



# CVCWA Central Valley Clean Water Association

*Representing Over Fifty Wastewater Agencies*

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December 21, 2018



Jeanine Townsend  
Clerk to the Board  
State Water Resources Control Board  
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Sacramento, CA 95814  
[commentletters@waterboards.ca.gov](mailto:commentletters@waterboards.ca.gov)

Re: Comment Letter — Toxicity Provisions

Dear Ms. Townsend:

The Central Valley Clean Water Association (CVCWA) appreciates the opportunity to comment on the Draft Water Quality Control Plan for Inland Surface Waters, Enclosed Bays, and Estuaries of California; Toxicity Provisions (Toxicity Provisions). CVCWA is a non-profit association of public agencies located within the Central Valley region that provide wastewater collection, treatment, and water recycling services to millions of Central Valley residents and businesses. We approach these matters with the perspective of balancing environmental and economic interests consistent with state and federal law.

First, we appreciate the time extension the Board has provided for this Comment Letter for CVCWA to finalize our Phase I Report for our Toxicity Special Study (Toxicity Report). This report was developed in collaboration with the Central Valley Regional Water Quality Control Board (Central Valley Water Board) and some of the Publicly Owned Treatment Works (POTWs) in the Central Valley to assess low level indications of toxicity and better understand whole effluent toxicity testing and its nexus to our waterbodies. The Toxicity Report is attached.

In this letter, we provide significant and other comments regarding the proposed Toxicity Provisions. As a preliminary matter, we want to convey our appreciation to the State Water Resources Control Board (State Water Board) for including provisions for insignificant discharges, as well as small disadvantaged communities.

In addition to the comments provided in this letter, CVCWA joins the comments made by the California Association of Sanitation Agencies (CASA) and the Bay Area Clean Water Agencies (BACWA) on the Toxicity Provisions.

## **Introduction**

In the Executive Summary of the Draft Staff Report for the proposed Toxicity Provisions, it is stated that:

“Aquatic toxicity occurs when the effects of pollutants in surface water negatively impact aquatic life beneficial uses. When originating from an effluent, these effects are typically referred to as ‘whole effluent toxicity’ (WET).”

CVCWA believes that whole effluent toxicity is more properly defined as toxicity measured in an effluent sample which is used as a surrogate to estimate toxicity in receiving waters.

Further, we question the allegation that significant evidence exists to demonstrate that the ambient toxicity which has been observed in California waters “originates from effluent.” The statewide ambient toxicity results summarized in Section 4.2 of the staff report indicate that pesticides are the primary source of observed toxicity in ambient waters in California. As indicated in the attached Toxicity Report, a summary of 35 Toxicity Reduction Evaluation (TRE) investigations performed in the Central Valley Region of California since 2011 show that pesticides are not an observed cause of WET. No linkage has been made in the staff report (or in any other documentation supporting the proposed Provisions) between WET results and ambient toxicity observations or impairments. We believe that this information indicates that POTW discharges in California do not pose a significant risk to ambient water quality or receiving water aquatic life uses.

We believe that this information supports our position that the proposed Provisions should not be unnecessarily conservative in the implementation of the proposed water quality objectives in National Pollutant Discharge Elimination System (NPDES) permits. Our comments below reflect reasonable requests to move policy implementation in this direction.

## Significant Comments

### 1. Instream Waste Concentration (IWC) Determinations

WET measurements are an indirect indicator of the toxicity of effluent discharges to receiving waters. Effects measured in whole effluent may not necessarily translate to similar effects in ambient waters. The level of hazard associated with an effluent is significantly influenced by the dilution of the effluent in receiving waters. The CVCWA Toxicity Special Study: Phase 1 Report (December 2018) (Toxicity Report), attached hereto as Attachment A, summarizes information from toxicological literature that reinforce the concept that WET results best reflect ambient conditions downstream of an effluent discharge when dilution is properly taken into account. This finding has been well established since the early days of the WET requirements in the NPDES program. (See 40 CFR 122.44(d)(1)(ii); see also United States Environmental Protection Agency (USEPA) Technical Support Document for Water Quality-Based Toxics Control (USEPA TSD) (1991), Section 1.3.2, p. 7.) It has also been corroborated by information presented in Diamond and Daley (2000). (Diamond, J. and Daley, C. 2000. *What is the Relationship Between Whole Effluent Toxicity and Instream Biological Condition?* Environmental Toxicology and Chemistry, Vol. 19, No. 1, pp. 158-168.) Diamond and Daley cited work which found that basing WET compliance on average or actual stream flow conditions more efficiently predicted instream biological conditions than the use of the seven-day average condition expected to occur once in 10 years (7Q10).

