

UNITED STATES CONFERENCE OF MAYORS
NATIONAL LEAGUE OF CITIES
WATER ENVIRONMENT FEDERATION
ASSOCIATION OF METROPOLITAN SEWERAGE AGENCIES
MID-ATLANTIC BIOSOLIDS ASSOCIATION
CALIFORNIA ASSOCIATION OF SANITATION AGENCIES
WEST VIRGINIA MUNICIPAL WATER QUALITY ASSOCIATION
MARYLAND ASSOCIATION OF MUNICIPAL WASTEWATER AGENCIES
SOUTH CAROLINA WATER QUALITY ASSOCIATION
VIRGINIA ASSOCIATION OF MUNICIPAL WASTEWATER AGENCIES
Tri-TAC
THE SOUTHERN CALIFORNIA ALLIANCE OF PUBLICLY OWNED TREATMENT WORKS
THE CENTRAL VALLEY CLEAN WATER ASSOCIATION
THE NORTHWEST BIOSOLIDS MANAGEMENT ASSOCIATION
BAY AREA CLEAN WATER AGENCIES
WATER ENVIRONMENT ASSOCIATION OF TEXAS

October 24, 2003

Via Telecopier, E-Mail and U.S. Mail

Marianne Horinko, Acting Administrator
United States Environmental Protection Agency
Ariel Rios Building
1200 Pennsylvania Avenue, N.W.
Washington, DC 20460

Re: Response to Petition Seeking "Emergency Moratorium"
on the Land Application of Biosolids

Dear Ms. Horinko:

The above organizations respond herein to the Center for Food Safety's October 7, 2003 petition to the U. S. Environmental Protection Agency (EPA) seeking a moratorium on biosolids land application and other actions.

Collectively, these organizations represent the leadership of America's major cities, the majority of the sewered population in the United States, 38,000 water quality professionals, and numerous state organizations that address water quality, wastewater treatment, and biosolids issues. We expect that additional biosolids stakeholder organizations will become signatories in the near future and plan to forward these updates to you. Detailed information on each signatory is included in Attachment A to this letter.

We ask that the petition be denied because:

- Beneficial use of properly managed biosolids through land application to farms, reclamation of disturbed lands, and use in turf maintenance and home gardening is a safe and time-tested recycling practice;

- The safety of beneficial use of properly managed biosolids has been underscored by decades of scientific work, including two National Academy of Sciences reviews;
- Biosolids recycling is a successful component of America's clean water program;
- Petitioners' allegations that biosolids have been shown to injure animals or humans are unsubstantiated by sound science; and
- EPA has met and continues to meet its obligations to update the science and regulation of biosolids.

We are committed to safe and proper land application of biosolids under current federal EPA regulations, as well as additional state and local requirements. We believe the petition is based on misinformation and fears that have not materialized over decades of successful land application of biosolids. A wealth of scientific evidence and the long experience of our agencies and members demonstrate the safety and environmental advantages of recycling biosolids. We urge EPA to continue to base federal biosolids policy and regulation on sound science and experience.

A. The Allegations in the Petition Regarding Biosolids are Incorrect

The petition filed by the Center for Food Safety and other interest groups is legally meritless, factually inaccurate and scientifically wrong. Its allegations and demand for a ban do not enhance protection of the environment or advance biosolids science.

This is apparent in the petitioners' inability to identify a single piece of scientific evidence of harm to human health or the environment resulting from the beneficial use of biosolids, or to identify a single regulatory failure on the part of the EPA. The main "evidence" cited by petitioners – a lawsuit in Georgia state court in which the plaintiffs alleged that land applied biosolids poisoned their dairy cattle with heavy metals – has been misrepresented by the petitioners. The scientific evidence presented to the Georgia court showed no significant amounts of metals in the pastureland or cattle. The jury award in favor of the plaintiffs was based on a contract claim and the question of whether biosolids injured the plaintiffs' cattle or land was never presented to the jury. Moreover, we understand that the case is still pending.¹ In each case of human death that petitioners attribute to EPA regulated sewage sludge, government investigations of the allegations have found no link between biosolids and the deaths.²

¹ Counsel for the defendant City of Augusta, which land applied the biosolids in question, submitted a letter to EPA dated October 20, 2003 that comprehensively addresses the petitioners' misrepresentations. *See also* J. Gaskin et al., *Long-Term Biosolids Application Effects on Metal Concentrations in Soil and Bermudagrass Forage*, 32 *Journal of Environmental Quality* 146 (2003) (a study of Georgia pastureland receiving City of Augusta biosolids found that "forage quality from fields with long-term application of biosolids was similar to that having only commercial fertilizer and should not pose a risk to animal health").

