



February 10, 2020

Jeanine Townsend, Clerk to the Board  
State Water Resources Control Board  
1001 I Street, 24th Floor  
Sacramento, CA 95814

VIA EMAIL: [commentletters@waterboards.ca.gov](mailto:commentletters@waterboards.ca.gov)

**Subject: Comment Letter – Toxicity Appendices J and K**

Ms. Townsend,

The Bay Area Clean Water Agencies (BACWA) appreciates the opportunity to comment on **Appendix K** to the Draft Staff Report, Including Substitute Environmental Documentation, for the Proposed Establishment of the Water Quality Control Plan for Inland Surface Waters, Enclosed Bays, and Estuaries of California; and Toxicity Provisions (proposed Toxicity Provisions). BACWA is a joint powers agency whose members own and operate publicly-owned treatment works (POTWs) and sanitary sewer systems that collectively provide sanitary services to over 7.1 million people in the nine-county San Francisco Bay Area. BACWA members are public agencies, governed by elected officials and managed by professionals who protect the environment and public health.

As we expressed in previous opportunities to comment on the proposed Toxicity Provisions (see letter dated December 21, 2018), BACWA has significant concerns regarding several aspects of the proposed Toxicity Provisions. The present letter is limited in scope to comments on Appendix K to the Draft Staff Report on the proposed Toxicity Provisions. We thank State Water Board staff for providing this comment opportunity. In addition to our comments herein, we support the alternative approach to the monitoring frequencies and timing of the three sample medians that are proposed by the Central Valley Clean Water Agencies in their respective comment letter. BACWA also supports the comments submitted by the Sacramento Regional County Sanitation District (Regional San).

Toxicity testing requires significant logistical resources and planning in order to be conducted in a timely manner. BACWA appreciates the State Water Board's staff effort to research toxicity laboratory practices and include these findings in Appendix K of the Staff Report. As concluded in Appendix K and acknowledged by staff at the November 28, 2018, State Water Board Hearing and again at the recent January 10, 2020, Public Staff Workshop, initiating three tests within a 30

day period is possible, but very difficult. This makes it for all practical purposes, infeasible on an on-going basis across the State.

Per Appendix K, “dischargers will know if they need to initiate a second MMEL compliance test between day 15 and day 27 of the calendar month. The second MMEL compliance test could be initiated somewhere between day 16 and day 28 of the calendar month, if it is required.” As noted, results from the second MMEL may not be available until day 27 of the calendar month. This leaves agencies extremely vulnerable to small slippages in the timeline due to unforeseen events. Dischargers are very much reliant on the labs to be efficient and to provide the results in a timely manner. Any delays on their part can jeopardize the discharger’s ability to initiate the third test within the same calendar month. And, if a result is obtained on a weekend or holiday or if other unavoidable issues are encountered at the POTW such that collection of a third sample is not obtained within a day of the receipt of results from the second MMEL compliance test, the discharger is again at risk of noncompliance with the Toxicity Provisions.

Because of the level of complexity and expertise required to perform WET tests, most agencies send their sample to contract laboratories. There are limited accredited laboratories available to perform toxicity testing; at present there are three in the San Francisco Bay Area. It is likely that at some point an agency will not be able to locate a laboratory able to accept their sample, or turn around reports to meet the schedule stipulated. Department of Fish and Wildlife Scientific Collecting Permits are required for collecting certain wild (non-cultured) bioassay test organisms. These permits have become increasingly complex to apply for and are often delayed. Additionally, there are very few wild-caught organism suppliers providing these types of test organisms for bioassay labs. An issue such as this could impact all laboratories in the State, and is a further example of the difficulties involved in potentially performing bioassay testing three times per calendar month. The proposed Toxicity Provisions should avoid penalizing an agency in this type of situation. Similar consideration must be given to the very real possibility that a test may be invalidated due to laboratory error, quality control failure, and unavailability of test organism due to seasonal nature, and permittees are not able to meet the required time limits.

BACWA supports and thanks State Water Board staff for revising the proposed Toxicity Provisions to allow replacement toxicity tests, including replacement tests in a subsequent month, when required initial testing does not meet the test acceptability criteria (TAC). However, this allowance does not go far enough to recognize the breath of circumstances that can delay a successful toxicity test. BACWA proposed that the proposed Toxicity Provisions retain the language allowing for tests to be run in a subsequent month, but broaden the reasons for granting the extension to include circumstances beyond the POTWs control in addition to tests that do not meet TAC. BACWA requests that **the Permitting Authority be given discretion to extend the allowable schedule for effluent testing if an agency can prove that they are unable to conduct their test for reasons outside of their control**, such as lack of species availability, control failure, or capacity contract laboratories. Such discretion would allow dischargers the ability to collect and analyze the needed samples without the jeopardy of receiving a violation.

BACWA also requests that the State Water Board reevaluate its median limit requirements. The proposed Toxicity Provisions, as written, expose agencies to non-compliance due to factors

outside their control in the worst case scenario, or waste of resources due to planning unnecessary testing under the best case scenario. On the issue of resources and costs associated with conducting up to three tests in a calendar month, BACWA supports the detailed comments submitted by Regional San, in particular comment 5 of their letter. For these reasons, **instead of a median monthly limit, BACWA recommends that the Toxicity Provisions implement a rolling median limit, similar to how median chronic toxicity triggers are currently implemented in Region 2 NPDES permits.**

BACWA appreciates State Water Board staff's ongoing willingness to discuss and reevaluate aspects of the Toxicity Provision during this process. Please do not hesitate to contact Lorien Fono, BACWA Executive Director, at [lfono@bacwa.org](mailto:lfono@bacwa.org) to discuss next steps.

Respectfully Submitted,

A handwritten signature in black ink that reads "Lorien Fono". The signature is written in a cursive, flowing style.

Lorien Fono  
Executive Director

cc: BACWA Executive Board  
Debbie Webster, Central Valley Clean Water Association  
Terrie Mitchell, Sacramento Regional County Sanitation District (Regional San)  
Rebecca Franklin, Regional San and Sacramento Area Sewer District (SASD)