



# San Mateo County Association of REALTORS®

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DIVISION OF WATER QUALITY

October 19, 2011

State Water Resources Control Board  
Division of Water Quality  
ATTN: OWTS Policy  
P.O. Box 100  
Sacramento, CA 95812-100

RE: OWTS Policy Seeping Document

Dear Water Board Members and Staff:

Thank you for the opportunity to provide comments on the Water Quality Control Policy for Siting, Design, Operation, and Maintenance of Onsite Wastewater Treatment Systems (Policy) dated September 30, 2011.

The San Mateo County Association of REALTORS® (SAMCAR) has monitored the AB 885 regulatory process. As such, SAMCAR represents not only the rights of property owners who currently own, or might someday own, an Onsite Wastewater Treatment System (OWTS) but our 3,000 REALTOR® members. The monitoring process has led to concerns outlined in this letter.

## GENERAL

Protecting Environmental Quality Deserves More than 2% Participation. Less than 2% of homes in California will change hands this year. In fact, even in a robust economy, less than 2% of homes change hands in any given year. Given that truth, a "point of sale" or "transfer of title" approach is both inefficient and does not tackle the matter – as a stated goal of the State Water Resources Control Board – on a statewide basis.

Therefore, any implementation of standards, offers for education and/or outreach, or mandates on reporting should not be focused on real estate transactions or the WRCB's goal – as noted – is, candidly, disingenuous. If one of the goals of the Policy is to truly "help ensure that public health and beneficial uses of the state's waters are protected from OWTS effluent discharges by meeting water quality objectives", then every property with OWTS should be informed of the new requirements and any new or existing restrictions that may be in place. In addition, no new mandates should result from the Policy that prejudice against or burden real estate transactions.

Keep Local Land Use Planning Local. State mandated land use planning rules not only take away the power of a community to build and define itself but they also do not consider local land use and housing affordability needs. This is of prime importance in San Mateo County. SAMCAR supports local land-use planning decision making. Bottom line: the state should not dictate to communities the minimum lot sizes they can consider; that is a decision that should be made via the local land-use planning processes.

## COMMENTS ON PROPOSED REGULATIONS

### Section 1.0 Definitions

SAMCAR agrees with the comments provided by the California Association of REALTORS® (C.A.R.) that the definition of "Major Repair" be amended as follows to allow for greater clarity and direction to local government agencies:

"Major repair" means either: (1) for a dispersal system repair required for an OWTS dispersal system due to surfacing wastewater effluent from the dispersal field and/or wastewater backed up into plumbing fixtures because the dispersal system is not able to percolate the wastewater, or (2) for a septic tank, ~~any~~ repairs required to ~~the tank for a baffle failure or tank structural integrity failure such that either~~ mitigate wastewater is exfiltrating or groundwater is infiltrating the septic tank.

### Section 5.0 State Water Board Functions and Duties

Subsection 5.6 provides the Water Resources Control Board (WCRB) with the authority to list bodies of water "where it is likely that OWTS will subsequently be determined to be a contributing source of pathogens or nitrates and therefore it is anticipated that OWTS would receive a loading reduction."

Our concern is this statement will urge the immediate listing of bodies of water that are, at best, only suspected to have a future problem related to OWTS. The statement also effectively pre-empts the opportunity for the new Policy to demonstrate efficacy in reducing pathogens and/or nitrates emanating from OWTS.

In addition, the word "likely" invites speculative and even arbitrary designation of bodies of water to be put on a watch list because substantiation of the listing is not required. (This ambiguity recalls the designation of 'vernal pools' by aerial survey wherein standing water on the roofs of high rise office buildings in Southern California were classified as 'vernal pools.')

We agree with C.A.R. that Subsection 5.6, and all further references to the section, be struck from the Policy.

### Section 6.0 Coverage for Properly Operating Existing OWTS

In Subsection 6.2, the Regional Water Control Board or local agency is empowered to deny Tier 0 grandfathering to existing systems based upon three criteria.

