



**Minutes of
 March 12, 2008 Meeting
 Littleton/Englewood WWTP**

In Attendance:

Dennis Stowe	L/E WWTP
Colleen Young	Greeley Water & Sewer
Mary Gardner	L/E WWTP
Blair Corning	SACWSD
Jeremy Torres	WQCD
Andrew Ross	WQCD
Tim Woodard	City of Westminster
Dave Meyer	City of Westminster
Fred Walker	Boxelder Sanitation
Jim Egan	RMI
Bob Anastasov	Aurora
Connie King	Law Firm
Chris Laroe	Bear Creek W&SD
Jill Piatt-Kemper	Aurora
Paul Grundemann	CWSD
Karl Heil	City of Northglenn
Bret Linenfelser	Boulder
Sharon Davis	MWRD
Doug Kemper	Colorado Water Congress
Mike Wicklund	Monument Sanitation District
Jim Kendrick	Monument Sanitation District
Amy Woodis	MWRD
Martha Rudolph	CDPHE
Stu Fonda	L/E WWTP
Paul Ferraro	Ferraro Associates, Inc.
Via telephone:	
Nancy Keller	Pueblo
Ginny Johnson	Colorado Springs Utilities

I. Colorado Environmental Programs and Environmental Legislation Update, Martha Rudolph (CDPHE)

Martha Rudolph gave the following overview:

Background:

- Served on the Attorney General's staff for 14 years and spent time as legal counsel to the CWQCC for a number of years. She also served on the Commission while in private practice.
- Last June she became the Director of the Department's Environmental Programs, which include Water Quality (Wastewater and Drinking Water), Air Quality, Hazardous Waste and Consumer Protection.

Her Involvement:

- Leadville - working on a proposal regarding the discharge of mine water
- Legislative - Bills: 1) Delegation of Pretreatment introduced without Department support. Was defeated. 2) Commission Clean Up Bill. Health Board items to WQCC. HB1073--Small facilities exempt from having a certified operator. 3) Next year - fee increase to fund more FTEs. Seeking Council support. 4) Seeking support for fee increase for Air this year.
- Programs
 - Puts out a lot of fires.
 - Leadville mine problem and Northglenn WWTP issue - sent a lot of people to the meetings.
 - HB1341 Rulemaking - oil & gas
 - She works with EPA, Governor's Office, Legislature, General Public and Dischargers.
 - She is pulled in a lot of different directions, but we need to work together, talk to each other.
 - Personal philosophy - I'm interested in understanding other perspectives since issues are not black or white. There are many different viewpoints.
 - Wants stakeholders to have access to the Division staff.

Comments from Council members:

- Forum Workgroups are important for stakeholders and the Division.
- Permits - The WQCD divided a multi-situation general permit into many smaller general permits, possibly resulting in needing more permits/permitting than previously required. Meeting this week on the issue.
- Nutrients - why do we have to do it all by 2010, river, lakes and reservoirs?
- Ammonia - everyone questions the benefits - wholesale numbers for all. Segments then are put on the 303(d) list.
- Ammonia/Nutrient standards will require facilities to nitrify and denitrify.
- Monument WWTP- Permit expired in December 2007. Permit extension not reissued in time. Temp Mod for copper of 8.0 to 12.5 ppb. Cannot meet the limits all the time. Influent copper concentration of 50-200 ppb. Need letter from the Division. \$300,000 spent on lawyers, etc. 4.2 million gpd - population

25,000-30,000 people. Monument has a concern about the Division's actions. May need to have product bans such as copper sulfate.

- Risk base permits - issue the same permit - save time if nothing has changed in the permit.
- Seek time saving approaches.
- Process over product (solving problems is important).
- Standards setting staff and permits staff need to work together.
- Self certification done by L/E - then the Division did a full inspection. Process does not seem to provide benefits
- Pre-issue draft permits to dischargers prior to public notice – there are time concerns if the discharger has to respond within the public comment period. Policies should be policies, not regulations. The Division uses them as regulations. One size fits all is not the way to approach regulations.
- The Division does support Council meetings.
- Fee increases without notification is a problem for small facilities.
- There is a better product overall if stakeholders are involved.
- Permitting - inconsistencies because of new staff.
- Problem with permits - no use of data collected by the permittees.
- Brad Simmons (D.E.) will work with the Boxelder District. Good outreach.