In light of the above, we request that the IWC language in the proposed Provisions be modified to allow regional water quality control boards (Regional Water Boards) flexibility to establish an IWC based on actual in-stream conditions during discharge events and/or to establish an IWC that accounts for seasonality. CVCWA requests that Section IV.B.2.d be revised to read as follows (revision shown in italics):

On page 20, last paragraph, last sentence,

*“The DILUTION RATIO shall be determined using the parameters specified in Table 3, or, alternatively, shall be determined using a method approved by the Permitting Authority that accounts for dilution conditions occurring in the receiving water during the period of the toxicity test, including consideration of seasonality.”*

We also request that the language in Table 3 on page 21 of the Toxicity Provisions be modified so that the averaging periods match the duration of chronic toxicity tests, reduce unnecessary conservatism, and create a more accurate assessment of effects in ambient waters. Specifically, we request that the title of Table 3 be changed to “Parameters for Calculating a Dilution Ratio, unless otherwise approved by the Permitting Authority”. We also request the following changes to the column in Table 3 titled “Use the Discharge Effluent Flow Of:”

Next, we request that “Maximum daily flow (i.e. the maximum flow sample of all samples collected in a calendar day)<sup>1</sup> during period of discharge” for acute toxicity be replaced with “*Average daily flow (i.e. the average of all flow measurements in a calendar day) during period of discharge.*” We also request that “Four-day average of daily maximum flows (i.e. the average of daily maximums taken from the data set in four-day intervals) during period of discharge” for chronic toxicity be changed to “*Four-day average of all flows (i.e. the average of all flow measurements taken in four-day intervals) during the period of discharge.*”

In addition, the State Implementation Policy (SIP) (Page 1.4.D on page 13) includes the following language regarding the consideration of seasonal conditions in establishing effluent limits for, among other parameters, chronic toxicity.

“In determining the appropriate available receiving water flow, the RWQCBs may take into account actual and seasonal variations of the receiving water and the effluent.”

CVCWA requests that the above provision be added to Section IV.B.2.d of the proposed Toxicity Provisions.

## 2. Reasonable Potential Determinations

Federal NPDES regulations at 40 C.F.R. section 122.44(d)(1)(ii) require that effluent limits be established where it is determined that a discharge “causes, has the reasonable potential to cause, or contributes to an in-stream excursion above . . . water quality standard.” As it has been applied in NPDES permits in California, and consistent with the approach documented in the USEPA TSD and the SIP, the water quality standard is used directly in the determination of reasonable potential. With specific reference to WET, the federal regulations specifically refer to “an in-stream excursion above the numeric criterion for whole effluent toxicity.” (40 C.F.R. § 122.44(d)(1)(iv).)

The Toxicity Provisions propose to use a metric (where test results indicate a 10 percent effect or greater) to determine whether a discharge has reasonable potential for both chronic and acute toxicity, but that is not the water quality objective. This approach also does account for dilution in the receiving water. This results in reasonable potential determinations that are significantly more conservative than is necessary. The Staff Report does not offer an adequate rationale to justify this overly conservative and unconventional approach.

