature of the changes proposed, OVSD requests EPA re-propose the CTR for public review and comment. We appreciate the opportunity to comment on the proposed CTR, as well as your consideration of our comments.

Response to: CTR-067-007

In response to the comment requesting that EPA re-propose and re-open the public comment period, please refer to response to CTR-005-010. In response to the comment that EPA work together to develop a revised approach, EPA did not substantially revise the CTR and thus, re-proposal is not warranted.

Subject Matter Code: O Offer of Assistance/Review

Comment ID: CTR-027-013b

Comment Author: California SWQTF

Document Type: Storm Water Auth.

State of Origin: CA

Represented Org:

Document Date: 09/25/97

Subject Matter Code: O Offer of Assistance/Review

References: Letter CTR-027 incorporates by reference letters CTR-001, CTR-036 and CTR-040

Attachments? N

CROSS REFERENCES M

Comment: OFFER OF ASSISTANCE

We appreciate the opportunity to provide comments to the proposed rule. Overall, we believe the rule should not be adopted as proposed. We would recommend that USEPA modify the rule and redistribute the rule for further review and comment.

During the development of the proposed rule, USEPA failed to meet with the California Stormwater Task Force or any other California group of MS4 dischargers to discuss the proposed rule. We believe such a meeting would have been very beneficial for USEPA and the MS4 dischargers. We extend an offer to meet with EPA and other interested parties to resolve the above issues, and other significant issues prior to finalizing the rule.

Thank you again for this opportunity, if you have any questions or would like to discuss these comments or issues further please contact me at (510) 670-5563.

Response to: CTR-027-013b

EPA did not meet with the commenter during the development of the California Toxics Rule because the commenter did not ask for a meeting to discuss the rule during this time period. EPA did hold a public meeting on August 2, 1995 which provided an opportunity for all groups, including storm water dischargers, to ask questions or express concerns about the CTR. Since the proposal and subsequent to the commenter's request to meet with EPA, EPA did meet with the California Water Quality Task Force to discuss a related issue to CTR; language in current stormwater permits regarding water quality standards. In addition, EPA held two public hearings, September 18, 1997 in San Francisco and September 19, 1997 in Los Angeles. EPA believes it does understand the concerns of the California Water Quality Task Force and MS4 dischargers as expressed through its written and verbal comments on the CTR. EPA addresses these comments elsewhere in the response to comment document for the rule.

Comment ID: CTR-040-001

Comment Author: County of Sacramento Water Div

Document Type: Storm Water Auth.

State of Origin: CA

Represented Org:

Document Date: 09/25/97

Subject Matter Code: O Offer of Assistance/Review

References: Letter CTR-040 incorporates by reference letter CTR-027

Attachments? Y

CROSS REFERENCES

Comment: OUR PROGRAM

The County is one of four agencies comprising the Sacramento Stormwater Management Program. The other three agencies are the cities of Sacramento, Folsom, and Galt. The Sacramento Stormwater Management Program began in June 1990. Since its inception, the Sacramento Stormwater Program has developed into a high quality stormwater program which is being recognized this year by EPA through its first place award to both the County and City of Sacramento in EPA's outstanding Stormwater Management Program, municipal category.

OUR INTERESTS

The comments that follow are based on our interests that the Rule, the Preamble, and the Rule's accompanying analyses accomplish the following goals:

1. Allow municipal stormwater programs to continue their focus on reduction of pollutants to the maximum extent practicable.
2. Satisfy the requirements of applicable Federal laws and regulations.
3. Provide incentives for reasonable actions to address toxic pollutants from all sources within a watershed.

We believe these interests are compatible with those of EPA and other interested parties, and we offer to work with all parties to craft a Rule that satisfies these interests.

Response to: CTR-040-001

EPA believes the CTR is consistent with the goals stated in the comments.

Comment ID: CTR-040-021

Comment Author: County of Sacramento Water Div

Document Type: Storm Water Auth.

State of Origin: CA

Represented Org:

Document Date: 09/25/97

Subject Matter Code: O Offer of Assistance/Review

References: Letter CTR-040 incorporates by reference letter CTR-027

Attachments? Y

CROSS REFERENCES

Comment: OFFER TO ASSIST

Again, we appreciate the opportunity to comment on the proposed Rule. We extend an offer to sit down with EPA and other interested parties to resolve these and other significant issues prior to finalizing the

Rule.

Response to: CTR-040-021

See response to CTR-040-001.

Subject Matter Code: P Whole Effluent Toxicity

Comment ID: CTR-057-008
Comment Author: City of Los Angeles
Document Type: Local Government
State of Origin: CA
Represented Org:
Document Date: 09/26/97
Subject Matter Code: P Whole Effluent Toxicity
References:

Attachments? N

CROSS REFERENCES

Comment: Toxicity

While we acknowledge the need for improved sampling and testing protocols for acute and chronic toxicity, we are concerned about the extent of EPA's awareness with respect to test variability and test acceptability criteria. The effects of test organism age and health and variations in effluent quality over the testing period introduce many variables into toxicity assessment results; these variations can only be accounted for through statistical methods of data analysis. Consequently, we believe that the EPA should provide for the use of narrative toxicity criteria when site-specific conditions merit them. Similarly, the use of non-local test species should be viewed with caution since this introduces another variable into the test results. Narrative criteria can also be justified in view of the need for additional toxicity research on standard test species with respect to type of pollutant, especially chlorination by-products and ammonia.

Response to: CTR-057-008

The CTR did not propose either narrative or numeric toxicity criteria, and therefore, issues related to WET are outside the scope of this rule.

Comment ID: CTR-065-006a
Comment Author: Environmental Health Coalition
Document Type: Environmental Group
State of Origin: CA
Represented Org:
Document Date: 09/26/97
Subject Matter Code: P Whole Effluent Toxicity
References:
Attachments? N
CROSS REFERENCES C-20

Comment: TOXICITY TESTING

EHC strongly supports inclusion of acute and chronic toxicity tests. However, it is very important that chlorine and ammonia be added to the list of constituents.

Response to: CTR-065-006a

With respect to your comment on the inclusion of acute and chronic toxicity testing, the CTR did not propose either narrative or numeric toxicity testing criteria. As required by Section 303(c)(2)(B), the CTR proposed numeric water quality criteria for priority toxic pollutants, as identified at CWA section 307(a) and for which the Agency has issued CWA section 304(a) criteria guidance. Whole effluent toxicity limits are not within the ambit of section 303(c)(2)(b) and thus are outside the scope of this action.

EPA agrees that acute and chronic toxicity testing is an important component of the water quality-based toxics control program. In EPA's water quality standards regulations, 40 CFR 131.11, EPA encourages states to adopt both numeric and narrative criteria. Narrative criteria can be the basis for limiting toxicity in waste discharges where a specific pollutant can be identified as causing or contributing to the toxicity but there are no numeric criteria in the state standards, or where toxicity cannot be traced to a particular pollutant. Section 131.11(a)(2) requires states to develop implementation procedures to explain how it will ensure the narrative toxic criteria are met.

Subject Matter Code: Q Nonpoint Sources

Comment ID: CTR-086-001a

Comment Author: EOA, Inc.

Document Type: Trade Org./Assoc.

State of Origin: CA

Represented Org: California Dent

Document Date: 09/26/97

Subject Matter Code: Q Nonpoint Sources

References: Letter CTR-086 incorporates by reference letter CTR-035

Attachments? N

CROSS REFERENCES K-01

Comment: CDA's primary concerns are with the potential for additional regulation of wastewater discharges from dental offices to POTWS. Several municipalities in the Bay Area, including the City of San Francisco, have informed CDA that dentist offices are considered a source of mercury discharges to municipal sewer systems, and under the Basin Plan will be subject to additional regulation when lower effluent limits are imposed in municipal NPDES permits. Yet, very little is known about the fate, transport, bioavailability and overall water quality impacts of amalgam related mercury.

CDA in cooperation with San Francisco, has developed a comprehensive program of pollution prevention practices (best management practices) for dental offices that has been distributed statewide and is in the process of being implemented. Yet efforts continue by municipalities in parts of the State, such as San Francisco Bay, to impose increasingly stringent and costly controls on dental offices. Within the current point source regulatory structure. POTWs that have mercury compliance problems, or perceive that they might have if the criteria become more stringent (e.g. through loss of dilution credit), are forced to continue to look "upstream" for additional sources to control, until such time, as recommended, as a more comprehensive watershed based approach is allowed.

CDA is a strong supporter of water quality and human health protection. CDA's primary goals in commenting on the draft CTR are to request that mercury criteria be based on sound science and that mercury regulation be implemented via a watershed management, phased TNML-type approach. CDA is particularly concerned that the CTR does not adequately assess the economic impacts on indirect dischargers nor the extent to which there will be measurable water quality benefits solely from adoption of the proposed mercury criteria for point sources.

Watershed Management Based Approach

Data show that there are elevated levels of mercury in San Francisco Bay waters, sediments, and some fish tissue. It is critical to have a better understanding of watershed-wide mercury inputs, fate, transport, and biogeochemical transformations affecting the San Francisco Bay food chain and human health, and the feasibility and costs of alternative control measures, before imposing potentially onerous control measures (through POTWS) on indirect dischargers, such as dentists, that may not provide measurable water quality or human health benefits.

Since POTWs are only responsible for contributing 1-10% of the toxics mass loading (including mercury) to San Francisco Bay (p. 7-7 EA) it makes economic sense to focus limited public resources on identification of larger and potentially more cost-effective sources to control. Since dentists likely represent a very minor and declining fraction of the mercury loading to POTWs (due to implementation

of BMPs and substitution of non-mercury based compounds for mercury containing dental amalgam), it makes even more public policy sense to fully evaluate and prioritize all sources and controls before pursuing additional control measures on indirect dischargers such as dentists. This needs to be conducted on a watershed basis, consistent with various EPA guidance including the August 1997 Robert Perciasepe TMDL Policy memorandum and the San Francisco Bay Regional Board's July 1997 Watershed Management Initiative Guidance.

Response to: CTR-086-001a

The commentor's concerns that the CTR would disproportionately impact dental offices makes assumptions about the implementation of the CTR. The implementation of the CTR includes issues that are outside the scope of this rule. The purpose of the CTR is to establish ambient criteria, which define the constituent concentrations that represent a quality of water that supports a particular use. EPA recognizes that both point (including indirect industrial discharges to POTWs) and nonpoint sources may contribute to exceedence of water quality criteria. While EPA encourages the State to take a watershed approach and consider the total and relative loadings from, and the most effective means of controlling, both point and nonpoint sources in developing programs to ensure that criteria are met, the purpose of the CTR is to establish the criteria themselves; not to provide, nor impose, tools for achieving the criteria. The State has primacy in developing its own implementation procedures. The State's proposed implementation procedures can be found in "Policy for Implementation of Toxics Standards for Inland Surface Waters, Enclosed Bays, and Estuaries of California," September 11, 1997. The State plans to issue a final policy shortly after promulgation of the CTR.

EPA believes that the Economic Analysis does adequately address economic impacts on indirect dischargers based on the use of available data. The EA used available data from San Jose and Sunnyvale based on those cities' projections of pretreatment controls for copper and nickel from industrial sources. EPA's analysis makes reasonable estimates given the uncertainty of whether NPDES permit limits will become more stringent and how POTWs would implement controls on industrial or commercial discharges to POTWs. As stated in the EA, the States and POTWs have a great deal of discretion in implementing these criteria.

Regarding the commentor's request that mercury criteria be based on sound science see responses to category C-1.

Comment ID: CTR-090-007

Comment Author: C&C of SF, Public Util. Commis.

Document Type: Local Government

State of Origin: CA

Represented Org:

Document Date: 09/25/97

Subject Matter Code: Q Nonpoint Sources

References: Letter CTR-090 incorporates by reference letters CTR-035 and CTR-054

Attachments? Y

CROSS REFERENCES

Comment: Major Concerns About the Proposed Criteria and Rule

1. The Proposal is Based on Poor Data and Will Not Result in Better Water Quality for California. We

stated that our own attainability analysis and that of BADA show that San Francisco,) will be impacted by this rule. Unfortunately, due to the short time for review, the poor quality of data and basis for statements and assumptions in the proposal and the problem with detection limits we cannot specifically say what will be the cost to Sari Francisco. One analysis tell us it could be \$2.3 million per year annualized costs and another analysis tells us it could be much more. We strongly recommend major revision to the proposal and the economic analysis before final promulgation for the following reasons:

This rule will be applied to point source dischargers with NPDES permits and all EPA and State data confirm that the major sources of many of the pollutants of concern in the major waters of California are not point discharges.

Response to: CTR-090-007

The comment claiming the CTR will have a disproportionate burden on point sources deals with implementation of the CTR which is outside the scope of this rule. The purpose of the CTR is to establish ambient criteria, which define the constituent concentrations that represent a quality of water that supports a particular use. EPA discusses the legal bases for the rule in the preamble and elsewhere in the comment response document for the rule. EPA recognizes that both point and nonpoint sources may contribute to exceedence of water quality criteria. While EPA encourages the State to take a watershed approach and consider the total and relative loadings from, and the most effective means of controlling, both point and nonpoint sources in developing programs to ensure that criteria are met, the purpose of the CTR is to establish the criteria themselves; not to provide, nor impose, tools for achieving the criteria. The State has primacy in developing its own implementation procedures. The State's proposed implementation procedures can be found in "Policy for Implementation of Toxics Standards for Inland Surface Waters, Enclosed Bays, and Estuaries of California," September 11, 1997. The State plans to issue a final policy shortly after promulgation of the CTR.

Regarding the uncertainty of the costs to San Francisco, EPA agrees that economic impacts, due to the the uncertain manner in how the CTR will be implemented by on a site-specific basis, are difficult to predict. However, EPA believes its Economic Analysis provides a reasonable range of potential costs to sample facilities given the available data and the uncertainty of site-specific implementation.

Comment ID: CTR-090-015

Comment Author: C&C of SF, Public Utl. Commis.

Document Type: Local Government

State of Origin: CA

Represented Org:

Document Date: 09/25/97

Subject Matter Code: Q Nonpoint Sources

References: Letter CTR-090 incorporates by reference letters CTR-035 and CTR-054

Attachments? Y

CROSS REFERENCES

Comment: Source of toxicants - Benefits from adoption of this rule may be minimal as the most serious water quality problems are caused by non-point sources not subject to WQBEL in NPDES permits. For example, the Benefits Document depicts the seven northern California water bodies that currently have DHS health advisories. These water bodies are:

1. Lake Nacimiento 2. Guadalupe and other Santa Clara County Reservoirs 3. Lake Herman 4. Lake Berryessa 5. Clear Lake 6. Kesterton National Wildlife Refuge/Grassland Area 7. San Francisco Bay

The first five areas are all areas contaminated by mercury from historical mercury mines. Between the late nineteenth century to about 1965, the central coast ranges from San Luis Obispo County north to Lake County provided 70% of the domestic production of elemental mercury. The dominant ore was cinnabar, (HgS) which was found typically in shallow deposits within serpentine and other Franciscan formation rocks. Many abandoned mercury mines with their attendant calcined waste dumps and contaminated main facilities are found throughout this area. Construction and maintenance of access roads to these mines could also mobilize considerable mercury through increased erosion.

Natural releases of mercury either through seismic or geothermal activity may be a significant portion of the mercury problem in some parts of Clear Lake. Sediment deposits dated to 8,800 years ago show mercury concentrations up to 65 mg/kg. Geothermal activity also occurs within the catchment for Lake Beryessa.

(For a good discussion of the mercury problem in the Coast Ranges, see Hood, Michael, et al, Mining Waste Study -Final Report, University of California, Berkeley, July 1, 1988, prepared for the SWRCB, pages 243, et seq. and pages 275 et seq.).

No part of this mercury problem can be attributed to either POTWs or currently active industries. Nor will anything in the CTR provide additional tools to assist in the remediation of the correctable portions of these mercury problems.

The sixth site is Kesterson Reservoir, contaminated by selenium, from surface and sub-surface agricultural drains. Again state efforts to remediate this problem are underway and will not change as a result of the CTR.