Martha summarized the following items she will take away from the meeting:

- Nutrients - set priorities and do not set a standard for lakes, reservoirs and rivers at the same time. Pilot studies.
- Process vs. Products.
- Set Priorities.
- Inform stakeholders why the Division is taking a certain position.
- Process vs. a minimal stakeholder process.

II. Colorado Water Congress (CWC) Activities and Issues, Doug Kemper (CWC)

- CWC is celebrating its 50th anniversary this year.
- Had over 500 attendees at its conference in January 2008.
- W. Q. Workshop had several sponsors and 70 attendees. It was the second largest workshop.
- There is much interest in water issues by legislators and others.
- CWC will have audio conferencing in the near future.
- Contaminants of Emerging Concern is becoming a bigger topic.

- Reduced funding from the Department of Local Affairs -from oil & gas severance tax, a variety of issues.
- Water Conservation Task Force evaluating the Zebra Mussels problem.
- CWC takes positions on 22 bills per year. 85% they supported became law; None became law that they opposed.
- CWC's website has a status of every water bill. This year they are monitoring 17 bills: 12 they support; 5 they oppose.
 - HB 1099 - supported by CWC. Authorizes CWQCC. Clean up from last year. It has passed the House.
Paul Grundemann asked if the Council supports this bill. It was okayed by members and Metro will attend the hearing.
 - HB 1306 - Amends payments to subcontractors from prime contractors. It has passed out of the House Business Affairs. CWC opposed the Bill.
 - HB 1346 - Construction Bill - Water Conservation Board. \$350K for gauging stations, \$100K to develop water strategy regarding low flows. CWC supports the bill.
 - HB 1141 - Look at new subdivisions to see if there is adequate water and good water quality.
 - HB 1280 - Water Rights - Water Conservation.
- Comments:
 - Legislators do not understand the difference between the CWQCC and CWQCD.
 - Need to educate legislators.
 - The CWC Summer Conference will be August 20-22, 2008 in Vail.
- Federal Level - Water Quality bill is on hold.
- CWC Membership is interested in water quality issues.

III. Updates

- Water Utility Council - Sharon reported:
 - Policy #4- a lot of discussion. Well operating treatment plant is defined. Division wants a tool to help get a small water treatment plant in compliance. The next meeting is March 21 at Denver Water.
 - Department of Homeland Security (Chemical Bill) - chlorine use - in Congress.
 - Jeannie to upload the document from Sharon.

- Mentoring
 - Paul G. mentioned that the contract between CWUC and CWWUC regarding the Mentoring Program (Water) has been signed. Received a Purchase Order from the CWQCD - Water Program to assist in the Mentoring Program (Water).
 - Paul F. mentioned that he worked with a mentor and CRWA to have a water seminar for C&D level operators. Over 53 operators attended two classes - one in Erie and one in Longmont on the same day. There is enough interest to hold another seminar soon.
- Biosolids/Pretreatment Delegation. Seek delegation in 2009?

IV. Open Discussion

- Jim Egan gave an overview of issues regarding Regulation 22 (Site Applications). The Council plans on being a party for the Issue Formulation Hearing. See page 6 to review Jim's Issues and Strategy Paper.

The meeting adjourned at 3:45 PM.

Next Meeting: Wednesday, April 9, 2008 at L/E WWTP

The Council held an Executive Session for 30 minutes. Members can call Paul G. or Dennis S. to discuss the Issue of Concern.

