



CALIFORNIA ASSOCIATION OF REALTORS®

October 20, 2011

State Water Resources Control Board
Division of Water Quality
OWTS Policy
Sacramento, CA 95814
Emailed to: owts_commentletters@waterboards.ca.gov

RE: Comment Letter – OWTS Policy Scoping Document

Dear State Water Board Members and Staff:

Thank you for the opportunity to provide comments on the Water Quality Control Policy for Siting, Design, Operation, and Maintenance of Onsite Wastewater Treatment Systems (Policy) dated September 30, 2011. As you know, the CALIFORNIA ASSOCIATION OF REALTORS® (C.A.R.) has participated as a “stakeholder” in the AB 885 regulatory process since it began in 2002. During this process, we have found ourselves representing not only the interests of our 164,000 REALTOR® members, but also the interests of property owners who currently own, or might someday own, an Onsite Wastewater Treatment System (OWTS). This letter provides a synopsis of our overarching concerns, followed by detailed comments on the proposed Policy.

OVERARCHING CONCERNS

Protecting Environmental Quality Deserves More than 2% Participation. Less than 2% of homes in California will change hands this year. In fact, even in a robust economy, less than 2% of homes change hands in any given year. Thus, C.A.R. believes that any implementation of standards, offers for education and/or outreach, or mandates on reporting should not be tied to real estate transactions. If one of the goals of the Policy is to “help ensure that public health and beneficial uses of the state’s waters are protected from OWTS effluent discharges by meeting water quality objectives”, then **all** properties with OWTS should be informed of the new requirements and any new or existing restrictions that may be in place. In addition, no new mandates should result from the Policy that prejudice against or burden real estate transactions.

Keep Land Use Planning Local. State mandated land use planning rules not only take away the power of a community to build and define itself but they also do not consider local land use and housing affordability needs. We support local land-use planning decision-making -- the state



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should not dictate to communities the minimum lot sizes they can consider; that is a decision that should be made via the local land-use planning processes.

DETAILED COMMENTS ON PROPOSED REGULATIONS

Structure of the Policy

After the statement “This Policy is structured into seven major parts:” the seven major parts should be outlined, such as they are in Section 5.4 in the Preliminary Substitute environmental document.

Section 1.0 Definitions

We respectfully request that the definition of “Major Repair” be amended as follows to allow for greater clarity and direction to local government agencies:

“**Major repair**” means either: (1) for a dispersal system, ~~any repairs~~ required for an OWTS dispersal system due to surfacing wastewater effluent from the dispersal field and/or wastewater backed up into plumbing fixtures because the dispersal system is not able to percolate the wastewater, or (2) for a septic tank, ~~any repairs~~ required to ~~the tank for a baffle failure or tank structural integrity failure such that either~~ *mitigate* wastewater ~~is~~ exfiltrating or groundwater ~~is~~ infiltrating *the septic tank*.

Section 5.0 State Water Board Functions and Duties

Subsection 5.6 provides the State Water Board (SWB) the authority to list bodies of water “where it is **likely** that OWTS will **subsequently** be determined to be a contributing source of pathogens or nitrates and therefore it is anticipated that OWTS would receive a loading reduction.” C.A.R. is concerned that this statement will urge the immediate listing of water bodies that are at best only suspected to have a future problem related to OWTS. The statement also effectively pre-empts the opportunity for the new Policy to demonstrate efficacy in reducing pathogens and/or nitrates emanating from OWTS. Furthermore, the word “likely” invites speculative and even arbitrary designation of water bodies to be put on a watch list because substantiation of the listing is not required.

C.A.R. respectfully requests that Subsection 5.6, and all further references to the section, be struck from the Policy.

