

Subject Matter Code: S UMRA

Comment ID: CTR-005-006b
Comment Author: Novato Sanitary District
Document Type: Sewer Authority
State of Origin: CA
Represented Org:
Document Date: 09/23/97
Subject Matter Code: S UMRA
References:
Attachments? Y
CROSS REFERENCES C-21; R

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-005-006b

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 (Subject R, Regulatory Flexibility Act), CTR-036-005c (Category E-01c; Executive Order 12866), CTR-036-003a, and the preamble to the proposed rule.

Comment ID: CTR-019-002b
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: S UMRA
References: Letter CTR-019 incorporates by reference letters CTR-001, CTR-013, CTR-027 and CTR-036
Attachments? N

CROSS REFERENCES J

Comment: UNFUNDED MANDATED PROGRAMS

One of the express purposes of the Unfunded Mandates Reform Act of 1995 is "to end the imposition, in the absence of full consideration of Congress of Federal mandates on State, local and tribal governments without adequate Federal funding, in a manner that may displace other essential State, local and tribal governmental priorities." 2 U.S.C. section 1501(2). The proposed rule in its current form seems to have been drafted without regard to its fiscal impact on cities. The rule could require treatment of storm water discharges, despite the fact that no funding mechanism, nor any assistance, financial or otherwise, is being provided to the cities by either USEPA or the State of California. If the USEPA wishes to impose these treatment programs, it needs to provide funds to pay for their implementation.

We believe that USEPA's analysis under the Unfunded Mandates Reform Act of 1995 that the CTR will not result in an expenditure in the aggregate of more than \$100,000,000.00 a year is wrong. As pointed out by other local government entities which have submitted comments, the USEPA appears to assume that a BMP program will lead to compliance with numeric effluent guidelines and that there will be no associated additional costs for the BMP program. However, the economic analysis does not appear to analyze the potential cost of end of pipe treatment controls and analyze in any sort of detail what sort of BMP's would be necessary to achieve numeric effluent guidelines for the toxic pollutants. The economic analysis itself acknowledges that under its existing NPDES stormwater permit, the cities and counties of the Los Angeles area plan to spend \$15,000,000 annually on public education in a program to curb illegal dumping. That cost estimate was based upon the analysis by the SWRCB of the 1990 permit. The actual costs of implementing all of the programs under the 1990 permit have been considerably more. For example, the cost estimates prepared by the San Gabriel Valley COG in connection with the LA. County permit, estimated implementation costs at \$8.98 per person per year. The City of Long Beach estimated that it was already spending, as of early 1996, \$12.4 million a year and that the estimated costs of implementing the programs under the current permit adopted in July 1996 would be another \$3.4 million or about \$16.1 million total. That number extrapolated to approximately \$38.35 per person per year. The comparative cost numbers prepared by the Santa Monica Bay Restoration Project in connection with the existing Los Angeles permit estimated an average cost of dedicated stormwater program funding of \$3.34 a month per household or approximately \$13.36 per person per year. Using that number as a base, a city with a population of approximately 40,000 people can expect to spend \$500,000 a year under its current stormwater programs. Extrapolating those numbers over the State of California, it is quite clear that the costs of implementing the existing stormwater program are in the hundred of millions of dollars a year.

Considering these economic analyses, it is quite clear that the financial impact of requiring end of pipe treatment controls or other means to achieve numeric effluent guidelines would quite easily exceed \$100 million a year.

The foregoing numbers, of course, do not include potential increased costs to residents, business and industry complying with the discharge prohibitions and other requirements under the "City's current municipal permits nor does the EPA's economic analysis calculate the potential costs to regulated dischargers, that is, business and industries required to either obtain an individual NPDES stormwater permit or who are covered under a general permit by filing a notice of intent.

Necessarily, the expenditure of such large amounts of money is an important public policy question, particularly in a situation where neither the State of California nor the federal government has been

willing to provide any meaningful source of funds to local agencies to carry out these programs.

Response to: CTR-019-002b

See responses to CTR-013-003 (Category J; Stormwater Economics) and CTR-036-003a (Category S; Unfunded Mandates Reform Act).

Comment ID: CTR-021-005e

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: S UMRA

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

Attachments? Y

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

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 that 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-021-005e

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 (Category R; Regulatory Flexibility Act), CTR-036-005c (Category E-01c; Executive Order 12866), CTR-036-003a, and the preamble to the proposed rule.

With respect to detection limits see responses 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-021-006d

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: S UMRA

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

Attachments? Y

CROSS REFERENCES J; E-01c; R; 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 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:

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-021-006d

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 (Category R, RFA), CTR-036-005c (Category E-01c; Executive Order 12866), CTR-036-003a, 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-034-004

Comment Author: SCAP

Document Type: Trade Org./Assoc.

State of Origin: CA

Represented Org:

Document Date: 09/25/97

Subject Matter Code: S UMRA

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 believes that EPA has failed in its duties under the Unfunded Mandates Reform Act to consider the cost of the proposed regulation to local governments and the regulated community and to select the most cost-effective and least burdensome regulatory alternative that achieves the objectives of the rule and is consistent with statutory requirements. Although EPA prepared an assessment of the anticipated costs and benefits of the CTR, we believe that the economic analysis failed to consider major factors contributing to potential costs and substantially overstated the anticipated benefits of the rule (see below).

Response to: CTR-034-004

See response to CTR-036-003a.

Comment ID: CTR-035-040

Comment Author: Tri-TAC/CASA

Document Type: Trade Org./Assoc.

State of Origin: CA

Represented Org:

Document Date: 09/25/97
Subject Matter Code: S UMRA

References:

Attachments? N

CROSS REFERENCES

Comment: p. 42191 -- The Unfunded Mandates Reform Act of 1995 All local governmental agencies, especially "small agencies" within the meaning of the Unfunded Mandates Reform Act (2 U.S.C.A. 1511 et. seq.) deserve the protections afforded by that Act. EPA's claim that the Act does not apply because "Today's proposed rule does not regulate or affect any entity" is unfounded. The claim is that the CTR may not impose costs greater than \$100 million a year is without merit (see discussion below). The CTR directly impacts all NPDES holders in the State of California, as stated above. Accordingly, all of its provisions apply to the CTR, including, without limitation, the requirement found in Section 1533(a)(2) that the Agency's required small government agency plan provide for "meaningful and timely input" into the development of the CTR. As stated earlier, the failure of EPA to allow CASA/Tri-TAC members the opportunity to review the State Proposal for any longer than two weeks simply does not meet a common sense interpretation of "meaningful and timely review." EPA must comply with the Act.

Response to: CTR-035-040

See response to CTR-036-003a.

Comment ID: CTR-036-003a

Comment Author: County of Orange

Document Type: Local Government

State of Origin: CA

Represented Org:

Document Date: 09/25/97

Subject Matter Code: S UMRA

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: EPA also has failed to meet its obligations under the Unfunded Mandates Reform Act of 1995 (the "Reform Act"). As with E.O. 12866, the Reform Act requires federal agencies to assess the effects of their regulatory actions on state, local and tribal governments, and on the private sector [U.S.C. section 1531]. Among other things, the Reform Act requires the preparation of a cost-benefit analysis and the examination of a range of alternatives, whenever the proposed action may result in expenditures in excess of \$100 million [2 U.S.C. section 1532, 1535]. In addition, the Reform Act contains a number of specific requirements where an action may significantly or uniquely impact small governments [2 U.S.C. section 1533].

EPA asserts again that it does not have to comply with the Reform Act because the proposed rule "imposes no direct enforceable duties on the State or any local government or on the private sector." [62 Fed. Reg 42160, 42191]. For the reasons discussed earlier, this assertion is without merit. As EPA acknowledges, these criteria will serve as the basis for any water quality standards promulgated by the State, which in turn will be binding on local government and private industry. Unless EPA is prepared

to view these criteria as being optional, it therefore cannot in good conscience state that they do not create an enforceable duty. Given this, EPA must comply with the mandates of the Reform Act

Response to: CTR-036-003a

EPA has determined that the CTR contains no federal mandates (under the regulatory provisions of title II of the Unfunded Mandates Reform Act) for State, local, and tribal governments or the private sector. The CTR imposes no direct enforceable duties on the State or any local government or on the private sector; rather, the CTR promulgates ambient water quality criteria which, when combined with State-adopted uses, will create water quality standards for those water bodies with adopted uses. The State will then use these resulting water quality standards in implementing its existing water quality control programs.

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. In any event, even if EPA were to consider the implementation costs rather than the direct costs of the rule for the purposes of UMRA compliance, EPA has determined that this rule will not result in expenditures of \$100 million or more for State, local, or tribal governments, in the aggregate, or the private sector in any one year.

Comment ID: CTR-038-005c

Comment Author: Sonoma County Water Agency

Document Type: Sewer Authority

State of Origin: CA

Represented Org:

Document Date: 09/25/97

Subject Matter Code: S UMRA

References:

Attachments? Y

CROSS REFERENCES E-01c; R

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-038-005c

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

Comment ID: CTR-038-006d

Comment Author: Sonoma County Water Agency

Document Type: Sewer Authority
State of Origin: CA
Represented Org:
Document Date: 09/25/97
Subject Matter Code: S UMRA
References:
Attachments? Y
CROSS REFERENCES C-21; E-01c; R

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-038-006d

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 (Category R; RFA), CTR-021-005c (Category E-01c; Executive Order 12866), CTR-036-003a, and the preamble to the proposed rule.

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

See response to CTR-038-008a (Category C-24; Site-Specific Criteria). See response 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 (Category R; RFA), CTR-021-005c (Category E-01c; Executive Order 12866), CTR-036-003a, and the preamble to the proposed rule.

Comment ID: CTR-038-009d

Comment Author: Sonoma County Water Agency

Document Type: Sewer Authority

State of Origin: CA

Represented Org:

Document Date: 09/25/97

Subject Matter Code: S UMRA

References:

Attachments? Y

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

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-038-009d

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 (Category R; RFA), CTR-021-005c (Category E-01c; Executive Order 12866), CTR-036-003a, and the preamble to the proposed rule.