Jim Egan's Issues and Strategy Paper

Regulation 22 (Site Application) Issue Formulation Hearing – May 2008

Issues and Strategy

Basic Issues/Problem

1. Reg and Guidance are very detailed and prescriptive
2. Current interpretation/application is strict verbatim
3. Significant conflict exists between Reg 22 and Reg 61 and other policies
 - a. Which Reg is driving? – Reg 22 supports Reg 61 and permitting.
 - b. PELs v. Reg 61 Effluent Limitations
 - c. POTW treatment of metals v. Pretreatment or Site-specific WQS
 - d. No consideration of compliance schedules or Temporary Mods
 - e. Permit establishes permitted allowable capacity not the Site Application
4. Site Appl process requires late design stage info before design is underway
 - a. Deeds and easements prior to pipeline or POTW design
 - b. Operational plans before facility designed
 - c. Financial and management plans prior to facility design
 - i. May be appropriate in case of new developer-owned projects
5. Puts D.E.s in conflict of interest with designer P.E.s w/ no accountability
6. Improper interchanging of PELs and Effluent Limitations
 - a. Not the same
 - b. Effluent Limitations include numeric and procedural limitations, PELs are worst case numerical estimates not final limits
7. Current prescriptive interpretation seems outside statutory goal of consolidation and location consideration.
8. Process is costly and time-consuming w/o apparent commensurate value
9. Process allows COG and WQPA Utility Plans to hold projects hostage preventing needed WQ projects and services for political reasons
10. Appears to interfere with proper O&M of facilities
 - a. Replacement of “in-kind” needs realistic/reasonable definition/ clarification to prevent delay in maintaining treatment process
 - b. Replacement with reasonably larger equipment (good planning) is prevented without full Site Application and full political process
 - c. How address safety factors, backup, etc. in design and construction – what is OK and what is “illegal expansion”?
11. Interferes with pre-emptive and cost-efficient planning
 - a. Example: construct once w/ slightly more capacity and request capacity re-rate later, as opposed to costly remodel later on live equipment/structure
 - b. Ignores Reg 22 requirement that entire train must provide capacity per P.E. review.
12. Interpretation not consistent with plain language
 - a. “Expansion” requires “Construction” which requires a “contract”, not “in-kind” replacement of a similar but not exactly the same unit.
 - b. Forces less efficient more costly improvements

Solutions

1. Revise Reg 22 to correct current prescriptiveness and over-reach
 - a. Informational meeting with WQCD 3/28,08, 9 AM
 - i. WWUC presence and issues presentation
 - ii. Project incident summaries
 - b. Issues Formulation Hearing, May 12, 2008
 - i. Coordinated input
 1. WWUC
 2. Individual POTWs

2. Use “clarifying policy statement” provision in Reg 22 to back-off hardline prescriptive interpretations and return to location/consolidation goal.
 - a. Get commitment from WQCD in writing to do this at Issues Hearing
 - b. W/WUC spearhead POTW group to draft statements for negotiations with WQCD
3. Needs simplification and streamlining, more flexibility needed, less prescriptive and intrusive

SITE APPLICATION INTERPRETATION ISSUES
December 2007 (Rev 1)

ISSUE 1: A Site Application is required for a new wastewater treatment facility (“WWTF”) or domestic waste treatment works (“DWTW”) or a WWTF “expansion requiring construction” but an amendment can be used for certain expansions “where no construction is involved”, and no Site Application is required for “in-kind” replacement of a component(s) of a WWTF with “similar” equipment.

In this issue, relevant questions arise as to what constitutes construction vs. routine O&M, what does “in-kind” and “similar” equipment mean, and when is plant capacity increased?

Reconnaissance Level Analysis

This is NOT an exhaustive or comprehensive analysis of the issue, nor a full regulatory analysis of the most legally sound interpretation. Nor is this an analysis of specific conflicts between regulations, and/or legal analysis as to which regulation has precedence. This preliminary discussion highlights apparent conflicting interpretations as well as apparent conflicts between WQCC programs and regulations, and raises basic resolution approach considerations.

