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Public Hearing (8/21/12)
Policy for Toxicity Assessment and Control
Deadline: 8/21/12 by 12 noon

August 21, 2012

VIA ELECTRONIC MAIL

c/o Jeanine Townsend, Clerk to the Board
commentletters@waterboards.ca.gov

Charles R. Hoppin, Chair and Members
State Water Resources Control Board
1001 I Street
Sacramento, CA 95814



SUBJECT: Draft Policy for Toxicity Assessment and Control (Public Review Draft, June 2012)

Dear Chair Hoppin and Members:

The Association of California Water Agencies (ACWA) appreciates this opportunity to provide comments on the State Water Resources Control Board's (SWRCB) Revised Draft Policy for Toxicity Assessment and Control (Revised Draft Policy) released by the State Water Resources Control Board (State Water Board) in June of 2012. As you know, ACWA represents approximately 450 public water agencies throughout the state. Our members provide approximately 90 percent of the water used for residential, commercial and agricultural purposes in California. ACWA's member public water utilities provide potable water treatment, wastewater treatment and water recycling, and agricultural water supply services statewide. Our member agencies also manage local and regional surface and groundwater supplies, and depend on extensive water transfer across the state using a complex water supply system upon which the economy of California depends.

ACWA supports the identification and remediation of chemical discharges and other water quality conditions that adversely impact California's water bodies and their beneficial uses. We recognize toxicity testing is a useful water quality evaluation tool to help identify chemical constituents that may be causing or contributing to toxicity to aquatic organisms.

ACWA therefore supports the goal of developing a clear and consistent statewide policy to guide toxicity assessments that are based on the best currently available science and analytical methods. The policy would then be used consistently by the Regional Boards to improve the discharge permitting process and better ensure that real instances of toxicity are being detected, investigated and resolved as effectively as possible.

ACWA appreciates that the State Water Resources Control Board staff has made efforts in the Revised Draft Policy to respond to comments and concerns associated with the 2010 Draft Policy, including ACWA's comment letter dated January 21, 2011.

However, ACWA still has some fundamental concerns regarding the June 2012 Revised Draft Policy.

First, we believe the Revised Draft Policy will result in a significant increase the number apparent cases of toxicity determinations, where in fact there is no actual toxicity. Many scientific testing and analytical methods result in some level of “false positive” results but usually that outcome can be managed at an acceptable level by the way the data is interpreted. Under the Revised Draft it is our understanding that dischargers would be deemed in violation of their discharge permit based on a single test failure at 50% of the chronic endpoint. We support revising the Revised Draft Policy to express numeric limits as median or other percentile limits that require more than one test result to assess a permit violation. It is not appropriate to use single sample results due to the inherent variability and uncertainty in testing biological organisms on which the toxicity testing is based.

Second, we suggest that the Revised Draft Policy be further revised to eliminate the proposed “maximum daily effluent limitation” for regulatory purposes. Compliance based on daily limitations may reflect episodic water quality conditions but may overemphasize the significance of single test results. Instead, effluent limitations should be expressed as monthly or weekly limitations in conformance with federal regulations (40 C.F.R. § 122.45(d)(2)).

The state’s effort to develop an authoritative toxicity policy has significant implications for water quality and surface water management efforts and programs statewide. In this light, we believe that the Revised Draft Policy needs such revisions before it is ready for Board adoption and implementation.

If you have any questions regarding this letter please feel free to contact me by e-mail at daveb@acwa.com or by phone at (916) 441-4545.

Sincerely,



David Bolland
Senior Regulatory Advocate

CC: Timothy Quinn
Jonathan Bishop JSBishop@waterboards.ca.gov
Tom Howard thoward@waterboards.ca.gov
Victoria Whitney vwhitney@waterboards.ca.gov