Comment ID: CTR-040-009b

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: S UMRA

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

Attachments? Y

CROSS REFERENCES R

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-040-009b

See responses to CTR-001-008b (Category R; RFA), CTR-021-005c (Category E-01c; Executive Order

12866), CTR-036-003a, and the preamble to the proposed rule.

Comment ID: CTR-040-012b

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: S UMRA

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

Attachments? Y

CROSS REFERENCES 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.

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

* In failing to properly evaluate the Rule's impacts and in failing to adequately consider regulatory alternatives, the Rule is inconsistent with Presidential Executive Order 12866 and the Unfunded Mandates Reform Act (See Attachment B).

Response to: CTR-040-012b

See responses to CTR-021-005c (Category E-01c; Executive Order 12866), CTR-036-003a, and the preamble to the proposed rule.

Comment ID: CTR-040-015a

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: S UMRA

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

Attachments? Y

CROSS REFERENCES C-13

Comment: RECOMMENDED MODIFICATIONS

To address our concerns, we recommend the following modifications which do not undermine the toxic pollutant control actions envisioned in EPA's economic analysis (e.g., BMPs for stormwater and source

control). In fact, some of these recommendations would provide incentives for greater movement toward achieving the water quality criteria than would occur under the Rule as it is currently proposed.

II. Recommendation: Adopt human health criteria for PAHs at a 10 (-4) risk level and human health criteria for other carcinogens at risk levels that are generally achieved by municipal wastewater and stormwater dischargers.

* As previously stated, the Sacramento Stormwater Management Program would have to expend on the order of \$260 million per year to treat stormwater, and this may not achieve the proposed criteria for PAHS, which is based on a 10 (-6) cancer risk level.

* Under the Unfunded Mandates Reform Act, EPA must adopt the least cost alternative for complying with the CWA, unless the Administrator explains in the final rule why the least cost alternative is not adopted. As indicated in the Preamble, risk levels of 10 (-5) and 10 (-4) are acceptable under the CWA.

* Therefore, pursuant to the spirit of the Unfunded Mandates Reform Act, EPA should adopt the PAH criteria at a 10 (-4) risk level. The same should be true for other carcinogens that present attainability problems for dischargers. Most carcinogenic constituents are not readily controllable through source control or BMPs and would generally require end-of-pipe controls to achieve significant reduction. The benefits associated with additional reduction of carcinogenic constituents are not expected to be measurable since, as acknowledged in the economic analysis, point sources are relatively minor sources of these constituents.

Response to: CTR-040-015a

See responses to CTR-058-001 (Category C-13; Risk Level), CTR-013-003 (Category J; Stormwater Economics) and CTR-036-003a.

Comment ID: CTR-040-055

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: S UMRA

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

Attachments? Y

CROSS REFERENCES

Comment: b. Unfunded Mandates Reform Act

Under the Unfunded Mandates Reform Act (UMRA, 2 U.S.C. section 1501 et seq.), EPA is required to consider the cost of a proposed regulation to both state and local Governments and the regulated community. EPA is required to prepare a qualitative and quantitative assessment of the anticipated costs and benefits of the Federal mandate and to select the most cost-effective and least burdensome regulatory alternative that achieves the objectives of the rule and is consistent with statutory requirements. EPA has performed an economic analysis, however, EPA contends that the cost of the CTR will not result in expenditures in the aggregate "of \$100 million or more in any one year" necessary to trigger the other

requirements of the UMRA.

EPA only makes a limited analysis of alternatives and does not explicitly defend the rule's cost-effectiveness because it contends that does not apply because the \$100 million cut off was not met (*3). Based on the cost research performed by the POTWs and other dischargers, EPA's contention that UMRA's requirements do not apply may be challengeable. The regulated community may also be able to demonstrate that the Administrator was arbitrary and capricious by alleging the cost of implementing the CTR will not result i expenditures in the aggregate" of \$100 million or more in any one year."

EPA should have considered alternatives, such as the adoption of less stringent criteria or different risk levels (e.g., 10E-4 or 10E-5), that could also achieve the objectives of the rule. These alternatives would have met both the UMRA criteria of being more cost-effective and less burdensome while still maintaining consistency with the Clean Water Act.

(*3) "EPA has determined that this rule does not contain a federal mandate that may result in expenditures by State, local, and tribal governments, in the aggregate, or by the private sector, of \$100 million or more in any one year. The proposed rule imposes no direct enforceable duties on the State or any local government or on the private sector; rather, this rule proposes ambient water quality criteria which, when combined with State adopted designated uses, will create water quality standards for those water bodies with adopted uses. The State may use these resulting water quality standards in implementing its existing water quality control programs. Today's proposed rule does not directly regulate or affect any entity and, therefore, is not subject to the requirement of sections 202 and 205 of the UMRA." 62 Fed. Reg. 41,191.

Response to: CTR-040-055

See response to CTR-036-003a.

Comment ID: CTR-041-013c
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: S UMRA
References:
Attachments? N
CROSS REFERENCES E-01c; R

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-041-013c

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 (Category R; UMRA), CTR-021-005c (Category E-01c; Executive Order 12866), CTR-036-003a, and the preamble to the proposed rule.

Comment ID: CTR-041-016
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: S UMRA
References:
Attachments? N
CROSS REFERENCES

Comment: b. Unfunded Mandates Reform Act

Under the Unfunded Mandates Reform Act (UMRA, 2 U.S.C. section 1501 et seq.), EPA is required to consider the cost of a proposed regulation to both state and local Governments and the regulated community. EPA is required to prepare a qualitative and quantitative assessment of the anticipated costs and benefits of the Federal mandate and to select the most cost-effective and least burdensome regulatory alternative that achieves the objectives of the rule and is consistent with statutory requirements. EPA has performed an economic analysis, however, EPA contends that the cost of the CTR will not result in expenditures in the aggregate "of \$100 million or more in any one year" necessary to trigger the other requirements of the UMRA.

EPA only makes a limited analysis of alternatives and does not explicitly defend the rule's cost-effectiveness because it contends that UMRA does not apply because the \$100 million cut off was not met.(*4) Based on the cost research performed by the POTWs and other dischargers, EPA's contention that UMRA's requirements do not apply may be challengeable. Specifically, the EPA Administrator's determination that the cost of implementing the CTR will not result in expenditures in the aggregate "of \$100 million or more in any one year" could be found to be arbitrary and capricious.

EPA should have considered alternatives, such as the adoption of less stringent criteria or different risk levels (e.g., 10E-4 or 10E-5), that could also achieve the objectives of the rule. These alternatives would have met both the UMRA criteria of being more cost-effective and less burdensome while still maintaining consistency with the Clean Water Act.

(*4) "EPA has determined that this rule does not contain a federal mandate that may result in expenditures by State, local, and tribal governments, in the aggregate, or by the private sector, of \$100 million or more in any one year. The proposed rule imposes no direct enforceable duties on the State or any local government or on the private sector; rather, this rule proposes ambient water quality criteria which, when combined with State adopted designated uses, will create water quality standards for those water bodies with adopted uses. The State may use these resulting water quality standards in implementing its existing water quality control programs. Today's proposed rule does not directly regulate or affect any entity and, therefore, is not subject to the requirement of sections 202 and 205 of the UMRA." 62 Fed. Reg. 42,191.

Response to: CTR-041-016

See responses to CTR-058-001 (Category C-13; Risk Level) and CTR-036-003a.

Comment ID: CTR-042-007c
Comment Author: Cal. Dept. of Transportation
Document Type: State Government
State of Origin: CA
Represented Org:
Document Date: 09/26/97
Subject Matter Code: S UMRA
References:
Attachments? Y
CROSS REFERENCES C-21; E-01c

Comment: 7. The CTR may violate the Administrative Procedures Act, the and Executive Order (E.O.) Unfunded Mandates Reform Act No. 12866.

In the Preamble to the CTR, EPA repeatedly claims that the CTR will not result in expenditures of more than \$100 million per year and, therefore, the statutory requirements of the UMRA and E.O. 12866 are not triggered.(*1) Caltrans' annual costs alone and only in Los Angeles will exceed the \$100 million annual figure, even assuming the lowest level of treatment. Therefore, EPA's cost assumptions are challengeable as being arbitrary and capricious and in violation of the Administrative Procedures Act.(*2)

Request: Caltrans requests that EPA reconsider its cost estimates based on the comments received during the public comment period.

Caltrans would like to thank EPA for the opportunity to provide comments on this proposed regulation. It is hoped that EPA will consider and address Caltrans' comments in the final version of the CTR. Should you have any questions concerning our comments on the CTR, please feel free to address these questions to Marcia Arrant at (916) 657-5381.

(*1) See CTR, 62 Fed. Reg. at 42,188, and at 42,191 ("EPA has determined that this rule does not contain a federal mandate that may result in expenditures by State, local and tribal governments, in the aggregate, or by the private sector, of \$100 million or more in any one year.")

(*2) See American Iron and Steel Institute v. EPA, 1997 WL 297251 (D.C. Cir., 1497)(the court found that EPA had arbitrarily failed to adequately address cost-justification for its elimination of mixing zones. EPA had estimated the total cost of elimination mixing zones for bioaccumulative chemicals of concern (BCCS) from all dischargers to the Great Lakes at \$200,000, without even acknowledging a comment estimating the cost to one town for removal of mercury from its sewage discharge would be approximately \$300,000).

Response to: CTR-042-007c

See responses to CTR-036-003a, CTR-021-005c (Category E-01c; Executive Order 12866), and CTR-042-007a (Category C-21; Legal Issues).

Comment ID: CTR-043-005d

Comment Author: City of Vacaville

Document Type: Local Government

State of Origin: CA

Represented Org:

Document Date: 09/26/97

Subject Matter Code: S UMRA

References:

Attachments? Y

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

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-043-005d

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 (Category R; RFA), CTR-021-005c (Category E-01c; Executive Order 12866), CTR-036-003a, and the preamble to the proposed rule.

Comment ID: CTR-044-005g
Comment Author: City of Woodland
Document Type: Local Government
State of Origin: CA
Represented Org:
Document Date: 09/26/97
Subject Matter Code: S UMRA
References:
Attachments? Y
CROSS REFERENCES E-01g08; E-01h01; E-01m; E-02c; E-01c02; R

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-044-005g

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.