1. Initially, there is an apparent conflict between Reg 22 and Reg 61. Reg 61 provides that the capacity of a WWTF is as established in the CDPS Permit, and to alter the permitted capacity requires a CDPS Permit Amendment. Reg 22 provides that an increase in WWTF capacity (hydraulic or organic loading capacity) may require construction, but that such construction is not required given a proper engineering system analysis of the entire process train, with the capacity based upon the most limiting process unit of the facility components. Based upon the framework of the federal CWA and the Colorado WQCA, the CDPS (NPDES) Permit appears to be the primary legal instrument controlling the discharge of the WWTF (volume and quality); and would seem, therefore, to be the primary legal authority as to WWTF capacity. Final Permit limits determine the final WWTF requirements, and therefore, WWTF design (new, expanded, or non-construction re-rate). **Preliminary Conclusion: In effect, the WWTF’s rated organic or hydraulic capacity does not increase or decrease until the Permit says it does.**
2. Increase in hydraulic or organic capacity is considered “expansion”. The definition of expansion in Reg 22, (22.2(13)), provides: *expansion means any construction that increases design capacity of any facility [not facility component] meeting the definition of a domestic wastewater treatment works. An expansion involves increasing the hydraulic, organic, or other capacity-limiting pollutant (as defined under design capacity [as provided in the CDPS Permit and Rationale] for which the treatment facility has a rated capacity) loading to the domestic treatment works. **It does not mean the replacement of in kind facilities or equipment that would be considered ordinary maintenance.** If a modification or replacement does not increase design capacity of the domestic wastewater treatment works, it is not an expansion. **Preliminary Conclusions: 1) expansion requires “construction”. 2) Routine O&M in-kind equipment or facilities replacement is not expansion. 3) Expansion refers to an increase in design capacity of the entire facility, not to a single component of the facility.***
3. “Construction”, as defined (in part) in Reg 22, (22.2(5)), *means entering into a contract for the erection or physical placement of materials, equipment, piping, earthwork, or buildings which are to be part of a domestic wastewater treatment works.* This definition is consistent with, if not identical to, the definition of construction in the Colorado WQCA at 25-8-701. **Preliminary Conclusions: 1) Construction requires entering into a contractual agreement with a contractor for the purpose of erection or materials placement. 2) If there is no contract for such erection or materials placement, there is no construction. 3) If there is no construction, there is no “expansion” by definition in Reg 22.**
4. “Design Capacity” as defined in Reg 22, (22.2(7)), *means the rated capacity (capability) of a treatment plant to meet effluent limitations [not PELs] or other appropriate capacity measure for treatment works. ----- Thus, the hydraulic and organic loading capacities define the maximum amount of waste that a facility can reliably treat and be in compliance with effluent limitations.*

Preliminary Conclusion: The rated capacities of a WWTF are driven by the final permit effluent limitations, not PELs prior to development of a draft Permit.

