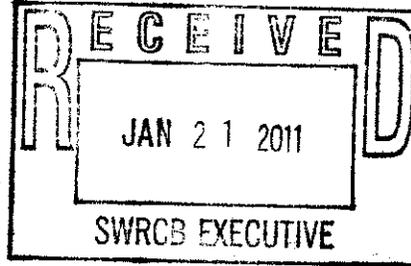




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Public Works & Community
Development Department

January 18, 2011



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

SUBJECT: DRAFT POLICY FOR TOXICITY ASSESSMENT AND CONTROL

Dear Ms. Townsend:

The City of Benicia appreciates the opportunity to comment on the Draft Policy for Toxicity Assessment and Control. The City of Benicia Wastewater Treatment Plant serves a population of approximately 28,000 and treats primarily domestic sewage. The treatment plant won the CWEA Redwood Empire Section Plant of the Year award for plants under 5 MGD in 2005.

Our agency is very concerned about the State Water Quality Control Board's Draft Policy for Toxicity Assessment and Control. This draft Policy, if adopted in its current form, will have significant impacts on our agency. For example, we understand that the Policy will result in required monthly acute and chronic toxicity testing, which will cost an additional \$108,000 over a 5-year permit term for our agency, even though we have had excellent compliance with acute and chronic toxicity for the last 10 years.

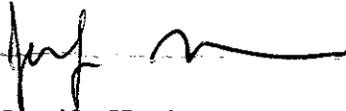
Additionally, we understand that there will be an increased false positive error rate in the new compliance determination approach, which would trigger yet additional costly sampling for each trigger. This additional testing is not necessary or appropriate for an agency such as ours that has had a good record of toxicity testing compliance.

Under this proposed Policy, exceedances of acute and chronic toxicity limits are Clean Water Act violations subject to State penalties of up to \$10,000 per day or \$10.00 per gallon, and federal penalties of up to \$37,500 per day per violation. In addition, our agency would be subject to third party lawsuit and attorney fee liability, particularly if regulators decide to take no enforcement actions. And, costs associated with conducting Toxicity Reduction Evaluations (TREs) can be high and long lasting, not to mention unnecessary treatment upgrades in response to false positive toxicity exceedances. Our agency is very concerned that the costs associated with coming into compliance in instances of actual or apparent toxicity were not considered by your staff because these costs were determined to be "too speculative." We are very concerned that the California Water Code section 13241 and economic analysis are inadequate.

The City of Benicia hopes that the State Water Resources Control Board will take these comments under serious consideration. We further request that the Water Board allow an additional 60 days for the comment period and direct staff to allow stakeholders to develop an alternative policy, and that an additional workshop on a draft Policy be held in 2011. Thank you for your consideration of our comments.

If you have any questions or comments, you can call me at (707) 746-4781 or e-mail me at jharrington@ci.benicia.ca.us.

Sincerely,



Jennifer Harrington
Laboratory Analyst

JH:ch

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cc: Chris Tomasik, Asst. Director of Public Works