

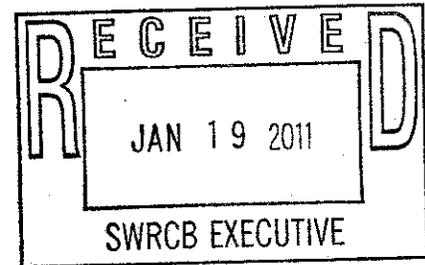


City of Santa Rosa

Public Comment (11/16/10 Wrkshp)
Policy for Toxicity Assessmnt
Deadline: 1/21/11 by 12 noon

January 19, 2011

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



COMMENT LETTER – POLICY FOR TOXICITY ASSESSMENT AND CONTROL

The purpose of this letter is to summarize the concerns of the City of Santa Rosa (hereafter “Santa Rosa”) with regard to the State Water Resources Control Board’s (hereafter “State Water Board”) proposed Policy for Toxicity Assessment and Control (hereafter “proposed Policy”). Santa Rosa owns and operates both a publicly owned treatment works that collects, treats, and recycles or discharges wastewater and a municipal separate storm sewer system (“MS4”).

The California Association of Sanitation Agencies (CASA) and the California Stormwater Quality Association (CASQA) have done a thorough evaluation of the proposed Policy. Santa Rosa concurs with the comments concurrently submitted by those associations and incorporates them by reference.

Of particular concern to Santa Rosa are the following:

1. Under the proposed Policy, the Water Boards will have the discretion to impose numeric chronic toxicity limits for all MS4 dischargers. In addition, Phase I and Phase II MS4 dischargers and individual industrial storm water dischargers with existing toxicity monitoring requirements are not eligible to receive a compliance schedule.
2. The proposed Policy will result in an excessive rate of false determination of toxicity, leading to costly investigations that may yield little, if any, beneficial information. Given the current fiscal constraints of public agencies, resources should be focused on identifying and/or ameliorating actual threats to water quality.

With respect to numeric effluent limitations for stormwater discharges, Santa Rosa objects to including such limits because identifying a source for any reported toxicity and implementing appropriate control strategies in response thereto will be exceptionally difficult, if not impossible, due to the inherent variable nature of the quality of municipal stormwater runoff. As

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a result, municipal stormwater dischargers will be placed in the untenable situation of being in violation of a limitation that cannot be addressed or cured. Given the significant exposure to administrative and judicial penalties and enforcement, as well as third party lawsuits, for repeated non-compliance with NPDES permit provisions, Santa Rosa requests that toxicity be addressed via an iterative process that can accommodate the unique aspects of municipal stormwater discharges. Should the State Water Board persist with the proposed Policy, Santa Rosa requests that compliance schedules be more widely authorized to provide relief while a municipality investigates and attempts to ameliorate reported toxicity.

Further, under the proposed Policy, permittees, including Santa Rosa, may incur violations, be exposed to additional administrative and third party enforcement, and be forced to expend significant resources investigating the source of, and attempting to "solve," reported toxicity that may simply be an artifact of the proposed testing method and the variability inherent in the testing of biological organisms.

As discussed by CASA in its comment letter, the Test of Significant Toxicity methodology imposed by the proposed Policy produces an excessive rate of false determination of toxicity, of approximately 15% or more. Santa Rosa offers its experience with toxicity requirements in the City's existing NPDES permit for wastewater collection, treatment, and recycling or discharge to illustrate important consequences of excessive rates of false determination of toxicity that may result from the proposed Policy.

In February 2008, chronic WET tests performed on Santa Rosa's Title 22 tertiary treated recycled water, stored in ponds before being recycled or discharged, indicated toxicity to *Selanastrum* and *Ceriodaphnia* despite no previous indications of toxicity. Accelerated monitoring indicated toxicity to *Ceriodaphnia* in one of four tests, but none for *Selanastrum*. Because of the inconsistency of the toxicity, Santa Rosa has conducted 17 further toxicity tests on the same body of ponded water with no consistent toxicity by test species or sample location. In addition, replicate samples sent to different commercial laboratories yielded inconsistent results. Santa Rosa intends to continue efforts to identify the source of any toxicity by conducting TIEs, however because of the relatively low level of toxicity (TUC's generally less than 2) and the sporadic nature of the toxicity, the likelihood of actually identifying the source of toxicity is very small.

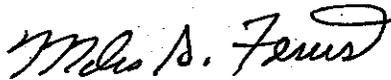
Santa Rosa recycles 95 to 100 percent of its treated water and discharges to surface waters only 10-20 days a year. Thus, an increased rate of false determination of toxicity using the method prescribed in the proposed Policy, will result in Santa Rosa having to expend even more limited municipal resources on extensive TIEs and TREs that yield no useful information, and that may

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not result in any changes to Santa Rosa's treatment and control systems. Knowingly introducing additional false determinations of toxicity will only subject Santa Rosa to further administrative and civil enforcement, which could result in costly penalties, and third party lawsuit and attorney fee liability, without providing for any actual benefit to the environment. For these reasons, Santa Rosa supports the recommendations by CASA and other associations to use a different statistical method and to instead impose a narrative toxicity requirement with specified triggers to require additional investigatory and remedial actions.

Thank you for your consideration of Santa Rosa's comments. If you have any questions or need additional information, please contact Mr. Lynn M. Small, Deputy Director Environmental Services, of my staff at telephone number (707) 543-3350.

Sincerely,



Miles A. Ferris
Director of Utilities