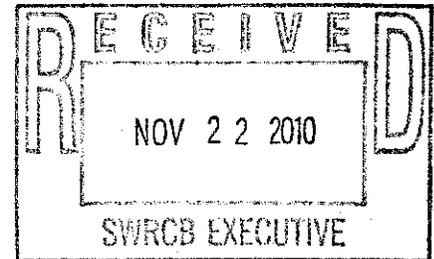


City of San Luis Obispo

OFFICE OF THE CITY COUNCIL
990 Palm Street ■ San Luis Obispo, CA 93401-3249 ■ 805/781-7119

November 22, 2010

Mr. Charles R. Hoppin, Chairman
State Water Resources Control Board
1001 I Street
Sacramento, CA 95814



SUBMITTED VIA EMAIL

Subject: Comments on Proposed Policy for Toxicity Assessment and Control

Dear Mr. Hoppin:

The City of San Luis Obispo appreciates the opportunity to provide the State Water Resources Control Board (State Water Board) comments on the proposed Whole Effluent Toxicity (WET) Policy.

The City operates a Publicly Owned Treatment Works, administers an Industrial Stormwater Pollution Prevention Plan, and is enrolled in the MS4 Phase II NPDES Stormwater Permit. As such, the potential impacts from this proposed policy would be great. Costs associated with the proposed required monitoring for these programs will be significant in both laboratory expense and in time spent sampling for these tests. Estimates range from \$120,000 to \$240,000 per discharge location over the life of a five-year permit with an unclear water quality benefit associated with these costs.

As we understand the proposed policy, the City would also potentially be held to numeric limits for acute toxicity testing as the proposed policy broadly states that the Regional Boards will have the discretion to impose acute toxicity limits on all dischargers. This would lead to even more potential impacts.

All effluent from the MS4 stormwater, industrial, and NPDES processes are discharged into San Luis Obispo Creek and its tributaries. Years of laboratory testing and scientific studies have shown these waterways to be excellent aquatic habitat supporting a thriving year-round population of steelhead in various life stages.

The City's concern with the proposed testing is based on the excessive false positive error rates toxicity tests have been shown to have. Fifteen percent of all non-toxic samples are expected to be identified as "toxic" based on an evaluation of EPA blank data. This would create a situation in which the probability of failing at least one chronic toxicity test is 86% over the course of a year and more than 99.9% over the course of a five-year permit cycle even when the data is non-toxic. A false positive will force staff to spend many hours and resources looking for the causes of this "toxicity".

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These types of false positives will also unnecessarily cause issues with the public's perception of our high quality effluent. The citizens and visitors to the City of San Luis Obispo place a high value on the creek environment and showcase it as an integral part of our downtown community.

This series of false positives could also lead to wrongly listing waterbodies under the Clean Water Act 303(d) listing process as impaired. This will result in even more time and funding resources being wasted by this process.

A potential for large state and federal penalties would also be associated with numeric limits for chronic and acute toxicities. State penalties could be up to \$10,000 per day and \$10.00 per gallon, in addition to federal penalties of \$37,500 per day per violation. This could also open the door to unwarranted third party lawsuits. Other associated costs include Toxicity Identification Evaluation (TIE) testing, Toxicity Reduction Evaluations (TREs), and any costs associated with unnecessary treatment upgrades in response to false positive toxicity exceedances.

The numeric objectives in the proposed policy were taken from the EPA's TST document. These TST procedures were adopted from a recent EPA guidance document that was never released for public comment. The proposed policy statistical procedures are not contained in the formally adopted 40 CFR 136 methods. This oversight creates an impression of "underground rulemaking".

Furthermore, this policy is unnecessarily stringent. There is no evidence that these objectives and effluent limitations are necessary. As currently proposed, the policy would not allow for adequate time to come into compliance if it was needed. If a compliance schedule was authorized on a discharger, the duration may not exceed two years. Current State Water Board policy allows up to 10 years to comply with non-California Toxics Rule constituents. As written, the statewide numeric objectives would not supersede existing narratives and would also allow for Regional Boards to "translate" narratives into additional or different limits.

In addition, the proposed policy will automatically assume reasonable potential for the City's discharge. This is contrary to the federal rule. The policy is more stringent than the federal policy in that it requires numeric effluent limits when not required by federal or state law along with maximum daily effluent limitations.

Under the proposed policy, identified instances of toxicity – including false positives – will constitute violations subject to administrative and civil enforcement. The current approach, where effluent limits are prescribed for specific toxicants identified as causing failures, will result in greater water quality improvement than the proposed policy. The proposed policy merely makes test failures enforceable without changing anything in the effluent or the environment. This not only diverts resources from the identification and reduction of the toxicity, but penalizes dischargers genuinely attempting to reduce toxicity through an aggressive TRE Process.

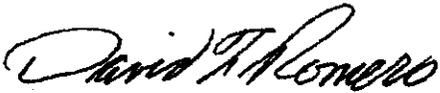
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With so many limitations which are in excess of federal law requirements, and all of the potential additional costs of testing and unnecessary treatment upgrades, this policy essentially becomes an unfunded state mandate.

Given the high costs of testing, the even higher potential costs of unnecessary upgrades and unwarranted fines due to false positives, and federal laws already in place that will better address the goal of water quality, the proposed policy should not be accepted.

The City of San Luis Obispo remains committed to our high quality waterbodies and appreciates the opportunity to provide comments regarding the Proposed WET Policy. If you have any questions concerning this letter, please contact Aaron Floyd at (805) 781-7425.

Sincerely,



David F. Romero
Mayor
