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OWTS Policy  
State Water Resources Control Board  
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Sent via Email: [owts\\_commentletters@waterboards.ca.gov](mailto:owts_commentletters@waterboards.ca.gov)

**Subject: Comments on the Draft Water Quality Control Policy for Siting, Design, Operation, and Management of Onsite Wastewater Treatment Systems**

The San Joaquin County Environmental Health Department has reviewed the draft Water Quality Control Policy for Siting, Design, Operation, and Management of Onsite Wastewater Treatment Systems (OWTS). The Department has identified certain elements of the policy that merit revision and has prepared the following comments for your consideration:

**Comment # 1**

Section 3.3 details the items that local agencies are required to report annually to the Regional Water Quality Control Board (RWQCB). Sections 3.3.1, 3.3.2, 3.3.3, and 3.3.4 state that the annual report must include the location of each permit issued, which will result in large amounts of address data being forwarded to the RWQCB. The RWQCB will not likely need lists of addresses, but will find the total number of permits issued under each Tier type useful.

Additionally, Section 3.3.2 requires the total number and location of OWTS cleanings and pumping to be reported annually to the RWQCB pursuant to Section 117400 et seq. of the California Health and Safety Code. It is recommended that the language in this section be revised to reflect submittal of only relevant and useable information, such as total number of cleanings and the total volume of pumping. If a local agency does not collect or track this information (since it is optional in State law), then it should not be a requirement in the annual report.

**Discussion**

The Section 3.3 requirement to report the location of each permit issued will result in long lists of address data being submitted to the RWQCB. Since the RWQCB is unlikely to review and analyze each address location, this requirement should be eliminated.

Currently, Section 117435 of the California Health and Safety Code provides for the collection of pumping statements by local agencies as optional and many local agencies do not collect this

information. Therefore, the language in Section 3.3.2 should be revised to clarify that this information would only be reported if the local agency is collecting it from registered pumpers.

Also, many agencies that do collect this information receive the data on paper by individual pumping companies, and at times, these statements consist of several pages of addresses. It is doubtful that the RWQCBs would utilize or desire this large amount of paper information. The time and cost to convert the data into electronic format would be cost prohibitive to many local agencies. Revising the reporting requirement to include only the total number and volume of pumping would enable local agencies to adjust data collection with little additional effort and would still provide the RWQCB with useful data over time.

#### Comment # 2

**Section 3.4 requires local agencies to record on each permit the reasoning and justification for determining which Tier the permit was issued under. This requirement would be overly burdensome to the local agency and this information would not be useful to any reader of the permit. However, the permit should reflect which Tier the permit was issued under, as this data needs to be collected by the local agency for the annual reporting to the Regional Water Board under Section 3.3.3.**

#### Discussion

Typically, the information collected on OWTS permits is used to 1) identify owner and contractor information, 2) document compliance with OWTS standards and setbacks, 3) document the location and construction of the OWTS, 4) document the initial approval, inspections, and final approval of the OWTS, and 5) document certain specific conditions applicable to the OWTS, such as operating and monitoring requirements. The information already collected on OWTS permits should be quite sufficient to show that the system being permitted under the appropriate Tier. Future permits will reference which Tier the permit was issued under so the local agency is able to report this information to the RWQCB.

It is unlikely that the local agency, the OWTS owner, the consultant, or the contractor would utilize the additional reasoning and justification information on the permit for their reference, as this would be evident based on the Tier referenced.

The RWQCB will not be reviewing *each* permit issued by the local agency and would not utilize the additional information. However, the Board will be informed of the number of permits issued under each Tier in the annual report submitted by the local agency.

Suggested language:

3.4 All local agencies permitting OWTS shall retain records for those items detailed in Section 3.3 above for a minimum of twenty (20) years and will make those records available on request for review by the Regional Water Board. Each permit issued by the local agency shall reference the Tier the permit was issued under.

#### Comment # 3

**Section 4.0 provides for the functions and duties of the RWQCBs. Among their other duties, RWQCBs may review waste discharges from subdivisions pursuant to Section**

**13266 of the California Water Code. RWQCBs should utilize this existing and established provision for input into local land use decisions related to subdivisions of land and waste discharges.**

**Discussion**

Section 13266 of the California Water Code provides a process for RWQCBs to provide input and conditions relating to the discharges from proposed subdivisions of land and higher density building permits. This provision of the California Water Code provides for the protection of water quality, but does not direct local land use processes and standards. This provision of the California Water Code should be referenced under Section 4.0 Regional Water Board Functions and Duties to encourage RWQCBs to utilize this process to review and regulate, as appropriate, these types of discharges. This established approach should be used instead of prescribing general density requirements elsewhere in the Policy.

Suggested language:

- 4.9 Regional Water Boards shall review the notifications from each city, county, or city and county, made pursuant to Section 13266 of the California Water Code, relating to certain land use and building permit applications for potential impact to water quality and shall take appropriate actions as necessary.

