



August 24, 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

Subject: Comment Letter – Toxicity 2018 to 2020 Changes

Ms. Townsend,

The Bay Area Clean Water Agencies (BACWA) appreciates the opportunity to comment on the revisions to the Draft Water Quality Control Plan for Inland Surface Waters, Enclosed Bays, and Estuaries of California; and Toxicity Provisions, released on July 7, 2020 (2020 Draft Toxicity Provisions). Related documents referenced below include 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 (2020 Staff Report) and the Summary of Comments and Responses on the 2018 Draft Toxicity Provisions and 2018 Draft Staff Report (Response to Comments, or RTC). 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 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.

BACWA has been working with State Water Resources Control Board (State Water Board) staff on different iterations of these proposed Toxicity Provisions for over a decade. We last submitted comments on the 2018 Draft Toxicity Provisions and we thank the State Water Board staff for considering and responding to our comments in the recently published RTC document. We also appreciate that Water Board for incorporating many of our recommendations, particularly those relating to the circumstances under which a reduced monitoring frequency is allowed.

For the current comment period, BACWA's comments are limited to the 2020 Draft Toxicity Provisions' introduction of targets, and their relationship to Reasonable Potential. In previous discussions with Water Board Staff, the Water Board expressed the position that numeric limits were necessary to observe and follow up on apparent toxicity, and that toxicity in the effluent of agencies without Reasonable Potential might be missed. BACWA had responded that a trigger concept could be used for agencies with no reasonable potential, where they are required to do

some level of monitoring and follow up with a TRE if toxicity is observed. This concept has been incorporated to the 2020 Draft Toxicity Provisions as targets via the Maximum Daily Effluent Target (MMET) and the Median Monthly Effluent Target (MMET) for agencies whose flows are less than 5 mgd without reasonable potential, as well as until December 31, 2023 for agencies for whom *Ceriodaphnia dubia* is the most sensitive species.

BACWA reaffirms our position that the establishment of toxicity numeric limits does not yield any water quality benefits beyond those provided by numeric target. In either case, numeric limits or targets, after the observation of apparent toxicity, the sole route available to a discharger is to investigate and reduce the observed toxicity to the extent feasible. The only additional consequence of having numeric limits, rather than targets, is the threat of a violation in the case of a WET test failure, with the associated Federal liabilities. Since the 2020 Draft Toxicity Provisions already include numeric targets for facilities that are below 5 mgd and without a determination of reasonable potential. BACWA recommends that this approach is extended to all POTWs, regardless of size. **We request that POTWs of any size with Reasonable Potential would be assigned numeric effluent limits, while POTWs of any size without Reasonable Potential would be assigned numeric target.**

In addition to our comments herein, we also support the comments provided by the California Association of Sanitation Agencies. Please do not hesitate to contact Lorien Fono, BACWA Executive Director, at lfono@bacwa.org to discuss next steps.

Respectfully Submitted,



Lorien Fono

BACWA Executive Director

cc: BACWA Executive Board

Mary Lou Esparza, BACWA Permits Committee Chair

Adam Link, California Association of Sanitation Agencies