

January 19, 2011

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

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

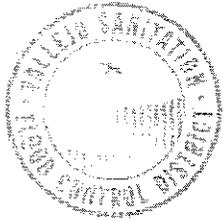
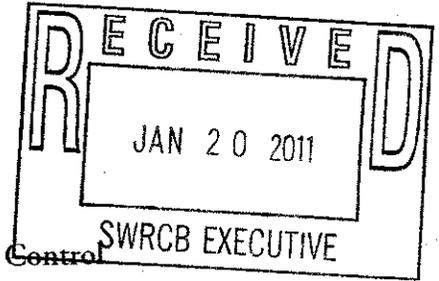
Dear Ms. Townsend:

Vallejo Sanitation & Flood Control District (District) appreciates the opportunity to comment on the Draft Policy for Toxicity Assessment and Control. The District's boundary covers 28 square miles, providing wastewater and flood control services for approximately 116,000 people within the City of Vallejo and parts of Solano County. The District has been recognized for operational excellence at the local, state and national level, and is an active participant in the Vallejo Watershed Alliance, a partnership of public agencies and interested individuals working together to improve the greater Vallejo watershed

The District 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 the District. For example, we understand that the Policy will result in required monthly chronic toxicity testing, which will cost an additional \$164,000 over a 5-year permit term for the District, even though we have had excellent compliance with chronic toxicity over the last 10 years. The current cost of performing chronic toxicity testing is \$82,000 over a 5 year permit term.

The District performed the Test of Significant Toxicity (TST) calculation using the past three years of chronic toxicity data and determined accelerated monitoring would have been triggered twice during this period. The accelerated monitoring would have cost the District an additional \$50,000. This additional costly 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, the District would be subject to third party lawsuit and attorney fee liability, particularly if regulators decide to take no enforcement actions. 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. The District 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.



VALLEJO SANITATION &  
FLOOD CONTROL DISTRICT  
450 Ryder Street  
Vallejo, California 94590  
phone 707-644-8949  
[www.VSFCD.com](http://www.VSFCD.com)

*Protecting public health  
and the San Francisco Bay  
since 1952.*

BOARD OF TRUSTEES

Osby Davis  
Stephanie Gomes  
Hermie Sunga  
Michael Wilson  
Joanne Schivley  
Erin Hannigan  
Marti Brown  
Barbara Kondylis

DISTRICT MANAGER

Ronald J. Matheson

This new policy and associated analytical tools have not been promulgated or established through a formal rule-making and therefore constitute underground rulemaking, because the analytical procedures were adopted from a recent USEPA *guidance* document, that was never released for public comment.

Vallejo Sanitation & Flood Control District hopes that the State Water Resources Control Board will take these comments under serious consideration. We further request that the Water Board direct staff to allow stakeholders to develop an alternative policy, and that an additional workshop on a draft Policy be held. Thank you for your consideration of our comments.

Sincerely,



RONALD J. MATHESON  
District Manager

GS

cc: Environmental Services