The seventh area is San Francisco Bay. Portions of the Bay have elevated levels of mercury, PCBS, dioxin and pesticides. EPA acknowledges that NPDES permitted point sources typically account for between 4 % and 11 % of most of the problematic toxicants.

Whether these percentages hold true for the chlorinated organic compounds is difficult to establish as many potential sources are not well characterized due to analytical problems. Nevertheless, it is unlikely that POTWs and industrial point sources are anything other than minor contributors of the chlorinated hydrocarbon compounds of greatest concern.

The major sources for most of the problem toxicants in the Bay, are, agriculture, abandoned mines, historical contaminated sediments and both urban and nonurban runoff. These major sources will be very difficult, and in some cases impossible, to control. Therefore, even if permitted point sources achieve full compliance with the CTR, only negligible (<10%) improvement in Bay water quality will result. The CTR must address this critical issue: which toxic pollutants prevent California waters from achieving CWA goals and objectives and what is the source of these toxicants. This assessment is necessary to determine if EPA has met its obligations to promulgate new water quality standards necessary to meet the requirements of the Act. [CWA section 303(c)(4)]

Response to: CTR-090-015

See response to CTR-090-007 (first paragraph).

Comment ID: CTR-090-023b

Comment Author: C&C of SF, Public Util. Commis.

Document Type: Local Government

State of Origin: CA

Represented Org:

Document Date: 09/25/97

Subject Matter Code: Q Nonpoint Sources

References: Letter CTR-090 incorporates by reference letters CTR-035 and CTR-054

Attachments? Y

CROSS REFERENCES K-02

Comment: An Alternative Strategy to Implement the CTR - The CTR will likely result in massive public and private expenditures without yielding measurable or significant environmental benefits. Costs can be significantly reduced with regulatory flexibility and the cost analysis assumes that regulatory relief will be forthcoming when costs become excessive. However, nothing in the preamble nor anything in the State's implementation plan indicates a willingness to provide regulatory relief. On the contrary, the draft rule establishes an unusually cumbersome variance procedure while the State's draft proposal sets out very conservative procedures for WQBELs and waste load allocations (WLAs).

For these reasons, we recommend a go slow approach to both promulgating and implementing the CTR for those toxicants where the best evidence indicates that non-permitted sources are the predominant sources. This approach would:

1. Use the concept of temporary standards based on liberal assumptions such as use of a CRF of 10E-4 or 10E-4.5 until such time that a) problems in tissue concentrations are established; and b) loadings are established within the watershed.
2. Require permitted sources, including storm water sources to thoroughly characterize their discharges for the watershed specific problem contaminants.
3. Require permitted sources including storm water that discharge nontrivial amounts of problem toxicants to participate in or financially support ambient monitoring programs.
4. Require permitted sources including storm water sources, to undertake all reasonable source control efforts for any problem toxicants in their discharge.

The above efforts will continue through the development of Watershed based control measures, including TMDLs where required. For complex watershed the TMDL process could be lengthy, up to 10 years or more.

Such approaches were discussed in the preamble of the Great Lakes Initiative (589 FR 72, April 16, 1993), and are further discussed in a September 10, 1997 EPA HQ draft memorandum "A Watershed Approach for the Achievement of Water Quality Objectives." (Attachment 1) The temporary limits approach would also obviate the massive administrative burdens contained in the proposed variance procedures.

Response to: CTR-090-023b

See response to CTR-090-023b (first paragraph).

Subject Matter Code: R RFA/SBREFA

Comment ID: CTR-001-008b
Comment Author: Law Offices of Alan C. Waltner
Document Type: Storm Water Auth.
State of Origin: CA
Represented Org: Alameda Cnty Clean Wtr Pgm
Document Date: 09/22/97
Subject Matter Code: R RFA/SBREFA
References:
Attachments? N
CROSS REFERENCES J-02

Comment: EPA'S PROPOSAL VIOLATES THE REGULATORY FLEXIBILITY ACT

Several of the member agencies of the ACCWP have populations less than 50,000 (Piedmont, Emeryville, Albany) and will be significantly affected by the proposed rule if it results in the adoption of NELs or WLAs in the permit for their discharges. These "small entities" under the Regulatory Flexibility Act ("RFA") are entitled to both initial and final regulatory flexibility analyses under the RFA.

EPA's finding that a substantial number of small entities will not be significantly affected by the proposed rule is arbitrary and capricious given this demonstrated impact. A substantial number of municipalities less than 50,000 in population are currently covered by NPDES permits for their storm water discharges. In addition, EPA's upcoming Phase II storm water regulations may substantially expand the universe of small municipalities that will be subject to NPDES permits and, through those permits, to the provisions of the CTR.

Neither the ACCWP, the ACCWP's member agencies or, to our knowledge, any other storm water system that will be subject to this rule, was contacted by EPA in advance of the proposed rulemaking and given a reasonable opportunity to participate in the rulemaking as required by 5 U.S.C. section 609(a). In addition, as a "covered agency" under 5 U.S.C. section 609, EPA must process the proposed rule in accordance with the provisions of that section, including the convening of a review panel, but apparently has failed to do so.

Response to: CTR-001-008b

The Regulatory Flexibility Act generally requires federal agencies to prepare a regulatory flexibility analysis (RFA) that describes the impact of a rule on small entities (small businesses, small organizations and small governmental jurisdictions) whenever an agency promulgates a final rule under section 553 of the Administrative Procedure Act, 5 U.S.C. Section 553. 5 U.S.C. Section 604. Under section 605(b) of the Regulatory Flexibility Act, however, if the head of an agency certifies that a rule will not have a significant economic impact on a substantial number of small entities, the statute does not require the agency to prepare an RFA. Pursuant to section 605(b), the Administrator is today certifying that this rule will not have a significant economic impact on a substantial number of small entities for the reasons explained below. Consequently, EPA has not prepared an RFA.

The RFA requires analysis of the economic impact of a rule only on the small entities subject to the rules' requirements. See *United States Distribution Companies v. FERC*, 88 F.3d 1105, 1170 (D.C. Cir. 1996). ("[N]o [regulatory flexibility] analysis is necessary when an agency determines that the rule will not have

a significant economic impact on a substantial number of small entities that are subject to the requirements of the rule," *United Distribution* at 1170, quoting *Mid-Tex Elec. Co-op v. FERC*, 773 F.2d 327, 342 (D.C. Cir. 1985) (emphasis added by United Distribution court).) Thus, the RFA requires that any regulatory flexibility analysis prepared for a final rule must include estimates of "the number of small entities to which a rule will apply." 5 U.S.C. Section 604(a)(3). The analysis must also include a description of the recordkeeping, reporting and compliance requirements of the rule, including an estimate of the classes of small entities "which will be subject to the requirements." 5 U.S.C. Section 604(a)(4). In light of these provisions, courts have consistently interpreted the RFA to impose no obligation on an agency to conduct a small entity impact analysis on entities it does not regulate. *Motor & Equip. Mfrs. Ass'n v. Nichols*, 142 F.3d 449, 467 & n.18 (D.C. Cir. 1998).

The U.S. Court of Appeals for the District of Columbia Circuit recently reaffirmed its conclusion that the RFA does not require an agency to prepare an assessment of the economic impact of a rule on small entities that are not directly affected by a rule. *American Trucking Association, Inc. v. U.S. Environmental Protection Agency*, (D.C. Cir. 1999). In that case, the court determined that EPA was not required to prepare a regulatory flexibility analysis of the economic impact of a rule on small entities when it promulgated air quality standards under the Clean Air Act. There, EPA had certified that the rule would not have a significant impact on small entities because the air standard did not directly impose requirements on small entities and consequently they were not subject to the rule. Under the Clean Air Act, states regulate small entities through state implementation plans that they are required to develop under the Act. States have broad discretion in determining how to achieve compliance with the standards and may choose to avoid imposing any of the burden of complying with the standards on small entities.

The CTR presents a situation very similar to that described in the *American Trucking* case. It establishes no requirements that are directly applicable to small entities, and so the agency is not required to conduct a regulatory flexibility analysis under the RFA. (See *United States Distribution Companies v. FERC*, 88 F.3d 1105, 1170 (D.C. Cir. 1996). The Agency is therefore certifying that today's rule will not have a significant economic impact on a substantial number of small entities, within the meaning of the RFA.

Under the CWA water quality standards program, states must adopt water quality standards for their waters that must be submitted to EPA for approval. If the Agency disapproves a state standard and the state does not adopt appropriate revisions to address EPA's disapproval, EPA must promulgate standards consistent with the statutory requirements. EPA has authority to promulgate criteria or standards in any case where the Administrator determines that a revised or new standard is necessary to meet the requirements of the Act. These state standards (or EPA-promulgated standards) are implemented through various water quality control programs including the National Pollutant Discharge Elimination System (NPDES) program that limits discharges to navigable waters except in compliance with an EPA permit or permit issued under an approved state program. The CWA requires that all NPDES permits must include any limits on discharges that are necessary to meet state water quality standards.

Thus, under the CWA, EPA's promulgation of water quality criteria or standards establishes standards that the state, in turn, implements through the NPDES permit process. The state has considerable discretion in deciding how to meet the water quality standards and in developing discharge limits as needed to meet the standards. In circumstances where there is more than one discharger to a water body that is subject to water quality standards or criteria, a state also has discretion in deciding on the appropriate limits for the different dischargers. While the state's implementation of federally-promulgated water quality criteria or standards may result indirectly in new or revised discharge limits for small entities, the criteria or standards themselves do not apply to any discharger, including small entities.

EPA recognizes that it has undertaken an economic analysis pursuant to E.O. 12866 for this rule. This analysis, however, makes numerous assumptions and does not necessarily predict how the state will implement the criteria. Thus, the economic analysis represents EPA's best estimate of the implementation costs of the rule given the broad flexibility the state has in implementing the criteria.

The CTR, as explained above, does not itself establish any requirements that are applicable to small entities. As a result of EPA's action here, the State of California will need to ensure that permits it issues comply with the water quality standards established by the criteria in today's rule. In so doing, the State will have a number of discretionary choices associated with permit writing. While California's implementation of today's rule may ultimately result in some new or revised permit conditions for some dischargers, including small entities, EPA's action today does not impose any of these as yet unknown requirements on small entities.

Although the statute does not require EPA to prepare a regulatory flexibility analysis when it promulgates water quality criteria which will establish water quality standards for California, EPA has prepared an assessment of potential economic impact. This evaluation focuses on State and local implementation procedures related to the NPDES permit program. This evaluation is included in a document entitled, Implementation Analysis of Ambient Water Quality Criteria for Priority Toxic Pollutants in California which is part of the administrative record for this rulemaking. This document looks at the many implementation procedures of the NPDES permit program that the State implements to control pollutants from point source discharges. The procedures discussed in the document include: methods to calculate water quality-based effluent limits; mixing zones; site-specific translators for metals criteria; compliance schedules; effluent trading; water-effect ratios; variances; designated use reclassification; and site-specific criteria. Each of these implementation procedures may have an effect on how water quality standards, based on the criteria in today's rule, will impact NPDES permit holders. Many of these procedures will lessen impacts on regulated entities.

The document also looks at implementation procedures used in the pretreatment program to control pollutant discharges from dischargers that do not discharge directly but introduce pollutants to publicly owned treatment works (POTWs). These dischargers include retail, commercial, and small industrial facilities that discharge to publicly owned treatment works (POTWs). Local entities have significant flexibility to implement their pretreatment programs. These procedures include: methods to calculate local limits (allocation of pollutants); methods of pollution prevention for various specific sources; pretreatment pollutant trading; methods of low cost pollutant reductions; technical assistance to move toward or achieve zero-discharge; cost accounting to drive down levels of discharges; and a few of the regulatory relief options discussed in the direct discharger section, e.g., compliance schedules.

The discussion illustrates the significant amount of flexibility available to the State and local agencies when implementing the NPDES permit program and pretreatment program and emphasizes that appropriate use of the available implementation tools can greatly affect the impact to many direct and indirect dischargers.

See also response to CTR-050-007a (Category C-21; Legal Concerns) and the preamble to the final rule.

Comment ID: CTR-005-006c
Comment Author: Novato Sanitary District
Document Type: Sewer Authority
State of Origin: CA

Represented Org:
Document Date: 09/23/97
Subject Matter Code: R RFA/SBREFA
References:
Attachments? Y
CROSS REFERENCES C-21; S

Comment: 5. The proposed rule is inconsistent with applicable Federal law and regulations. In proposing a single set of criteria for all estuaries, the rule is inconsistent with the Clean Water Act and EPA's water quality standards regulations. The Clean Water Act requires that water quality standards be established taking into consideration their use and value for public water supplies, propagation of fish and wildlife, recreational purposes, and also taking into consideration their use and value for navigation (See CWA section 303(c)(2)(A)). Consistent with this, EPA regulations require that water quality standards be based on identification of where toxic pollutants may be adversely affecting water quality or the attainment of the designated water use or where the levels of toxic pollutants are at a level to warrant concern. For those identified waters, states must adopt criteria for such toxic pollutants applicable to sufficient to protect the designated use"(See 40 CFR 131.1 1 (a)(2)).

Clearly the intent of both the Act and EPA regulations is that water quality standards be tailored to the characteristics of the waters in question. In failing to properly evaluate the rule's economic impacts and in failing to adequately consider regulatory alternatives, the rule is inconsistent with Presidential Executive Order 12866 and the Unfunded Mandates Reform Act. In failing to properly consider the impacts on small entities, the rule is inconsistent with the Regulatory Flexibility Act.

Response to: CTR-005-006c

With respect to EPA's decision to publish a single set of criteria in the rule, see responses to CTR-035-012a and CTR-036-005 (both responses are in Category C-21; Legal issues). For a discussion of how the rule complies with the E.O. 12866, the Unfunded Mandates Reform Act, and Regulatory Flexibility Act, see responses to CTR-001-008b, CTR-021-005c (Category E-01c; Executive Order 12866), CTR-036-003a (Category S; Unfunded Mandates Reform Act), and the preamble to the proposed rule.

Comment ID: CTR-013-008a
Comment Author: County of Los Angeles
Document Type: Storm Water Auth.
State of Origin: CA
Represented Org:
Document Date: 09/25/97
Subject Matter Code: R RFA/SBREFA
References: Letter CTR-013 incorporates by reference letter CTR-027
Attachments? N
CROSS REFERENCES J

Comment: In addition, we would like to emphasize the following concerns which greatly impact the Los Angeles County Stormwater Program:

8. The proposed rule applies to all current and future MS4 dischargers, including small communities.

The small communities will be significantly impacted by the proposed rule. In Los Angeles County, 77 of the 85 co-permittee cities are communities with a population of less than 100,000. Many of the larger municipalities in California have conducted stormwater discharge characterization studies. These studies have shown that there are common pollutants associated with stormwater discharges from urbanized areas that could result in compliance problems with the proposed criteria. Most small communities have not conducted discharge characterization studies, however, it is reasonable to assume that discharges from small communities would also contain these same pollutants. This would result in a smaller community being faced with the same compliance issues as large and medium municipalities, however, the cost to comply could be more significant and prohibitive for smaller communities.

The Regulatory Flexibility Act requires the USEPA to conduct an analysis on the economic impact the proposed rule may have on small entities unless the USEPA certifies that the rule will not affect a significant number of small entities. In the preamble to the proposed rule(*2) it indicates that there are no small entities to be impacted by the rule and, therefore, the USEPA did not need to complete an analysis required under the Act. The USEPA neglected to address small MS4 communities in California that are currently subject to a MS4 permits, and those smaller communities that may be impacted through Phase II. The USEPA should have conducted an analysis on the economic impacts to smaller communities.

Therefore, unless the preamble is modified to indicate that MS4s are not required to comply with water quality standards, the proposed rule should not be applied to smaller MS4 communities until the USEPA has complied with the requirements of the Regulatory Flexibility Act.

(*2) Federal Register, August 5, 1997, Vol. 62, No. 150, Page 42191.

Response to: CTR-013-008a

See response to CTR-001-008b and the preamble to the final rule.