Section 6.0 Coverage for Properly Operating Existing OWTS

In Subsection 6.2, the Regional Water Board or local agency is empowered to deny Tier 0 grandfathering to existing systems based upon three criteria. Subsection 6.2.3 states that simply the “opinion” of the Regional Water Board could disqualify a system from Tier 0 classification. C.A.R. is concerned that since this section does not require substantiation by the Regional Water Board for their basis of denial, the language empowers Regional Water Boards to deny OWTS into Tier 0 via regulatory fiat. To mitigate the potential for conflicts under this section, C.A.R. respectfully requests the following amendments:

6.2 A Regional Water Board or local agency may deny coverage under this Policy

to any OWTS ~~that is~~ *where*:

6.2.1 ~~The OWTS is n~~Not in compliance with Section 6.1;

6.2.2 ~~The OWTS is c~~Causing a nuisance or pollution;

6.2.3 ~~In the opinion of~~ *Where* the Regional Water Board *obtained and verified enough data to determine that the OWTS is* not able to adequately protect the water quality of the waters of the State and should therefore submit a report of waste discharge to receive Region specific waste discharge requirements or waiver of waste discharge requirements so as to be protective.

Section 7.0 Minimum Site Evaluation and Siting Standards (Tier 1)

Subsection 7.8 mandates that the minimum average density for new subdivision projects implemented under Tier 1 to be 2.5 acres per single family dwelling unit (or equivalent) for units that rely on OWTS. C.A.R. strongly believes that all local land use planning, including minimum lot size development standards for units that rely on OWTS, should be determined through local government planning. Local governments are best suited to determine land use densities and other land use practices based upon local geologic and groundwater and other conditions and needs. Additionally, communities around the state are already finding it difficult to provide adequate housing for Low to Moderate Income (LMI) levels without utilizing Density Bonus rules. Without Density Bonus many projects simply do not “pencil out” so in many areas throughout the state the 2.5 acre minimum lot size will not only preclude the development of affordable housing, it will also drive up the cost of housing for all income levels.

C.A.R. respectfully requests the removal of Subsection 7.8, and all further references to the land use planning requirements in this section.

Section 9.0 Local Agency Management Program for Minimum OWTS Standards

In Subsection 9.2.3 the Policy states that education and/or outreach programs including informational materials will be provided to inform property buyers of the “existence, location, operation, and maintenance of onsite disposal systems as well as any enforcement action (e.g. Basin Plan prohibitions) regarding OWTS” within the jurisdiction of the agency. C.A.R. is concerned that the focus of the education and outreach program is too narrow. Existing home owners will not necessarily be aware of changing OWTS requirements or the condition of the local surface and groundwater bodies. Thus, education and information should be provided to all property owners with OWTS. We respectfully suggest the following simple but important amendment:

9.2.3 Education and/or outreach program including informational materials to inform property ~~buyers~~ owners of the existence, location, operation, and maintenance of onsite disposal systems as well as any enforcement action (e.g., Basin Plan prohibitions) regarding OWTS within its jurisdiction. The education and/or outreach program shall also include procedures to ensure that alternative onsite system owners are provided an informational maintenance or replacement document by the system designer or installer. This document shall cite homeowner procedures to ensure maintenance, repair, or replacement of critical items within 48 hours following failure.

Subsection 9.3.8. establishes minimum monitoring requirements by the local agency for managing the Local Agency Management Program. This section allows for existing sources of data to be used to including the following:

9.3.8.2 Routine real estate transfer samples if those are performed and reported.

C.A.R. respectfully requests the removal of Subsection 9.3.8.2. Currently, any well sampling data collected in the course of a real estate transfer is not reported to a government agency. Collection of the information is optional and a condition that, if raised, is negotiated as part of the sale. Once collected, the information is shared with the buyer, but, again, is not reported. With the adoption of the new Policy, local governments are sure to begin requiring reporting. Thus, Subsection 9.3.8.2 will create a new Point-of-Sale mandate for reporting well sampling data to a local government agency. Once mandated, this new requirement could hold up real estate transfers and jeopardize transactions.

Thank you for the opportunity to provide these comments. As you can see from the above, we are very concerned about some of the practical implications of the proposed Policy. Property owners with OWTS or those who might need to install or replace OWTS in the future must feel confident that the state is seriously attempting to tackle a water quality problem, and not create unreasonable burdens or increase the cost of home ownership in California.

Sincerely,

A handwritten signature in black ink, appearing to be 'JG' or similar initials, written in a cursive style.

Jelisaveta Gavric
Legislative Advocate