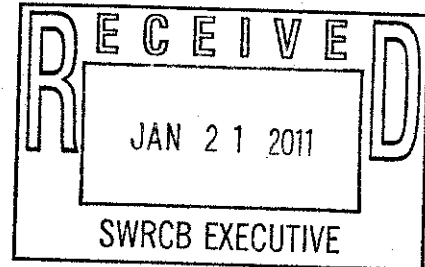


California Stormwater Quality Association
Dedicated to the Advancement of Stormwater Quality Management, Science and Regulation

Public Comment (1/16/10 Workshop)
Policy for Toxicity Assessment
Deadline: 1/21/11 by 12 noon

January 21, 2011

Paul Hann
Chief, Planning Standards and Implementation Unit
California State Water Resources Control Board
Division of Water Quality
1001 I Street, 15th Floor
Sacramento, CA 95814



Subject: Draft Policy for Toxicity Assessment and Control

Dear Mr. Hann:

The California Stormwater Quality Association (CASQA) appreciates this opportunity to provide comments regarding the Draft Policy for Toxicity Assessment and Control, dated October, 2010 (Draft Policy). The enclosed comments are consistent with and build upon the comments previously submitted by CASQA^{1,2}. We believe that many of our previous comments and recommendations are still relevant, and request that they be considered and addressed prior to the adoption of the Policy.

The Draft Policy is intended to supersede the toxicity control provisions of the Policy for the Implementation of Toxic Standards for Inland Surface Waters, Enclosed Bays, and Estuaries of California (SIP) and all toxicity testing provisions in Regional Water Quality Control Plans (Basin Plans). As currently drafted, the Policy will apply to discharges from municipal separate storm sewer systems (MS4) regulated by Phase I and Phase II national pollutant discharge elimination system (NPDES) permits.

CASQA supports the need to establish a policy to control toxicity in our receiving waters. Toxicity is a critical environmental issue and must be addressed through a progressive and technically sound approach. However, it should be recognized that the occurrence of toxicity can be brief, and identification of a responsible toxicant is often technically challenging. This is especially true for stormwater discharges, which are intermittent, with variable quality. Furthermore the outdoor use of pesticides in urban areas and the resulting runoff has been linked to toxicity to organisms in urban creeks. According to the California State Water Resources Control Board, toxicity is widespread in California watersheds—and is almost exclusively caused by currently used pesticides.³ Pesticide-related toxicity in surface waters receiving urban runoff has created a multi-million dollar regulatory burden for our municipality members. Municipalities also face negative publicity and the threat of

¹ Written comments submitted August 9, 2010, in response to the Preliminary Draft Policy for Whole Effluent Toxicity Assessment and Control, dated July 7, 2010.

² Oral comments submitted on November 16, 2010 at the State Water Resources Control Board workshop on the Draft Policy.

³ Hunt, J., Markiewicz, D., and Pranger, M. (2010) *Summary of Toxicity California Watersheds, 2001-2009*. Prepared for the California State Water Resources Control Board Surface Water Ambient Monitoring Program. November.

litigation under the citizen suit provisions of the Clean Water Act. Any attempt to try and remove from pesticides from urban runoff associated with toxicity would most likely require large tracts of land and construction of new treatment infrastructure,. Thus it is inappropriate to develop a toxicity policy that would result in spending public funds on something that has little chance of success on a practical level, when source regulation is the more effective approach. Considering the resources required to identify and manage toxicity, and the limited resources currently available to many of our public agencies, we believe that the fundamental principle the State should consider in establishing a toxicity policy is to address the occurrences and causes of recurring toxicity. Single, brief exceedances of toxicity objectives should not be used to direct our limited resources. This is particularly true with respect to stormwater discharges, which are temporal in nature and depend upon many environmental factors, and as noted above some controllable but many non-controllable. Furthermore the Policy should be consistent with current regulatory approaches for stormwater discharges by creating an iterative process to address problematic discharges. Given these factors, we recommend that implementation related to stormwater discharges (Part III B) be removed from the Draft Policy, and a separate policy be drafted to appropriately address toxicity related to stormwater.