Comment ID: CTR-044-006d
Comment Author: City of Woodland
Document Type: Local Government
State of Origin: CA
Represented Org:
Document Date: 09/26/97
Subject Matter Code: S UMRA
References:
Attachments? Y
CROSS REFERENCES C-21
E-01c
R

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-044-006d

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 (Category R; RFA), CTR-036-005c (Category E-01c; Executive Order 12866), CTR-036-003a, and the preamble to the proposed rule.

Comment ID: CTR-044-009d
Comment Author: City of Woodland
Document Type: Local Government
State of Origin: CA
Represented Org:
Document Date: 09/26/97
Subject Matter Code: S UMRA
References:
Attachments? Y
CROSS REFERENCES C-28
E-01c
R

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-044-009d

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 (Category R; RFA), CTR-021-005c (Category E-01c; Executive Order 12866), CTR-036-003a, and the preamble to the proposed rule.

Comment ID: CTR-044-046

Comment Author: City of Woodland

Document Type: Local Government

State of Origin: CA

Represented Org:

Document Date: 09/26/97

Subject Matter Code: S UMRA

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

Attachments? Y

CROSS REFERENCES

Comment: b. Unfunded Mandates Reform Act

Under the Unfunded Mandates Reform Act (UMRA, 2 U.S.C. section 1501 et seq.), EPA is required to consider the cost of a proposed regulation to both state and local Governments and the regulated community. EPA is required to prepare a qualitative and quantitative assessment of the anticipated costs and benefits of the Federal mandate and to select the most cost-effective and least burdensome regulatory alternative that achieves the objectives of the rule and is consistent with statutory requirements. EPA has performed an economic analysis, however, EPA contends that the cost of the CTR will not result in expenditures in the aggregate "of \$100 million or more in any one year" necessary to trigger the other requirements of the UMRA.

EPA only makes a limited analysis of alternatives and does not explicitly defend the rule's cost-effectiveness because it contends that does not apply because the \$100 million cut off was not met.(*3) Based on the cost research performed by the POTWs and other dischargers, EPA's contention that UMRA's requirements do not apply may be challengeable. The regulated community may also be able to demonstrate that the Administrator was arbitrary and capricious by alleging the cost of

implementing the CTR will not result in expenditures in the aggregate "of \$100 million or more in any one year."

EPA should have considered alternatives, such as the adoption of less stringent criteria or different risk levels (e. g., 10E-4 or 10E-5), that could also achieve the objectives of the rule. These alternatives would have met both the UMRA criteria of being more cost-effective and less burdensome while still maintaining consistency with the Clean Water Act.

(*3) "EPA has determined that this rule does not contain a federal mandate that may result in expenditures by State, local, and tribal governments, in the aggregate, or by the private sector, of \$100 million or more in any one year. The proposed rule imposes no direct enforceable duties on the State or any local government or on the private sector; rather, this rule proposes ambient water quality criteria which, when combined with State adopted designated uses, will create water quality standards for those water bodies with adopted uses. The State may use these resulting water quality standards in implementing its existing water quality control programs. Today's proposed rule does not directly regulate or affect any entity and, therefore, is not subject to the requirement of sections 202 and 205 of the UMRA." 62 Fed. Reg. 42,191.

Response to: CTR-044-046

See responses to CTR-058-001 (Category C-13; Risk Level) and CTR-036-003a.

Comment ID: CTR-050-007d
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: S UMRA
References:
Attachments? N
CROSS REFERENCES C-21
E-01c
R

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-050-007d

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

Comment ID: CTR-052-021d

Comment Author: East Bay Dischargers Authority

Document Type: Sewer Authority

State of Origin: CA

Represented Org:

Document Date: 09/26/97

Subject Matter Code: S UMRA

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

Attachments? Y

CROSS REFERENCES C-21

E-01c

R

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-052-021d

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 (Category R; RFA), CTR-036-005c (Category E-01c; Executive Order 12866), CTR-036-003a, and the preamble to the proposed rule.

Comment ID: CTR-054-008e

Comment Author: Bay Area Dischargers Assoc.

Document Type: Sewer Authority

State of Origin: CA

Represented Org:

Document Date: 09/25/97

Subject Matter Code: S UMRA

References:

Attachments? Y

CROSS REFERENCES C-02b

C-24

E-01c

R

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-054-008e

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, and the preamble to the proposed rule.

Comment ID: CTR-054-050

Comment Author: Bay Area Dischargers Associati

Document Type: Sewer Authority

State of Origin: CA

Represented Org:

Document Date: 09/25/97

Subject Matter Code: S UMRA

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

Attachments? Y

CROSS REFERENCES

Comment: b. Unfunded Mandates Reform Act

Under the Unfunded Mandates Reform Act (UMRA, 2 U.S.C. section 1501 et seq.), EPA is required to consider the cost of a proposed regulation to both state and local Governments and the regulated community. EPA is required to prepare a qualitative and quantitative assessment of the anticipated costs and benefits of the Federal mandate and to select the most cost-effective and least burdensome regulatory alternative that achieves the objectives of the rule and is consistent with statutory requirements. EPA has performed an economic analysis, however, EPA contends that the cost of the CTR will not result in expenditures in the aggregate "of \$100 million or more in any one year" necessary to trigger the other requirements of the UMRA.

EPA only makes a limited analysis of alternatives and does not explicitly defend the rule's cost-effectiveness because it contends that does not apply because the \$100 million cut off was not met.(*3) Based on the cost research performed by the POTWs and other dischargers, EPA's contention that UMRA's requirements do not apply may be challengeable. The regulated community may also be able to demonstrate that the Administrator was arbitrary and capricious by alleging the cost of implementing the CTR will not result in expenditures in the aggregate "of \$100 million or more in any one year."

EPA should have considered alternatives, such as the adoption of less stringent criteria or different risk levels (e. g., 10E-4 or 10E-5), that could also achieve the objectives of the rule. These alternatives would have met both the UMRA criteria of being more cost-effective and less burdensome while still maintaining consistency with the Clean Water Act.

(*3) "EPA has determined that this rule does not contain a federal mandate that may result in

expenditures by State, local, and tribal governments, in the aggregate, or by the private sector, of \$100 million or more in any one year. The proposed rule imposes no direct enforceable duties on the State or any local government or on the private sector; rather, this rule proposes ambient water quality criteria which, when combined with State adopted designated uses, will create water quality standards for those water bodies with adopted uses. The State may use these resulting water quality standards in implementing its existing water quality control programs. Today's proposed rule does not directly regulate or affect any entity and, therefore, is not subject to the requirement of sections 202 and 205 of the UMRA." 62 Fed. Reg. 42,191.

Response to: CTR-054-050

See responses to CTR-058-001 (Category C-13; Risk Level) and CTR-036-003a.

Comment ID: CTR-056-022b

Comment Author: East Bay Municipal Util. Dist.

Document Type: Sewer Authority

State of Origin: CA

Represented Org:

Document Date: 09/22/97

Subject Matter Code: S UMRA

References: Letter CTR-056 incorporates by reference letter CTR-054

Attachments? N

CROSS REFERENCES E-01E

Comment: EBMUD perceives there to be a significant overall economic impact resulting from CTR, contrary to the conclusions reached by EPA. Because the cost may exceed \$100 million annually on the regulated community (the majority of which are publicly owned agencies), it appears that pursuant to Executive Order 12,866 and the Unfunded Mandates Reform Act, the CTR can be considered a significant regulatory action which is likely to adversely affect the economy of many regions of the State, the environment and/or local governments. EBMUD is also of the opinion that EPA failed to make a, "...reasoned determination that the benefits of the intended regulation justify its costs," and is obligated to redo the draft Economic Analysis and submit it for review by the Office of Management and Budget.

Response to: CTR-056-022b

See responses to CTR-021-005c (Category E-01c; Executive Order 12866), CTR-036-003a, and the preamble to the proposed rule.

Comment ID: CTR-059-002c

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: S UMRA

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

Attachments? Y
CROSS REFERENCES E-01c
R

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-059-002c

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

Comment ID: CTR-059-006c
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: S UMRA
References: Letter CTR-059 incorporates by reference letter CTR-035

Attachments? Y
CROSS REFERENCES C-28
E-01c

Comment: Due to the time constraints of the comment period, we have focused our review and comments primarily on those criteria that we anticipate may cause compliance issues for one or more of the Sanitation Districts' WRPs (see below). Based on our initial review of the proposed rule, the Sanitation Districts recommend that adoption of some of the criteria be deferred. As explained in the attached comments, we believe that there are significant scientific issues regarding the human health criteria for several trihalomethanes that call into question the accuracy and appropriateness of the proposed criteria. In addition, we reconunend that EPA defer adoption of those criteria that are below detection limits and that have not been demonstrated to be adversely affecting water quality or the attainment of designated uses on a water body-specific basis in California. In addition, we recommend that EPA not adopt criteria for effluent dependent waters, unless they have been adjusted to reflect the characteristics of this type of

water body.

Criteria Below Detection Limits

We believe that there are fundamental problems with EPA's decision to adopt criteria that are below detection limits. This issue relates to EPA's statutory and regulatory obligations in establishing water quality criteria; namely, that EPA is subject to the same policies, procedures, analyses, and public participation requirements as States pursuant to 40 CFR section 131. These regulations require States to "review water quality data and information on discharges to 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 and must adopt criteria for such toxic pollutants applicable to the water body sufficient to protect the designated use." (40 CFR section 131.11) For criteria where the method detection limit exceeds the objective, there are inadequate data to determine if the pollutant could reasonably be expected to interfere with attainment of designated uses. We believe that because of the inability to detect these substances and the lack of monitoring information indicating water quality use impairment EPA has not been able to fulfill its obligations to conduct a water body-specific analysis of the need to promulgate criteria.(*1)

(*1)U.S. Environmental Protection Agency, Economic Analysis of the Proposed California Water Quality Toxics Rule, Office of Water (EPA-820-B-96-001, July 1997), p. 8-18.

Second, EPA has not fulfilled its obligations under the Unfunded Mandates Reform Act and Executive Order 12866 to analyze the costs and benefits of promulgating proposed criteria which cannot be detected or for which insufficient monitoring data are available.

