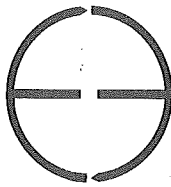


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# California Council for Environmental and Economic Balance

Public Hearing (8/21/12)  
Policy for Toxicity Assessment and Control  
Deadline: 8/21/12 by 12 noon

# 9

100 Spear Street, Suite 805, San Francisco, CA 94105 • (415) 512-7890 • FAX (415) 512-7897

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August 21, 2012

Chairman Hoppin and Members of the Board  
State Water Resources Control Board  
1001 I Street, 24<sup>th</sup> Floor  
Sacramento, CA 95814

Via email: [commentletters@waterboards.ca.gov](mailto:commentletters@waterboards.ca.gov)

RE: Comment Letter – Policy for Toxicity Assessment and Control

Dear Chairman Hoppin:

The California Council for Environmental and Economic Balance (CCEEB) is a non-partisan, non-profit coalition of business, labor and public leaders that advances strategies for a strong economy and a healthy environment. On behalf of CCEEB, we want to thank the State Water Resources Control Board (SWRCB) for this opportunity to comment on the revised Proposed Draft Policy for Toxicity Assessment and Control.

CCEEB has reviewed the revised Proposed Policy for Toxicity Assessment and Control and continues to have serious concerns about the underlying science; the reversal of the current null hypothesis from an assumption that an effluent is presumed to be non-toxic until demonstrated otherwise to an assumption that an effluent is toxic; the high number of false positive test results; the reliance on living-organism testing methods; the inappropriate use for storm water events; and, the lack of formal US EPA regulatory status.

These are the same issues that we raised in our comment letter dated January 21, 2011. Attached is our comment letter of 18 months ago.

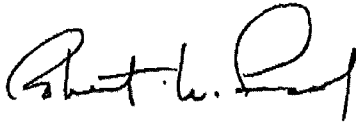
As pointed out in our letter, small NPDES dischargers (and point source WDR dischargers) may be subject to this policy. However, the proposed implementation procedures are not workable for non-continuous (intermittent) discharges, especially those under 1 MGD (e.g., excavation dewatering, vault dewatering, hydrotest dewatering). These discharges are very small volume, highly



intermittent, and may be unscheduled and/or occur at different discharge points; factors that complicate the implementation procedures outlined in the policy. These discharges should be identified in the policy as insignificant discharges.

Please review our earlier letter and reconsider the merits of our continued concerns.

Sincerely,



Robert W. Lucas  
Waste & Water Quality Project Manager

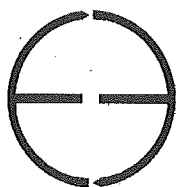


Gerald D. Secundy  
President

Attachment (1)

cc: The Honorable Jerry Brown, Governor  
Matthew Rodriguez, Secretary for Environmental Protection  
Gordon Burns, Undersecretary for Environmental Protection  
Michael Lauffer, Chief Counsel, SWRCB  
Jonathan Bishop, Chief Deputy Director, SWRCB  
Jackson Gualco, The Gualco Group, Inc.

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# California Council for Environmental and Economic Balance

100 Spear Street, Suite 805, San Francisco, CA 94105 • (415) 512-7890 • FAX (415) 512-7897

January 21, 2011

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1001 I Street  
Sacramento, CA 95814

Via email: [commentletters@waterboards.ca.gov](mailto:commentletters@waterboards.ca.gov)

RE: Comment Letter – Policy for Toxicity Assessment and Control

Dear Ms. Townsend:

The California Council for Environmental and Economic Balance (CCEEB) is a non-partisan, non-profit coalition of business, labor, and public leaders that advances strategies for a strong economy and a healthy environment. On behalf of CCEEB, we want to thank the State Water Resources Control Board for this opportunity to comment on the Draft Policy for Toxicity Assessment and Control (Policy).

**9.1** → CCEEB has reviewed the Draft Policy for Toxicity Assessment and Control and has serious concerns about the underlying science and public process relied upon to date. We believe that further study is needed to support this proposed testing and application that would be required by this Policy.

CCEEB does not believe that this proposed Policy is suitably supported by scientific evidence to warrant its consideration at this time. The Policy proposes to reverse the null hypothesis from an assumption that an effluent is presumed to be non-toxic until demonstrated otherwise to an assumption that all discharges are toxic unless demonstrated otherwise. We see no justification for making this change. We believe that it introduces a great uncertainty of fair enforcement because of the high number of false positive results that will lead to enforcement actions.

**9.2** → CCEEB believes that it is incorrect to increase reliance on living organism-testing methods. Because of the differences between organisms, even of the same species, there is an inherent question of how to best interpret results. This proposed Policy's reliance on sub-lethal test standards unnecessarily increases that uncertainty. It also runs counter to using live animals as test subjects. Considering past Board actions, we believe it seems entirely inconsistent for the Board to adopt a Policy that requires imperiling even more live organisms.

## CONSULTANTS

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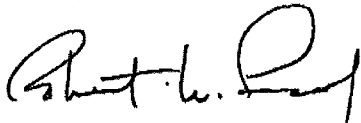
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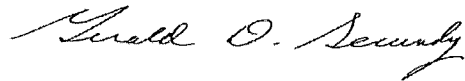
- 9.3 → The Policy could lead to numeric limits for storm water events. These storm events typically only last for a few hours. The nature of the runoff varies with time. We are concerned that there won't be time to complete the test. This is a serious practical limitation for the use of this test for storm water. Numeric limits are further undermined for storm water by the natural variability of the response of the different organisms to a storm water environment. This discretion will unintentionally bring stormwater and the small NPDES dischargers into the scope of this Policy.
- 9.4 → Additionally, the economic analysis conducted for this Policy is inadequate, as it does not appropriately address the costs associated with its application to stormwater discharges (and other discharges) that could become subject to the Policy.
- 9.5 → With regard to process issues, we are concerned that the peer review conducted by the US EPA does not meet California's standards.
- 9.6 → We are also concerned that this is a new test that arises from an EPA guidance that has not been adopted under federal regulatory standards.

The concerns raised in this letter are a summary of some of the major issues that have been discussed by our members. CCEEB will work with the Board and staff as you further consider a Draft Policy. However, we believe that more consideration must be given to dealing with the underlying scientific uncertainties before a final Policy is considered.

Sincerely,



Robert W. Lucas  
Waste & Water Quality Project Manager



Gerald D. Secundy  
President

cc: Linda Adams, Secretary, California Environmental Protection Agency  
Cindy Tuck, Undersecretary, California Environmental Protection Agency  
Jackson Gualco, The Gualco Group, Inc.