

LA City and County agree to \$168 million plan to reduce trash in 51-mile LA River.

(We have the inside story - inside!)

A compromise was reached recently to settle a lawsuit by the city and county of LA that challenged the California Regional Water Quality Control Board's mandate to reduce trash going into the river by 10% annually over the next ten years. The compromise requires the city and county to reduce rubbish discharge into the river and Ballona Creek by 50% by 2008. The agreement also gives local officials freedom to pursue both high- and low- tech solutions to trash removal in addition to a stepped-up street cleaning and trash removal program.

Fresh Ideas wanted to get a better overall perspective of the situation so we contacted two senior players involved in the program. **Morad Sedrak** is the Assistant Division Engineer, City of Los Angeles, Department of Public Works, Bureau of Sanitation, Watershed Protection Division and **Ken Farfsing** is the City Manager for the City of Signal Hill, California.

Both Morad and Ken are articulate, committed, and have their own viewpoints on what is happening as a result of the compromise. Each bring a broad foundation of experience and a vision of what needs to be done and how to achieve success.

We asked each a series of general topic questions and turned on our recorder. Starting on page 2 is a compilation of nearly three hours of conversation.

Product News: New Plastic Net Frame

Fresh Creek now offers a frame constructed of molded plastic for replaceable nets. The new design is an alternative to wood frames and is immediately available for 30" x 30" nets with availability for additional net sizes planned for future introduction. Early-adopting customers report that plastic frames are not only aesthetically appealing but also easier to change out. Fresh Creek provides a metal A-frame device to provide stable, hands-free net removal and replacement.

Beach Closings Reported Down

Beach closings and related advisories declined in 2002, according to Natural Resources Defense Council's (NRDC) Testing the Waters 2003. This was NRDC's 13th annual report on beach closings and related monitoring, based on data from the EPA supplemented by NRDC's own survey data. Although reported beach closings and advisories declined 8% in 2002, (from a record 13,410 days in 2001 to 12,184 in 2001), it's still a lot of beach closings, so should we point to the statistics with pride or view them with alarm?

Not a simple question. NRDC is concerned that the downturn in 2002 is simply the result of drought conditions on the East Coast and in California. On the other hand, one reason for the higher level of reported closings in recent years is that more monitoring is being done and more beaches are being closed when water quality is poor. This is good for swimmers since you can get sick from swimming in polluted water. Beach closings can be caused by combined sewer overflows, malfunctions in sewage plants and sanitary sewers, and stormwater runoff. The pathogens in sewage-polluted water cause gastroenteritis, hepatitis, respiratory illness, and ear, nose and throat problems. Children and older people are most susceptible. A large scale epidemiological study in Santa Monica Bay (California) showed that individuals swimming near a storm drain outlet were 50% more likely to get sick than those who swam more than 400 yards away.

Even so, beach monitoring and closing is still a haphazard process. Only 15% of reported beaches have monitoring and notification programs that are fully compliant with EPA recommended standards. Some states and localities have partial coverage or reduced frequency and some states have no program at all. Further, the EPA guidance for acceptable pollution levels are not completely safe (19 out of 1000 swimmers in water meeting the enterococcus bacteria standard will become ill), but only a few states and localities have upgraded to EPA's 1986 revised standard. The Federal BEACH Act of 2000 requires that all states be up to standard by 2004 and also provides grant funding, so things should be improving quickly.

Protecting the health of beachgoers seems like a noble cause, but vacationers would undoubtedly be more impressed if the polluted waters were actually cleaned up. At least one third of all Americans visit coastal or Great Lakes beaches each year, with related tourism expenditures exceeding \$100 billion. Clean water is vital to this experience, so there is a persuasive economic case for fixing the problem. The beach monitoring data doesn't provide much help. In a staggering 62% of the closings, authorities were unable to pinpoint the cause of the pollution.

Maybe they were just being coy. California's beaches were so trashed with water-borne street litter that a "Trash TMDL" was formulated in 1999 to guide the cleanup process. And when property owners located downwind of a combined sewer outfall experience the stench of raw sewage after a rainstorm, there's little doubt about the source. However, progress in fixing the problems is slow. Until it's done, look for more beach closings.★

What's going on in Southern California with the agreement?

The City of LA believes it will cost \$120 million to comply with the Trash TMDL, which equates to about \$12 million per year for the next ten years. Operations and Maintenance costs are included in this estimate. The County of LA believes that their costs will be about \$48 million. We are hoping during the implementation phase that the competitive market will lead to a reduced overall cost of implementation.

