UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION IX
75 Hawthorne Street
San Francisco, CA 94105-3901

Reply to:
WTR-5

Mr. Paul Hann
California State Water Resources Control Board
Division of Water Quality
1001 I Street, 15th Floor
Sacramento, CA 95814

Dear Mr. Hann:

Thank you for the opportunity to provide written comments on the *Draft Policy for Toxicity Assessment and Control*, released for public review on October 20, 2010. As noted in our comment letter from Alexis Strauss to Tom Howard, dated January 21, 2011, our recommendations for minor language changes to the policy are provided, below.

Recommended Changes

Page 1, Part I: Add the California Ocean Plan definition for "Ocean Waters" because this term is used in the policy.

Page 2, Part I.F: Add "..., using the TST approach." following the words "...greater."

Page 2, Part I.L: Clarify that a discharge consisting of both wastewater and industrial storm water belongs to the category "NPDES Wastewater Dischargers".

Page 3, Part II, under "Chronic Toxicity" and "Acute Toxicity": Following "Compliance...is demonstrated by rejecting the null hypothesis.", add "The null hypothesis is tested using the statistical method in Part III.A.6 of this policy."

Pages 4, Part III.A.1: Some NPDES wastewater dischargers governed under the State Implementation Policy have dilution for chronic toxicity, but not for acute toxicity. Because the State Implementation Policy authorizes dilution for both chronic and acute toxicity objectives, we recommend that monitoring and a reasonable potential determination for acute toxicity be required when dilution for chronic toxicity is authorized.

Page 4, Part III.A.1, paragraph 2: For clarity, replace "...a variety of municipal dischargers..." with "...a variety of domestic and non-domestic users...".

Page 5, Part III.A.2: We understand there is interest in revising the proposed policy to afford flexibility in meeting toxicity effluent limits, to address the very small number of failing tests where our TST guidance document suggests that test precision should be increased by the discharger, for example, by adding replicates. If the policy is revised to address such tests, it

should not change the policy's numeric objectives and daily maximum effluent limit approaches, but should rely on the well-known laboratory practices described in the TST guidance document to increase test precision.

Page 5, Part III.A.2, paragraph 2: The proposed "example" language for the toxicity effluent limit should be changed to "required" language for the effluent limit—when an NPDES discharger must have a toxicity effluent limit because it has reasonable potential—and the effluent trigger for accelerated monitoring and TREs whether or not an NPDES discharger has reasonable potential.

In addition, we recommend that the in-bracket IWC language be changed from "…[either 100 percent or an effluent at the mixing zone to be determined at the time of permit issuance] percent effluent." to "…[either 100 when no dilution factor is authorized for the discharge, or the inverse of the dilution factor × 100 when dilution is authorized for the discharge] percent effluent." Also change the phrase "…the percent effect at the to the [Applicable Water Board]." to "…the percent mean effect at the IWC to the [Applicable Water Board]."

Page 8, Part III.A.6: Add new "Step 6" that shows how the "percent mean response at the IWC" is correctly calculated.

Page 9, Table 1: Delete footnote 3 for topsmelt under "Acute Marine Methods".

We are pleased to assist in developing this policy and look forward to working with the State and Regional Water Boards to build the capacity and expertise to effectively implement the policy. If you have questions regarding these comments, please contact Robyn Stuber, of my staff, at (415) 972-3524.

Sincerely,

David W. Smith 1/21/11

David W. Smith, Manager
NPDES Permits Office