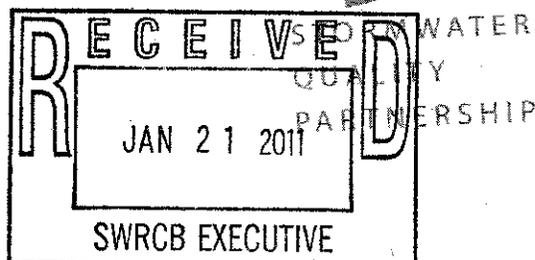


SACRAMENTO



January 21, 2011

Paul Hann
Chief, Planning Standards and Implementation Unit
California State Water Resources Control Board
Division of Water Quality
1001 I Street, 15th Floor
Sacramento, CA 95814



Delivered via electronic mail: commentletters@waterboards.ca.gov

Subject: Comment Letter – Policy for Toxicity Assessment and Control

Dear Mr. Hann:

The Sacramento Stormwater Quality Partnership (Partnership) appreciates this opportunity to comment on the Policy for Whole Effluent Toxicity Assessment and Control. The Partnership includes Sacramento County and the Cities of Sacramento, Elk Grove, Citrus Heights, Folsom, Rancho Cordova, and Galt. These agencies are co-permittees on the national pollutant discharge elimination system (NPDES) municipal separate storm sewer systems (MS4) permit.

We support the State Water Resources Control Board's (State Board) efforts to develop the proposed Policy to provide a better framework for aquatic toxicity monitoring in NPDES permits. However, there are several critical technical and implementation issues with the proposed test for significant toxicity (TST), that must be *clearly and fairly addressed prior to adopting the proposed policy*.

The Partnership previously commented by letter on the July 7, 2010 Draft Policy and provided testimony at the November 16, 2010 workshop. Most of these comments still apply, as we have not seen significant revisions to the proposed Policy since submission of these comments.

Most critically, the Draft Policy could supersede the exemption of stormwater from the toxicity control provisions of the Policy for the Implementation of Toxic Standards for Inland Surface Waters, Enclosed Bays, and Estuaries of California (SIP)¹ rather than using the current "iterative" approach to addressing constituents of concern in urban runoff. Currently the stormwater section (B) of the Draft Policy provides direct linkages to the wastewater point sources section (A) that includes numeric effluent limitations, findings of reasonable potential and other SIP-based regulations that should not apply to MS4 discharges. *We request that the Policy be modified to clearly separate the*

¹ As noted on Page 3, footnote 1 of the SIP, the SIP does not apply to the regulation of stormwater discharges.

The Sacramento Stormwater Quality Partnership is a joint program of the County of Sacramento and the Cities of Citrus Heights, Elk Grove, Folsom, Galt, Rancho Cordova, and Sacramento.

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wastewater and stormwater regulatory processes or develop a separate policy altogether that can adequately address the technical and regulatory differences between the types of discharges.

Listed below are a few key comments that must be considered in developing the Policy for stormwater:

- Stormwater discharges are highly variable in quality and quantity and are intermittent and difficult to precisely predict in contrast to continuous, less variable wastewater discharges. This poses technical challenges to identify causes of toxicity as the toxicity may be present one storm event and then absent the next. Because of the short duration of events, large volumes of water must be collected to allow for test renewals or for follow-up toxicity identification work. In many cases the additional volumes are not necessary and are a significant wasted effort or the toxicity is not persistent enough for follow-up identification work. A better predictor of toxicity from stormwater has historically been through chemistry and tracking of pesticide regulation and regional pesticide usage.
- The Policy is inconsistent and confusing in its treatment of stormwater numeric effluent limitations, which will invariably lead to widely different permit and enforcement approaches, which contradicts the purpose of the effort – to achieve uniformity in statewide implementation of toxicity testing standards. For example, in the evaluation of three alternatives: 1) no action; 2) require NPDES permits for MS4 and individual and industrial storm water dischargers to include numeric effluent limitations for chronic toxicity; or 3) require MS4 and individual and industrial storm water dischargers to include chronic toxicity monitoring; the Staff Report selects alternative No. 3 as the preferred alternative as it “...provides a feasible alternative to numeric effluent limitations and increases protections for aquatic life beneficial uses.” But then the Staff Report continues to specifically state that this selection does not preclude Water Boards from establishing numeric effluent limitations. The proposed Policy language similarly states this mixed-message that the Policy does not intend to set effluent limitations, but the permit writers have the discretion to do so, and refers to the wastewater section of the proposed Policy.
- The Policy should establish clear, consistent and reasonable directives for permit writers for adaptively implementing monitoring requirements. The proposed Policy does not adequately address the technical issues related to the combined complexity of stormwater monitoring and toxicity evaluations. We suggest that the State Board work with statewide Regional Board permit writers, MS4 programs and monitoring and toxicological experts to develop a technically based stormwater Policy that adopts an iterative and adaptive approach. For example, the following are fundamental issues that the Policy should consider:
 - Acute vs. chronic exposure periods and the intermittent impact of urban runoff
 - Accelerated monitoring and the persistence of typical urban runoff toxicants
 - Frequency and location of required monitoring in light of the typically high number of MS4 discharge locations, the unpredictable nature of storm events, and the large amount of resources necessary to successfully and accurately collect samples

- Stormwater toxicity testing and the role or substitution of other predictors of toxicity and water quality impacts such as changes in pesticide regulation and analytical chemistry
- The inherent difficulty in linking observed toxicity in urban runoff to activities other than pesticide application and in controlling dispersed sources
- Test species selection and episodic changes in toxicants
- The Policy should allow mechanisms for providing relief from triggering of repetitive and costly monitoring, once the discharger has identified causes of continuing toxicity and taken appropriate actions to address them under the terms of their NPDES permit. This would allow dischargers to focus limited resources on solving the problem, rather than gathering additional data on conditions that are already well characterized.

The Partnership looks forward to working with the Board in developing the needed improvements to the Policy as it is further developed. Please contact me (916 874-8024) or Sherill Huun (916 808-1455) at the City of Sacramento if you have any questions or would like to discuss our comments further.

Sincerely,



Dave Tamayo
Environmental Specialist IV
Sacramento County Stormwater Quality Program

Cc:

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