



Toxicity Provisions Litigation Update

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History of Toxicity Challenges

- **2014** – ATP Challenge v. EPA – resulted in ATP allowing 2 concentrations to be withdrawn. Rest of case deemed moot.
- **2014** – Objection suit v. EPA – dismissed for lack of jurisdiction, upheld by Ninth Circuit. Petitioned to USSC in 2017, denied in 2018.
- **2016** – TST challenge v. EPA – Court granted EPA's motion to dismiss, upheld by Ninth Circuit in 2020.
- **2023** – Toxicity Provisions approval v. EPA – Injunction denied due to lack of proven harm and case dismissed w/o prejudice

History of Toxicity Advocacy

- 2002 Permit appeals resulted in 2 SWRCB precedential orders removing numeric toxicity limits and using triggers instead.
- Two other SWRCB orders upheld this approach in 2008 and 2012.
- Participating in comments on various versions of the Toxicity Policy from 2008.
- In 2018, CVCWA and others met with EPA for a “listening session.”
- Comments on final Toxicity Provisions adopted in 2020.

Toxicity Provisions Litigation

- **December 2020** - SWRCB adopted the WQCP known as the Toxicity Provisions.
- Complaint filed by CVCWA, SCAP, TO, SV, and Camarillo San challenging the Provisions.
- **October 2021**- Changes were made to Provisions.
- Filed a stipulated dismissal to allow refileing once Provisions approved by USEPA.
- **May 2023** – Provisions approved by USEPA.
- Writ denied on all grounds and appealed.

Toxicity Provisions Appeal

- Appeal challenged failure to comply with:
 - (1) relevant federal laws and regulations of the Clean Water Act;
 - (2) state water quality laws under the Water Code;
 - (3) California's APA; and
 - (4) CEQA.
- **July 29, 2025** – Oral Argument in 5th District Court of Appeal.
- **August 5, 2025** – 59-page appellate decision issued holding “the Test of Significant Toxicity [TST] cannot be used in NPDES proceedings to measure whole effluent toxicity, but that the State Board has otherwise properly adopted the Toxicity Provisions.”
- The Court reversed in part related to TST, affirmed all state law rulings, and remanded the matter to the trial court for further proceedings and awarded costs to appellants.

Appellate Court's Ruling on TST

- No deference to SWRCB or EPA because rules are clear.
- EPA regulations only authorize the two endpoints of No Observed Effect Concentration (NOEC) and the 25 percent inhibition concentration (IC25).
- The TST uses a different hypothesis test called bioequivalence testing.
- The TST reverses the hypothesis to assume the effluent is toxic until demonstrated otherwise.
- The TST's regulatory management decision of 25 percent effect could not be used in hypothesis testing because only promulgated for IC25.
- The TST is not a mere statistical method to determine NOEC or IC25.
- The TST fundamentally changes what is considered toxic water.
- The TST is not an approved method.

Petition to Cal Supreme Court

- On September 15, 2025, the SWRCB petitioned the appeals court's decision to the California Supreme Court arguing:
 - 1) Circuit court split with an unpublished 3rd DCA decision
 - 2) Contrary to federal law/regulations.
- Any Answer to the petition is due by October 6th (if one is filed).
- Supreme Court will either take case up or the appeals court decision will become final.

Questions?

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