Our comment letter provides further elaboration of our concerns and is organized to address :

1. **Policy Application.** The Draft Policy creates a fundamental shift in current approach to the regulation of stormwater, as the SIP explicitly does not apply to stormwater discharges⁴. With its multiple cross references to the wastewater provisions, the Draft Policy will be interpreted to require numeric effluent limits (NELs) for stormwater discharges. The Draft Policy does not provide a rationale or justification for this significant policy change. In fact, the Blue Ribbon Panel, as convened by the State Board, noted in their final report that the development of enforceable numeric effluent limits (NELs) was not feasible for stormwater discharges.⁵ Alternatively, the Panel suggested the use of "action levels" for guiding stormwater programs. We submit that the "iterative" pollutant reduction process⁶ currently required for stormwater dischargers, combined with "action levels" as recommended by the Blue Ribbon Panel, represents the appropriate implementation method to address stormwater-related toxicity. We have provided supplemental discussion below to support this position.
2. **Technical Challenges.** The variable nature of stormwater runoff presents unique challenges in accurately characterizing water quality and potential receiving water impacts. This is especially true for toxicity monitoring, where the science required to effectively characterize stormwater toxicity is lacking, and the application of methods derived for continuous wastewater discharges is not appropriate. Of primary concern is the mismatch between the exposure periods for toxicity testing, typically lasting four to ten days, and the

⁴ As noted on Page 3, footnote 1 of the SIP, the SIP does not apply to the regulation of stormwater discharges.

⁵ Storm Water Panel recommendations for the California SWRCB regarding "The Feasibility of Numeric Effluent Limits Applicable to Discharges of Storm Water Associated with Municipal, Industrial and Construction Activities, June 16, 2006.

⁶ The iterative process involves increasing implementation of BMPs to address any identified water quality issues, with the overall goal of reducing discharges of pollutants in runoff to the maximum extent practicable (MEP).

duration of stormwater discharges, typically lasting some number of hours, and rarely exceeding one full day. Additionally, while the toxicity objectives listed in the Draft Policy are meant to protect receiving waters, the Draft Policy does not specify whether stormwater dischargers are required to monitor toxicity in discharges or receiving waters. As noted by the Blue Ribbon Panel, characterization of highly-variable and intermittent stormwater discharge quality is technically challenging, and is not compatible with the Reasonable Potential Analysis (RPA) approach used to identify the need for NELs in wastewater discharges. Development of a technically-sound means of assessing the effects of stormwater discharges is needed.

We expand on each of these subjects below. We have also prepared a redline version of Part III.B of the Draft Policy, and certain other related provisions, to illustrate comments noted herein. (See Attachment A)

Policy Application

Notwithstanding our comments that stormwater should not be included in the Draft Toxicity Policy and should be addressed in its own stormwater policy, we have provided comments below for modifying the Draft Policy to more closely reflect the current iterative process and the findings of the Blue Ribbon Panel.

- **The Intent of the Applicability of the Draft Policy to Stormwater is Unclear**

The Draft Policy and the Staff Report for the Draft Policy provide numerous contradictory statements regarding the applicability of the Draft Policy to discharges of stormwater. As we have noted, the State's own Blue Ribbon Panel of experts stated that the development of enforceable numeric effluent limits for stormwater is not feasible.

The Draft Policy is unclear as to its applicability to stormwater in the following ways:

Contradiction in the Establishment of Numeric Effluent Limits for Stormwater Dischargers

The Staff Report examines three alternatives for the requirements for stormwater in Issue 1D. The alternatives considered are:

Alternative 1. No Action

Alternative 2. Require NPDES permits for MS4 and individual and industrial storm water dischargers to include numeric effluent limitations for chronic toxicity

Alternative 3. Require MS4 and individual and industrial storm water dischargers to include chronic toxicity monitoring.

The Staff Report selects chronic toxicity monitoring requirements (Alternative 3) over establishing numeric effluent limits (Alternative 2) as the preferred alternative as it "*...provides a feasible alternative to numeric effluent limitations and increases*

protections for aquatic life beneficial uses.” Yet the intent of the monitoring alternative is unclear as it also states it does not preclude establishment of numeric effluent limits:

“Nevertheless, this option will not preclude the Water Boards from establishing numeric effluent limits for toxicity in Phase I and Phase II MS4 permits, and individual industrial storm water permits if is deemed appropriate.”

