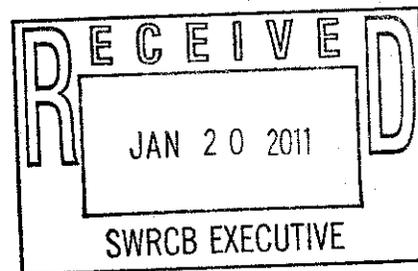


THE METROPOLITAN WATER DISTRICT
OF SOUTHERN CALIFORNIA

Office of the General Manager



January 20, 2011

Ms. Jeanine Townsend, Clerk to the Board
State Water Resources Control Board
1001 I Street
Sacramento, California 95814
Sent via E-Mail: commentletters@waterboards.ca.gov

Subject: Comment Letter – Policy for Toxicity Assessment and Control

Dear Ms. Townsend:

The Metropolitan Water District of Southern California (Metropolitan) appreciates the opportunity to provide comments on the State Water Resources Control Board's (SWRCB) proposed Draft Policy for Toxicity Assessment and Control (Draft Policy). Metropolitan is comprised of 26 cities and water districts that provide drinking water to nearly 19 million people in parts of Los Angeles, Orange, San Diego, San Bernardino, Riverside, and Ventura counties. The mission of Metropolitan is to provide its service area with adequate and reliable supplies of high quality water to meet present and future needs in an environmentally and economically responsible way. Metropolitan currently delivers an average of 1.7 billion gallons of water per day to a 5,200 square-mile service area.

Metropolitan acknowledges the time and effort of SWRCB staff in development of the Draft Policy. However, Metropolitan has several significant issues and concerns regarding the Draft Policy which are summarized in this letter. Many of the concerns that Metropolitan staff has identified are the same as those that multiple presenters described to the Board during oral testimony at the workshop held on November 16, 2010. Our concerns with the Draft Policy are based on the understanding that permits issued, reissued, or reopened after the effective date of the Draft Policy would be required to conduct toxicity testing utilizing the proposed, new methodology. Metropolitan is subject to several individual and general NPDES permits and is concerned about the serious consequences of including the provisions of the Draft Policy in these and other effluent discharge permits for wastewater, storm water, and aquatic pesticides.

Key Concerns

- **The Draft policy requires the use of the Test of Significant Toxicity (TST) approach to test for whole effluent toxicity (WET).** The TST method was established by the Environmental Protection Agency (EPA) as a guidance document only, and has not been vetted through peer review nor has it undergone a formal public review and comment process. The SWRCB's definition of WET using the new TST methodology essentially changes water quality standards, and warrants a formal rulemaking process rather than implementation via a new policy. The TST method is not approved under current EPA requirements in 40 CFR Part 136 and no Federal Register notices were issued concerning the proposed TST guidance methods.
- **The Draft Policy and the TST approach utilize the "null hypothesis" which assumes that an effluent is toxic unless testing is able to show that the effluent is in fact not toxic.** The Draft Policy specifies that a discharger must assume its effluent is toxic and requires the use of the TST method to prove that it is not. This is a complete reversal of the "presumption of innocence," that has been used historically, and is a major departure from accepted practices. This approach is not appropriate when dealing with statistical uncertainty.
- **Use of the TST methodology has not been proven to provide additional protection of the aquatic environment, as compared to the methods currently in use.** The current approach used by the SWRCB where effluent limits are prescribed for specific toxicants identified as causing the failures, results in greater water quality improvement than will the proposed Draft Policy. It is not clear why the existing methodology needs to be changed at this particular time, and what is not working with the current procedures. The costs of running the proposed test method and analysis, and the frequency of testing will be high for both the permit holder and for SWRCB staff, yet the accrued benefits, if any, will be negligible.
- **Use of the TST method is expected to result in a large increase in the percentage of false positives and subsequent false violations.** This will lead to the expenditure of resources by both the discharger, and the SWRCB and Regional Boards' staff to respond to and to address the large number of false indications of toxicity. Under the Draft Policy, exceedances of the numeric objectives placed into NPDES permits would be considered a violation, and thus would trigger further requirements such as accelerated monitoring and a Toxic Reduction Evaluation (TRE), as well as potential Mandatory Minimum Penalties (MMPs). With the current economic situation in California, implementation of these additional measures is not a good use of resources and diverts enforcement and other staff resources away from real water quality issues and actual violations. This essentially places dischargers in the indefensible position of resolving non-existent problems.

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- **Expanding WET testing to storm water discharges is not valid.** The Draft Policy expands WET testing to storm water dischargers although this approach is not supported by studies or applicable data. This would likely result in increased enforcement actions, appeals, and significant costs for dischargers, storm water agencies, and the SWRCB and Regional Boards. This Draft Policy should not be applied to storm water nor should it be utilized to determine reasonable potential or to establish effluent limits for these types of discharges.
- **The Draft Policy does not provide site specific consideration for California waterbodies.** The natural ionic chemistry of California receiving waters and local groundwater supplies may interfere with the normal growth and reproduction of test organisms. This in turn could lead to false indications of toxicity, particularly chronic toxicity. According to EPA guidance, small changes in the ionic balance may interfere with the conduct and interpretation of effluent toxicity tests using standard indicator organisms.

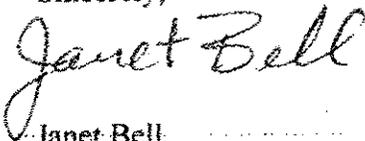
Recommendation

Metropolitan recommends that the Board **not** adopt the numeric objectives or use of the TST method in the Draft Policy to derive numeric effluent limitations. SWRCB staff should continue to utilize existing methods and data which support continued use of narrative objectives with accelerated monitoring and TRE triggers to address effluent toxicity. These existing methods have been implemented in California for many years, are consistent with current direction from EPA and are supported by recognized national and regional experts.

Should the Board determine that a new toxicity test method is needed, additional time is essential to provide for both peer and public reviews through a formal rulemaking process. Metropolitan looks forward to working with the Board and staff as the Draft Policy and alternatives are further examined and reviewed.

Please contact me at (213) 217-5516 with any questions or comments.

Sincerely,



Janet Bell

Environmental Health and Safety Program Manager

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