² *See* Letter from J. Kaplan, Acting Chief Medical Examiner of the State of New Hampshire, to E. Schmidt, Director, Division of Water Supply and Pollution Control, New Hampshire Department

Sensational and anecdotal claims of harm to human health and the environment such as those collected by the Cornell Waste Management Institute (“CWMI”) and cited by petitioners can not trump the large body of scientific evidence supporting the safety of beneficial use. See National Research Council of the National Academy of Sciences, *Biosolids Applied to Land: Advancing Standards and Practices* 12 (2002) (cautioning against reliance on “anecdotal information . . . for the predication of past, current, or future regulations”). CWMI even disclaims having conducted a proper scientific investigation of the alleged illnesses it links to biosolids. See CWMI, *Clustering of Biosolids Land Application Alleged Health Incidents by Locality*, at <http://cwmi.css.cornell.edu/Sludge/INCIDENTS.htm>. Rigorous scientific studies continue to show that biosolids are not a source of pathogens for human exposure.³

B. Land Application of Biosolids is Safe and Environmentally Beneficial

Thousands of local governments throughout the United States rely on land application of biosolids for environmentally beneficial and economic management of sewage sludge. See EPA, *Biosolids Generation, Use, and Disposal in the United States* 2 (1999) (over 60% of the 6.9 million tons of biosolids generated in 1998 were beneficially used). Beneficial use of biosolids consists of land application to farm land as a fertilizer and soil amendment, reclamation of disturbed lands such as strip mines, and use in turf maintenance and home gardening. The petition before EPA broadly targets all types of beneficial use of all types of biosolids that are added to land.

Of equal importance, beneficial use of biosolids recycles valuable plant nutrients and builds soil quality. Thousands of farmers rely on land application as an inexpensive fertilizer and organic soil amendment. The World Health Organization recognized in 1980 that “biosolids should be regarded as a natural resource to be conserved and reused rather than discarded.”

Beneficial use of biosolids has undergone intensive scrutiny by EPA and the academic community and repeatedly has been deemed safe by objective scientific researchers. The National Research Council (“NRC”) of the National Academy of Sciences recently conducted a comprehensive review of the science underlying EPA’s Part 503 Rule, the federal regulations governing biosolids. NRC, *Biosolids Applied to Land: Advancing Standards and Practices* (2002). The NRC concluded “there is no documented scientific evidence that the Part 503 Rule has failed to protect public health.” *Id.* at 3; see also NRC, *Use*

(...Continued)

of Environmental Services (Nov. 27, 1995), at <http://www.biosolids.com/pdf/20.pdf>; Pennsylvania Department of Environmental Protection (“PA DEP”) Bureau of Investigations, *Report on the Investigation into the Application of Biosolids at the Al Hamilton Mountain Top Mine Site and the Death of Tony Behun* (May 2000), at <http://www.dep.state.pa.us/dep/biosolids/Testimony/BiosolidsReport0500.htm> PA DEP Bureau of Investigations, *Interim Report on the Investigation of the Gelsinger Farm/Biosolids Application Site and the Death of Daniel Pennock* (July 25, 2001), at http://www.dep.state.pa.us/dep/biosolids/Testimony/Intro_to_Pennock_Investigation.htm Last week, a Pennsylvania state court dismissed the claims of the family of Daniel Pennock alleging harm from biosolids.

³ See, e.g., P. Russin et al., “Evidence for the Absence of Staphylococcus in Land Applied Biosolids” *Environmental Science & Technology* 4027 (Sept. 15, 2003).

of Reclaimed Water and Sludge in Food Crop Production 13 (1996) (land application of biosolids poses “negligible risk” to human health and the environment). In response to the NRC’s 2002 report on biosolids, EPA stated that the report does not affect the viability of land application of biosolids as a management option for wastewater agencies. Letter of Tracy Mehan and Paul Gilman, EPA Assistant Administrators, Oct. 31, 2002.

