



COUNTY OF SONOMA
PERMIT AND RESOURCE MANAGEMENT DEPARTMENT

2550 Ventura Avenue, Santa Rosa, CA 95403-2829
(707) 565-1900 FAX (707) 565-1103

November 10, 2011

OWTS Policy
Division of Water Quality
State Water Resources Control Board
PO Box 2231
Sacramento, CA 95812

Attn: Mr. Darrin Polhemus, Deputy Director

Subject: Comments on AB 885 Draft Policy

Dear Mr. Polhemus

The County of Sonoma appreciates the opportunity to provide comments on the Draft Policy crafted to implement AB 885. Our comments are included below. Generally we find this draft is much improved as compared to the first draft. However, there are provisions of concern to Sonoma County and there are provisions where we seek clarification. Should you have any questions, I can be reached at (707) 565-3507.

Sincerely,

Nathan Quarles
Engineering Division Manager

Cc: Sonoma County Board of Supervisors
Sonoma County Land Use Advisory Panel
Mr. Pete Parkinson, Director of Permit and Resource Management Department
Mr. DeWayne Starnes, Deputy Director of PRMD

Section 3

- 3.4 This section requires the retention of records for 20 years. Given that state law requires the retention of building permits for 6 months, that the IRS only audits records going back 7 years, and that annual reports will summarize this information, a retention time of 20 years seems excessive. Please justify the retention of detailed records for 20 years.

Section 4

- 4.2 This section requires the Regional Water Boards to amend their Basin Plans within 12 months and affords the Regional Water Board the ability to create more restrictive requirements. This creates uncertainty and will delay the creating of Local Agency Management Programs that may need to be altered to address any changes in new or more restrictive requirements created by the Regional Water Boards. The Policy should specify a timeframe for LAMP submittal contingent upon completion of Basin Plan amendments. For example, a LAMP shall be submitted for approval by RWB within 3 years of implementation of this Policy or 2 years from completion of Basin Plan amendment, whichever occurs last.
- 4.7 Section 4.7 requires the various RWBs will notify and enforce requirements for existing OWTS determined to be in Tier 3. We encourage the SWRCB to provide resources and funding so that the nine RWBs can adequately staff and implement the applicable sections of this Policy.

Section 7 (Tier 1)

- 7.6 This section requires the local agency to determine if the OWTS is within 1200 of an intake for a surface water treatment plant for drinking water. Section 7.6.4 refers specifically to *public* water systems, but this is the first place public or private is mentioned and this is in a subservient provision. Does section 7.6, apply to public or private drinking water treatment plants? In the rural setting there are many private water intakes with small water treatment systems. Many of these serve just one house or family and the treatment could be for any number of parameters (disinfection, pH adjustment, water softening, etc). Identifying all of these small private water systems would be virtually impossible. Please be more explicit on which type of water treatment systems this provision applies to: private or public.
- 7.6.4 Five days for public water system owner to respond seems too short of a time frame to provide input to the permitting agency.

Section 8

- 8.1.4 This section and others, refer to “dispersal systems.” Are gray water systems as allowed under Ch 16 of the Plumbing Code considered a dispersal system as a part of the OWTS? If gray water systems are considered a dispersal system, which set of regulations apply: Ch 16 of the Plumbing Code or this Policy?
- 8.1.7 Please clarify the infiltrative area per linear foot. Does the infiltrative area include the side walls, trench bottom or both? We recommend that the trench bottom area not to be included in the infiltrative area calculation.
- 8.2 Section 8.2 seems to be inconsistent with the Business and Professions Code, Division 3, Chapter 9. Contractors, Article 4. Classifications. Under section 7057(b), a “B” contractor can only take out work for framing or carpentry, but can’t be the prime on other work such as the work outlined in this Policy.

Business & Professions Code
Division 3, Chapter 9. Contractors, Article 4. Classifications

7057. (a) Except as provided in this section, a general building contractor is a contractor whose principal contracting business is in connection with any structure built, being built, or to be built, for the support, shelter, and enclosure of persons, animals, chattels, or movable property of any kind, requiring in its construction the use of at least two unrelated building trades or crafts, or to do or superintend the whole or any part thereof.

This does not include anyone who merely furnishes materials or supplies under Section 7045 without fabricating them into, or consuming them in the performance of the work of the general building contractor.

(b) A general building contractor may take a prime contract or a subcontract for a framing or carpentry project. However, a general building contractor shall not take a prime contract for any project involving trades other than framing or carpentry unless the prime contract requires at least two unrelated building trades or crafts other than framing or carpentry, or unless the general building contractor holds the appropriate license classification or subcontracts with an appropriately licensed specialty contractor to perform the work. A general building contractor shall not take a subcontract involving trades other than framing or carpentry, unless the subcontract requires at least two unrelated trades or crafts other than framing or carpentry, or unless the general building contractor holds the appropriate license classification. The general building contractor may not count framing or carpentry in calculating the two unrelated trades necessary in order for the general building contractor to be able to take a prime contract or subcontract for a project involving other trades.

Section 9 (Tier 2)

- 9.3 Certain minimum responsibilities of the local agencies to implement a LAMP seem onerous, specifically the monitoring/data collection and the water quality assessment. The language under 9.3.8 seems vague and open ended. For example, “... monitoring and assessment ... on a regional and localized basis across the entire jurisdictional area of the local agency ...” Further, “... will include testing for nitrates and pathogens, but may include other constituents

deemed appropriate ...”

Section 9.3.8 goes on to list various types of monitoring data that may be used. Many of the listed data types are not readily available such as groundwater sampling performed as part of WDRs or sampling performed as part of a NPDES permit. This data is not in electronic format and is housed at various Regional Boards and would entail file searches and data entry to use. Further, the list of existing data likely is not relatable to OWTS in terms of spatial or temporal associations. While the intent of using existing data is appreciated, it does not seem that practicable.

