

**From:** Hunsinger, Ronald  
**Sent:** Monday, March 16, 2009 7:08 PM  
**To:** FN-OMB-OIRA-Submission  
**Subject:** Federal Regulatory Review

March 16, 2009

Office of Information and Regulatory Affairs (OIRA)  
Records Management Center  
Office of Management and Budget  
Attn: Mabel Echols  
Room 10102, NEOB  
725 17<sup>th</sup> Street NW  
Washington, DC 20503

Re: Federal Regulatory Review

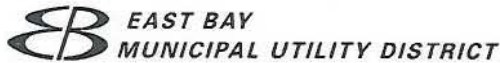
Dear Ms. Echols:

The East Bay Municipal Utility District serves drinking water to 1.3 million and waste water treatment to 650,000 customers in 20 cities in the vicinity of Oakland California. We are actively involved as stakeholders in the development of regulations at both the state and federal level.

We recommend that you consider metrics to measure the effectiveness of regulations in your guiding principles in Federal Regulatory Review. This recommendation is consistent with our recent comment letter to EPA requesting actionable metrics in the Total Coliform Rule revisions Agreement in Principal, appended for your reference.

Thank you for considering our submission.

Ron Hunsinger, Manager of Water Quality  
East Bay Municipal Utility District



August 27, 2008

Total Coliform Rule Distribution System Federal Advisory Committee  
c/o Crystal C. Rodgers-Jenkins, Designated Federal Officer  
U.S. Environmental Protection Agency  
1201 Constitution Avenue, NW (MC-4607M)  
Washington, DC 20460

MICHAEL J. WALLIS  
DIRECTOR OF OPERATIONS AND MAINTENANCE  
(510) 287-1615  
wallis@ebmud.com

RICHARD G. SYKES  
MANAGER OF MAINTENANCE AND CONSTRUCTION  
(510) 287-1629  
rsykes@ebmud.com

EILEEN M. WHITE  
MANAGER OF WATER OPERATIONS  
(510) 287-1149  
ewhite@ebmud.com

Dear Members:

The East Bay Municipal Utility District (District) appreciates the opportunity to submit comments to the Federal Advisory Committee. The District would like to acknowledge the long hours and hard work that have gone into drafting the Agreement in Principle (AIP) as it exists. As a public agency, the District, like all the stakeholders around the table, serve the public at large. As a water utility, the District has a fiduciary responsibility to ensure funds collected from our customers are used efficiently and effectively. Given our current Total Coliform Rule (TCR) sampling costs (approximately \$300,000/yr) and that our compliance data, along those of other California utilities, was not used in the development of the AIP, the District believes that greater attention should be paid to the manner in which compliance data is collected and used to measure the effectiveness of the revised TCR (RTCR). Such attention needs to be developed well in advance of promulgating the final RTCR. To that end, the District submits the following comments for your consideration:

The Total Coliform Rule and Distribution System Advisory Committee (TCRDSAC) is nearing completion on the AIP that will be the basis for revising the TCR. Within the AIP are provisions that call for developing performance measures for the RTCR in parallel with rule development, with the aim of evaluating the rule's long-term effectiveness. The provision for the actual rule evaluation is written as a recommendation from the FACA and reads:

“The TCRDSAC recommends that EPA conduct a review of the effectiveness of the RTCR using a stakeholder process. This review can be conducted in accordance with the Agency’s existing 6 year review process.” (July 30, 2008 Draft).

The AIP also contains a recommendation for working on the data collection system 18 months after the final rule is promulgated:

“The TCRDSAC recommends within 18 months of final rule promulgation EPA release an upgrade to SDWIS State and SDWIS Fed to accommodate monitoring data, tracking, compliance determinations and reporting of all rule related requirements, as appropriate.” (July 30, 2008 Draft)



The metrics to measure the effectiveness of the rule must be established in concert with rule development and not after the final revised rule is promulgated. This is in accordance with the USEPA Office of Water's draft "Drinking Water Program Health Outcome Based Performance Measures for Chemical Contaminants and Microbial Contaminants" (USEPA, 2008), which was developed with input from the National Drinking Water Advisory Council. The document provides for measuring baseline metrics (pre-rule), post-rule targets, and the methodology for measuring metrics when data are collected. As the document states, it will be used as a tool for EPA to use in finalizing new Strategic Plan measures and as a future reference in implementing measures and evaluating progress toward measure targets.

The USEPA document expressly discusses collecting data on baseline metrics before a rule is promulgated so that a reference baseline can be established. In order for this initiative to be successful, rules need to have the performance metrics established in advance of rule promulgation so the proper metrics are collected before the rule is promulgated. If the metrics are established after the rule is promulgated, the data collected after the rule is promulgated will be a mix of new rule requirements and the old, making it impossible to establish a usable baseline. A poor or unstable baseline will erode future efforts to measure health benefits, especially when the difference between the noise and the outcome metric is small, because the ability to distinguish a true event from the noise becomes more difficult.

Unless the data systems are set up to collect the correct metric data, the same problem the District and the TCRDSAC have with the current TCR data will recur in future revision attempts. Without established metrics and a data system to collect and store the data before the rule is promulgated, the agency will be unable to establish a baseline from which to measure health benefits from the revised TCR. Future discussions regarding modifications to the rule will be no better off than they were for the current negotiations, which relied on one year's worth of data (out of nearly 20 years of monitoring under the current TCR) from about half of states (missing data from states like California). It is wasteful and irresponsible to collect hundreds of million dollars worth of data each year and not be able to use it to measure the effectiveness of the program or use the knowledge to enhance future revisions.

The current AIP should advocate for effectiveness metrics to be established in advance of the revised TCR promulgation, and for the data collection systems also be established well in advance (18 months) of final rule promulgation, so that data necessary to measure the effectiveness of the RTCR will be captured.

In addition, USEPA should include information about the development of metrics and data systems in its stakeholder communications during rule development.

Total Coliform Rule Distribution System Federal Advisory Committee  
August 27, 2008  
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If you have any questions regarding the content of this comment, please do not hesitate to contact me or Rick Sakaji at [REDACTED].

Sincerely,



Michael J. Wallis  
Director of Operations and Maintenance

MJW:ss

Reference:

United States Environmental Protection Agency, Drinking Water Program Health Outcome Based Performance Measures for Chemical Contaminants and Microbial Contaminants (DRAFT) March 10, 2008

[http://yosemite.epa.gov/sab/sabproduct.nsf/3C7023C58F6ED3D0852574170042CCD4/\\$File/DWC+Measures+document+SAB+draft+031008+for+4-2-08+meeting.pdf](http://yosemite.epa.gov/sab/sabproduct.nsf/3C7023C58F6ED3D0852574170042CCD4/$File/DWC+Measures+document+SAB+draft+031008+for+4-2-08+meeting.pdf)

cc: G. Bingham [gbingham@resolv.org]  
E. Brown, AMWA  
T. Schaefer, AMWA  
A. Roberson, AWWA  
S. Via, AWWA  
K. Zimmer [kzimmer@resolv.org]