By including this statement, the Staff Report is essentially not recommending an alternative and is selecting both Alternative 2 and Alternative 3.

Furthermore, the Draft Policy states that it is not the Policy’s intent to require establishment of numeric effluent limits for toxicity in permits for Phase I and Phase II MS4 dischargers and individual and industrial storm water dischargers. The Staff Report goes to great lengths to acknowledge the difficulty in establishing numeric effluent limits for stormwater and even notes that efforts to assign numeric limits would likely be ineffective. However, the Draft Policy at page 13 grants discretion to Regional Boards to apply numeric effluent limits in permits. This discretion is in contradiction with the recommended alternative (i.e. alternative 2 - requirement of chronic toxicity monitoring) in the Staff Report.

CASQA recommends that the applicability of the Draft Policy to stormwater is clarified by removing the contradictory statements in the Staff Report and Draft Policy providing for the establishment of numeric effluent limits by regional water quality control boards.

Contradiction in the State Water Board’s Goals for the Project in the Staff Report

The project description of the Staff Report for the Draft Policy states:

“The State Water Board’s goals for this project are to have Regional Water Boards convert the Policy’s WET objectives into effluent limitations in order to: protect aquatic life beneficial uses; provide regulatory consistency; provide a basis for equitable enforcement; and fulfill the requirements of State Water Board Resolution No. 2005-0019.”

This language appears to apply principally to continuous wastewater discharges. As noted above, for stormwater discharges the Staff Report selects the chronic toxicity monitoring requirements over establishment of numeric effluent limits as the recommended alternative. However, the stated goal of the project, to convert the objectives into effluent limitations, contradicts the recommended approach for stormwater.

CASQA recommends that the goals of the project be modified to accurately reflect the goals of the project for stormwater dischargers.

Contradictions in Policy Intent

As noted previously, it is unclear from the Draft Policy whether the intent of the Policy to require *monitoring* for toxicity or development of NELs to ensure *compliance* with the receiving water

objectives? This is a key distinction, as monitoring requirements involve data collection that could inform management actions, whereas compliance with NELs subjects stormwater dischargers to enforcement exposure, including mandatory minimum penalties (MMPs) and third party law suits. This is especially problematic in the case of pesticide-caused toxicity, in which local agencies have no regulatory authority to control the application of the identified toxicants within the urban watersheds under their jurisdiction, and reasonable application of BMPs often is not sufficient to fully address the problem.

Furthermore and consistent with the iterative process and the Blue Ribbon Panel recommendations, action levels should be established to guide stormwater managers and BMP implementation. This would provide for resolution of any toxicity issues through an enforceable, mandated series of requirements, rather than placing stormwater programs in immediate and continuous noncompliance while issues are evaluated. Otherwise, in addition, the Regional Boards and State Boards will face a large and potentially unjustified increase in reported violations to evaluate and process under the State's Enforcement Policies.

CASQA recommends that the Policy include stormwater provisions that (1) are developed to distinctly and clearly consider the variable nature of stormwater discharges, (2) establish a Technical Advisory Committee to develop appropriate action levels for toxicity, and (3) clearly identify the iterative process to address exceedances of action levels.

- **The Draft Toxicity Policy Needs to Include a Stand Alone Provision Specifically Developed for Stormwater Discharges**

The Draft Policy is structured to prescribe implementation procedures separately for non-storm water NPDES permittees and point-source waste discharge requirement (WDR) enrollees (Part A), storm water dischargers (Part B), and dischargers regulated exclusively under the Porter-Cologne Water Quality Control Act (Part C).

The stormwater provision (Part B) of the Draft Policy cross-references the traditional point-source (i.e., wastewater dischargers) provisions (Part A) in several instances. Of particular concern are the multiple cross-references to the compliance determination section for wastewater dischargers^{7,8}.