**Comment # 4**

**Sections 7.5, 9.4.10, and 10.4.10 provide for minimum horizontal setback requirements. Many of these requirements are more restrictive than existing setbacks currently in use. When setback requirements become more stringent, certain new and replacement OWTS will not be able to achieve these setbacks due to existing lot sizes and developed structures. To prevent the creation of uninhabitable or unbuildable lots, some provision must be made for existing non-conforming OWTS and OWTS that may become non-conforming once the Policy is adopted.**

**Discussion**

Many of the minimum horizontal setback requirements found in Sections 7.5, 9.4.10, and 10.4.10 are more restrictive than existing setbacks. Implementing these new setbacks on existing lots created and developed under the provisions of earlier minimum horizontal setbacks will result in some new or replaced OWTS not being able to meet the new setbacks. Since these OWTS cannot meet the setback requirements found in Tier 1, Tier 2, and Tier 3, they will be placed into Tier 4. Tier 4, as currently written, allows for no other recourse for OWTS owners but to submit a report of waste discharge to the RWQCB.

The language found in Section 9.2.1 *suggests* the local agency can issue permits that are in “substantial conformance” with the Local Agency Management Plan. However, Section 9.4 *strictly prohibits* the inclusion in the Local Agency Management Plan of setbacks less than those indicated in the Policy. This language is too vague and limiting to the local agency and OWTS owners. Provisions are needed to allow the local agency to manage and report these non-conforming systems in a clear, standard process.

Language should be added to Tier 4 to allow local agencies to issue alternative Tier 4 Special Permits so that OWTS can be installed or replaced on existing non-conforming lots and new non-conforming lots created by this Policy, as well as prevent an OWTS owner from having to submit a report of waste discharge to the RWQCB. The conditions under which a Tier 4 Special Permit is issued by the local agency can be included as a requirement of the Local Agency Management Plan for approval by the RWQCB. Certain findings that would ensure the protection of ground and surface waters could be established and would be required to be met prior to the issuance of a Tier 4 Special Permit. The issuance of Special Permits is the current practice of many local jurisdictions and has worked well to resolve the issue of unbuildable or uninhabitable lots. This option would allow for people to build on their existing lots, remain in their homes, and would still be protective of ground and surface waters. The ability for a local agency to issue Tier 4 Special Permits would provide an alternative approach that allows for continued local control while avoiding exorbitant costs to OWTS owners and increased workloads for RWQCBs.

In addition, this provision would be consistent with the intent of Section 13241 of the California Water Code, which recognizes that water quality may be changed to some degree without unreasonably affecting beneficial uses, taking into account economic considerations and the need for housing development.

Suggested language:

9.2.7 Any requirements for Tier 4 Special Permits to be issued to regulate new and existing OWTS on existing lots which were legal when brought into existence, but which do not comply with the standards established in this Policy. The requirements shall include detailed findings that must be met to ensure the protection of human health and the beneficial uses of ground and surface water.

#### Tier 4 – OWTS Requiring Corrective Action and Special Permits

OWTS that cannot meet the requirements of Tier 1, Tier 2, or Tier 3, or that require corrective action, or are either presently failing or fail at anytime while this Policy is in effect are automatically included in Tier 4 and must follow the requirements as specified.

11.9 Tier 4 Special Permits may be issued to regulate new and existing OWTS on existing lots which were legal when brought into existence, but which do not comply with the standards established in this Policy.

11.9.1 A request for a Tier 4 Special Permit shall be submitted to the local agency in writing and shall state the conditions for the request.

11.9.2 Each Tier 4 Special Permit request shall be reviewed on an individual basis and shall not be issued unless the findings approved in the Local Agency Management Plan for the issuance of a Special Permit are met.

**Comment # 5**

**Section 7.8 requires the minimum average density for any new subdivision project 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. This provision is too restrictive for statewide application, is not necessary, and is in conflict with Section 13291.7 of the California Water Code. This section should be eliminated.**

**Discussion**

Section 7.8 implements a single minimum density standard for new lots that would utilize OWTS on a statewide basis. This standard is too restrictive, as there may be situations where a higher density subdivision is proposed, and for various reasons, groundwater is not threatened by the project. Without a reasonable justification for such a restrictive statewide density standard, this provision should be removed. Also, as already stated in Comment # 3 above, this provision is not necessary, since RWQCB input into certain subdivision and building permit applications is already provided for in Section 13266 of the California Water Code. Finally, this provision is in direct conflict with the intent of Section 13291.7 of the California Water Code, which provides that the land use authority of any city, county, or city and county, not be limited by the regulation of OWTSs. As RWQCBs already have a mechanism in place to review land use projects for the protection of water quality, this provision is not necessary and should be eliminated from the Policy.

