



JACK MILLER
Director

County of San Diego

ELIZABETH POZZEBON
Assistant Director

DEPARTMENT OF ENVIRONMENTAL HEALTH
LAND AND WATER QUALITY DIVISION
P.O. BOX 129261, SAN DIEGO, CA 92112-9261
Phone: (858) 505-6700 FAX: (858) 694-3670
1 (800) 253-9933
www.sdcdeh.org

November 14, 2011

Darrin Polhemus, Deputy Director
Division of Administrative Services
State Water Resources Control Board
P.O. Box 2231
Sacramento, CA 95812

Dear Mr. Polhemus:

COMMENTS ON THE DRAFT WATER QUALITY CONTROL POLICY FOR SITING, DESIGN, OPERATION, AND MAINTENANCE OF ONSITE WASTEWATER TREATMENT SYSTEMS DATED SEPTEMBER 30, 2011

The County of San Diego Department of Environmental Health (DEH) appreciates the opportunity to comment on the proposed policy governing onsite wastewater treatment systems (OWTS). The following contains our comments and recommendations on the draft document.

Section 7.4

This section limits percolation rates for Tier 1 systems to between 1 and 90 minutes per inch with rates less than or greater than those numbers requiring Tier 2 systems. It could be argued that percolation rates less than 1 minute per inch should require an increased level of protection but all other rates up to 120 minutes per inch should be allowed in Tier 1. Our experience with percolation rates up to 120 minutes per inch has shown no greater risk or impact to groundwater quality than any other rate when system are properly sited and sized.

Section 7.5

The setbacks listed in this section are in some cases significantly greater than setbacks currently used in the Uniform Plumbing Code, California Plumbing Code and recommendations of the California Department of Public Health. Specifically, the setbacks in question are the 200 feet to a lake or pond, and 200 to 400 feet to a drinking water reservoir. Current setbacks allowed are 100 feet to a lake or pond, and 200 feet to a drinking water reservoir. Please provide the science or justification for such increases. These setbacks would have severe impacts on the cost and ability to site new, replace or repaired OWTS. It is recommended that the current setbacks allowed be adopted unless evidence can be provided to justify these increases.

Section 7.6

The section requires the local agency and property owner to perform additional work when the OWTS is within 2500 feet of an intake for surface water treatment plant for drinking water as well as requiring the California Department of Public Health to review the proposed application.

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Please provide the justification for this requirement which will increase costs for all parties involved as well as create unnecessary delays for the project.

Section 8.1.6

Table 1 in this section requires 8 feet between the dispersal system and groundwater for percolation rates between 5 and 29 minutes per inch and 20 feet for percolation rates between 1 and 5 minutes per inch. Please provide justification for this separation requirement as this has the potential to require the use of advanced treatment which will significantly increase costs on existing undeveloped lots previously approved for development.

Section 9.3.7

This section requires the local agency to maintain a list of new OWTS installations within 500 feet of a sewer system. DEH currently does not allow for the installation of new, replaced or repaired OWTS where public sewer is available. We recommend that this requirement be eliminated as the maintenance of such a list would have no benefit to protecting groundwater quality and would only increase local agency costs to implement.

Section 9.3.8

This section requires the local agency to establish a program for ongoing monitoring of groundwater to determine the effects of OWTS effluent. This requirement needs to be further defined as to what will be considered acceptable monitoring. In addition, many areas of San Diego County that utilize OWTS are served by imported public water and water wells for testing may not be available for testing on the site using a Tier 2 alternate program.

Section 10

This section has the potential to require all new and existing OWTS within 600 feet of 303(d) listed water bodies for nitrates to upgrade to supplemental treatment systems at a significant cost to the property owner regardless of the amount or significance of their contribution. In some cases, the upgrades to the OWTS will have minimal benefit to groundwater quality. In addition, the intent of the legislation was to provide funding assistance, but a realistic funding source has not been identified and the environmental report does not fully address the overall economic impacts on private property owners. It must be demonstrated that the environmental benefits of these upgrades will justify the excessive costs and then, a realistic option of funding assistance must be identified.

As an option, several modifications to this section should be considered. First, no basis has been provided for the distance of 600 feet used as the setback to impaired water bodies for nitrates. No studies have been performed to show that all OWTS within 600 feet are contributing to the impairment. All current regulations and design standards require a 100 foot setback to flowing creeks or water bodies and it has not been demonstrated that this setback is inadequate. Reducing the setback to 100 feet would lessen the economic and possibly unnecessary impact on property owners and may meet the intent of the regulations. Second, an option should be considered to apply these regulations only to new OWTS and OWTS in need of a major repair or replacement within a specified distance to affected impaired water bodies. Eventually, all existing OWTS would need to be upgraded if they are shown to be contributing to the impairment but this would allow property owners to plan for the financing of the upgrade and not be required to do the work within the five (5) year period regardless of whether or not the system is failing.

Section 10.6

This section requires advanced treatment for all new OWTS installations within 600 feet of a 303(d) listed water body for nitrates or pathogens that does not have an adopted TMDL while the remainder of Section 10 uses a 100 foot setback requirement for pathogen impaired water bodies. This section should be changed to be consistent with the remainder of the policy and

only require advanced treatment for new OWTS installations within 100 feet of a 303(d) listed water body where the impairment is only pathogens.

Section 10.8.2

This section requires a three (3) foot separation to groundwater below the bottom of a dispersal system using advanced treatment for pathogens and within required setbacks to a 303(d) listed water body for pathogens. This is inconsistent with other sections of the policy where less than a three (3) separation to groundwater is allowed and should be changed so as to be consistent throughout the policy.

For the most part, DEH will be able to implement the proposed regulations in San Diego County but we have concerns over the increased costs to our local agency and the public in general that will occur with its implementation.

The monitoring, reporting and groundwater assessment that must be completed are requirements that we do not currently perform. These requirements will increase our work and therefore costs locally. In normal economic times, these costs would be passed on to the public through fee increases but with today's economy, fee increases are difficult, if not impossible to get passed. This will require DEH to do more without any increased compensation. Due to this, we would like to see the monitoring and reporting requirements reduced to the minimum levels needed with the elimination of the requirement to report the number of new OWTS within 500 feet of sewer and the septic tank cleanings so as only to include requirements that are relative to ground water quality.

In addition, the regulations will likely require advanced treatment for OWTS on some undeveloped sites that previously were approved for conventional systems or those new or repaired systems that are near impaired water bodies. These treatment systems will significantly increase the property owner's cost to develop a site or repair their OWTS and in some cases to a point where they will be unable to afford to increased costs. In the case where a property owner cannot afford the cost for the advanced treatment required for a failed OWTS, condemnation of the dwelling unit may become the only option to abate the public health threat.

DEH has been involved in the process of developing the statewide standards since the initial drafting of Assembly Bill 885. We remain committed to the objective of developing effective and workable regulations that ensure a safe and healthy water environment in California which considers economic costs and practical considerations for regional and local implementation. The current draft regulations fail to satisfy these objectives.

We strongly urge that you continue to work with the stakeholder groups and revise the current proposed regulations to incorporate our recommendations along with the recommendations of the California Conference of Directors of Environmental Health. This would create regulations that meet the intent of the statute and provides the protective, effective and enforceable rules envisioned by Assembly Bill 885.

Should you have any questions regarding our comments, please contact Tom Lambert, Program Coordinator for the Land and Water Quality Division at (858) 495-5752 or by e-mail at tom.lambert@sdcounty.ca.gov.

Sincerely,



MARK MCPHERSON, Chief, Land and Water Quality Division
Department of Environmental Health