To maintain consistency with the conventional basis for reasonable potential determinations, it is requested that the proposed language be changed to define Reasonable Potential for chronic toxicity based on either: (1) a 25 percent effect; or (2) a

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<sup>1</sup> Note that the definition of Maximum Daily Flow is inconsistent with prior definitions for Maximum Daily Flow. What is described in parenthesis is instantaneous maximum.

failed test at the IWC as determined using the TST. For acute toxicity, it is requested that the proposed language be changed to define Reasonable Potential to be based on either a (1) 20 percent effect or (2) a failed test at the IWC using the TST. The suggested change to the percent effect for chronic and acute toxicity are consistent the water quality objectives set forth in the Toxicity Provisions on page 2. These specific requested language changes are to replace “10 percent” with “25 percent.” In the third paragraph, replace “10 percent” with “20 percent” in Section IV.B.2.b. on page 15, second paragraph.

Please see the following for a strikeout version of our proposed revisions to Page 15, Section 2.b.i:

“A discharge has REASONABLE POTENTIAL to cause or contribute to an excursion above the chronic toxicity water quality objectives specified in Section III.B.2.a, if any of the CHRONIC TOXICITY TESTS result in a “fail” at the IWC, or if any of the CHRONIC TOXICITY TESTS have a PERCENT EFFECT at the IWC greater than ~~10~~ 25 percent.

A discharge has REASONABLE POTENTIAL to cause or contribute to an excursion above the acute toxicity water quality objectives specified in Section III.B.2.b, if any of the ACUTE TOXICITY TESTS result in a “fail” at the IWC, or if any of the ACUTE TOXICITY TESTS have a PERCENT EFFECT at the IWC greater than ~~10~~ 25 percent.”

Additionally, CVCWA disagrees with the provision in Section IV.B.2.b, which is mirrored in other sections, that those POTWs authorized to discharge at a rate equal to or greater than 5 million gallons per day (mgd) will automatically be required to have chronic toxicity effluent limits. Although a marginal improvement over the 1 mgd threshold proposed in the 2012 version of the draft Toxicity Provisions, CVCWA requests that this language be modified to state that all POTWs be allowed to perform a reasonable potential analysis to determine the need for such effluent limits, consistent with USEPA regulations contained in 40 C.F.R. § 122.44(d). If that change is not made, we request in the alternative that the Toxicity Provisions be modified to state that the Reasonable Potential assumption will apply only for the first NPDES permit renewal following adoption of the Toxicity Provisions, and that all POTWs shall be allowed to perform reasonable potential analyses to determine the need for chronic toxicity effluent limits in subsequent NPDES permit renewals.

CVCWA’s preferred revisions for Page 14, Section IV. 2.b.i.

i. Non-Storm water NPDES Dischargers Required to Conduct Reasonable Potential Analysis for Chronic Toxicity.

~~Except for POTW dischargers authorized to discharge at a rate equal to or greater than 5.0 MGD, a~~ All NON-STORM WATER NPDES DISCHARGERS shall conduct a REASONABLE POTENTIAL analysis for chronic toxicity, pursuant to the procedures specified in Section IV.B.2.b.iii, for review and approval by the PERMITTING AUTHORITY. ~~A REASONABLE POTENTIAL analysis for chronic toxicity is not required for POTW dischargers authorized to discharge at a rate equal to or greater than 5.0 MGD, because the PERMITTING AUTHORITY shall include an effluent limitation for these dischargers pursuant to Section IV.B.2.e.~~

CVCWA's recommended edits for page 16, Section IV.c., first paragraph, are as follows:

All NON-STORM WATER NPDES DISCHARGERS that demonstrate REASONABLE POTENTIAL for chronic toxicity ~~and all POTW dischargers that are authorized to discharge at a rate equal to or greater than 5.0 MGD~~ shall conduct monitoring for compliance with the chronic toxicity MDEL and MMEL. All NON-STORM WATER NPDES DISCHARGERS that demonstrate REASONABLE POTENTIAL for acute toxicity shall conduct monitoring for compliance with the acute toxicity MDEL and MMEL. The compliance monitoring for the MDEL and MMEL includes ROUTINE MONITORING and MMEL COMPLIANCE TESTS.

