



**SOLANO COUNTY**  
**Department of Resource Management**  
Environmental Health Division  
675 Texas Street, Suite 5500  
Fairfield, CA 94533  
[www.solanocounty.com](http://www.solanocounty.com)

Telephone No: (707) 784-6765  
Fax: (707) 784-4805

Bill Emlen, Director  
Clifford K. Covey, Assistant Director

November 10, 2011

State Water Resources Control Board  
Sent via e-mail ([owts\\_commentletters@waterboards.ca.gov](mailto:owts_commentletters@waterboards.ca.gov))

RE: Comment Letter – Draft OWTS Policy Documents

Thank you for the opportunity to comment on the proposed policy for Onsite Wastewater Treatment Systems (OWTS) proposed by the State Water Resources Control Board. Please accept the following comments regarding this proposed policy.

**1. Section 2.0**

- a. Section 2.2 states that "Owners of new and replaced OWTS ..." shall comply with the requirements of Tier 3 if found to be contributing to an impairment of waters of the State...". However, section 10 does not limit requirements to OWTS that are "found to be contributing", but seems to impose on all OWTS located within a specified distance to a 303(d) water body listed as impaired by pathogens or nutrients, regardless of potential contributing sources listed.

Recommend clarification to section 10 that Tier 3 requirements will only apply to OWTS within certain distance to 303(d) water body listed as impaired by pathogens or nutrients where OWTS's are listed as a contributing source. Once a TMDL is completed within 5 years, the OWTS will comply with the requirements of the TMDL to address the specific contribution from the OWTS's. Without this clarification, there is the potential for costly upgrades and monitoring to existing OWTS's and extensive requirements on new/replaced OWTS near impaired water bodies that will not result in any significant improvement of the impairment.

- b. Section 2.6.5 seems to conflict with section 6.1.2, which includes existing "food service buildings" with high strength wastes and grease traps in Tier 0, thereby exempting them from a WDR from the RWQCB. Recommend modifying section 2.6.5 to make consistent with 6.1.2.

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Building & Safety David Cliche Building Official	Planning Services Mike Yankovich Program Manager	Environmental Health Terry Schmidtbauer Program Manager	Administrative Services Suganthi Krishnan Sr. Staff Analyst	Public Works- Engineering Matt Tuggle Engineering Manager	Public Works- Operations Wayne Spencer Operations Manager
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## 2. Section 4.0

Section 4.3 appears to provide RWQCB review requirements for initial submission of a Local Agency Management Program. Section 4.5 states that RWQCB shall accept any request for modification from any person, but does not specify if person is meant for public only, or for a local agency. Section 4.5 then goes on to discuss only the process for consideration of the "person's" request for revocation of a local agency management program and not modification to the program. Section 4.3 and 4.5 need clarification to specifically address processing procedures and timelines of requests by a local agency regarding modification of its existing Local Agency Management Program, and appeal process should request for modification be denied.

## 3. Section 5.0

- a. Section 5.5 has same issues as section 4.3 and 4.5 mentioned above. There needs to be a clear process for review of modifications to an existing Local Agency Management Program submitted by the Local Agency. Section 5.3 can be modified to include modifications of a Local Agency Management Program.
- b. Section 5.5 also refers to revocation process per section 4.4, which is the RWQCB duty and delineates actions taken by the RWQCB. This is an issue for two reasons: 1) This section needs to refer to a revocation or modification process and not just revocation process; and 2) it may be interpreted that the SWRCB refers back to the RWQCB and creates an endless loop. It should clearly delineate that for section 5.5 the SWRCB will be used in place of RWQCB (as described in section 4.4).

## 4. Section 6.0

Section 6.1.2 appears to be in conflict with section 2.6.5 in that it allows food establishments to be in Tier 0 with wastewater exceeding the high strength wastewater characteristic that requires a WDR per 2.6.5, and if a grease trap is present. Recommend modifying section 2.6.5 to be consistent with section 6.1.2.

## 5. Section 7.0

Section 7.3.4 states that "...the direct observation method indicating the highest level shall govern" for determining highest extent of groundwater elevation. This may defer to historic levels of groundwater and not actual levels that exist during true elevated groundwater periods due to wet weather or flood irrigation practices. In Solano County we may use mottling as initial indicator, but allow the option for groundwater monitoring to determine actual elevation provided the monitoring occurs during period of normal rainfall, or agricultural practices, that result in elevated groundwater conditions. As worded, this option will not be available. Direct observation of groundwater, during conditions that are typical, should be allowed to over-rule indicators, such as mottling. Alternatively, this wording in Tier 1 may be acceptable if it is

understood that alternate methods for groundwater elevation determination can be used in siting requirements contained in a Tier 2 Local Agency Management Program.