**Comment # 6**

**Section 8.1.9 provides for a 100 percent replacement area. In San Joaquin County, the current replacement area for a residential OWTS is 50 percent. Because the 100 percent requirement is more restrictive, certain new and replacement OWTSs may not be able to achieve this standard. To prevent the creation of uninhabitable or unbuildable lots, some provision must be made for existing non-conforming OWTSs and OWTSs that will become non-conforming once this Policy is adopted.**

**Discussion**

Suggestions to resolve this issue are the same as discussed in Comment # 4 above.

**Comment # 7**

**Section 9.2.3 requires the local agency to present details, including informational materials, for an education and/or outreach program as part of the Local Agency Management Plan. Because this provision is overly burdensome to some local agencies and is not a requirement of the law, it should be optional. Local agencies that already have an education and outreach program in place should be allowed to continue their programs.**

**Discussion**

Section 9.2.3 requires the local agency to present details, including informational materials, for an education and/or outreach program as part of the Local Agency Management Plan. Many jurisdictions do not have an established education program and do not routinely notify property buyers about OWTSs. The cost for a local agency to develop and implement a new education and outreach program, with materials, would be difficult to fund in this economic environment. In addition, there is no requirement in Chapter 4.5 of the California Water Code for a local OWTS educational program. Therefore, this provision should be optional and allow local

agencies that already have an education and outreach program in place to continue their programs.

Suggested language:

9.2.3 Any education and/or outreach efforts, including informational materials that the local agency will utilize to provide information to the public on OWTSs in their jurisdictions, as applicable. The program may include information on the following: the existence, location, installation, operation, and maintenance of OWTS, OWTS corrective action requirements, any Basin Plan prohibitions or 303d water bodies in the region, and alternative OWTS systems requirements.

#### **Comment # 8**

**Section 9.3 details the items required to be maintained by the local agency. Sections 9.3.4 and 9.3.6 require the local agency to maintain records of the number and location of permits issued for repairs to existing and new OWTS with additional conditions imposed. The language should be revised to indicate that these are Tier 4 Special Permits (see Comment # 4). Section 9.3.7 requires the local agency to maintain a list of all new OWTS within 500 feet of a sewer system. This requirement would be an additional burden to local agencies to collect and should be eliminated.**

#### **Discussion**

Sections 9.3.4 and 9.3.6 require the local agency to maintain records of the number and location of permits issued for repairs and new OWTS with additional conditions imposed. The language “additional conditions” is too ambiguous and subject to many different interpretations. There are no parameters in the draft Policy for issuing permits with “additional conditions.” Non-conforming situations that require “additional conditions” or special considerations should be handled by an established process that is fair and equitable for all OWTS owners. The process suggested in Comment # 4 to provide for the issuance of Tier 4 Special Permits can be implemented and the language of these two sections could reflect this change.

Section 9.3.7 requires the local agency to maintain a list of all new OWTS within 500 feet of a sewer system. Most local agencies do not collect this information and having to do so would be burdensome. Currently, local ordinances require property owners to connect to public sewer if it is within a certain distance (typically 200 feet) and/or if the property is located in a sewer district. This existing local requirement is adequate to address the connection of OWTSs when appropriate. Because the local agency would not utilize this list and the RWQCBs can request this information as needed, this Section should be eliminated.

Suggested language:

9.3.4 Maintain records of the number of Tier 4 Special Permits issued for repair of an OWTS.

9.3.6 Maintain records of the number of Tier 4 Special Permits issued for new OWTS.

**Comment # 9**

**Section 9.6 requires the local agency to detail with specific criteria the characteristics for which their Local Agency Management Plan for OWTS deviates from those requirements in Tier 1. This language appears to require a direct comparison of the Tier 2 provisions to the Tier 1 provisions. This language needs to be modified and clarified to indicate that a direct comparison is not required and instead, any Tier 2 provisions must achieve a comparable level of water quality protections.**

**Discussion**

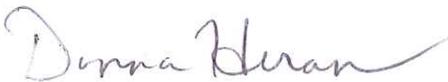
Because Tier 2 allows local agencies to implement provisions different but as protective as Tier 1, this requirement for a one-to-one comparison of each element should be eliminated. Section 9.6 should be eliminated and language should be added to Section 9.2 to provide for information to be included in the Local Agency Management Plan discussing how the Tier 2 criteria will work collectively to achieve a comparable level of water quality protection.

Suggested language:

9.2.7 A discussion on how the Tier 2 criteria works collectively to achieve a comparable level of water quality protection as that achieved by the standards set forth in Tier 1.

Thank you for the opportunity to comment on the draft OWTS Policy. If you have any questions, please contact Rodney Estrada, REHS, Acting Program Coordinator, at (209) 468-0331.

Sincerely,



Donna Heran, REHS, Director  
Environmental Health Department