



November 14, 2011

Thomas Howard
Executive Director
State Water Resource Control Board
1001 I Street
Sacramento, CA 95814
Sent via Electronic Mail

Re: Comment letter – DRAFT OWTS Policy Documents

Dear Sir,

These comments are submitted on behalf of California Rural Legal Assistance Foundation, Clean Water Action and the Community Water Center. We are a group of nonprofit organizations concerned about the impacts of groundwater contamination on rural communities and the environment. In particular, we are concerned at the increasing number of wells contaminated by nitrates; nitrate is the largest source of well closure in the state¹ and an acute contaminant that threatens public health. Unfortunately, while most communities whose wells exceed the nitrate standard are able to replace the contaminated water supply, small communities often lack the resources to do the same. The problem becomes more acute when families dependent upon private wells are unaware of contamination in their well and continue to consume tainted water.

While inadequate or failing septic systems are a minor source of nitrate in groundwater compared with large animal feeding or agricultural operations, their frequent proximity to domestic wells presents a serious dilemma to residents. The proposed policy is insufficient to protect these wells from leaking septic tanks.

Our organizations offer the following suggestions to improve this program:

A tiered approach is appropriate to protect water quality and target enforcement activities where they are most needed. We agree that a tiered enforcement program is a good way to focus resources and attention on the most serious problems. However, while the process for protecting threatened surface water bodies is clearly identified in Tier 3, it is unclear how hydrologically vulnerable groundwater areas will be identified and protected. The Tier 2 Local Agency Management Programs may perform this function, but the requirements listed in the draft policy do not provide sufficient confirmation of that.

¹ Saracino, A. and H. Phipps. (2008). Groundwater Contaminants and Contaminant Sources. In *Watersheds, Groundwater and Drinking Water: A Practical Guide*, edited by T. Harter and L. Rollins. Oakland: University of California, Agriculture and Natural Resources.



More aggressive action is needed to protect domestic water supplies. Although the draft policy prescribes action if water quality exceedances are found, the lack of testing for domestic wells makes it difficult to find OWTS that are contaminating groundwater. We understand that resources for monitoring are limited. One suggestion for identifying at-risk wells could be to require that domestic wells located within 300 feet of an OWTS be tested for nitrate and pathogens when the property on which the OWTS or domestic well is located changes hands. This would at least provide minimal data to assist local agencies in their effort to identify problem systems.

Five years is too long to wait for the policy to take effect (Section 3.1). The scope of the policy has been significantly reduced, so implementation should be similarly streamlined. We recommend a 3-year phased implementation, with Tier 1 requirements taking effect as soon as possible, Tier 2 in 3 years, and Tiers 0 and 4 in 6 months.

- Tier 1 is a very clear set of minimum standards that can be easily incorporated into local requirements; it doesn't make sense to delay regulations that can have an immediate impact on public health and the environment.
- Many counties have regulations that meet Tier 2 requirements. Quickly approving these plans and posting them on the internet to serve as a template for other counties should reduce the time required to prepare and approve such plans.
- Tier 4 covers systems that are severely impacting public health and the environment; waiting 5 years to implement this segment will unnecessarily threaten public health.

Regional Board requirements should be clarified. Local agencies are required to provide an annual summary report to the Regional Board; but the Regional Board responsibilities (Section 4) provide no corresponding reporting requirement to the State Board. We recommend that in addition to the local agency summary reports, the Regional Board provide annually to the State Board a list of any WDRs or waivers granted that grant exemptions to the policy (per section 4.8), as well as any enforcement actions.

The Policy does not provide sufficient time to CDPH Drinking Water program to respond to concerns (Sections 7.6.4, 9.5.4). Five days is not necessarily sufficient for review of a permit application by the CDPH Drinking Water Program, particularly since these sections address proposed OWTS that are near drinking water intakes.

Tier 4 requirements lack sufficient detail to determine their efficacy. With no time frames for the required corrective actions in this section, we are left with no certainty that this policy will achieve its purpose of improving water quality. While we appreciate the threat of a Report of Waste Discharge for those OWTS that fail to comply with Tier 4 requirements, it's not clear that this threat will ever be carried out. We are also concerned that the requirements for groundwater (Section 11.5) have no specific objectives or action, only the direction to "modify or upgrade" the OWTS to "abate its impact." We would appreciate greater specificity about the objectives and how compliance is measured for this section.



The Policy should identify mechanisms to assist low-income homeowners. The Board should identify available or potential funding sources to assist low-income home owners to comply with regulations through design, permitting and construction funding, including proper abandonment of failed systems. For instance, Assembly Bill 1221 (Alejo), chaptered on October 11 of this year, allows public agencies (including counties) to apply for funds for infrastructure projects. The Board could identify under what circumstances local jurisdictions could utilize this ability to provide low-cost loans or grants to eligible residents through the Clean Water State Revolving Fund.

Education must be an integral part of the policy. The policy is silent on how residents can be better educated and informed about proper OWTS maintenance. Because this policy is mostly passive in its regulation of existing systems, education is one a key factor in the protection of water quality. As the Board moves forward with plans to increase technical assistance to communities, it should consider how it can partner with counties to provide this needed component. One example and a potential replicable model is in the Coachella Valley, where Polanco Rehabilitation Assistance Program (PRAP) provides direct assistance to repair or replace failing systems and Comunidades de Salud (CODESA) which helps families to understand how to manage onsite wastewater systems to prevent future failure and overall unhealthy conditions.

Conclusion

We appreciate the difficulty of developing a policy that affects so many California residents, and support your efforts to create a program that limits costs to both local government and residents. However, we are concerned that the policy as drafted is insufficient to identify and address threats to groundwater, particularly domestic well water quality. Further, the long lead time for implementation and enforcement of the policy delays even its modest measures to improve water quality for almost two decades past the passage of AB885. We urge you, as you continue to improve this program, to consider steps that can improve drinking water quality in a more expeditious manner

Sincerely,

A handwritten signature in black ink, appearing to read "Esmerald Soria".

Esmerald Soria
California Rural Legal Assistance Foundation

A handwritten signature in black ink, appearing to read "Laurel Firestone".

Laurel Firestone
Co-Executive Director and Attorney at Law
Community Water Center



CLEAN WATER ACTION
CALIFORNIA



Jennifer Clary
Water Policy Analyst
Clean Water Action