



# ENVIRONMENTAL HEALTH

## COMMUNITY DEVELOPMENT AGENCY

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May 3, 2012

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Jeanine Townsend, Clerk to the Board  
State Water Resources Control Board  
1001 I Street, 24th Floor  
Sacramento, CA 95814

Re: Final Draft AB 885 Policy – Comments

Dear Sir(s):

Thank you for the opportunity to comment on the most recent draft policy developed pursuant to AB 885. While certain aspects of the current draft are an improvement over the last publicly released document, there remain significant concerns over the extent to which this policy would adversely impact rural communities, such as ours, compared to the degree of benefit that may be realized.

### INTENT OF AB 885

AB 885 was introduced in early 1999 to address impaired waters in California's coastal zones. Before passage in late 2000 the bill saw numerous revisions, ultimately requiring statewide participation. Still, it would be advantageous to recognize the problems that initiated the legislation and focus the policy more carefully on the coastal zone and impaired water bodies for which evidence supports a linkage to OWTS. This would optimize public health and water quality protection with minimal burden on areas of the state where OWTS have not significantly contributed to adverse impacts.

AB 885 required that the state board, in consultation with the State Department of Health Services, the California Coastal Commission, the California Conference of Directors of Environmental Health, counties, cities, and other interested parties, adopt regulations or standards for the permitting and operation of onsite sewage treatment systems. Of this list of participants, it appears that cities and counties have not been directly consulted in policy development. The state board should inform the public which organizations have been party to the development of this document of statewide impact since the last public release.

One of the key points of AB 885 is that it requires the regulations adopted to include exemption criteria to be established by regional boards. The only reference to exemption in the proposed document is section 4.8:

“Regional Water Boards may adopt waste discharge requirements, or conditional waivers of waste discharge requirements, that exempt individual OWTS from requirements contained in this Policy.”

This optional language misses the mark entirely.

## THE POLICY

The policy contains many highly prescriptive criteria, not just in Tier 1 but throughout, which in some instances constrain the Local Agencies (LAs) unnecessarily. There are integral criteria, however, upon which the document is silent. **Much of Tier 1 is predicated on percolation test results but no standardized percolation test method is given. Without an established standard test, parameters can be altered to produce desired results. Similarly the policy does not establish standardized daily design flow criteria for residential OWTS for single family dwellings or for multiple dwelling unit systems.**

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### 3.0 Local Agency Requirements and Responsibilities

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**Section 3.1 is poorly written. It appears to offer a 60 month window for continued implementation of existing local programs but states that, in the absence of a Tier 2 Local Agency Management Program, to the extent that there is a direct conflict between the applicable minimum standards and the local codes or ordinances (such that it is impossible to comply with both the applicable minimum standards and the local ordinances or codes), the more restrictive standards shall govern. Since one of the first acts to follow policy adoption would be realignment of Regional Water Quality Control Board basin plans to be consistent with the policy, it would appear that there is no real 60 month grace period for local jurisdictions to continue program delivery unless the local program is in strict compliance with the policy. This section should clearly state that the existing local program may remain in place for 60 months or until approval of the Tier 2 proposal, whichever comes first, and that those local programs may be altered before either of those milestones consistent with the governing basin plan.**

### 4.0 Regional Water Board Functions and Duties

Aside from establishing timeframes for review of Tier 2 programs and an appeal process, this portion of the policy accomplishes little. The intent of the policy overall is clearly to place tight controls on LAs but the only restraint on the Regional Boards is via the appeals process. **At a minimum the regional boards should be prohibited from establishing additional prescriptive criteria for Tier 2 programs unless there is sufficient cause. Regional boards must also be precluded from requiring that local agencies implement monitoring programs for Tier 0 systems.**

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## TIER 0

### 6.0 Coverage for Properly Operating Existing OWTS

Under Section 6.0 it states that existing OWTS with projected flows under 10,000 gpd are to be covered by the waiver under Tier 0. Standardized design flow assumptions for single family and

multi-unit residential uses are needed.

7 → Section 6.1 states that systems meeting certain criteria are “automatically covered” by the policy and waiver. No request or application for coverage is mentioned. Section 6.2 refers to denial of coverage by the Regional Board. It is unclear how the Regional Boards are to be informed of non-compliant systems subject to denial of coverage.

8 → Regional boards must be precluded from altering the criteria for automatic coverage under Tier 0 or from establishing new requirements for Tier 0 eligibility other than those established in this policy.

## TIER 1

### 7.0 Minimum Site Evaluation and Siting Standards

Tier 1 is in many ways too restrictive and unlikely to be of any real value to most, if not all, jurisdictions. Unless a local jurisdiction receives approval of a proposed Tier 2 program, the only alternative for owners wishing to build on properties that do not comply with Tier 1 or 3 are extremely expensive. This places great pressure on local jurisdictions to submit a Tier 2 proposal and is virtually an unfunded mandate.