Comment ID: CTR-014-004a

Comment Author: City of Lakewood

Document Type: Local Government

State of Origin: CA

Represented Org:

Document Date: 09/25/97

Subject Matter Code: R RFA/SBREFA

References: Letter CTR-014 incorporates by reference letters CTR-013 and CTR-027

Attachments? N

CROSS REFERENCES J

Comment: 4. The proposed rule applies to all current and future MS4 dischargers, including small communities. These small communities will be significantly impacted by the proposed rule. In California, there are many small communities that are currently co-permittees to MS4 permits. Many of the larger municipalities in California have conducted stormwater discharge characterization studies. These studies have shown that there are common pollutants associated with stormwater discharges from urbanized areas that could result in compliance problems with the proposed criteria. Most small communities have not conducted discharge characterization studies; however, it is reasonable to assume

that discharges from small communities would also contain these same pollutants. This would result in a smaller community being faced with the same compliance issues as large and medium municipalities; however, the cost to comply could be more significant and prohibitive for smaller communities.

The Regulatory Flexibility Act requires the USEPA to conduct an analysis on the economic impact the proposed rule may have on small entities, unless the USEPA certifies that the rule will not affect a significant number of small entities. In the preamble to the proposed rule(*1), it indicates that there are no small entities to be impacted by the rule, and, therefore, the USEPA did not need to complete an analysis required under the Act. The USEPA neglected to address small MS4 communities in California that are currently subject to a MS4 permits, and those smaller communities that may be impacted through Phase II. The USEPA should have conducted an analysis on the economic impacts to smaller communities.

Unless the preamble is modified to indicate that MS4s are not required to comply with water quality standards, the proposed rule should not be applied to smaller MS4 communities until the USEPA has complied with the requirements of the Regulatory Flexibility Act.

Thank you for this opportunity to comment on the proposed CTR. Respectfully,

Lisa Ann Rapp Director of Public Works

(*1) Federal Register, August 5, 1997, Vol. 62, No. 150, Page 42191

Response to: CTR-014-004a

See response to CTR-001-008b and the preamble to the final rule.

Comment ID: CTR-019-003b
Comment Author: Richards, Watson & Gershon
Document Type: Local Government
State of Origin: CA
Represented Org: Cities of Barst
Document Date: 09/26/97
Subject Matter Code: R RFA/SBREFA
References: Letter CTR-019 incorporates by reference letters CTR-001, CTR-013, CTR-027 and CTR-036

Attachments? N
CROSS REFERENCES J

Comment: THE PROPOSED RULE DOES NOT COMPLY WITH THE REGULATORY FLEXIBILITY ACT

USEPA's analysis under the Regulatory Flexibility Act and Executive Order No. 12866 that the CTR will not affect a significant number of small entities is simply wrong. Most of the cities which we represent have populations of less than 20,000; many have less than 10,000. As noted by the County of Los Angeles, 77 of the co-permittee cities have populations of less than 100,000. Many of these cities are

primarily residential and with limited tax revenues. Nevertheless the proposed CTR would impose the same financial requirements on these cities as would be imposed on larger entities. These cities do not receive funds from either the State of California or the federal government for their storm water programs or other urban runoff control measures.

Response to: CTR-019-003b

See response to CTR-001-008b and the preamble to the final rule.

Comment ID: CTR-021-005d

Comment Author: LeBoeuf, Lamb, Green & MacRae

Document Type: Local Government

State of Origin: CA

Represented Org: City of Sunnyvale

Document Date: 09/25/97

Subject Matter Code: R RFA/SBREFA

References: Letter CTR-021 incorporates by reference letter CTR-035

Attachments? Y

CROSS REFERENCES C-13; C-28; E-01c; S

Comment: It is with a sense of reluctance that Sunnyvale joins in CASA/Tri-TAC's adverse comments on the CTR and the EA, and Sunnyvale does so in a spirit of constructive criticism and with an expectation that the Agency will make the necessary adjustments in its approach towards the CTR before the final rule is promulgated. In addition, in the same spirit and with the same expectation, Sunnyvale would like to make the following points on its own behalf:

2. Obligation to Assess Alternative Cancer Risk Levels for Human Health-Based Criteria. Sunnyvale is gravely concerned that EPA has used the wrong approach in proposing to establish human health criteria for organic pollutants, particularly those pollutants for which the proposed criteria are below the method level of detection ("MDL"). Sunnyvale recommends that EPA should thoroughly assess all of the potential impacts, including costs and benefits, of the 10E-4 and 10E-5 risk levels before proposing the human health-based criteria. As pointed out in the EOA Letter, there is a significant potential for advancing technology to lower the MDL for many pollutants to the point where laboratory equipment is able to measure some or all of the organic compounds for which EPA is proposing to establish criteria at the new level. It is intuitively obvious that the costs of attaining criteria set at the 10E-6 level will be significantly greater than attainment of a 10E-5 or 10E-4 level, particularly where, as pointed out in the EOA Letter, the only available method of treatment is granular activated carbon. Sunnyvale is concerned that the EA does not adequately address the potential for these costs, and, consequently, does not take these potential costs into account in determining whether to exercise its flexibility in choosing whether to use a 10-4 , 10-5 or 10-6 cancer risk level as the basis for its CTR promulgation.

EPA is required by Executive Order 12866, the Regulatory Flexibility Act and the Unfunded Mandates Reform Act to identify and analyze alternatives to a proposed rule. We cannot understand, therefore, why EPA has done such a cursory analysis in the preamble to the CTR and the EA of the alternatives to the use of the most stringent (10E-6) risk level for establishing criteria for human health effects of pollutants, particularly organic pollutants. EPA cannot base its selection of the 10E-6 level based upon previous regulatory pronouncements by the State of California. Any new determination by the State will be subject to the analytical requirements of Section 13241 of the Porter-Cologne Act and by review by

the Office of Administrative Law. Thus, it is not a foregone conclusion that the State will ultimately select the 10E-6 level. EPA has its own legal requirements to fulfill. Accordingly, we ask that EPA not promulgate the final human health criteria for the pollutants of concern unless and until it has adequately analyzed the costs and other implications of the various alternatives to the 10E-6 level.

In conclusion, we are entirely supportive of many of EPA's innovative approaches towards development of the CTR, particularly as regards the toxic metals. However, we believe tht EPA has needlessly failed to comply with many of its legal obligations, particularly as regards the development of human health-based criteria on cancer risk levels of organic pollutants. We urge the Agency to reconsider its position in the matters covered by this letter (as amplified by the EOA Letter) and the CASA/Tri-TAC letter. Sunnyvale pledges its continued participation in place-based watershed management planning in the South Bay, its cooperation with the Agency in making a success of the WPI, and to an ongoing effort by the Agency and others to reach water quality goals in the South Bay. We thank you for the opportunity to comment on the proposed CTR.

Response to: CTR-021-005d

For a discussion of how the rule complies with the E.O. 12866, the Unfunded Mandates Reform Act, and Regulatory Flexibility Act, see responses to CTR-001-008b, CTR-036-005c (Category E-01c; Executive Order 12866), CTR-036-003a (Category S; Unfunded Mandates Reform Act), and the preamble to the proposed rule.

With respect to detection limits see response to CTR-034-010b and CTR-060-010 (Category C-28; Detection Limits). With respect to the selection and economic analysis of risk levels for carcinogens see responses to CTR-021-005a (Category C-13; Risk Level) and CTR-021-005c (Category E-01c; Executive Order 12866).

Comment ID: CTR-021-006c

Comment Author: LeBoeuf, Lamb, Green & MacRae

Document Type: Local Government

State of Origin: CA

Represented Org: City of Sunnyvale

Document Date: 09/25/97

Subject Matter Code: R RFA/SBREFA

References: Letter CTR-021 incorporates by reference letter CTR-035

Attachments? Y

CROSS REFERENCES J; E-01c; S; I-01

Comment: It is with a sense of reluctance that Sunnyvale joins in CASA/Tri-TAC's adverse comments on the CTR and the EA, and Sunnyvale does so in a spirit of constructive criticism and with an expectaton that the Agency will make the necessary adjustments in its approach towards the CTR before the final rule is promulgated. In addition, in the same spirit and with the same expectation, Sunnyvale would like to make the following points on its own behalf:

3. Failure to Address Important Stormwater-Related Issues. In addition to its POTW, Sunnyvale is the owner of a system of storm drains which contribute wet weather flows to the South Bay. We are concerned that the EA entirely neglects the potential impacts of the proposed CTR on the storm drains. The EA entirely omits any meaningful analysis of the costs of bringing storm drains into compliance with

the proposed CTR, thereby significantly understating the overall costs of the CTR. We believe that this omission is violative of the Agency's legal obligations under the authorities cited in the preceding paragraph.

In addition, we join in the comments being filed by the various other operators of stormwater collection systems to the effect that EPA has overstated the legal requirements for storm drains to comply with numerical criteria.

Response to: CTR-021-006c

For a discussion of how the rule complies with the E.O. 12866, the Unfunded Mandates Reform Act, and Regulatory Flexibility Act, see responses to CTR-001-008b, CTR-036-005c (Category E-01c; Executive Order 12866), CTR-036-003a (Category S; Unfunded Mandates Reform Act), and the preamble to the proposed rule.

EPA believes it properly described the potential impact of the implementation of the CTR on storm drains in the preamble to the proposed CTR and in its Economic Analysis. For further discussion see responses to CTR-013-003 and CTR-040-004 (Category J; Stormwater Economics).

Comment ID: CTR-023-001

Comment Author: City of Los Alamitos

Document Type: Local Government

State of Origin: CA

Represented Org:

Document Date: 09/25/97

Subject Matter Code: R RFA/SBREFA

References: Letter CTR-023 incorporates by reference letters CTR-027 and CTR-036

Attachments? N

CROSS REFERENCES

Comment: The City of Los Alamitos is particularly concerned that, in promulgating the California Toxics Rule, US EPA has neglected its responsibilities under the Regulatory Flexibility Act (RFA). Specifically, the proposed rule does not present any analysis of its impact on a small entity such as the City of Los Alamitos (Population - 12,425) as required by the RFA.

As a small entity regulated under the municipal stormwater permitting requirements of the Clean Water Act, the proposed rule making will have a profound impact on the City of Los Alamitos. This impact now needs to be explicitly understood before further action is taken on the California Toxics Rule.

Response to: CTR-023-001

See response to CTR-001-008b and the preamble to the final rule.

Comment ID: CTR-024-004a

Comment Author: City of Hawthorne

Document Type: Local Government

State of Origin: CA

Represented Org:

Document Date: 09/25/97

Subject Matter Code: R RFA/SBREFA

References: Letter CTR-024 incorporates by reference letters CTR-013 and CTR-027

Attachments? N

CROSS REFERENCES J

Comment: 4. The proposed rule applies to all current and future MS4 dischargers, including small communities. The small communities will be significantly impacted by the proposed rule. In California, there are many small communities that are currently co-permittees to MS4 permits. Many of the larger municipalities in California have conducted stormwater discharge characterization studies. These studies have shown that there are common pollutants associated with stormwater discharges from urbanized areas that could result in compliance problems with the proposed criteria. Most small communities have not conducted discharge characterization studies; however, it is reasonable to assume that discharges from small communities would also contain these same pollutants. This would result in a smaller community being faced with the same compliance issues as large and medium municipalities; however, the cost to comply could be more significant and prohibitive for smaller communities.

The Regulatory Flexibility Act requires the USEPA to conduct an analysis on the economic impact the proposed rule may have on small entities, unless the USEPA certifies that the rule will not affect a significant number of small entities. In the preamble to the proposed rule(*1), it indicates that there are no small entities to be impacted by the rule, and therefore, the USEPA did not need to complete an analysis required under the Act. The USEPA neglected to address small MS4 communities in California that are currently subject to a MS4 permits, and those smaller communities that may be impacted through Phase II. The USEPA should have conducted an analysis on the economic impacts to smaller communities.

Unless the preamble is modified to indicate that MS4s are not required to comply with water quality standards, the proposed rule should not be applied to smaller MS4 communities until the USEPA has complied with the requirements of the Regulatory Flexibility Act.

(*1) Federal Register, August 5, 1997, Vol. 62, No. 150, page 42191

Response to: CTR-024-004a

See response to CTR-001-008b and the preamble to the final rule.

Comment ID: CTR-027-009a

Comment Author: California SWQTF

Document Type: Storm Water Auth.

State of Origin: CA

Represented Org:

Document Date: 09/25/97

Subject Matter Code: R RFA/SBREFA

References: Letter CTR-027 incorporates by reference letters CTR-001, CTR-036 and CTR-040

Attachments? N

CROSS REFERENCES J

Comment: 9. The proposed rule applies to all current and future MS4 dischargers, including small communities. The small communities will be significantly impacted by the proposed rule. In California, there are many small communities that are currently co-permittees to MS4 permits. Many of the larger municipalities in California have conducted stormwater discharge characterization studies. These studies have shown that there are common pollutants associated with stormwater discharges from urbanized areas that could result in compliance problems if the proposed criteria are adopted. While most small communities have not conducted discharge characterization studies; it is reasonable to assume that discharges from small communities would also contain these same pollutants. This would result in a smaller community being faced with the same compliance issues as large and medium municipalities; however, the cost to comply could be more significant and prohibitive for smaller communities.

The Regulatory Flexibility Act requires USEPA to conduct an analysis on the economic impact the proposed rule may have on small entities, unless EPA certifies that the rule will not affect a significant number of small entities. In the preamble to the proposed rule (*3), USEPA indicates that no small entities are impacted by the rule, and, therefore, USEPA did not need to complete an analysis required under the Act. USEPA neglected to address small MS4 communities in California that are currently subject to a MS4 permits, and those smaller communities that may be impacted through Phase II. USEPA should have conducted an analysis on the economic impacts to smaller communities.

Recommendation: Unless the preamble is modified to indicate that MS4s are not required to comply with water quality standards, the proposed rule should not be promulgated until USEPA has complied with the requirements of the Regulatory Flexibility Act.

(*3) Federal Register, August 5, 1997, Vol. 62, No. 150, page 42191

Response to: CTR-027-009a

See responses to CTR-013-003, CTR-040-004, (Category J; Stormwater Economics), and CTR-001-008b.

Comment ID: CTR-027-011

Comment Author: California SWQTF

Document Type: Storm Water Auth.

State of Origin: CA

Represented Org:

Document Date: 09/25/97

Subject Matter Code: R RFA/SBREFEA

References: Letter CTR-027 incorporates by reference letters CTR-001, CTR-036 and CTR-040

Attachments? N

CROSS REFERENCES

Comment: 11. The proposed rule appears to violate applicable Federal law and regulations. As indicated in the above comments, it appears that the proposed rule is inconsistent with the Regulatory Flexibility Act by not considering the impacts on small entities. The rule also appears to be in conflict with the Clean Water Act by proposing a single set of criteria for all fresh waters instead of adopting criteria for pollutants that could "reasonably be expected to interfere with those designated uses".(*4)

And finally as noted in our comment 3, the rule did not consider the potential cost for MS4s for either a BMP based program or a program designed to meet WQBELS. The Statewide cost for this latter effort may be as high as \$7 billion per year. Further discussions are provided on these issues in the responses to the CTR by the counties of Alameda, Orange and Sacramento and are incorporated herein by reference.

(*4) Federal Register, August 5, 1997, Vol. 62, No. 150, page 42160

Response to: CTR-027-011

With respect to EPA compliance with the RFA see response to CTR-001-008b and the preamble to the final rule. With respect to the commenter's assertion that the rule is in conflict with the Clean Water Act by proposing a single set of criteria for all fresh waters see response to CTR-036-005 (Category C-21; Legal Issues). With respect to costs for stormwater dischargers, EPA disagrees. See response to CTR-013-003 (Category J; Stormwater Economics).

Comment ID: CTR-028-001a

Comment Author: City of Folsom

Document Type: Storm Water Auth.