Given these deficiencies, we recommend that EPA defer the adoption of criteria for constituents which are below detection limits until such time as EPA has demonstrated that the levels of toxic pollutants being discharged are at a level to warrant concern. As an alternative, EPA could defer to the State for promulgation of criteria for such compounds on a water body-specific basis as part of the State's continuous water quality planning process.

Response to: CTR-059-006c

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 (Category R; RFA), CTR-021-005c (Category E-01c; Executive Order 12866), CTR-036-003a, and the preamble to the proposed rule.

Comment ID: CTR-059-015b

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: S UMRA

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

Attachments? Y

CROSS REFERENCES E-01c

Comment: Executive, Order 12866 and Unfunded Mandates Reform Act

The Sanitation Districts disagree with EPA's assertion that the CTR is not a significant regulatory action under Executive Order 12866 or the Unfunded Mandates Reform Act. We believe that the potential costs for POTWs to comply with the CTR criteria could far exceed the \$ 100 million threshold, based on the fact that we estimate that the potential costs of seven Sanitation Districts' facilities to comply with the CTR could 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, and that it is significantly different from other federal regulations previously promulgated in California. Therefore, we believe that EPA has not complied with the mandates of E.O. 12866 and the Unfunded Mandates Reform Act, and that the economic analysis must be revised, and EPA must select the most cost-effective and least burdensome regulatory alternative. In addition, the Office of Management and Budget should review the economic analysis and the rule before it is promulgated, as required by Section 6 of E.O. 12866.

Response to: CTR-059-015b

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

Comment ID: CTR-084-002b
Comment Author: City of Redding
Document Type: Local Government
State of Origin: CA
Represented Org:
Document Date: 09/26/97
Subject Matter Code: S UMRA
References:
Attachments? N
CROSS REFERENCES E-01c01

Comment: ISSUES OF CONCERN

The Unfunded Mandates Act of 1995, 62 FR 42191. The City of Redding disagrees with the conclusion that the proposed rule does not result in expenditures by state or local governments in aggregate of \$100 million or more in any one year. The strict water quality criteria in the proposed rule would directly cause the state to adopt more stringent standards for dischargers, which would then require the local dischargers to implement exorbitant and costly measures against our users.

Regarding unfunded mandates, the City of Redding believes that the state and local governments would have no alternative in implementing this federal rule than to enforce exorbitant and costly measures against our users. Therefore, the proposed rule would directly cause significant burden and costs to state and local governments.

Response to: CTR-084-002b

See responses to CTR-021-005c (Category E-01c; Executive Order 12866), CTR-036-003a, and the preamble to the proposed rule.

Comment ID: CTR-090-012b

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: S UMRA

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

Attachments? Y

CROSS REFERENCES E-01c

Comment: The PUC is aware that the Clean Water Act does not require and in fact does not allow for economic considerations in meeting water quality requirements. However, other policies and regulatory mandates (Executive Order 12866 and the Unfunded Mandates Reform Act) require that we disclose to the public the cost of meeting water quality requirements. There is no doubt that there will be costs that California must bear to produce water quality. We must assure the public that the costs will produce benefits. We are not confident that this proposed rule can do that.

Response to: CTR-090-012b

See responses to CTR-021-005c (Category E-01c; Executive Order 12866), CTR-036-003a, and the preamble to the proposed rule.

Comment ID: CTR-092-016c

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: S UMRA

References: Letter CTR-092 incorporates by reference letter CTR-035

Attachments? Y

CROSS REFERENCES E-01c

R

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-092-016c

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

Subject Matter Code: T State Implementation Policy

Comment ID: CTR-004-001

Comment Author: South Bayside System Authority

Document Type: Sewer Authority

State of Origin: CA

Represented Org:

Document Date: 09/24/97

Subject Matter Code: T State Implementation Policy

References:

Attachments? N

CROSS REFERENCES

Comment: SBSA is the regional wastewater treatment agency serving over 200,000 residents and businesses in southern San Mateo County. SBSA has a permitted capacity of 29 MGD average dry weather flow utilizing advanced treatment processes including filtration, discharging to the San Francisco Bay. While there are many concerns about various features of this regulation the main issue to SBSA is the inability to determine what the actual impacts will be due to uncertainties of how the California Toxics Rule (CTR) will be implemented by the state. Assumptions that the impacts will be small because of regulatory flexibility cannot be made (see Attachment A).

Response to: CTR-004-001

EPA believes that it is possible for a discharger to pursue regulatory relief which would result in a less stringent WQBEL through a TMDL, variance, site-specific criteria, or alternative mixing zone and that it properly included the possibility of these mechanisms in calculating the low-end cost in the Economic Analysis.

With respect to the comments on TMDLs, EPA's proposed rule does not alter the statutory and regulatory language requiring the states to perform TMDLs which are then submitted for EPA approval. The preamble merely acknowledges the reality that past and ongoing TMDL processes are often a collaborative effort by dischargers, the State, EPA, and other stakeholders and that EPA expects that this collaborative approach will be utilized in the future. With respect to the comments on pounds per day, pollutant trading, and interim limits, EPA believes the preamble discussion was appropriate in articulating current EPA policy but should not be put into regulatory language since these issues are related to permit implementation which is the primary responsibility of the State.

EPA disagrees with the comments on variances and site-specific criteria. EPA believes that even though these mechanisms are not specifically authorized as part of the CTR, the rule does not preclude these mechanisms from being pursued and approved by the State and EPA in the future consistent with current regulations. Therefore, for the purposes of crafting a reasonable cost analysis, the economic analysis incorporates the possibility of dischargers obtaining variances and site-specific criteria.

With respect to mixing zones, the preamble merely reiterates EPA's current policy on the proper application of mixing zones and does not restrict mixing zones any more than they were restricted in the past. EPA will review the State's new mixing zone policy for consistency with the Clean Water Act. A federal rulemaking would not have to accompany EPA approval of specific mixing zones in permits since, unlike a variance or site-specific criteria, a change in the mixing zone does not require a change in the underlying water quality standards of a specific waterbody. See also CTR-004-009 (Category G-05;

Mixing Zones and Dilution Credits).

Given the possibility that dischargers may be able to obtain permits with less stringent WQBELs based on the mechanisms discussed above, EPA calculated a low-end cost of the rule that included the costs of a discharger pursuing regulatory relief if the costs exceed a trigger of \$200 per toxic-pounds equivalent removed.

EPA acknowledges that regulatory relief which would result in a less stringent WQBEL through a TMDL, variance, site-specific criteria, or alternative mixing zone may not always be available or appropriate. Therefore, in the final Economic Analysis, EPA calculated a high-end cost of the rule that did not contain any assumption of regulatory relief if the costs per toxic-pounds equivalent exceeded a specific "cost-trigger."

Given the uncertainty inherent in predicting how regulatory relief will be granted given that it will be decided by regulatory authorities on a case-by-case basis, EPA believes that its approach in the final Economic Analysis is a reasonable way of expressing the possible range of regulatory outcomes and the costs (and benefits) resulting from those outcomes.

Comment ID: CTR-007-006

Comment Author: Port of San Diego

Document Type: Port Authority

State of Origin: CA

Represented Org:

Document Date: 09/24/97

Subject Matter Code: T State Implementation Policy

References:

Attachments? N

CROSS REFERENCES

Comment: 5. The District is concerned with the apparent complexity of calculating the various water quality criteria limits. In order to reduce the number of errors likely to occur as a result of the calculations, the District recommends that detailed step-by-step forms be created outlining the precise calculation methods for the various priority toxic pollutants.

Thank you for this opportunity to comment on the proposed rule. Sincerely,

STUART A. FARNSWORTH Senior Environmental Planner

Response to: CTR-007-006

EPA agrees that the calculations for various water quality criteria may be complex. To assist regulatory authorities in calculating various water quality criteria, EPA has included in the "General Notes" to the proposed CTR (see 62 CFR 42160 at pp. 42205-42208) and final CTR, a section containing formulas, tables, and additional information necessary for calculating various water quality criteria proposed in the CTR.

Comment ID: CTR-009-001

Comment Author: City of Thousand Oaks
Document Type: Local Government
State of Origin: CA
Represented Org:
Document Date: 09/22/97
Subject Matter Code: T State Implementation Policy
References:
Attachments? Y
CROSS REFERENCES

Comment: Dear Ms, Frankel:

The City of Thousand Oaks has reviewed the 40 CFR Part 131 Water Quality Standards; Establishment of numeric Criteria for Priority Toxic Pollutants for the State of California; Proposed Rule as published in the Federal Register, Vol. 62, No. 150, Tuesday, August 5, 1997, and offers the following comments:

The City applauds the EPA's encouragement and endorsement of maximum flexibility applied by the State to implement these priority pollutant criteria. To that end, the City agrees with EPA that the State of California should develop and promulgate its own comprehensive water quality standards and implementation procedures, in accordance with Section 303 of the federal Clean Water Act as expeditiously as possible. The City understands the agency's lack of resources to complete the entire rulemaking task for the State, but also suggests that the EPA appreciate the lack of resources the regulated community has to comply with partial and inflexible requirements. The same "Public" is the ultimate provider of these resources. It is therefore incumbent on all layers of government to assure the value received is at least commensurate with the cost.

Response to: CTR-009-001

As recognized by the commenter, EPA has chosen to defer to the State with respect to implementation procedures. To facilitate coordination between EPA and the State on issues pertaining to implementation of CTR criteria and regulatory flexibility outlined in the CTR preamble, EPA has provided lengthy formal comment on the State's draft Policy for Implementation of Toxics Standards for Inland Surface Waters, Enclosed Bays, and Estuaries of California and Functional Equivalency Document (FED), and draft supplement and draft addendum to the supplement for the FED. EPA will continue to work closely with the State on CTR implementation issues and concerns. Pursuant to Executive Order 12866, EPA did prepare an economic analysis which provides an estimate of potential costs and benefits due to the implementation of the CTR.

Comment ID: CTR-015-003
Comment Author: Eastern Municipal Water Dist.
Document Type: Sewer Authority
State of Origin: CA
Represented Org:
Document Date: 09/23/97
Subject Matter Code: T State Implementation Policy
References:
Attachments? N
CROSS REFERENCES

Comment: Implementation Issues

It is made clear that the State Board will have the responsibility for determining implementation of the water quality criteria in the Rule and not the Agency. However, there are several implementation issues discussed in the Preamble. The relationship of the Agency to the State Board and to the Regional Water Quality Control Boards ("Regional Boards") is unclear and requires more specific explanation. Further, the Agency does not acknowledge some of the State Board's existing authority and policies, but frequently recognizes Regional Board Basin Plans.

