



Countywide Services Agency

Environmental Management  
Department

Environmental Compliance Division  
Elise Rothschild, Chief

County of Sacramento

Bradley J. Hudson, County Executive

Bruce Wagstaff, Agency Administrator

Val F. Siebal, Department Director

November 11, 2011

State Water Resources Control Board  
Division of Water Quality  
1001 I Street, 15th Floor  
P.O. Box 2231  
Sacramento, CA 95812

Dear State Water Resources Control Board Members,

**SUBJECT: Comments On Draft Water Quality Control Policy For Siting, Design, Operation And Maintenance of Onsite Water Treatment System (OWTS), released September 30, 2011.**

Sacramento County Environmental Management Department (SCEMD) has reviewed the draft Water Quality Control Policy for Siting, Design, Operation, and Maintenance of Onsite Wastewater Treatment Systems (OWTS Policy) that was released for public comment on September 30, 2011 by the State Water Resources Control Board. Even though the proposed OWTS Policy is an improvement and incorporates many of the comments made on the 2008 draft regulation, we find the policy to be unworkable in its current version for the needs and resources available in Sacramento County.

Sacramento County has approximately 20,000 active OWTS (see Table 4-6 Substitute Environmental Document). SCEMD has had local authority over the siting, design, installation, and operation of these systems for more than 50 years. Our existing OWTS ordinance and programs are fully protective. During this period, there has been no evidence leading us to believe that OWTS, as currently designed, installed, and operated within this county, are jeopardizing public health or our drinking water sources. SCEMD has been monitoring small drinking water systems over the span of 40 years for both nitrates and pathogens with no evidence of contamination from OWTS. We attribute the success of the OWTS regulatory program to several factors including: general knowledge of county-specific geology and hydrology, careful planning with respect to land development, a comprehensive OWTS ordinance, and staff that are well trained and competent in the field of environmental health, on-site wastewater treatment, and water protection.

Page 2

Mr. Charles R. Hoppin, Chairman  
State Water Resources Control Board  
November 10, 2011

The current draft policy would directly impact 95% of new installations or repairs in Sacramento County by placing these OWTS into Tier 2. Disposal fields deeper than 10 feet would not qualify for Tier 1 as the current policy does not give the flexibility of OWTS to be allowed into Tier 1.

Under the Tier 2 requirements, an approved Local Area Management Plan (LAMP) would be required which includes several components that will require more oversight and costs to SCEMD and the residents with OWTS in Sacramento County. Even in a better economy, the requirements are not merited. These include:

- Undefined data collection and reporting requirements as part of a Groundwater/surface water monitoring plan and assessment for the possible effects of OWTS activity. The LAMP requirements are not well defined and do not allow sufficient flexibility for the local programs to implement their own monitoring program. This will result in more oversight and increase staff time to collect the data and prepare the assessment.
- Maintain and report septic pump truck records. This requirement will increase staff time and costs in order to gather the data and place it in a format that is acceptable to the state. The California Health and Safety Code 117435(a) states that this requirement is optional by the use of the term "may." The regional treatment plants already receive and report this data from pumper trucks as part of their waste discharge requirements by the Regional Board. This is a duplication of reporting data to the state.
- Requirements for monitoring and maintenance of OWTS. Again, this requirement will increase staff time and costs.

Draft policy language does not contain a "grandfather" clause for existing lots and would supersede Sacramento County OWTS Ordinance; therefore OWTS would be regulated under Tier 2 within the LAMP requirements. Sacramento Counties Ordinance allows new installations on 1.0 acre or 2.0 acre lots depending on if there is a well. Construction on these parcels would not be allowed with the 2.5 acre limit stated in this policy. This will result in higher costs to homeowners or the inability to repair or install OWTS. This will be a statewide issue.

The SWRCB has not stated that there has been a substantive economic impact analysis completed for this policy; despite that the mandates within the document are unfunded and there will be a substantial economic impact to local programs and residents of the State of California utilizing OWTS. We request that an economic impact analysis be performed for this draft policy and comments be taken on that analysis.

Page 3

Mr. Charles R. Hoppin, Chairman  
State Water Resources Control Board  
November 10, 2011

The policy demonstrates a "one size fits all" approach when developing siting and design criteria for Tier 1. Problems from OWTS should be addressed on a site specific basis rather than imposing one size fits all requirements.