Tier 1 contains detailed prescriptive standards based on percolation test results. Without standardized percolation test methods, the application rate and groundwater separation requirements are meaningless.

9 → In section 7.3.1, deletion of the word “direct” is suggested so as to eliminate confusion in section 7.3.4.

10 → The intent of section 7.5.3 is unclear. Definition of “unstable land mass” is needed. A uniform 100 foot setback regardless the size or type of unstable land mass, site slope, or the orientation of the OWTS to the mass with regard to gradient may often be unnecessary. Location of the OWTS within 100 feet of a small unconsolidated fill on level ground may pose no real risk whereas installation immediately upslope of a stable cut bank may pose a high risk of surface discharge.

11 → Sections 7.5.7 and 7.5.8 can be eliminated since section 8.1.8 states, “Dispersal systems shall not exceed a maximum depth of 10 feet as measured from the ground surface to the bottom of the trench.”

1 → Sections 7.5.9 and 7.5.10 should give consideration to flowing water bodies and direction of flow.

2 → Section 7.6.3 should be reworded. It is the applicant’s responsibility to describe the intended use(s) to be served. The policy should standardized flow assumptions for residential applications under Tier 1. The applicant’s qualified professional should provide wastewater flow estimates for non residential applications to be verified or approved by the permitting agency.

## 8.0 Minimum OWTS Design and Construction Standards

- 12 → Section 8.1.4 requires 5 feet of native soil below the dispersal trench. 8.1.5 requires 12 inches of soil cover. The policy does not establish minimum trench depth and does not provide adequate information on trench sidewall credit. The policy should clarify whether imported material may be used for any portion of a Tier 1 installation including trench sidewalls or cover.
- 13 → If OWTS design is based on soil texture rather than perc rate, Table 1 indicates that groundwater separation shall be based on the equivalent perc as determined by the local agency. Please clarify if it is the intent that the local agency would compare the application rate as determined by texture in Table 3 to the perc rate as linked to the application rate in Table 2 to determine appropriate groundwater separation or is this decision, as the policy states, entirely up to the LA.
- 14 → Table 2 appears to be extremely conservative at moderate to slow perc rates, resulting in extremely large and expensive OWTS dispersal fields. Please provide the source of or the formula used to generate the table and explain how it was developed.
- 15 → Section 8.2.5 should be located in a general Tier 1 construction section rather than under the heading Septic Tank Construction and Installation. Some repairs do not entail tank repair or replacement. Please clarify whether inspections or as-built diagrams are required of qualified contractors.
- 16 → The rationale behind the proposed piecemeal adoption of portions of Section K5, part 5, Title 24 of the California Code of Regulations is unclear and the result is confusing. It is recommended that section 8.2.1 be revised to state that new or replaced septic tanks shall comply with Section K5 of Appendix K with the exception that steel tanks are prohibited and that grease interceptors shall comply with Appendix H, again with a prohibition on steel interceptor tanks, of Part 5, Title 24 of the 2010 California Code of Regulations and all updates thereto.
- 17 → Section 8.2.2.1 requires water tight risers for septic tank access openings, the tops of which are to be set within 6 inches of finished grade. The policy should make clear whether termination of risers 6 inches below grade is acceptable and why risers extending more than 6 inches above grade would be a problem.

## TIER 2

### 9.0 Local Agency Management Program for Minimum OWTS Standards

Tier 2 contains too many restrictive criteria to enable local jurisdictions to propose effective program alternatives to Tier 1. Local jurisdictions have, in the vast majority of instances, implemented extremely effective on-site wastewater treatment system programs. By comparison most Regional Board personnel have limited experience with these systems, at best. Local jurisdictions are also in a much better position than the Regional Boards to cost effectively provide permit and inspection

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services. The policy should minimize, to the extent possible, the degree of reporting required of the local agencies proposing Tier 2 programs and should limit the amount of oversight by the Regional Boards of those local programs. Individual water well monitoring shall not be established as a prerequisite for approval of Tier 2 programs.

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Section 9.3.2 mandates some level of water quality monitoring by the LA. A number of factors other than OWTS can adversely impact water quality. The policy should explain who will review or have access to this data and how the data will be interpreted or used. There is a concern that discovery of any water quality concerns in an OWTS monitoring and reporting program would be likely to lead to OWTS being presumed the default culprit for any impacts. Contaminated ground or surface water linked to sanitary sewer leaks or overflows and POTWs which may or not be in compliance with WDRs would be difficult to discern from OWTS. There are numerous local examples of such discharges. Livestock operations, wildlife, and landscaping runoff are also potential sources of contamination.

