



VALLEJO SANITATION &
FLOOD CONTROL DISTRICT
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*Protecting public health
and the San Francisco Bay
since 1952.*

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August 20, 2012

Via email: commentletters@waterboards.ca.gov

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Jeanine Townsend
Clerk to the Board
State Water Resources Control Board
1001 I Street, 24th Floor [95814]
Sacramento, CA 95814

Subject: Comments on the Draft Policy for Toxicity Assessment and Control

Dear Ms. Townsend:

Vallejo Sanitation & Flood Control District (District) appreciates the opportunity to comment on the Draft Policy for Toxicity Assessment and Control. The District's boundary covers 28 square miles, providing wastewater and flood control services for approximately 116,000 people within the City of Vallejo and parts of Solano County. The District has been recognized for operational excellence at the local, state and national level, and is an active participant in the Vallejo Watershed Alliance, a partnership of public agencies and interested individuals working together to improve the greater Vallejo watershed

The District 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 our agency. We support the letter submitted by the Bay Area Clean Water Agencies, which comments on region-wide impacts of the Policy, and would like to share our concerns about the specific burdens that will fall on our agency pertaining to increased costs and increased violations.

51.1 → Violations based on a single test result

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

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.

Therefore, the District strongly recommends that the WET Policy, if it must include numeric effluent limits, include average, median, or other percentile limits that require more than one test result to assess a permit violation.

Increased costs of routine testing

51.2 → We understand that the Policy will result in required monthly chronic toxicity testing, which will increase our frequency from quarterly and this will significantly increase the laboratory costs.

While the Policy only requires testing at a single concentration, performing additional test replications can help us avoid false determinations of toxicity. If the District determines that additional replicates are needed to avoid falsely determined violations, then the cost of routine monitoring will increase accordingly.

51.3 → Savings resulting from termination of acute toxicity testing requirements are not assured by this proposed policy. The Economic Impacts analysis in Appendix H of the Staff report bases a large part of the estimated cost saving 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 could continue to require acute testing. If acute toxicity testing is to continue, the District would incur the cost of modifying the existing testing equipment to increase the number of replicates to facilitate an accurate calculation using the TST method. 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.

51.4 → **Calculating the MMEL on a calendar month basis will cause logistical problems**
The Draft Policy states that if an initial test results on a “fail”, but the percent effect is below the MDEL, the discharger shall conduct two additional toxicity tests within the same calendar month in order to determine compliance with the MMEL. While we support the multiple test approach set forth for the monthly effluent limitations for POTWs, the District is very concerned that the use of a calendar month for testing will result in a flood of sampling at the beginning of each month and overwhelm the few trusted laboratories able to perform the testing. Also, viable organisms are not always available. We recommend that the language be changed to allow the two additional tests to be conducted within 30 days of completion of the “failed” initial toxicity test. If both additional toxicity tests “pass” and at least one test is performed in the following calendar month, it may be used as the initial monthly toxicity test for routine monitoring.

51.5 → **Inconclusive TREs/TIEs**
We are concerned that the Policy fails to differentiate real, persistent toxicity from episodic low-level toxic events and the false determinations of toxicity that are built in to the TST method. Costs associated with conducting Toxicity Reduction Evaluations (TREs) and Toxicity Identification Evaluations (TIEs) can be high and long lasting, as can be the cost associated with unnecessary treatment upgrades in response to false determinations of toxicity.

51.6 → **Increased costs due to violations**
The cost of increased violations was not considered in the Economic Impacts Analysis in the Staff Report. A major difference between this Policy and how toxicity is currently managed is that exceedences of acute and chronic toxicity limits are Clean Water Act violations subject to State penalties of up to \$10,000 per day or \$10.00 per gallon, and federal penalties of up to \$37,500 per day per violation. 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 6 months under the Policy. In addition, the District would still be subject to third party lawsuit and attorney fee liability, particularly if regulators decide to take no enforcement actions.

Even though we have had excellent compliance with chronic toxicity testing over the past twelve years, we are concerned that the rate of false determination of toxicity that is built in to the TST method will lead to a possible violation within the 5-year NPDES permit cycle that is not related to actual toxicity.

51.7 → Stormwater should be addressed through a separate policy

The District is a co-permittee of the City of Vallejo Stormwater NPDES permit. We acknowledge that toxicity is a critical environmental issue for aquatic life beneficial uses and must be addressed through a progressive and technically sound approach. However, the Draft Policy should recognize that toxicity monitoring for stormwater discharges presents specific challenges. Stormwater discharges are intermittent, with variable quality, and therefore the occurrence of toxicity can be brief due to the transient nature of storm events. Follow up monitoring is technically challenging. Considering the resources required to identify and manage toxicity, and the limited resources currently available to us, we believe that the State should focus the toxicity policy on addressing the occurrences and causes of recurring toxicity. Therefore, we request that the State Board remove stormwater dischargers (Part III B) from the Draft Policy. We recommend that the State Board craft a separate policy to appropriately address toxicity related to stormwater discharges.

Vallejo Sanitation and Flood Control 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 the District and we are concerned about the increase of violations that are a consequence of this Policy. Thank you for your consideration of our comments. If you need additional information, please contact me at dtafolla@vsfcd.com.

Sincerely,

A handwritten signature in black ink, appearing to read 'D. Tafolla', with a long horizontal flourish extending to the right.

Daniel T. Tafolla
Director of Environmental Services