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CF/43-0-25 STATE WATER RESOURCES CONTROL BOARD
(SWRCB) (ID 1181)

August 20, 2012

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
commentletters@waterboards.ca.gov

Subject: Comment Letter - Policy for Toxicity Assessment and Control

Dear Chairman Hoppin and Members:

The Sonoma County Water Agency (Water Agency) appreciates the opportunity to comment on the State Water Resource Control Board's (State Water Board) Revised Draft Policy for Toxicity Assessment and Control (Policy). The Water Agency assumed management responsibilities for the County of Sonoma Sanitation Districts and Zones in January 1995. The County Board of Supervisors acts in part as the Board of Directors for the County Sanitation Districts and Zones. The County Sanitation Districts and Zones include seven wastewater treatment facilities that treat wastewater to secondary or tertiary standards. Three of the facilities discharge to inland surface waters and estuaries during the wet season. These facilities are listed below along with their approved treatment and discharge capacities. The Sonoma Valley wastewater treatment facility is located within the jurisdiction of the San Francisco Bay Regional Water Quality Control Board (Region 2). The remaining facilities are located within the jurisdiction of the North Coast Regional Water Quality Control Board (Region 1). During the dry season, treated effluent is recycled and used for irrigation.

| | Dry Weather Design Flow (MGD) | Wet Weather Capacity (MGD) |
|--|-------------------------------------|-------------------------------------|
| Occidental County Sanitation District | 0.050 | --- |
| Russian River County Sanitation District | 0.71 | 3.5 |
| Sonoma Valley County Sanitation District | 3.0 | 16 |

The Water Agency appreciates the State Water Board's goal of state-wide consistency in toxicity monitoring and enforcement, as well as the efforts that have already gone into this Policy. However, this Policy, if adopted in its current form, will have significant impacts on the Water Agency. The Water Agency supports the letter submitted by the Bay Area Clean Water Agencies (BACWA) which comments on Region 2 impacts of the Policy, and the letter submitted by the California Association of

Sanitation Agencies (CASA) which comments on statewide impacts. In addition, the Water Agency is sharing its concerns about the specific burdens that will fall on the agency and the residents and businesses served by the sanitation districts, specifically the small community and enforcement aspects of the Policy.

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→ **The Definition of Small Communities is too narrow and small communities will be disproportionately affected.** The Water Agency is concerned that the Policy will impose a disproportionate economic burden on smaller wastewater agencies that are not deemed disadvantaged pursuant to somewhat narrow criteria and given the high costs of conducting the required toxicity testing and TRES. The Policy defines small communities as those with populations of 20,000 or less, and a median household income below 80 percent of the statewide median household income (MHI). The Policy exempts small communities unless the applicable Regional Water Board finds them to have an impact on receiving water quality. The Policy also finds that all publicly-owned treatment works (POTWs) with a discharge of 1 MGD or more have reasonable potential and are required to implement the Policy requirements.

A conservative design standard for POTWs is to assume a per capita flow rate of 100 gallons per day.¹ Using this design standard, a POTW with a capacity of 1 MGD would only provide service to 10,000 people. As a result, a community could meet the population and income definition of a small community, but Policy implementation would be required solely based on the ≥ 1 MGD threshold definition for reasonable potential. The 100 gallons per day design standard is conservative because it does not account for any commercial or industrial flows that may discharge to the POTWs.

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→ **The Water Agency recommends modification of the Policy to change the presumption of reasonable potential (which automatically requires implementation of the Policy) from 1 MGD to 5 MGD.** This is consistent with the U.S. EPA discharge threshold for the requirement of most industrial pretreatment programs, and is based not simply on the POTW's ability to pay, but on the reduced potential for the occurrence of toxicity in these small POTWs.

Violations based on a single test result. Permit violations result in significant impacts to public agencies that are measured financially, legally, and in public trust. The Policy contains a Maximum Daily Effluent Limit (MDEL) that would assess a permit violation as a result of a single test result.

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→ **Even though the MDEL involves a higher effect level, the Water Agency believes that the use of a single toxicity test result to assess a permit violation is inappropriate.**

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→ **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 toxicity testing methods note the variability and occasional anomalous results inherent in biological testing, and the Test of Significant Toxicity (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.

¹ Recommended Standards for Wastewater Facilities, 2004 Edition, Policies for the Design, Review, and Approval of Plans and Specifications for Wastewater Collection and Treatment Facilities (Ten States Standard). Health Research Inc., Health Education Services Division, Albany, NY.

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The Water Agency strongly advocates for narrative acute and chronic toxicity objectives, which are fully protective and allow the Regional Water Boards flexibility in regulating different categories of discharges. However, if the Policy must include numeric effluent limits, the Water Agency recommends inclusion of average, median, or other percentile limits that require more than one test result to assess a permit violation.

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Increased financial costs due to violations. The financial cost of increased violations was not considered in the Economic Impacts Analysis provided in the Staff Report. A major difference between the Policy and the current approach for implementing toxicity requirements is that exceedences of acute and chronic toxicity limits will become violations of the California Water Code and the Clean Water Act. As a result, the violations will be subject to State and Federal penalties that are assessed per day and per gallon discharged. The Policy does not dictate over what time period these penalties are assessed. For example, in a worst-case scenario, the penalty could be assessed over the time period of accelerated monitoring and TRE/TIE investigations, which is defined as 6 months under the Policy. In addition, the violations will be subject to third party lawsuits and attorney fee liability, particularly if regulators do not take enforcement actions. The rate of false determination of toxicity that is built in to the TST process will also lead to increased costs (i.e., fines, lawsuits) that are not related to actual toxicity.

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The Sonoma County Water Agency thanks the State Water Resources Control Board for taking these comments under serious consideration.

Sincerely,



Pamela Jeane, P.E.
Assistant General Manager