State of Origin: CA

Represented Org:

Document Date: 09/25/97

Subject Matter Code: R RFA/SBREFA

References: Letter CTR-028 incorporates by reference letter CTR-040

Attachments? N

CROSS REFERENCES J

Comment: The City is a small community with a population of less than 50,000. We volunteered to participate in the Sacramento Stormwater Management Program as a co-permittee on the NPDES permit because we understood that it was a BMP-based program aimed at reducing the discharge of pollutants to the maximum extent practicable. We are very concerned with the CTR's Preamble statement that municipal stormwater agencies must comply with effluent limitations based on water quality criteria. As the County has stated in its comments, this will result in enormous costs without producing significant environmental benefits.

We are also concerned that the EPA Administrator has certified that the CTR will have no effect on small entities such as the City. Based on the estimated compliance costs prepared by the County and the statewide estimates prepared by the California Storm Water Quality Task Force, the CTR will have significant economic effects on small communities throughout the State. For example, our proportional share of the countywide costs to comply with effluent limitations, based on the proposed water quality criteria, could be over \$10 million per year.

We urge EPA to reconsider its position that municipal stormwater discharges must comply with water quality standards. EPA should remove the Preamble statement or clarify that municipal stormwater discharges are only required to reduce the discharge of pollutants to the maximum extent practicable.

Alternatively, EPA must revise its economic analysis to include the costs to municipal stormwater agencies and the EPA Administrator must withdraw her certification and, pursuant to the requirements of the Regulatory Flexibility Act, assess the economic impacts of the CTR on small entities.

Response to: CTR-028-001a

See responses to CTR-013-003, CTR-040-004, (Category J; Stormwater Economics), and CTR-001-008b.

Comment ID: CTR-031-006b

Comment Author: Fresno Metro. Flood Ctrl Dist.

Document Type: Flood Ctrl. District

State of Origin: CA

Represented Org:

Document Date: 09/25/97

Subject Matter Code: R RFA/SBREFA

References: Letter CTR-031 incorporates by reference letter CTR-027

Attachments? N

CROSS REFERENCES J; E-01c

Comment: b. If the CTR as proposed in the current draft is applied to municipal storm water dischargers so as to require numeric effluent limitations in municipal stormwater permits, the cost to the public will be phenomenal. In the economic analysis of the CTR, EPA failed to consider these costs, and failed to consider the costs to industrial storm water dischargers as well.

The District Is urban storm water drainage system captures through retention 90% of its annual average runoff, and discharges 90% after detention (1% is directly discharged without treatment). The system cost in 1997 dollars is estimated at \$500 million.

The only option available to the District to mitigate violations of the proposed criteria would be to expand system storage to capture 100% of average annual runoff. Increasing system storage by 20,000 acre feet (estimated additional storage required for average years), at the current cost of \$11,000-\$20,000 per acre foot of storage, would result in a capital expenditure of \$220,000,000 to \$400,000,000.

Even with this exorbitant investment, in approximately half of the rain seasons storage would be exceeded, and 100% of the discharges would be expected to exceed the dissolved metals criteria noted above.

Smaller cities (under 50,000) in California are currently subject to NPDES municipal storm water discharge permits, and many more will be included upon implementation of the Stormwater Phase II program. EPA's failure to assess economic impacts on small cities would appear to be contrary to the requirements of the Federal Regulatory Flexibility Act.

The District includes in its constituency industrial businesses. The District serves these businesses and assists in the oversight of their pollution prevention and storm water permit compliance efforts. Regardless of EPA's approach to applying the CTR to municipal storm water permits, industrial storm water dischargers are directly and seriously affected by application of the CTR. EPA's failure to assess these economic impacts on our communities is short-sighted and a breach of good public policy.

Response to: CTR-031-006b

With respect to EPA's compliance with the Regulatory Flexibility Act see response to CTR-001-008b.
With respect to the commenter's estimate of its stormwater costs see response to CTR-040-004 (Category J; Stormwater Economics).

Comment ID: CTR-031-009
Comment Author: Fresno Metro. Flood Ctrl Dist.
Document Type: Flood Ctrl. District
State of Origin: CA
Represented Org:
Document Date: 09/25/97
Subject Matter Code: R RFA/SBREFA
References: Letter CTR-031 incorporates by reference CTR-027
Attachments? N
CROSS REFERENCES

Comment: Any continuing ambiguities and inconsistencies among state and federal law, regulation, and official policy will continue to lead to legal challenges and the corresponding drain on public funds. The CTR should not be adopted as proposed. The above comments and concerns are fundamental to accomplishing consistency with the CWA and Regulatory Flexibility Act, and providing for the unique circumstances of regulating municipal storm water dischargers.

Response to: CTR-031-009

See response to CTR-001-008b.

Comment ID: CTR-034-005
Comment Author: SCAP
Document Type: Trade Org./Assoc.
State of Origin: CA
Represented Org:
Document Date: 09/25/97
Subject Matter Code: R RFA/SBREFA
References: Letter CTR-034 incorporates by reference letter CTR-035
Attachments? N
CROSS REFERENCES

Comment: LEGAL ISSUES -- Executive ORder 12866, Unfunded Mandates Reform Act, Regulatory Flexibility Act

* SCAP disagrees with EPA's determination under the Regulatory Flexibility Act that the rule will not have a significant economic impact on a substantial number of small entities. SCAP's membership includes several small entities serving a population of 50,000 or less that may be significantly affected by the CTR. In addition, all, of our members provide sewer services to all or most of the small businesses in their service areas. These businesses potentially will be affected by the proposed rule through increased

regulation of their discharges, increased sewer discharge fees, or both. EPA's conclusion appears to be based on the fact that the one minor municipal discharger that EPA studied had no effluent data for the CTR pollutants, and EPA therefore assumed that no costs would be incurred by any small municipal dischargers in the State. This reasoning is erroneous. We therefore request that EPA revise its Economic Analysis to fully examine the impact of the proposed rule on small entities, to re-analyze significant alternatives to the proposed rule (including those alternatives that would minimize any significant economic impact of the proposed rule on small entities), and to allow for meaningful involvement in the development of the rule by small entities.

Response to: CTR-034-005

EPA did not base its rationale for RFA compliance based on its assessment of the minor discharger in its Economic Analysis for the proposed CTR. With respect to the rationale for EPA's compliance with the Regulatory Flexibility Act see response to CTR-001-008b. The classification of minor and major dischargers is based on flow, not population served. EPA did include additional minor dischargers in its sample for its Final Economic Analysis in order to more accurately assess the potential cost of CTR implementation on minor dischargers throughout California.

Comment ID: CTR-035-041

Comment Author: Tri-TAC/CASA

Document Type: Trade Org./Assoc.

State of Origin: CA

Represented Org:

Document Date: 09/25/97

Subject Matter Code: R RFA/SBREFA

References:

Attachments? N

CROSS REFERENCES

Comment: pp. 42191 - 42192 -- The Regulatory Flexibility Act EPA's position that the Regulatory Flexibility Act (5 U.S.C.A. 601 et seq.) does not apply is incorrect. While EPA takes the position (p. 42192) that "the criteria or standards themselves do not apply to any discharger, including small entities," we believe that these statements are erroneous, since, as noted on p. 42182, "once an appropriate numeric criterion is selected for either aquatic life or human health protection, this facilitates the calculation of water quality-based effluent limits and/or total maximum daily loads (TMDLs) for that chemical." In fact, EPA itself oversees State issuance of these permits. EPA's reliance on the United States Distribution case cited at p. 42192 to demonstrate why the requirements of the Regulatory Flexibility Act do not apply is misplaced; that case involved the issue of whether the FERC needed to prepare a regulatory flexibility analysis ("RFA") when issuing its Order No. 636. The court determined that the RFA requirement did not apply in this case because of the statutory language exempting regulatory rulemaking where the agency determines "that the rule will not have a significant economic impact on a substantial number of small entities that are subject to the requirements of the rule. " (88 F.3d 1170) The court went on to note that the FERC did not even have authority to regulate the small entities allegedly affected by the rule. The exemption purportedly established by the United States Distribution case cannot be applied in this instance because the standards in the CTR are required by federal and state law to be implemented directly into NPDES permits, through water quality based effluent limitations calculated directly from the numerical criteria in the rule, as well as through load reductions to comply

with TMDLs derived from the standards. Under the Clean Water Act, every NPDES permit issued in California requires compliance with applicable water quality objectives and this will include those proposed in the CTR. Further, EPA has authority to apply those criteria directly, either by its review and potential veto of state-issued permits or its direct issuance of permits in cases where it has vetoed a state permit under Section 402(a) and (d) of the Clean Water Act. Accordingly, the Regulatory Flexibility Act requires EPA not only to prepare an official RFA, but to comply with the procedural requirements of Section 609(b) of the Act, including the requirement to notify and involve the Chief Counsel for Advocacy of the Small Business Administration.

Response to: CTR-035-041

See response to CTR-001-008b and the preamble to the proposed rule.

Comment ID: CTR-036-004b

Comment Author: County of Orange

Document Type: Local Government

State of Origin: CA

Represented Org:

Document Date: 09/25/97

Subject Matter Code: R RFA/SBREFA

References: Letter CTR-036 incorporates by reference letters CTR-013, CTR-018, CTR-031, CTR-034 and CTR-040

Attachments? N

CROSS REFERENCES J

Comment: Finally, EPA has not met its duties under the Regulatory Flexibility Act (the "RFA"). Under the RFA, federal agencies are required to conduct an initial regulatory flexibility analysis ("IRFA") describing the impact of a proposed regulatory action on small entities. Once more relying on the claim that the proposed rule does not establish criteria that are directly applicable to small entities, EPA states that the mandates of RFA do not apply [62 Fed. Reg. 41160, 42191-92].

This position is contrary to both the letter and the spirit of the RFA. The fact that the toxics criteria contained in the proposed rule must be translated into water quality standards and, in turn, NPDES permit effluent limitations, does not negate the fact that the burden of complying and implementing such toxics criteria ultimately will be borne by individual municipalities and business entities. As noted above, the costs to municipalities alone could run into billion of dollars placing a severe strain on their budgets and forcing them to divert funds currently allocated to other important municipal services, including public safety.

Moreover, EPA's statement that "California will have a number of discretionary choices associated with permit writing" is disingenuous and ironic in light of EPA's rationale for issuing the proposed rule. The toxics criteria will necessarily narrow the State's discretion in issuing NPDES permits and in establishing effluent limits for such permits. If EPA had meant for the State to have any serious discretion, it would not be promulgating these criteria in the first place.

Response to: CTR-036-004b

See response to comment CTR-036-004a (Category J; Stormwater Economics).

Comment ID: CTR-038-005b
Comment Author: Sonoma County Water Agency
Document Type: Sewer Authority
State of Origin: CA
Represented Org:
Document Date: 09/25/97
Subject Matter Code: R RFA/SBREFA
References:
Attachments? Y
CROSS REFERENCES E-01c; S

Comment: A further consequence of the flawed economic analysis is the conclusion that the CTR is not a major rule (i.e., one which will result in excess of \$100 million per year expenditure) subject to Presidential Executive order 12866 and the Unfunded Mandates Reform Act or a rule that affects small entities protected under the Regulatory Reform Act. The District, for example, is a small community having a population of under 50,000 and, in addition, serves several small towns and communities (Sonoma, Glen Ellen, Boyes Hot Springs and Agua Caliente) that would be greatly impacted by the proposed rule.

Response to: CTR-038-005b

See responses to CTR-001-008b, CTR-021-005c (Category E-01c; Executive Order 12866), CTR-036-003a (Category S; Unfunded Mandates Reform Act), and the preamble to the proposed rule.

Comment ID: CTR-038-006c
Comment Author: Sonoma County Water Agency
Document Type: Sewer Authority
State of Origin: CA
Represented Org:
Document Date: 09/25/97
Subject Matter Code: R RFA/SBREFA
References:
Attachments? Y
CROSS REFERENCES C-21; E-01c; S

Comment: 5. The proposed rule is inconsistent with applicable Federal law and regulations. In proposing a single set of criteria for all estuaries, the rule is inconsistent with the Clean Water Act and EPA's water quality standards regulations. The Clean Water Act requires that water quality standards be established taking into consideration their use and value for public water supplies, propagation of fish and wildlife, and recreational purposes (see CWA section 303(c)(2)(A)). Consistent with this, EPA regulations require that water quality standards be based on identification of "specific water bodies where toxic pollutants may be adversely affecting water quality or the attainment of the designated water use or where the levels of toxic pollutants are at a level to warrant concern..." For those identified waters, "states must adopt criteria for such toxic pollutants applicable to the water body sufficient to protect the designated use" (See 40 CFR 131.11(a)(2)). Clearly the intent of both the Clean Water Act and EPA regulations is that water quality standards be tailored to the characteristics of the waters in question. In

failing to properly evaluate the rule's economic impacts and in failing to adequately consider regulatory alternatives, the rule is inconsistent with Presidential Executive Order 12866 and the Unfunded Mandates Reform Act. Moreover, in failing to properly consider the impacts on small entities, such as the District and the small communities it serves, the rule is inconsistent with the Regulatory Flexibility Act.

Response to: CTR-038-006c

With respect to EPA's decision to publish a single set of criteria in the rule, see responses to CTR-035-012a and CTR-036-005 (both responses are in Category C-21; Legal issues). For a discussion of how the rule complies with the E.O. 12866, the Unfunded Mandates Reform Act, and Regulatory Flexibility Act, see responses to CTR-001-008b, CTR-021-005c (Category E-01c; Executive Order 12866), CTR-036-003a (Category S; Unfunded Mandates Reform Act), and the preamble to the proposed rule.

Comment ID: CTR-038-008c
Comment Author: Sonoma County Water Agency
Document Type: Sewer Authority
State of Origin: CA
Represented Org:
Document Date: 09/25/97
Subject Matter Code: R RFA/SBREFA
References:
Attachments? Y
CROSS REFERENCES C-24; E-01c; S; T

Comment: 7. Separate, sites-specific aquatic life criteria for copper and human health criteria for mercury should be adopted for Schell Slough, or alternatively EPA should specify implementation procedures for these criteria that will preclude unreasonable controls such as end-of-pipe treatment. To comply with the Clean Water Act and EPA regulations, EPA should consider specific water bodies. To fulfill the spirit of Presidential Executive Order 12866 and the requirements of the Unfunded Mandates Reform Act and the Regulatory Flexibility Act, EPA should evaluate regulatory alternatives based on an analysis of costs and benefits. Based on the assessment of costs and benefits described in "3" above, EPA should either adopt the criteria that is currently achieved, or alternatively specify implementation procedures that would allow the current discharge to continue (e.g., allowable Mixing zones and averaging periods and, for copper, a translator and water-effect ratio). Again, the District is amenable to continuing to address these constituents through pollution prevention measures and to assessing the actual impacts of these constituents in Schell Slough. Without EPA specifying such implementation procedures in the CTR, it is possible that the CTR could impose significant costs on the District (and the other small communities its serves) without providing a commensurate environmental benefit. In that case, the CTR would be inconsistent with the Clean Water Act, EPA regulations, Presidential Executive Order 12866, the Unfunded Mandates Reform Act and the Regulatory Flexibility Act.

Response to: CTR-038-008c

See response to CTR-038-008a Category C-24; Site-Specific Criteria. See responses to CTR-034-010b and CTR-060-010 (Category C-28; Detection Limits). For a discussion of how the rule complies with the E.O. 12866, the Unfunded Mandates Reform Act, and Regulatory Flexibility Act, see responses to CTR-001-008b, CTR-021-005c (Category E-01c; Executive Order 12866), CTR-036-003a (Category S;

Unfunded Mandates Reform Act), and the preamble to the proposed rule.

