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Via email: commentletters@waterboards.ca.gov

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



Dear Ms. Townsend:

Subject: Draft Policy for Toxicity Assessment and Control

The Coachella Valley Water District (CVWD) appreciates the opportunity to comment on the State Water Resource Control Board's (State Water Board) Draft Policy for Toxicity Assessment and Control (Policy). CVWD provides domestic water, wastewater, recycled water, irrigation/drainage and regional stormwater protection services to a population of about 300,000 throughout the Coachella Valley.

CVWD 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, and would like to share our concerns about the specific burdens that will fall on our agency pertaining to increased costs and increased violations.

Violations based on a single test result. Permit violations impose significant costs on public agencies such as ours: financially, legally, and in public trust. The current draft policy contains a Maximum Daily Effluent Limit (MDEL) that would assess a permit violation as a result of a single test result. Even though the MDEL involves a higher effect level, our agency believes that the use of a single toxicity test result to assess a permit violation is inappropriate.

The result of a single bioassay is not a conclusive demonstration that a sample is toxic, since there are numerous sources of uncertainty in toxicity testing. EPA guidance and approved methods note the variability and occasional anomalous results inherent in biological testing, and the Test of Significant Toxicity (TST) method itself has a built-in allowance for a 5% false positive rate. Analysis of past EPA inter-laboratory data by the TST method indicates that the false positive rate may be even higher for some test species.

Therefore, our agency strongly recommends that the WET Policy, if it must include numeric effluent limits, include average, median, or other percentile limits that require more than one test result to assess a permit violation.

Increased costs of routine testing. We understand that the Policy will result in required monthly chronic toxicity testing, which will increase our frequency from quarterly. This alone will cost an additional \$85,000 in laboratory costs over our 5-year permit cycle. These costs assume 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.

Inconclusive TREs/TIEs. We are concerned that the Policy fails to 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.

CVWD has spent over \$100,000 during the past five years on chronic toxicity testing, TREs/TIEs and related special toxicity investigations.

Despite considerable time and expense, CVWD was not able to conclusively identify the cause(s) of the chronic toxicity observed during this period. In short, CVWD took all available steps to identify the cause(s) and source(s) of the observed chronic toxicity, but no definitive pollutant(s) or source(s) were ever identified. CVWD continues to aggressively implement its source control program that has been in place since the early 1980s and no significant industrial dischargers exist within our sanitary collection system serving resort communities in the Coachella Valley.

Our aggressive monitoring efforts and TRE/TIE source identification activities would not have differed if numeric toxicity effluent limits included in the Policy had been in place. The only difference would have been that we would have been subject to additional penalties for violations over which we had no control.

Increased costs due to violations. 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 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. 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.

Even though we have had excellent compliance with acute and chronic toxicity testing requirements since this testing was first added to CVWD permits, we are concerned that the rate of false determination of toxicity associated with the TST method, combined with a single test result violation approach that fails to account for the known variability using bioassay tests, will lead to violations at CVWD's facility that are not related to actual toxicity.

CVWD hopes that the State Water Resources Control Board will take these comments under serious consideration. The additional costs due to the Policy will be burdensome for our agency. Even in the absence of these cost increases, we are concerned that this new Policy will result in unwarranted violations from inaccurate toxicity results that do not reflect actual water quality impairments and will only act to damage the public's confidence in the sanitation services CVWD provides.

Please contact me if you have any questions.

Yours very truly,



Steve Bigley
Environmental Services Manager

cc: Scott Bruckner Wastewater Permit Manager
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PA:pr/eng/wr/12/aug/Toxicity Policy