CVCWA's recommended edits for page 21, IV.B.2.e.i.A, first paragraph with a similar recommended change for the MMEL on page 22, subsection B, are as follows:

Except when the MOST SENSITIVE SPECIES does not include the survival ENDPOINT the PERMITTING AUTHORITY shall include the following MDEL in the NPDES permit if REASONABLE POTENTIAL is demonstrated for chronic toxicity in accordance with the provisions specified in Section IV.B.2.b, ~~or if a POTW is authorized to discharge at a rate equal to or greater than 5.0 MGD:~~

Currently, Section IV.B.2.b.iii requires five years of reference, all toxicity test data generated within five years prior to permit issuance, reissuance, renewal, or reopening (to address toxicity requirements) that is representative of effluent quality during discharge conditions shall be evaluated in determining REASONABLE POTENTIAL. The phrase "during discharge conditions" is unclear in this section, because past discharge conditions may not be representative of current discharge conditions, especially in the cases of treatment plant upgrades or additional controls within a plant. As such, CVCWA recommends the paragraph be modified in two ways, here and in other similar

provisions of the document, first by adding the word “valid” before of toxicity testing and second by clarifying that the evaluation is based on current data.

“All **valid** toxicity test data generated within five years prior to permit issuance, reissuance, renewal, or reopening (to address toxicity requirements) that is representative of **current** effluent quality during discharge conditions shall be evaluated in determining REASONABLE POTENTIAL.”

### 3. Test Methods and Test Endpoints

The use of the TST statistical approach proposed in the Toxicity Provisions involves the presumption that samples tested (i.e. all effluents, all ambient waters) are toxic and then relies on toxicity test results to show that they are not. This creates a presumption that depends on the toxicity testing methods being well established and consistently implemented to yield reproducible results among multiple testing laboratories. The attached Toxicity Report identifies a number of instances where significant variability in test results occurs using standard test methods and outlines suggested best practices to promote consistency in methodology. The report emphasizes the need to reduce test variability to ensure that the WET testing program is cost-effective. In that regard, changes to the proposed Toxicity Provisions are needed to add greater emphasis regarding the use of reliable and reproducible toxicity test methods.

In Section III, CVCWA requests that the proposed language addressing the “Interaction of Toxicity Provisions with Narrative and Numeric Toxicity Water Quality Objectives” be modified to establish consistent requirements regarding the Permitting Authority’s discretionary capability to use alternative test organisms, test endpoints and test methods to derive effluent limitations in the application of narrative objectives.

The requested language change is as follows. In Section III.B.4 Page 4, fourth paragraph, add the following after the last sentence:

“In exercising its discretion, the Permitting Authority shall carry the burden of demonstrating that test methods and test endpoints are reliable, repeatable, and reproducible through a process which includes, but is not limited to, documentation of test protocols, test acceptability criteria, and data quality objectives and inter-laboratory comparisons.”

The importance of this was highlighted with the Southern California Coastal Research Project for the Stormwater Coalition in Southern California in 2016, which prior to the test were following non-standardized methods. However, inter-laboratory tests for blank samples for a variety of aquatic toxicity tests, including *Hyalella* and *Ceriodaphnia*, resulted in high levels of variability among the laboratories for these two species. In the second round of testing, after further consistency in method approach

were placed on the Surface Water Ambient Monitoring Program (SWAMP) protocols, the participating laboratories were able to produce much more consistent results with *Hyalella*. Additionally, testing where suppliers and timing vary still needs to be assessed to demonstrate that the method is robust enough to produce consistent results.

With regard to the test organisms and test methods specified in Table 1 of the proposed Toxicity Provisions, similar attention should be placed on the *Ceriodaphnia dubia* short term chronic reproduction test. As described in the white paper produced for CASA (Larry Walker Associates, 2018), ongoing issues persist regarding the *Ceriodaphnia dubia* reproduction test. (See CASA comments and attachments.) Those issues include variability in test results among laboratories and determination of toxicity in non-toxic samples.

Accordingly, CVCWA requests that language be added to the proposed Toxicity Provisions to limit the use of *Ceriodaphnia dubia* short term chronic reproduction tests in NPDES permits pending resolution of various testing method issues. It is also requested that the State Water Board and Regional Water Boards seek State funds to partner with the regulated community to design and implement the necessary studies to improve this test method.

