

May 3, 2012

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Jeanine Townsend
Clerk to the Board
State Water Resources Control Board
1001 I Street, 24th Floor
Sacramento, CA 95814
(Via email: commentletters@waterboards.ca.gov)

Subject: Draft Onsite Wastewater Treatment Systems (OWTS) Policy

Dear Ms. Townsend,

The County of Orange (County) has reviewed the Draft Onsite Wastewater Treatment Systems Policy (OWTS Policy) proposed by the State Water Resources Control Board dated March 20, 2012. Water quality and public health are very important to the County but in considering a policy as important as this, a careful balance must be attained that recognizes cost and other potential deleterious impacts on existing communities. We are particularly concerned that the policy, as proposed, will have significant effects on the County's budget and land use control and also on the residents of the unincorporated area of Orange County, particularly the rural canyon areas. It also includes requirements that appear to be unfunded State mandates. The most concerning issues are described below.

Under Section 3 "Local Agency Requirements and Responsibilities," the proposed OWTS Policy would require the County to establish a process and dedicate staff to collect data and submit an annual report to the Regional Water Quality Control Boards regarding all of the OWTSs located in the unincorporated area. In addition, under Section 10 "Advanced Protection Management Program," the County would be required to develop and implement an Advanced Protection Management Program due to the presence of impaired water bodies within the County's jurisdiction. The collection and maintenance of this amount of data and the implementation of the Advanced Protection Management Program would create a considerable financial burden for the County that is not commensurate with the threat. A study conducted by the County, on behalf of the Orange County Stormwater Program, in June 2003 (see http://www.ocwatersheds.com/Documents/2003_App_E4_SepticSystemSurvey.pdf), for example, found a low incidence of failure among septic tanks, similar to a larger study in Oregon. Similarly, limited bacteria monitoring data from the rural canyon areas of Orange County shows no significant evidence of bacterial contamination (it should be noted that streams in these areas were listed as impaired in 1998 with minimal data record).

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The OWTS Policy also contains a number of the provisions that may detrimentally affect property owners and residents of the rural portions of the unincorporated area, especially those in historic canyon communities. For example, under Section 7 “Minimum Site Evaluation and Siting Standards,” the OWTS Policy establishes a minimum lot size of 2.5 acres per dwelling unit for properties reliant on these systems. This is excessively restrictive and requires analysis as to why this acreage is optimal for water quality. Such restrictions will impact the development of existing properties in the canyon areas, many of which are much smaller, averaging from 1,500 to 6,000 square feet per lot. The Substitute Environmental Document ((SED) at page 202 states that nothing in the OWTS Policy will conflict with applicable land use plans, policies or regulations and that no other mitigation is required. However, 2.5 minimum acreage and other site development requirements will clearly force municipalities to change their zoning in order to abide by the OWTS Policy, such as the County’s minimum one acre per dwelling unit requirement for canyon areas. Additionally, the SED does not analyze the impacts to rural properties that are less than 2.5 acres where the build-out of sanitation lines is infeasible. Therefore, the SED does not properly analyze the impacts on local governments and rural development, and the OWTS Policy would unlawfully preempt the County’s constitutional land use authority.

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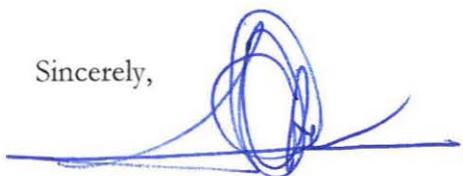
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A majority of the residences located in our historic canyon communities are more than 50 years old and constructed among steep slopes, oak woodlands, and sensitive plant communities. It may be infeasible for owners of very small parcels to accommodate a new or enlarged OWTS. The owners of parcels located within 600 feet of Silverado Creek may be subject to additional requirements that may be financially or physically impossible to meet. The proposed OWTS Policy should address the possible infeasibility of compliance and provide alternatives.

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The County respectfully requests that the State Water Resources Control Board review and incorporate enclosed detailed comments and suggested revisions into the final OWTS Policy. If you have any questions regarding this matter please contact Ignacio Ochoa, Interim Director, OC Public Works, at 714-667-3213. Additional comments both from the County and area residents are enclosed.

Sincerely,



Ignacio G. Ochoa, P.E
Interim Director, OC Public Works

Enclosures

cc: Orange County Board of Supervisors
Thomas G. Mauk, County Executive Officer
Alisa Drakodaidis, Deputy CEO, OC Infrastructure
Rick LeFeuvre, Director, OC Public Works/OC Planning

County of Orange
Review of Water Quality Policy for
Siting, Design, Operation, and Maintenance of
Onsite Wastewater Treatment Systems (OWTS)
Dated: March 20, 2012