SCEMD has additional comments and concerns regarding the draft OWTS policy. We have included these in an attached document. The Sacramento County Board of Supervisors also expressed their concerns regarding this Policy. A copy of their resolution detailing their objections is also attached.

In closing, we acknowledge that the proposed OWTS Policy does provide a better approach to AB 885 implementation in comparison to previous proposals. However, it still contains requirements that are unsubstantiated both scientifically and legally, and are costly and overly burdensome to property owners of OWTS and SCEMD as the local implementing agency. Therefore, SCEMD opposes adoption and implementation of the OWTS Policy as currently drafted and requests the Board consider our comments and concerns in revising the proposed policy.

We look forward to your response and an opportunity to comment on a second draft.

Sincerely,



Val F. Siebal  
Director

VFS:vmk

Encl.: Comments Attachment  
Sacramento County Board of Supervisors Position Statement on OWTS Draft Policy



Countywide Services Agency

Environmental Management  
Department

Environmental Compliance Division  
Elise Rothschild, Chief

County of Sacramento

Bradley J. Hudson, County Executive

Bruce Wagstaff, Agency Administrator

Val F. Siebal, Department Director

November 10, 2011

State Water Resources Control Board  
Division of Water Quality  
1001 I Street, 15th floor  
P.O. Box 2231  
Sacramento, CA 95812

Dear State Water Resources Control Board,

**SUBJECT: Comments Attachment**

#### GENERAL COMMENTS

After careful review of the draft OWTS Policy, we have concluded that:

1. The policy does not establish necessity for the higher degree of regulatory oversight required for the standard gravity flow OWTS utilized throughout this county. Over 19,000 OWTS (95% of active systems) will be placed in this higher regulatory tier when a repair is needed. These systems and their designs have been proven over the years to be viable and protective methods for wastewater disposal. This proven track record is based on the Sacramento County Environmental Management Departments (SCEMDs) 50 years of experience regulating these systems in addition to scientific research and past groundwater sampling events. These systems have allowed individuals to safely develop land that might not be suitable for a classic "text book" type of OWTS (Tier 1). Tier 1 is overly restrictive, there are too many unjustified setback requirements. Other viable systems are not recognized in the Tier 1 criteria (e.g. deep trenches, seepage pits, etc).
- The policy demonstrates a "one size fits all" approach when developing low risk siting and design criteria for Tier 1. Tier 1 criteria does not include the many other low risk siting and design parameters that can safely be used to mitigate public health and water quality issues (beds, deep trenches, pits, pressure dosed systems, etc.) in areas with soils that may not be favorable for the type of system required in Tier 1. This "one size fits all" approach to deal with specific isolated cases of improperly designed and operated OWTS (Stinson Beach, Malibu, Rincon Beach, Los Osos, etc) is at the expense of the vast majority of existing systems throughout the state that were properly sited and designed (the Preliminary Substitute Environmental Document indicates this is approximately 90% of OWTS in the state, see Table 4.4.).
- SCEMD advocates several changes to the reporting requirements identified in Tier 2 (detailed in the "Specific Comments" section below). With the public comments period ending there is not sufficient time to develop a reporting format for Tier 2 (and other)

requirements. We advocate that this policy be amended to include an extension of time solely for development of the reporting format for Tier 2 (and other) requirements. This will allow the State and local agencies time to develop a reporting format that realistically meets the needs of all parties yet is not too cumbersome.

- SCEMD advocates that the draft policy prohibits RWQCB's from adding additional requirements beyond those listed in the policy.

## **SPECIFIC COMMENTS REGARDING POLICY SECTIONS**

### **Section 1 Definitions**

1. "Groundwater". First water is often times too high in total suspended solids or available in such a low yield that it is not considered useable water. The policy's definition is too broad and will unjustifiably place a large percentage of county residents into a higher regulatory tier when a repair is needed. The definition of groundwater should be changed to that listed in California Water Code 10752.
2. "Replaced OWTS". The definition should be changed to allow for the replacement of distribution boxes, manifolds, drip line emitters, etc. Something as simple as replacing a D-box could trigger the replacement of an entire system.
3. "Supplemental Treatment". Please specify what are the performance requirements referenced in this definition.

