

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.