

California Regional Water Quality Control Board  
Santa Ana Region

July 14, 2006

STAFF REPORT

ITEM: \*7

SUBJECT: Appeal of Staff's Denial of an Exemption from the Minimum Lot Size Requirement for Subsurface Disposal System Use – Joseph and Shirley Polack, 195 Bonita Court, Mentone, San Bernardino County, APN 0298-332-09

DISCUSSION:

On May 9, 2006, Joseph Polack contacted staff requesting approval for the use of a second septic tank-subsurface disposal system at the above-referenced site. Mr. and Mrs. Polack own and reside in a house located on a 0.56-acre lot at 195 Bonita Court, Mentone. This area of Mentone is unsewered. The existing house is currently connected to an existing septic tank-subsurface disposal system. Mr. and Mrs. Polack propose to install a mobile home as a second dwelling unit to provide a residence for themselves and have their son and family move into their existing home where they can be close by to care for them. A second septic system is proposed to serve this second dwelling unit.

On October 13, 1989, the Regional Board adopted Resolution No. 89-157, which requires new developments for which on-site subsurface disposal system use is proposed to have a minimum 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 groundwater of the Region. Mr. and Mrs. Polack's proposed development is a new development as defined in Resolution No. 89-157 and is therefore subject to the minimum lot size requirements specified therein. With a density of 0.28 acres per dwelling unit, Mr. & Mrs. Polack's proposal does not comply with the Board's minimum lot size requirements. Accordingly, Board staff denied Mr. and Mrs. Polack's request for an exemption from the minimum lot size requirements.

In adopting the minimum lot size requirements (MLSRs), the Board recognized that it was appropriate to distinguish between "existing" developments using subsurface disposal systems, (i.e., those already in place or approved at the time the MLSRs were adopted), and "new" developments. Thus, 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 MSLRs also exempt additions to existing dwellings. The intent of distinguishing between additions that are attached to existing dwellings and freestanding structures was to guard against the use of the freestanding structure as a second single-family residence on the property. In this case, the purpose of the second dwelling unit is to provide a home for Mr. and Mrs. Polack.

Mr. and Mrs. Polack note that the additional flows that would occur as a result of this project would be no greater than the flows that would be allowed if they were to add on to their existing house and replace the existing septic tank to accommodate the increased flows, which would be exempt from the minimum lot size requirement. On this basis, Mr. & Mrs. Polack are appealing to the Regional Board for reversal of staff's denial of an exemption from the minimum lot size requirements.

While it is true that there would be no difference in wastewater flows on an immediate basis, i.e., while Mr. and Mrs. Polack own the property and their son and family reside with them, there can be no guarantee that wastewater flows would not increase considerably in the future. As stated above, it was on this basis that the Board determined not to exempt the construction of new freestanding structures from the minimum lot size requirements. However, Mr. and Mrs. Polack have offered to remove the mobile home and septic system from the property once it is no longer required for their use. Mr. and Mrs. Polack have also agreed to enter into an Agreement of Restriction to be recorded with the property Chain of Title that stipulates that this property may not be sold until the fixture units in the second dwelling (mobile home) has been removed and the second septic system has been demolished or removed from service.

Board staff has also advised Mr. Polack of an option identified in the Board's minimum lot size exemption criteria that allows project proponents to implement an acceptable offset project. If Mr. and Mrs. Polack connect another septic system (that would not otherwise be required to be connected to the sewer) to the sewer, then it would not be necessary to remove the second home (mobile home) and the second septic system from service. Mr. and Mrs. Polack plan to continue to attempt to locate an affordable offset that, if implemented, would allow septic tank discharges from the second dwelling unit to continue.

#### RECOMMENDATION:

Approve Mr. and Mrs. Polack's request for an exemption from the minimum lot size requirement specified in Resolution No. 89-157 with the following conditions: 1) Once the mobile home is no longer required for use by the Polack family, it shall be removed from the property and the second septic system will be eliminated or removed from service; and, 2) Mr. and Mrs. Polack must enter into an Agreement of Restriction, which shall become a part of the Chain of Title, that the second home (mobile home) must be removed prior to sale of the property or whenever the second home is no longer required for the use of Mr. and Mrs. Polack, whichever occurs first; and 3) If Mr. and Mrs. Polack locate and implement an acceptable offset or connect their property to sewer, the Agreement of Restriction may be removed, allowing the continued use of the second home (mobile home) on their property.

Comments were solicited from the following agencies:

State Water Resources Control Board, Office of Chief Counsel – Jorge Leon  
San Bernardino County Environmental Health Services – Corwin Porter/Mike Farrell  
San Bernardino County Building and Safety – Barbara Johnston