### **Section 7 Minimum Site Evaluation and Siting Standards**

1. 7.5.3 Provide an explicit legal definition for "unstable land mass" and "earth sides".
2. 7.5.5 Provide an explicit legal definition for "vernal pools", "wetlands", "lakes", and "ponds".
3. 7.5.5 Please specify when a vernal pool or wetland becomes an "officially recognized" surface water body subject to this policy.
4. 7.5.5 Approximately 70% of Sacramento County is made up of alluvial deposits that impede the downward migration of rainwater into underlying aquifers. As a result, many areas within the county remain flooded during the winter and spring seasons. According to the Federal Department of Fish and Wildlife, wetlands are defined by plants, soils, and frequency of flooding, and there is no single, indisputable, ecologically sound definition for wetlands. Vernal pools are defined as shallow depressions that hold water seasonally. Many existing lots may not be able to meet the 200 foot setback without considerable increases in system repair costs or enrollment in a Local Agency Management Program.

Please address the economic impact this setback will have on County residents within the flood prone areas when a repair to their existing OWTS is needed.

- 5. 7.5.5 The policy requires a 200 foot setback from vernal pools, wetlands, lakes, ponds, or other bodies where etc, etc, etc.

Delete this requirement or specify code, regulation, or published scientific data that supports this 200 foot requirement when a system is properly designed with specific emphasis on vernal pools and wetlands (assume Tier 1 soils criteria is met).

- 6. 7.5.6 Historically, setbacks from public water wells to shallow disposal fields has been 100 feet (DWR Bulletin 74-90 and CDPH drinking water standards). Bulletin 74-90 also allows for deviations from this setback when a site can support it or when other measures can be obtained to provide the same level of water and public health protection as would be achieved by the 100 foot setback (deeper wells, deeper annular seals, treatment, etc).

Delete this requirement or provide citations to published scientific data that support this increased setback when all other siting and design criteria specified in Tier 1 can be met.

- 7. 7.5.7 Same issue as 7.5.6. Setbacks to deeper disposal field types have historically been 150 feet.

Delete this requirement or provide citations to published scientific data that support this requirement.

- 8. 7.5.5-7.5.10 The setback standards specified in these sections are not supported scientifically in this policy and can create an undue hardship on property owners when a repair to their OWTS is needed. Setbacks to sensitive receptors are dependent on a multitude of parameters such as wastewater quality and quantity, geology, climate, and topography.

Delete this requirement, instead accept locally approved setbacks contained in local ordinances.

- 9. 7.6.2-7.6.4 OWTS permit approval is based on compliance with minimum standards adopted in local and State codes. Requirements more stringent than what is codified are unwarranted and cannot be enforced. These requirements place a burden of time and resource expenditure on the local permitting agency and parties wishing to repair or install an OWTS. This level of reporting is not justified and is an unfunded requirement. These sections should be deleted from the Policy.

- 10. 7.7 This restriction on maximum ground slope (25%) may limit an individual's ability to develop land or repair an existing system.

Delete this requirement. Allow the LAMP to address this issue.

11. 7.8 One single family dwelling unit per 2.5 acres for the protection of water quality is not scientifically supported and is a one size fits all statement that will impact development within this County. It will also impose additional regulation and cost onto existing property owners who have lots less than 2.5 acres. OWTS risk associated with lot size is dependent on site specific geology, hydrology, geography, type of OWTS, and cumulative impacts of existing OWTS in an area.

Delete this requirement, use 1 acre for lots with public water, 2 acres for lots with a water supply well and grandfather all existing lots up to the date of adoption of this policy by the SWRCB.

