

Alternatives to Select Provisions of the Draft Policy for Toxicity Assessment and Control

Comment	Response	Alternative 1	Alternative 2	Alternative 3
<p>Numeric Effluent Limits</p> <ul style="list-style-type: none"> Commenters suggested that a single toxicity test failure should not result in a violation. Citizen lawsuits, bad publicity, and toxicity test variability were identified as concerns. Commenters expressed doubt about the accuracy of the TST method, claiming that the false positive rate is higher than the stated 5%. 	<p>Change Effluent Limit Expression</p> <ul style="list-style-type: none"> Commenters are mistakenly referencing TST analyses that declare a statistically significant difference between the sample and control, despite an effect level below the RMD (25% for chronic, 20% for acute). Staff is confident that this outcome can be minimized by adding replicates and/or improved quality assurance practices. Staff agrees that a single test failure should not be construed as a violation when effect levels are below the RMDs. 	<p>Modify Test Acceptability Criteria</p> <ul style="list-style-type: none"> Dischargers would be required to conduct more toxicity test replicates than the minimum quantities established in 40 CFR Section 136.3 when necessary to prevent incorrect declarations of toxicity. The number of additional replicates would be based upon the method's standard deviation as calculated by U.S. EPA's national distribution. Should a sample fail a toxicity test, the discharger would be required to implement an accelerated monitoring schedule. 	<p>Establish MDELs and AMELs for Toxicity</p> <ul style="list-style-type: none"> Effluent limits would be expressed as MDELs and AMELs. Any sample that results in a failure using the TST with an effect level in excess of the RMDs would be considered a violation of the MDEL. If a sample fails with an effect level below the chronic or acute RMDs, two additional tests within the same calendar month would be required. Compliance with the AMEL is demonstrated when: <ul style="list-style-type: none"> Option 1 – two of the three monthly tests are a “pass” Option 2 – the average effect level is less than the chronic and acute RMDs 	<p>Adopt Tiered Accelerated Monitoring</p> <ul style="list-style-type: none"> The chronic and acute RMDs would be established as effluent limits. Any sample that results in a fail using the TST with an effect level in excess of these limits would be considered a violation. Tier 1 accelerated monitoring – If a sample fails with an effect level below the RMD limits, two additional tests within the same calendar month would be required. Tier 2 accelerated monitoring – If a sample fails during Tier 1, dischargers would be required to conduct six, five-concentration tests over a period of twelve weeks.

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<p style="text-align: center;">Storm Water and Channelized Discharger Provisions</p> <ul style="list-style-type: none"> Commenters found the sections of the draft Policy applying to storm water and channelized dischargers to be confusing. 	<p style="text-align: center;">Revise Policy Language</p> <ul style="list-style-type: none"> These sections of the draft Policy will be revised for clarity. 	<p style="text-align: center;">Improve Cross-References</p> <ul style="list-style-type: none"> The cross-references to Section A would be further clarified by explicitly stating applicable provisions. 	<p style="text-align: center;">Remove Cross-References</p> <ul style="list-style-type: none"> The cross-references in Sections B and C would be replaced with new sub-sections that distinctly state applicable provisions. 	<p style="text-align: center;">Create Individual Policy</p> <ul style="list-style-type: none"> Sections B and C would be removed entirely. Staff would develop a separate toxicity policy dedicated exclusively to storm water and channelized dischargers at a later date.
<p style="text-align: center;">Economic Impact on Small, Disadvantaged Communities</p> <ul style="list-style-type: none"> Commenters were concerned that the draft Policy may have a disproportionate economic impact upon small, disadvantaged communities. 	<p style="text-align: center;">Add Provisions to Policy</p> <ul style="list-style-type: none"> Staff will include provisions in the draft Policy to assist these communities. 	<p style="text-align: center;">Grant Discretionary Authority</p> <ul style="list-style-type: none"> The Regional Water Boards would be directed to exempt small, disadvantaged communities at their discretion. 	<p style="text-align: center;">Modify Major POTW Class</p> <ul style="list-style-type: none"> The draft Policy's "major POTW facility" classification would be changed to five million gallons a day or more, reducing the likelihood of monthly monitoring requirements for small, disadvantaged communities. 	<p style="text-align: center;">Exclude Small, Disadvantaged Communities</p> <ul style="list-style-type: none"> Qualifying communities would be exempt from the provisions of the draft Policy.