



CITY OF PETALUMA

POST OFFICE BOX 61
PETALUMA, CA 94953-0061

David Glass
Mayor

Chris Albertson
Teresa Barrett
Mike Harris
Mike Healy
Gabe Kearney
Tiffany Renée
Councilmembers

August 21, 2012

Via email: 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:

The City of Petaluma appreciates the opportunity to comment on the State Water Resource Control Board's (State Water Board) Draft Policy for Toxicity Assessment and Control (Policy). The City of Petaluma provides treatment of domestic, commercial and industrial wastewater generated in the City of Petaluma and in the unincorporated community of Penngrove. The City has invested in the Ellis Creek Water Recycling Facility (ECWRF) which began treating wastewater on January 6, 2009. The ECWRF is capable of treating 6.7 MGD during average dry weather conditions and up to 36 MGD during peak wet weather flow conditions. The treated effluent from the ECWRF is discharged to the Petaluma River during the winter months (October 21 through April 30) and reused for agricultural irrigation during the summer months (May 1 through October 20).

Our agency appreciates the State Water Board's goal of state-wide consistency in toxicity monitoring and enforcement, as well as the efforts that have already gone into this Policy. However, this Policy, if adopted in its current form, will have significant impacts on our agency. We support the letter submitted by the Bay Area Clean Water Agencies, which comments on region-wide impacts of the Policy.

We understand that the Policy will result in required monthly chronic toxicity testing, which will increase our frequency from quarterly. Even if the unit costs of sampling were to decrease, as predicted by the Staff report, this change will result in increased laboratory costs and a significant increase in effort by City staff to meet monthly sampling and reporting requirements. The increase in costs is based on an assumption of additional monthly monitoring 3 times per 5-year permit cycle due to the minimal false determination of toxicity rate of 5%, which is built into the TST method.

Public Works & Utilities

City Engineers
11 English Street
Petaluma, CA 94952
Phone (707) 778-4474
Fax (707) 778-3602
E-Mail: publicworks@ci.petaluma.ca.us

Parts & Building
Maintenance
840 Hopper St. Ext.
Petaluma, CA 94952
Phone (707) 778-4303
Fax (707) 778-4437

Transportation Services
555 N. McDowell Blvd.
Petaluma, CA 94954
Phone (707) 778-4421
Fax (707) 778-3799

Utilities & Field Operations
202 N. McDowell Blvd.
Petaluma, CA 94954
Phone (707) 778-4346
Fax (707) 778-4308
E-Mail:
utilities@ci.petaluma.ca.us

While the Policy only requires testing at a single concentration, performing additional test replications can help us avoid false determinations of toxicity. If our agency determines that additional replicates are needed to avoid falsely determined violations, then the routine monitoring will cost our agency an additional \$63,700 in laboratory costs over a 5-year permit cycle. Costs for a reference toxicant tests to assure data quality are not included in the Staff Report, and are in addition to this amount.

Savings resulting from termination of acute toxicity testing requirements are not assured by this proposed policy. The Economic Impacts analysis in Appendix H of the Staff report bases a large part of the estimated cost saving on the assumption that acute toxicity will no longer be required. However, since this is ultimately left to the discretion of the Regional Boards, we have to assume that Region 2 could continue to require acute testing. Furthermore, we have already invested significant resources into developing acute toxicity testing capability in-house, so even if the acute toxicity testing is not required, we will not realize the savings described in the Staff report.

We are also concerned that the Policy does not differentiate real, persistent toxicity from episodic low-level toxic events and the false determinations of toxicity that are built in to the TST method. Costs associated with conducting Toxicity Reduction Evaluations (TREs) and Toxicity Identification Evaluations (TIEs) can be high and long lasting, as can be the cost associated with unnecessary treatment upgrades in response to false determinations of toxicity.

The cost of increased violations were not considered in the Economic Impacts Analysis in the Staff Report. A major difference between this Policy and how toxicity is currently managed is that exceedences 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. The Policy does not dictate over what time period these penalties are assessed. For example, in a worst-case scenario, the penalty could be assessed over the time period of accelerated monitoring and TRE/TIE investigations, which is 6 months under the Policy. In addition, our agency would still be subject to third party lawsuit and attorney fee liability, particularly if regulators decide to take no enforcement actions.

The City of Petaluma hopes that the State Water Resources Control Board will consider these comments. The additional costs due to the Policy will be burdensome for our agency. Even in the absence of these cost increases, we are concerned about the potential increase of violations that are corollary to this Policy. Thank you for your consideration of our comments.

Sincerely,



Lena Cox
Environmental Services Supervisor