**Section 8 Minimum OWTS Design and Construction Standards**

1. 8.1.6 Delete this requirement, not substantiated in the draft policy. Published research supporting these separation distances are not referenced in this policy.
2. 8.1.7 Delete this requirement, not substantiated in the draft policy. Published research supporting maximum 4 square feet of infiltrative area per linear foot of trench is not referenced in this policy.
3. Table 2 Delete this requirement, not substantiated in the draft policy. Published research supporting the application rates depicted in Table 2 are not referenced in this policy.
4. 8.1.8 Delete this requirement. There is published scientific research that concludes dispersal systems deeper than 10 feet provide adequate protection of water quality and the public health. What were the criteria used when determining the maximum allowed depth (pathogen reduction, nitrification, etc)? Please cite published scientific data showing that soils deeper than 10 feet below ground surface are not capable of bio attenuation to a degree that is as protective of water quality as a shallower disposal field.
6. 8.2.3 Delete this requirement. Requiring access risers on tanks that are less than 18 inches below grade is not a reasonable request as risers are an additional cost for homeowners, they pose serious entrapment hazards when not maintained, and tanks less than 18 inches below grade are not difficult for a pump truck operator or septic contractor to expose for service. This request is unjustified.

**Section 9 Local Agency Management Program for Minimum OWTS Standards**

1. 9.1.2 Provide an explicit legal definition for “High Quality waters.”
2. 9.1.3 Provide an explicit legal definition of “standard” for shallow soils closer to ground surface.
3. 9.1.4 Provide an explicit legal definition for “high domestic well usage.”
4. 9.1.7 Provide an explicit legal definition for “poorly drained soils;” are specific depths identified? Please clarify.

5. 9.1.8 Clarify how vulnerability to surface water from OWTS is determined.
6. 9.1.10 Clarify how “high density” is determined.
7. 9.2 Is “maximum OWTS sizing” volume of wastewater? Please clarify.
  
8. 9.2.1 The “monitoring, maintenance” language in this section adds an unfeasible requirement on local agencies. There would be an added time and cost to the local agency (eventually passed to the homeowner) for the administration of “monitoring, maintenance”. However the benefit of such administration is not sufficient to justify the cost from our “boots on the ground” experience. We advocate “monitoring, maintenance” should be removed from this section. Adequate oversight of OWTS can be accomplished by the local agency through the review of repair and installation applications and on-sight inspections for repairs and installations. This will provide substantive conformance to the LAMP. The number of applications and inspections for repairs and installations could be included in the required reports to the RWQCB to demonstrate local management of OWTS. We also advocate the language “including procedures to ensure that replacements or repairs to failing systems are done under permit from the local governing jurisdiction” be changed. “Procedures to ensure” places an unfair burden on local agencies, to be responsible for unknown, illegal repairs. While these may be very rare in a well-run OWTS program, this language presents a liability for local agencies. We believe the language should be changed to “including procedures for the review and inspection of OWTS repairs and installations”. Sacramento County, as many local agencies in California receives and responds to complaints of potential OWTS failures. SCEMD responds to all complaints to determine if there is substantive evidence of surfacing sewage or OWTS failure. When substantive evidence is observed/obtained, SCEMD follows up with the responsible party to obtain compliance. Any associated repair or replacement of OWTS requires SCEMD review of an application to repair or replace and SCEMD inspections. This process is feasible and economical; it also protects water quality and public health. The number of complaints that result in observable failures and the number of those that result in permits and inspections could be included in reports to the RWQCB.
  
9. 9.2.3 OWTS are commonplace. It is incumbent on property buyers to perform some due diligence before purchasing a property. The knowledge of the existence, location, operation and maintenance of OWTS should be the responsibility of property owners and buyers. There is a time and expense cost for local agencies to perform the education described in the draft policy. The cost of implementing this is not commensurate with potential benefits. This section should be removed from the Policy or modified to only apply to OWTS determined to be alternative systems by the local agency. An alternative system should not include a standard gravity flow or pressure dosed system. If this section is not removed we advocate the language be changed to read: “Education program/method to inform buyers of the existence, operation and maintenance of alternative design OWTS (not to include a standard gravity flow or pressure dosed system). The education program/method shall also include procedures to ensure that alternative onsite system owners are provided an informational maintenance document written by the system designer or installer.”