Comment ID: CTR-038-009c

Comment Author: Sonoma County Water Agency

Document Type: Sewer Authority

State of Origin: CA

Represented Org:

Document Date: 09/25/97

Subject Matter Code: R RFA/SBREFA

References:

Attachments? Y

CROSS REFERENCES C-28; E-01n; S

Comment: 8. EPA should not adopt criteria for any pollutant where the method detection limit exceeds the objective and there is insufficient detectable, reliable data to determine if the pollutant could reasonably be expected to interfere with designated uses. The proposed rule includes criteria for a number of constituents where there is insufficient data to determine whether the discharge of such pollutants could reasonably be expected to interfere with the designated uses. EPA has chosen to promulgate criteria for these constituents even though section 303 (c)(2)(B) of the Clean Water Act requires States to adopt numeric criteria only for constituents "...the discharge or presence of which in the affected waters could reasonably be expected to interfere with those designated uses adopted by the State, as necessary to support such designated uses." Clearly, this "play-it-safe" approach goes beyond the requirements of the Clean Water Act and is therefore unnecessary. By taking this approach, however, EPA is unable to fulfill its duty (under Presidential Order 12866, the Unfunded Mandates Reform Act, and the Regulatory Flexibility Act) to assess the costs, benefits, and impacts of the rule on local government and small entities. While this may be the conservative approach for EPA, it places dischargers throughout the State at risk. As analytical detection limits improve, dischargers may find they are unable to achieve the criteria without costly end-of-pipe controls. But, by then, it will be too late for EPA to evaluate the costs and benefits of the criteria and alternative criteria. For these reasons, EPA must not adopt criteria for those constituents. If EPA does adopt criteria for those constituents, EPA must evaluate the costs and benefits of the criteria, as well as alternative criteria, using worst case assumptions (i.e., assume that discharge levels and ambient levels are at the detection limits). With respect to the District's discharge and Schell Slough and Second Napa Slough, the criteria in this category include, but are not necessarily limited to, the following : benzo(a)anthracene, benzo(a)pyrene, benzo(b)fluoranthene, benzo(k)fluoranthene, chrysene, dibenzo(a,h)anthracene, aldrin, 4,4'-DDD, 4,4'-DDE, dieldrin, endosulfan I, endosulfan II, endosulfan sulfate, heptachlor, heptachlor epoxide, toxaphene, PCB-1016, OCB-1221, PCB-1232, PCB-1242, PCB-1248, PCB-1254, PCB-1260, and hexachlorobenzene (see Table 3).

Response to: CTR-038-009c

See responses to CTR-034-010b and CTR-060-010 (Category C-28; Detection Limits). For a discussion of how the rule complies with the E.O. 12866, the Unfunded Mandates Reform Act, and Regulatory Flexibility Act, see responses to CTR-001-008b, CTR-021-005c (Category E-01c; Executive Order 12866), CTR-036-003a (Category S; Unfunded Mandates Reform Act), and the preamble to the proposed rule.

Comment ID: CTR-040-009a
Comment Author: County of Sacramento Water Div
Document Type: Storm Water Auth.
State of Origin: CA
Represented Org:
Document Date: 09/25/97
Subject Matter Code: R RFA/SBREFA
References: Letter CTR-040 incorporates by reference letter CTR-027
Attachments? Y
CROSS REFERENCES S; E-01c

Comment: MAJOR CONCERNS

We do, however, have fundamental concerns with the Rule as it is presently proposed and its supporting economic analysis. We believe the Rule can be modified in a manner that will be responsive to our concerns while at the same time being consistent with applicable Federal law and regulations. Our major concerns are presented here and are followed by our recommended modifications.

II. Concern: The economic analysis upon which the Rule is based is seriously flawed.

* A consequence of the cost/benefit analysis of the Rule are several erroneous conclusions, namely that: (1) this is not a "significant regulatory action" or a major rule (i.e., one which will result in excess of \$100 million annual expenditure) subject to the requirements contained in Presidential Executive Order 12866 and the Unfunded Mandates Reform Act; and (2) this is not a rule that will have a significant economic impact on a substantial number of small entities protected under the Regulatory Flexibility Act.

Response to: CTR-040-009a

See responses to CTR-001-008b, CTR-021-005c (Category E-01c; Executive Order 12866), CTR-036-003a (Category S; Unfunded Mandates Reform Act), and the preamble to the proposed rule.

Comment ID: CTR-040-010b
Comment Author: County of Sacramento Water Div
Document Type: Storm Water Auth.
State of Origin: CA
Represented Org:
Document Date: 09/25/97
Subject Matter Code: R RFA/SBREFA
References: Letter CTR-040 incorporates by reference letter CTR-027
Attachments? Y
CROSS REFERENCES J

Comment: MAJOR CONCERNS

We do, however, have fundamental concerns with the Rule as it is presently proposed and its supporting economic analysis. We believe the Rule can be modified in a manner that will be responsive to our concerns while at the same time being consistent with applicable Federal law and regulations. Our major concerns are presented here and are followed by our recommended modifications.

* The cities of Folsom and Galt, co-permittees in our stormwater program, both have populations less than 50,000. Their costs associated with complying with the effluent limitations proposed in the Rule would be significant (on the order of \$10 million annually for each city). Therefore, the EPA Administrator's certification that the Rule would have no effect on small entities, pursuant to the requirements of the Regulatory Flexibility Act, is incorrect.

Response to: CTR-040-010b

With respect to EPA's compliance with the Regulatory Flexibility Act see response to CTR-001-008b. With respect to the commenter's estimate of its stormwater costs see response to CTR-040-004 (Category J; Stormwater Economics).

Comment ID: CTR-040-013

Comment Author: County of Sacramento Water Div

Document Type: Storm Water Auth.

State of Origin: CA

Represented Org:

Document Date: 09/25/97

Subject Matter Code: R RFA/SBREFA

References: Letter CTR-040 incorporates by reference letter CTR-027

Attachments? Y

CROSS REFERENCES

Comment: MAJOR CONCERNS

We do, however, have fundamental concerns with the Rule as it is presently proposed and its supporting economic analysis. We believe the Rule can be modified in a manner that will be responsive to our concerns while at the same time being consistent with applicable Federal law and regulations. Our major concerns are presented here and are followed by our recommended modifications.

III. Concern: The proposed Rule violates applicable Federal law and regulations

* In failing to consider the impacts on small entities (e.g., for bringing stormwater into compliance with WQBELs based on the Rule's criteria), the Rule is inconsistent with the Regulatory Flexibility Act (See Attachment B).

Response to: CTR-040-013

See response to CTR-001-008b and the preamble to the rule.

Comment ID: CTR-040-056

Comment Author: County of Sacramento Water Div

Document Type: Storm Water Auth.

State of Origin: CA

Represented Org:

Document Date: 09/25/97

Subject Matter Code: R RFA/SBREFA

References: Letter CTR-040 incorporates by reference letter CTR-027

Attachments? Y

CROSS REFERENCES

Comment: 3. The California Toxics Rule is inconsistent with the Regulatory Flexibility Act.

The Regulatory Flexibility Act (RFA, 5 U.S.C. section 601 et seq.) requires that each federal agency, including EPA, publish in the Federal Register twice a year a regulatory flexibility agenda which contains a brief description of the subject area of any rule which the agency expects to promulgate which is likely to have a significant economic impact on a substantial number of small entities (includes municipalities with a population of less than 50,000). Because EPA contends that the CTR does not significantly or uniquely affect small entities, EPA does not believe it is required under the RFA to describe the impact of the proposed rule, which accomplish the stated objectives and which minimize any significant economic impact of the proposed rule on small entities.

The EPA Administrator has certified that the rule will not, if promulgated, have a significant economic impact on a substantial number of small entities. However, because the CTR will in fact have a significant economic impact on a substantial number of small entities, the Administrator's certification can be challenged as being arbitrary and capricious under the Administrative Procedures Act. If that challenge were successful, then the CTR could not be re-promulgated until the required final regulatory flexibility analysis has been completed by the Agency.

Furthermore, any small entity that is adversely affected or aggrieved by final CTR is entitled to judicial review of agency compliance with the requirements of the RFA. The judicial relief possible in a challenge made by a small entity is as follows:

- Remand of the rule, and - Deferred enforcement of the rule against small entities unless the courts find that continued enforcement of the rule is in the public interest.

Response to: CTR-040-056

See response to CTR-001-008b and the preamble of the final rule.

Comment ID: CTR-041-013b

Comment Author: Sacramento Reg Cnty Sanit Dist

Document Type: Sewer Authority

State of Origin: CA

Represented Org:

Document Date: 09/25/97

Subject Matter Code: R RFA/SBREFA

References:

Attachments? N

CROSS REFERENCES E-01c; S

Comment: 8. The proposed Rule is Inconsistent with Applicable Federal Law and Regulations

The proposed rule is inconsistent with applicable Federal law and regulations. In proposing a single set

of criteria for all estuaries, the rule is inconsistent with the Clean Water Act and EPA's water quality standards regulations. (See attached Legal Analysis of the Proposed California Toxics Rule) to properly evaluate the rule's economic impacts and in failing to adequately consider alternative criteria for San Francisco Bay Area waters, the rule is inconsistent with Presidential Executive Order 12866 and the Unfunded Mandates Reform Act (Id). In failing to properly consider the impacts on small entities, the rule is inconsistent with the Regulatory Flexibility Act (Id).

Thank you for the opportunity to provide comments on this important new rule. Please call if you have any questions regarding our letter.

Response to: CTR-041-013b

With respect to EPA's decision to publish a single set of criteria in the rule, see responses to CTR-035-012a and CTR-036-005 (both responses are in Category C-21; Legal issues). For a discussion of how the rule complies with the E.O. 12866, the Unfunded Mandates Reform Act, and Regulatory Flexibility Act, see responses to CTR-001-008b, CTR-021-005c (Category E-01c; Executive Order 12866), CTR-036-003a (Category S; Unfunded Mandates Reform Act), and the preamble to the proposed rule.

Comment ID: CTR-041-017

Comment Author: Sacramento Reg Cnty Sanit Dist

Document Type: Sewer Authority

State of Origin: CA

Represented Org:

Document Date: 09/25/97

Subject Matter Code: R RFA/SBREFA

References:

Attachments? N

CROSS REFERENCES

Comment: 3. The California Toxics Rule is inconsistent with the Regulatory Flexibility Act.

The Regulatory Flexibility Act (RFA, 5 U.S.C. section 601 et seq.) requires that each federal agency, including EPA, publish in the Federal Register twice a year a regulatory flexibility agenda which contains a brief description of the subject area of any rule which the agency expects to promulgate which is likely to have a significant economic impact on a substantial number of small entities (includes municipalities with a population less than 50,000) Because EPA contends that the CTR does not significantly or uniquely affect small entities, EPA does not believe it is required under the RFA to describe the impact of the proposed rule on small entities or to describe any significant alternatives to the proposed rule, which accomplish the stated objectives and which minimize any significant economic impact of the proposed rule on small entities.

The EPA Administrator has certified that the rule will not, if promulgated, have a significant economic impact on a substantial number of small entities. However, because the CTR will in fact have a significant economic impact on a substantial number of small entities, the Administrator's certification can be challenged as being arbitrary and capricious under the Administrative Procedures Act. If that challenge were successful, then the CTR could not be re-promulgated until the required final regulatory flexibility analysis has been completed by the agency.

Furthermore, any small entity that is adversely affected or aggrieved by final CTR is entitled to judicial review of agency compliance with the requirements of the RFA. The judicial relief possible in a challenge made by a small entity is as follows:

- Remand of the rule, and
- Deferred enforcement of the rule against small entities unless the court finds that continued enforcement of the rule is in the public interest.

Response to: CTR-041-017

See response to CTR-001-008b and the preamble to the final rule.

Comment ID: CTR-043-005c
Comment Author: City of Vacaville
Document Type: Local Government
State of Origin: CA
Represented Org:
Document Date: 09/26/97
Subject Matter Code: R RFA/SBREFA
References:
Attachments? Y
CROSS REFERENCES C-21; E-01c; S

Comment: 5. The proposed rule is inconsistent with applicable Federal law and regulations.

In proposing a single set of criteria for all estuaries, the rule is inconsistent with the Clean Water Act and EPA's water quality standards regulations. The Clean Water Act requires that water quality standards be established taking into consideration their use and value for public water supplies, propagation of fish and wildlife, recreational purposes (see CWA section 303(c)(2)(A)). Consistent with this, EPA regulations require that water quality standards be based on identification of "specific water bodies where toxic pollutants may be adversely affecting water quality or the attainment of the designated water use or where the levels of toxic pollutants are at a level to warrant concern..." For those identified waters, "states must adopt criteria for such toxic pollutants applicable to the water body sufficient to protect the designated use"(See 40 CFR 131.1 I (a)(2)). Clearly the intent of both the Act and EPA regulations is that water quality standards be tailored to the characteristics of the waters in question. In failing to properly evaluate the rule's economic impacts and in failing to adequately consider regulatory alternatives, the rule is inconsistent with Presidential Executive Order 12866 and the Unfunded Mandates Reform Act. Moreover, in failing to properly consider the impacts on small entities, the rule is inconsistent with the Regulatory Flexibility Act.

Response to: CTR-043-005c

With respect to EPA's decision to publish a single set of criteria in the rule, see responses to CTR-035-012a and CTR-036-005 (both responses are in Category C-21; Legal issues). For a discussion of how the rule complies with the E.O. 12866, the Unfunded Mandates Reform Act, and Regulatory Flexibility Act, see responses to CTR-001-008b, CTR-021-005c (Category E-01c; Executive Order

12866), CTR-036-xxx (Category S; Unfunded Mandates Reform Act), and the preamble to the proposed rule.

Comment ID: CTR-044-005f

Comment Author: City of Woodland

Document Type: Local Government

State of Origin: CA

Represented Org:

Document Date: 09/26/97

Subject Matter Code: R RFA/SBREFA

References:

Attachments? Y

CROSS REFERENCES E-01g08; E-01h01; E-01m; E-02c; E-01c02; S

Comment: We have reviewed the proposed CTR and offer the following comments:

4. EPA's Economic Analysis is seriously flawed. The major flaws include:

(1) failing to do an appropriate sampling of small dischargers having little or no dilution; (2) assuming in the high-end cost scenario that a 25% reduction could be achieved through source control and an additional 25% achieved through treatment plant optimization without capital improvements; (3) constraining estimates of potential costs through key assumptions, including the assumption that regulatory relief from the rule would be granted if costs were in excess of certain thresholds; and (4) exaggerating estimates of potential benefits by assuming an end (i.e., achievement of the proposed water quality criteria) that will not result from the rule. Additional concerns with the economic analysis are presented in Exhibit F. The result of these flaws is that potential costs are greatly understated and potential benefits are greatly overstated. Moreover, the flawed economic analysis has led to the erroneous conclusion that the CTR is not a "significant regulatory action" or major rule subject to Presidential Executive Order 12866 and the Unfunded Mandates Reform Act or a rule that affects small entities protected under the Regulatory Flexibility Act. The City, for example, is a small community having a population of under 50,000 and would be greatly impacted by the proposed rule.

Response to: CTR-044-005f

See responses to CTR-054-013a, CTR-021-005c, CTR-032-004, CTR-021-008, CTR-040-029a, CTR-059-018 (all comments in Category E-01; CTR Cost Comments), and CTR-036-003a (Category S; UMRA).

Comment ID: CTR-044-006c

Comment Author: City of Woodland

Document Type: Local Government

State of Origin: CA

Represented Org:

Document Date: 09/26/97

Subject Matter Code: R RFA/SBREFA

References:

Attachments? Y

CROSS REFERENCES C-21; E-01c; S

Comment: We have reviewed the proposed CTR and offer the following comments:

5. The proposed rule is inconsistent with applicable Federal law and regulations.

In proposing a single set of criteria for all estuaries, the rule is inconsistent with the Clean Water Act and EPA's water quality standards regulations. The Clean Water Act requires that water quality standards be established taking into consideration their use and value for public water supplies, propagation of fish and wildlife, recreational purposes (see CWA section 303(c)(2)(A)). Consistent with this, EPA regulations require that water quality standards be based on identification of "specific water bodies where toxic pollutants may be adversely affecting water quality or the attainment of the designated water use or where the levels of toxic pollutants are at a level to warrant concern..." For those identified waters, "states must adopt criteria for such toxic pollutants applicable to the water body sufficient to protect the designated use"(See 40 CFR 131.11 (a)(2)) (see Exhibit G). Clearly the intent of both the Act and EPA regulations is that water quality standards be tailored to the characteristics of the waters in question. In failing to properly evaluate the rule's economic impacts and in failing to adequately consider regulatory alternatives, the rule is inconsistent with Presidential Executive Order 12866 and the Unfunded Mandates Reform Act (Id.). Moreover, in failing to properly consider the impacts on small entities, such as the City, the rule is inconsistent with the Regulatory Flexibility Act (Id.).