The District supports the inclusion of any provisions that allow for state flexibility in implementation of the Rule. The Agency needs to re-examine its discussions, however, as some of them do not seem consistent with the Agency's own guidance. Finally, it is critical that the Agency work closely with the State Board on these issues. From a preliminary review of the State Board's Draft Policy for Implementation of Toxics Standards, which was just released, it is apparent that there has been no coordination on these issues. There are several inconsistencies and contradictions which should be resolved before the Rule is promulgated.

Response to: CTR-015-003

State Water Resources Control Board and Regional Water Quality Control Board authorities and policies are generally outlined and/or incorporated by reference into Basin Plans adopted by the Regional Water Quality Control Boards. To facilitate coordination between EPA and the State on issues pertaining to implementation of CTR criteria and regulatory flexibility outlined in the CTR preamble, EPA has provided lengthy formal comment on the State's draft Policy for Implementation of Toxics Standards for Inland Surface Waters, Enclosed Bays, and Estuaries of California and Functional Equivalency Document (FED), and draft supplement and draft addendum to the supplement for the FED. EPA will continue to work closely with the State on CTR implementation issues and concerns.

See also CTR-015-004 (Category G-05; Mixing Zones and Dilution Credits), CTR-004-007 (Category G-07; Variances), and CTR-015-006 (Category G-02; Compliance Schedules).

Comment ID: CTR-027-005b

Comment Author: California SWQTF

Document Type: Storm Water Auth.

State of Origin: CA

Represented Org:

Document Date: 09/25/97

Subject Matter Code: T State Implementation Policy

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

Attachments? N

CROSS REFERENCES G-03

Comment: 5. The proposed rule restricts the State's regulatory flexibility in permitting by establishing averaging periods and low flow conditions, and directives regarding establishing effluent limits for criteria not being adopted as part of the CTR. USEPA has preempted the State's flexibility by establishing averaging periods for applying acute and chronic aquatic life and human health criteria, and by establishing low flow conditions that must be used in developing limits based on proposed criteria.

These are implementation issues that should remain with the State regulatory authority.

Recommendation: The rule should be revised to delete all provisions that preempt the State's regulatory flexibility.

Response to: CTR-027-005b

EPA has adopted recommendations for averaging periods and low flow values because they are intrinsic to ensuring that the numeric values are protective of the designated use. These factors are part of the ambient condition necessary to protect the designated use, see preamble to the proposed CTR and Technical Support Document for Water Quality Based Toxics Control, U.S. EPA 1991, Section 2.3, and Appendix D. As acknowledged in the preamble, the State may develop and adopt criteria averaging periods and critical low flows that differ from EPA's recommendations, as long as they are scientifically supportable, but when EPA promulgates rules, it is using these averaging periods and flow recommendations as representing the best scientific judgement given all the uncertainties in deriving these factors.

Comment ID: CTR-032-003

Comment Author: Las Gallinas Val. Sanitary Dist

Document Type: Sewer Authority

State of Origin: CA

Represented Org:

Document Date: 09/25/97

Subject Matter Code: T State Implementation Policy

References: Letter CTR-032 incorporates by reference letter CTR-035

Attachments? N

CROSS REFERENCES

Comment: It is important that the significant efforts and accomplishments of the Task Forces not be ignored in this CTR promulgation process. The District suggests that EPA consider providing more specific guidance to the State on the need for and use of regulatory flexibility beyond its statement that "EPA supports the State's consideration of stakeholder Task Force recommendations to help in dealing with these controversial and complex issues." (CTR p.42185)

Response to: CTR-032-003

See response to CTR-009-001.

Comment ID: CTR-032-005b

Comment Author: Las Gallinas Val. Sanitary Dist

Document Type: Sewer Authority

State of Origin: CA

Represented Org:

Document Date: 09/25/97

Subject Matter Code: T State Implementation Policy

References: Letter CTR-032 incorporates by reference letter CTR-035

Attachments? N

CROSS REFERENCES V

Comment: The CTR criteria need to be specifically and directly linked in the regulations to the State's Implementation Policy. Furthermore, the CTR and the Implementation Policy need to be moved to more parallel tracks and reviewed and adopted at the same time, not in series. EPA needs to provide more specific direction to the State on how and under what conditions regulatory relief options will be pursued jointly by the State and/or Regional Boards and impacted dischargers. The concept of numeric triggers should be refined, or an equivalent threshold identified, above which specific regulatory relief options would be pursued and requirements for major treatment plant improvements held in abeyance. Without these types of commitments and the linkage of the two regulatory actions, there is no sound basis for the CTR cost estimates.

Response to: CTR-032-005b

See response to CTR-009-001 and CTR-004-001.

Comment ID: CTR-038-008e

Comment Author: Sonoma County Water Agency

Document Type: Sewer Authority

State of Origin: CA

Represented Org:

Document Date: 09/25/97

Subject Matter Code: T State Implementation Policy

References:

Attachments? Y

CROSS REFERENCES C-24

E-01c

R

S

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-038-008e

See response to CTR-038-008a (Category C-24; Site-Specific Criteria).

Comment ID: CTR-052-015

Comment Author: East Bay Dischargers Authority

Document Type: Sewer Authority

State of Origin: CA

Represented Org:

Document Date: 09/26/97

Subject Matter Code: T State Implementation Policy

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

Revise the CTR to address attainability and cost issues. The CTR should be revised such that EPA acknowledges the cost and benefit issues and provides specific regulatory relief where cost-effective compliance cannot be achieved.

Response to: CTR-052-015

See response to CTR-042-007a (Category C-21; Legal Concerns).

Comment ID: CTR-053-005

Comment Author: Heal the Bay

Document Type: Environmental Group

State of Origin: CA

Represented Org:

Document Date: 09/26/97

Subject Matter Code: T State Implementation Policy

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: Finally, Heal the Bay will review the implementation policy issued by the State to ensure that the policy includes a process to identify: (1) those criteria pollutants that, based on the recommendations of the task force and recent scientific data, should be more stringent than the proposed California Toxics Rule; (2) the process to perform the required CEQA analysis of those criteria; and (3) the time-lines for adopting the more stringent criteria.

Response to: CTR-053-005

No response required by comment.

Comment ID: CTR-055-002b
Comment Author: USS-POSCO Industries
Document Type: Specific Industry
State of Origin: CA
Represented Org:
Document Date: 09/26/97
Subject Matter Code: T State Implementation Policy
References:
Attachments? Y
CROSS REFERENCES C-21

Comment: Waste Load Allocation (WLA) is a flawed concept and UPI requests the EPA promulgate conditions for exemption as part of the requirement for compliance with such allocations.

The implementation of CWA Section 303(c)(2)(B) as discussed beginning on page 42184 causes numerous obstacles, both financial and technological, to facilities such as UPI. Our facility will be subject to water quality-based effluent limitations (WQBELs). Therefore, total maximum daily loads (TMDL) and WLAs will be utilized as future discharge permit criteria.

State Task Force recommendations also recognize that the TMDL process can be significantly labor and data intensive. UPI concurs that the TMDL process is significantly labor and data intensive. During the five year period from 1989 through 1993 UPI spent close to a million dollars (\$1,000,000) on the studies of point source wasteload performance at its facility. The study was initiated to verify the efficacy of our waste water treatment system in removing chemical process constituents that were added to the water from the river (Delta) during use of the water as process water. Chain-of-custody and laboratory results for this study were documented in our required monthly self monitoring reports to the RWQCB.

The above study of efficacy of wastewater treatment prior to discharge is summarized in the following attached tables which show averages for three month periods over five full years.

Table 9. Summary of Discharge 001 Gross Mass Loading, lb/day Table 10. Summary of Discharge 001 Net Mass Loading, lb/day Table 11. Summary of Discharge 001 Net Concentrations, ug/l

Each table is shown in two sections. Section A shows the tabulation of results for cadmium (Cd), total chromium (Cr, total), hexavalent chromium (CrE+6), copper (Cu), total iron (Fe, total), dissolved iron (Fe, dissolved), lead (Pb), nickel (Ni) and zinc (Zn). Section B shows the tabulation of results for arsenic (As), mercury (Hg), selenium (Se), silver (Ag), tin (Sn), cyanide, phenolics, polyaromatic hydrocarbons (PAHs), naphthalene, and tetrachloroethylene. All analyses were done using approved standard procedures to determine the total concentration of each chemical. All results that were reported at minimum detection level (MDL) are included in the averages at one half of the reported MDL.

The attached tables illustrate the following: The gross lb/day discharge loadings (Table 9) show certain trends of improvement, eg, CrE+6, for which the process sources had been controlled. Note that since completion of the study compliance samples for CrE+6 during the most recent two year period have been reported at less than MDL. Other decreases, such as shown for Cd, Hg and Pb, are the result of improved analytical test procedures.

The net discharge lb/day loadings (Table 10) and net discharge ug/l concentrations (Table 11) show

many results that are at or below zero discharge for many constituents. Other net discharge ug/l concentrations are significantly below the applicable MDLs, which also indicates that the net concentration is essentially zero. This indicates that chemical control for most chemicals is essentially 100% complete and that no process constituents are contained in the permitted discharge, except as noted below.

Exceptions to the above are Cr, Sn, and phenolics for which the net results are significantly above zero.

The above study shows the substantial effort and expenditure that was required to verify performance with respect to chemicals of concern (COCs) for a specific source category (and for several additional chemicals that were added to the COC list). The list of COCs is being expanded to 126 in the proposed regulations, more than six times as large a list as was evaluated in our performance study.

While the use of the Waste Load Allocation (WLA) principle may sound good, it is only good if properly administered. Two criterion should be considered to make the use of WLAs practicable and administratively feasible for both the agencies and the dischargers.:

- * The COCs applicable to WLA discharge compliance should be identified by the Administrator for each source category, per Title 33, Section 1316(b)(1).