C. EPA’s Research Plan for Biosolids Meets the Agency’s Obligations Under the Clean Water Act

Although the petitioners assert that EPA has failed to meet its regulatory obligations, citing, among other things, a requirement that it conduct a biennial review of the biosolids regulations, *see* Clean Water Act § 405(d)(2)(C), the Agency has in fact undertaken the necessary reviews of the 503 Rule. For example, EPA on April 9, 2003 published a Federal Register Notice regarding the very requirements that petitioners’ claim EPA has not met. *See* EPA, *Standards for the Use and Disposal of Sewage Sludge; Agency Response to the National Research Council Report on Biosolids Applied to Land and the Results of EPA’s Review of Existing Sewage Sludge Regulations*, 68 Fed. Reg. 17379 (Apr. 9, 2003). In this critical document, the EPA both describes in detail its compliance with its obligations under the Clean Water Act and affirms that “[t]he Agency continues to believe that land application of biosolids is an appropriate choice for communities when conducted in compliance with EPA regulations.” *Id.* at 17392. The Agency further explains its ongoing development of a research agenda to address the key recommendations of the NRC to update the science underlying the 503 Rule. The final research agenda will be released in January 2004, along with the results of EPA’s § 405(d)(2)(C) review.

Most recently, on October 17, 2003, the EPA issued a fifty-four page notice of its final scientific determination on dioxins in biosolids. After a multi-year data gathering and risk assessment, the Agency “decided not to regulate dioxins in land-applied sewage sludge because EPA considers the predicted risks to human health and the environment from dioxin and dioxin-like compounds in land-applied sewage sludge to be low [T]he existing regulation of sewage sludge in 40 CFR part 503 is adequate to protect human health and the environment. . . . EPA’s evaluation . . . shows the risks to be minimal.” EPA, *Standards for the Use or Disposal of Sewage Sludge: Decision Not to Regulate Dioxins in Land-Applied Sewage Sludge*.

To the extent that petitioners want to participate in the development of biosolids policy and ongoing biosolids activities, there are many opportunities to do so. For example, the Water Environment Research Foundation and EPA co-hosted a national Biosolids Research Summit in July of 2003 that was open to all stakeholders, including critics of biosolids recycling on land, for the purpose of shaping the research agenda in response to the NRC recommendations to update biosolids science. Many of the petitioners attended and played a role in the WERF/EPA summit. Similarly, major stakeholders are developing environmental management systems in conjunction with EPA, specifically to improve biosolids practices at America’s wastewater treatment plants.

In conclusion, the beneficial use of biosolids is a time-tested practice that is critical to the nation’s wastewater infrastructure. Biosolids recycling manages millions of tons of sewage, improves the quality of the nation’s waters and provides America’s land with a valuable organic supplement. Hundreds of

thousands of land applications over the last half-century have proven the safety and environmental benefits of recycling biosolids.

We urge EPA to reject the petitioners' demand for a moratorium or a rulemaking. Instead, the Agency should reiterate its commitment to the beneficial use of properly managed biosolids and continue ongoing activities for enhancing communication with outside associations and with the public.

Sincerely,

U.S. Conference Of Mayors
National League Of Cities
Water Environment Federation
Association Of Metropolitan Sewerage Agencies
Mid-Atlantic Biosolids Association
California Association Of Sanitation Agencies
West Virginia Municipal Water Quality Association
Maryland Association Of Municipal Wastewater Agencies
South Carolina Water Quality Association
Virginia Association Of Municipal Wastewater Agencies
Tri-TAC
The Southern California Alliance Of Publicly Owned Treatment Works
The Central Valley Clean Water Association
The Northwest Biosolids Management Association
Bay Area Clean Water Agencies
Water Environment Association of Texas

cc: G. Tracy Mehan, III, Assistant Administrator, Office of Water
Paul Gilman, Assistant Administrator, Office of Research and Development
James Hanlon, Director, Office of Wastewater Management, Office of Water
Geoffrey H. Grubbs, Director, Office of Science and Technology, Office of Water
Lisa M. Jaeger, Acting General Counsel, Office of General Counsel
Lisa Harrison, Acting Associate Administrator, Office of Public Affairs