The Draft Policy as noted previously gives considerable discretion to the Regional Boards to apply the compliance provisions that have been developed specifically for wastewater dischargers. Such an approach does not adequately consider the inherent differences between wastewater and stormwater discharges. CASQA is concerned that the application of a

⁷ Part III, Section B-1 states: *However, the applicable Water Board has the discretion to apply numeric effluent limitations for toxicity in these permits. The numeric effluent limitations shall be consistent with the requirements of Part II, Section A-2 of this Policy.*

⁸ Part III, Section B-3 states: *Identification or confirmation of the most sensitive test species to be used for storm water monitoring, in accordance with the provisions established in Part III, Section A-1, shall also be included as a required component of a SWMP in addition to appropriate remediation measures such as those established in Part III, Section A-7.*

compliance framework designed for wastewater dischargers will lead to the inappropriate and/or inconsistent regulation of stormwater.

CASQA recommends that the Policy includes a compliance determination section in Part B that has been designed specifically to consider the complex issues pertaining to stormwater. Furthermore the section should clearly state that compliance with this policy is based on conducting toxicity monitoring appropriately tailored to evaluating stormwater impacts, and using the data to inform stormwater management actions in an iterative process. The elements that should be considered in the development of a stormwater compliance determination section include:

- *Compliance strategy*
- *Application of TST to Existing Toxicity Monitoring Requirements*
- *Toxicity Monitoring Programs Established Pursuant to this Policy*
- *Exceptions*

CASQA recommends that the stormwater section of the Toxicity Policy include specific language stating that compliance for stormwater dischargers will be determined through the iterative process to address toxicity.

- **Allowing State Board and/or Regional Boards to Impose More Stringent Requirements without Criteria to Justify Such Requirements Contradicts the Establishment of Statewide Objectives to Protect Beneficial Uses and/or the Statewide Consistency of Objectives for Toxicity**

The Draft Policy will supersede Section 4 of the SIP and all toxicity testing provisions established in Basin Plans. Yet, the Policy also states that the State Water Resources Control Board or Regional Water Quality Control Boards may impose more stringent requirements than those contained in the Policy, where appropriate. These two statements appear contradictory and should be clarified.

The Policy establishes water quality objectives that protect the aquatic life beneficial uses of waters of the United States and surface waters of the State. By superseding Basin Plan provisions, the Policy ensures statewide consistency. If more stringent or inconsistent requirements are imposed, then those provisions would be in conflict with the Draft Policy, resulting in a conclusion that either (1) the Draft Policy itself fails to establish water quality objectives to protect beneficial uses or (2) statewide consistency is not appropriate and it is therefore not necessary for the Policy to supersede conflicting Basin Plan provisions.

CASQA recommends (1) the State Board clearly establishes a consistent, statewide Policy for toxicity, (2) modification of the Draft Policy language to clarify that the Policy will supersede existing Basin Plan toxicity objectives and Basin Plan requirements for toxicity testing, and (3) identification of the criteria that the State Water Resources Control Board and/or Regional Water Quality Control Boards must meet to establish that more stringent requirements are warranted.

- **Special Considerations should be provided for all Small Phase II Permittees**

The Phase II NPDES permit program applies different requirements to communities with populations of less than 100,000. Such an approach is warranted given the technical limitations and economic challenges of smaller communities. The Draft Policy partially addresses these limitations and challenges by exempting communities less than 50,000 but not less than 100,000. CASQA would suggest that the Draft Policy exemption be given to all Phase II communities. This distinction may be based on the 100,000 population threshold or cross referenced to the communities identified as being subject to the Phase II general permit (See Attachment 1, WQO 2003-0005-DWQ).

CASQA recommends that Phase II NPDES permittees with populations less than 100,000 be exempted from the Toxicity Policy.

- **Compliance Schedules are too Severely Restricted; Monitoring should be Addressed through Implementation Schedules**

The Draft Policy's provisions on compliance schedules are overly restrictive-for compliance with a new water quality objective, and are confusing when applied to monitoring requirements. In the attached redline, we have suggested edits to the section which would maintain what appears to be the intended focus on monitoring, using the concept of implementation schedules, rather than compliance schedules.

