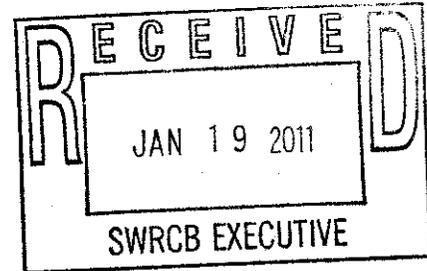




SAN FRANCISCO  
**BAYKEEPER.**

January 19, 2010

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



*Via electronic mail to [commentletters@waterboards.ca.gov](mailto:commentletters@waterboards.ca.gov)*

**Re: Comment Letter – Policy for Toxicity Assessment and Control**

Dear Ms. Townsend:

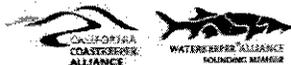
Thank you for considering the following comments on the Draft Policy for Toxicity Assessment and Control (“Draft Policy”). We are submitting these comments on behalf of San Francisco Baykeeper (“Baykeeper”) and our 2,300 members.

We applaud the State Board for standardizing the toxicity assessment requirements for NPDES permittees. We think that the policy is an improvement over the toxicity policy in the San Francisco Bay Regional Basin Plan, which includes limits for individual dischargers based on Best Professional Judgment. A standard formula approach is clear and can be applied across the board to Permittees. In addition, we support the use of an “effect level” in assessing toxicity rather than only determining toxicity by examining percent survival. Including effects broader than survival, which could include effects on reproduction and growth, is an improvement because toxic substances could have negative impacts without being lethal.

Although we generally support the Draft Policy, we do have some concerns, which are outlined below.

**A. The Draft Policy Fails to Explain How the Board Will Determine “Insignificant Dischargers.”**

The Draft Policy contains an exception for certain NPDES wastewater dischargers and point source WDR dischargers if they are “insignificant dischargers.” Part III.A.9.a. Under the exception, insignificant dischargers are exempt from the requirements of Part III.A., which includes toxicity test implementation procedures and assessment methodology. The insignificant dischargers are not required to conduct an analysis to determine if their waste discharge has the reasonable potential to cause or contribute to an excursion above the chronic toxicity objectives established in Part II. The only two criteria listed for determining whether a discharger is “insignificant” include 1) whether the applicable Water Board finds that the discharge will have an insignificant impact on receiving water quality, and 2) they discharge less than one million gallons per day on a non-continuous basis. Part III.A.9.a. The Draft Policy does not include any details on how the Board will determine whether a discharge will have an insignificant impact on



receiving water quality. The Draft Policy should, at a minimum, have a uniform policy for this determination. The Board must use actual monitoring data to establish that a discharge will not significantly impact water quality. Discharges of less than one million gallons can have the potential to impact water quality, so they should not be categorically excluded. Without at least a systematic approach by the Board, we do not think any dischargers should be exempt from Part III.A of this Draft Policy.

The Draft Policy also contains an exception for non-traditional MS4s and communities with populations of less than 50,000 unless the Board finds that they have a significant impact on receiving water quality. Part III.B.5.a. Again, the Draft Policy is lacking an explanation of how the Board will determine whether there will be a significant impact on water quality or not.

**B. The Draft Policy Must Require NPDES Permits to Include Numeric Effluent Limitations for Acute Toxicity.**

Part III.A.2 requires the applicable Water Board to include numeric effluent limitations for chronic toxicity in any NPDES discharge permit issued, reissued, or reopened. However, the Draft Policy does *not* require numeric effluent limitations for acute toxicity. The Board should not have the discretion to leave out acute toxicity effluent limitations. Effluent limitations for acute toxicity must apply to protect water quality and the health of aquatic organisms.

**C. The Draft Policy Must Include Numeric Effluent Limitations for Individual Industrial Storm Water Dischargers.**

Under Part III.B.1, the Draft Policy does not require numeric effluent limitations for toxicity in permits for individual industrial storm water dischargers. The Board has discretion to apply numeric effluent limitations, but is not required to do so. Industrial storm water dischargers are major sources of toxic pollutants and should have strong, enforceable discharge permits. Without numeric effluent limitations, it will be difficult for the Board or others to determine whether a discharger is violating its permit.

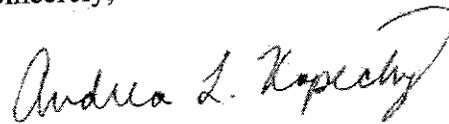
**D. The Draft Policy Fails to Provide Justification for the Chosen Numeric Toxicity Objectives.**

Part II of the Draft Policy includes numeric toxicity objectives that apply to waters of the United States. According to the Draft Policy, 0.25 and 0.20 effect levels demonstrate chronic and acute toxicity, respectively. The Draft Policy does not provide an explanation of how these values were chosen. It also fails to demonstrate that these effect levels are sufficient to protect water quality and aquatic organisms. The State Board must explain its reason for choosing these values or at least cite a policy or scientific studies to support its decision.

Thank you for considering these comments. Please contact me at (415) 856-0444 x 110 if you have any questions.

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Baykeeper Comments  
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Sincerely,

A handwritten signature in cursive script that reads "Andrea L. Kopecky". The signature is written in dark ink and is positioned above the typed name.

Andrea L. Kopecky  
Legal Associate  
San Francisco Baykeeper