**From:** Morris, Cris@Waterboards
**To:** Stuber, Robyn; Smith, DavidW
**Subject:** FW: Revised TSO and fact sheet language
**Date:** Wednesday, March 25, 2015 12:28:19 PM
**Attachments:** Template TSO Revised draft (3-24-15) lacsd.docx
San Jose Revision to Fact Sheet (3-24-15) lacsd.docx

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Here is the latest from C. San.

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**From:** Heil, Ann [mailto:AHeil@lacsd.org]
**Sent:** Wednesday, March 25, 2015 12:04 PM
**To:** Morris, Cris@Waterboards
**Cc:** Smith, Deborah@Waterboards; Friess, Phil; Smith, Davidw@epamail.epa.gov; Markle, Phil
**Subject:** RE: Revised TSO and fact sheet language

Cris,

Thanks so much for sending over the revisions to the TSO and Fact Sheet. The revisions indicate that you, Deb and Dave all listened carefully to our concerns and tried to respond in a substantive way to them. We feel that the changes proposed represent a good faith effort on your part to express the intent of the Regional Board to not take enforcement action during the accelerated monitoring/TIE/TRE process unless there are unusual circumstances such as a fish kill caused by effluent. We have indicated some suggested changes on the attached documents that we believe better capture this intent, and also correct according to our understanding the usage of the terms "TRE" and "TIE".

While we support inclusion of the TSO and Fact Sheet changes in the permit (including our suggested edits), we unfortunately would not be able to commit to accepting all of the provisions in the permits even with these changes. From the beginning, our two concerns on the toxicity provisions in our NPDES permits related to allowing use of all QA/QC procedures in the promulgated method to minimize false positive errors and protection from enforcement during the accelerated testing/TRE period, which would be solely punitive since we are taking every possible measure to address the situation. On the first concern, we were highly concerned about the slides in your presentation at the March hearing regarding the role of the concentration-response evaluation in TST testing when a multi-concentration test design is used. The position expressed in these slides has left us with renewed concerns about the potential false positive rate that we may see when using the TST and compliance failures unrelated to sample toxicity. On the second concern, while the proposed Fact Sheet and TSO language would help alleviate our concerns about enforcement, the level of protection that would be afforded is much less than what we had agreed to accept in March. The combined effect of these two concerns leaves us significantly less comfortable with the imposition of the new chronic toxicity limits.

That said, we cannot stress strongly enough how much we appreciate Regional Board staff working with us on the chronic toxicity provisions since the February hearing. We believe that the process of trying to work through our concerns has resulted in a better understanding on both sides of the concerns and constraints we are faced with in regulating chronic toxicity. Regardless of the end form of the chronic toxicity provisions in our permits, we believe that the understanding gained through our discussions will help us with moving forward cooperatively with implementation of the

provisions. As we've said before, we absolutely agree that it is not appropriate to discharge toxic effluent to our receiving waters and we are committed to doing everything possible to preventing and resolving any such discharges. Our concerns only relate to ensuring that we are not inappropriately penalized for false positive results, and that punitive enforcement is not taken when we are aggressively moving forward with every possible effort to resolve any new toxicity that may arise.

We would very much like to continue to work with you on finalizing TSO and Fact Sheet language that could be put into the NPDES permits at the April hearing. Even though it does not appear that such language would allow us to accept all of the toxicity provisions in our permits, we feel the language represents an important statement of the intent of the Regional Board regarding how these permits will be implemented.

Ann

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**From:** Morris, Cris@Waterboards [mailto:Cris.Morris@waterboards.ca.gov]
**Sent:** Tuesday, March 24, 2015 6:05 PM
**To:** Friess, Phil; Heil, Ann; Smith, Davidw@epamail.epa.gov
**Cc:** Smith, Deborah@Waterboards
**Subject:** Revised TSO and fact sheet language

Phil, Ann, and Dave,

Thanks for participating in the call yesterday to discuss draft fact sheet and TSO language that was crafted per Board direction to try to address compliance concerns during accelerated monitoring and the TIE process in a way that would be acceptable to the Board.

Phil and Ann - we listened carefully to your concerns and have made changes to address each of your concerns: (1) to make the fact sheet more clear about the intention of Board staff to consider and issue the first TSO, (2) to include a clear statement in the Resolved Section of the TSO about enforcement not being pursued if the conditions of the TSO are met, and (3) revising Resolved (#2) to the 50% mortality endpoint. We remain a bit concerned about (3) being the sole indicator of a significant problem in the river and have added #3: "The effluent shall not cause an actual fish kill in the river".

Dave - please review these changes to see if your agency is OK with these and let us know if you have concerns or comments.

We would appreciate any comments on these by noon tomorrow. This latest language is subject to final review from our management and legal team, but we wanted to send this proposal to you as soon as possible. Phil and Ann - If there is still no interest in commenting on, and pursuing, this TSO, please let us know as well.

We look forward to hearing from you. Thanks.

Cris Morris, PE, PMP

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