#### 4. Water Quality Objectives and the Null Hypothesis

As currently written, the proposed numeric water quality objectives are written in such a way that the State Water Board is proposing to deem all inland surface waters as toxic. CVCWA is very concerned about the consequences of such an action.

At minimum we recommend removing the paragraphs on page 2 for both acute and chronic objectives that read:

“Attainment of the water quality objective is demonstrated by conducting CHRONIC TOXICITY TESTING as described in Section IV.B.1.b and rejecting this NULL HYPOTHESIS in accordance with the TEST OF SIGNIFICANT TOXICITY (TST) statistical approach described in Section IV.B.1.c. When the NULL HYPOTHESIS is rejected, the ALTERNATIVE HYPOTHESIS is accepted in its place, and there is no exceedance of the chronic toxicity water quality objective. Failing to reject the NULL HYPOTHESIS (referred to as a “fail”) is equivalent to an exceedance of the chronic toxicity water quality objective.”

Additionally, in Section III.B.2 on page 2, the wording of the proposed numeric toxicity objectives is not phrased in plain English and is difficult to understand. It is requested that the language describing the proposed objectives be modified to be more understandable to the public and regulated entities.



## 5. Compliance Monitoring and Sensitivity Screening

For smaller POTWs in the Central Valley, the Compliance Monitoring and Sensitivity Screening elements of the proposed Toxicity Provisions are burdensome and will add significant costs. CVCWA has several recommendations concerning these sections, which are organized in the order in which the provisions appear in the Toxicity Provisions.

- Species Sensitivity Screening & Species Use

The Toxicity Provisions require all NPDES Dischargers to conduct Species Sensitivity Screening as if they had never conducted WET testing or species sensitivity testing previously. In the Central Valley, that is not the case. Many of our POTWs have tested all three species on a regular basis for years, and have conducted screening as part of their latest permit. CVCWA recommends that the language concerning the effective date as to when screening data be considered be removed.

Page 10, Section IV.B.1.e. Reporting:

“Results obtained from **valid** toxicity tests shall be reported to the PERMITTING AUTHORITY as either a “pass” or a “fail,” and the PERCENT EFFECT at the IWC for each endpoint. The results and any required supporting data shall be submitted in the format specified by the PERMITTING AUTHORITY.”

Starting on page 12 of Section 2.IV.b.2.a., subsections i and ii:<sup>2</sup>

“All NON-STORM WATER NPDES DISCHARGERS shall conduct a SPECIES SENSITIVITY SCREENING for chronic toxicity either prior to, or within 18 months after the first issuance, reissuance, renewal, or reopening (to address toxicity requirements) of the permit ~~after the effective date of these TOXICITY PROVISIONS~~. The PERMITTING AUTHORITY may require a SPECIES SENSITIVITY SCREENING for chronic toxicity prior to every subsequent...”

On Page 13, Section IV.B.2.a.iii., for both chronic and acute sensitive species screening for non-continuous discharges, evaluating over a calendar year may not be the appropriate metric since discharges may be limited to a season or condition. CVCWA recommends the language for both chronic and acute screening be modified to:

For NON-CONTINUOUS DISCHARGERS, the four sets of testing shall be evenly distributed across the CALENDAR YEAR, **or during a period representative of the discharge quality**, to the extent feasible.

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<sup>2</sup> Similar language is also used in other subsequent sections and should be modified consistently with the proposed language here.

On Page 14, Section IV.B.2.a.iv, CVCWA recommends that the last paragraph be divided to give Regional Water Boards Executive Officers flexibility during a permit term if most sensitive species cannot be used. The paragraphs would then be stand-alone.