However, Subsection 6.2.3 states that simply the "opinion" of the Regional Water Control Board could disqualify a system from Tier 0 classification. The upshot is this section does not require substantiation by the Regional Water Control Board for their basis of denial. Again the bottom line is the language empowers Regional Water Boards to deny OWTS into Tier 0 via regulatory fiat. To mitigate the potential for conflicts under this section, we joint with C.A.R. in requesting the following amendments:

6.2 A Regional Water Board or local agency may deny coverage under this Policy to any OWTS ~~that is~~where;

6.2.1 ~~The OWTS is n~~ot in compliance with Section 6.1;

6.2.2 ~~The OWTS is c~~causing a nuisance or pollution;

6.2.3 ~~In the opinion of~~ Where the Regional Water Board obtained and verified enough data to determine that the OWTS is not able to adequately protect the water quality of the waters of the State and should therefore submit a report of waste discharge to receive Region specific waste discharge requirements or waiver of waste discharge requirements so as to be protective.

### Section 7.0 Minimum Site Evaluation and Siting Standards (Tier 1)

Subsection 7.8 mandates that the minimum average density for new subdivision projects implemented under Tier 1 to be 2.5 acres per single family dwelling unit (or equivalent) for units that rely on OWTS. Given some of the land use considerations in San Mateo County, all local land use planning, including minimum lot size development standards for units that rely on OWTS, should be determined through local government planning.

Local governments are best suited to determine land use densities and other land use practices based upon local geologic and groundwater conditions. With the difficulty in providing adequate housing for low- and moderate-income levels without utilizing Density Bonus rules, many projects simply do not "pencil out." A 2.5 acre minimum lot size will not only preclude the development of affordable housing, it will also drive up the cost of housing for all income levels.

### Section 9.0 Local Agency Management Program for Minimum OWTS Standards

In Subsection 9.2.3 the Policy states that education and/or outreach programs including informational materials will be provided to inform property buyers of the "existence, location, operation, and maintenance of onsite disposal systems as well as any enforcement action (e.g. Basin Plan prohibitions) regarding OWTS" within the jurisdiction of the agency.

That foci is too restrictive and defeats the purpose of outreach and education. Existing home owners will not necessarily be aware of changing OWTS requirements or the condition of the local surface and groundwater bodies. Thus, education and information should be provided to every property owner with OWTS. We again concur with C.A.R. that the following will assist in achieving the WCRB's goal:

9.2.3 Education and/or outreach program including informational materials to inform property buyers owners of the existence, location, operation, and maintenance of onsite disposal systems as well as any enforcement action (e.g., Basin Plan prohibitions) regarding OWTS within its jurisdiction. The education and/or outreach program shall also include procedures to ensure that alternative onsite system owners are provided an informational maintenance or replacement document by the system designer or installer. This document shall cite homeowner procedures to ensure maintenance, repair, or replacement of critical items within 48 hours following failure.

Subsection 9.3.8

Subsection 9.3.8. establishes minimum monitoring requirements by the local agency for managing the Local Agency Management Program. This section allows for existing sources of data to be used to including the following:

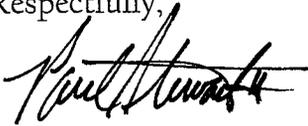
9.3.8.2 Routine real estate transfer samples if those are performed and reported.

SAMCAR agrees with C.A.R. that Subsection 9.3.8.2 be removed. Currently, any well sampling data collected in the course of a real estate transfer is not reported to a government agency. Collection of the information is optional and a condition that, if raised, is negotiated as part of the sale.

Once collected, the information is shared with the buyer, but, again, is not reported. With the adoption of the new Policy, local governments are sure to begin requiring reporting. Thus, Subsection 9.3.8.2 will create a new **Point-of-Sale mandate** for reporting well data to a local government agency. If past local practices with other 'point-of-sale' or 'transfer-of-title' mandates are any indication, this new requirement will hold up real estate transfers and jeopardize transactions.

Thank you for the opportunity to provide these comments. As you can see from the above, SAMCAR joins C.A.R. in their concerns about some of the practical implications of the proposed Policy.

Respectfully,



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