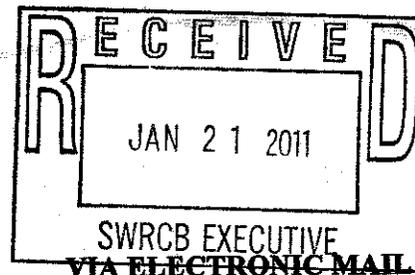




Vision for the Future
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January 21, 2011

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

c/o Jeanine Townsend, Clerk to the Board
commentletters@waterboards.ca.gov

SUBJECT: Comment Letter on the Draft Policy for Toxicity Assessment and Control

Dear Chairman Hoppin and Members:

The Association of California Water Agencies (ACWA) appreciates the opportunity to provide comments on the State Water Resources Control Board's (SWRCB) Draft Policy for Whole Effluent Toxicity Assessment and Control (Draft Policy). ACWA represents approximately 450 public water agencies throughout the state. Our members provide approximately 90 percent of the water used for residential, commercial and agricultural purposes in California. ACWA's member public water utilities provide potable water treatment, wastewater treatment and water recycling, and agricultural water supply services statewide. Our member agencies also manage local and regional surface and groundwater supplies, and depend on extensive water transfer across the state using a complex water supply system upon which the economy of California depends.

ACWA believes the use of toxicity testing can be a useful water quality evaluation tool to help identify chemical constituents that may be causing or contributing to toxicity to aquatic organisms. We appreciate the SWRCB effort to develop a policy that will standardize how toxicity testing is conducted, bring more statewide consistency and clarity to the process. We believe that any responsibility imposed on a permit holder to conduct toxicity testing as a condition of the permit should be limited to those constituents that the permit holder is responsible for under the permit, and not for evaluating the overall health of the waterbody, in terms of all possible chemical constituents that may be present. For example, a permit to apply aquatic pesticides should obligate the permit holder only to monitor for the pesticides the permit holder is authorized to apply. Overall monitoring and determination of the "health" of a waterbody, in terms of all potential chemical constituents, is a responsibility that we believe rests with the waterboards.

Charles R. Hoppin, Chairman and Members
Comment Letter on the Draft Policy for Toxicity Assessment and Control
Page 2

However, ACWA does not support the Draft Policy for Toxicity Assessment and Control as currently proposed. We are concerned that the Draft Policy will result in unwarranted toxicity determinations and unfounded toxicity listings of water bodies statewide, adding further regulatory constraints to a water supply and management system that is already strained to the breaking point. Adopting the Draft Policy in its current form, which we believe will lead to many unintended consequences, is neither necessary nor strategic at this time.

Instead, we support redrafting the Draft Policy to emphasize the use of toxicity testing as an *investigative tool* to identify and control specific chemicals or discharges that are the source of the toxicity. Compliance with the toxicity objectives should be based upon the permit holder's adherence to strict monitoring, accelerated testing, and toxicity reduction evaluation (TRE) plan requirements that are specifically designed to effectively identify and control the cause of toxicity. Numeric limits should be applied as appropriate to specific constituents causing toxicity, rather than to a "toxicity hit" based on a statistical evaluation of the effects of sample on the test species, as proposed in the Draft Policy. Additionally, the proposed TST statistical method for evaluating toxicity needs to be subjected to scientific peer review to determine if it not only reduces the instances of "false negative" results over current methods, but also does not increase the instances of "false positive" results. The regulatory sanctions that are associated with widespread false positive "toxic hits" are too serious to allow the use of a statistical methodology that is not uniformly reliable.

The Draft Policy was developed by its proponents in absence of effective stakeholder collaboration. ACWA recommends that the SWRCB convene an inclusive and transparent stakeholder process similar to the one that resulted in the successful Recycled Water Policy to continue work on the Draft Toxicity Policy. ACWA stands ready to participate in such a process, which we believe can lead to a more widely accepted and credible result.

If you have any questions regarding this letter please feel free to contact David Bolland by e-mail at daveb@acwa.com or by phone at (916) 441-4545.

Sincerely,



Mark S. Rentz
Director of Regulatory Affairs