How were you involved?

I am responsible for satisfying the TMDL requirements associated with the storm water program; therefore, I was the developer of the Trash TMDL (Total Maximum Daily Load) implementation plan and the cost estimate associated with the plan. The plan was developed to implement the requirements of the TMDL and meet the limits that the regulators established on the basis of what would be the amount of pollutant (trash) that a receiving body can receive without impairing it.

How is the city dealing with the implementation?

The City's approach has always been to use a public education forum as a means for reducing the pollution of concern at the source. This is one key element of the program that has been going on for the past five years. The second element of the program involves evaluation of existing institutional measures to ensure that progress is being made in the right direction. For example, we have catch basin cleaning activities and street sweeping that take place on a regular basis and then we also have enforcement activities associated with citing polluters if they discharge illegally. We have an enforcement group that is tasked with two responsibilities — inspecting restaurant and commercial establishments, and citing an establishment when it violates the requirements for good housekeeping practices.

The communication between the City and the County is very good, in addition, communications between the City and its stakeholders is also pretty good. We have regular quarterly meetings with the environmental organizations to update them on our progress and to get feedback from them if there are areas of concern to address. We work closely with the County pursuing grant applications for projects that we both feel would benefit the region at large, and improve the water quality of the receiving waters. We also participate in the Executive Advisory Committee where we meet with representatives from other municipalities that are dealing with the same type of issues and regulations and we collaborate on resolving common issues and concerns and share our implementation strategies.

What are the next steps?

The final step is to ensure compliance. As you know, public education and outreach does not guarantee compliance with the new regulations. So we needed to deal with the requirements under the TMDL with a shorter term plan to ensure that we are not in violation because every violation entails a penalty of \$32,500 and makes cities subject to a third party lawsuit. To prevent this from happening, the City's Trash TMDL implementation plan entails installation of various trash removal systems. The plan included

installation of catch basin opening screen covers, catch basin filter inserts, full capture systems, and end-of line trash basket units.

The 5 to 10 year big picture

The big picture as I see it is not just the Trash TMDL but the future TMDLs that regulators will continue to issue at the rate of six TMDLs per year. The City will be addressing the other TMDLs coming their way, the cost of which will be well beyond a billion dollars over the next fifteen years. This is an estimate for achieving the water quality standards that the regional board has the task to set. The money for this is not available at this time. The money will be coming from the taxpayers either in the form of long term bonds, increases in storm water service charges, the creation of new taxes on specific products that are contributing to the problem, or a combination of these.

What do you expect from the waste management industry? The vendors you work with?

The industry at this point in time is in its infancy. The City of LA began first by doing limited installations of structural pollution control devices to insure that these products performed as the vendors indicated. This has been going on for some time. We want to see results based on performance. That's the evolving process of establishing the plan itself.

Where they should vendors be putting their money – R&D, technology, training, communications?

If we are talking about trash capture technologies, I think it should be in development of better communications, better reaction time, and being more responsive to the needs of the various municipalities. Suppliers don't need to provide new products necessarily, but they need to demonstrate the effectiveness of what they have now. Then they should improve their products to meet our needs. With the understanding that there are other TMDLs for other pollutants of concern – metals, bacteria, etc., the industry should focus more on products that can deal with multiple pollutants at one time. That would be really a great help for cutting down on the cost of dealing with one pollutant at a time. In the future, that's what every manager will be looking for.

I would prefer, as part of a vendor's marketing process, that the manufacturers would take more of a lead role in assessing its products once they are in the ground, and taking a lead role in assessing their performance afterwards under field conditions. This would be valuable data. I don't have a budget for performing such things, and if I did I would be concerned that such data would be misperceived and challenged by the vendor. My preference is not to use lab data as real life applications. What we are looking for is real data with real information from the field.

We feel that all these vendors and all these products are in their infancy. They haven't been proven. Unlike the wastewater treatment products, it's going to take some time for each vendor to establish themselves and a track record. They have to show us that the products work and keep on working and meet, and continue to meet, the new regulations.

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Give us an overview of the lawsuits?

