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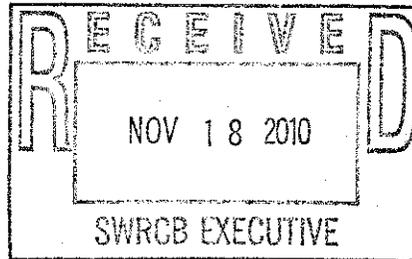
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Jeanine Townsend
Clerk to the Board
State Water Resources Control Board
1001 I Street, Sacramento, CA 95814



RE: Comment Letter – Policy for Toxicity Assessment and Control

I am writing to express my deep concern over the new toxicity policy that has been drafted. We currently have one sawmill in California operating under a site specific NPDES permit that has a requirement for acute and chronic toxicity testing. Based on our experience in meeting the provisions of that permit, this testing is very costly (minimum \$7,500 for chronic suites) and the results are not easily interpreted. For a non-continuous discharge, collecting the samples for chronic analysis correctly is not even a simple task. This is an important consideration that is not adequately addressed in the draft. At our sites it is rare for a storm water point discharge to continuously discharge for seven days, the standard period for collection of renewal samples per EPA protocol. According to a review done by the California Association of Sanitation Agencies, 15% of all non-toxic samples are expected to be identified as “toxic” based on an evaluation of EPA blank data. In addition to these false positives, an apparently “toxic” result can be attained when the sample water is lacking in nutrients that are essential to certain organisms. Thus a result can appear toxic when in reality the sample water was lacking an essential constituent as opposed to containing a toxic pollutant. Furthermore, low pH and conductivity that is frequently naturally occurring in storm water can result in evidence of low growth or reproduction in lab tests.

The applicability of this type of analysis to storm water runoff is suspect, especially with respect to chronic testing. Since so few facilities that are covered under the general statewide permits have ever been required to do toxicity analysis, moving immediately to a system of possible violations is unjustified. The proposed policy merely makes test failures enforceable without changing anything in the effluent or in the environment. This not only diverts resources from the identification and reduction of the toxicity, but penalizes dischargers genuinely attempting to

reduce toxicity through a comprehensive Toxicity Reduction Evaluation process. Overall a better understanding of the best means for carrying out this testing, including dual-control testing when the issue may be a lack of nutrients, is necessary. The probability of failing at least one chronic toxicity test is 86% over the course of one year and more than 99.9% over the course of a five-year permit cycle even if the discharge was actually non-toxic. Non-toxic discharges will be perceived to be toxic, resulting in false public perception of discharge and receiving water quality, and resources wasted to attempt to find the cause of the "toxicity."

Clean Water Act section 303(d) impairment designation will occur if two or more receiving water samples are identified as toxic. An 89% chance of 303(d) impairment designation exists even for a completely non-toxic receiving water. Once a waterbody is listed, the false positive error rate will make it practically impossible to statistically demonstrate that a waterbody will meet 303(d) delisting requirements, even for a completely non-toxic receiving water. TMDLs will therefore be required for all waterbodies without any way to demonstrate that the waterbody will be attaining beneficial uses. Dischargers who have the TMDL allocations incorporated into NPDES permits will be at risk for permit violations for non-toxic conditions. Erroneous 303(d) listings will divert State resources from development of TMDLs with legitimate impairments.

I appreciate this opportunity to comment and sincerely hope the Board considers the reality of implementing such a broad reaching change in terms of both testing cost and manpower for sampling and review. Far more education of the Board staff, the regulated public and even laboratories and consultants is necessary in order to create a sampling program that is appropriate and meaningful for each type of discharge.

Sincerely,



Cheryl Moore

Environmental Manager