5. There is no definition of “in-kind” or “similar” in Reg 22. However, *Webster’s New World Dictionary*, 2003, Wiley Publishing, defines similar as “nearly but not exactly the same or alike”. There is no definition of “in-kind” in the cited dictionary. The *Guidance Document for the Site Location and Design Approval Regulations for Domestic Wastewater Treatment Works Regulation Number 22, November 2004*, at Section 1.9, provides the guidance that “There are circumstances that do not require a site application or amendment (or design approval) such as: Replacement in kind, i.e. replacing a component or components of an existing treatment works with similar equipment at the existing, previously approved site location; ---“ **Preliminary Conclusions: 1) the terms “similar” and “in kind” are effectively the same as presented in the Guidance Document – they are interchangeable. 2) “in-kind” and “similar” mean nearly the same but not exactly the same or alike; ie, not identical.**
6. At 22.8(2)(b) and (c), Reg 22 provides that, *If a treatment entity is contemplating a physical change to its treatment works that is similar in scope to those listed above, but is not precisely covered by this list, then the entity must submit to the Division an analysis from a professional engineer registered to practice in the State of Colorado describing the proposed changes and describing how those changes would affect the performance of other parts of the treatment works and effluent quality. Where such an analysis is submitted, the Division shall evaluate the proposed process change considering the list above and provide written response to the entity either stating that the changes may be made without amending their previous site location approval and obtaining design approval, or requiring a site application amendment and subsequent design review. ----- (c) A decrease or increase in the approved, rated design capacity of the treatment works, as long as no construction is to take place. An increase in hydraulic capacity for a treatment plant will require that the existing effluent limitations be analyzed in coordination with the Division to determine whether new PELs must be developed. Any change in treatment requirements necessitated by more stringent PELs must be addressed by the proposed modification. **Preliminary Conclusions: 1) This provision confuses effluent limitations with PELs. They are not the same, have a different purpose, and cannot be interchanged. Final Permit effluent limitations include numerical limitations and procedural limitations (such as compliance schedules, monitoring programs, and temporary modifications that hold WQS in abeyance). This is because the technology to achieve some of the numerical PELs may not be available, may not be feasible, and may not be appropriate because the constituent of concern is natural or not correctable. The final Permit addresses this, the PELs do not. This is an important and serious inconsistency that can prevent necessary treatment works from being constructed. This is discussed further in Issue 2, below. 2) An engineering system analysis is required to demonstrate that all treatment process components have compatible treatment capacities. 3) Treatment facility capacity can be changed by a no-construction re-rate without a site application or amendment to a prior approved site application based upon an engineering evaluation.***

While there are some inconsistencies internally in Reg 22, (some serious and in need of clear and timely resolution) and some inconsistencies between Reg 61, and Reg 22, that need clarification, some basic overall conclusions can be made. These are:

1) The CDPS Permit is the controlling legal instrument. The Site Application approval process supports the CDPS Permit, and must, therefore, comport with the requirements of the Permit and Reg 61 – it is not a stand alone program isolated from the intent and all modalities and requirements of a CDPS (NPDES) Permit and Reg 61. The ultimate capacity of the facility and the discharge effluent limitations and any procedural limitations are established by the Permit, not PELs. Reg 22 cannot be read in a vacuum, it must be read in the context and intent of Reg 61, which Reg 22 exists to support.

2) It is clear from the Reg 22 definitions that expansion requires construction, and construction requires a contract. Without a contract, there is no construction and, therefore, no expansion, and no automatic need for a Site Application or amendment to a previously approved Site Application.

3) Further, in-kind and similar are interchangeable terms, they mean “alike” but not exactly the

same – they do not mean identical to what is replaced. Routine in-kind replacement of existing facilities or equipment does not require a site application. It is clear in Reg 22, that O&M replacements of existing equipment with similar – but not identical equipment and facilities – were not intended to require traversing the Site Application process. To do so would effectively cripple a treatment entity's ability to maintain and operate the Domestic Treatment Works at Permit-required efficiency at all times. (Example: It is reasonable to consider that a 15 HP surface aerator and a 20 HP surface aerator are similar for replacement purposes.) If existing aerators are replaced because of wear, failure, or damage, they must be replaced as soon as possible. Identical units are not always available in a timely manner, or may not be available at all. Replacing a failing pump with a somewhat larger pump is the same situation – it is not construction, it is O&M. Hence, the Reg 22 reference to in-kind (similar) replacement with no Site Application. Treatment facility hydraulic and organic capacity are not legally or operationally increased until such time as the CDPS Permit is amended to establish a new capacity (following the Engineer's comprehensive system analysis).

ISSUE 2: Site Application Regulation (Reg 22) interchanges the term effluent limitations (which are binding CDPS Permit requirements) with term preliminary effluent limitations (“PELs”) (which are estimates), creating confusion and inconsistency, and more importantly, creating the potential to prevent necessary WWTF new construction or expansion of an existing facility, which, in turn, has the potential to result in receiving water quality impacts, unsolvable noncompliance issues, and growth moratoriums. Reg 22 does not recognize or consider compliance schedules or temporary modifications or other CDPS permitting measures – procedural limitations – in the Site Application review and approval process. Further, the Site Application process, relative to this issue, conflicts with Reg 61 and the permitting practices of the Division.

