



December 21, 2018

The Honorable Felicia Marcus, Chair
Jeanine Townsend, Clerk of the Board
State Water Resources Control Board
1001 I Street, 24th Floor
Sacramento, CA 95814



RE: Comment Letter – Toxicity Provisions

The Association of California Water Agencies (ACWA) and the California Municipal Utilities Association (CMUA) appreciate the opportunity to provide comments regarding the State Water Resource Control Board's (State Water Board) proposed Establishment of the Water Quality Control Plan for Inland Surface Waters, Enclosed Bays, and Estuaries of California; and Toxicity Provisions (Draft Toxicity Provisions). ACWA represents over 430 public water agencies that collectively supply approximately 90% of the water delivered in California for domestic, agricultural, and industrial uses. CMUA represents 42 water agencies that deliver water to over 70% of Californians. Many of ACWA's and CMUA's public agency members are entrusted with the responsibility of supplying the public with safe and reliable drinking water. Ensuring the safety of drinking water supplies by complying with all relevant state and federal standards is the highest priority of these agencies.

ACWA and CMUA would like to express our appreciation to State Water Board staff for their effort to improve the Draft Toxicity Provisions and address stakeholder concerns raised on its different iterations. We support the State Water Board's efforts to develop a policy that will standardize how toxicity testing is conducted and will bring more statewide consistency. Toxicity testing is a useful water quality evaluation tool to help identify chemical constituents that may be causing or contributing to toxicity of aquatic organisms, and we support the identification and remediation of chemical discharges and other water quality conditions that adversely impact California's water bodies and their beneficial uses.

ACWA and CMUA urge the State Water Board to consider the following comments:

1. Establish an Exception for Drinking Water System Discharges for the Toxicity Water Quality Objectives

ACWA and CMUA are concerned that the Draft Toxicity Provisions specify requirements for all non-storm water National Pollutant Discharge Elimination System (NPDES) dischargers, including drinking water discharges. Under the Statewide General NPDES Permit, drinking water system discharges, due to the intermittent, seasonal and temporary characteristics, have insignificant impacts to existing surface water quality. These discharges are a necessary consequence of providing safe, clean, affordable, and accessible drinking water to people of the state and are mandated by drinking water laws and regulations. Existing best management practices required under the NPDES General Order for drinking water system discharges constitute best practical treatment and control of these discharges.

Under the Draft Toxicity Provisions, Section 5.7.5 *Consideration of Insignificant Dischargers*, the Regional Water Quality Control Board (Regional Water Board) may exempt certain non-storm water NPDES

discharges, which are determined to be insignificant from some or all the implementation requirements. Although the exemption could apply to water purveyors, a Regional Water Board must first make a finding that an insignificant discharger will have no reasonable cause or contribute to an exceedance of the toxicity water quality objectives.

Due to the low-threat nature of these discharges and the resources that would be required for these public water agencies to comply with the requirements of the Toxicity Provisions, we respectfully request that the Draft Toxicity Provisions be modified to provide a categorical variance and exception for discharges resulting from a water purveyor's operations and maintenance activities undertaken to comply with the federal Safe Drinking Water Act, the California Health and Safety Code, and the State Water Board's Division of Drinking Water permitting requirements.

2. Update the Economic Impact Assessment to Appropriate Reflect Costs to Drinking Water Systems

As written, Section 9.1.4 *Economic Considerations* does not consider potential costs placed upon drinking water systems to comply with the Draft Toxicity Provisions. As noted, the Draft Toxicity Provisions give the Regional Water Boards the discretion to require additional acute toxicity monitoring and testing. If the Draft Toxicity Provisions are to be applicable to drinking water systems, then the economic impact assessment must be revised.

If it is the intent of the State Water Board to exempt drinking water systems from these Draft Toxicity Provisions, ACWA and CMUA recommend language noting the exemption should be included in the economic considerations section.

ACWA and CMUA support the concerns outlined in the San Diego County Water Authority comment letter related to potable reuse discharges for surface water augmentation. We additionally encourage the State Water Board to consider the comments submitted by the California Association of Sanitation Agencies. Further, our associations generally encourage policies that presume discharges to surface water are not toxic unless demonstrated otherwise.