- * Each NPDES Permit Applicant shall analyze and report on chemical listed on the standard permit application every five years to verify which if any discharge chemicals are subject to WLA discharge compliances.

For the above reasons, UPI requests the EPA add the following to the end of Section 131.38(e)(1) of part 131 of Title 40:

"New and existing point source dischargers shall be considered to be in compliance with such WQBELs except for (i) any WQBEL constituent that is identified for the source category pursuant to Section 1316(b)(1) of Title 33, or (ii) any WQBEL constituent which may cause an increase in the receiving water due to such discharge as determined from information contained in the standard required permit application."

Response to: CTR-055-002b

The comment regarding wasteload allocations is outside the scope of this rule. The CTR sets criteria for pollutant levels in ambient water but does not address how wasteload reductions are to be allocated to sources of pollutants. Wasteload allocations are already addressed under current regulations and guidance. When developing effluent limitations for a NPDES permit, the permitting authority must consider effluent limitations based on both the technology available to treat the pollutants and limitations that are protective of the designated uses of the receiving water. The intent of technology based effluent limitations is to require a minimum level of treatment for industrial/municipal point sources based on currently available treatment technologies. For industrial sources, national effluent limitations guidelines are developed based on the demonstrated performance of a reasonable level of treatment that is within the economic means of specific categories of industrial facilities. However, effluent limitations guidelines are not always established for every pollutant present in an industrial discharge and, in many instances, the guidelines are established only for those pollutants which are necessary to ensure that industrial facilities will comply with the technology-based requirements of the CWA (i.e., BPT, BCT, BAT, NSPS).

NPDES permitting regulations at 40 CFR 122.44(d) require that if, after technology based effluent limitations are applied, the permitting authority projects that any point source discharger may exceed an applicable water quality criterion, then a water quality based effluent limitation for that pollutant must be imposed. In addition, Section 301(b)(1)(c) of the Clean Water Act requires that effluent limitations be established as necessary to meet water quality standards. Neither EPA nor the states are required to set water quality based effluent limits at any higher level because of technological difficulties in measuring compliance. See *NRDC v. EPA*, 859 F. 2d 156, 208 (D.C. Cir. 1988). Water quality based effluent limitations are usually calculated from WLAs based on TMDLs, or on WLAs estimated for a single point source using simplified water quality models. These regulations also require that all effluents be characterized by the permitting authority to determine the need for water quality based effluent limitations. (The Technical Support Document for Water Quality-based Toxics Control (1991) provides additional guidance on collecting monitoring data for establishing water quality based effluent limits.) In accordance with these regulations, when determining whether a water quality based effluent limitation is needed in a permit, the permitting authority is required to consider, at minimum: (1) existing controls on point and nonpoint sources of pollution; (2) the variability of the pollutant or pollutant parameter in the effluent; (3) the sensitivity of the species to toxicity testing; and (4) where appropriate, the dilution of the effluent in the receiving water. The permitting authority must also consider whether technology based limits are sufficient to maintain State water quality standards.

Given the requirements outlined above, EPA believes that the requested changes to the end of 40 CFR 131.38(e)(1) are not appropriate within the scope of today's rule.

Comment ID: CTR-057-009

Comment Author: City of Los Angeles

Document Type: Local Government

State of Origin: CA

Represented Org:

Document Date: 09/26/97

Subject Matter Code: T State Implementation Policy

References:

Attachments? N

CROSS REFERENCES

Comment: 1995 Public Advisory Task Force Efforts

Following the State's rescission of the ISWP in 1995, eight Public Advisory Task Forces were established to deal with specific issues and problems that either arose after the plan was adopted in 1991 or were carried over from the pre-adoption public review period. These task forces were comprised of representatives from numerous public groups and agencies, including the EPA. In hindsight, it is important to note that many of the problems that were identified and addressed by the task forces review can be attributed to the similarities between the proposed Rule and the ISWP. In view of the fact that the task forces were able to achieve consensus with respect to their individual recommendations for plan revision, we believe that the EPA should acknowledge these efforts in the CTR as a means of encouraging the development of an EPA-approved State priority-pollutant plan.

Response to: CTR-057-009

See response to CTR-009-001.

Comment ID: CTR-086-005
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: T State Implementation Policy
References: Letter CTR-086 incorporates by reference letter CTR-035
Attachments? N
CROSS REFERENCES

Comment: It is important that the significant efforts and accomplishments of the Task Forces not be ignored in this CTR promulgation process. CDA suggests that EPA consider providing more specific guidance to the State on the need for, and use of, regulatory flexibility beyond its statement that "EPA supports the State's consideration of stakeholder Task Force recommendations to help deal with these controversial and complex issues." (p. 42185)

Response to: CTR-086-005

See response to CTR-009-001.

Comment ID: CTR-086-007
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: T State Implementation Policy
References: Letter CTR-086 incorporates by reference letter CTR-035
Attachments? N
CROSS REFERENCES

Comment: The CTR criteria need to be specifically and directly linked in the regulations to the State's Implementation Policy. Furthermore, the CTR and the Implementation Policy need to be moved to more parallel tracks and reviewed and adopted at the same time, not in series. EPA needs to provide more specific direction to the State on how and under what conditions regulatory relief options will be pursued jointly by the State and/or Regional Boards and impacted dischargers.

CDA appreciates the opportunity to comment on the draft CTR.

Response to: CTR-086-007

See response to CTR-009-001.

Comment ID: CTR-090-009

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: T State Implementation Policy
References: Letter CTR-090 incorporates by reference letters CTR-035 and CTR-054
Attachments? Y
CROSS REFERENCES

Comment: We recommend that EPA:

1. Incorporate in the rule, not the preamble, the implementation of the regulatory relief such as the tiered mixing zones, the use of translators, the use of the water effects ratio, interim limits and compliance schedules. Without these assurances and inclusion of these in the rule the economic analysis is useless.

Response to: CTR-090-009

EPA believes that it is not necessary to include implementation of regulatory relief such as tiered mixing zones, translators, and interim limits in today's rule since these issues are closely related to the issuance of permits which is properly deferred to the State, the permitting authority. In fact, shortly after the publication of the proposed CTR, the State's Draft Policy for Implementation of Toxics Standards for Inland Surface Waters, Enclosed Bays, and Estuaries of California proposed the use mixing zones, translators, water effects ratio, interim limits, and compliance schedules as appropriate to develop discharge limits for permits.

The CTR does include a compliance schedule provision and incorporates the water effects ratio into the calculation of the water quality criteria if appropriate.

EPA disagrees with the commenter's assertion that the economic analysis is useless unless the CTR includes the implementation measures stated by the commenter. EPA believes that the economic analysis is useful since it presents a range of possible economic impacts which vary depending upon a number of assumptions about how the State could implement the rule, including the use of regulatory relief.

Comment ID: CTR-092-001
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: T State Implementation Policy
References: Letter CTR-092 incorporates by reference letter CTR-035
Attachments? Y
CROSS REFERENCES

Comment: Relationship Between the CTR and State Implementation

The City of San Jose understands the level of effort that has gone into this rulemaking process. We find much of the preamble to the Rule to encouraging and generally support the road map to implementation of the rule that is laid out in the preamble.

The preamble describes a number of potential regulatory approaches that could be used by the State to implement the criteria proposed in the CTR. Regulatory tools such as translator mechanisms, water effect ratios, site specific objectives, interim limits while performing special studies, mixing zones, compliance schedules and trading programs are all good examples of regulatory approaches that should be used, especially under conditions such as those which exist in South San Francisco Bay, where water quality has improved tremendously in the recent past, yet full attainment of water quality objectives is still not possible.

EPA's Economic Analysis makes it clear that EPA is not only supporting use of these regulatory tools by the State, but is in fact assuming that they will be used. The accuracy of this assumption is questionable at this point in time, in light of the State's historic approach to implementation. Since EPA has the responsibility to approve any of the implementation procedures that the State decides to employ, we believe it is necessary for EPA to play an active role in the implementation phase.

Although we have not had an opportunity to review and comment on the recently issued "Proposed Policy for Implementation of Toxics Standards for Inland Surface Waters, Enclosed Bays and Estuaries of California", we believe that the implementation policy presents an opportunity to resolve the uncertainty concerning whether the State will adopt reasonable, flexible approaches to implementing the criteria that would be established by the CTR. We are requesting that the uncertainties concerning State implementation be resolved before the CTR is finalized.

Response to: CTR-092-001

See response to CTR-009-001.

Comment ID: CTRH-001-055
Comment Author: Michael Lozeau
Document Type: Public Hearing
State of Origin: CA
Represented Org: S.F. Bay/Delta Keeper
Document Date: 09/17/97
Subject Matter Code: T State Implementation Policy
References:
Attachments? N
CROSS REFERENCES

Comment: I have one more thing I can hardly read here. I was just referring back to Phil Bobel, who mentioned the state's process.

I would certainly not encourage you to do what the state has tried to do for the last three years, which is a very complicated, totally burdensome task force stakeholder process, which had most of the environmental groups walking away from it for lack of resources to keep up with all of the meetings.

And that had the result of nothing, essentially no -- I guess implementation came on Friday suddenly, but

no criteria came out of that process at all, despite all those meetings. So I certainly don't encourage you to follow that.

I think a reasonably swift process here is warranted. We're already four years late, so I would certainly encourage you to finish this rule as quickly as possible, and hopefully people will be able to make intelligent comments about it.

Response to: CTRH-001-055

No response required by comment.

Subject Matter Code: V Collaborative Approach

Comment ID: CTR-031-002e

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: V Collaborative Approach

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

Attachments? N

CROSS REFERENCES F

C-17a

C-17b

J

Comment: 2. Since the preamble implies that CTR criteria may be applied in NPDES permits for municipal storm water dischargers as numeric effluent limitations, the proposed rule is flawed with regard to: a) setting attainable, scientifically valid criteria in a manner consistent with state and federal regulatory approaches; b) assessing the potential economic impact on the public served by municipal storm water dischargers; c) assessing environmental impacts pursuant to the National Environmental Policy Act and the Endangered Species Act; and d) providing for the coordinated review and evaluation of the proposed CTR in conjunction with the proposed State Implementation Plan.

