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DIVISION OF WATER QUALITY

November 11, 2011

State Water Resources Control Board
P.O. Box 100
Sacramento, CA 95812-0100

RE: Water Quality Control Policy For Siting, Design, Operation, And Maintenance Of Onsite Wastewater Treatment Systems

CSERC has reviewed the draft policy that is proposed to govern onsite wastewater treatment systems in the State. As indicated in the "Fact Sheet" prepared for the public's review, this policy is intended to be "much simpler than the policy circulated for public review in 2008" and will "....take a risk based approach, addressing only those systems that threaten water sources serving the general public". It appears, however, that the State Board is taking a "hands off" approach to regulating private septic systems in response to outcry from those that would be required to more closely monitor these systems locally. While we are supportive of the water quality protections to address impaired water bodies, the draft policy is unclear as to how this would actually be accomplished, and in many sections, the draft policy contains contradictory language as to whether described protections are actually required. Additionally, our Center does not support allowing local agencies to significantly deviate from the minimum standards contained in this policy.

The primary focus of this OWTS process is supposedly to establish a statewide risk-based OWTS tiered approach to protecting water resources and public health. This is in direct contrast to a local county government approach that in most cases, due to local political pressure, will understandably favor the least possible regulation, the least amount of monitoring or oversight by local government staff, and the least costs for local area property owners.

Using the local county government of Tuolumne County as an example, that County has already shown its desire to reduce soil depth requirements and other standards in order to maximize development on marginal sites. The County board of supervisors has openly provided support for reduced regulatory oversight and fewer restrictions affecting whatever people want to do on their private property. This clear desire to favor development over water quality makes the local county government motivated to adopt the least stringent OWTS policies for local application.

Thus, unless the new state OWTS policies result in strong statewide minimum requirements for new or repaired standard onsite wastewater treatments systems, then local governments and agencies will simply adopt weaker local plans and claim that their weaker standards accomplish the same objectives. This is the single most important comment submitted by our non-profit center in response to the proposed new policy package. **Allowing local programs to substantially deviate**

from the State standards due to “local conditions” will significantly undermine the positive intent of improving OWTS within California and the goal to reduce OWTS risks to public health and the degradation of water quality. Very clear and strong minimum standards need to be spelled out for all standard OWTS as well as for advanced treatment systems. Those should apply to Tier 2 system requirements as well as to Tier 3.

We provide more specific comments below:

Tier 1 and Tier 2 Requirements

CSERC supports the minimum siting standards spelled out in Section 7 as being generally acceptable provided that local jurisdictions do have the authority to require stronger standards, but do not have the flexibility to be less restrictive. Specifically, we support the minimum soil depth below the leaching trench of five feet, and we oppose allowing lesser soil depths to be granted under a Tier 2 local program unless there is advanced treatment. We strongly oppose allowing local programs to authorize minimum depths to groundwater of less than 5 feet. We urge that no exceptions be allowed to reduce that depth requirement.

Unfortunately, the policies do appear to allow a local agency to be less restrictive with a Tier 2 Local Agency Management Program because the document contains contradictory language. For example, Section 3.6 states:

“ Nothing in the Policy shall preclude a local agency from adopting or retaining standardsthat are *more protective* of the public health or the environment than are contained in this policy.”

This statement is then continually weakened throughout the document where “other percolation rates” are allowed (Section 7.4) as well as reduced setbacks from water bodies (7.5.4).

Rather than provide a clear minimum standard, it appears that the new policy would maintain the status quo by allowing a local agency to propose alternative or less restrictive standards if “they meet the intent of the policy”. In many rural jurisdictions where anti-regulatory sentiment is pervasive, it is certain that local officials will consistently opine that there weaker standards meet the intent of the Statewide policy. In reality, they would simply be substituting weaker policies that would fail to protect water quality or prevent risk to human health.

We urge the State to remove these inconsistent statements and provide clear definitions and minimum standards for local agencies.

Tier 3-Systems located adjacent to Impaired Water Bodies

The draft policy is unclear and contradictory as to whether or not the Tier 3 program is applicable to existing systems. On Page 4, under “Tier 3 Impaired Areas” it states “ Existing OWTS that are within the defined boundaries....*must* meet the timelines and requirements of Tier 3”. Then on Page 31, in Section 10.0 it states “ ...local agencies are *not required* to notice or enforce the requirements of Tier 3 for existing OWTS”. This is contradictory.

