EASTERN MUNICIPAL WATER DISTRICT
SINCE 1950

August 20, 2012

Via E-mail

Jeanine Townsend, Clerk to the Board
State Water Resources Control Board
1001 I Street, 24th Floor
Sacramento, CA 95814
(commentletters@waterboards.ca.gov)

Dear Ms. Townsend:

SUBJECT: Comment Letter – Policy for Toxicity Assessment and Control

Eastern Municipal Water District (EMWD) appreciates the opportunity to provide comments on the State Water Resources Control Board proposed Policy for Toxicity Assessment and Control (Policy). As an NPDES seasonal discharger, EMWD is committed to providing effective treatment to its effluent that is discharged to surface waters for the protection of beneficial uses.

EMWD currently provides potable water and water reclamation services to over 755,000 people in a service area of 542 square miles. Two (2) water filtration plants and one (1) desalinization facility, in addition to MWD connections and local wells, provide potable water to the customers the District serves. Additionally, four (4) water reclamation facilities provide wastewater services to a portion of western Riverside County which include a number of cities. These four water reclamation facilities produce about 45 million gallons per day of tertiary treated recycled water that is distributed and utilized for agricultural, irrigation, landscape, industrial and environmental uses. Although EMWD has the ability to store more than 2 billion gallons of recycled water, during the winter/wet season, when recycled water demand is low and recycled water storage ponds are at capacity, EMWD must discharge its recycled water to surface waters.

EMWD supports the unified comments and concerns submitted by the following clean water associations (herein collectively referred to as "CWA"): Southern California Alliances of POTWs (SCAP), California Association of Sanitation Agencies (CASA), Tri-TAC, Bay Area Clean Water Agencies (BACWA), Central

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Valley Clean Water Association (CVCWA) and the Regional Council of Rural Counties (RCRC). As the above association's comment letter is very thorough and detailed, EMWD will only emphasize on a few points of concern from the perspective of a "*non-continuous discharger*" as defined in the proposed Policy who currently has toxicity monitoring requirements in its Region 9 issued NPDES permit.

Monitoring frequency for non-continuous dischargers is inconsistent with sampling requirements

Part III(A)(4)(a) of the proposed Policy states that chronic toxicity testing for dischargers who discharge at a rate greater than or equal to one-million gallons per day, shall occur every calendar month in which a discharge lasting more than two days occurs. As mentioned in the CWA comment letter and EMWD's practice when sampling for chronic toxicity per EPA's WET method manual[1], chronic toxicity testing requires three samples being collected at a minimum of over a five day period. While EMWD is a wet season discharger, in the past there have been times when maintenance/shutdown of facilities or pipelines necessitated discharge of recycled water to surface waters for less than five days. EMWD has always been granted the exception of conducting chronic toxicity testing during these events by the Regional Board due to the need for there to be more than 5 days to collect such samples. Thus, EMWD concurs with the CWA's suggestion to revise the proposed Policy to state that chronic toxicity testing shall occur with a discharge lasting more than six days.

Clarity in what constitutes a violation of MDEL and MMEL for non-continuous dischargers

First, EMWD is not in support of numeric effluent limits for toxicity and recommend that the maximum daily effluent limitation be deleted, as no single chronic toxicity test should result in a violation that could result in mandatory minimum penalties (MMPs) or lawsuits from third parties. EMWD is in support of the CWA's stance that use of a narrative objective with numeric accelerated testing and TRE triggers will be fully protective. However, with the proposed Policy as drafted, EMWD is highly concerned regarding what constitutes a violation for a non-continuous discharger if a toxicity test "fails" under the Test of Significant Toxicity (TST). Part III(A)(7) of the proposed Policy states that, "*Additionally, a discharger's failure to initiate an accelerated monitoring schedule or conduct a TRE, as required by an NPDES wastewater permit or point source WDR, will result in all exceedences being considered violations of the MDEL or MMEL and may result in the initiation of an enforcement action.*" What happens if a non-continuous discharger, upon receipt of a "failed" toxicity test under the TST stops its discharge before either the verification or first or second accelerated monitoring sample can take place? Is the discharger in violation because they did not conduct an accelerated monitoring schedule due to them ceasing discharge? What if the non-continuous discharger does not discharge again until 6 plus months later, does the discharger still need to continue in an accelerated monitoring schedule?

[1] "Short-term Methods for Estimating the Chronic Toxicity of Effluents and Receiving Waters to Freshwater Organisms", Fourth Edition, EPA-821-R-02-013.

EMWD has a very complicated operation strategy when it comes to discharging recycled water to surface water and it's a delicate balance between weather conditions, supply, demand and storage capacity every year. One would find months where discharge is started and stopped a few times in one calendar month, or years, like 2012, where to-date, EMWD only needed to discharge for a total of 15 days during the month of February, and depending upon weather conditions, may not discharge again (excluding short discharge events due to maintenance related activities) until next year. The questions asked in the preceding paragraph are real questions to real situations, and while EMWD acknowledges that it will be difficult for the State Board to address every unique situation in its policies, we recommend that the State Board consider adding clarification to the policy regarding accelerated monitoring and violation determinations for non-continuous dischargers. This could include the exception that ceasing discharge could constitute compliance if a discharger were to fail a toxicity test and the allowance of the Regional Board's to decide whether or not accelerated monitoring is appropriate when discharge resumes.

TST Method is not a promulgated method in 40 CFR Part 136 and has an unacceptable false positive error rate

In EMWD's NPDES permit, as is in the permit of all NPDES permit holders, all sampling and laboratory analyses must be done according to test procedures *approved* under 40 CFR Part 136. As the clean water associations comment letter details, the TST is not listed as an approved method for toxicity within 40 CFR Part 136, has not gone through Alternate Test Procedures (ATP) as required by 40 CFR Part 136.5 and whose peer review of the guidance document and State Board proposed Policy, is highly questionable in respect to if it was conducted in accordance with peer review requirements under the California Health and Safety Code section 57004. Additionally, the false positive error rate for the TST is unacceptably high, especially for *Ceriodaphnia dubia* and fathead minnow[2], which are the test organisms utilized by inland dischargers in Region 8, Santa Ana River Basin.

Due to EMWD's uncertainty and lack of confidence in the TST method we would find it difficult to have our legally responsible officials sign self-monitoring reports certifying the validity and accuracy of toxicity test results utilizing the TST method.

Thank you for the opportunity to comment. If you have any questions, please feel free to contact Alfred Javier at (951) 928-3777 extension 6327 or at javiera@emwd.org.

Sincerely,

Jayne Joy, P.E.
Director, Environmental and Regulatory Compliance

JJ/LL:tlg

cc: Records Management

[2] Tri-TAC and CASA evaluated non-toxic blank data from the EPA Variability Study and found that 14.8% and 8.3% of the EPA clean water, non-toxic samples tested with *Ceriodaphnia dubia* and fathead minnow, respectively, would have been incorrectly identified as toxic using the TST.