10. 9.3.1-9.3.7 Many local agencies have observed indications of heavy workloads for RWQCB staff. Add to the policy: “Costs for RWQCB review of LAMPs required by this policy will not be borne by local agencies.”
11. 9.3.2 Section 117400 of the CA H&SC states that a local agency “may” require submission of pump truck records. The maintenance and reporting of pump truck records will increase labor and cost to a local agency. The number of pump records would be over 7,000 documents per year for Sacramento County. Any time expended in collecting and reformatting this data to a format preferred by the State is an unnecessary expense. The cost-benefit of any time expended by the local agency in tracking and maintaining pump out records is not warranted. Furthermore, pump out records are not a reliable tool in detecting OWTS failure and can lead to many “false positives” that drain local resources. The identification of potentially failing OWTS is often through receipt of public complaint and subsequent follow up by the local agency. See the comments for 9.2.1 for more detail regarding the SCEMD process of complaint follow up. This method of OWTS failure has proven to be feasible, reliable and cost efficient for SCEMD and many other local agencies. This section should be removed from the Policy and left to the discretion of the local regulatory agencies to determine if pump-out records should be submitted.
12. 9.3.8-9.3.9 As written, the water quality monitoring and assessment is too burdensome for Sacramento County. There is a cost for the implementation and maintenance of this monitoring/assessment program, which will result in new or increased fees for residents with OWTS. The current economic environment is not suitable for increases in government fees. In addition, the requirements as written require monitoring or reporting that is excessive and or too costly when weighed against any perceived benefit. We advocate the removal of “local surface water” from the policy language. If drinking water sampling is occurring and there is no substantive nitrate or pathogen contamination, surface water sampling is an unnecessary and costly event. We advocate that the language be changed from “...groundwater and local surface water quality on a regional and localized basis across the entire jurisdictional area...” to “...drinking water quality in the jurisdictional area of the local agency...”. Also for the section that reads “...but may include other constituents deemed appropriate for assessing the impacts of OWTS on water quality...” add “as determined by the local agency.”
- Small water system sampling data (tested for coliform and nitrates) should be sufficient to demonstrate that drinking water is monitored and assessed. Small water system sampling should be added as an example of existing data that may be used by the local agency to fulfill this requirement. Also, small water quality data for small water systems in Sacramento County is supplied to the California Department of Public Health (CDPH) by testing companies and other parties. This information should be shared amongst State Agencies rather than requiring a local agency or other parties the added cost of reporting this information to multiple State Agencies. We also advocate that the last sentence in section 9.3.9 be deleted (requirement for EDF and CEDEN data format). Additional collection and format requirements add costs to local agencies. Finally, water quality monitoring, assessment and reporting should be on a less frequent basis. We advocate that the language in the policy be changed to require a report every five years. This will provide effective feedback

that water quality is being monitored for impacts meanwhile minimizing the cost impact on local agencies and residents.

13. 9.4.4 Provide an explicit legal definition for “surface impoundment.”

9.4.8 Delete this provision. Local agencies protect public health and water quality for existing facilities such as these. These facilities should be addressed in the LAMP. An increase in regulation and oversight will increase fees. The result will most likely be an increase in illegal discharges to both the ground and surface waters.

14. 9.4.9 As per Tier 2, an “advanced/alternative system” is any OWTS that provides wastewater treatment to an extent that it’s as protective of public health and groundwater as a Tier 1 system.

Please specify the level of wastewater treatment expected by the State Water Board or Regional Water Board prior to dispersal two feet above groundwater.

What level of treatment is protective of public health and groundwater prior to dispersal two feet above groundwater?

What type of treatment will be required and to what degree must the advanced/alternative OWTS be capable of treating the wastewater prior to dispersal below ground surface?

Will credit be given for the soils aerobic and filtration capacity? If so, what treatment reduction will be allowed?

15. 9.4.10.1-2 These prohibitions should be deleted. 100’ has been used in Sacramento County for decades with no demonstrable contamination to drinking water. The grout seal depth on the well is a factor that is not included in this prohibition. The vertical distance from the well to the effluent dispersal system should be part of the calculation. If an existing system cannot meet these setbacks what options are left for the existing homeowner? See comments on sections 7.5.5 & 7.5.6.

16. 9.4.10.2-5 Delete these setbacks. These requirements are not scientifically or legally substantiated in the draft policy.

17. 9.5 Delete these setbacks. See comment above and comments for 7.6.2-7.6.4.