ATTACHMENT A

- The United States Conference of Mayors (USCM) is the official nonpartisan organization of the nation's 1,183 U.S. cities with populations of 30,000 or more. Each city is represented in the Conference by its chief elected official, the mayor. The primary roles of the Conference of Mayors are to promote the development of effective national urban/suburban policy; strengthen federal-city relationships; ensure that federal policy meets urban needs; provide mayors with leadership and management tools; and create a forum in which mayors can share ideas and information. The USCM has assumed historically a national leadership role, calling early attention to serious urban problems and pressing successfully for solutions.
- The National League of Cities (NLC) is the oldest and largest national organization representing municipal governments throughout the United States with members ranging in size from New York City to Bee Cave, Texas. Its mission is to strengthen and promote cities as centers of opportunity, leadership, and governance. Working in close partnership with all 49 state municipal leagues, the National League of Cities serves as a resource to and an advocate for the more than 18,000 cities, villages, and towns it represents. NLC was founded in December 1924 by 10 state municipal leagues that saw the need for a national organization to strengthen local government through research, information sharing, and advocacy on behalf of hometown America. It was initially an organization of state municipal leagues. In the 1960s and 1970s, membership was gradually opened to cities of all sizes giving local elected leaders a more direct opportunity to shape the priorities, policies, and advocacy positions of the organization. Today, the unique partnership among NLC, the 49 state municipal leagues, and the elected leaders of the 1,700 member cities and 18,000 state league cities provides a powerful network for information sharing and for speaking on behalf of America's cities in Washington, D.C. and in the state capitols.
- The Water Environment Federation (WEF) is a non-profit technical and educational organization dedicated to serving the public interest in providing efficient and environmentally protective water quality and wastewater management services. WEF is comprised of approximately 38,000 water quality professionals, including engineers, academics, wastewater professionals, and public officials. Our organization and its affiliate, the Water Environment Research Foundation (WERF), have invested millions of dollars researching and improving the science and management practices for land application of biosolids.
- The Association of Metropolitan Sewerage Agencies (AMSA) represents the interests of nearly 300 of the nation's publicly owned wastewater utilities (POTWs). AMSA members serve the majority of the sewered population in the United States and collectively treat and reclaim over 18 billion gallons of wastewater every day. AMSA member agencies generate wastewater sludge in the biological treatment process. After further treatment, this sludge can become a useful product to amend and enhance soil.

Biosolids land application is one of the most environmentally sound and land applications for the millions of tons of biosolids generated every year by U.S. citizens.

- The mission of the Mid-Atlantic Biosolids Association is to cooperatively foster public understanding and environmentally sound management of biosolids. MABA's geographical coverage is the six states of New York, New Jersey, Pennsylvania, Delaware, Maryland, and Virginia, and also the District of Columbia. MABA has four classes of membership: Public Facility, Business, Alliance and Associate. Convened August 1997, Philadelphia, PA. MABA was incorporated April 19, 1999, in the Commonwealth of Pennsylvania, under 501(c)(3).
- The California Association of Sanitation Agencies (CASA) is the primary advocate for California POTWs in Sacramento and Washington, DC. We provide a wide range of services to over 100 members, including legislative advocacy at the state and federal levels, a regulatory affairs program, a legal affairs program, a biosolids program and a variety of other services. Our members are public agencies and cities that provide wastewater collection treatment, disposal and reclamation services throughout California. CASA also has Associate Members, including engineering firms, financial consultants, human resources consultants and law firms.
- The West Virginia Municipal Water Quality Association, Inc. (WV MQA) comprises 25 local governments statewide providing public water and sewer service to almost 90 percent of the sewered population in the State. A majority of the WV MWQA members land apply biosolids for agricultural, retail or other beneficial uses. Our land application activities occur in full partnership with our farming partners, the WV Department of Environmental Protection and the public that we serve. The employees of our member agencies strive each day to efficiently and affordably protect the health of our citizens and our environment.
- The Maryland Association of Municipal Wastewater Agencies, Inc. (MAMWA) comprises 26 local governments statewide providing public water and sewer service to over 95 percent of the sewered population in the State. Our members have invested in some of the most advanced treatment facilities in the nation to protect public health and waters across the State and the Chesapeake Bay. A majority of the MAMWA members land apply biosolids for agricultural, retail or other beneficial uses. Our land application activities occur in full partnership with our farming partners, the Maryland Department of Environmental Protection and the public that we serve. The employees of our member agencies excel each day in their efforts to efficiently and affordably protect the health of our citizens and our environment.
- The South Carolina Water Quality Association, Inc. (WQA) comprises 20 local governments statewide providing public water and sewer service to a majority of the sewered population in the State. WQA members land apply biosolids for agricultural, retail or other beneficial uses. Our land application activities occur in full partnership with our farming partners, the SC Department of Health and Environmental Control and

