California Regional Water Quality Control Board
Santa Ana Region

July 18, 2008

ITEM: 13

SUBJECT: Appeal of Staff's Denial of an Exemption from the Minimum Lot Size Requirement for Subsurface Disposal System Use – Scott and Debbi Low, 5543 Morning Canyon Way, Rancho Cucamonga, San Bernardino County, APN 1074-211-24

DISCUSSION:

Mr. & Mrs. Scott and Debbi Low reside in a house located at 5543 Morning Canyon Way, Rancho Cucamonga, San Bernardino County. The property is just over one-half acre in size (30,209-sq. ft., or 0.69 acre net). An existing subsurface disposal system is utilized for the discharge of sanitary wastes from the house. This area of the City is unsewered and on-site septic tank-subsurface disposal systems are utilized for the disposal of sanitary wastes.

In early May 2008, the City of Rancho Cucamonga (City) learned that the Lows had begun construction of a detached garage without obtaining prior approval or building permits from the City. The City informed the Lows to stop the construction and that they must obtain prior approval from the Regional Board for the detached garage due to the inclusion of plumbing fixtures. Consequently, on May 9, 2008, Debbi Low contacted staff requesting approval for the construction of a 1,838 sq. ft. detached garage/workshop/office, including a 510 sq. ft office/workshop with a bathroom, at the above-referenced property. The detached garage will be located adjacent to the rear property line of the Lows' property. Mr. & Mrs. Low propose to connect the detached garage waste drain pipe to the existing 1,200-gallon septic tank-subsurface disposal system that currently serves the home.

On October 13, 1989, the Regional Board adopted a Basin Plan amendment that requires new developments for which on-site subsurface disposal system use is proposed to have a minimum of one-half acre of land per dwelling unit. The Board found that it was necessary to limit the density of new subsurface disposal systems to control the nitrate quality problems found in the groundwaters of the Region. The Board specifically exempted from the one-half acre requirement existing developments where septic tank-subsurface disposal systems had been installed by September 7, 1989 or for which conditional approval (e.g. conditional use permit, or conditional approval of tentative parcel or tract map) had been obtained by that date. The one-half acre requirement applies only to "new" developments.

The Board also recognized that there would likely be proposals for additions to existing developments that would result in increased wastewater flow. The Board's Minimum Lot Size Requirements (MLSR) addressed these circumstances. Additions to existing dwellings (bedrooms/baths) are exempt from the MLSR, if the existing septic system could accommodate the resultant additional wastewater flows. However, the MLSR provides that any proposal to add any freestanding structures that would result in additional wastewater flows must be considered a "new" development, to which the minimum lot size requirement applies.

The Lows' proposed detached garage/workshop/office would be a freestanding structure. As such, the project as a whole (the existing house and detached garage) must be considered a "new" development, to which the one-half acre minimum lot size requirement applies. To satisfy the MLSR, the existing house and the proposed detached garage/workshop/office would each require one half-acre minimum lot size, for a total of 1 acre. As the Lows' property is only 0.69 acres, their proposal does not comply with the MLSR.

On occasion, Board staff has recommended approval of an exception to the MLSR if Board staff was convinced that the additional freestanding structure would not be used as a secondary dwelling unit. This practice reflects the understanding that the intent of distinguishing between additions that are attached to existing dwellings and freestanding structures was to guard against the effects of substantially increased wastewater flows that would be associated with the use of freestanding structures as second single-family residences. In this case, the Lows state that they intend to use the bathroom only when working in the detached garage/workshop/office. Accordingly, the additional flows that would occur as a result of this project would be no greater than those that would occur if they were to construct an add-on to the existing house, which would be exempt from the minimum lot size requirement. However, considering the large size of the project (1,838 sq. ft.), Board staff is concerned that the detached garage/workshop/office may be converted to separate living quarters in the future. Such a situation would result in significant additional wastewater flows to the existing septic system, and would likely lead to increased impacts on the groundwater to which the septic system discharges.

On May 27, 2008, Mr. and Mrs. Low met with Board staff and were advised of an option identified in the Board's exemption criteria, which allows project proponents to implement an acceptable offset. Mr. and Mrs. Low were informed that they could proceed with their proposed development if they connected another septic system (that would not otherwise be required to be connected to the sewer) to the sewer. Mr. and Mrs. Low declined to pursue the offset program. During the meeting, the Lows stated that a project similar to theirs had been given approval by the City of Rancho Cucamonga Building Department staff without the necessary approval from the Regional Board. The Lows expressed their concern about the inconsistent approach of City of Rancho Cucamonga Building Department staff with respect to requiring proponents to get approval from the Regional Board.

Board staff shares the Lows' concern regarding inconsistency. Board staff has had repeated discussions/meetings with Rancho Cucamonga staff about this evident inconsistency in the past. Nevertheless, the inconsistent approach continues. On June 11, 2008, Board staff met again with the City Building Officials to further clarify the requirements of the MLSR, specifically with respect to approval of any proposed detached freestanding structures that would entail the use of septic systems on lots that are less than one acre in size. City Building Officials expressed their willingness to cooperate with the proper and consistent application of the MLSR requirements. Since that time, the City has developed a written policy regarding the MLSR to guide City staff in the issuance of building permits or approval of projects when the use of septic tank subsurface disposal systems is proposed.

On June 30, 2008, Rancho Cucamonga staff informed Regional Board staff that the Lows' project has been approved for a detached garage, workshop/office with no restroom facilities and that the proponent may obtain permits for the work (excluding the plumbing portion) at any time.

RECOMMENDATION:

Deny Mr. and Mrs. Low's request for an exemption from the minimum lot size requirements for the use of a detached garage/workshop/office with a bathroom. Alternatively, Mr. and Mrs. Low may proceed with their project if they were to implement an acceptable offset.

Comments were solicited from the following agencies:

San Bernardino County Environmental Health Services – Mike Farrell
City of Rancho Cucamonga, Building and Safety – Trang Huynh
David Curry