(Example: The WQCC set statewide Selenium (“Se”) WQSs uniformly, without determining site-specific or ambient standards for State water bodies subject to high natural Se concentrations or runoff related Se concentrations. There currently is no technology available for DWTW to meet these limits. The WQCC and WQCD Permitting Section uses temporary modifications and compliance schedules to investigate the source and cause of high Se concentrations, evaluate control alternatives, and develop BMPs, industrial pretreatment programs, and site specific WQSs to address locally high Se concentrations through the final Permit effluent limitations and requirements. The Site Application process, as currently structured and interpreted, cannot proceed unless the proposed DWTW improvements can demonstrate compliance with the Se PEL. The PELs precede CDPS Permit development and the final effluent limitations, and preclude use of the other permitting modalities available. This Catch 22 can prevent the improvement or construction of a DWTW necessary for nitrogen removal and/or to treat increasing influent contributions.)

In this issue, Reg 22 interchanging the terms PELs and effluent limitations, and not recognizing legally authorized permitting and compliance modalities such as temporary modifications and compliance schedules creates a collision course potentially leading to unavoidable and unsolvable noncompliance. The PEL documents prepared by the Permitting Section, clearly state that for planning and permitting information purposes, PELs are modeled for all potential parameters of concern, including metals, at worst case conditions. The PEL document also states that it is Division policy not to expect POTWs (DWTWs) to meet metals limits by treatment, but by other means such as pretreatment programs, BMPs, and studies to develop site-specific WQS. The WQCD also uses temporary modifications to study local high Se concentrations and characterize whether these high concentrations are correctable or natural, or if site-specific ambient WQSs are necessary and appropriate.

Reconnaissance Level Analysis

This is NOT an exhaustive or comprehensive analysis of the issue, nor a full regulatory analysis of the most legally sound interpretation. Nor is this an analysis of specific conflicts between regulations, and/or analysis as to which regulation has legal precedence. This preliminary discussion highlights apparent conflicting interpretations as well as apparent conflicts between the WQCC Site application and permitting programs and regulations.

