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Dedicated to Preserving the Napa River for Generations to Come

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August 21, 2012

**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: Comment Letter - Policy for Toxicity Assessment and Control**

Dear Ms. Townsend:

The Napa Sanitation District (District) welcomes the opportunity to provide comments on the State Water Resources Control Board's (State Water Board) Revised Draft Policy for Toxicity Assessment and Control (Policy) as it applies to NPDES wastewater dischargers. The District owns and operates a 15.4-MGD municipal wastewater treatment plant which collects and treats domestic and commercial wastewater from the City of Napa and nearby unincorporated areas of Napa County.

The District is dedicated to the protection of aquatic life by ensuring that its effluent is free of toxic chemicals in toxic amounts, and has an established history of compliance with chronic toxicity provisions in the State Implementation Policy and Basin Plan as implemented in our NPDES permits.

The District has a number of concerns regarding the Policy as currently proposed, particularly because it will sharply increase the cost of monitoring for toxicity without providing additional ecological benefits to aquatic life. Specifically, the District's concerns are focused on the following issues:

- The Policy increases the likelihood of a false violation and its associated costs. The cost of increased violations were not considered in the Economic Impacts Analysis in the Staff Report. Unlike under existing policy, under the new policy, exceedances of acute and chronic toxicity limits are Clean Water Act violations subject to State and Federal penalties. We are concerned that false determinations of toxicity that are built into the TST method, will lead to one or more violations within the 5-year NPDES permit cycle that are not related to actual toxicity. These anomalous violations, despite additional test events, would leave the District as well as other agencies subject to litigation from third parties.
- Non-continuous discharges must have sufficient time to conduct a toxicity test during a partial-discharge month. A single chronic toxicity test typically requires the collection of three samples over at least a 5-day period. Therefore any minimum discharge periods should be compatible with this typical sampling requirement, including a margin for error and consistent with requirements for

stormwater discharges. The District requests that the last sentence at the bottom of page 8 in Part III.A.4.a. in the Proposed Policy be revised from two days to six days.

- Compliance determination on a calendar month basis will cause logistical problems with our contract laboratory. The Policy states that if a routine initial toxicity test results in a “fail,” but the percent effect is below the MDEL, the discharger shall conduct two additional toxicity tests within the same calendar month in order to determine compliance with the MMEL. To accommodate two additional tests within a calendar month, dischargers will have to perform routine testing during the first week of each calendar month. The District is concerned that the use of a calendar month will result in a flood of sampling at the beginning of each month and overwhelm the few trusted laboratories able to perform the testing. Therefore, the District supports the proposal by the Bay Area Clean Water Association (BACWA) that the language be changed to allow the two additional tests to be conducted within 30 days.
- Use of the Instream Waste Concentration is essential to the revised Policy. The validity of using the Test of Significant Toxicity (TST) for regulatory decision-making is based on its use in conjunction with the Instream Waste Concentration (IWC), which is the inverse of the dilution factor. The District is concerned that calculation of the IWC will not be required, since the Policy states that this is at the discretion of the Regional Water Board. If a dilution credit is denied and the IWC is established at 100 percent effluent as allowed by the Policy, this will overstate the true measurement of toxicity, since in reality some dilution of the District’s effluent always occurs.
- The Policy will increase monitoring costs by a minimum of \$36,000 per permit cycle. The Policy will require monitoring for chronic toxicity at a higher frequency than that required by the District’s current NPDES permit. Even if the District’s effluent is **not** toxic, the presence of false positives in any testing method will result in additional exceedances of toxicity objectives. These exceedances will trigger additional monthly monitoring and accelerated testing, and the Policy requires a larger number samples during accelerated monitoring than the District’s current NPDES permit. Therefore, the Policy will increase costs merely by requiring additional samples to be collected, as shown below in **Table 1**.

**Table 1. Cost Impact to Napa Sanitation District from Proposed WET Policy**

	<i>Current NPDES Permit Requirements</i>	<i>Proposed WET Policy</i>
<b>Routine Monitoring</b>		
Frequency	Quarterly during wet season (2/yr)	Monthly during wet season (6/yr)
Test type	Purple Urchin ( <i>S. purpuratus</i> ), Embryo development	same

Unit cost	\$1,700 <sup>1</sup>	same
# Tests in each permit cycle	10	30
Total cost in each permit cycle for routine monitoring	\$17,000	\$51,000
<b>Additional and Accelerated Monitoring</b>		
# Additional testing triggers in each permit cycle <sup>2</sup>	N/A	1.5
# Tests required per additional testing trigger <sup>3</sup>	N/A	2
# Accelerated testing triggers in each permit cycle <sup>2</sup>	0.5	0.15
# Tests required per accelerated testing trigger (minimum)	2	4
Total cost in each permit cycle for accelerated monitoring <sup>3</sup>	\$1,700	\$3,776
<b>Total of Routine and Accelerated Monitoring</b>		
<b>Total cost in each permit cycle</b>	<b>\$ 18,700</b>	<b>\$ 54,776</b>
Notes:		
1. Unit cost from State Water Resources Control Board Draft Staff Report and Environmental Checklist, Policy for Toxicity Assessment and Control, June 2012, Exhibit 4-4.		
2. Based on a 5% exceedance frequency, which is equivalent to the false positive rate for the TST method.		
3. Based on a unit cost of \$927 for additional testing (single-concentration) and \$1,700 for accelerated testing (multiple-concentration); see Note 1 for source.		

The costs identified in Table 1 do not include the cost of implementing Toxicity Reduction Evaluations, which may also increase under the Policy.

- Cost savings for single-concentration tests will not be realized. The economic analysis in the Staff Report indicates that monitoring costs will be reduced by requiring single-concentration rather than multiple-concentration samples. However, it is impossible to demonstrate with a single-concentration test that observed responses are indeed due to toxicity. Therefore, the District would continue to conduct routine monitoring using multiple concentrations even though single-concentration testing may be allowed. These costs are reflected in the estimate in Table 1.
- Cost savings for acute toxicity monitoring may not be realized. The economic analysis in the Staff Report incorrectly assumes that adoption of the proposed Policy will result in no acute toxicity monitoring requirements, even while it allows Regional Water Boards the discretion to include acute monitoring and limits. The District does not expect that the Regional Water Boards will no longer exercise this option when the proposed Policy specifically allows for such discretion. 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. These investments were made because the District's NPDES permit requires flow-


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through bioassays for acute toxicity testing, making it impractical and costly to perform the test off-site.

To help address these concerns, the District supports the recommended approaches developed by BACWA and other clean water associations, as described in their respective comment letters.

Thank you for your consideration of these comments. Please let me know if you have any questions or would like additional information.

Sincerely,



Timothy B. Healy  
General Manager/District Engineer