To meet this requirement, Sonoma County would need to conduct sampling that is more directly tied to OWTS operations. This would include staff time to collect the samples as well as the laboratory costs. Sonoma County encompasses 1,768 square miles and has approximately 50,000 OWTS currently in place. Sampling 10% of these as well as receiving waters could easily cost \$500,000 (\$100 per 5,000 samples). Conducting regional and localized monitoring across the entire jurisdiction is potentially very expensive and staff intensive.

Our recommendation is to revise the policy to allow the Regional Boards to work in conjunction with the local agency to develop a monitoring and assessment program that is feasible for the local agency, given financial and staffing constraints.

- 9.4.3 Section 9.4 lists activities that are not to be allowed under a LAMP. Section 9.4.3 disallows any form of effluent disposal on or above the ground surface. Is the intent to exclude mound or engineered fill systems whose discharge maybe above the original ground surface, but is internal to the mound or engineered fill system? Also, does this include gray water systems discharging to the ground such as a mulch basin or surface infiltration area?
- 9.4.4 Likewise, Section 9.4.4 specifically states that surface impoundments are not to be allowed. Does this exclude constructed wetlands? Also, does this exclude gray water systems discharging to a constructed wetland?

Section 10 (Tier 3)

- 10.0 This Tier requires advanced treatment for OWTS which are within specific distances of impaired waterbodies. Do these provisions apply only to the main stem of the named waterbody? Does Tier 3 apply to named tributaries to the waterbody? Does Tier 3 apply to un-named tributaries of the named waterbody? Does Tier 3 apply to the whole watershed of the named waterbody or just the main stem of the named waterbody?

The SWRCB should ensure that the Regional Water Boards have sufficient

funding and resources to carry out their responsibilities to enforce Tier 3 for existing OWTS.

There is confusion over what is an Advanced Protection Management Program. Is this similar to a LAMP in that a local agency will need to produce an APMP for submittal and approval by local RWBs? Is Tier 3 considered to be the APMP as Tier 3 contains requirements to implement advanced treatment (sections 10.2.2, 10.2.3 for existing and section 10.6 for new OWTS), treatment or performance standards (section 10.7 and 10.8), and monitoring requirements (section 10.11). What additional information or requirements, beyond those detailed in Tier 3, should be included in an APMP?

- 10.2 This section seems to require compliance with Section 10 or a future TMDL. A future TMDL may be less stringent, equal or more stringent than Section 10. Please verify the intent of Section 10.2 in each of these scenarios. Further, this section does not provide regulatory certainty and owners may very well be chasing a moving target.

What are the “enhanced requirements” of Section 10? Section 10.7 and 10.8, and other sections, refer to advanced treatment, but the term “enhanced requirements” only appears in section 10.2.

- 10.2.1 The structure of this section is confusing. It seems to be saying the OWTS must comply with section 10 or a future TMDL:
- In accordance with a TMDL adopted prior to the effective date of this policy, which is 6 months after approval by OAL, or
 - Within 5 years of the effective date of this policy, or
 - Within 5 years of a water body being designated on a future 303(d) list

What if a TMDL is adopted after the effective date of this policy?

The last provision also creates regulatory uncertainty and may require untold OWTSs to comply with Section 10 in the future. It seems within a CEQA context, this type of language extends the project (the policy) indefinitely into the future as well as geographically and in the number of affected residents.

- 10.2.2 Please clarify the compliance dates contained within section 10.2.1, 10.2.2 and 10.2.3. Section 10.2.1 appears to establish a 5 year time line for compliance with “enhanced requirements” of section 10, while 10.2.2 and 10.2.3 appear to establish a 2 year time line for compliance with the advanced treatment requirements of sections 10.7 and 10.8. Adding to the confusion is that 10.2.2 and 10.2.3 refer back to the date established in 10.2.1.

- 10.3 This section provides guidance on how OWTS owners may interact with the TMDL development process and does not seem pertinent to this Policy.

- 10.4.8 Various provisions (sections 9.4.8 for Tier 2, 10.4.8 for Tier 3) prohibit OWTS

from receiving waste from recreational vehicles (RVs). How is the waste from RVs to be managed? If not subject to this Policy, what options are available for the RV community? Who will regulate this waste stream: local agencies or the state? What are the standards?

- 10.5 This section provides that OWTS owners who commit in writing to connecting to a centralized wastewater system will be exempt from this Policy. Since Tier 3 is enforced by the RWBs for existing systems, is there any expectation of the local agencies to track or have knowledge of the contractual agreements for sewer connection?
- 10.12 Section 10.12 requires alarms that will alert the owner and a service provider if/when needed. Will perpetual maintenance contracts be required for all systems incorporating advanced treatment devices? Further, being a Tier 3 requirement, how will the RWB enforce this provision?
- 10.13 Section 10.13 requires effluent testing for disinfection on a quarterly basis and further requires a service provider to take the effluent samples. Will perpetual maintenance contracts be required for all systems incorporating advanced treatment devices? Further, being a Tier 3 requirement, how will the RWB enforce this provision?

Section 11 (Tier 4)

- 11.1 Is a repair (i.e., corrective action) the same as a replacement system?
- 11.5 This section speaks to any OWTS that has affected, or will affect, groundwater or surface water. Given that OWTS have a finite life span and without repair or replacement will eventually fail, one could argue that all OWTS “will affect” groundwater or surface water. Contrast this language to the preamble to Tier 4 which covers OWTS that fail at anytime while this Policy is in effect. The “will fail” insinuates the potential to fail and covers all OWTS, whereas the preamble language is more definitive – the OWTS has failed and needs to be corrected. Please consider revising the “will fail” language.