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Section 9.4.4 prohibits slopes greater than 30 percent without a slope stability report approved by a registered professional. A better and less prescriptive alternative would be a requirement that Tier 2 programs establish and justify their own slope criteria. Some jurisdictions may prefer a more stringent approach, some less.

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Section 9.4.6 prohibits supplemental OWTS without requirements for periodic monitoring. The majority of proprietary supplemental treatment units rely heavily on an operation and maintenance program provided by qualified persons. Would such an O&M program qualify as monitoring? If so, would periodic reporting to the local agency be expected? The policy needs to clarify whether required monitoring for supplemental treatment includes more passive designs, such as mounds, and low risk sites, such as large parcels with generous setbacks and groundwater separation. It should clarify whether periodic monitoring may be performed by owner/user, by the local agency or if it must always be performed by a qualified service provider. The State Water Resources Control Board should maintain a list of State Board approved supplemental OWTS technology which could be adopted by reference in Tier 2 applications to encourage statewide consistency and efficiency.

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Section 9.4.8 prohibits a minimum separation of the bottom of dispersal system to groundwater less than two (2) feet. Amador County has had notable success with engineered fills, creating a dispersal site where no suitable site existed naturally. It is believed that, like Amador, significant areas of shallow soils exist statewide where engineering solutions such as fills can greatly improve the ability of the site to assimilate effluent. The policy is silent on the use of fills, French drains and similar site modification designs. For OWTS installed on existing parcels, it should be made clear that site modifications, such as the inclusion of fill, can be viable solutions for sites that would not otherwise comply with these prescriptive guidelines.

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Section 9.4.12 should be eliminated and 9.4.11 revised to include parcels of record existing on the effective date of the policy. The local agency would need to assess whether the OWTS is likely to impact the water based on topography, soil depth, soil texture, and groundwater separation. The local

- 25 → agency would determine whether to require supplemental treatment for pathogens or nitrogen as may be appropriate.

### TIER 3

#### 10.0 Advanced Protection Management Program

- 26 → Since 303(d) listing of water bodies is integral to the policy and the list is subject to change, there should be some discussion how candidate water bodies are selected for investigation and how the list is maintained and updated. Communication with potentially affected local agencies and property owners should be part of the ongoing process.

Amador County has had notable success with engineered fills, creating a dispersal site where no suitable site existed naturally. It is believed that, like Amador, significant areas of shallow soils exist statewide where engineering solutions such as fills can greatly improve the ability of the site to assimilate effluent. Section 10.6.8 requires a minimum of two feet of separation between dispersal system bottom and groundwater. This may not be possible to accomplish with native soil. The engineered fill option should be considered.

Section 10.9.1 establishes that effluent from the supplemental treatment components designed to reduce nitrogen shall be certified by NSF, or other approved third party tester, to meet a 50 percent reduction in total nitrogen when comparing the 30-day average influent to the 30-day average effluent. 10.10.1 establishes that supplemental treatment components designed to perform disinfection shall provide sufficient pretreatment of the wastewater so that effluent does not exceed a 30-day average TSS of 30 mg/L and shall further achieve an effluent fecal coliform bacteria concentration less than or equal to 200 Most Probable Number (MPN) per 100 milliliters. The State

- 27 → Water Resources Control Board should maintain a list of approved technology to avoid errors and inconsistency and to maximize efficiency statewide.

- 28 → Section 10.10.2 requires a minimum native soil depth and the minimum depth to the anticipated highest level of groundwater below the bottom of the dispersal system of three feet. If site conditions are such that it is not possible to meet this criteria the use of engineered fill should be recognized as an acceptable alternative.

- 29 → Section 10.14 references telemetry for supplemental treatment to notify the owner and service provider in the event of malfunction. The policy is silent whether the owner or provider would be required to routinely report to the LA or others or whether any special events, such as failure, should be reported promptly. It may also be appropriate for the owner or service provider to, in consultation with the local agency, take other appropriate actions to promptly abate conditions that cause or threaten to cause failure and increase risk of contamination of the water body

**TIER 4**

**11.0 Corrective Action for OWTS**

30 → Sections 11.6 and 11.7 are vague in terms of timeframe for correction. Correction is most often delayed due to finances and weather. It should be recognized that the LA is much more likely to be familiar with the OWTS, cause(s) of failure, site conditions, probable cost of correction, ability of the owner to pay for correction, impact of ongoing failure, interim measures that can be taken to reduce or eliminate impacts to public health or the environment, etc. The LA should be the lead in determining if and when to refer the matter to the Regional Board for submittal of a report of waste discharge.

Again, thank you for the opportunity to participate in the process. Please seriously consider our comments and those of others.

Sincerely,



Michael W. Israel, REHS  
Amador County Environmental Health Director

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