Section 10.1 and 10.2 then appear to indicate that the Tier Program *would* apply to existing systems stating that “...For those impaired water bodies that do not have a TMDL, the requirements specified in Section 10 *shall* be applied.” This section contains major contradiction and apparent

loophole deficiency whereby local agencies are NOT being required to enforce the new Policy, only “encouraged” to work with Regional Boards to implement the Policy.

By allowing local agencies to shrug off enforcement of the new statewide Policy, the entire Policy becomes toothless and meaningless. Why would any local government choose to apply staff time and resources to implementing and enforcing a new Policy program if the enforcement is optional rather than mandatory? Allowing local governments to shrug off enforcement undercuts the entire Policy and makes the new statewide approach completely meaningless. We strongly urge the State to clarify language regarding the Tier 3 systems to ensure that it will be implemented and apply to all existing systems located near impaired water bodies.

Monitoring and Reporting

The annual reporting to the State is an important component of the draft regulations and we are highly supportive of this change. We again raise the concern that although maintenance records could be obtained for those that are actually keeping up with maintenance of their systems, the larger problem are likely from those systems that are not being maintained at all. This continues to be a major deficiency in the State’s “risk based” rather than preventative approach to regulating septic systems.

Under Responsibilities and Duties, Section 2.0, it states: “...Owners of OWTS shall maintain their OWTS in good working condition including inspections and pumping solids as necessary, or as required by local ordinances, to maintain proper function and assure adequate treatment.” Relying on local ordinances will not remedy this problem if the state does include a clear requirement that local jurisdictions periodically monitor all systems, not just those located next to known impaired water bodies. We also urge the State to establishing a maximum period for an existing standard OWTS to go between maintenance visits, otherwise the vast majority of systems will not be pumped or maintained as needed.

Additionally, CSERC recommends that at a minimum, the policy require that property owners retain documents demonstrating that there system has been pumped within the last 8 years and provide such documentation if requested by local or state officials.

Time Limits for Implementation

On page 11, item 3.1, CSERC strongly opposes allowing local programs to continue for 60 months under current regulatory requirements. The desirable maximum period for allowing local programs to continue should be no more than two years. If the state must err on the side of flexibility, the state should allow no more than 36 months for local programs to continue before coming into full compliance with the new policies.

Comments Specific to Tuolumne and Calaveras Counties

On November 1, 2011, a letter was approved by the Tuolumne County Board of Supervisors complaining that the new Policy would require the majority of septic systems in the County to be upgraded to stricter design requirements and potentially advanced wastewater treatment. The response to that complaint is a no brainer. Of course septic systems that fail to meet minimum standards need to be brought up to new minimum standards. That is especially important because so many septic systems of low design standards are currently in place within watersheds identified as impaired within Tuolumne County.

That is a second complaint spelled out in the letter drafted up by County staff and approved by County supervisors. The County letter objects to the fact that Sullivan Creek and Woods Creek are shown as impaired waters because there has not been extensive testing to inarguably prove that the pathogen contamination is primarily coming from failing septic systems rather than from livestock or wildlife.

The response to that complaint is also obvious. The fact that fecal coliform levels in those creeks have frequently been proven to greatly exceed basin plan standards is clear evidence that the streams are polluted. Thus Tier 3 requirements for certain systems within close proximity to the streams are not only logical, but are essential to begin to correct the degradation. The options for actions tied to Tier 3 include opportunities to test and show that individual systems are not contributing to the problem, but it is unreasonable to suggest that no action should be taken until some future fecal source testing proves that septic systems are the primary cause. Inaction will simply allow the degradation to continue.

A third complaint in the Tuolumne County letter is that the County would be required to collect, store, and transfer data to the Regional Water Board. The County claims a financial hardship and claims that it would only be able to recover costs through new fees that would be a burden on constituents. With the ownership of an OWTS comes responsibility. If fees are necessary for Tuolumne County or any other County to do the necessary reporting and data collection to determine the extent of OWTS pollution or need for repair, then it is incumbent upon the septic system owners to provide the necessary funding through payment of necessary fees.

While we do agree that this program will be challenge to implement, we believe that the long-term public and environmental health benefits would be invaluable and far exceed the shortterm financial costs. We hope that the state will provide assistance to local agencies in identifying grants and other funding sources for monitoring, reporting, and system upgrades.

Thank you for considering these comments. We hope that they lead to improvements and stronger assurance that the statewide policies will not be allowed to be significantly undercut by much weaker local government alternative policies.



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