## 6. Section 9.0

- a. Section 9.2.3 – The wording for the requirement to inform property buyers of “enforcement action (e.g., Basin Plan prohibitions) regarding OWTS within its jurisdiction” is confusing. Enforcement action is not defined, and could mean informal as well as formal enforcement actions. This could be interpreted that a local agency must inform property buyers of minor violations that are readily corrected and have no impact on the functioning of OWTS throughout the county (e.g.- repair a tightline), other than the specific OWTS being cited. The intent should be that property owners are notified of jurisdiction wide, or area wide, formal enforcement actions that have implication to the operation of multiple OWTS’s.
- b. Sections 9.3.3, 9.3.4, 9.3.5; and 9.3.6 – Section 9.3.4 and 9.3.6 need to be eliminated, or at most captured in sections 9.2.3 and 9.3.5. What is an “additional condition”? Having two lists for new and repair permits is a logistics nightmare and serves no purpose.
- c. Section 9.3.7- requires the local agency to maintain a list of all new OWTS installations within 500 feet of sewer. This data can be readily accessed by the RWQCB through the sewer provider. The sewer utility will have a list of connections and maps tools to show who is connected to their system. By default in almost all cases any structure with plumbing that is not connected to sewer will have an OWTS. As sewer mains expand, the list also becomes outdated. There is no beneficial use for “maintaining” such a list by the OWTS permitting agency. This requirement needs to be eliminated.
- d. Section 9.3.9- states that the report is due annually or once every three years from the approval date. This may result in a logistic issue for tracking when reports are due, resulting in timelines being missed. Reports should be due on a certain date for all jurisdictions. For example, February 15 of the first full year (or three years) following local agency approval. If it is a routine, specified date, it may be easier to track for both the local agency and RWQCB.
- e. Section 9.4.10 – prohibits a Local Agency Management Program from regulating OWTS within certain specified setbacks to public drinking water wells, or surface water intakes. This means that any new or replaced OWTS proposed within these setbacks would be required to obtain a WDR or waiver from the RWQCB. This is excessively prohibitive as the setbacks proposed are greater than those currently required by state regulations; there are no provisions for site conditions or use and design of the OWTS; and there is no scale for potential impact. While we concur that our drinking water resources need to be protected, there is inadequate reason provided why a local agency management program cannot adequately provide that protection.

- f. Section 9.6- Recommend modify language to read: "A local agency must detail how all the criteria in their program work together to achieve a comparable level of water quality protection." As written, it will be too onerous to identify each characteristic against Tier 1 standards. Tier 1 and Tier 2 are simply different management strategies to achieve the same goal.

## 7. Section 10.0

- a. Section 10.6- Requires advanced treatment for any new OWTS installed within 600' to a 303(d) water body listed as impaired by nutrients or pathogens if there is no TMDL. This requirement does not take into consideration the actual potential impact from the new OWTS. In Solano County, the Suisun Marsh is listed as impaired for nutrients. The impairment is predominantly a result of flows from outside the area. OWTS's are not identified in the 303(d) listing. People own property within the marsh, and water flow is controlled by the Suisun Resource Conservation District. Many undeveloped lots are large (several acres) and not all are within 600 feet of water, though lots may be within the marsh area. While we concur that the Suisun Marsh needs to be protected, if a site within the marsh can accommodate a conventional, or alternative, OWTS using current county code requirements, the potential impact on the water quality of the marsh would be minimal. Additional monitoring and reporting requirements would prove a costly burden that will not result in an equal or greater benefit to water quality protection. There needs to be a method to allow new OWTS development within 600' of an impaired water body if that new development would result in a de minimis contribution, if any.
- b. Section 10.8.2 –
  - i. Requires 3' separation distance to highest anticipated level of groundwater. 2' separation should be allowed as additional pretreatment components are necessary to meet the TSS standard. The pretreatment of the effluent will act equivalent to 1' of natural soil and improves the efficacy of the disinfection agent.
  - ii. Section 10.8.2 also requires a minimum of 12" soil cover. This may eliminate drip dispersal systems, which are often placed 6" to 9" below grade to take full advantage of uptake by vegetation. If a 303(d) is listed for both nitrates and pathogens, drip dispersal systems will be excluded, thereby eliminating a very useful technology to address the nitrate issue.

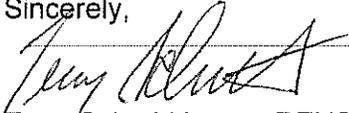
## 8. Attachment 2

Attachment 2 lists the Napa River in Solano County for nutrients, which indicates that OWTS would be a source of contamination. In Solano County homes located within 600' of the Napa River are supplied by public sewer. Furthermore, the State Water Resource Control Board's web site: [http://www.waterboards.ca.gov/water\\_issues/programs/tmdl/integrated2010.shtml](http://www.waterboards.ca.gov/water_issues/programs/tmdl/integrated2010.shtml)

list the Napa River as impaired by nutrients from "agriculture", and pathogens from "urban runoff/storm sewers" that is being addressed by an approved TMDL. There is no mention of onsite wastewater treatment systems contributing to this impairment for either nutrients or pathogens. Given this information and the presence of public sewer, Solano County should not be included in the Napa River designation in Attachment 2 of the Policy.

If you have questions regarding these comments, please feel free to contact me at 707-784-3308.

Sincerely,

A handwritten signature in black ink, appearing to read "Terry Schmidtbauer", written over a horizontal dotted line.

Terry Schmidtbauer, REHS  
Environmental Health Manager