NOVATO SANITARY DISTRICT

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August 20, 2012

Via email: commentletters@waterboards.ca.gov

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

Subject: Comment Letter – Policy for Toxicity Assessment and Control

Dear Ms. Townsend:

The Novato Sanitary District (District) appreciates the opportunity to provide comments on the State Water Resources Control Board's (State Water Board) revised Draft Policy for Toxicity Assessment and Control (Policy) as it applies to NPDES wastewater agencies. The District owns and operates a 7.05 MGD municipal wastewater treatment plant which provides secondary treatment to wastewater from a primarily residential area serving about 60,000 people in the City of Novato and adjacent areas. The District conducts routine whole effluent toxicity monitoring for up to nine months of the year when effluent is discharged to San Francisco Bay.

We appreciate the efforts that have been expended in the development of this proposed Policy. However, the District has a number of concerns regarding the Policy as currently proposed, particularly because it will sharply increase the cost of monitoring for toxicity without providing additional ecological benefits to aquatic life. We support the letters submitted by the Bay Area Clean Water Agencies (BACWA) and other clean water agencies, and would also like to share our concerns about the specific burdens that will impact our agency pertaining to increased costs and increased violations.

28.1 → **Violations based on a single test result are inappropriate.** Permit violations impose significant costs on public agencies such as ours: financially, legally, and in public trust. The current draft policy contains a Maximum Daily Effluent Limit that would assess a permit violation as a result of a single test result. We believe the use of a single toxicity test result to assess a permit violation is inappropriate.

28.2 The result of a single bioassay is not a conclusive demonstration that a sample is toxic, since there are numerous sources of uncertainty in toxicity testing. EPA guidance and approved methods note the variability and occasional anomalous results inherent in biological testing, and the TST method itself has a built-in allowance for a 5% false positive rate. Analysis of past EPA inter-laboratory data by the TST method indicates that the false positive rate may be even higher for some test species. More importantly, the District has recent, first-hand experience with a

28.3 Toxicity Reduction Evaluation and accelerated monitoring that were necessary because of pathogen interference in a small number of chronic toxicity tests. With the TST test, we would have incurred violations under the proposed policy, even though EPA has specifically stated, and it is widely agreed, that pathogen interference is *not* toxicity. This experience has clearly demonstrated the error of relying upon a single test to understand whole effluent toxicity, whether for identifying its source or assessing a violation.

28.4 Our agency would strongly prefer a state-wide narrative toxicity objective translated into consistent numeric effluent triggers that, if exceeded, would require us to conduct accelerated testing and potentially a Toxicity Reduction Evaluation (TRE). If the policy must include numeric effluent limits, they should be based on average, median, or other percentile limits that require more than one test result to assess a permit violation.

Our recent accelerated monitoring efforts and TRE/TIE source identification activities would not have differed if numeric toxicity effluent limits had been in place. The only difference would have been that we would be subject to violations over which we had no control.

28.5 **The Policy will substantially increase monitoring costs.** The Policy will result in required monthly chronic toxicity testing, which will increase our current frequency of quarterly. This alone will cost an additional $14,000 in laboratory costs over our 5-year permit cycle. These costs are based on the additional monthly as well as accelerated monitoring due to the false determination of toxicity rate of 5%, which is built into the TST method.

While the Policy only requires testing at a single concentration, the District's experience shows that multiple-concentration tests are crucial to avoiding false determinations of toxicity. As mentioned previously, the District recently experienced interference in our chronic toxicity test, including atypical dose-response curves. Therefore, the District may continue to use the multiple concentration test method to avoid false positives, which will increase our costs an additional $39,000 over a 5-year permit cycle compared to the existing policy.

28.6 Savings resulting from termination of acute toxicity testing requirements are not assured by this proposed policy. The economic analysis in the Staff Report incorrectly concludes that there will be cost savings based on the assumption that acute toxicity will no longer be required. However, since this is ultimately left to the discretion of the Regional Boards, we have to assume that Region 2 would continue to require acute testing. Furthermore, we have already invested significant resources into developing acute toxicity testing capability in-house, so even if the acute toxicity testing is not required, we will not realize the savings described in the Staff report. These investments were made because the District's NPDES permit requires flow-through

28.6 → bioassays for acute toxicity testing, making it impractical and costly to perform the test off-site (for example through a contractor as indicated in the Staff Report).

28.7 → **Compliance determination on a calendar month basis will cause logistical problems with our contract laboratory.** The Policy states that if a routine initial toxicity test results in a "fail," but the percent effect is below the MDEL, the agency shall conduct two additional toxicity tests within the same calendar month in order to determine compliance with the MMEL. To accommodate two additional tests within a calendar month, agencies will have to perform routine testing during the first week of each calendar month. The District is concerned that the use of a calendar month will result in a flood of sampling at the beginning of each month and overwhelm the few trusted laboratories able to perform the testing. This approach will drive up costs at the laboratory and make implementation of the approach logistically impossible. Therefore, the District supports the proposal by BACWA that the language be changed to allow the two additional tests to be conducted within 30 days.

The Novato Sanitary District hopes that the State Water Resources Control Board will take these comments under serious consideration. The additional costs due to the Policy will be burdensome for our agency. Even in the absence of these cost increases, we are concerned about the increase of violations that this Policy will surely create. We work hard to protect water quality in San Francisco Bay and believe that increase the risk of violations for no apparent reason is not a meaningful way to spend public resources. Thank you for your consideration of our comments. Please contact Sandeep Karkal at (415) 892-1694 or sandeepk@novatosan.com if you would like additional information.

Sincerely,

Beverly B James

Beverly B. James
Manager-Engineer