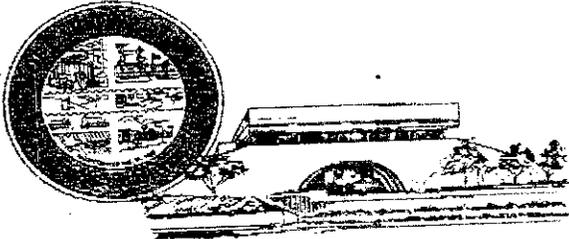


OFFICE OF THE CITY MANAGER

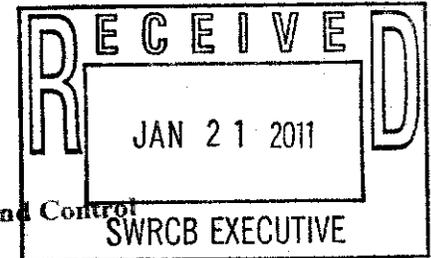


CITY OF CARSON

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

Transmitted via facsimile
(916) 341-5620

January 20, 2011



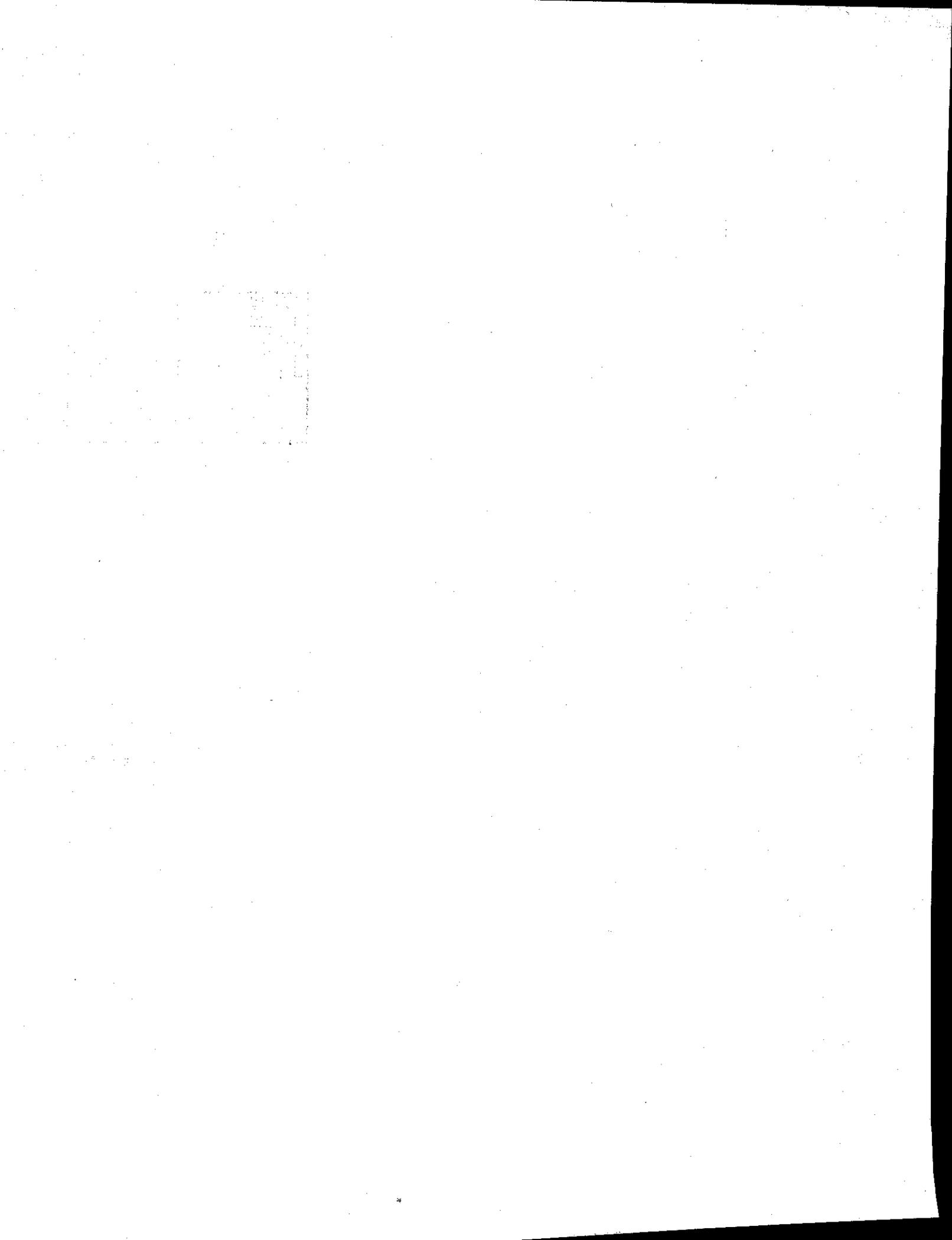
Subject: **Comment Letter – Draft Policy for Toxicity Assessment and Control**

Dear Ms. Townsend,

The city of Carson (city) appreciates the opportunity to comment upon the State Water Resources Control Board's (State Board's) proposed Draft Policy for Toxicity Assessment and Control (Draft Policy). The city recognizes and appreciates the effort that the State Board's staff has put into the development of the proposed Draft Policy; however, the city also has serious concerns regarding the Draft Policy.