The Trash TMDL (Total Maximum Daily Load) lawsuit, there are three filed - the City of LA, the County of LA and our city lawsuit, which is set for trial October 27. We did not settle our lawsuit. If you read carefully the settlement agreement with LA city/county they essentially agreed to put their lawsuits on hold pending the outcome of our litigation. Also, the Control Board has to go back through the public hearing processes to change the trash order. So, when you talk about the \$120 million settlement costs, that's only the City of LA's costs or about \$12 million a year. They have agreed to put that money into programs to reduce trash. The county settlement has an additional \$5 million per year. The county represents about 7 percent of the river watershed. The urbanized portion of the watershed is about 528 sq miles, that's the built-up area.

What's your perspective on the situation?

Our view is that it's typical top heavy, top down regulations with the TMDLs developed in a vacuum at the Regional Board along with the EPA. They then trotted them out for a series of what they considered public input sessions but they weren't willing to listen to anybody and then they adopted the TMDLs, The rest is history — litigation was filed. I wouldn't call it a collaborative process.

Our lawsuit calls out this whole top down, top heavy control. We basically felt that a backroom deal was cut between the EPA and the environmental groups, not even consulting with the people who are going to be regulated. You get very suspicious when things like that occur. The consent decree was entered into in Oakland, not even in our local court system so, how do you find out about those things? Now everybody has to live with that decision of not getting the cities involved early on in the process. When the Trash TMDL came out as a zero order, that basically set the water quality control plan for LA county. The basin plan, it's a state document, is a general plan for ground and surface water, it sets all the standards. If you look at that plan when it was put together in 1972, it set the standard for floatables in stormwater at zero. It said that there shall be no floatables in any of the surface waters. From that, the regional staff extrapolated that to a numeric zero. They took that goal and said, "There shall be no floatables in storm water" and made that a hard zero. Nobody feels that zero is achievable but that's the standard that has been put together to meet this trash order. That's part of what played into this filing of our litigation. Was this a hard and fast rule that was set?

Are you influenced or impacted by this settlement?

Probably a little of both. Our litigation is going to continue, obviously it has been impacted. They enter into agreements to try to influence the case. They are going to say that our cities are unreasonable. Why can't these little tiny cities agree? They will try to impact our litigation with their settlement. Hopefully the judge will look at our case and not be influenced by other actions. If we lose our case we end up with the settlement terms that the city of LA and the county negotiated. We've got some concerns with the terms of the settlement. One of them, which is interesting, has introduced the concept of MEP or Maximum Extent Practicable. That's a term within the Clean Water Act that applies to municipal storm water systems.

MEP was never defined by Congress. It was left up to individual states to come up with definitions. Some states have defined it some have not. California does not have anything in statute that defines what is MEP. We interpret MEP when we look at all of our resources as a total community. We look at the requirement to meet these water quality objectives. We have to balance the local economy with the environmental benefit. At some point in time we make a decision "This is how much money, as a community, we have to spend at any one time on environmental clean up, that's our Maximum Extent Practicable."

We are concerned that the settlement has wrapped MEP into structural devices, there's no consideration for such things as housekeeping practices. Maybe you might want to increase the frequency of street sweeping or catch basin cleanout or other housekeeping programs that meet the MEP for your individual circumstances. What has happened is the settlement is tied into installing structural devices. What we understand MEP to be, according to the EPA, is a process of iteration and invention. It's going to take several permit cycles to get there so you start by using the most cost effective approaches. As you move through this process of invention, you get to the point where you have exhausted all of your management practices and you start employing the more expensive technological solutions, the engineering approaches. We're concerned that this is the first time anyone in California has tried to define MEP and right out of the chute it's tied into expensive engineering controls. That doesn't bode well for the future if we are looking at 92 other TMDL's and being told, forget all of these housekeeping BMP practices, and go immediately to technology solutions.

How are the local governments responding?

I think we are doing a good job. The cities have always been good environmental stewards. We invest significant amounts of city resources into environmental programs - recycling waste, refuse reduction programs, recycling motor oil, or just good stewardship of city parks. We also have controls on developers that make developers more sensitive to environmental concerns. I think the cities track records in terms of spending on the environment are pretty good but little recognized. City councils have a very difficult job of balancing, with limited public resources, the many competing needs that we have as communities and service demands. Number one is public safety – police, fire, and paramedics. You don't want to ring 911 and have a recording that comes on and says, "Well, sorry, we no longer have a police department because we've spent our entire budget on environmental programs."

What do you see happening within the next five to ten years?