ACWA and CMUA appreciate the opportunity provide the attached language and are available to work collaboratively with State Water Board staff to ensure the appropriate protections of beneficial uses while ensuring low-threat drinking water system dischargers are not unintentionally included in these Draft Toxicity Provisions. If you have any questions regarding this letter, please feel free to contact Chelsea Haines with ACWA by email at chelseah@acwa.com or by phone at (916) 441-4545 or Jonathan Young with CMUA at jyoung@cmua.org or by phone at (916) 326-5806.

Sincerely,



Chelsea Haines
Regulatory Advocate, ACWA



Jonathan Young
Regulatory Advocate, CMUA

cc:

The Honorable Tam Doduc, Board Member, State Water Resources Control Board
The Honorable Dorene D'Adamo, Board Member, State Water Resources Control Board

The Honorable E. Joaquin Esquivel, Board Member, State Water Resources Control Board
The Honorable Sean Maguire, Board Member, State Water Resources Control Board
Ms. Eileen Sobeck, Executive Director, State Water Resources Control Board
Mr. Jonathon Bishop, Chief Deputy Director, State Water Resources Control Board
Ms. Karen Mogus, Deputy Director of Division of Water Quality, State Water Resources Control
Board

EXCERPT FROM DRAFT TOXICITY PROVISIONS, PAGE 26

The underlined language below reflects ACWA and CMUA's recommended language to be considered for inclusion in the State Water Board's Draft Water Quality Control Plan for Inland Surface Waters, Enclosed Bays, and Estuaries of California.

5. Variances and Exceptions to the Toxicity Water Quality Objectives

a. Waters of the U.S.

The PERMITTING AUTHORITY may, in compliance with CEQA, and subsequent to a public hearing, grant a variance to the numeric and narrative water quality objectives for toxicity. Water quality standard variances are subject to review and approval of the U.S. EPA, in accordance with Code of Federal Regulations, Title 40, section 131.14. {Note: This paragraph or similar provision may be added as part of an earlier amendment to the ISWEBE.}

b. Waters of the State That are Not Also Waters of the U.S.

The PERMITTING AUTHORITY may, after compliance with CEQA, allow short-term or seasonal exceptions from meeting numeric and narrative water quality objectives for toxicity if determined to be necessary to implement control measures for resource or pest management (e.g., vector or weed control, pest eradication, or fishery management) conducted by public entities.

The discharger shall notify potentially affected members of the public and governmental agencies. Also, the discharger shall submit to the PERMITTING AUTHORITY all of the following:

- 1) A detailed description of the proposed action, including the proposed method of completing the action;
- 2) A time schedule;
- 3) A discharge and receiving water quality monitoring plan (before project initiation, during the project, and after project completion, with the appropriate quality assurance and quality control procedures);
- 4) CEQA documentation;
- 5) Contingency plans;
- 6) Identification of alternate water supply (if needed); and
- 7) Residual waste disposal plans.

Additionally, upon completion of the project, the discharger shall provide certification by a qualified biologist that the receiving water beneficial uses have been restored. A qualified biologist is a biologist who has the knowledge and experience in the ecosystem where the resource or pest management control measure is implemented so that he or she can adequately evaluate whether the beneficial uses of the receiving waters have been protected and/or restored upon completion of the project.

Categorical Exceptions

The State Water Board also finds that categorical exceptions shall be granted to drinking water system discharges conducted to fulfill statutory requirements under the federal Safe Drinking Water

Act, the California Health and Safety Code or the State Water Board Division of Drinking Water permit requirements. Such categorical exceptions shall also be granted for draining water supply reservoirs, canals, and pipelines for maintenance, for draining municipal storm water conveyance for cleaning or maintenance, or for draining water treatment facilities for cleaning or maintenance.

For each non-emergency project, the discharger shall notify potentially affected public and governmental agencies. Also, the discharger shall submit to the Executive Officer of the appropriate Regional Water Board, for approval:

- 1) A detailed description of the proposed action, including the proposed method of completing the action;
- 2) A time schedule;
- 3) A discharge and receiving water quality monitoring plan (before project initiation, during the project, and after project completion, with the appropriate quality assurance and quality control procedures);
- 4) CEQA documentation;
- 5) Contingency plans;
- 6) Identification of alternate water supply (if needed); and
- 7) Residual waste disposal plans.

Additionally, upon completion of the project, the discharger shall provide certification by a qualified biologist that the receiving water beneficial uses have been restored.

To prevent unnecessary delays in taking emergency actions or to expedite the approval process for expected or routine activities that fall under categorical exceptions, the discharger is advised to file in advance with the appropriate Regional Water Board the information required in items (1)–(7) above, to the extent possible.