

# California Council for Environmental and Economic Balance

100 Spear Street, Suite 805, San Francisco, CA 94105 • (415) 512-7890 • FAX (415) 512-7897

Walter McGuire  
CHAIRMAN  
Jose Mejia  
VICE-CHAIRMAN  
Gerald D. Secundy  
PRESIDENT  
William J. Quinn  
CHIEF OPERATING OFFICER  
Steve Gross  
TREASURER  
Randy Fischback  
SECRETARY

## BOARD OF DIRECTORS

Bob Antonopolis  
Joseph Avila  
William T. Bagley  
Robert Balgenorth  
Michael Barr  
Jack Bean  
Mike Beasley  
Joseph C. Bellas  
Russ Burns  
Steve Burns  
Ken Casarez  
John Chillemi  
Michele Corash  
Tim Cremins  
Hal Dash  
Bill Devine  
Cesar Diaz  
Greg Feere  
Randy Fischback  
Steve Gross  
Michael Hertel  
Fred John  
James (J.P.) Jones  
Kenneth L. Khachigian  
John T. Knox  
Kirk Markwald  
Nancy McFadden  
Walter McGuire  
Sunne McPeak  
Jose Mejia  
Richard Morrison  
Cressey Nakagawa  
Joe Nufiez  
George Plantka  
Mark Posson  
Art Pulaski  
Mike Roos  
Lanny Schmid  
Gerald D. Secundy  
Dan Skopec  
Don Solem  
Katherine Strehl  
Steve Toth  
Minnie Tsunezum  
Victor Weissner

## CONSULTANTS

Kendra Daljogo  
THE GUALCO GROUP, INC.  
Jackson R. Gualco  
THE GUALCO GROUP, INC.  
Robert W. Lucas  
LUCAS ADVOCATES

Gov. Edmund G. "Pat" Brown  
FOUNDING CHAIRMAN 1973

[www.cceeb.org](http://www.cceeb.org)

January 21, 2011

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

Via email: [commentletters@waterboards.ca.gov](mailto:commentletters@waterboards.ca.gov)

RE: Comment Letter – Policy for Toxicity Assessment and Control

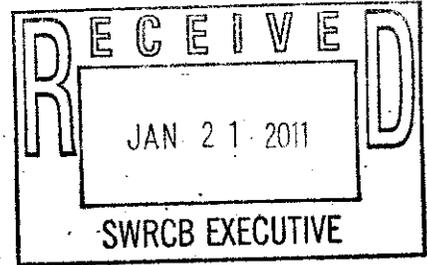
Dear Ms. Townsend:

The California Council for Environmental and Economic Balance (CCEEB) is a non-partisan, non-profit coalition of business, labor, and public leaders that advances strategies for a strong economy and a healthy environment. On behalf of CCEEB, we want to thank the State Water Resources Control Board for this opportunity to comment on the Draft Policy for Toxicity Assessment and Control (Policy).

CCEEB has reviewed the Draft Policy for Toxicity Assessment and Control and has serious concerns about the underlying science and public process relied upon to date. We believe that further study is needed to support this proposed testing and application that would be required by this Policy.

CCEEB does not believe that this proposed Policy is suitably supported by scientific evidence to warrant its consideration at this time. The Policy proposes to reverse the null hypothesis from an assumption that an effluent is presumed to be non-toxic until demonstrated otherwise to an assumption that all discharges are toxic unless demonstrated otherwise. We see no justification for making this change. We believe that it introduces a great uncertainty of fair enforcement because of the high number of false positive results that will lead to enforcement actions.

CCEEB believes that it is incorrect to increase reliance on living organism-testing methods. Because of the differences between organisms, even of the same species, there is an inherent question of how to best interpret results. This proposed Policy's reliance on sub-lethal test standards unnecessarily increases that uncertainty. It also runs counter to using live animals as test subjects. Considering past Board actions, we believe it seems entirely inconsistent for the Board to adopt a Policy that requires imperiling even more live organisms.

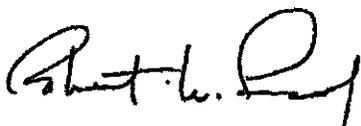


The Policy could lead to numeric limits for storm water events. These storm events typically only last for a few hours. The nature of the runoff varies with time. We are concerned that there won't be time to complete the test. This is a serious practical limitation for the use of this test for storm water. Numeric limits are further undermined for storm water by the natural variability of the response of the different organisms to a storm water environment. This discretion will unintentionally bring stormwater and the small NPDES dischargers into the scope of this Policy. Additionally, the economic analysis conducted for this Policy is inadequate, as it does not appropriately address the costs associated with its application to stormwater discharges (and other discharges) that could become subject to the Policy.

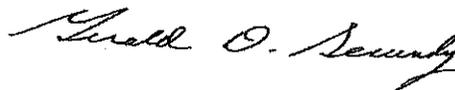
With regard to process issues, we are concerned that the peer review conducted by the US EPA does not meet California's standards. We are also concerned that this is a new test that arises from an EPA guidance that has not been adopted under federal regulatory standards.

The concerns raised in this letter are a summary of some of the major issues that have been discussed by our members. CCEEB will work with the Board and staff as you further consider a Draft Policy. However, we believe that more consideration must be given to dealing with the underlying scientific uncertainties before a final Policy is considered.

Sincerely,



Robert W. Lucas  
Waste & Water Quality Project Manager



Gerald D. Secundy  
President

cc: Linda Adams, Secretary, California Environmental Protection Agency  
Cindy Tuck, Undersecretary, California Environmental Protection Agency  
Jackson Gualco, The Gualco Group, Inc.