



ENVIRONMENTAL CONSULTING & TESTING

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December 20, 2018

Subject: Comment Letter – Toxicity Provisions



Ms. Townsend,

Thank you for the opportunity to respond to the draft *Water Quality Control Plan for Inland Surface Waters, Enclosed Bays, and Estuaries of California* (released October 2018). As a laboratory that performs whole effluent testing (WET), and that will need to comply with the provisions in the adopted plan, we offer the following recommendation and request clarification on a single item for which we believe all laboratories performing WET testing will benefit.

Recommendation:

Provision IV.B.2.c (MDEL and MMEL Compliance Monitoring) indicates the following:

The PERMITTING AUTHORITY shall specify the day of the month that corresponds to the start of a CALENDAR MONTH, and the day of the month and the month(s) that correspond to the start of the CALENDAR QUARTER, AND CALENDAR YEAR in an NPDES permit or Water Code section 13383 Order.

For dischargers that conduct ROUTINE MONITORING at a less than monthly frequency, the CALENDAR MONTH begins from the initiation of the ROUTINE MONITORING test.

There appears to be a contradiction here, in that the first paragraph indicates that “the permitting authority shall specify.....the day and the months that correspond to the calendar quarter”, whereas the second paragraph indicates that for those with less than a monthly frequency, “the calendar month begins from the initiation of the routine monitoring test.”

We encourage the inclusion of language that provides maximum flexibility to the discharger and laboratory to schedule their testing to ensure that there are no challenges to laboratory capacity so as to ensure that the requirements are successfully achieved state-wide. The second paragraph seems to indicate that there was an attempt to achieve this by establishing the timing of the calendar month based on the initiation of the routine monitoring test. This language *does* provide the maximum flexibility needed by dischargers and laboratories. The language that the permitting authority will identify the timing removes such flexibility.

So as to provide the maximum flexibility that is needed to successfully implement the requirements, we encourage the plan to simply indicate the calendar month begins from the

initiation of the routine monitoring, regardless if the discharger is performing monthly or quarterly testing, and that this established the calendar month moving forward throughout the permit period.

If this recommendation can't be achieved within the regulatory framework, we *minimally* recommend that the language be changed as follows:

The PERMITTING AUTHORITY shall ***have the NON-STORMWATER NPDES DISCHARGERS*** specify the day of the month that corresponds to the start of a CALENDAR MONTH, and the day of the month and the month(s) that correspond to the start of the CALENDAR QUARTER, AND CALENDAR YEAR, ***which will be included*** in an NPDES permit or Water Code section 13383 Order. (Bold and italic font added for emphasis).

For dischargers that conduct ROUTINE MONITORING at a less than monthly frequency, the CALENDAR MONTH begins from the initiation of the ROUTINE MONITORING test.

Request for Clarification:

Unique to toxicity testing is the prospect that a test will fail to meet test method required minimum test acceptability criteria (TAC); there is no such equivalent for analytical chemistry testing. Per the test method requirements, a test that fails to meet the TAC is considered invalid and must to be repeated. Note that even the very best laboratories periodically experience invalid testing due to circumstances that are out of their control (e.g., poor quality organisms shipped from vendors, shipping stress, etc.). With the prospect that dischargers may fail the TST for their routine monitoring test and need to perform up to two additional toxicity tests within the calendar month, any invalid (i.e., failing to meet TAC) toxicity test can create significant challenges in achieving three toxicity tests within a calendar month, especially for those tests that take ~10 days from first sample collection to the weight of the test organisms and required statistical analyses (e.g., chronic fathead minnow test).

What is a discharger and their laboratory required to do should an invalid test occur such that a fourth toxicity test in the calendar month can't be achieved? How will compliance with the MMEL be calculated/evaluated under these circumstances?

Please don't hesitate to contact us should you have any questions regarding our comment or question.

My regards,



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Stephen L. Clark
Vice President & Special Projects Director