Response to: CTR-031-002e

EPA has coordinated the CTR schedule to coincide as closely as possible with the State's Implementation Plan. However, EPA wishes to promulgate the CTR as soon as possible. Therefore, EPA could not commit that the proposed CTR would be released at the same time as the proposed State Implementation Policy. For the same reasons, EPA cannot ensure that the final CTR will be released at the same time as the final State implementation policy. EPA and the State have made every effort to ensure that its separate actions will work well together and are consistent with one another.

With respect to ESA, EPA has completed consultation as required by Section 7 of the ESA. With respect to compliance with NEPA, section 511(c) of the Clean Water Act excludes this rulemaking from the requirements of NEPA. The comment also assumes that stormwater discharges subject to numeric effluent limitations will have to be treated by new end-of-pipe facilities. As explained in the response to Storm Water Economics Comments (Category J, Comment # 040-004), EPA believes that implementation of criteria as applied to wet-weather discharges will not require the construction of end-of-pipe facilities.

Comment ID: CTR-031-008b

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: V Collaborative Approach

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

Attachments? N

CROSS REFERENCES B

Comment: d. The proposed CTR and the recently released proposed State Implementation Plan must be fully integrated, internally consistent, and their combined effect thoroughly assessed. However, EPA has allowed only one week of overlap between the proposals for stakeholder review.

The EPA concedes within the proposed CTR that the criteria themselves lack substance without the corresponding implementation measures. EPA also acknowledges that the economic impact of the CTR can not be fully evaluated without consideration of the ISWP. However, the EPA can not simply abdicate its responsibility to assess the impact of its proposal, nor can it expect stakeholders to accept the proposed CTR without full understanding of its implementation.

All stakeholders require the opportunity to evaluate the proposed CTR and Implementation Plan together as a comprehensive, cohesive body of regulation.

Response to: CTR-031-008b

EPA has coordinated the CTR schedule to coincide as closely as possible with the State's Implementation Plan. However, EPA must promulgate the CTR as soon as possible to comply with its statutory obligations under the Clean Water Act. Therefore, EPA could not commit that the proposed CTR would be released at the same time as the proposed State Implementation Policy. For the same reasons, EPA cannot ensure that the final CTR will be released at the same time as the final State implementation policy. EPA and the State have made every effort to ensure that its separate actions will work well together and are internally consistent.

EPA agrees that the CTR without the corresponding implementation measures would have no direct effect on permittees. However, EPA disagrees that it has abdicated its responsibility to assess the impact of the proposal. EPA has projected the potential economic impacts of the CTR using reasonable implementation measures which are either already used by the State or are recommended in EPA's Technical Support Document (TSD) EPA believes this methodology is appropriate and reasonable since EPA cannot anticipate the final State implementation measures. EPA's estimates measure the impact of the CTR combined with the implementation procedures EPA believes are reasonable for the State to adopt. If the State adopts implementation procedures that differ from EPA recommended procedures, the change in impact will be reflected in the State's economic analysis.

Comment ID: CTR-032-005a

Comment Author: Las Gallinas Val. Sanitary Dist

Document Type: Sewer Authority

State of Origin: CA

Represented Org:

Document Date: 09/25/97

Subject Matter Code: V Collaborative Approach

References: Letter CTR-032 incorporates by reference letter CTR-035

Attachments? N

CROSS REFERENCES T

Comment: The CTR criteria need to be specifically and directly linked in the regulations to the State's Implementation Policy. Furthermore, the CTR and the Implementation Policy need to be moved to more parallel tracks and reviewed and adopted at the same time, not in series. EPA needs to provide more specific direction to the State on how and under what conditions regulatory relief options will be pursued jointly by the State and/or Regional Boards and impacted dischargers. The concept of numeric triggers should be refined, or an equivalent threshold identified, above which specific regulatory relief options would be pursued and requirements for major treatment plant improvements held in abeyance. Without these types of commitments and the linkage of the two regulatory actions, there is no sound basis for the CTR cost estimates.

Response to: CTR-032-005a

See response to CTR-031-008b. With regard to providing regulatory relief, the State has discretion to what extent it will provide regulatory relief in its water quality standards program and NPDES program. EPA disagrees with the assertion that it has no sound basis for estimating costs if it does not link both regulatory actions. The numeric cost triggers in EPA's economic analysis are used to establish a lower bound of costs since EPA cannot anticipate exactly how the State will implement regulatory relief on a case-by-case basis. To provide a more conservative cost estimate, EPA did not use the numeric cost triggers for its upper bound cost estimate. In effect, the upper bound cost estimate assumes that the State will not provide any regulatory relief.

Comment ID: CTR-034-002

Comment Author: SCAP

Document Type: Trade Org./Assoc.

State of Origin: CA

Represented Org:

Document Date: 09/25/97

Subject Matter Code: V Collaborative Approach

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

Attachments? N

CROSS REFERENCES

Comment: Equally important, we also urge EPA to work more closely with the State Water Resource Control Board (SWRCB), including such steps as the use of simultaneous comment periods and joint final promulgation. This heightened level of coordination would truly enhance the effectiveness of both EPA and the State's efforts to comply with Section 303(c)(2)(B) of the Clean Water Act, since, as EPA acknowledges in numerous locations in the Preamble, the impacts of the CTR criteria depend greatly on the State's approach to implementation (see, for instance, pp. 42188 and 42191). Thus, an important reason for EPA to grant our request to reopen the comment period is to allow sufficient time to review the draft CTR in the context of the SWRCB's recently released Statewide Implementation Policy. Thus, we ask that EPA extend the comment period until December 10, 1997, the SWRCB's public comment deadline, or, at a minimum, for 30 days.

Response to: CTR-034-002

See response to CTR-031-002e. Regarding request for extension in the comment period see section on Comment Period (Category B, CTR-001-001).

Comment ID: CTR-054-015
Comment Author: Bay Area Dischargers Assoc.
Document Type: Sewer Authority
State of Origin: CA
Represented Org:
Document Date: 09/25/97
Subject Matter Code: V Collaborative Approach
References:
Attachments? Y
CROSS REFERENCES

Comment: EPA should use a collaborative approach to address the major issues raised by BADA and other commenters. The CTR is extremely important to all stakeholders, including the regulated community, the environmental community, and the regulatory agencies. The traditional rule-making approach does not lend itself to resolving the issues raised in a manner that will satisfy the various stakeholders. The State Plan Task Force experience has demonstrated that varying interests can come together and quickly reach consensus on how to address statutory and regulatory requirements in a mutually satisfactory manner. BADA would encourage EPA to use such an approach in preparing a final CTR and would offer to assist EPA in organizing such an approach.

Response to: CTR-054-015

EPA has decided that to promulgate the CTR in a timely manner it is necessary to use the traditional rule-making approach rather than a collaborative approach involving stakeholders or a regulatory negotiation approach. The EPA must promulgate CTR water quality criteria as quickly as possible to fill the gap in California that has existed for five years. In promulgating a final rule EPA has considered all written and verbal comments as well as applicable State Plan Task Force recommendations. After consideration of all comments, EPA must ultimately promulgate criteria that are protective, scientifically defensible, and meet the requirements of the Clean Water Act. EPA believes the traditional notice and comment rule-making approach is the best way of fulfilling its obligations under the Clean Water Act in the most timely manner.

Comment ID: CTRE-001-001b
Comment Author: Tri-TAC/CASA
Document Type: Trade Org./Assoc.
State of Origin: CA
Represented Org:
Document Date: 07/21/97
Subject Matter Code: V Collaborative Approach
References:
Attachments? N
CROSS REFERENCES B

Comment: We are writing to you on behalf of Tri-TAC and the California Association of Sanitation Agencies regarding the forthcoming publication of the proposed Water Quality Standards for Toxic Pollutants for California ("California Toxics Rule") and release of draft state implementation policies

and functional equivalent document. As you are aware, Tri-TAC and CASA have supported the decisions of the U.S. Environmental Protection Agency (EPA) and the State Water Resources Control Board (SWRCB) to eliminate duplication in state and federal water quality rulemaking activities through the pursuit of a collaborative approach. Our understanding is that, through this approach, EPA will adopt water quality criteria for toxic pollutants that will apply in California and the SWRCB will adopt implementation policies that will guide the Regional Water Quality Control Boards in the implementation of those criteria. In a later phase, the SWRCB intends to adopt state criteria that will replace the federal criteria.

We have been informed recently by EPA staff that publication of the draft California Toxics Rule is imminent and is expected to take place by the end of July. According to staff, a 50-day public comment period will be provided. We have heard from SWRCB staff that they plan to release the proposed state implementation policies and FED on September 12. We have asked each agency to provide an overlapping comment period for these draft regulations, and have been informed that the current schedule will provide about one week of overlap, assuming that both agencies release their drafts on schedule. We are quite concerned about this situation in several respects. First, we believe that a one-week overlap does not provide sufficient time for a meaningful review and comparison of the regulations (and comparative analysis of the economic impact analyses, which depend heavily on the implementation policies). We believe that a minimum of 30 days is necessary for the overlap review period, and that the slight delay that this would create for EPA is warranted and would have a negligible impact on the timing of the overall rule promulgation process. Second, we are very concerned about whether the SWRCB will meet its projected release schedule. While we believe that sufficient time has been available to prepare the draft policies and FED, it is imperative that the SWRCB do everything possible to meet its commitment to move forward in a timely manner, and that any extension of EPA's comment period not be used to adjust the state's schedule. Third, we understand that both EPA and the SWRCB plan to hold public hearings regarding their respective proposals this fall. We believe that it is important that representatives of both agencies attend and participate in the hearings that each agency holds, and that an explanation be provided regarding both the CTR and the implementation policy.

In short, we request that EPA and the SWRCB carefully review their efforts to coordinate both the development and release of the California Toxics Rule and State implementation Policies, and specifically, we request that EPA provide a comment period sufficient to ensure that a 30-day overlap will occur with the SWRCB's release of the FED for the State Implementation Policies. More generally, we hope that both agencies will offer flexibility in the promulgation process so that the various scheduling and review needs can be met. We hope that your respective agencies will continue to move forward with a collaborative rulemaking process, and are concerned that cooperation not break down due to institutional barriers at this point in the process.

Thank you for your consideration of our comments. We would be happy to discuss these issues further at your convenience.