Response to: CTR-044-006c

With respect to EPA's decision to publish a single set of criteria in the rule, see responses to CTR-035-012a and CTR-036-005 (both responses are in Category C-21; Legal issues). For a discussion of how the rule complies with the E.O. 12866, the Unfunded Mandates Reform Act, and Regulatory Flexibility Act, see responses to CTR-001-008b, CTR-036-005c (Category E-01c; Executive Order 12866), CTR-036-003a (Category S; Unfunded Mandates Reform Act), and the preamble to the proposed rule.

Comment ID: CTR-044-009c

Comment Author: City of Woodland

Document Type: Local Government

State of Origin: CA

Represented Org:

Document Date: 09/26/97

Subject Matter Code: R RFA/SBREFA

References:

Attachments? Y

CROSS REFERENCES C-28; E-01c; S

Comment: We have reviewed the proposed CTR and offer the following comments:

8. EPA should not adopt criteria for any pollutant where the method detection limit exceeds the objective and there is insufficient detectable, reliable data to determine if the pollutant could reasonably be expected to interfere with designated uses. The proposed rule includes criteria for a number of constituents where there is insufficient data to determine whether the discharge of such pollutants could reasonably be expected to interfere with the designated uses. EPA has chosen to promulgate criteria for

these constituents even though section 303 (c)(2)(B) of the Clean Water Act requires States to adopt numeric criteria only for constituents "... the discharge or presence of which in the affected waters could reasonably be expected to interfere with those designated uses adopted by the State, as necessary to support such designated uses." Clearly, this approach goes beyond the requirements of the Clean Water Act and is therefore unnecessary. Additionally, this approach does not allow EPA to fulfill its duty (under Presidential Order 12866, the Unfunded Mandates Reform Act, and the Regulatory Flexibility Act) to assess the costs, benefits, and impacts of the rule on local government and small entities. While this may be the conservative approach for EPA, it places dischargers throughout the State at risk. As analytical detection limits improve, dischargers may find they are unable to achieve the criteria without costly end-of-pipe controls. But, by then, it will be too late for EPA to evaluate the costs and benefits of the criteria-and-consider alternative criteria. For these reasons, EPA should not adopt criteria for those constituents. If EPA does adopt criteria for those constituents, EPA should evaluate the costs and benefits of toxic criteria, as well as alternative criteria, using worst case assumptions (i.e., assume that discharge levels and ambient levels are at the detection limits).

Response to: CTR-044-009c

See responses to CTR-034-010b and CTR-060-010 (Category C-28; Detection Limits). For a discussion of how the rule complies with the E.O. 12866, the Unfunded Mandates Reform Act, and Regulatory Flexibility Act, see responses to CTR-001-008b, CTR-021-005c (Category E-01c; Executive Order 12866), CTR-036-003a (Category S; Unfunded Mandates Reform Act), and the preamble to the proposed rule.

Comment ID: CTR-044-047

Comment Author: City of Woodland

Document Type: Local Government

State of Origin: CA

Represented Org:

Document Date: 09/26/97

Subject Matter Code: R RFA/SBREFA

References: Letter CTR-040 incorporates by reference letter CTR-027

Attachments? Y

CROSS REFERENCES

Comment: 3. The California Toxics Rule is inconsistent with the Regulatory Flexibility Act.

The Regulatory Flexibility Act (RFA, 5 U.S.C. section 601 et seq.) requires that each federal agency, including EPA, publish in the Federal Register twice a year a regulatory flexibility agenda which contains a brief description of the subject area of any rule which the agency expects to promulgate which is likely to have a significant economic impact on a substantial number of small entities (includes municipalities with a population less than 50,000). Because EPA contends that the CTR does not significantly or uniquely affect small entities, EPA does not believe it is required under the RFA to describe the impact of the proposed rule on small entities or to describe any significant alternatives to the proposed rule, which accomplish the stated objectives and which minimize any significant economic impact of the proposed rule on small entities.

The EPA Administrator has certified that the rule will not, if promulgated, have a significant economic impact on a substantial number of small entities. However, because the CTR will in fact have a

significant economic impact on a substantial number of small entities, the Administrator's certification can be challenged as being arbitrary and capricious under the Administrative Procedures Act. If that challenge were successful, then the CTR could not be re-promulgated until the required final regulatory flexibility analysis has been completed by the agency.

Furthermore, any small entity that is adversely affected or aggrieved by final CTR is entitled to judicial review of agency compliance with the requirements of the RFA. The judicial relief possible in a challenge made by a small entity is as follows:

- Remand of the rule, and - Deferred enforcement of the rule against small entities unless the court finds that continued enforcement of the rule is in the public interest.

Response to: CTR-044-047

See response to CTR-001-008b and the preamble to the final rule.

Comment ID: CTR-047-004b

Comment Author: City of Santa Fe Springs

Document Type: Local Government

State of Origin: CA

Represented Org:

Document Date: 09/24/97

Subject Matter Code: R RFA/SBREFEA

References: Letter CTR-047 incorporates by reference letters CTR-013 and CTR-027.

Attachments? N

CROSS REFERENCES J

Comment: In addition, we would like to emphasize the following key issues on the California Toxic Rule (CTR), which are of major impact to our storm water program:

4. The proposed rule applies to all current and future MS4 dischargers, including small communities. The small communities will be significantly by the proposed rule. In California, there are many small communities that are currently co-permittee to MS4 permits. Many of the larger municipalities in California have conducted storm water discharge characterization studies. These studies have shown that there are common pollutants associated with storm-water discharges from urbanized areas that could result in compliance problems with the proposed criteria . Most small communities have not conducted discharge characterization studies; however, it is reasonable to assume that discharges from small communities would also contain these same pollutants. This would result in a smaller community being faced with the same compliance issues as large and medium municipalities; however, the cost to comply could be more significant and prohibitive for smaller communities.

The Regulatory Flexibility Act requires the USEPA to conduct an analysis on the economic impact the proposed rule may have on small entities, unless the USEPA certifies that the rule will not affect a significant number of small entities. In the preamble to the proposed rule, it indicates that there are no small entities to be impacted by the rule, and, therefore, the USEPA did not need to complete an analysis required under the Act. The USEPA neglected to address small MS4 communities in California that are currently subject to MS4 permits, and those smaller communities that may be impacted through Phase II. The USEPA should have conducted an analysis on the economic impacts to smaller communities.

Unless the preamble is modified to indicate that MS4s are not required to comply with water quality standards, the proposed rule should not be applied to smaller MS4 communities until the USEPA has complied with the requirements of the Regulatory Flexibility Act.

Response to: CTR-047-004b

See responses to CTR-013-003, CTR-040-004, (Category J; Stormwater Economics), and CTR-001-008b.

Comment ID: CTR-050-007c

Comment Author: Sonnenschein Nath & Rosenthal

Document Type: Trade Org./Assoc.

State of Origin: CA

Represented Org: American Petrol

Document Date: 09/26/97

Subject Matter Code: R RFA/SBREFA

References:

Attachments? N

CROSS REFERENCES C-21; E-01c; S

Comment: IV. EPA Has Not Complied With Applicable Regulatory Review Requirements. There are several significant statutes and executive orders that require EPA to undertake analyses of the costs and benefits of its regulations, and to submit the regulations and analyses to other governmental bodies, including the Office of Management and Budget (OMB) and Congress. Those authorities include the Regulatory Flexibility Act, the Small Business Regulatory Enforcement and Fairness Act (SBREFA), the Unfunded Mandates Reform Act, the Congressional Review Act, and Executive Order 12866 (Regulatory Planning and Review). EPA apparently believes that it does not need to comply with any of those requirements for this rulemaking. (62 Fed. Reg. at 42188-42191). API believes that EPA is required to meet those obligations for the proposed criteria, and that the Agency's rationale for avoiding this responsibility has no legal basis.

EPA supports its decision not to comply with the regulatory review statutes by stating that the proposed criteria "by themselves, do not directly impose economic impacts." (62 Fed. Reg. at 42188). EPA admits that when those criteria are combined with the designated uses that have been adopted by the State, and implemented in permit limits, "there may be a cost to some dischargers." (62 Fed. Reg. at 42188) could be substantial; the Agency itself estimates that the compliance cost could be between \$15 and \$87 million per year. (62 Fed. Reg. at 42189). (That does not include indirect costs to the economy, which would surely put this rule above the \$100 million impact threshold specified in several of the regulatory review statutes listed above.) EPA cannot ignore those costs by creating its own interpretation of those statutes in which only "direct" impacts need be considered. There is no support in the statutory language or legislative history for such a reading, and EPA has cited no such support in its Federal Register notice.

There is another problem with EPA's rationale for avoiding regulatory review: if EPA were right that "indirect" impacts do not trigger those reviews, the impacts of this rulemaking are not really "indirect." Those impacts emerge clearly once the proposed criteria are combined with the State's designated uses. Those designations have already been established, so there is nothing uncertain or indefinite about that aspect of the water quality standards. Then, once the standards are completed, the State must implement

those standards through permit limits. While there are some decisions that the State must make in determining the proper permit limits, which can influence the size of the compliance costs, EPA can readily determine a range of possible costs. In fact, the Agency has already done so, resulting in the \$15 - \$87 million cost range discussed above. While those costs may not be fixed with certainty, they are certainly "direct economic impacts". Therefore, even if the Agency were correct in looking at only "direct" impacts, this rulemaking poses such impacts, and EPA must comply with the statutory requirements to conduct and submit cost and benefit analyses of its proposed criteria.

V. CONCLUSION

As explained above, EPA's proposal to issue water quality criteria for toxicities in the State of California suffers from serious legal flaws. API urges the Agency to reconsider its intended course of action in light of the issues raised in these and other public comments. If you have any questions regarding these comments, or would like any additional information, please call Theresa Pugh at 202/682-8036.

Response to: CTR-050-007c

See responses to CTR-001-008b, CTR-050-007a (Category C-21; Legal Concerns), CTR-021-005c (Category E-01c; Executive Order 12866), CTR-036-003a (Category S; Unfunded Mandates Reform Act), and the preamble to the proposed rule.

Comment ID: CTR-052-021c

Comment Author: East Bay Dischargers Authority

Document Type: Sewer Authority

State of Origin: CA

Represented Org:

Document Date: 09/26/97

Subject Matter Code: R RFA/SBREFA

References: Letter CTR-052 incorporates by reference letters CTR-035 and CTR-054

Attachments? Y

CROSS REFERENCES C-21; E-01c; S

Comment: C. RECOMMENDATIONS FOR MODIFICATIONS TO THE CTR AND EA

EPA should revise the proposed rule and economics analysis such that they are consistent with applicable Federal law and regulations. In proposing a single set of criteria for all estuaries, the rule is inconsistent with the Clean Water Act and EPA's water quality standards regulations. In failing to properly evaluate the rule's economic impacts and in failing to adequately consider alternative criteria for San Francisco Bay Area waters, the rule is inconsistent with Presidential Executive Order 12866 and the Unfunded Mandates Reform Act. In failing to properly consider the impacts on small entities, the rule is inconsistent with the Regulatory Flexibility Act. Specific citations for these inconsistencies are contained in comments from BADA and CASA/Tri-TAC.

Response to: CTR-052-021c

With respect to EPA's decision to publish a single set of criteria in the rule, see responses to CTR-035-012a and CTR-036-005 (both responses are in Category C-21; Legal issues). For a discussion of how the rule complies with the E.O. 12866, the Unfunded Mandates Reform Act, and Regulatory

Flexibility Act, see response to CTR-001-008b, CTR-036-005c (Category E-01c; Executive Order 12866), CTR-036-003a (Category S; Unfunded Mandates Reform Act), and the preamble to the proposed rule.

Comment ID: CTR-054-008d
Comment Author: Bay Area Dischargers Assoc.
Document Type: Sewer Authority
State of Origin: CA
Represented Org:
Document Date: 09/25/97
Subject Matter Code: R RFA/SBREFA
References:
Attachments? Y
CROSS REFERENCES C-02b; C-24; E-01c; S

Comment: Separate, scientifically defensible, reasonably achievable aquatic life criteria for copper should be adopted for San Francisco Bay, or alternatively EPA should specify in the Preamble implementation policies for copper that will result in reasonable control measures actions. To comply with the Clean Water Act and EPA regulations, EPA is required to consider specific water bodies. To fulfill the spirit of Presidential Executive Order 12866 and the requirements of the Unfunded Mandates Reform Act, EPA is required to evaluate regulatory alternatives based on an analysis of costs and benefits. Based on BADA's analysis of costs and benefits, EPA should either adopt copper criteria that are reasonably achievable or alternatively specify implementation policies that will avoid costly end-of-pipe controls. Potential implementation measures that could be specified include use of the following in calculating effluent limitations: actual dilution based on modeling studies; copper translators; probability of compliance less than 99.9%; and water-effect ratios determined for different segments of the Bay. Unless EPA specifies these or similar implementation policies in the rule, it is possible that the CTR could result in significant costs (\$12 million per year to \$78 million per year) while resulting in minor environmental benefit (a 1% reduction in copper loading to the Bay). In that case, the CTR would violate the Clean Water Act, EPA regulations, Presidential Executive Order 12866, the Unfunded Mandates Reform Act and the Regulatory Flexibility Act. (see the discussion under Item 11 below.)

Response to: CTR-054-008d

See responses to CTR-054-008a (Category C-02b; Copper Aquatic Life), CTR-035-012a and CTR-036-005 (Category C-24; Legal Issues), CTR-021-005c (Category E-01c; Executive Order 12866), CTR-054-013a (Category E-01g3; Cost-Effectiveness Ratio), CTR-001-008b, CTR-036-003a (Category S; Unfunded Mandates Reform Act), and the preamble to the proposed rule.

Comment ID: CTR-054-051
Comment Author: Bay Area Dischargers Associati
Document Type: Sewer Authority
State of Origin: CA
Represented Org:
Document Date: 09/25/97
Subject Matter Code: R RFA/SBREFA

References: Letter CTR-040 incorporates by reference letter CTR-027

Attachments? Y

CROSS REFERENCES

Comment: 3. The California Toxics Rule is inconsistent with the Regulatory Flexibility Act.

The Regulatory Flexibility Act (RFA, 5 U.S.C. section 601 et seq.) requires that each federal agency, including EPA, publish in the Federal Register twice a year a regulatory flexibility agenda which contains a brief description of the subject area of any rule which the agency expects to promulgate which is likely to have a significant economic impact on a substantial number of small entities (includes municipalities with a population less than 50,000). Because EPA contends that the CTR does not significantly or uniquely affect small entities, EPA does not believe it is required under the RFA to describe the impact of the proposed rule on small entities or to describe any significant alternatives to the proposed rule, which accomplish the stated objectives and which minimize any significant economic impact of the proposed rule on small entities.

The EPA Administrator has certified that the rule will not, if promulgated, have a significant economic impact on a substantial number of small entities. However, because the CTR will in fact have a significant economic impact on a substantial number of small entities, the Administrator's certification can be challenged as being arbitrary and capricious under the Administrative Procedures Act. If that challenge were successful, then the CTR could not be re-promulgated until the required final regulatory flexibility analysis has been completed by the agency.

Furthermore, any small entity that is adversely affected or aggrieved by final CTR is entitled to judicial review of agency compliance with the requirements of the RFA. The judicial relief possible in a challenge made by a small entity is as follows:

- Remand of the rule, and - Deferred enforcement of the rule against small entities unless the court finds that continued enforcement of the rule is in the public interest.

Response to: CTR-054-051

See response to CTR-001-008b and the preamble to the final rule.

