

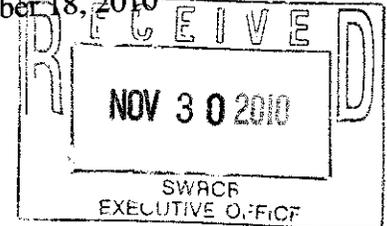


DEPARTMENT OF DEFENSE
REGIONAL ENVIRONMENTAL COORDINATOR, REGION 9
937 N. Harbor Drive, Box 81
San Diego, California 92132-0058

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November 18, 2010



Ms. Jeanine Townsend
Clerk to the Board
State Water Resources Control Board (SWRCB)
1001 I Street
Sacramento, CA 95814

Subject: **COMMENTS ON THE DRAFT POLICY FOR TOXICITY ASSESSMENT AND CONTROL**

On behalf of the Department of Defense (DoD) Regional Environmental Coordinator (REC) in California, we appreciate this opportunity to provide the comments below on the Water Board's Draft Policy for Toxicity Assessment and Control.

In the Water Board's Staff Report on "Policy for Toxicity Assessment and Control" Project Background Section identifies the triggering event for this draft policy as the renewal of two NPDES permits for two publicly owned treatment plants (page 5 and 6). While chronic toxicity may be an established problem with discharges from publicly owned treatment plants, the staff report never indicates there is a demonstrated problem with chronic toxicity from storm water discharges. The proposed four chronic toxicity tests per year for storm water discharge (Part III, Section B.3, page 14) should not be required until it is established that chronic toxicity from storm water run-off has the reasonable potential to cause or contribute to an excursion above the chronic toxicity objective.

Should the state elect to move forward with the chronic toxicity monitoring requirements for storm water discharges, the definition for "instream waste concentration" (page 2, Definition H.) should be revised to clarify storm water discharges can only be assessed after considering mixing in the receiving water, and read as follows:

"Instream waste concentration (IWC) is the concentration of a toxicant or effluent in the receiving water after mixing (the inverse of the dilution factor). For discharges other than stormwater, a discharge of 100% effluent will be considered the IWC whenever mixing zones or dilution credits are not authorized by the applicable Water Board."

The draft policy allows Regional Water Boards to determine "reasonable potential" by applying toxicity testing to whole effluent storm water runoff instead of considering the actual exposure to aquatic life. Storm water discharges are generally short term, intermittent discharges that typically do not cause toxicity in receiving waters after mixing. Applying toxicity testing and objectives directly to storm water discharges is overly conservative and will result in reasonable potential determinations that do not reflect actual affects to aquatic life. The acute and chronic

toxicity reasonable potential analyses and effluent limitations for storm water discharges and other intermittent, short term discharges should be performed on the effluent after considering the mixing that occurs in the receiving water. This will provide for the consistent statewide application of toxicity limitations and objectives and prevent the application of overly conservative standards that are not based on real impacts to beneficial uses.

In addition, we would request that the policy on compliance schedules be modified to recognize the differences between acute toxicity and chronic toxicity. As currently written, a discharger with existing toxicity monitoring requirements is ineligible to receive a compliance schedule. This would mean that a discharger with existing acute toxicity monitoring requirements would not be eligible for a compliance schedule for the proposed chronic toxicity requirements. The SWRCB's "Policy for Compliance Schedules in NPDES Permits" allows for a compliance schedule for a new permit limitation "more stringent than the limitation previously imposed." We believe requiring compliance with chronic toxicity tests constitutes a more stringent limitation than a previously imposed acute toxicity limitation. As such, we propose insertion of the word "chronic" into the last sentence of Part III, Section B.4 (page 14) so it would read:

"Phase I and Phase II MS4 dischargers and individual industrial storm water dischargers with existing chronic toxicity monitoring requirements are not eligible to receive a compliance schedule."

Please direct any questions or concerns you may have regarding this letter to Mr. Michael Huber at (619) 532-2303.

Sincerely,



C.L. STATHOS
By Direction