

August 17, 2012

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



Via email: commentletters@waterboards.ca.gov

Subject: Comments on the Draft Policy for Toxicity Assessment and Control



Dear Ms. Townsend,

City of Belmont welcomes the opportunity to comment on the State Water Resource Control Board's (State Water Board) Draft Policy for Toxicity Assessment and Control (Policy). City of Belmont is member of the Joint Powers of Authority known as South Bayside System Authority (SBSA). SBSA provides wastewater treatment services for businesses and 210,000 residents in southern San Mateo County.

Our City appreciates the State Water Board's goal of statewide 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 City and SBSA. 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 City and its ratepayers as a member of SBSA pertaining to increased costs and increased violations.

Our concerns fall into the following categories:

- **Violations based on a single result.** The inherent variability of this test is known to generate false positive results part of the time. If the policy must include numeric effluent limits, it should include average, median, or other percentile limits that require more than one test result to assess a permit violation.
- **Increased monitoring costs.** If the current policy is implemented, SBSA's treatment facility expects to spend an additional \$64,000 on replicate testing over the 5 year duration of their NPDES. This testing will be necessary to minimize false positive results which lead to permit violations and expensive TIEs/TREs.
- **Expensive and inconclusive follow-up testing known as TIEs/TREs.** We are aware that some agencies in the San Francisco Bay area have spent \$1million on these follow-up procedures and still did not identify the source of toxicity. It is important that the policy use persistent toxicity to trigger further investigation. TIEs/TREs triggered by episodic toxicity can lead to a useless expenditure of public funds.
- **Increased costs due to violations.** The costs 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.

Even though our treatment facility has demonstrated excellent compliance with acute and chronic toxicity testing over the last twelve (12) years, we are concerned that the expected rate of false determination of toxicity will lead to a possible violation within the 5-year NPDES permit cycle that is not related to actual toxicity.

The City of Belmont requests that the State Water Resources Control Board take these comments under serious consideration. The additional costs due to the Policy will be burdensome for our ratepayer. Even in the absence of these cost increases, we are concerned about the increase of violations that will result from this policy. Thank you for your consideration of our comments.

Sincerely,



Warren Lieberman
SBSA Commissioner, and
City of Belmont Council Member

cc: Mayor & Council Members, City of Belmont
Dan Childs, SBSA General Manager
Greg Scoles, City Manager
Afshin Oskoui, Public Works Director