When the SPECIES SENSITIVITY SCREENING is conducted within 18 months of the issuance, reissuance, renewal, or reopening (to address toxicity requirements) of the permit after the effective date of these TOXICITY PROVISIONS, then the PERMITTING AUTHORITY shall specify in the NPDES permit a species as the MOST SENSITIVE SPECIES until the SPECIES SENSITIVITY SCREENING is conducted. The NPDES permit shall indicate the method of determining the MOST SENSITIVE SPECIES from the SPECIES SENSITIVITY SCREENING, and a provision indicating that the Executive Director or Executive Officer may select and document the species determined to be the MOST SENSITIVE SPECIES from the SPECIES SENSITIVITY SCREENING test.

**The** PERMITTING AUTHORITY shall specify in the NPDES permit that when that species cannot be used, such as when discharger encounters unresolvable test interference or cannot secure a reliable supply of test organisms, the Executive Director or Executive Officer may specify the next applicable species as the MOST SENSITIVE SPECIES and document that determination.

- Timing of Routine Monitoring and Compliance tests

CVCWA appreciates that these Toxicity Provisions include a monthly median for chronic toxicity. However, basing a chronic toxicity limit on a single sample does not accurately reflect chronic toxicity conditions. That is based on long-term exposure of four days. Accordingly, the decision to impose a chronic toxicity effluent limitation should not be based on a single sample. Additionally, CVCWA is concerned that the Toxicity Provisions would allow the imposition of up to a half-dozen whole effluent toxicity limitations. The Toxicity Provisions do not appear to direct the Regional Water Boards to consider which limitation is most stringent, and then to apply only those limitations. The Regional Water Boards currently consider all potential WET limitations and select the most stringent, which is both protective of water quality and does not expose dischargers to unnecessary liability. CVCWA requests that the Toxicity Provisions be revised to clearly establish that Regional Water Boards use their discretion in applying only the most restrictive effluent limits in permits, rather than every potential effluent limit related to whole effluent toxicity.

CVCWA is very concerned about the requirements that the median monthly effluent limitations (MMELs) be conducted within a calendar month. As described in the BACWA's comment letter on the Toxicity Provisions, there are serious logistical issues with conducting three tests in one month. This is especially difficult when a fourth test for the following month is expected and may need to be taken adjacent to the prior

months test due to timing issues. Because most of our members do not receive final laboratory reports until three weeks after instigation of the report, our member agencies anticipate they will need to: (1) have organisms ready for two additional tests, (2) sample and transport samples to the laboratory, and (3) have the laboratory possibly start analyzing the second test at significant cost when the test ultimately may not be necessary because of the timeframe for testing associated with some of the most common species.

Furthermore, the proposed three-sample Monthly Median does not allow sufficient time associated in situations where: (1) the test acceptability criteria (TAC) is not met, (2) contract laboratory is experiencing a backlog that is outside of the discharger's control, and (3) urgent operational changes that can cause the sampling event already in progress to be aborted or re-scheduled until the treatment plants are back in normal operating condition. These scenarios may make it impossible to take the three samples within a calendar month. Because of these concerns, CVCWA recommends policy be revised to implement at least a 6-week cycle (commencement to commencement of samples) for the three-sample Median. This allows one of the compliance samples to count as the next month's sample, which saves costs. It would also avoid unnecessary costs associated with preparing, taking, and partially analyzing samples that may not be needed while still providing a reasonable method to determine compliance.

Section IV.2.c. in the first paragraph and multiple places in the section should be modified as follows:

“The discharger shall conduct at least one CHRONIC TOXICITY TEST every CALENDAR MONTH during which there is expected to be at least 15 days of discharge. A sample for the ROUTINE MONITORING test shall be taken at a time that would allow corresponding MMEL COMPLIANCE TESTS to be initiated within six weeks of the initiation of the same CALENDAR MONTH as the ROUTINE MONITORING test.”

- Monitoring Frequency for Toxicity and Associated Costs

The frequency of monitoring in the draft Toxicity Provisions are a significant increase over current permitting practices. This will result in substantial cost increases on dischargers. Many Central Valley POTWs with NPDES are very high-level treatment facilities. Of the 76 POTWs evaluated in CVCWA's study, over 50 of these POTWs are expected to see increases in the level of monitoring required – most increasing from quarterly or semiannually monitoring to monthly monitoring.

