



Central Contra Costa Sanitary District

Protecting public health and the environment

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Charles R. Hoppin, Chairman and Members
State Water Resources Control Board
c/o Jeanine Townsend
Clerk to the Board
1001 I Street, Sacramento, CA 95814

Via email: commentletters@waterboards.ca.gov

COMMENT LETTER – POLICY FOR TOXICITY ASSESSMENT AND CONTROL

Dear Ms. Townsend:

Central Contra Costa Sanitary District (District) appreciates the opportunity to comment on the Draft Policy for Toxicity Assessment and Control (Policy). The District provides wastewater collection and secondary wastewater treatment for approximately 461,000 people in central Contra Costa County. The District's wastewater treatment facility located in Martinez has a permitted average dry weather flow capacity of 53.8 million gallons per day. Sewage sludge (currently 41 dry tons/day) generated as part of the treatment process is 100% recycled. The District's delivers millions of gallons of high quality recycled water to customers each year and works to expand participation with this very important program. The District has been recognized many times for our excellence in the cost effective collection and treatment of wastewater. The District received the Platinum-14 from the National Association of Clean Water Agencies for operating over 14 years without a violation of our National Pollutant Discharge Elimination System (NPDES) permit.

The District acknowledges the significant effort that State Water Resources Control Board (State Board) staff has invested in this Policy. The primary objectives of the Policy are to improve regulatory consistency and establish a uniform approach to toxicity monitoring, analysis and remediation measures throughout the state. The District supports the pursuit of these primary objectives to implement an effective toxicity assessment and control program. The draft Policy distributed in June 2012 represents significant improvement over the draft that had been distributed in 2011 for public review and comment. However, the current Policy contains elements that could yield significant adverse unintended consequences or direct limited public resources to respond to toxicity monitoring results that do not actually represent a potential impairment to the waters of the state. With modifications, these potential negative outcomes can be avoided while ensuring the Policy's primary objectives are achieved.

Numeric Action Levels

The District recommends the following amendment to the Policy: Modify the current thresholds of violations of Maximum Daily Effluent Limit (MDEL) and Minimum Median Effluent Limit (MMEL) to be Numeric Action Levels that require dischargers to complete initial review of operations in response to an exceedance and repeat toxicity sampling (daily sampling within 20 days of original MDEL exceedance and three samples within the month following the MMEL exceedance). Violations occur if the MDEL and MMEL are exceeded again during a repeat toxicity sampling event and appropriate accelerated monitoring is initiated.

Section III.A.7 identifies that exceedance of the Maximum Daily Effluent Limit (MDEL) or Medium Monthly Effluent Limit (MMEL) is a violation. Due to the inherent variability of the toxicity testing methods, violations should not be assessed in response to one exceedance of the thresholds proposed in the Policy. The District recommends inserting Numeric Action Levels into the Policy to require dischargers to respond to exceedances of MDEL and MMEL thresholds in a specified manner. If the toxicity event is confirmed with additional test result(s), then a violation of the MDEL and MMEL are recorded and the discharger continues with accelerated monitoring and implementation of Toxicity Reduction Evaluation (TRE) if needed.

Use of In-stream Waste Concentration (IWC) Integral to the TST Approach

The District recommends the following amendment to the Policy: Remove the second sentence of the definition of IWC from the Policy so that it reads: "In-Stream Waste Concentration (IWC) is the concentration of a toxicant or effluent in the receiving water after mixing (the inverse of the dilution factor)."

The revised Policy defines In-stream Waste Concentration (IWC) as follows: "In-Stream Waste Concentration (IWC) is the concentration of a toxicant or effluent in the receiving water after mixing (the inverse of the dilution factor). A discharge of 100 percent effluent will be considered the IWC whenever mixing zones or dilution credits are not authorized by the applicable Water Board." The second sentence artificially defines an IWC to be 100 percent effluent when the true IWC is lower, significantly lower in many cases. Under this situation, the Test of Significant Toxicity (TST) analysis will always overstate the true measurement of toxicity for that effluent in the receiving water. The District recognizes the State Implementation Policy provides discretion to Regional Boards to implement mixing zone/dilution policies in the Basin Plans and we continue to work with Region 2 staff on the use of appropriate IWC to implement this Policy.

