

**STATE WATER RESOURCES CONTROL BOARD
BOARD HEARING SESSION – DIVISION OF WATER QUALITY
AUGUST 21, 2012**

ITEM 6

SUBJECT

PUBLIC HEARING ON THE DRAFT POLICY FOR TOXICITY ASSESSMENT AND CONTROL AND ASSOCIATED SUBSTITUTE ENVIRONMENTAL DOCUMENT

DISCUSSION

In accordance with Water Code sections 13140 and 13147, the State Water Resources Control Board (State Water Board) is holding a Public Hearing to receive comments on the [Public Review Draft of the Policy for Toxicity Assessment and Control](#), (Policy) and [Draft Staff Report](#), released on June 27, 2012. Written comments are due by noon on the day of the Public Hearing.

The Policy was developed to fulfill the requirements of [Resolution No. 2005-0019](#), which directed State Water Board staff to revise the toxicity control provisions in Section 4 of the *Policy for Implementation of Toxics Standards for Inland Surface Waters, Enclosed Bays, and Estuaries of California* (SIP). The SIP requires the Regional Water Quality Control Boards (Regional Water Boards) to determine compliance with narrative chronic toxicity objectives using United States Environmental Protection Agency (U.S. EPA) methodology for all inland surface waters, enclosed bays, and estuaries. However, this regulatory framework lacks a consistent approach to toxicity control which has ultimately weakened the protection of aquatic life beneficial uses in water bodies throughout California.

The Policy has undergone a number of revisions since it was originally released to the public in the summer of 2010. The June 2012 Public Review Draft incorporates a number of suggestions received during the informal comment periods and stakeholder meetings held during the development process. Briefly, the Policy now includes:

- Maximum Daily Effluent Limitations and Median Monthly Effluent Limitations for National Pollutant Discharge Elimination System (NPDES) wastewater and point source Waste Discharge Requirements (WDR) dischargers
- Exceptions for small communities
- Greater flexibility in Toxicity Reduction Evaluation Work Plans
- Monitoring requirements for storm water and channelized dischargers that are now “recommended,” rather than “required”
- A guidance document to assist storm water dischargers with toxicity monitoring programs

The Public Review Draft retains the numeric chronic and acute toxicity objectives proposed in earlier versions, as well the reasonable potential analysis, Policy exceptions, and the required use of U.S. EPA’s Test of Significant Toxicity (TST) approach for data analysis. The Policy will apply to NPDES permits, point source WDRs, conditional waivers of WDRs, and prohibitions issued for discharges to inland surface waters, enclosed bays, and estuaries, excluding ocean waters of California. If adopted, the Policy will supersede Section 4 of the SIP, as well as the toxicity test provisions established in some Basin Plans. The narrative toxicity objectives established in each of the ten Basin Plans, however, would remain in effect.

The Policy will protect aquatic life beneficial uses throughout California, while providing both regulatory consistency and a basis for equitable enforcement.

POLICY ISSUE

There will be no action on this item. This Public Hearing is being held only to receive public comments on the Policy.

FISCAL IMPACT

There is no fiscal impact to this Public Hearing.

REGIONAL BOARD IMPACT

Upon adoption, the Regional Water Boards would be required to include the proposed wastewater provisions in all NPDES permits and point source WDRs issued, reissued, or reopened (to address toxicity requirements) after the effective date of the Policy. Regional Water Board staff would also be obligated to mail out letters pursuant to Water Code sections 13383 and 13267. These letters would require storm water and channelized dischargers that are currently monitoring toxicity to analyze results using the TST approach within one year of the effective date of the Policy. In addition, all storm water NPDES permits and channelized discharger WDRs, conditional waivers of WDRs, and conditional prohibitions issued or reissued after the effective date of the Policy would need to include language requiring the use of the TST if the permitting authority decides to include chronic or acute toxicity monitoring requirements.

Beyond the incorporation of the Policy's provisions and the distribution of letters pursuant to Water Code sections 13383 and 13267, State Water Board staff does not anticipate a significant increase in the Regional Water Boards' workload. Increases in the amount of toxicity data interpretation that may result from the implementation of the Policy are expected to be offset by the streamlined method of compliance determination the Policy proposes.

STAFF RECOMMENDATION

This Item is for receiving public comment on the Policy. Staff is not making a recommendation at this time.

State Water Board action on this item will assist the Water Boards in reaching Goal 6 of the Strategic Plan Update: 2008-2012: to enhance consistency across the Water Boards, on an ongoing basis, to ensure our processes are effective, efficient, and predictable, and to promote fair and equitable application of laws, regulations, policies, and procedures. In particular, approval of this item will assist in fulfilling the 2011 Priority Action to develop statewide toxicity control provisions.