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14 UNITED STATES DISTRICT COURT  
15 CENTRAL DISTRICT OF CALIFORNIA

16 CITY OF LOS ANGELES; ORANGE  
COUNTY SANITATION DISTRICT;  
17 COUNTY SANITATION DISTRICT NO. 2  
OF LOS ANGELES COUNTY;  
18 RESPONSIBLE BIOSOLIDS  
MANAGEMENT, INC.; R&G FANUCCHI,  
19 INC.; SHAEN MAGAN, both individually  
and d/b/a HONEY BUCKET FARMS and  
20 TULE RANCH/MAGAN FARMS;  
WESTERN EXPRESS, INC.; SIERRA  
21 TRANSPORT, INC.; CALIFORNIA  
ASSOCIATION OF SANITATION  
22 AGENCIES,

23 Plaintiffs,

v.

24 COUNTY OF KERN; KERN COUNTY  
25 BOARD OF SUPERVISORS,  
26 Defendants.

No. CV 06-5094 GAF (VBKx)

**DECLARATION OF LARRY  
BAHR IN SUPPORT OF  
PLAINTIFFS' MOTION  
FOR A PRELIMINARY  
INJUNCTION**

Date: October 16, 2006  
Time: 9:30 a.m.  
Place: 255 East Temple St.,  
Room 740  
Los Angeles, CA 90012  
Judge: Hon. Gary A. Feess

1 I, Larry Bahr, declare as follows:

2 **EXPERIENCE, QUALIFICATIONS, AND SUMMARY OF OPINION**

3 1. I am the Regulatory Program Director for the Fairfield-Suisun  
4 Sewer District (FSSD) and have been employed by FSSD for 14 years. The FSSD  
5 provides wastewater treatment for over 130,000 citizens in central Solano County,  
6 which is located approximately mid-way between Sacramento and the San  
7 Francisco Bay area. As Regulatory Program Director, I am responsible for  
8 insuring compliance with all federal, State, and local regulations and requirements  
9 that govern the FSSD's operation. Establishing and maintaining a compliant  
10 biosolids management program is a key aspect of these duties.

11 2. I submit this Declaration in support of Plaintiffs' motion for a  
12 preliminary injunction. I have been asked to provide this Declaration by Plaintiff  
13 California Association of Sanitation Agencies ("CASA") and am doing so without  
14 compensation. The facts stated in this Declaration are based on my personal  
15 knowledge and a review of reports and documents that are customarily relied upon  
16 by professionals in my field. I could and would competently testify to the facts  
17 stated in this declaration if called upon to do so.

18 3. My professional opinion is that the Kern County Biosolids Ban  
19 ("Kern Ban") scheduled to take effect in January 2007 is now and will cause  
20 increased prices and operational challenges for biosolids management for many  
21 California sanitation agencies, including agencies other than the Plaintiffs and  
22 agencies outside of Southern California. California sanitation agencies will face  
23 greater difficulty finding and paying for land application services and for other  
24 methods of biosolids management, such as composting and disposal in landfills.  
25 These difficulties in securing sound and safe outlets for biosolids will harm many  
26 of the member agencies of Plaintiff CASA and the ratepayers these agencies serve,  
27 who must pay for increased costs for biosolids management. A preliminary  
28 injunction that stays the effective date of the Kern Ban will lessen these impacts.

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DECLARATION OF LARRY BAHR

1           4.     I earned a B. S. in Environmental Microbiology from Montana  
2 State University in 1974 and am a California Grade V Wastewater Operator and an  
3 Ohio Grade III Wastewater Operator.

4           5.     I have over 30 years operational and management experience  
5 with wastewater treatment plants in Colorado, Texas, Mississippi, Ohio, and  
6 California. I managed a large biosolids land application program and wastewater  
7 treatment plant for the Miami Conservancy District in Dayton, Ohio, and have  
8 managed a biosolids land application project in California.