For example, the City of Davis, who was evaluated as part of the economic analysis for these proposed toxicity provisions (see Staff Report at Page 245, Table 9-1, showing a *decrease* in cost of \$15,000), anticipate that the actual costs are expected to triple their cost for testing if the monitoring frequency under the toxicity provision is applied as compared to the City's newly adopted NPDES permit (NPDES Permit Order No. R5-2018-0085). The increase in costs listed above do not include acute toxicity testing if required by the Central Valley Water Board.

Although the draft provisions allow for reduce monitoring, the requirements for reduce monitoring under the draft Toxicity Provisions do not recognize the years of toxicity testing that POTWs have already completed and are incredibly burdensome and do not recognize plant upgrades or efforts that were taken to address toxicity if it was identified. CVCWA recommends that the level of reduction not be specified and the use of historical data be considered when determining frequency.

### **Other Comments**

1. The definition of aquatic toxicity in Section III.B (page 1) of the proposed Provisions includes reference to "physical agents" as potential causes of adverse responses of aquatic organisms, in addition to chemical agents. This definition is atypical and may cause confusion in the implementation of the Toxicity Provisions. It is requested that the following language be used in place of the first line of the proposed definition:

*"Aquatic toxicity is the adverse effects of contaminants in aquatic ecosystems."*

2. Section IV.B.1.b (Toxicity Test Methods): It is stated on page 7 that, while test methods listed in Table 1 specify a minimum number of replicates, additional test replicates may be conducted to increase test sensitivity and confidence in the results. This raises the question of the validity of test results performed at the minimum level of replication and whether a repeated test at increased replication should be required to confirm important results, i.e. findings of toxicity leading to potential 303(d) listings or findings triggering TRE efforts. Please address this issue in the proposed Provisions, as appropriate.

3. Section IV.B.2: It has been stated in public workshops that it is the intention of the State Water Board that the proposed Toxicity Provisions limit the establishment of acute toxicity effluent limits in the NPDES permits issued to POTWs. To firmly implement this intention, it is requested that the language of the Provisions be modified to state that the imposition of acute toxicity effluent limits should be an exception, and that Regional Water Boards (i.e. the Permitting Authority) shall be

required to provide special documentation in the NPDES permit fact sheet to justify such limits.

4. Section IV.B.2.e. Effluent Limitations. The Toxicity Provisions establish the structure of having both chronic and acute effluent limits, which deviates from the approach taken for priority pollutants in the SIP. The concern exists that a single sample result may result in multiple violations, i.e. that a test results will lead to a violation of both acute toxicity and chronic toxicity effluent limits, especially for test methods that have both mortality and sublethal endpoints. It is requested that an explanation be provided to demonstrate how this circumstance will be avoided. In the event it is found that this circumstance may occur, it is requested that changes be made to avoid episodes of multiple compliance jeopardy associated with either a single sample result or results for a single month.

5. Section IV.B.2.c. contains provisions on page d 16 -18, that the permitting authority shall specify the day of the month that corresponds to the start of the calendar month etc. Please note that other programs also use these terms and utilizing the same start date may not always be practical. Determining the appropriate start date is something that needs to be worked out between the POTW and the laboratory. We oppose the permitting authority to specify the exact dates for routine monitoring without solid justification.

6. It is unclear how the State Water Board intends to utilize the glossary in the ISWBE Plan – if as a standalone glossary to the Toxicity Provisions or combined with other terms from different programs. Our concern is the appropriateness of some of the terms that contradict with other programs, policies or new provisions. CVCWA recommends this be clear in the final policy and that should the applicability go beyond just the Toxicity Provisions, the State Water Board release a draft of the Glossary showing current terms and the newly proposed terms as it would sit in the ISWBE Plan.

We appreciate your consideration of these comments. If you have any questions, or if CVCWA can be of further assistance, please contact me at [eoofficer@cvcwa.org](mailto:eoofficer@cvcwa.org) or (530) 268-1338.

Sincerely,



Debbie Webster,  
Executive Officer

Enclosure