Use of a true IWC when using the TST to evaluate toxicity test results is needed to ensure the validity of using the TST for regulatory decision-making. All documents referencing use of the TST to evaluate toxicity test data, including the Revised Draft Policy itself, staff report, and the Peer Review of the Policy, agree on this point. The USEPA guidance document that establishes the standards for using the TST in NPDES permit programs requires the IWC to be a true concentration of effluent in the receiving water after mixing.

Assumption of Reasonable Potential for Major Dischargers

The District recommends the following amendment to the Policy: Remove the second paragraph of section III.A.1 from the Policy so that all dischargers follow the RPA process during permit issuance and reissuance.

The Policy should not assume that all major Publicly Owned Treatment Works (POTW) dischargers have reasonable potential (RP) for chronic toxicity. It is accurate that if the proposed thresholds for RP in the Policy are retained, most major POTW dischargers will likely demonstrate RP for toxicity but it is not certain that all would. The assumption that all POTWs have a RP for toxicity is inconsistent with the Policy's RP Analysis Procedure, SWRCB State Implementation Policy, and US EPA Technical Support Document. The Policy sets precedence on implementing the RP process that should be avoided.

Violations During TRE Implementation

The District recommends the following amendment to the Policy: Remove the second element to the criteria to suspend assessment of violations for exceedances during accelerated monitoring and TRE implementation so that section III.A.7 reads: "...Any exceedances occurring during a required accelerated monitoring period and, if appropriate, a TRE period shall not constitute additional violations provided that the discharger proceeds with the accelerated monitoring and TRE (if required) in a timely manner. The applicable Water Board has the discretion to impose additional violations and initiate an enforcement action for toxicity test results in a "fail" after completion of the TRE. Additionally, a discharger's failure..."

Section III.A.7 suspends assessing violations for exceedances during accelerated monitoring periods and TRE implementation with the condition that the TRE be completed within 6 months after the initial violation. The suspension of violations during these periods is a positive change to the Policy but the limit to six months of TRE implementation is not appropriate. POTW dischargers have a significant exposure to failing a chronic toxicity test as a result of licensed pesticides being discharged to the sanitary sewer even in very low concentrations. The District has experience trying to regulate the use of licensed pesticides and options for POTW dischargers are very limited; essentially public education campaigns and pursuing product bans through the pesticide licensing agencies. These efforts require many years to complete and have limitations on success.

Appendix D Figure 2 Compliance Determination for Wastewater Dischargers Decision Tree

The Decision Tree in Appendix D Figure 2 needs to be modified under the Fail greater than/equal to MDEL branch. The flow from the Verification Test diamond currently reads Fail (any % effect). This threshold needs to read "Fail greater than/equal to 25% chronic effect or 20% acute effect".

This Decision Tree needs further modifications to describe the procedures followed under the Numeric Action Level model identified above.

Unintended Consequences of Branding POTW Effluent as “Toxic”

The District recommends the Policy be designed to minimize the effect of unintended consequences resulting from falsely labeling POTW dischargers’ effluent as “toxic”. Ensuring use of a true IWC and adopting other modifications (e.g. use Numeric Action Levels) will result in a Policy that can minimize the potential for unintended adverse consequences from occurring.

The District strives to properly treat the wastewater collected in our service area and return it as clean water to the environment. An important program for the District is the delivery of highly treated recycled water for specified uses by customers (e.g. landscaper irrigation). If the Policy is implemented in a manner that designates the District’s effluent as “toxic” when it actually does not have toxic effects within the receiving water, then programs such as recycled water could be significantly curtailed because customers will not want the “toxic” water being delivered to lawn areas that their families are using.

In summary, the District is committed to meeting its mission to meet and/or exceed standards that are set to protect water quality and the environment. We support the State Board’s efforts to establish an appropriate Policy for Toxicity Assessment and Control. The current Policy, if not modified, could have significant unintended adverse consequences and will likely require significant expenditure of District funds to respond to toxicity test results that do not accurately represent toxicity and would not have a positive effect on receiving water quality.

Thank you again for the opportunity to comment on the proposed Policy. Please do not hesitate to contact me at (925) 229-7302, or Tim Potter at (925) 229-7380, with any questions.

Sincerely,



Ann E. Farrell
General Manager

cc: Bruce Wolfe, Executive Officer, SF Bay RWQCB
Kent Alm, District Counsel,
Tim Potter, Environmental Compliance Superintendent
Mary Lou Esparza, Lab Superintendent