9           6.     Throughout my career I have been active in national and  
10 statewide professional organizations regarding wastewater and biosolids and have  
11 gained a thorough knowledge of issues affecting biosolids management, including  
12 the impacts of local regulations. I am a member of the Strategic Planning  
13 Workgroup formed by CASA to develop and update CASA's strategic business  
14 plan for biosolids. I am an active member of the Bay Area Clean Water Agencies'  
15 (BACWA) Biosolids Committee and Air Committee and am past Chair of the  
16 Permit Committee. Each of these committees provides technical and policy advice  
17 to San Francisco Bay Area wastewater treatment agencies within its areas of  
18 interest and expertise. I am a past president of the Sacramento Area Section of the  
19 California Water Environment Association, which addresses both the interests and  
20 the training needs of Sacramento Area wastewater agencies. In addition, I am a  
21 member of the State Water Resources Control Board's Wastewater Operator  
22 Certification Technical Advisory Committee, the Napa Flood Control District's  
23 Technical Advisory Panel, the EPA Region IX Nutrient Criteria Development  
24 Technical Advisory Group, the American Chemical Society, the Water  
25 Environment Federation, the National Association of Clean Water Agencies' Air  
26 Regulatory Committee, and the Air and Waste Management Association. I attend  
27 local, State, and national meetings of these and other organizations in my field and  
28 occasionally deliver papers and presentations. I am a founding member of the Bay

1 Area Stormwater Management Agencies Association and a former member of the  
2 Solano County Independent Solid Waste Hearing Panel.

3 **THE FAIRFIELD-SUISUN SEWER DISTRICT**

4 7. The FSSD provides high level wastewater treatment for the  
5 Cities of Fairfield and Suisun City, including Travis Air Force Base. The FSSD's  
6 Wastewater Treatment Plant in Fairfield has a permitted capacity of 23.7 million  
7 gallons per day and produces annually approximately 3,000 dry tons of biosolids.  
8 It is considered a medium-sized wastewater treatment facility.

9 8. The FSSD has an environmental goal of beneficially using  
10 biosolids, which includes land application in all its forms. FSSD currently reuses  
11 100% of biosolids as alternative daily cover at the local landfill. Alternative daily  
12 cover is a type of beneficial use in which a thin layer of biosolids is applied over  
13 the top of municipal refuse at the conclusion of each day of operations. The cover  
14 improves decomposition of the solid waste, replaces soil that would have to be  
15 excavated to fulfill the need, and insures that disease carrying vectors (such as rats  
16 and sea gulls) do not have access to the solid waste.

17 9. The FSSD recognizes that, within California, options for  
18 management of biosolids are rapidly narrowing, in part due to "not in my back  
19 yard" public sentiment. Landfill space is at a premium and not likely to increase in  
20 the near future. Biosolids production volume is directly related to the population  
21 served and continues each day regardless of the desires of those who would limit  
22 management options. In early 2006, a Biosolids Management Master Plan was  
23 undertaken by the FSSD to identify and develop long term biosolids management  
24 options that are stable, environmentally sound, and economically viable. Key to  
25 this master planning effort is the availability of all management options approved  
26 under United States Environmental Protection Agency ("EPA") and California  
27 regulations, including biosolids land application. As explained further below, the  
28 Kern Ban undercuts the strategic plan of FSSD and many other sanitation agencies.

1 **THE MANAGEMENT AND REGULATION OF BIOSOLIDS AND**  
2 **THE NEGATIVE EFFECTS OF THE KERN BAN**

3 **A. Biosolids, Federal Regulation under Part 503, and Beneficial Use**

4 10. The term “sewage sludge” refers to the solid material produced  
5 by the wastewater treatment processes. When sewage sludge is properly treated  
6 pursuant to federal regulations, it becomes “biosolids.”<sup>1</sup> Biosolids are nutrient-rich  
7 organic matter and can be beneficially used and applied like a fertilizer to improve  
8 and maintain productive soils and stimulate plant growth. When beneficially used,  
9 biosolids are generally managed in four forms: as a moist, cake-like soil  
10 amendment, dried pellets, liquid biosolids, or compost. With advancements in  
11 technology, processed biosolids can also be used in a fifth form, as a fuel source.  
12 Biosolids can also be managed in landfills when beneficial use options are not  
13 available or accessible.

