SOUTH BAYSIDE SYSTEM AUTHORITY
JOINT POWERS AUTHORITY — A Public Entity
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City of Belmont
City of Redwood City
City of San Carlos
West Bay Sanitary District

January 20, 2011
13-90

Charles R. Hoppin, Chairman and Members
State Water Resources Control Board
1001 I Street, Sacramento, CA 95814

C/o Jeanine Townsend
Clerk to the Board
Sent via email to: commentletters@waterboards.ca.gov

Subject: Draft Policy for Toxicity Assessment and Control

Dear Mr. Hoppin,

South Bayside System Authority (SBSA) welcomes the opportunity to comment on the State Water Resources Control Board's "Draft Policy for Toxicity Assessment and Control." SBSA operates a wastewater treatment facility serving businesses and 220,000 residents in southern San Mateo County. The treatment facility has a permitted flow of 29 MGD and discharges into the San Francisco Bay. SBSA is committed to providing the very best wastewater treatment to our residents and preserving water quality in the San Francisco Bay. SBSA has general comments on the draft policy, and some POTW specific comments, we would like the Board to consider as they evaluate the implementation of the proposed draft policy.

GENERAL COMMENTS

This new policy is unnecessarily stringent because there is no evidence that the water quality objectives and effluent limits are necessary. The draft Policy includes findings regarding toxicity that are qualified with "may be," "might be," or "could be" throughout the document. There are no concrete examples provided, only vague statements such as "the potential for ecological harm would likely increase" without the Policy (for example see Staff Report at p. 45).

Under this proposed Policy, an "exceedance" of acute and chronic toxicity limits is a Clean Water Act violation, subject to State penalties of up to $10,000 per day and $10.00 per gallon, and federal penalties of up to $37,500 per day per violation. Our agency could also be subject to

third party lawsuits, with the associated legal and attorney fee liability, particularly if regulators decide against taking enforcement action. The costs associated with conducting unnecessary Toxicity Reduction Evaluations (TREs) should also be a consideration, as they can be high and long lasting. The potential for unnecessary treatment process upgrades in response to "false positive" toxicity exceedances could be extremely costly.

SBSA is very concerned that costs, associated with coming into compliance in instances of actual or apparent toxicity, were not considered by your staff, because they costs were determined to be "too speculative." We believe the California Water Code Section 13241 requirements and the associated economic analysis done to date are inadequate to address these issues.

COMMENTS SPECIFIC TO SBSA TOXICITY DATA

During the public hearing in December of 2010, many affected dischargers expressed concern regarding the potential for "false positive" results and the significant requirements of the proposed draft policy as a result of one potentially erroneous result. The POTWs were asked in response to this concern, to look at past toxicity data using the TST calculation found in the draft policy.

SBSA applied the "New TST Calculator_20091012.xls" to historical chronic toxicity data from 2008 to 2010 (12 test events). The TST calculator determined that one (1) event failed and eleven (11) passed (using the 10% concentration). With SBSA's current approach, the highest IC25 for three years was only 4.2 TUc, below the most sensitive trigger of 10 TUc in SBSA's NPDES Permit. Refer to Attachment 1 for the comparison of the 12 test events.

The failed July 2008 TST result, from SBSA's perspective, is a "false positive." This single failed TST, based on the draft policy, implies "significant toxicity" at the 10% concentration level. The IC25 of 30% (3.4 TUc), however, indicates only 25% of the organisms show an effect at a 30% concentration level. In this case, one (1) sample in twelve (12) gave a "false positive" and based on the current draft policy, unnecessary accelerated monitoring would be required for a minimum of one year.

The proposed draft policy requires accelerated monitoring with six (6) tests in twelve (12) weeks when a single monthly test fails. In SBSA's case, the increased cost of this monitoring would be $19,000. A single failure during the accelerated monitoring would trigger a costly TRE, known to cost in excess of $100,000.00. Since the purpose of a TRE/TIE is to identify persistent toxicity, SBSA urges the State Water Resources Control Board to consider an alternative to the single event trigger.

SBSA recommends, if the decision to implement the proposed policy is made, to change the "single sample" trigger to a more realistic schedule. Triggers should reflect toxicity in multiple samples such as two (2) failed samples out of three (3) consecutive samples or (2) consecutive failed samples, for example.

South Bayside System Authority sincerely encourages the State Water Resources Control Board and staff to seriously consider these comments and make the suggested improvements to the proposed policy prior to adoption.

Sincerely,

Daniel T. Child
Manager

ATTACHMENT 1

South Bayside System Authority

Comparison of TST and IC25 on historical data

Test Species: Americamysis bahia
Chronic Growth endpoint is Biomass value (mg)
Chronic Survival endpoint is % survival

Ran TST calculator using 10% Effluent concentrations

Chronic Test Date	New TST Calculator Survival	New TST Calculator Growth	Reported TUc Survival	Reported TUc Growth
Nov 2010	Pass	Pass	<2.5	<2.5
Aug 2010	Pass	Pass	<2.5	3.8
May 2010	Pass	Pass	<2.5	3.4
Feb 2010	Pass	Pass	<2.5	3.1
Nov 2009	Pass	Pass	<2.5	<2.5
Aug 2009	Pass	Pass	<2.5	4.2
May 2009	Pass	Pass	<2.5	<2.5
Feb 2009	Pass	Pass	<2.5	3.3
Oct 2008	Pass	Pass	<2.5	<2.5
Jul 2008	Pass	Fail	<2.5	3.4
Apr 2008	Pass	Pass	<2.5	<2.5
Jan 2008	Pass	Pass	<2.5	<2.5

Jul 2008
-Pass at 2.5, 5, and 20%.
-Fail at 10 and 40%.