Comment ID: CTR-059-002b

Comment Author: Los Angeles County Sanit. Dist

Document Type: Sewer Authority

State of Origin: CA

Represented Org:

Document Date: 09/26/97

Subject Matter Code: R RFA/SBREFA

References: Letter CTR-059 incorporates by reference letter CTR-035

Attachments? Y

CROSS REFERENCES E-01c; S

Comment: The Sanitation Districts disagree with EPA's assertions that the CTR is not a significant regulatory action under Executive Order 12866 or the Unfunded Mandates Reform Act, and that EPA is not required to comply with the Regulatory Flexibility Act because the CTR establishes no requirements

applicable to small entities. We believe the potential costs for POTWs to comply with the CTR criteria would far exceed the \$ 100 million threshold, based on the fact that we estimate that the potential costs for seven Sanitation Districts' facilities to comply with the CTR to be nearly \$150 million per year. Clearly, many of the 304 other POTWs in the State will also incur costs, as will other NPDES permittees, indirect dischargers, stormwater dischargers, and nonpoint sources. Thus, EPA's cost figure of \$15 - \$87 million per year is simply not a credible estimate. Also, it is quite clear that the CTR is likely to adversely affect local governments, including over 40 small communities located in our service area, and that it is significantly different from other federal regulations previously promulgated in California. We believe that EPA has not complied with the mandates of Executive Order 12866, the Unfunded Mandates Reform Act and the Regulatory Flexibility Act. Accordingly, EPA must revise the economic analysis and it must be reviewed by the Office of Management and Budget and then EPA must select the most cost-effective and least burdensome regulatory alternative.

Response to: CTR-059-002b

See responses to CTR-001-008b, CTR-021-005c (Category E-01c; Executive Order 12866), CTR-036-003a (Category S; Unfunded Mandates Reform Act), and the preamble to the proposed rule.

Comment ID: CTR-059-016

Comment Author: Los Angeles County Sanit. Dist

Document Type: Sewer Authority

State of Origin: CA

Represented Org:

Document Date: 09/26/97

Subject Matter Code: R RFA/SBREFA

References: Letter CTR-059 incorporates by reference letter CTR-035

Attachments? Y

CROSS REFERENCES

Comment: Regulatory Flexibility Act

Contrary to EPA's finding in the Preamble that the CTR "establishes no requirements applicable to small entities (p. 4219 1)," we believe that the NPDES permit requirements and TMDLs that will be based on the CTR criteria will apply to small and large entities alike, because, under Section 301 (b)(1)(C) of the Clean Water Act, EPA and States must establish effluent limitations necessary to meet water quality standards. Although the State of California is a delegated NPDES state, EPA has authority to apply the criteria directly, either by its review and potential veto of state-issued permits, or through direct issuance of permits in cases where it has disapproved a state permit under Section 402 of the Clean Water Act. As pointed out by EPA on p. 42165, the scope of the CTR is to "re-establish criteria for the remaining priority toxic pollutants to meet the requirements of section 303(c)(2)(B) of the CWA." Section 303(c)(2)(B) of the Act requires the establishment of water quality standards for toxic pollutants. Thus, EPA is establishing water quality standards, and NPDES permits subsequently issued must contain effluent limitations necessary to meet water quality standards. Thus, EPA's finding is erroneous, and the CTR will establish requirements applicable to small entities.

Of the 78 cities whose Mayors comprise the Sanitation Districts' Board of Directors, 41 are "small communities" with a population of less than 50,000 people.*1) It is likely that some or all of these communities would be significantly affected if any or all of the Sanitation Districts' water reclamation

plants were required to install expensive treatment facilities as a result of the CTR. EPA must to comply with the requirements of the Regulatory Flexibility Act to address the impacts on small communities such as these. Most, if not all, of these communities, would also be subject to CTR compliance requirements as a result of their responsibilities as co-permittees under the Los Angeles County Municipal Storm Water NPDES Permit.

Under the requirements of the Regulatory Flexibility Act, we therefore believe that EPA is required to prepare initial and final regulatory flexibility analyses that describe the impact of the proposed rule on small entities, identify any significant alternatives to the proposed rule that accomplish the stated objectives, and describe any significant alternatives to the proposed rule that minimize any significant economic impact of the proposed rule on small entities.

(*1)These communities include Vernon, Bradbury, Industry, Irwindale, La Habra Heights, El Segundo, Rolling Hills Estates, Signal Hill, Sierra Madre, Commerce, San Marino, Palos Verdes Estates, Hawaiian Gardens, Santa Fe Springs, Artesia, Hermosa Beach, Lakewood, Lomita, La Canada Flintridge, Duarte, South El Monte, Cudahy, South Pasadena, Maywood, Lawndale, Walnut, La Veme, Temple City, Manhattan Beach, San Ditnas, Bell, West Hollywood, Monrovia, San Gabriel, La Puente, Azusa, Rancho Palos Verdes, Bell Gardens, Covina, and La Mirada.

Response to: CTR-059-016

See response to CTR-001-008b.

Comment ID: CTR-062-004b

Comment Author: City of Downey

Document Type: Local Government

State of Origin: CA

Represented Org:

Document Date: 09/24/97

Subject Matter Code: R RFA/SBREFEA

References: Letter CTR-062 incorporates by reference letters CTR-013 and CTR-027

Attachments? N

CROSS REFERENCES J

Comment: In addition, we would like to emphasize the following key issues on the California Toxic Rule (CTR), which are of major impact to our stormwater program:

4. The proposed rule applies to all current and future MS4 discharges, including small communities. The small communities will be significantly impacted by the proposed rule. In California, there are many small communities that are currently co-permittees to MS4 permits. Many of the larger municipalities in California have conducted stormwater discharge characterization studies. These studies have shown that there are common pollutants associated with stormwater discharges from urbanized areas that could result in compliance problems with the proposed criteria. Most small communities have not conducted discharge characterization studies; however, it is reasonable to assume that discharges from small communities would also contain these same pollutants. This would result in a smaller community being faced with the same compliance issues as large and medium municipalities; however, the cost to comply could be more significant and prohibitive for smaller communities.

The Regulatory Flexibility Act requires the U.S. EPA to conduct an analysis on the economic impact the proposed rule may have on small entities, unless the U.S. EPA certifies that the rule will not affect a significant number of small entities. In the preamble to the proposed rule, it indicates that there are no small entities to be impacted by the rule, and, therefore, the U.S. EPA did not need to complete an analysis required under the Act. The U.S. EPA neglected to address small MS4 communities in California that are currently subject to MS4 permits, and those smaller communities that may be impacted through Phase II. The U.S. EPA should have conducted an analysis on the economic impacts to smaller communities.

Unless the preamble is modified to indicate that MS4s are not required to comply with water quality standards, the proposed rule should not be applied to smaller MS4 communities until the U.S. EPA has complied with the requirements of the Regulatory Flexibility Act.

Response to: CTR-062-004b

See responses to CTR-013-003, CTR-040-004, (Category J; Stormwater Economics), and CTR-001-008b.

Comment ID: CTR-067-006a
Comment Author: Ojai Valley Sanitary District
Document Type: Sewer Authority
State of Origin: CA
Represented Org:
Document Date: 09/26/97
Subject Matter Code: R RFA/SBREFA
References:
Attachments? N
CROSS REFERENCES E-01d01

Comment: * The EPA should reevaluate their determination under the Regulatory Flexibility Act that the rule will not have a significant economic impact on a substantial number of small entities. OVSD would be classified as a small entity, serving a population of 25,000, and would be significantly affected by the CTR. OVSD would have to further treat our effluent with reverse osmosis in order to comply with proposed CTR criteria, specifically for copper, nickel, zinc, lindane, and trihalomethanes; modifications to the existing plant would result in estimated increased annualized costs of \$1.98 million. These costs are significantly higher than EPA's estimated costs per plant of \$27,000 to \$480,000 per year. In addition, EPA must consider that OVSD's contingent of small businesses potentially will be affected by the proposed rule through increased regulation of their discharges, increased sewer discharge fees, or product bans. Thus we strongly believe that the EPA's Economic Analysis significantly underestimates the potential statewide costs associated with adoption of the CTR and should be revised.

Response to: CTR-067-006a

See response to CTR-001-008b and CTR-045-012b (Category E-01c; Executive Order 12866).

Comment ID: CTR-071-004b

Comment Author: City of Rosemead
Document Type: Local Government
State of Origin: CA
Represented Org:
Document Date: 09/25/97
Subject Matter Code: R RFA/SBREFA
References: Letter CTR-071 incorporates by reference letter CTR-013 and CTR-027
Attachments? N
CROSS REFERENCES J

Comment: In addition, we would like to emphasize the following key issues on the California Toxic Rule (CTR), which are of major impact to our stormwater program.

4. The proposed rule applies to all current and future MS4 dischargers, including small communities. The small communities will be significantly by the proposed rule. In California, there are many small communities that are currently co-permittees to MS4 permits. Many of the larger municipalities in California have conducted stormwater discharge characterization studies. These studies have shown that there are common pollutants associated with stormwater discharges from urbanized areas that could result in compliance problems with the proposed criteria. Most small communities have not conducted discharge characterization studies; however, it is reasonable to assume that discharges from small communities would also contain these same pollutants. This would result in a smaller community being faced with the same compliance issue as large and medium municipalities; however, the cost to comply could be more significant and prohibitive for small communities.

The Regulatory Flexibility Act requires the USEPA to conduct an analysis on the economic impact the proposed rule may have on small entities, unless the USEPA certifies that the rule will not affect a significant number of small entities. In the preamble to the proposed rule it indicates that there are no small entities to be impacted by the rule, and, therefore, the USEPA did not need to complete an analysis required under the Act. The USEPA neglected to address small MS4 communities in California that are currently subject to a MS4 permits, and those smaller communities that may be impacted through Phase II. The USEPA should have conducted an analysis of the economic impacts to smaller communities.

Unless the preamble is modified to indicate that MS4s are not required to comply with water quality standards, the proposed rule should not be applied to smaller MS4 communities until the USEPA has complied with the requirements of the Regulatory Flexibility Act.

Response to: CTR-071-004b

See responses to CTR-013-003, CTR-040-004, (Category J; Stormwater Economics), and CTR-001-008b.

Comment ID: CTR-072-004b
Comment Author: City of Bell Gardens
Document Type: Local Government
State of Origin: CA
Represented Org:
Document Date: 09/25/97
Subject Matter Code: R RFA/SBREFA

References: Letter CTR-072 incorporates by reference letters CTR-013 and CTR-027

Attachments? N

CROSS REFERENCES J

Comment: In addition, we would like to emphasize the following key issues on the California Toxic Rule (CTR), which are of major impact to our stormwater program.

4. The proposed rule applies to all current and future MS4 dischargers, including small communities. The small communities will be significantly impacted by the proposed rule. In California, there are many small communities that are currently co-permittees to MS4 permits. Many of the larger municipalities in California have conducted stormwater discharge characterization studies. These studies have shown that there are common pollutants associated with stormwater discharges from urbanized areas that could result in compliance problems with the proposed criteria. Most small communities have not conducted discharge characterization studies; however, it is reasonable to assume that discharges from small communities would also contain these same pollutants. This would result in a smaller community being faced with the same compliance issue as large and medium municipalities; however, the cost to comply could be more significant and prohibitive for small communities.

The Regulatory Flexibility Act requires the USEPA to conduct an analysis on the economic impact the proposed rule may have on small entities, unless the USEPA certifies that the rule will not affect a significant number of small entities. In the preamble to the proposed rule it indicates that there are no small entities to be impacted by the rule, and, therefore, the USEPA did not need to complete an analysis required under the Act. The USEPA neglected to address small MS4 communities in California that are currently subject to a MS4 permits, and those smaller communities that may be impacted through Phase II. The USEPA should have conducted an analysis of the economic impacts to smaller communities.

Unless the preamble is modified to indicate that MS4s are not required to comply with water quality standards, the proposed rule should not be applied to smaller MS4 communities until the USEPA has complied with the requirements of the Regulatory Flexibility Act.

Response to: CTR-072-004b

See responses to CTR-013-003, CTR-040-004, (Category J; Stormwater Economics), and CTR-001-008b.

Comment ID: CTR-073-004b

Comment Author: City of Paramount

Document Type: Local Government

State of Origin: CA

Represented Org:

Document Date: 09/25/97

Subject Matter Code: R RFA/SBREFEA

References: Letter CTR-073 incorporates by reference letters CTR-013 and CTR-027

Attachments? N

CROSS REFERENCES J

Comment: In addition, we would like to emphasize the following key issues on the California Toxic Rule (CTR), which are of major impact to our stormwater program.

4. The proposed rule applies to all current and future MS4 dischargers, including small communities. The small communities will be significantly impacted by the proposed rule. In California, there are many small communities that are currently co-permittees to MS4 permits. Many of the larger municipalities in California have conducted stormwater discharge characterization studies. These studies have shown that there are common pollutants associated with stormwater discharges from urbanized areas that could result in compliance problems with the proposed criteria. Most small communities have not conducted discharge characterization studies; however, it is reasonable to assume that discharges from small communities would also contain these same pollutants. This would result in a smaller community being faced with the same compliance issue as large and medium municipalities; however, the cost to comply could be more significant and prohibitive for small communities.

The Regulatory Flexibility Act requires the USEPA to conduct an analysis on the economic impact the proposed rule may have on small entities, unless the USEPA certifies that the rule will not affect a significant number of small entities. In the preamble to the proposed rule it indicates that there are no small entities to be impacted by the rule, and, therefore, the USEPA did not need to complete an analysis required under the Act. The USEPA neglected to address small MS4 communities in California that are currently subject to a MS4 permit, and those smaller communities that may be impacted through Phase II. The USEPA should have conducted an analysis of the economic impacts to smaller communities.

Unless the preamble is modified to indicate that MS4s are not required to comply with water quality standards, the proposed rule should not be applied to smaller MS4 communities until the USEPA has complied with the requirements of the Regulatory Flexibility Act.

Response to: CTR-073-004b

See responses to CTR-013-003, CTR-040-004, (Category J; Stormwater Economics), and CTR-001-008b.

Comment ID: CTR-074-004b

Comment Author: City of San Gabriel

Document Type: Local Government

State of Origin: CA

Represented Org:

Document Date: 09/25/97

Subject Matter Code: R RFA/SBREFEA

References: Letter CTR-074 incorporates by reference letters CTR-013 and CTR-027

Attachments? N

CROSS REFERENCES J

Comment: In addition, we would like to emphasize the following key issues on the California Toxic Rule (CTR), which are of major impact to our stormwater program:

4. The proposed rule applies to all current and future MS4 dischargers, including small communities. The small communities will be significantly impacted by the proposed rule. In California, there are many small communities that are currently co-permittees to MS4 permits. Many of the larger municipalities in California have conducted stormwater discharge characterization studies. These studies have shown that there are common pollutants associated with stormwater discharges from urbanized areas that could

result in compliance problems with the proposed criteria. Most small communities have not conducted discharge characterization studies; however, it is reasonable to assume that discharges from small communities would also contain these same pollutants. This would result in a smaller community being faced with the same compliance issues as large and medium municipalities; however, the cost to comply could be more significant and prohibitive for smaller communities.

The Regulatory Flexibility Act requires the USEPA to conduct an analysis on the economic impact the proposed rule may have on small entities, unless the USEPA certifies that the rule will not affect a significant number of small entities. In the preamble to the proposed rule, it indicated that there are no small entities to be impacted by the rule, and, therefore, the USEPA did not need to complete an analysis required under the Act. The USEPA neglected to address small MS4 communities in California that are currently subject to a MS4 permits, and those smaller communities that may be impacted through Phase II. The USEPA should have conducted an analysis on the economic impacts to smaller communities.

Unless the preamble is modified to indicate that MS4s are not required to comply with water quality standards, the proposed rule should not be applied to smaller MS4 communities until the USEPA has complied with the requirements of the Regulatory Flexibility Act.

Response to: CTR-074-004b

See responses to CTR-013-003, CTR-040-004, (Category J; Stormwater Economics), and CTR-001-008b.

