

A Joint Powers Agency

- Almonte S.D.
- Alto S.D.
- City of Mill Valley
- Homestead Valley S.D.
- Richardson Bay S.D.
- Tamalpais S.D.

August 20, 2012

Via email: commentletters@waterboards.ca.gov

Jeanine Townsend
Clerk to the Board
State Water Resources Control Board
1001 I Street, Sacramento, CA 95814



Subject: Draft Policy for Toxicity Assessment and Control

Dear Ms. Townsend:

The Sewerage Agency of Southern Marin (SASM) appreciates the opportunity to comment on the Draft Policy for Toxicity Assessment and Control (Policy). SASM is a Joint Powers Agency that serves approximately 28,000 residents in southern Marin County area from Tamalpais Junction to the northern Tiburon Peninsula. This facility has been in operation since the 1940's and upgraded in 1983. The original trickling filters were upgraded to bio-towers with secondary clarification. There are no industrial users in the SASM service area. Over 97% of the flow is residential. The plant is permitted to discharge 3.6 million gallons per day. The deep water outfall in Raccoon Strait of the San Francisco Bay is shared with another Wastewater Treatment Plant. The SASM Wastewater Treatment Plant, as a member of the *Wastewater Treatment Agencies of Marin County*, was awarded the "2010 Dr. Teng-chung Wu P2 Award" by the San Francisco Bay Water Board (Region 2) for leadership and excellence in pollution prevention in addition to the 2012 Public Education Program of the year (large budget) for the CWEA Redwood Empire Section and the State. More recently, the same group was awarded the 2011 Public Education Program of the year (large budget) for the CWEA Redwood Empire Section.

Our agency appreciates the State Water Board's goal of state-wide consistency in toxicity monitoring and enforcement, as well as the efforts that have already gone into this Policy. However, this Policy, if adopted in its current form, will have significant impacts on our agency. We support the letter submitted by the Bay Area Clean Water Agencies, which comments on region-wide impacts of the Policy, and would like to share our concerns about the specific burdens that will fall on our agency pertaining to increased costs and increased violations.

This policy may result in permit violations based on a single test result. Violations impose significant costs on public agencies such as ours: financially, legally, and in public trust. The current draft policy contains a Maximum Daily Effluent Limit that would assess a permit violation as a result of a single test result. Even though the MDEL involves a higher effect level, our agency believes that the use of a single toxicity test result to assess a permit violation is inappropriate.

The result of a single bioassay is not a conclusive demonstration that a sample is toxic, since there are numerous sources of uncertainty in toxicity testing. EPA guidance and approved methods note the variability and occasional anomalous results inherent in biological testing, and the TST method itself has a built-in allowance for a 5% false positive rate. Analysis of past EPA inter-laboratory data by the TST method indicates that the false positive rate may be even higher for some test species.

Therefore, our agency strongly recommends that the WET Policy, if it must include numeric effluent limits, include average, median, or other percentile limits that require more than one test result to assess a permit violation.

The costs of routine testing will be greatly increased under this new policy. As we understand it, this Policy will result in required monthly chronic toxicity testing, which will increase our frequency from once in 5 years. This alone will cost at least an additional \$33,000 in laboratory costs over our 5-year permit cycle. These costs assume additional monthly monitoring 3 times per 5-year permit cycle due to the minimal false determination of toxicity rate of 5%, which is built into the TST method.

While the Policy only requires testing at a single concentration, performing additional test replications can help us avoid false determinations of toxicity .If our agency determines that additional replicates are needed to avoid falsely determined violations, then the routine monitoring may cost our agency an additional \$96,000 in laboratory costs over a 5-year permit cycle. Costs for a reference toxicant tests to assure data quality are not included in the Staff Report, and are in addition to this amount.

Savings resulting from termination of acute toxicity testing requirements are not assured by this proposed policy. The Economic Impacts analysis in Appendix H of the Staff report bases a large part of the estimated cost saving on the assumption that acute toxicity will no longer be required. However, since this is ultimately left to the discretion of the Regional Boards, we have to assume that Region 2 could continue to require acute testing. Furthermore, we have already invested significant resources into developing acute toxicity testing capability in-house, so even if the acute toxicity testing is not required, we will not realize the savings described in the Staff report.

In addition the SASM Laboratory provides acute toxicity testing services for neighboring agencies. The additional replicates deemed necessary will make collaborative cost-saving efforts impossible.

The costs of violations will be greatly increased under this new policy. The cost of increased violations were not considered in the Economic Impacts Analysis in the Staff Report. A major difference between this Policy and how toxicity is currently managed is that exceedences of acute and chronic toxicity limits are Clean Water Act violations subject to State penalties of up to \$10,000 per day or \$10.00 per gallon, and federal penalties of up to \$37,500 per day per violation. The Policy does not dictate over what time period these penalties are assessed. For example, in a worst-case scenario, the penalty could be assessed over the time period of accelerated monitoring and TRE/TIE investigations, which is 6 months under the Policy. In addition, our agency would still be subject to third party lawsuit and attorney fee liability, particularly if regulators decide to take no enforcement actions.

Even though we have had excellent compliance with acute and chronic toxicity testing over the last 23 years, we are concerned that the rate of false determination of toxicity that is built in will lead to a possible violation within the 5-year NPDES permit cycle that is not related to actual toxicity.


S A S M
SEWERAGE AGENCY OF
SOUTHERN MARIN

A Joint Powers Agency

- Almonte S.D.
- Alto S.D.
- City of Mill Valley
- Homestead Valley S.D.
- Richardson Bay S.D.
- Tamalpais S.D.

The Sewerage Agency of Southern Marin hopes that the State Water Resources Control Board will take these comments under serious consideration. The additional costs due to the Policy will be burdensome for our agency. Even in the absence of these cost increases, we are concerned about the increase of violations that are corollary to this Policy. Thank you for your consideration of our comments.

Sincerely,



Jeff Carson
Interim Treatment Plant Manager