The Draft Policy's language suggests that no compliance schedules would be allowed for any obligation arising from the Draft Policy's adoption of the new water quality objective. We request that compliance schedules be incorporated into the water quality objective or otherwise be included to ensure that stormwater dischargers are not in jeopardy of noncompliance with any permit obligations linked to water quality standards, before there is adequate time to make determinations whether there are toxicity issues associated with discharges, and to implement measures to resolve them. It is not appropriate to completely disallow compliance schedules for dischargers with existing toxicity monitoring requirements. Until the full implications of the Draft Policy are understood, the appropriate length of maximum compliance schedules cannot be reasonably defined. However, two years is surely an inadequate for properly determining and then resolving noncompliance.⁹

Questions raised by the Compliance Schedule section point out the lack of clarity in the Draft Policy regarding the purpose and implications of the new water quality objective. Failures of toxicity tests performed in receiving water will result in the addition of many water bodies to the 303(d) List without adequate justification. Test failures may cause violation of general narrative obligations in existing NPDES permits, including stormwater permits, in ways not analyzed or justified in the Staff Report or Draft Policy. Questionable 303(d) listings will waste public resources, and will cause consternation in CEQA analyses and 401 Certifications for new infrastructure and other public projects.

⁹ The attached redline does not attempt to craft specific compliance schedule language, as the intent of Section III.B.4, and its interrelationship with a revised water quality objective, is not yet clear.

Technical Challenges

The Technical Approach to Addressing Toxicity is not Appropriate for Stormwater Discharges

- **Toxicity Test Methods**

The variable nature of stormwater runoff presents unique challenges with regard to accurately characterizing water quality and potential receiving water impacts. The standard EPA whole effluent toxicity (WET) test methods were developed for continuous point source wastewater discharges and do not take into account the unique features pertaining to stormwater. The applicability of the WET method for use on intermittent stormwater samples has never been properly validated. Indeed, the existing EPA WET methods (EPA 2002a-c and EPA 1995) were not designed to assess the extremely dynamic and transient nature of stormwater runoff. Stormwater discharges typically last a (highly variable) number of hours, while most toxicity tests last several days; the tests continue to expose organisms to stormwater for periods far exceeding the duration of actual exposure to stormwater in the real world. The net effect is to overestimate the toxic effects of stormwater. This point holds even though many Phase 1 MS4s have been doing some toxicity testing according to WET protocols. Attachment B of our previous (August 9, 2010) comment letter identifies the major challenges associated with toxicity testing and indicates the need to develop more appropriate testing protocols for stormwater. An initial starting point should involve investigation of the feasibility of various approaches, through pilot studies of various options.

CASQA recommends that an appropriate technical approach to characterizing toxicity for stormwater discharges be developed for the State of California.

- **Accelerated Monitoring – Wet Weather**

Part B of the Draft Policy requires stormwater dischargers to conduct both dry weather and storm event monitoring. Through the cross-reference to Part A, stormwater dischargers would be required to conduct accelerated monitoring¹⁰ if a test results in a “fail.” Storm events are episodic in nature and represent acute (not chronic) conditions, making the accelerated monitoring prescribed in the Draft Policy not appropriate for storm event monitoring. The inapplicability of accelerated monitoring for storm events demonstrates the inherent difference between the regulation of stormwater and wastewater and the need to develop stormwater-specific compliance determination provisions.

CASQA recommends that the Policy includes a methodology for follow-up monitoring and/or actions appropriate for storm event monitoring that is consistent with the existing approach in MS4 permits throughout the State.

¹⁰ At a minimum, six, five concentration chronic WET tests, conducted at approximately 2 week-intervals, over a twelve week period

- **First Storm Event Monitoring**

Part B of the Draft Policy also requires the monitoring of the first storm event of the wet season. CASQA has strong reservations about this requirement. Because of the very real possibility of a surprise (poorly predicted) rain event, and other significant logistical issues, MS4s cannot realistically be expected to regularly comply with such a requirement, and would be in frequent violation of that aspect of the Draft Policy. Many MS4s do not have field crews on-call for stormwater monitoring 24/7, and many times the first storm event occurs after hours, on a weekend, or on a holiday, when field crews may not be available. For toxicity testing, live organisms must be ordered in advance by the laboratory, and the labs typically are not open for new business 24/7. In stormwater monitoring contracts, holidays typically are "blacked out" (excluded) to accommodate field crews needs and because the testing labs will not be open to receive or process samples on those days.

