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May 1, 2012

#22

OWTS Policy

Jeanine Townsend, Clerk to the Board
State Water Resources Control Board
1001 I Street, 24th Floor
Sacramento, CA 95812

RE: Comment Letter – OWTS Policy Documents

Dear Ms. Townsend:

On behalf of Madera County, I am writing to provide comments on the State Water Board's Draft Water Quality Control Policy for Siting, Design, Operation and Maintenance of Onsite Wastewater Treatment Systems (OWTS). As you are aware, Madera County was adamantly opposed to the proposed regulations that were released in 2008. Overall, we believe the latest draft represents a more reasonable approach to implementation of AB 885, the legal mandate that required the State Water Board to develop statewide OWTS regulations.

Madera County is appreciative that the Draft Statewide Policy recognizes the importance and effectiveness of local government control. Furthermore, we support the proposed risk-based approach that focuses attention on known problem areas of the State and limits the number of total affected septic systems to less than 2 percent. We also appreciate the Water Board's objectives to minimize administrative costs to local governments, and provide financial assistance to homeowners through local agencies.

While the County acknowledges the improvements, a number of significant concerns remain unresolved. Therefore, we would like to see the following items included in the final Policy:

1. **Add a Requirement that RWQCBs Complete a Cost-Benefit Study Prior to Imposing Any New Requirements on Local Agencies Beyond Those in the Policy Itself.**

As the Policy is written, Regional Water Quality Control Boards (RWQCBs) will have the authority to determine whether or not counties will be allowed to continue their existing local on-site programs. With this authority, RWQCBs can impose various requirements on local agencies as conditions of approval. We are particularly concerned that RWQCBs may impose requirements for the establishment of costly new water quality monitoring requirements as a condition of local program approval. Since counties do not have available funding for this, it is possible that many otherwise acceptable Tier 2 programs could be rejected. To avoid this situation, we would like to see a requirement added to the Policy stating that RWQCBs need to undertake a detailed cost-benefit analysis for any new local agency requirements beyond those already required in the Policy itself. This analysis, similar to that which is already required in Section 13267 of the Water Code, would provide an assessment of whether or not the burden associated with any new and unanticipated county-specific requirement is commensurate with the associated water quality benefits. This analysis would prove useful to the SWRCB when reviewing appeals

from counties and would provide helpful information when resolving conflicts between counties and RWQCBs.

2. **Add Language to Avoid the Imposition of Unnecessarily Restrictive Tier 2 Siting and Design Requirements as a Condition of Local Program Approval.**
To be successful, we believe that the Policy must provide RWQCBs with clear legal authority to approve local programs that reasonably protect water quality, but which may not strictly conform with other existing strictures that were promulgated without due consideration of their applicability to OWTS. Since RWQCBs will have authority to determine the long-term effectiveness of the proposed Policy, we believe that the SWRCB needs to do everything it can to be sure that future RWQCB actions are consistent with stated Policy objectives. There must also be a clear, expedited process for approval and continuation of local programs in a local agency management program in Tier 2, and provisions to allow existing local programs to remain in effect during the approval process, which includes resolution of appeals. Along these same lines, the Policy should identify the criteria that the SWRCB will use as the basis for adjudicating any disputes between local government and RWQCBs. Furthermore, there needs to be an appropriate, fair and timely process for local agencies to appeal decisions by a RWQCB to the SWRCB.
3. **Restrict the Authority of SWRCB and RWQCBs to Arbitrarily Revoke Discharge Waivers for OWTS.**
Section 12.1 of the Policy says that a discharge waiver for any OWTS (or any category of OWTS) can be revoked at any time by either the SWRCB or any RWQCB. There are no requirements that OWTS owners be provided advance notice that their waiver will be revoked and there are no provisions for any sort of due process providing homeowners with the right to appeal such decisions. The Policy should require reasonable cause prior to any waiver revocation and OWTS owners must be provided a timeframe to contest the justification for any such action. If applicable notification and appeal procedures are already provided elsewhere in the Water Code, they should be clearly referenced in the Policy.
4. **Eliminate Excessive Requirements Being Imposed on Local Government as a Condition of Local Program Approval.**
The Policy includes a list of requirements that counties must meet in order to be eligible for “local control” authority. We believe that many of these requirements are excessive and unnecessary. Compliance with all of the proposed requirements will be costly to local governments and many counties simply do not have the resources to take on new unfunded mandates. Without any financial support from the State, many small counties with limited staff resources will be forced to curtail other important public health related activities in order to conform to Policy requirements. To avoid this, the Tier 2 submittal process for local program approval must be simplified and on-going reporting requirements to the RWQCBs must be reduced in both scope and content. For example, Section 9.2.6 of the Policy should be deleted since counties do not have the authority to determine septage disposal locations. Similarly, it should be made clear that the mandatory monitoring and inspection requirements in Section 9.4.6 do not apply to mound systems, to sand filter systems, or to drip systems.
5. **Modify Tier 1 Siting and Design Criteria to Be Less Restrictive.**
Tier 1 siting and design criteria, in combination, are unnecessarily restrictive and without scientific basis. At a minimum, it is recommended that that a 3-foot soil depth and 3-foot separation to groundwater be allowed

5 → for soils with a percolation rate of between 30 and 90 minutes per inch. Similarly a 5-foot separation is recommended for soil with percolation rates of between 5 and 30 minutes per inch.