Section: Tier 1 Low Risk New or Replacement OWTS			
Section	Proposed Policy	Comment	Suggested Revision
3.3	<p>“All local agencies permitting OWTS shall report annually to the Regional Water Board(s). If a local agency’s jurisdictional area is within the boundary of multiple Regional Water Boards, the local agency shall send a copy of the annual report to each Regional Water Board. The annual report shall include the following information (organized in a tabular spreadsheet format) and summarize whether any further actions are warranted to protect water quality or public health:</p> <p>3.3.1 number and location of complaints pertaining to OTWS operation and maintenance, and identification of those which were investigated and how they were resolved;</p> <p>3.3.2 shall provide the applications and registrations issued as part of the local septic tank registration program pursuant to Section 117400 et seq. of the California Health and Safety Code;</p> <p>3.3.3 number, location and description of permits issued for new and repaired OWTS and which Tier the permit is issued.</p>	<p>The justification of the need for this exhaustive data collection and record maintenance should be provided. These new requirements could be interpreted as an unfunded State mandate.</p>	<p style="text-align: center;">5</p> <p>The timeframe for compliance and amount of data needed and frequency of reporting should be subject to negotiation between the applicable Regional Water Quality Control Board(s) staff and the County.</p>

Section	Proposed Policy	Comment	Suggested Revision
5.6	The State Water Board, at the time of approving any Impaired Water Bodies [303(d)] List, and for the purpose of implementing Tier 3 of this Policy, shall identify in Attachment 2 those water bodies where: (1) it is likely that operating OWTS will subsequently be determined to be a contributing source of pathogens and nitrogen and therefore it is anticipated that OWTS would receive a loading reduction, and (2) it is likely that new OWTS installations discharging within 600 feet of the water body would contribute to the impairment. This identification shall be based on information available at the time of 303(d) listing and may be updated based on new information.	Stating that OWTS operating within 600 feet of an impaired water body would likely be a contributing source gives the impression that there is no scientific evidence to prove that this will definitely occur along the water ways located in Orange County. Without scientific evidence to justify the requirement, the 600 foot boundary seems arbitrary.	<div style="text-align: right; margin-bottom: 10px;">7</div> Provide scientific evidence that OTWS will contribute to impairments in a water body if it is operated within 600 feet of that water body, or consider eliminating or adjusting the 600 boundary.
7.5	“Minimum horizontal setbacks shall be as follows:”	The minimum horizontal setbacks will not be easily met, if at all, by a majority of parcels located in the rural canyons in eastern Orange County.	<div style="text-align: right; margin-bottom: 10px;">1</div> The policy should include alternatives if meeting one or more of these setback requirements are infeasible. Owners should not be restricted from building on their property due to its size or location in a rural area.
7.5.3	“100 feet from any unstable land mass or any areas subject to earth slides identified by a registered engineer or registered geologist; other setback distances are allowed, if recommended by a geotechnical report prepared by a qualified professional.”	The required 100 foot setback from unstable land mass is too restrictive for small lots which are common in Orange County’s historic canyon communities.	<div style="text-align: right; margin-bottom: 10px;">8</div> The site’s geology and geomorphology should determine the appropriate setback from any unstable land mass present. <div style="text-align: right; margin-top: 10px;">9</div>
7.5.4	“100 feet from springs and flowing surface water bodies where the edge of that water body is the natural or levied banks for creeks and rivers, or may be less where site conditions prevent migration of wastewater to the water body.”	The required 100 foot setback from surface water bodies is too restrictive for small lots which are common in Orange County’s historic canyon communities immediately adjacent to water ways.	<div style="text-align: right; margin-bottom: 10px;">9</div> The policy should include alternatives if meeting one or more of these setback requirements are infeasible. Owners should not be restricted from building on their property due to its size or location in a rural area.
7.8	The average density for any subdivision of property occurring after the effective date of this Policy and implemented under Tier 1 shall not exceed one single-family dwelling unit, or its equivalent, per 2.5 acres for those units that rely on OWTS.	The current zoning on many of the properties located in the canyon areas allow a minimum of one acre per dwelling unit. The OWTS Policy attempts to supersede the County’s land use authority.	<div style="text-align: right; margin-bottom: 10px;">10</div> This provision should be removed or revised into a guideline only.