The expansion of the "whole effluent toxicity" (WET) testing for the purpose of Municipal Separate Storm Sewer System (MS4) permitting is inappropriate and unsupported. The Draft Policy and the toxicity test methods it requires were primarily designed for wastewater and other steady discharges. However, the Draft Policy was expanded to cover stormwater and dry-weather flows (which differ significantly from wastewater discharges) without sufficient scientific basis and without necessary guidance for implementation. Discharges from the MS4 (both dry and wet weather) typically exhibit highly variable flow rates and constituent concentrations, receive pollutants from a wide range of sources (e.g., atmospheric deposition), and are not amenable to treatment by the processes used to treat wastewater discharges. Neither the United States Environmental Protection Agency (USEPA) nor the State Board has conducted any appropriate studies or data collection or provided any evidence to support the expansion of the WET testing to discharges regulated by MS4 permits. As a result, the Draft Policy provides no guidance for MS4 permittees. Formulating significant details such as how monitoring and testing should be conducted for intermittent, quickly changing flows and how compliance determinations should be made, would become the Regional Water Quality Control Board's (Regional Board's) responsibility. This expansion could lead to unnecessary increases in enforcement actions and related appeals.

The financial burden on many cities could be tremendous. Many cities could be placed in the untenable position of having to conduct extensive and accelerated monitoring, as well as toxicity reduction evaluations (TREs); particularly, for areas where there is no principal permittee for the MS4 permit. These requirements would likely result in duplicative monitoring and unnecessary spending of scarce funds. Under the Draft Policy, a single test failure during the compliance monitoring would be considered a violation, which would trigger requirements to conduct six accelerated tests within 12 weeks



and TREs. The cost of complying with these requirements would be exorbitant and greatly exceed the costs envisioned by State Board's staff in the Staff Report accompanying the Draft Policy. For instance, the city of San Bernardino spent more than \$100,000 on accelerated monitoring and preliminary Toxic Identification Evaluations (TIEs) over the last 10 years. In each occurrence, it appeared that the initial failure of the chronic sub-lethal toxicity test using *Ceriodaphnia dubia* (freshwater flea) for reproduction was due to routine (annual) culture crashes at the analytical laboratory. Many cities are already under enormous financial pressure and have been implementing layoffs, furloughs and pay reductions as well as other significant reductions to offset existing budget deficits. Essential services would be cut even further in order to afford to comply with the proposed Draft Policy.

The use of USEPA's Test of Significant Toxicity (TST) method and its implementation as numeric effluent limitations are invalid. The Draft Policy requires the use of the TST method to test for WET, even though the TST method was established by USEPA as guidance in June 2010 and has not been through the public review and comment process. The TST method is scientifically unproven, and the adoption of the method would provide no additional protection for the aquatic environment. The use of the TST method is highly problematic for the following reasons:

- The TST method assumes that an effluent is toxic unless testing is able to demonstrate that the effluent is in fact not toxic—a reversal of the "presumption of innocence" and a significant departure from traditional practice.
- The use of the TST method would lead to unacceptably high false violation rates (i.e., determining that an effluent sample is toxic when it is, in truth, not toxic) according to analyses of USEPA WET blank data. The high false violation rates are likely due to inherent variability in the toxicity testing method, and not to actual toxicity in effluent or receiving water samples. False findings of toxicity would lead to the unnecessary expenditure of significant State Board's, Regional Board's and MS4 permittees' resources to respond to non-toxic, false indications of toxicity, including unnecessary and unjustified 303(d) listings and development of TMDLs for non-existent problems.
- In addition, under the Draft Policy, the false failure rate of the reasonable potential analysis is too high and would result in unnecessary application of effluent limitations.

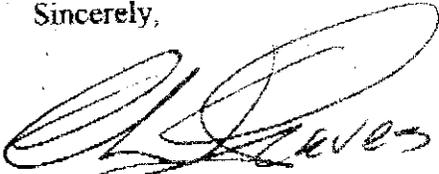
Given the lack of validation of the TST method, it is premature to apply the TST method until the scientific basis and false error rate of the method is further evaluated and sufficient evidence is gathered to support the application of the TST method as numeric effluent limitations for the types of discharges regulated by MS4 permits. Furthermore, a single test failure using a single surrogate species as proposed in the Draft Policy should never be construed to constitute a permit violation.

The proposed Draft Policy should be adopted through a formal rule-making process and in accordance with the requirements in Sections 13241 and 13242 of the California Water Code. This is particularly important since the TST method upon which the Draft Policy is based has not been adopted through a public process.

The city strongly recommends that the State Board should not adopt the Draft Policy for the purpose of MS4 permitting until appropriate studies and data collection are completed, and should not impose numeric effluent limitations for toxicity for discharges regulated by MS4 permits.

The city looks forward to working with the State Board and its staff on future revisions to the Draft Policy. Please contact Ms. Patricia Elkins, Storm Water Quality Programs Manager at (310) 847-3529 if you have any questions regarding the information provided in this letter.

Sincerely,



Clifford W. Graves
Interim City Manager

cc: Mayor and City Council