the public that we serve. The employees of our member agencies strive each day to efficiently and affordably protect the health of our citizens and our environment.

- The Virginia Association of Municipal Wastewater Agencies (VAMWA) is a non-profit environmental group devoted to the protection of public health and water quality based on sound science. The Association is comprised of 47 counties, cities, towns, wastewater authorities and sanitation districts from across the Commonwealth of Virginia. Members collectively serve over 90 percent of Virginia's sewered population. VAMWA firmly believes that biosolids land application in accordance with existing federal regulations is safe and environmentally beneficial and fully respects the role of local government in managing local land use.
- Tri-TAC is a technical advisory committee consisting of representatives from the California League of Cities, the California Association of Sanitation Agencies, and the California Water Environment Association. Tri-TAC works with State and Federal regulatory agencies and interest groups on matters related to POTWs, with the goal of improving the overall effectiveness and accountability of environmental programs that impact POTWs in California.
- The Southern California Alliance of Publicly Owned Treatment Works (SCAP) is an association of cities, special districts and other public agencies primarily formed to concentrate their resources to effect reasonable local, state and federal regulations impacting POTWs. The organization is comprised of 60 wastewater treatment agencies and one large regional water treatment agency. Together, SCAP's membership treats the wastewater for over 16 million southern Californians in seven counties. All of SCAP's members are public agencies, either municipalities or special districts, charged with the responsibility for treating and disposing of wastewater in a safe and economically viable manner for their ratepayers.
- The Central Valley Clean Water Association (CVCWA) was originally founded in 1987 and currently represents forty (44) cities, counties, and wastewater agencies in the Central Valley of California. The CVCWA represents wastewater utilities that serve communities ranging in size from 181 million gallons of wastewater per day down to twenty-six summer homes connected to a community leach field. Many of the member agencies reuse biosolids by land application to the benefit of lands of the Central Valley.
- The Northwest Biosolids Management Association (NBMA) was formed to provide a regional voice in the Pacific Northwest for reporting biosolids successes and concerns. Since 1987, the NBMA has worked to advance environmentally sound biosolids management through biosolids research, participating in regulatory development and implementation, and providing continuing education opportunities and biosolids information resources. The NBMA is a network of more than 200 members ranging from small sewer districts to large urban wastewater treatment agencies and private companies in Washington, Oregon, Alaska, and British Columbia.

- The Bay Area Clean Water Agencies' (BACWA) membership is comprised of local governmental agencies that are leaders in urban water resource management and public stewardship of the Bay water quality. BACWA members own and operate POTWs that discharge to the water of San Francisco Bay Estuary. Together, BACWA's members serve over 5 million people in the nine county Bay Area, treating all domestic, commercial and a significant amount of industrial wastewater. BACWA was formed to develop a region-wide understanding of the watershed protection and enhancement needs through reliance on sound technical, scientific, environmental and economic information and ensure that this understanding leads to long-term stewardship of the San Francisco Bay Estuary.
- The Water Environment Association of Texas (WEAT) is a non-profit professional association for the wastewater and water industry. WEAT consists of over 1,400 members from every facet of the water industry. Members are engineers, operators, plant supervisors, scientists, students, contractors, suppliers, industrial representatives, maintenance personnel, professors, training firms, consultants, and government representatives, all professionals in the water industry striving to continually improve our water environment. WEAT is a member association of the Water Environment Federation (WEF) that encompasses an international network of over 40,000 wastewater professionals worldwide.