14 11. It bears emphasizing that the creation of biosolids is non-  
15 discretionary – that is, public wastewater agencies cannot stop producing biosolids.  
16 With projected population growth and advances in wastewater treatment  
17 technology, the amount of biosolids generated is only going to increase in the  
18 coming years. Further, it takes a period of years to develop new options for  
19 managing biosolids because of the large capital and time investments required for  
20 infrastructure, technology, human resources, and regulatory approvals. While  
21 agencies need to be able to rely on all beneficial use options for their planning, at a  
22 minimum, proper biosolids management necessitates that options not be prohibited  
23 or restricted on very short notice, as the Kern Ban is attempting to do. If a key

24 \_\_\_\_\_  
25 <sup>1</sup> The term “biosolids” has been used exclusively in the wastewater profession and  
26 academia for many years for treated solid residuals, in contrast to the inaccurate  
27 and pejorative term “sewage sludge.” The most recent National Academy of  
28 Sciences study of land application recognized the distinction and chose the word  
“biosolids” as the preferred term. NAS, *Biosolids Applied to Land: Advancing  
Standards and Practices* (2002).

1 option (such as land application in Kern County) disappears, there rarely are  
2 economical, environmentally sound and lawful alternatives that can be quickly  
3 implemented. In addition, stockpiling biosolids is not an option. Biosolids must  
4 go somewhere and there must be available options that are legal and  
5 environmentally sound.

6 12. Biosolids management options are rooted in the federal  
7 regulatory scheme. The federal Clean Water Act requires that wastewater agencies  
8 treat their biosolids to stringent safety standards before they can be land applied to  
9 farm fields, regardless of the form the biosolids take (cake, pellets, liquid, or  
10 compost). Biosolids regulations adopted by U.S. EPA, which are codified at 40  
11 C.F.R. Part 503, are comprehensive, risk-based rules designed to protect human  
12 health and the environment from pollutants of concern that may be present in  
13 wastewater. The rules were based on extensive scientific peer review, and were  
14 adopted following public review and comment in a lengthy, multi-year rule-  
15 making process in the late 1980s and early 1990s. The safety of land application  
16 through compliance with the EPA's Part 503 regulations has been endorsed in two  
17 studies by the National Academy of Sciences (in 1996 and 2002) and in a detailed  
18 statewide Environmental Impact Report prepared by the California State Water  
19 Resources Control Board in 2004. The 2002 National Academy of Sciences report  
20 concludes "there is no documented scientific evidence that Part 503 has failed to  
21 protect public health."

22 13. In its Part 503 rules, the EPA established three categories of  
23 biosolids for regulatory purposes: Class B biosolids, Class A biosolids and Class  
24 A Exceptional Quality biosolids. *See generally* EPA, *A Plain English Guide to the*  
25 *EPA Part 503 Biosolids Rule* (1994). Class B Biosolids are biosolids in which  
26 99% of pathogens have been eliminated, and the remaining pathogens rapidly die  
27 off when the biosolids are applied to soils, essentially becoming pathogen free  
28 within a short period following application. Class A Biosolids are biosolids that

1 are further processed and treated, and are essentially free of pathogens prior to land  
2 application. Class A Exceptional Quality (EQ) are Class A biosolids that meet  
3 stringent pollutant concentration requirements for the trace amounts of metals  
4 found in biosolids at the parts per million level (e.g., cadmium, zinc).

5 14. The beneficial reuse of biosolids is a national policy articulated  
6 by the United States Congress when it banned ocean disposal of biosolids more  
7 than 30 years ago. Congress directed EPA to develop regulations for the disposal  
8 and utilization of sewage sludge, which led directly to the adoption of the Part 503  
9 regulations in 1993. *See* 58 Fed. Reg. 9248 (Feb. 19, 1993). EPA adopted land  
10 application as the single largest management option, recognizing biosolids as “a  
11 valuable resource” and “useful as a fertilizer and a soil conditioner” when land  
12 applied. 58 Fed. Reg. at 9249 (Feb. 19, 1993). EPA further stated its  
13 “preference...for local communities to reuse [biosolids] in beneficial ways” and  
14 that it would “actively promote” such practices. *Id.* at 9258. EPA’s Part 503 rules  
15 serve as a regulatory floor upon which states can build additional regulations to  
16 improve public confidence in land application of biosolids.