Response to: CTRE-001-001b

See response to CTR-031-002e. Regarding request for extension in the comment period see section on Comment Period (Category B, CTR-001-001).

Comment ID: CTRE-023-001b

Comment Author: Bay Area Dischargers Assoc.

Document Type: Sewer Authority
State of Origin: CA
Represented Org:
Document Date: 07/17/97
Subject Matter Code: V Collaborative Approach
References:
Attachments? N
CROSS REFERENCES B

Comment: The Bay Area Dischargers Association (BADA) is comprised of 10 POTWs in the San Francisco Bay Area. Our five largest charter members include the Central Contra Costa Sanitary District, City and County of San Francisco, City of San Jose, East Bay Dischargers Authority, and East Bay Municipal Utility District. Together BADA agencies provide wastewater service to most of the Bay Area.

BADA requests that the U.S. EPA allow at least 90 days for public review of the proposed California Toxics Rule (CTR). We understand the proposed rule will be published in the Federal Register toward the end of this month. The reasons for our request are as follows:

1. The CTR could have a significant economic impact on California municipalities and businesses. In order to properly assess the impacts of the proposed CTR standards, it is necessary to know how the standards are to be implemented. Yet, the proposed implementation provisions being developed by the State Water Resources Control Board will not be available until September 12, 1997. The several days of overlap are insufficient for California municipalities and businesses to assess the economic and environmental impacts of the proposed standards. At least 45 days of overlap is needed.
2. The U.S. EPA has spent more than three years developing the proposed CTR, in part because of its importance. It is therefore, reasonable to provide at least 90 days for the public to review and comment on the rule, especially considering its potential economic impact on the State and the unavailability of the implementation provisions
3. It is recommended that the EPA work closely with the SWRCB during the review period to define the implementation policy and procedures that the EPA would be likely to approve.

For these reasons, BADA urges you to issue a notice extending the review period from 45 days to 90 days.

Response to: CTRE-023-001b

Regarding request for extension in the comment period see section on Comment Period (Category B, CTR-001-001).

EPA did review the State's proposed implementation policy and procedures. EPA provided written comments to the SWRCB on December 9, 1997. These comments and other communications with the SWRCB are likely to facilitate EPA's review of the final SWRCB implementation plan.

Comment ID: CTRH-001-019b

Comment Author: Phil Bobel
Document Type: Public Hearing
State of Origin: CA
Represented Org: Tri-TAC
Document Date: 09/17/97
Subject Matter Code: V Collaborative Approach
References:
Attachments? N
CROSS REFERENCES B

Comment: MR. BOBEL: Thank you, Steve.

I'm Phil Bobel. I represent Tri-TAC, an organization of sewage treatment plants, the POTWs as we call them, made up of three groups: CASA, the California Association of Sanitation Agencies; the League of Cities; and the California Water Environment Association.

And later this afternoon you're going to hear from Bob Reid who represents CASA. And our comments are essentially the same, so I'm going to not repeat and just summarize a couple things.

I was even going to say you guys had done a really good job. But in light of all the previous speakers, I deleted that part of my testimony.

I will try to be positive and constructive. I promised to do that. In describing the nature of my comments on your little form, I put that I would be constructive. So I will do that.

The first point I'd like to make is positive. I think that the coordination you're doing with the state is great. The fact that we're going to have coordination with the feds focusing on the numeric criteria, the state focus on the implementation policy, working to come up with a system that will serve us all, is a good way to use resources of both organizations.

I applaud you for that and hope you will be able to pull that off. This is different than what we've tried to do before, and it will require some creativity.

One specific thing that I think would help if we did, is to allow all of us to see both what the state is proposing and what the feds are proposing, so we need a little more time in this comment period.

We've appealed before and been told no, but I still put that on the table as a good idea for the ultimate goal of a coordinated, consolidated, as much as possible, federal and EPA approach to this thing.

If you don't do that, or even if you do do that, I think it's going to require some other kinds of creativity as we move out of -- away from your hearing and toward a final rule.

And in that period of time, I would ask you and the state to sit down together and see what kind of a process you can use to take the comments that you'll hear from your federal regs and the comments you hear on the state plan, and put those together, hear more back from folks that are interested and come up with a package that makes sense.

You're going to need some way of going back to interested parties over a longer period of time -- communicating, coordinating -- and I would refer you to the process that the state used on their task force

approach and suggest that we need something like that as we move to the future. Creativity is going to be needed.

Response to: CTRH-001-019b

EPA has decided that to promulgate the CTR in a timely manner it is necessary to use the traditional rule-making approach rather than a collaborative approach involving stakeholders or a regulatory negotiation approach. The EPA must promulgate CTR water quality criteria as quickly as possible to fill the gap in California that has existed for five years. In promulgating a final rule EPA has considered all written and verbal comments as well as applicable State Plan Task Force recommendations. After consideration of all comments, EPA must ultimately promulgate criteria that are protective, scientifically defensible, and meet the requirements of the Clean Water Act. EPA believes the traditional notice and comment rule-making approach is the best way of fulfilling its obligations under the Clean Water Act in the most timely manner.

EPA and the State have made every effort to ensure that its separate actions will work well together and are internally consistent.

Comment ID: CTRH-001-025
Comment Author: Michelle Pla
Document Type: Public Hearing
State of Origin: CA
Represented Org: S.F. Public Utilities Com
Document Date: 09/17/97
Subject Matter Code: V Collaborative Approach
References:
Attachments? N
CROSS REFERENCES

Comment: I also want to back up the comment that Phil made about CASA. San Francisco is a member through the League of Cities, with Tri-TAC -- San Francisco is a member of Tri-TAC through the League of Cities, and also agree that you need to be creative here.

You may be taking the approach that this is a rulemaking for you, and once you're done making the rule, you're out. But because of the fact that we've come to a different perspective with you adopting numbers and statements looking at implementation, you're going to have to do an awful lot of creative work to -- working outside of models we're used to, in order to get to something that's going to make sense for the waters of the State of California, that's going to make sense for the people fishing and eating the fish.

So I really want to back up Phil and everyone else that makes those comments. That's very critical.

Response to: CTRH-001-025

See response to CTRH-001-019b.

Comment ID: CTRH-001-030
Comment Author: Michelle Pla

Document Type: Public Hearing
State of Origin: CA
Represented Org: S.F. Public Utilities Com
Document Date: 09/17/97
Subject Matter Code: V Collaborative Approach
References:
Attachments? N
CROSS REFERENCES

Comment: I think I want to close again with there's some really great things in there. There's also some flaws. And I think we're really missing the boat if we don't try to think outside of just a regular rulemaking here and begin thinking about a watershed approach, how we're going to get to making these waters clean.

And that's got to take a collaboration between EPA and the state that we haven't probably seen before. And I know you're attempting to do that. I want to encourage you to keep working on that.

Thank you.

Response to: CTRH-001-030

See response to CTRH-001-030.

Comment ID: CTRH-001-056
Comment Author: Dave Tucker
Document Type: Public Hearing
State of Origin: CA
Represented Org: San Jose Env. Serv. Dept.
Document Date: 09/17/97
Subject Matter Code: V Collaborative Approach
References:
Attachments? N
CROSS REFERENCES

Comment: MR. TUCKER: My name is Dave Tucker and I will be delivering Lou Garcia's comments today. He stepped away for a few minutes, then reappeared, but I got overcome by this. I'll keep my comments brief.

My comments will be on behalf of the City of San Jose Environmental Services Department. We will keep our comments brief today. We will be following up with extensive written comments by the close of the comment period next week.

I'm going to discuss two topics this afternoon. One is about the things that we support highly, and that is the flexibility and innovation that is included in the program regarding water quality standards.

However, we do recommend that EPA take a more active or proactive approach to employing such flexibility during the interim period between the federal promulgation and that of the completion of the statewide process, and that EPA be an active participant, actually extending into the water quality

planning and implementation process to California as an on-line stakeholder.

Response to: CTRH-001-056

EPA did review the State's proposed implementation policy and procedures. EPA provided written comments to the SWRCB on December 9, 1997. These comments and other communications with the SWRCB are likely to facilitate EPA's review of the final SWRCB implementation plan. EPA plans to continue to be an active participant into the water quality planning and implementation process in California.

Comment ID: CTRH-002-021b

Comment Author: Ing-Yig Cheng

Document Type: Public Hearing

State of Origin: CA

Represented Org: L.A. Bureau of Sanitation

Document Date: 09/18/97

Subject Matter Code: V Collaborative Approach

References:

Attachments? N

CROSS REFERENCES B

Comment: As you are aware, the California Policy for Implementation of Toxics Standards for Inland Surface Water, Enclosed Bays, and Estuaries of California, the proposed policy, was issued a few days ago. EPA and State essentially had the same objective to establish water quality criteria that are implementable for the water of California. Therefore, it is necessary for regulators and dischargers alike to fully comprehend the consequences of these rules on similar issues but from perhaps a different perspective.

Consequently, we strongly urge EPA to allow for additional 30 days for you and for us to fully review both documents together. We also urge EPA and State to coordinate these two rule-making process to minimize inconsistencies that might otherwise occur, EPA is the final focal point of this concern because the process of State's obtaining EPA approval of ISWP and EBEP will be greatly enhanced if EPA and State can work together; and without EPA's approval, State's plan will be no good. So I think it will be ideal if CTR and the State's proposed policy can be promulgated simultaneously.

Thank you again for the opportunity to address you.

Response to: CTRH-002-021b

Regarding request for extension in the comment period see section on Comment Period (Category B, CTR-001-001).

EPA did review the State's proposed implementation policy and procedures. EPA provided written comments to the SWRCB on December 9, 1997. These comments and other communications with the SWRCB are likely to facilitate EPA's review of the final SWRCB implementation plan.

EPA has coordinated the CTR schedule to coincide as closely as possible with the State's Implementation

Plan. However, EPA must promulgate the CTR as soon as possible to comply with its statutory obligations under the Clean Water Act. Therefore, EPA could not commit that the proposed CTR would be released at the same time as the proposed State Implementation Policy. For the same reasons, EPA cannot ensure that the final CTR will be released at the same time as the final State implementation policy. EPA and the State have made every effort to ensure that its separate actions will work well together and are internally consistent.