A lot of it is up to the regional board in terms of their own basin plan. We looked at the national academy of sciences report that recommends that before you start adopting all these new water rules, the TMDLs as a region, you need to go back and look at your basin plan to see if that plan is realistic. For example, in our region the system of storm drains don't feed into sanitary sewer facilities so there's no treatment of storm water. When it rains it goes into flood control channels sometimes traveling at 30 to 40 miles an hour and is shot out into the ocean as quickly as possible. The regional board is going to have to take a really good look at the basin plan. (Continued on Page 4)

Point Of View: Morad Sedrak (Continued)

Are you excited about the future?

Absolutely, I believe that the City's Trash TMDL plan will lead to success and everyone within the region will benefit from the implementation of the plan. We believe that through our combined effort that is, the City and its citizens, we can prevent littering and clean up our City. We all will benefit from this.

Creating a cleaner environment with healthy rivers, lakes and beaches for the enjoyment of our citizens that's really the thrust of our program. ✧

Point Of View: Ken Farfsing (Continued)

For example, the flood control channels have beneficial uses for fishing and swimming so you have to ask is that a realistic use, are the taxpayers going to be able to afford a program to clean storm water to the extent that people can swim in a flood control channel.

The other thing that's scary to us is that these clean water regulations allow for third party litigation so not only can the regional board fine cities if we don't reach the mandate but outside parties can litigate. I like to use the example, lets say, we are at year four and we are supposed to be at 40% trash reduction, and, lets say, we are at 39 percent. The regional board has the ability to fine the city of Signal Hill \$31,500 per day for every day we are out of compliance with a TMDL. The regional board may be reasonable saying Signal Hill is trying really hard and they are at 39 percent and next year they have to get to 50 percent and they are working hard and it looks like they are going to get there, and the regional board gives you a pass. Now, the environmental groups, who have third party litigation ability, can take us to court and sue us. A judge will look at it and say, "You guys were suppose to be at 40 and you are only at 39 percent — pay up. Pay the environmental group's attorney's fees, and here's a big hefty fine as a community for not reaching the 40 percent." So, we're very concerned about where these rules are going and the mandates that are going to be placed especially on the smaller communities.

What are your expectations from the vendor community? What are your needs? Engineering? Technical? Communications?

What I am concerned about is that we are at the very beginning, we are at the infancy stage. No matter what people tell you there is not a lot of off the shelf technology that's going to deal with these constituents. So, we are in a period of time where we are going to be experimenting. So to me it's really critical that the vendor community not try to sell the city a bill of goods. Lets be up front about the fact that we are in that experimental stage. Things are going to break and I think the vendor community needs to be there especially on these pilot programs to help with retrofitting, with repairs, for a certain period of time, with warranties especially until we can work the bugs out of these systems. We need them to propose solutions and fixes and be responsive.

Point Of View: Ken Farfsing (Continued)

The vendors that are going to be in it for the long haul are the ones that are going to do that. These are the vendors that are going to be recommended by other cities when they are looking for solutions.

Where should vendors be putting their money – R&D, training, new products, communications?

That's a good question, I think R&D, pilot programs and then education. We need transparent information – pilot programs that work in a community, those that don't and why didn't they work. I know that the EPA has a BMP web page but I hardly see any reports on how this equipment or an installation is working. How do we find out about? We have thousands of communities out there doing experimentation, but nobody knows what they are doing and what are the results. I am not too impressed by some of the advertisement and trade publication articles because I am always concerned that I am going to be sold a bill of goods. I am more interested in targeted information that is sent out to the cities where the product is described with the technical information and showing some real world applications. That works far more effectively than putting an ad in a magazine that tells me you've got this product.

Closing Comments:

It's important to communicate that the cities want to engage on the issues. We recognize that trash and other pollutants are a real problem that we have to deal with and we want to do it in a cost- effective manner. This whole program operating under all these court orders, consent decrees, litigation, the potential for fines, and third party litigation, is a terrible disservice to the environment. When you get right down to it it's a lot of wasted energy which would be better spent on everybody trying to work on solutions.

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These articles were developed from nearly three hours of interview tapes with Morad and Ken. Some of the comments have been edited but we have not revised or influenced any of the content of the comments. All opinions expressed are the opinions of the person interviewed and not Fresh Ideas, Fresh Creek Technologies, or Creative Resources.

Visit our web site: www.freshcreek.com for more on these interviews.

We wish to thank Morad and Ken for their time and candid comments.



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