Comment ID: CTR-075-004b

Comment Author: City of El Monte

Document Type: Local Government

State of Origin: CA

Represented Org:

Document Date: 09/24/97

Subject Matter Code: R RFA/SBREFA

References: Letter CTR-075 incorporates by reference letters CTR-013 and CTR-027

Attachments? N

CROSS REFERENCES J

Comment: In addition, we would like to emphasize the following key issues on the California Toxic Rule (CTR), which are of major impact to our stormwater program;

4. The proposed rule applies to all current and future MS4 dischargers, including small communities. The small communities will be significantly affected by the proposed rule. In California, there are many small communities that are currently co-permittees to MS4 permits. Many of the larger municipalities in California have conducted stormwater discharge characterization studies. These studies have shown that there are common pollutants associated with stormwater discharges from urbanized areas that could result in compliance problems with the proposed criteria. Most small communities have not conducted discharge characterization studies; however, it is reasonable to assume that discharges from small communities would also contain these same pollutants. This would result in a smaller community being faced with the same compliance issues as large and medium municipalities; however, the cost to comply could be more significant and prohibitive for smaller communities.

The Regulatory Flexibility Act requires the USEPA to conduct an analysis on the economic impact the proposed rule may have on small entities, unless the USEPA certifies that the rule will not affect a significant number of small entities. In the preamble to the proposed rule, it indicates that there are no small entities to be impacted by the rule, and, therefore, the USEPA did not need to complete an analysis required under the Act. The USEPA neglected to address small MS4 communities in California that are currently subject to a MS4 permits, and those smaller communities that may be impacted through Phase II. The USEPA should have conducted an analysis on the economic impacts to smaller communities.

Unless the preamble is modified to indicate that MS4s are not required to comply with water quality standards, the proposed rule should not be applied to smaller MS4 communities until the USEPA has complied with the requirements of the Regulatory Flexibility Act.

Response to: CTR-075-004b

See responses to CTR-013-003, CTR-040-004, (Category J; Stormwater Economics), and CTR-001-008b.

Comment ID: CTR-076-004b

Comment Author: City of Cudahy

Document Type: Local Government

State of Origin: CA

Represented Org:

Document Date: 09/25/97

Subject Matter Code: R RFA/SBREFA

References: Letter CTR-076 incorporates by reference letters CTR-013 and CTR-027

Attachments? N

CROSS REFERENCES J

Comment: In addition, we would like to emphasize the following key issues on the California Toxic Rule (CTR), which are of major impact to our stormwater program:

4. The proposed rule applies to all current and future MS4 dischargers, including small communities. The small communities will be significantly impacted by the proposed rule. In California, there are many small communities that are currently co-permittees to MS4 permits. Many of the larger municipalities in California have conducted stormwater discharge characterization studies. These studies have shown that there are common pollutants associated with stormwater discharge from urbanized areas that could result in compliance problems with the proposed criteria. Most small communities have not conducted discharge characterization studies; however, it is reasonable to assume that discharges from small communities would also contain these same pollutants. This would result in a smaller community being faced with the same compliance issues as large and medium municipalities; however, the cost to comply could be more significant and prohibitive for smaller communities.

The Regulatory Flexibility Act requires the USEPA to conduct an analysis on the economic impact the proposed rule may have on small entities, unless the USEPA certifies that the rule will not affect a significant number of small entities. In the preamble to the proposed rule, it indicates that there are no small entities to be impacted by the rule, and, therefore, the USEPA did not need to complete an analysis required under the Act. The USEPA neglected to address small MS4 communities in California that are currently subject to a MS4 permits, and those smaller communities that may be impacted through Phase

II. The USEPA should have conducted an analysis on the economic impacts to smaller communities.

Unless the preamble is modified to indicate that MS4s are not required to comply with water quality standards, the proposed rule should not be applied to smaller MS4 communities until the USEPA has complied with the requirements of the Regulatory Flexibility Act.

Response to: CTR-076-004b

See responses to CTR-013-003, CTR-040-004, (Category J; Stormwater Economics), and CTR-001-008b.

Comment ID: CTR-078-004b

Comment Author: City of Maywood

Document Type: Local Government

State of Origin: CA

Represented Org:

Document Date: 09/25/97

Subject Matter Code: R RFA/SBREFEA

References: Letter CTR-078 incorporates by reference letter CTR-013

Attachments? N

CROSS REFERENCES J

Comment: In addition, we would like to emphasize the following key issues on the California Toxic Rule (CTR), which are of major impact to our stormwater program:

4. The proposed rule applies to all current and future MS4 dischargers, including small communities. The small communities will be significantly impacted by the proposed rule. In California, there are many small communities that are currently co-permittees to MS4 permits. Many of the larger municipalities in California have conducted stormwater discharge characterization studies. These studies have shown that there are common pollutants associated with stormwater discharges from urbanized areas that could result in compliance problems with the proposed criteria. Most small communities have not conducted discharge characterization studies; however, it is reasonable to assume that discharges from small communities would also contain these same pollutants. This would result in a smaller community being faced with the same compliance issues as large and medium municipalities; however, the cost to comply could be more significant and prohibitive for smaller communities.

The Regulatory Flexibility Act requires the USEPA to conduct an analysis on the economic impact the proposed rule may have on small entities, unless the USEPA certifies that the rule will not affect a significant number of small entities. In the preamble to the proposed rule, it indicates that there are no small entities to be impacted by the rule, and, therefore, the USEPA did not need to complete an analysis required under the Act. The USEPA neglected to address small MS4 communities in California that are currently subject to a MS4 permit, and those smaller communities that may be impacted through Phase II. The USEPA should have conducted an analysis on the economic impacts to smaller communities.

Unless the preamble is modified to indicate that MS4s are not required to comply with water quality standards, the proposed rule should not be applied to smaller MS4 communities until the USEPA has complied with the requirements of the Regulatory Flexibility Act.

Response to: CTR-078-004b

See responses to CTR-013-003, CTR-040-004, (Category J; Stormwater Economics), and CTR-001-008b.

Comment ID: CTR-079-004b

Comment Author: City of Glendale

Document Type: Local Government

State of Origin: CA

Represented Org:

Document Date: 09/24/97

Subject Matter Code: R RFA/SBREFA

References: Letter CTR-079 incorporates by reference letters CTR-013 and CTR-027

Attachments? N

CROSS REFERENCES J

Comment: In addition, we would like to emphasize the following key issues on the California Toxic Rule (CTR), which are of major impact to our stormwater program:

4. The proposed rule applies to all current and future MS4 dischargers, including small communities. The small communities will be significantly impacted by the proposed rule. In California, there are many small communities that are currently co-permittees to MS4 permits. Many of the larger municipalities in California have conducted stormwater discharge characterization studies. These studies have shown that there are common pollutants associated with stormwater discharges from urbanized areas that could result in compliance problems with the proposed criteria. Most small communities have not conducted discharge characterization studies; however, it is reasonable to assume that discharges from small communities would also contain these same pollutants. This would result in a smaller community being faced with the same compliance issues as large and medium municipalities; however, the cost to comply could be more significant and prohibitive for smaller communities.

The Regulatory Flexibility Act requires the USEPA to conduct an analysis on the economic impact the proposed rule may have on small entities, unless the USEPA certifies that the rule will not affect a significant number of small entities. In the preamble to the proposed rule, it indicates that there are no small entities to be impacted by the rule, and, therefore, the USEPA did not need to complete an analysis required under the Act. The USEPA neglected to address small MS4 communities in California that are currently subject to a MS4 permits, and those smaller communities that may be impacted through Phase II. The USEPA should have conducted an analysis on the economic impacts to smaller communities.

Unless the preamble is modified to indicate that MS4s are not required to comply with water quality standards, the proposed rule should not be applied to smaller MS4 communities until the USEPA has complied with the requirements of the Regulatory Flexibility Act.

Response to: CTR-079-004b

See responses to CTR-013-003, CTR-040-004, (Category J; Stormwater Economics), and CTR-001-008b.

Comment ID: CTR-092-016b
Comment Author: City of San Jose, California
Document Type: Local Government
State of Origin: CA
Represented Org:
Document Date: 09/26/97
Subject Matter Code: R RFA/SBREFA
References: Letter CTR-092 incorporates by reference letter CTR-035
Attachments? Y
CROSS REFERENCES E-01c; S

Comment: Introductory Comment

EPA states in the Executive Summary (page ES-2) to the Economic Analysis that:

"EPA did not calculate costs for any program for which it does not have enforceable authority ... (nor) for NPDES sources which are not typically subject to numeric WQBELs....."

From a national policy perspective, this narrowing, of the focus of the Economic Analysis may be a justifiable approach to cost benefit analysis. Local government, however, is not able to disregard the potential cost effects of the CTR on urban and agricultural runoff. Those potential costs will have to be defrayed with proceeds from the same pool of local rate payers responsible for paying for point source pollutant removal programs. In California, those ratepayers have made clear both their support for environmental protection and their reluctance to pay more than is necessary for that protection. A narrow definition of those costs included in the CTR Economic Analysis continues the pattern of fragmenting responsibility and authority for the protection of waterways, which in turn hinders creation and implementation of holistic strategies which would best serve the environment at least cost.

Questions for EPA on the Introductory Comment

Q.-1) If not EPA, who has the responsibility to define the aggregated costs of all water quality-related regulations?

Q.-2) San Jose's reading of federal policy initiatives (which include, but are not limited to, the Regulatory Flexibility Act, Executive Order 12866, and the Unfunded Mandates Reform Act) indicates that EPA is empowered to analyze the economic impact of federal regulations in a way that addresses both aggregated cost impacts as well as the fiscal reality of local level government. Why was this not accounted for in the current analysis?

Response to: CTR-092-016b

See responses to CTR-001-008b, CTR-021-005c (Category E-01c; Executive Order 12866), CTR-021-006b (Category E-01c; Executive Order 12866), CTR-036-003a (Category S; Unfunded Mandates Reform Act), and the preamble to the proposed rule.

Comment ID: CTR-096-004b
Comment Author: City of Modesto
Document Type: Local Government

State of Origin: CA
 Represented Org:
 Document Date: 09/25/97
 Subject Matter Code: R RFA/SBREFA
 References:
 Attachments? N
 CROSS REFERENCES G-10

Comment: Thank you for the opportunity to comment on the proposed California Toxics Rule. The City's comments are related to five main concepts:

4. The environmental consequences of the necessary treatment facilities and changes in operating practices to meet these discharge standards is very significant and has not been addressed in promulgating the proposed rule.

Specifically, the City submits the following comments:

F. A comparison of the Water Quality Standards (WQS) used by its City during the Local Limits Study and the proposed WQS is shown in Table 1. There is a little variation in limits for cadmium, copper, nickel, and zinc as these values are dependent on receiving stream hardness. The values shown in Table I for the City were developed using a hardness of 170 mg/l as CaCO₃ while the standards from the CTR are based on 100 mg/l as CaCO₃. The WQS from the CTR are actually expressed as dissolved fractions. A factor of 1.7 has been used to convert from dissolved to total fractions for the comparison to take place.

Table 1

Comparison of Water Quality Standards

| | City Report | | WQS | | 1996 | | 1997 | | ----- |
|--------------------------|-------------|--------|---------|-------|--------------|-------|-------|-----|-------|
| | Chronic | Acute | Chronic | Acute | | | | | |
| Arsenic, ppb | 190.0 | 360.0 | 150.0 | 340.0 | Cadmium, ppb | 1.7 | 7.1 | 2.2 | |
| 4.3 Chromium, ppb | 10.0 | 15.0 | 11.0 | 16.0 | Copper, ppb | 19.0 | 29.0 | 9.0 | |
| 13.0 Nickel, ppb | 250.0 | 2200.0 | 52.0 | 470.0 | Zinc, ppb | 170.0 | 180.0 | | |
| 120.0 120.0 Mercury, ppb | | N/A | 2.1 | .77 | 1.4 | | | | |

Table 1 indicates that the City's Local Limits for arsenic, cadmium, chromium, and zinc would have little difficulty meeting the CTR. However, limits for copper, nickel and mercury may be drastically impacted. This impact in developing a stricter local limit may result in an economic hardship to many small business enterprises that currently do metal plating. These businesses may be forced to close down due to the implementation of these limits. Modesto experiences a chronic unemployment rate above 12%, and economic development is critical to this community.

Response to: CTR-096-004b

See response to CTR-096-004a (Category G-10; Pretreatment).

Comment ID: CTRE-003-001c
Comment Author: Bay Planning Coalition
Document Type: Trade Org./Assoc.
State of Origin: CA
Represented Org:
Document Date: 09/09/97
Subject Matter Code: R RFA/SBREFA
References:
Attachments? N
CROSS REFERENCES B; J

Comment: The Bay Planning Coalition represents approximately 200 maritime industry, shoreline businesses, local governments and Bay users along the S.F. Bay shoreline and is most significantly affected by the proposed California Toxics Rule. One of our primary interests is the economic analysis which under the EPA's model estimates a range of annual costs of \$14.9 to \$86.6 million.

We believe the annual costs for implementation of the Rule statewide exceed the EPA estimate range. We are particularly concerned because it appears that the economic impact analysis did not include the costs of compliance for the NPDES stormwater permit applicants. In order for us to provide EPA with sufficient detail on our economic analysis and cost projection as well as the impact of the Rule on small business under the Regulatory Flexibility Act, we request an extension of time to respond. A 30-day extension from September 26 to October 27, 1997 would be acceptable. Thank you so much for your consideration.

Response to: CTRE-003-001c

See responses to CTR-013-003, CTR-040-004, (Category J; Stormwater Economics), CTR-001-008b, and CTR-001-001 (Category B; Comment Period).

Comment ID: CTRH-001-005b
Comment Author: Alan Waltner
Document Type: Public Hearing
State of Origin: CA
Represented Org: Alameda Cnty Clean Wtr Pgm
Document Date: 09/17/97
Subject Matter Code: R RFA/SBREFA
References:
Attachments? N
CROSS REFERENCES J-2

Comment: If you go beyond best management practices, you're impliedly eliminating those provisions of the 1995 Basin Plan. I think it would clearly violate the Regulatory Flexibility Act, since you haven't considered the costs of controls.

If, again, our dischargers had to do whatever it took, our members had to do whatever it took -- and in fact, several of our dischargers are small entities under the Regulatory Flexibility Act: the City of

Emeryville, the City of Albany, the City of Piedmont.

The NPDES permits small entities and municipalities under 50,000 in number. If they had to do whatever it took to provide the waste allocations without consideration of the economic impact, those entities, because of the practical problems of needing 50 coliseums of storage in the Bay Area and the practical considerations that plague us -- and the only place you could put that is by the bay, where you have a serious problem with requirements under the Endangered Species Act.

To the extent you're standing in the shoes of the state in promulgating these standards, you violate the cost/benefit balances provision of the Porter Cologne Act.

Response to: CTRH-001-005b

With respect to EPA's compliance with the RFA see response to CTR-001-008b. With respect to stormwater costs see response to CTR-013--003 and CTR-04-004 (Category J; Stormwater Economics). With respect to commenters' assertion that EPA violated the cost/benefit provision of the Porter-Cologne Act, see response to CTR-020-002 (Category C-21; Legal Issues).

Comment ID: CTRH-001-008a
Comment Author: Doug Harrison
Document Type: Public Hearing
State of Origin: CA
Represented Org: Fresno Met. Flood Control
Document Date: 09/17/97
Subject Matter Code: R RFA/SBREFA
References:
Attachments? N
CROSS REFERENCES J-2

Comment: Looking at the results of our monitoring and your criteria, we'll have to achieve another 70 to 90 percent reduction in pollutants in order to be in compliance. That means we'd have to increase our storage volume to 20,000 acre feet just to handle average annual runoff we have underway right now.

That's a price tag of \$220 million to \$400 million to try to stay in compliance with the current criteria if you interpret the rule to apply to us -- 220 million. And then we can't prevent major storm events in our community, storm impacts that cause a discharge, in which case 100 percent of the discharges would exceed -- would be out of compliance, even though we were retaining 100 percent of the average annual rainfall.

We think that raises a problem with the Regulatory Flexibility Act, both in terms of the cost analysis itself and the impact that accrues to small communities, certainly with respect to the executive order. Just in our case alone the \$100 million limit is in serious trouble, dealing with compliance with a five-year schedule just in our community with the possibility of \$80 million per year of expense. That does not include O & M cost in that system.

Response to: CTRH-001-008a

See responses to CTR-013-003, CTR-040-004, (Category J; Stormwater Economics), CTR-021-005c

(Category E-01c; Executive Order 12866), and CTR-001-008b.