1. Based upon the framework of the federal CWA and the Colorado WQCA, the CDPS (NPDES) Permit appears to be the primary legal instrument controlling the capacities and discharge of the WWTF (volume and quality); and would seem, therefore, to be the primary legal authority as to what requirements must be met, including numerical and procedural limitations. Final Permit limits determine the final WWTF requirements, and, therefore, the WWTF design as well as include other implementation mechanisms such as studies, modeling, monitoring, BMPs, and other control programs, including trading. **Preliminary Conclusion: In effect, the Site Application process is pre-empting the Permitting process it was established to support, and is not considering the repertoire of alternative approaches the Permit uses to implement the requirements of the CWA and the CWQCA. Further, there is confusion as to what – PELs or effluent limitations – the Site Application is to assure conformance with.**
2. Reg 22 at 22.3(2)(c) and (f) provides conflicting policy directives for the Site Application Process. This provision requires that approval be reviewed to ensure: (c) *That the proposed treatment works can protect water supplies by meeting its discharge permit (where applicable) which is based upon water quality standards and/or appropriate waste load allocations.* (f) provides that *the applicant is capable of providing adequate treatment works construction and operational management, including legal authority and financial capabilities, to meet preliminary effluent limitations, where applicable, and minimize adverse impacts to water quality on a long term basis.* **Preliminary Conclusion: These requirements are internally inconsistent. The Site Application policy requires compliance with both the discharge permit (effluent limitations) and PELs (preliminary effluent limitations). The two terms are functionally not the same. The PELs are essentially a waste load allocation modeling action, and precede the Permit development, and do not, verbatim, end up as Permit limitations in the final CDPS Permit. The PELs do not include the other compliance tools used in the Permit. If PELs control, the tail is wagging the dog. Permit effluent limitations, include numerical and procedural limitations, and are THE CONTROLLING INSTRUMENT for the discharge.**
3. Reg 22 at 22.3(7), in the definition of “Design Capacity”, states, in part; *Design Capacity means the rated capacity (capability) of a treatment works to meet effluent limitations, and also states, Thus, the hydraulic and organic loading capacities define the maximum amount of waste that the facility can reliably treat and be in compliance with effluent limitations.* **Preliminary Conclusion: The treatment facility is to be designed to assure compliance with CDPS Permit effluent limitations, not PELs.**
4. Reg 22 at 22.2 (12), defines “Effluent Limitation” as *any restriction or prohibition established under the “Colorado Discharge Permit System Regulations”, Regulation 61 (5CCR 1002-61).* Reg 22, at 22.2 (23), also defines Preliminary Effluent Limitations (PELs) as *effluent limitations developed by the Division or developed by the applicant and approved by the Division, usually in support of a site application or permit application, based on a proposed discharge flow at the inflow to state waters and the applicable water quality standards for those state waters affected by the discharge.* **Preliminary Conclusions: Effluent limitations are the controlling restriction or prohibition, PELs are preliminary effluent limitations in support of the initiation of the site application and permit application process. PELs are NOT the final restriction or prohibition. The “restrictions and prohibitions” are as established in Reg 61, not Reg 22.**
5. Reg 22, at 22.3 (1)(b) “Declaration of Policy for the Site Location Approval Process” provides that ----- *the Division shall: Determine that the proposed domestic wastewater treatment works can be managed to minimize the potential adverse impact on water quality and in accordance with the appropriately issued discharge permit ---.* **Preliminary Conclusion: The Division is to evaluate facility ability to comply with the discharge permit not PELs, which are not a final CDPS Permit, (as defined in no. 4, above).**

Issues Resolution Approach Considerations

The above preliminarily identified and characterized Site Application process issues require resolution to avoid the internal inconsistencies in Reg 22, and the conflict between Reg 22 and Reg 61. Preliminarily, there are two basic apparent resolution approaches:

1) In accordance with Reg 22, at 22.3 (6), the WQCC can “adopt policies designed to aid the interpretation and implementation of [the Reg 22], such as policies that clearly define what “in-kind” replacement of “similar” facilities and equipment is, and that clarify that such in-kind replacements do not require a new or amended Site Application, and that final WWTF (DWTW) capacity is established by the CDPS Permit; that facility capacity is not changed, either by construction or non-construction re-rate, until the CDPS Permit is amended to reflect such capacity change. Additionally, “in-kind” and “similar” should be defined such that **like equipment** is considered “in-kind” and “similar”. **Like equipment** would be defined as mechanically or physically nearly but not exactly alike, (Example: a surface aerator for a surface aerator, or influent pump for influent pump), and such that, consistent with the current definitions of “expansion” and “construction”, if no contract is let to replace the in-kind facilities or equipment, no new or amended Site Application is required unless and until the applicant proposes a re-rate change in DWTW capacity. As a no-construction re-rate, a Site Application amendment would be required for a re-rate involving in-kind replacement. This is relevant and critical in ensuring continuing DWTW operations in compliance with CDPS Permit limitations.

2) Refinement and revision of Reg 22 language to clarify that final permit effluent limitations (numerical and procedural) are the binding restrictions and prohibitions that the treatment works must meet; and PELs are preliminary estimates of the WLA and the expected numerical effluent limitations used only to support the Site Application and Permit Application process, but are not final Permit limitations (numerical or procedural). The clarified language should also expressly provide that the Site Application approval process shall consider temporary modifications, compliance schedules, and other Permitting techniques authorized by Reg 61 when assessing the adequacy of the proposed facility improvements; and

An additional interpretation and implementation clarification policy should be considered that provides a universal clarification; to wit, that in the event of any conflict between Reg 22 and Reg 61, Reg 61 shall prevail. After all, the purpose of Reg 22 is to support Reg 61.