SACRAMENTO COUNTY BOARD OF SUPERVISOR'S POSITION STATEMENT ON  
PROPOSED STATE WATER RESOURCES CONTROL BOARD (SWRCB) POLICY ON  
ONSITE SEWAGE TREATMENT SYSTEMS (OWTS)

**WHEREAS**, in 2000, the California State Legislature passed Assembly Bill 885 (AB 885) requiring the California State Water Resources Control Board (SWRCB), to adopt a statewide standard or regulations for the permitting and operation of onsite waste water treatment systems (OWTS); and

**WHEREAS**, in 2008, SWRCB released draft regulations for public comment. The regulations were withdrawn by SWRCB because of public concerns about onerous unsubstantiated requirements with high economic impact within the document; and

**WHEREAS**, on September 30, 2011, the SWRCB released a new draft onsite sewage treatment systems (OWTS) policy in a second attempt to satisfy AB 885 requirements; the 45 day comment period will end November 14, 2011; and

**WHEREAS**, the SWRCB has scheduled four public workshops scheduled in San Luis Obispo, Redding, Santa Rosa and Riverside and there is no public workshop scheduled in the Greater Central Valley which has many OWTS ; and

**WHEREAS**, the Board of Supervisors of Sacramento County requested in a letter dated October 12, 2011, to the Chairman of SWRCB Board to hold an additional workshop in Sacramento County; and

**WHEREAS**, the Board of Supervisors of Sacramento County recognize that individual onsite OWTS, if properly designed, installed, and operated, are a viable option for the sewage treatment and disposal needs of residents, visitors, and businesses in those locations where connection to a community sewer system is not feasible; and

**WHEREAS**, there are approximately 20,000 OWTS in Sacramento County; the vast majority of these will be unable to comply with the low risk tier standards of the SWRCB draft policy when a repair, modification or a new installation is needed because of geological conditions or lot sizes within Sacramento County; and

**WHEREAS**, an OWTS Local Area Management Plan (LAMP) will have to be submitted and approved by the Central Valley Regional Water Quality Control Board (CVRWQCB); and

**WHEREAS**, the requirements of the LAMP are unfunded, extensive and not well defined and, depending on the approval requirements of the LAMP by the CVRWQCB, local OWTS fees may have to be established or raised in order to implement and maintain these reporting requirements; and

**WHEREAS**, the CVRWQCB could impose fees to Sacramento County since the draft policy contains no mechanism to fund their review of the LAMP; and

**WHEREAS**, there is a lack of an economic impact analysis for the draft OWTS policy describing the costs of the unfunded mandated requirements; and

**NOW, THEREFORE, BE IT RESOLVED AND ORDERED**, that the Board of Supervisors of Sacramento County, State of California, finds and objects to the following requirements of this draft OWTS policy by the SWRCB:

- That the majority of the OWTS systems in Sacramento County would be placed in a more stringent high risk tier when a repair or new installation is required and could result in additional costs to the property owner.
- That the requirements of the LAMP are not well defined and could, depending on the requirements imposed by the CVRWQCB, result in additional costs passed to the OWTS property owner to pay for unfunded mandated reporting.
- The CVRWQCB could impose fees to Sacramento County since the draft policy contains no mechanism to fund their review of the LAMP, and these fees would most likely be passed onto the residents operating OWTS.
- There is no economic impact analysis of this draft policy describing costs of these unfunded mandated requirements.

Sacramento County Board Of Supervisor's Position Statement On Proposed State Water Resources Control Board (SWRCB) Policy On Onsite Sewage Treatment Systems (OWTS)  
Page 3

On a motion by Supervisor Yee, seconded by Supervisor Nottoli, the foregoing Resolution was passed and adopted by the Board of Supervisors of the County of Sacramento this 8th day of November, 2011, by the following vote, to wit:

AYES: Supervisors, Nottoli, Peters, Serna, Yee, MacGlashan  
NOES: Supervisors, None  
ABSENT: Supervisors, None  
ABSTAIN: Supervisors, None



Roberta MacGlashan

Chair of the Board of Supervisors  
of Sacramento County, California

In accordance with Section 21200 of the Government Code of the State of California a copy of the document has been delivered to the Chairman of the Board of Supervisors, County Sacramento on 11/5/11

V. Roberts  
Deputy Clerk, Board of Supervisors

ATTEST:

Cyndi Lee  
Clerk, Board of Supervisors

**FILED**  
BOARD OF SUPERVISORS

NOV 08 2011

BY

Cyndi Lee  
CLERK OF THE BOARD