17 **B. Regulation of Biosolids In California.**

18 15. In California, the State Water Resources Control Board (“State  
19 Board”) regulates land application of biosolids through a detailed General Order,  
20 promulgated in 2004, that mandates many additional regulations and protections,  
21 such as requirements that each land application site be approved before any  
22 biosolids are land applied. The Regional Water Quality Control Boards use the  
23 General Order or issue local permits to exercise control over biosolids uses.

24 16. The State Board’s General Order (which is attached to this  
25 declaration as Exhibit A) is the culmination of a multi-year effort to determine the  
26 appropriate level of regulation for biosolids reuse. The General Order is based on  
27 a 600-page Environmental Impact Report (“EIR”) that found land application to be  
28 a safe and beneficial way to manage biosolids. The EIR determined that Class A

1 biosolids and Class B biosolids, when land applied according to Part 503 and the  
2 General Order, were equally safe practices. The EIR is widely recognized in the  
3 biosolids field as one of the most thorough and comprehensive reviews of land  
4 application.

5 17. In its General Order, the State Board adopted a statewide  
6 policy, based on the EIR's extensive scientific investigation, which reaffirms and  
7 encourages the beneficial use of biosolids. The General Order finds that biosolids  
8 are "beneficial to agricultural" and "improve agricultural productivity," and it  
9 describes the specific benefits from use of biosolids as a soil amendment. (General  
10 Order at ¶ 7). The General Order concludes that "[t]he beneficial use of biosolids  
11 through land application under this General Order is environmentally sound and  
12 preferable to non-beneficial disposal." (General Order at ¶ 11).

13 **C. Biosolids Management Options in California.**

14 18. Wastewater agencies in California generally meet their  
15 obligations for managing approximately 750,000 dry tons of biosolids produced  
16 per year through a combination of (a) land application (including composting and  
17 marketable products such as bagged pellets); (b) use of biosolids as a daily cover  
18 material at landfills to prevent wind-blown garbage and other nuisances; and  
19 (c) disposing of biosolids in landfills (which is not regulated by the EPA's Part 503  
20 regulations and is not a beneficial use).

21 19. An analysis of EPA Region IX Part 503 compliance reports for  
22 2004 that were submitted by California's wastewater agencies (the latest statistics  
23 available) reveals the following distribution for biosolids management:

24	a) Composting	27%
25	b) Landfill Cover (ADC)	19%
26	c) Out-of-State Management	18%
27	d) Land Application (Class A Biosolids)	17%
28	e) Land Application (Class B Biosolids)	7%

1	f) Disposal in Landfills	4%
2	g) Incineration	3%
3	h) Surface Disposal	2%
4	i) Storage	2%
5	j) Other	1%

6 A number of these options (options a, c, d and e) involve land application in one  
7 form or another. Collectively, options involving land application account for 69%  
8 of all of the biosolids generated by Californians.

9 20. Thus, land application of biosolids in various forms is the  
10 primary management tool for biosolids in California. As explained above,  
11 changing these management options takes years of planning and investment and  
12 can not be done rapidly without great expense and logistical challenges.

13 21. The capacity of California landfills to receive biosolids for  
14 basic, non-beneficial disposal is very limited and many landfills refuse biosolids  
15 because of management concerns regarding a semi-liquid waste and occasionally  
16 because of public perception obstacles. In November 2005, wastewater agencies in  
17 northern California conducted a survey of existing capacity at landfills within 200  
18 miles of San Francisco that had been identified as sites that would accept biosolids.  
19 This survey revealed that landfill disposal is diminishing as a viable option. Of the  
20 31 landfill sites surveyed, four indicated that they either do not or are not permitted  
21 to take biosolids; one facility planned to close in the next several months, seven  
22 either were unreachable or the phone was disconnected, and one was a duplicate  
23 listing. Of the remaining 18 sites, nine accept in-county material only. Therefore,  
24 there are only nine landfills within 200 miles of San Francisco that will accept  
25 biosolids from out-of-county sources.

26 22. As California landfill sites close or further restrict the  
27 acceptance of biosolids, agencies compete for this scarce resource, which results in  
28 both higher landfill "tipping fees" to accept biosolids and possibly longer hauling