6. **Eliminate Prescriptive Standards for Tier 2 Local Programs.**

6 → As proposed, the Policy includes restrictive and inflexible prescriptive standards that must be included in all Tier 2 local management programs—regardless of any mitigating factors that may be recommended by local agencies to provide adequate water quality protection. These “one-size-fits-all” standards are contrary to overall Policy objectives and inappropriately limit the ability of local government (with approval from RWQCBs) to creatively and responsibly address challenging site conditions. The proposed standards, including slope restrictions and certain setback requirements, will be particularly difficult for replacement systems and for new systems on existing lots because it may be physically impossible or unnecessarily costly for property owners to meet prescribed standards. To address these concerns, we recommend that prescriptive Tier 2 standards in Section 9.4 of the Policy only apply to new OWTS located on residential lots created after the effective date of the Policy. It is also recommended that the Policy clearly indicate that mound systems can be effectively used to achieve the specified two-foot minimum separation from ground-water.

7. **Modify Criteria for Required Connection to Public Sewer Systems.**

7 → To be considered for Tier 2 Local Program approval, Section 9.4.9 of the Policy says that counties must require sewer connections for all properties located within 200 feet of an existing sewer line. It is recommended that this requirement apply only to new OWTS (not replacement systems). It is further recommended that flexibility be provided to exclude properties that are located outside of existing district boundaries and, also, to allow for the installation of new OWTS if there is insufficient treatment plant capacity to handle increased sewer flows.

8. **Eliminate Inappropriate Tier 1 Land Use Restrictions for New Subdivisions.**

8 → RCRC believes that the proposed Tier 1 density limit for new subdivisions (see Section 7.8) should be deleted. We believe that this restriction inappropriately infringes on local government’s exclusive land use authority and we believe that the required CEQA analysis for all new subdivisions will provide for adequate assessment and mitigation of any groundwater quality impacts that may result from OWTS-related project approvals.

9. **Require RWQCBs to Solicit Local Government and Homeowner Input on Future 303(d) Impaired**

9 → **Water Body Listings.**
Section 5.6 requires the SWRCB to evaluate whether or not OWTS are contributing to the impairment of a water body before adding new water bodies in future 303(d) listings. This determination is significant because it will determine whether or not property owners will be subject to costly Tier 3 upgrade requirements and/or subject to exclusion from the Policy’s discharge waiver. In order for this decision-making to be based on the best available information, the proposed evaluative process in Section 5.6 must be expanded to include mechanisms that will ensure participation by local government and by impacted homeowners. To accomplish this, we believe that all impacted property owners (within 600 feet of the candidate water body) must be contacted prior to any decisions being made in this regard. The Policy should require meaningful engagement of local government so that the two parties can collaboratively assess the relative significance of all potential sources of nutrient and pathogen pollutant discharges into candidate 303(d) water bodies. Then, as part of the Section 5.6 evaluation process, the SWRCB should be required to

- 9 → consider all input provided by homeowners and local government as part of its deliberative process. Additionally, the Policy should specifically require that local government representatives and all potentially impacted homeowners be notified when relevant SWRCB hearings are scheduled and they should be allowed to comment directly to Board members.
10. **Provide a Mechanism that Will Allow Qualified Homeowners to Apply for Exemptions from Future Tier 3 Requirements.**
- 10 → As new water bodies are added to the State’s 303(d) listing of impaired water bodies, many existing homeowners could be required to add advanced treatment systems to their OWTS (for the removal of pathogens and/or nutrients). While this may be appropriate if the OWTS is contributing significantly to the cited impairment, we believe that there should be a mechanism in the Policy that will allow homeowners to apply for an exemption from this requirement if they are able to demonstrate that their system is not contributing to the nearby impairment.
11. **Allow for Regulatory Exemptions if Adequate State Funding is Unavailable.**
- 11 → AB 885 clearly states that it was the intent of the Legislature to provide financial assistance to qualified homeowners in order to help offset the costs of regulatory compliance. We are pleased to see that the latest Policy now includes a mechanism to provide needed financial assistance to qualified homeowners. However, there is no assurance that adequate funding will be available when needed. Considering this, Madera County believes that the Policy must include provisions that will allow counties and RWQCBs to conditionally exempt homeowners from costly regulatory compliance if financial assistance from the State is not available and if such exemptions are considered to be in the best interest of the State. Without an allowance for exemptions, it is possible that some residents could be forced to abandon their homes because of their inability to afford costly OWTS upgrades.

Madera County recommends that the Policy changes suggested above be made prior to final Policy adoption in order to avoid costly over-regulation beyond that which is required to meet AB 885 statutory requirements. Without the suggested changes, many counties with increasingly limited resources will be subject to new financial burdens and a significant number of property owners throughout the State will be subject to regulatory hurdles that provide minimal or no benefit to water quality.

In closing, we want to acknowledge the State Water Board’s willingness to listen and address the concerns of our County. The new Statewide Draft Policy is a vast improvement over the 2008 proposal. We hope you will utilize our input to help develop a final Policy document that is pragmatic and provides a workable framework for our County and our residents.

Respectfully,



Ronn Dominici
Chairman