CASQA recommends that the Draft Policy be modified to delete the requirement for monitoring of the first storm event of the wet season and to provide more flexibility in capturing an early season storm.

- **Point of Toxicity Assessment**

The Draft Policy appears to go to great length to specify the types of storms that should be monitored (by naming the storm size, number of storms, specific storm event – first storm event of the wet season, etc.) but fails to identify the locations for the monitoring (beginning with whether the locations are to be discharges or receiving waters). We would submit that the Policy should only state the goal of the monitoring program for stormwater discharges, i.e. to characterize toxicity in the receiving water and identify follow-up procedures once toxicity is identified, and leave the details to the Regional Board and the Discharger. It seems that the Policy errs on too much detail in one area and too little in other areas.

CASQA recommends to clarify the Policy to indicate that monitoring for toxicity assessment of stormwater should initially occur in the receiving water and subsequently, and only if necessary, move to the stormwater outfalls.

In closing, CASQA appreciates the opportunity to comment on the Draft Policy and we hope that our comments will assist you in identifying additional improvements as the Policy is further developed. Please contact me at (760) 603-6242 or Geoff Brosseau, our Executive Director at (650) 365-8620 if you have any questions or would like to discuss our comments further.

Sincerely,



Scott Taylor, Chair
California Stormwater Quality Association

cc: Brian Ogg, State Water Board
Charles Hoppin, Chair, State Water Board

Tam Doduc, State Water Board member
Tom Howard, Executive Director, State Water Board
Jonathan Bishop, Chief Deputy Director, State Water Board
Vicky Whitney, Deputy Director, State Water Board
Bruce Fujimoto, Chief – Stormwater State Water Board
CASQA Executive Program Committee
CASQA Board of Directors

Attachment A: Redline of Draft Policy for Toxicity Assessment and Control

POLICY FOR TOXICITY ASSESSMENT AND CONTROL
Redline Draft for Section III.B and Selected Excerpts
Provided by California Stormwater Quality Association

Part I: Definitions

Q. Storm Event means a precipitation event which results in a total measured precipitation accumulation equal to, or greater than one-quarter (0.25) of an inch of rainfall within a 24 hour time period. All samples must be collected from a discharge resulting from a measurable storm event at least 72 hours from the previous storm event.

PART III: Implementation Procedures

B. Storm Water Dischargers Regulated Pursuant to NPDES Permits

Section B applies to storm water discharges from municipal separate storm sewer systems (MS4) regulated pursuant to Phase I and Phase II NPDES permits, and individual industrial storm water discharger permits as defined in Part I. At the discretion of the applicable Water Board, the provisions established in Section B may also be applied to individual construction and/or industrial storm water dischargers regulated pursuant to general NPDES permits.

1. ~~Reasonable Potential and Effluent Limitations~~ Effluent Action Levels and Iterative Approach

This policy is not intended to require the establishment of numeric effluent limitations for toxicity in permits for Phase I and Phase II MS4s and individual industrial storm water dischargers. Instead, the policy establishes effluent action levels for storm water discharges consistent with recommendations of the Water Board's Blue Ribbon Panel¹ to guide stormwater programs to address problematic discharges. If there is an exceedance of an action level, the discharger shall identify the toxicant, and implement an iterative process involving best management practices designed to reduce discharge of the identified toxicant to the maximum extent practicable. However, the applicable Water Board has the discretion to apply numeric effluent limitations for toxicity in these permits. The numeric effluent limitations shall be consistent with the requirements of Part II, Section A-2 of this Policy. The applicable Water Board may use the procedure established in Part II, Section A-1 for reasonable potential determination and selection of most sensitive test species, or an alternative methodology as appropriate. The Action Levels will be established by a Technical Advisory Committee in consultation with the State and Regional Water Boards.

