



December 20, 2018

By email only to: commentletters@waterboards.ca.gov



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

SUBJECT: Comment Letter – Toxicity Provisions

Dear Ms. Townsend:

Thank you for the opportunity to comment on the proposed establishment of the Water Quality Control Plan for Inland Surface Waters, Enclosed Bays, and Estuaries of California (Toxicity Provisions). The Napa Sanitation District (NapaSan) is an independent special district providing wastewater collection, treatment, and reuse for the City of Napa and surrounding unincorporated areas. The average dry weather wastewater design flow for NapaSan's Soscol Water Recycling Facility is 15.4 MGD. We appreciate the diligence and care that State Water Board staff have taken in preparing the subject documents, however, NapaSan has several concerns which are described below.

1. Numeric limits for POTW toxicity testing are improper in the San Francisco Bay Region due to lack of need.

NapaSan strongly believes that numeric effluent limits are simply not appropriate for achieving beneficial uses, especially for publicly-owned treatment works (POTWs) such as NapaSan. In particular, all of the waterbodies in the San Francisco Bay region with POTW discharges have been achieving beneficial uses for many years. As evidence, *none* of the waterbodies listed in the Draft Toxicity Provisions Staff Report Table F-1, "2014 and 2016 Listing of water bodies impaired for toxicity" for the San Francisco Bay region have POTW discharges to them. POTWs in the San Francisco Region, including NapaSan, have been measuring chronic and acute toxicity for many years, and chronic toxicity triggers have been sufficient for meeting beneficial uses in receiving waters. Furthermore, neither the draft staff report nor the draft water quality control plan itself give any justification for the need to mandate numeric limits. The increased liability for POTWs in being subject to numeric limits for toxicity is unwarranted.

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2. Numeric limits for toxicity testing are improper due to the nonspecific nature of toxicity test results.

Toxicity testing results do not provide any information about the pollutants causing an exceedance of a numeric toxicity limit. Certainly, there are no proactive or immediate reactive actions that can be conducted to prevent or control toxicity based on an exceedance of a numeric toxicity limit. It takes time to identify a contaminant that might be causing the toxicity effect, and until the source of the toxicant is determined through a Toxicity Reduction Evaluation (TRE), it's impossible to do anything about the toxicity effect. This predicament penalizes public agencies *while they are trying to find the solution*. The use of chronic toxicity triggers have been successful in the San Francisco Bay Region for meeting beneficial uses in receiving waters for many years, and should be implemented to more efficiently use our scarce taxpayer and ratepayer dollars. Numeric limits are not needed and would result in additional and unnecessary cost.

3. All entities should establish reasonable potential prior to receiving limits or triggers.

The proposed Toxicity Provisions do not allow POTWs with permitted capacity at or above 5 mgd to perform a Reasonable Potential Analysis (RPA) prior to being assigned numeric limits. However, all other entities, including oil refineries greater than or equal to 5 mgd, are allowed an RPA before establishing a limit. Not only is this approach patently unfair, the larger POTWs have been conducting chronic toxicity tests for decades, and many of these agencies have never observed chronic toxicity. Given this track record, there is no reason to expect larger agencies to have different toxicity results than smaller agencies. As a result, all agencies should establish reasonable potential prior to receiving limits or triggers.

4. Requiring three tests in one calendar month is infeasible.

NapaSan appreciates the ability to set the beginning of the Calendar Month at any point during the month, to help avoid traffic jams at contract labs. However, it is really impractical to expect POTWs to squeeze three tests into a 28- to 31-day period. In addition, NapaSan only discharges a portion of the year, which is weather-dependent and therefore unpredictable. If, for example, NapaSan only discharges 16 days in April, and the first test is a "fail" and the second test is a "pass" (even if two tests can fit within 16 days which is unlikely), there is certainly no way that a third test can be conducted within the discharge month. In addition, the next discharge would not start until some months later. NapaSan recommends that in the case where a discharge occurs discontinuously during any particular month, that the median effluent limit approach proposed

by the Bay Area Clean Water Agencies (BACWA) apply to a **total** 6-week period of discharge, including when there is a gap of time within the period of discharge.

5. Reduced routine toxicity monitoring should be allowed when no historical toxicity issues have been observed.

Toxicity testing is the most expensive monitoring conducted by POTWs, and NapaSan has been conducting chronic toxicity testing quarterly for many years with no issues. However, the proposed Toxicity Provisions would **increase** the frequency of testing for NapaSan during the next permit term to monthly, which is illogical. We hereby request that a reduced frequency of toxicity testing be allowed with good historical performance immediately upon incorporating the new Toxicity Provisions into our next NPDES permit. In particular, language should be revised for Section IV.B.2.c.i.(B) as follows:

The PERMITTING AUTHORITY may approve a reduction in the frequency of the ROUTINE MONITORING specified in Section IV.B.2.c.i.(A) for dischargers upon reissuance, renewal, or reopening (to address toxicity requirements) of an NPDES permit when during the prior five consecutive years the following conditions have been met:

- 1. The MDEL and MMEL as specified in Section IV.B.2.e have not been exceeded;*
- 2. For initial incorporation of these Toxicity Provisions into an NPDES permit, no test data generated within the previous five years resulted in a "fail" at the IWC;*
- 2.3 The toxicity provisions in the applicable NPDES permit(s) have been followed.*

6. The Toxicity Provisions must provide an allowance for contract laboratory actions outside a discharger's control.

Due to the complexity and expertise required to perform chronic toxicity testing, NapaSan sends its samples to a contract laboratory. It is likely that at some point the contract laboratory will experience problems that NapaSan has no control over, such as basic throughput capacity, turnaround time, laboratory error, quality control failure, or the unavailability of seasonal test organisms. As a result, the Toxicity Provisions must stipulate that POTWs are allowed to show that any digression from the required timing for samples was outside the permittee's control despite its best efforts, and that in these cases no enforcement action would be undertaken.

- 7. The threshold for determining reasonable potential should be 25 percent effect.**

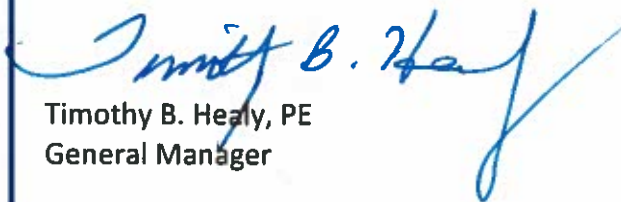
The proposed Toxicity Provisions establish a threshold of 10 percent effect for determining reasonable potential. However, some agencies that have never experienced toxicity at the instream waste concentration observe variability that goes above 10 percent effect. As a result, the reasonable potential determination at 10 percent effect is meaningless. The State Water Board should set the threshold at 25% because it is the level of the effluent limit and because it is scientifically more meaningful by avoiding the "noise" of variability.

- 8. The Toxicity Provisions should clarify that routine acute toxicity testing is not expected to occur when chronic testing is part of the monitoring program.**

Since the staff report indicates that POTWs would only be required to run acute toxicity testing under limited circumstances, and the chronic testing cost analyses assume no acute testing is taking place, we understand that acute toxicity testing would be a rare occurrence. Additional language in the Toxicity Provisions should reflect what is in the staff report – namely, that if chronic testing is being performed, acute testing is not required.

We appreciate the opportunity to comment on the proposed Toxicity Provisions. Please let me know if you have any questions or would like to discuss anything. Thank you very much.

Sincerely,



Timothy B. Healy, PE
General Manager