Section: Tier 3 – Impaired Areas

Section	Proposed Policy	Comment	Suggested Revision
Tier 3	<p>“OWTS that are near impaired water bodies may be addressed by a TMDL and its implementation program, or special provisions contained in a Local Agency Management Program. If there is no TMDL or special provisions, new or replacement OWTS within 600 feet of impaired water bodies listed in Attachment 2 must meet the specific requirements of Tier 3.”</p>	<p>The 600 foot boundary from impaired water bodies will capture a majority of properties in the historic Silverado Canyon community. The increased requirements in Tier 3 will greatly increase the cost to develop or redevelop a parcel.</p>	<p align="right">11</p> <p>The policy should include a “grandfathering” provision available to parcels that were developed prior to the listing of Silverado Creek, and other listed water bodies, as an impaired water body.</p>
10.0	<p>“The Advanced Protection Management Program is the minimum required management program for all local agencies where an OWTS is located near a water body that has been listed as an impaired water body due to nitrogen or pathogen indicators pursuant to Section 303(d) of the Clean Water Act. This Tier 3 contains the OWTS requirements within the Advanced Protection Management Program.”</p>	<p>The requirement to develop and implement an Advance Protection Management Program will create a significant financial burden upon the County. This requirement could be interpreted as an unfunded state mandate.</p>	<p align="right">12</p> <p>The duties and responsibilities listed in this provision should remain with the State Regional Water Quality Control Boards(s).</p>
10.4.1	<p>If a Regional Water Board does not complete a TMDL within two years of the time period specified in Attachment 2, coverage under this Policy’s waiver of waste discharge requirements shall expire for any OWTS that has any part of its dispersal system discharging within the geographic area of an Advanced Protection Management Program. The Regional Water Board shall issue waste discharge requirements, general waster discharge requirements, waivers of waste discharge requirements, or require corrective action for such OTWS.</p>	<p>Owners of new and existing systems may be subject to increased requirements which may be cost prohibitive even if their property has not been contributing to the impairment of the water body.</p>	<p align="right">13</p> <p>The policy should include a “grandfathering” provision available to parcels that were developed prior to the listing of Silverado Creek, and other listed water bodies, as an impaired water body.</p>
10.5	<p>“If the Regional Water Board requires owners of OWTS to submit a qualified professional’s report, the report may include a determination of whether the OWTS is functioning properly and as designed or requires corrective actions per Tier 4, and regardless of its state of function, whether it is contributing to the impairment of the water body.”</p>	<p>The requirement to pay for a report prepared by a qualified professional may be too costly for low-income households which make up a segment of the rural canyon population. In addition, if an OWTS is determined to be functioning properly, there should be no need to determine if it is contributing to the impairment of the water body.</p>	<p align="right">14</p> <p>The policy should address the possibility of an owner’s inability to pay for this type of report. Not all families will be able to qualify for loan assistance. Also, an owner should not be held responsible for a water body’s impairment if the OWTS located on their property is functioning properly.</p>

Draft Onsite Wastewater Treatment Systems (OWTS) Policy

Comments Provided by Residents of Unincorporated Orange County

- 1. Judie Bruno**
- 2. Linda Unger**
- 3. Gerald Mansfield**

Leng, Channary

From: JBruno868@aol.com
Sent: Monday, April 23, 2012 4:35 PM
To: Leng, Channary
Subject: New Septic System Requirements

Dear Mrs Channary:

How can the average person understand this stuff? Is there anyway we can get a digest that will explain it all in layman's terms so we know exactly what it says and how it will effect us? From what I've been told this will effect all of us in Silverado.

I just bought the house I plan to spend the rest of my life, my dream home in Silverado Canyon using a VA Loan and as a 100% Disabled Veteran, I am using a Grant from the VA to remodel it for the wheelchair. I live on a limited specific income and in no way, would I ever have the funds to change my septic in anyway to met these requirements. I would never be able to sell my home, leave it to my family or live in the home if I am forced to make these kind of changes and my house is the only house in Silverado that is built right over the creek. My septic is located in the shed connected to my home and my leach field is located under my courtyard. I would have to walk away from the home of my dreams if this is past and I will try my best to get the full support of the VA and the VA Loan behind me to stop this.

We will lose all of Silverado Canyon if this is past. You must realize that and as a community that has been here since the early 30's, that just isn't right. Something must be done.

Thank you

Judie Bruno
ADA Coordinator
Patient Advocate

Emergency Counsel
Inter-Canyon League
Canyon Watch - Canyon 1 5
PO Box 0298
Silverado, CA 92676
(714) 710-9033

-----Original Message-----

From: lmunger1@cox.net [lmunger1@cox.net]

Sent: Thursday, May 03, 2012 02:25 PM Pacific Standard Time

To: Leng, Channary

Subject: OWTS

Ms. Leng:

We in the Silverado Canyon community are very concerned about the State Water Board's policy concerning our septic tanks along Silverado Creek. Not only have we not been notified of their actions which could affect us immensely, but the potential future financial impact on our community would be devastating in terms of costs to repair or replace our facilities as well as how it may decrease property values. Our steep and narrow canyon is not amenable to a sewer system, and most of the properties are on small lots adjacent to the creek, making alternative waste treatment methods unfeasible.

We would ask that you notify the State Water Board of these issues.

Thank you,

Linda Unger
29291 Hazel Bell Dr.
P.O. Box 86
Silverado, CA 92676

From: gerald mansfield [mailto:killsavages@yahoo.com]
Sent: Wednesday, April 25, 2012 4:10 PM
To: Balsamo, Michael; Leng, Channary
Subject: In regards to Silverado tier 3 recommendation .

What is currently being discussed in regards to a tier 3 recommendation for Silverado cyn?

I live in Silverado and recently received an email stating, that pathogens found in creek water were going to force Silverado into a tier 3 classification, and this classification would require me as a resident to have my septic tank test periodically.

Now if this is the case its grossly unfair to residents like myself who live across the street from the creek.

So if there is any ground leaching into the creek it's quite discernibly not from my house located 50+ yards from the creek.

In conclusion, I would appreciate a follow up on the progress of this classification change, so I may have a chance to refute the change.