



**California Regional Water Quality Control Board
North Coast Region
Geoffrey M. Hales, Chairman**



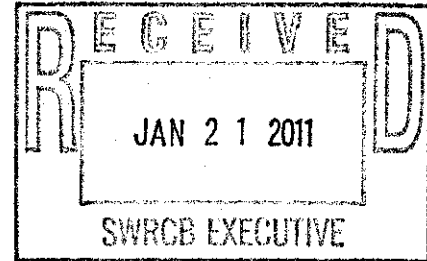
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Edmund G. Brown, Jr.,
Governor

January 21, 2011

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



Members of the Board:

Subject: Comment Letter – Policy for Toxicity Assessment and Control

We appreciate the opportunity to comment on this draft policy. Many aspects of this policy will assist in providing needed consistency and standardization for NPDES permits issued in the North Coast Region. We support the proposed technical criteria for evaluating toxicity test results as well as the language regarding the development of toxicity effluent limitations. However, there are provisions in the draft policy that will be difficult to implement or will cause undue economic hardship on permit holders in the North Coast Region. The provisions that concern Regional Water Board staff are:

1. Monitoring frequencies for NPDES permittees

In the North Coast Region, many of our NPDES permit holders are small, economically-disadvantaged communities. We believe that the monitoring frequencies required under this policy will result in significant economic impacts to these permit holders. Many of these facilities are already subject to costly compliance schedules, special studies, or enforcement actions, or are undertaking facility upgrades which are necessary for water quality protection. Requiring additional monitoring for these facilities will result in the diversion of limited funds away from existing efforts to improve effluent quality. Unfortunately, the proposed policy only allows for the reduction of required monitoring frequencies in very narrowly defined circumstances. We strongly recommend that the policy allow for added flexibility in the establishment of toxicity monitoring frequencies. We suggest that language be included to allow Regional Water Boards to reduce monitoring frequencies in a permit action where permit findings are included that justify the reductions.

California Environmental Protection Agency

2. Toxicity Criteria for Non Point Source and Channelized Discharges

The policy also establishes toxicity criteria for "channelized discharges." The definition for channelized discharges states that it applies to any waste flows that are regulated under the authority of the Porter-Cologne Water Quality Control Act (but not the NPDES program) and are discharged through a channel. This definition is overly broad and would seem to apply to thousands of small storm water discharges including roadside ditches, drainage swales, and privately owned storm drain systems. Due to the amount of rainfall that typically occurs on the North Coast, storm water drainage "channels" are very common. Most of the conveyances are not subject to the NPDES storm water program. Some of these discharges are regulated under waste discharge requirements or waivers of waste discharge requirements; however, these permit program control measures are primarily focused on preventing erosion and controlling sedimentation impacts. Including costly toxicity testing and evaluation and potentially toxicity effluent limits for these small, diverse storm water runoff discharges is inappropriate for the North Coast Region at this time. We recommend that the channelized discharge criteria clearly exclude storm water discharges from this category.

Other categories of "channelized discharge" would include discharges from land irrigation. In many areas of the state, including the North Coast, regulatory programs for irrigated agricultural discharges are relatively new. As with any new regulatory program, consideration should be given to a phased approach to new requirements, with a priority given to pollutants of concern. In our Region, non-point source dischargers are addressing impacts from sediment, siltation, nutrient, and temperature impairments. Including significant new toxicity requirements and costly monitoring will divert attention from dealing with critical TMDL pollutants. We cannot support the requirement that makes application of the test procedure mandatory for all non point sources with channelized discharges.

In discussions over the past month with agricultural and grazing interests almost no one has been aware of this draft policy and those who are aware of it do not understand its implications for the agricultural sector. Aside from storm water dischargers, there has not been any concerted outreach to the agricultural community, and the economic analysis does not reflect the costs that this community may bear.

We recommend that the channelized discharge section of this policy be removed and Regional Water Boards be directed to use their existing authority to require toxicity monitoring and to establish toxicity effluent limits on a case-by-case basis. We recommend that the policy require the use of the objectives and the implementation policy when the permitting authority believes its inclusion is important to protect water quality.

We suggest that the state's Surface Water Ambient Monitoring Program (SWAMP) be used as a means of data collection to better understand the occurrence of toxicity associated with nonpoint sources. SWAMP includes the Stream Pollution Trends Monitoring Program (SPoT), which conducts screening-level toxicity monitoring across the state. Of the nine SPoT stations sampled in the north coast over the past several years, none have had toxicity hits. Regional Water Board staff support continuing to conduct screening-level toxicity monitoring in the north coast under the SPoT program, including targeted monitoring of agricultural lands as part of our existing and future conditional waivers for agricultural lands in the north coast region.

Thank you for the opportunity to comment on the draft policy. If you have any questions on these comments, please contact John Short of my staff at 707-576-2065 or jshort@waterboards.ca.gov.

Sincerely,

Original signed by Luis Rivera for

Catherine Kuhlman
Executive Officer

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