

August 21, 2012

Charles R. Hoppin, Chairman
State Water Resources Control Board
1001 I Street
Sacramento, CA 95814

c/o Jeanine Townsend, Clerk to the Board
commentletters@waterboards.ca.gov

RE: Comments on Revised Draft Policy for Toxicity Assessment and Control

Dear Chairman Hoppin:

WATER is a coalition of businesses, schools, cities and local governments that supports cost-effective water quality policies. Collectively we represent 150 trade associations with over 20,000 businesses that employ 1.5 million workers, dozens of cities, and nearly 500 school districts that encompass 92% of California's school children. We are pleased to have the opportunity to provide comments from this diverse group interested in putting the resources of our state to the best use in producing a clean environment that supports a healthy economy.

Addressing Stormwater Toxicity under the Policy

55.1 → We appreciate the Draft Policy's recognition that storm water discharges must be evaluated differently than continuous point sources. However, Appendix E of the Draft Policy addresses guidance for stormwater monitoring. There is ongoing debate about its details, including its call for chronic toxicity testing of some stormwater, which typically is not discharged for the length of time used in the chronic toxicity tests. We ask that you consider removing Appendix E and that an appropriate technical approach to characterizing toxicity for stormwater discharges be developed for the State of California.

Adoption of the Numeric Water Quality Objective

There has been extensive discussion on whether to adopt, as California's standard, the form of whole effluent toxicity testing known as the "Test of Significant Toxicity" (TST). In light of its know potential to result in false determinations of toxicity, we are concerned that adopting the TST would hinder California's small businesses, cities and local governments.

55.2 → For example, the comment letter prepared by multiple associations representing the clean water agencies in California has noted that applying the proposed numeric water quality objectives for acute and chronic toxicity, even at the minimum 5% error rate acknowledged for the test of significant toxicity (TST), as many as 34% of California's non-toxic water bodies could be expected to be incorrectly listed as impaired. It appears that the State Board Staff's efforts have focused on criticisms of the test itself, as an investigation tool, but have not yet resolved the larger question of exactly how the test results will be used in regulatory actions. This needs to be examined and clarified before moving forward.

WATER coalition supporters are also concerned with the implications of adopting the proposed numeric water quality objective, before it is determined to actually demonstrate that toxicity exists in a water body. We are equally concerned that determinations of toxicity, without adequate basis, will trigger responses to the perceived exceedance of a water quality standard.

These responses and impacts could include the following:

- Assertions that any discharger upstream caused or contributed to an exceedance of a water quality standard.
- Requirements for accelerated, additional monitoring, and studies and reports to “disprove” the erroneous presumption of toxicity or impairment.

Listing of water bodies for “unknown toxicity” on the 303(d) list of impaired water bodies. Such listings, in turn, can result in the following:

- Requirements to develop costly TMDLs, which typically leaves a listing in place for many years, even before the TMDL is developed.
- Demanding and costly further studies to justify removal from the 303(d) list.
- Burdens on development of new housing, public projects and industrial facilities, which face permitting restrictions and other mitigation requirements based on 303(d) listings in local waters .
- The stigma of toxicity in water bodies publicized in reports and policy initiatives, and affecting the public’s and visitors to California’s enjoyment of our State’s waters.

The supporting Staff Report and response to comments document posted in this proceeding show the State Board has not considered the impact of the proposed numeric water quality objective on 303(d) listings, or determinations of impairment. The only response to comments addressing this question appears to be the following:

“Regarding impairment determinations, section 3.6 of the Water Quality Control Policy for Developing California’s Clean Water Act (CWA) Section 303(d) List leaves the choice of analytical techniques used in listing decisions to the discretion of Water Board staff. The draft Policy for Toxicity Assessment and Control (draft Policy) would not, in any way, override this provision.”^d

This seems to confirm that Water Board staff would have the discretion to consider listing waters for unknown toxicity based on exceedances of the numeric water quality objective. It does not address the amount of data that will be needed before impairment is found.

We request that before the Draft Policy is considered for adoption, State Board Staff provide an analysis of how 303(d) listings will be made using TST test results that exceed the numeric objective, and the potential impact


¹ SWRCB, *Prevailing Comments on the Draft Policy for Toxicity Assessment and Control*, p. 1.
http://www.waterboards.ca.gov/water_issues/programs/state_implementation_policy/docs/cmmnts_policy.pdf

this could have on the 303(d) list. We have heard some indication that the State Board intends to revise the 303(d) listing policy to specifically address TST results or exceedances of the numeric water quality objective. If this is true, any related amendment should be proposed and adopted simultaneously.

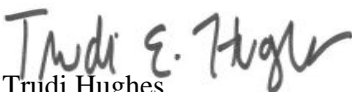
As representatives of stormwater dischargers, we are affected by numerous, separate water quality initiatives at the various Water Boards. We urge the State Board to step back and ensure that the Draft Policy will function properly in all the contexts in which the proposed water quality objective and implementation plan will be used or referred to. The goal is to have a comprehensible and well-integrated water quality policy that protects the State's waters.

We appreciate your consideration of our request for extension of time to submit additional comments, and your consideration of these preliminary comments. Please do not hesitate to contact us should you have any questions.

Sincerely,



James Simonelli
California Metals Coalition
WATER co-chair



Trudi Hughes
California League of Food Processors
WATER co-chair

cc: Jonathan Bishop, SWRCB
Brian Ogg, SWRCB