2. Application of TST Methodology to Existing Toxicity Monitoring Requirements

¹ Storm Water Panel recommendations for the California SWRCB regarding "The Feasibility of Numeric Effluent Limits Applicable to Discharges of Storm Water Associated with Municipal, Industrial and Construction Activities", June 16, 2006.

Within one year of the effective date of this Policy, the applicable Water Board shall issue Water Code Section 13383 letters to Phase I and Phase II MS4s and individual industrial storm water dischargers, with existing toxicity monitoring requirements. These 13383 letters shall require the use of the TST method for all toxicity data analyses, as described in Part III, Section A-6 of this Policy, and shall be a required component of each discharger's storm water management plan/program (SWMP) or permit within one year of the effective date of this Policy. ~~The applicable Water Board also has the discretion to apply the remediation measures established in Part III, Section A-7, or other remediation measures as appropriate.~~ Dischargers that lack existing toxicity monitoring requirements in their SWMP or permit shall be exempt from the provisions of Part III, Section B-1 for the remainder of their permit cycle.

3. Toxicity Monitoring Programs Established Pursuant to this Policy

When a Phase I or Phase II MS4 permit or individual industrial storm water discharge permit is issued, reissued, or reopened two or more years after the effective date of this Policy, a toxicity monitoring program that utilizes the TST method shall be included as a required component of each SWMP or permit. At a minimum, all toxicity monitoring programs established pursuant to this Policy shall include provisions requiring Phase I and Phase II MS4 dischargers, and individual industrial storm water dischargers, to conduct four chronic-acute toxicity tests during each year of the permit cycle as follows, including two wet season monitoring events and two dry season monitoring events: ~~Dischargers shall conduct one chronic-acute toxicity test shall using samples from a storm early in the wet season; dischargers shall make every reasonable effort to conduct the test using samples from the first storm event of the wet season; a second chronic-acute toxicity test shall use samples from a subsequent wet season storm event; and~~ ~~the two remaining chronic-acute toxicity tests shall use samples obtained during the dry season, when providing that sufficient flow is present to allow collection of meaningful samples for testing.~~ Identification or confirmation of the most sensitive test species to be used for storm water monitoring, in accordance with the provisions established in Part III, Section A-1, shall also be included as a required component of a SWMP or permit ~~in addition to appropriate remediation measures, such as those established in Part III, Section A-7.~~

4. Compliance Implementation Schedules

The applicable Water Board has the discretion to grant an implementation compliance schedule to Phase I and Phase II MS4 dischargers and individual industrial storm water dischargers implementing toxicity monitoring programs established pursuant to Part II, Section B-3 of this Policy. ~~Compliance Implementation schedules shall be applied consistent with the State Water Resources Control Board's Policy for Compliance Schedules in National Pollutant Discharge Elimination System Permits, adopted on April 15, 2008 (Resolution No. 2008-0025), to the extent applicable to such implementation schedules. T, with the exception that the duration of the compliance implementation schedule for monitoring requirements may not exceed two years from the date of permit issuance, reissuance, or reopener.~~ Phase I and Phase II MS4 dischargers and individual industrial storm water dischargers with existing toxicity monitoring requirements are not eligible to receive an implementation compliance schedule for monitoring requirements.

5. Exceptions

a. Insignificant Dischargers

Non-traditional MS4s and Phase II communities with a population of less than 100,000 or as defined in Water Quality Order 2003-0005-DWQ with populations of less than 50,000 are considered Insignificant Dischargers and are exempt from the provisions of Part III, Section B, unless the applicable Water Board finds them to have a significant impact on receiving water quality.

b. Categorical Exceptions

The applicable Water Board may grant a categorical exception to Phase I and Phase II MS4 dischargers and individual industrial storm water dischargers that meet the requirements of Part III, Section A-9.b of this Policy.

c. Case-by-Case Exceptions

The State Water Resources Control Board may grant a case-by-case exception to Phase I and Phase II MS4 dischargers and individual storm water dischargers that meet the requirements of Part II, Section A-9.c of this Policy.

DRAFT