



January 18, 2011

Charles R. Hoppin, Chair
State Water Resources Control Board
1001 I St.
Sacramento, CA 95814

Re: Proposed Policy for Toxicity Assessment and Control

Dear Chair Hoppin:

The California State Association of Counties (CSAC) and the Regional Council of Rural Counties (RCRC) are pleased to comment on the proposed Policy for Toxicity Assessment and Control on behalf of our member counties statewide. Many members of our organizations are currently under either the Phase I or Phase II MS4 Permit, and our counties also operate facilities that are subject to storm water permits. We also have numerous dischargers within our counties that are subject to WDR requirements, along with publicly-owned treatment works (POTWs).

CSAC and RCRC question the need for toxicity testing as outlined in the draft policy, and also have great concerns about the accuracy of the tests proposed for compliance. At a time when dischargers of all types are already struggling with compliance costs, we feel it is egregious and irresponsible to impose additional, expensive testing requirements when there has not been sufficient evidence that the testing outlined in the policy will result in greater protection of receiving waters. We have reviewed the comment letter being submitted by the Clean Water Associations for POTWs, and wholly endorse the scientific arguments regarding the proposed testing procedures and the validity of toxicity testing set forth therein as they apply to storm water permits and dischargers under WDRs.

Beyond the scientific aspects of the policy, CSAC and RCRC are also concerned about the amount of discretion the policy gives Regional Boards to apply toxicity testing requirements to dischargers. Allowing regional boards to apply numeric effluent limitations for toxicity in storm water permits and WDRs subjects dischargers, many of which are already maximizing their BMPs to meet state requirements, to additional lawsuits from environmental groups, as well as potentially increasing compliance costs

by several thousands of dollars. Dischargers already struggle with the costs to comply with statewide regulations without allowing regional boards to arbitrarily impose additional requirements not mandated by the state.

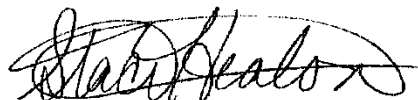
While CSAC and RCRC applaud the Water Board for including numerous exemptions in the policy, especially those targeted at small communities and dischargers, we are apprehensive about the policy's provisions allowing Regional Boards to impose the requirements in the policy on exempt dischargers if they are found to have a "significant impact" on receiving water quality. There is no definition of what "significant impact" means in the policy, which will lead to regionally inconsistent repeals of exemptions. There is also the possibility that a permit holder resides in two different regions, and could be impacted by two different regional policies. If required by a Regional Board, toxicity testing as proposed would disproportionately affect small dischargers and be nearly impossible to complete due to cost constraints.

CSAC and RCRC encourage the Water Board to work with stakeholders to develop a toxicity policy that is reasonable for all dischargers while achieving the protection for receiving waters that the Board seeks. We look forward to engaging with Water Board staff as the policy is refined, and thank the Water Board for considering our comments. Please do not hesitate to contact us with any questions or if you would like to discuss our comments.

Sincerely,



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CC: Members of the State Water Resources Control Board
Linda Adams, Secretary of Environmental Protection
CSAC Board of Directors
RCRC Board of Directors