

# Legal Issues with the Proposed WET Policy



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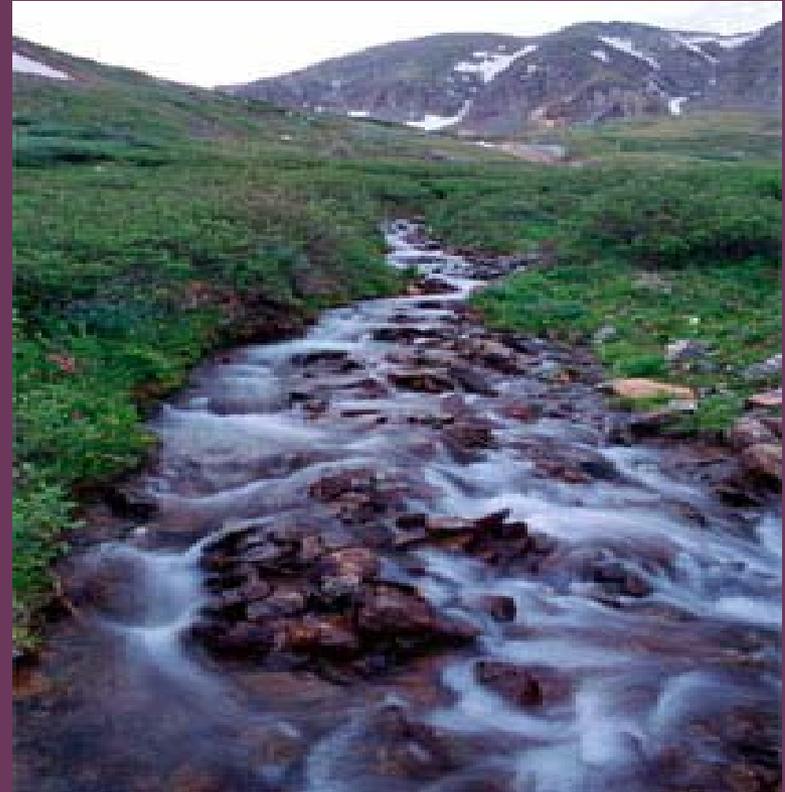
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# Why is Change Needed?

- Approach taken since 2001 is working and functions well.
- Current approach provides the appropriate incentives.
- Permits include enforceable provisions for accelerated monitoring.



# Unnecessarily Stringent

- The compliance schedule provisions are inappropriately restricted to where toxicity not previously monitored, and only for 2 years.
- Policy is more stringent than required by federal law by:
  - automatically assuming Reasonable Potential for toxicity for large POTWs (more than 1 mgd).
  - requiring numeric effluent limits
  - requiring maximum daily effluent limitations
  - will result in more frequent determinations of effluent as toxic



# Enforceability

- Under the current approach, identified instances of toxicity act as a trigger to proceed to confirmation and TIE/TRE steps, or the discharger is subject to enforcement by Boards, EPA or citizens.
- Under the new approach, identified instances of toxicity -- **including false positives**-- will constitute violations subject to administrative and civil enforcement, including citizen suits.
- Subject to 2 violations for RWL and WQBEL.



# Incorrect Focus

- The proposed Policy merely makes test failures enforceable without changing anything in the effluent or in the environment.
- This diverts limited resources from the identification and reduction of actual instances of toxicity.
- This penalizes dischargers “genuinely attempting to reduce toxicity through an aggressive TRE process” (see Staff Report at 44).



# Other Legal Issues

- The CEQA checklist finds “no impact” from the construction of new wastewater or stormwater treatment facilities, which is inaccurate (see Staff Report at 78).
- Even the obsolete SAIC economic analysis states that reverse osmosis or other control technologies may be required for some pollutants causing toxicity (see SAIC Economic Analysis at 5-7).
- The Water Code section 13241 analysis is inadequate, without any citations to facts or evidence to support the conclusions (see Staff Report at 63-64). No analysis of cost of compliance or enforcement.

