January 31, 2019

Ms. Lorelei Oviatt, Director
Planning and Natural Resources Department
2700 M Street, Suite 100
Bakersfield, CA 93301-8600

SUBJECT: Comments on Administrative Draft Environmental Impact Report for Amendment to Title 19 – Kern County Zoning Ordinance (2018 - A) for Agricultural Use of Biosolids.

Dear Ms. Oviatt:

The California Association of Sanitation Agencies greatly appreciates the opportunity to provide preliminary comments on the administrative draft Environmental Impact Report (EIR) for the agricultural use of biosolids prepared on behalf of Kern County by Ecology and Environment Inc. We were encouraged by our early conversations with you and your staff, and optimistic that the EIR would build upon the wealth of scientific and technical information available. Unfortunately, as discussed below, we believe the draft EIR is fundamentally flawed and that significant changes are required before public release.

The preparation of the EIR follows the judicial invalidation of Measure E, which prohibited the land application of biosolids in the unincorporated areas of the County. The court found Measure E conflicted with the California Integrated Waste Management Act and exceeded the County’s police power. In light of the legal boundaries established by the court, we are surprised and dismayed by the first draft of the EIR. It appears the EIR is attempting to justify reinstating a restrictive ordinance of the type the court ruled was beyond the authority of the County. The conclusions throughout the document that the land application of biosolids will have significant unavoidable environmental impacts have no basis in science or decades of practice in Kern County, in California, and across the globe. The excessive mitigation measures recommended in the EIR, which still purportedly result in significant and unavoidable cumulative impacts, amount to a de facto practical ban on the land application of biosolids.

The EIR cites significant and unavoidable cumulative impacts to Agriculture and Forest Resources due to contamination of heavy metals. This ignores science and court documents which illustrated no such impact. Others include Air Quality (due to transportation and field equipment, ignoring the fact that farming requires this activity whether using biosolids or not); Biological Resources (due to runoff, which regulations already prohibited); Greenhouse Gas Emissions and Global Climate Change (ignoring the science which shows biosolids sequester carbon and avoid the use of fossil fuel intense inorganic fertilizer (almost a quarter of a gallon of fossil fuel is needed to produce every pound of inorganic nitrogen)); and others all without technical or scientific substantiation.

The Draft EIR ignores the weight of scientific evidence, existing state and federal regulations which govern treatment, quality and land application of biosolids, and decades of experience. It is also in direct conflict with the findings of the State Water Resources Control Board’s (State Water Board) Statewide Programmatic Environmental Impact Report (PEIR) (Jones and Stokes 2004) which evaluated 50 potential impacts and found them all to be less than significant after mitigation. The State Water Board issued a statewide General Order based on the findings of the PEIR which concluded that the highest and best beneficial use of biosolids is land application.¹

Additionally, the Draft EIR is devoid of any discussion of recent legislation, SB 1383-Chapter 395 Statutes of 2016, which will be implemented through regulations currently being considered by CalRecycle. The proposed regulations would prohibit local ordinances that ban or impose more restrictive requirements than federal and state regulations for the land application of biosolids. A county ordinance reflecting the erroneous conclusions set forth in this EIR, including the onerous mitigation measures, would almost certainly fall afoul of these regulations and not withstand a legal challenge.

¹ Kern County sued the state over an early draft PEIR and as a result the state evaluated two additional alternative scenarios but did not alter its overall conclusions.
As the court found in the Measure E case, based on extensive expert and factual evidence in the record, “[t]he overwhelming weight of the evidence is that there is no basis in fact for any determination that land application of biosolids poses any risk to Kern County residents, let alone a real and substantial risk that would be alleviated by banning such land application . . . There is no evidence of risk to human health.” The EIR does not cite any conditions or factors that have changed since the court reached these conclusions. The Draft EIR attempts to revive Measure E with no evidentiary basis or persuasive rationale. The risks identified are grounded solely on fear and lack any scientific support.

In summary, CASA finds the EIR to be seriously flawed and an attempt to justify a de facto ban on the land application of biosolids. Such an outcome would conflict with findings and conclusions of the USEPA, the State Water Board, and the Superior Court of Tulare County. Significant revisions to the draft EIR are needed, and CASA is available to further discuss any of the issues raised in this letter and to provide assistance to improve the EIR. I can be reached at gkester@casaweb.org or at 916-844-5262.

Sincerely,

Greg Kester
Director of Renewable Resource Programs