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May 4, 2012

State Water Resources Control Board
Chair Hoppin and Board Members
1001 I Street, 15th Floor, P.O. Box 2231
Sacramento, CA 95812

VIA ELECTRONIC MAIL: commentletters@waterboards.ca.gov

Re: Comments on the Draft State Policy for Onsite Wastewater Treatment Systems and Substitute Environmental Document

Dear Chair Hoppin and Board Members:

The California Coastkeeper Alliance represents 12 Waterkeeper groups spanning the coast from the Oregon border to San Diego. The Alliance and its member Waterkeepers work daily to protect and enhance clean, abundant water flows throughout the state, for the benefit of Californians and California ecosystems. On behalf of the Alliance, we appreciate the opportunity to review and provide the following comments on the proposed Final Draft State Water Quality Control Policy for Siting, Design, Operation, and Maintenance of Onsite Wastewater Treatment Systems (OWTS) ("Policy").

In 2000, the Legislature passed Assembly Bill 885, directing the State Water Board to adopt a statewide septic systems policy to protect water quality, public health, and aquatic habitats from wastewater discharges. Septic systems regulations are long overdue. Unfortunately, we believe the Policy has serious flaws, and actually is a regression from the draft issued to the stakeholder group in fall 2011. We respectfully request that the State Water Board address the following critical issues in the Policy:

1 • Limit discretion of local agencies to regulate OWTS;
2 • Require regulation of all existing septic systems;
3 • Require septic systems to upgrade to advanced treatment within five years, unless covered under a TMDL or actively pursuing a sewer connection;
4 • Require more protective requirements and performance criteria for advanced treatment systems;
5 • Require implementation plans with compliance deadlines for EPA-adopted nutrient and pathogen TMDLs.

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I. The Policy should limit the discretion of local agencies to regulate OWTS.

We recognize the importance of providing flexibility in the Policy to address situations unique to geographic locales. However, we believe that the Policy provides excessive discretion to local agencies and Regional Boards in contravention of the federal Clean Water Act. The Policy gives local agencies discretion on whether to require system upgrades and set a timeline for compliance with TMDLs. Even the decision of whether to draft a TMDL for an impaired water body is left up to the local agencies. The Policy should contain clear and prescriptive minimum requirements that will be universally applied, and empower local agencies to craft locally-tailored regulations that meet these minimum requirements.

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II. All existing septic systems should be regulated under the Policy.

The Draft Policy does not provide regulations or inspection requirements for existing OWTS, unless they are proximate to impaired water bodies under Section 303(d) of the Clean Water Act. This means that thousands of problematic septic systems will continue to be unregulated – in complete disregard of the intent of AB 885. We ask the State Water Board to regulate all existing septic sewers under the Policy by inserting existing standards from the California Plumbing Code and/or Regional Board Basin Plan(s) into Tier 0. If an OWTS cannot meet current standards, then they should be immediately reclassified as either Tier 3, or Tier 4, as appropriate.

3

III. Septic Systems should upgrade to advanced treatment within five years, unless covered under a TMDL or actively pursuing a sewer connection.

The primary intent of AB 885, and therefore the Policy, is to drive the development and implementation of TMDLs in order to improve water quality in water bodies impacted by OWTS. Rather than incentivize the development of TMDLs, Section 10.3 appears to create a loophole for local agencies aiming to avoid TMDL development. If no TMDL is adopted, actions are determined by a Tier 2 (LAMP) Advanced Protection Management Program. Section 10.3 does not meet the purpose of AB 885, as it relies overwhelmingly on local enforcement, in direct contravention of the Clean Water Act. The Clean Water Act requires all 303(d)-listed waterbodies to have a TMDL.

Instead, the Policy should require system upgrades. Specifically, the Policy should clearly define a maximum compliance schedule of five years. The compliance deadline outlined in a TMDL should supersede the suggested timeframe up to a limit of a ten-year compliance period, in the event that a sewer connection is being actively pursued. The goal of this approach is to incentivize the creation of TMDLs in regions where they are yet to be established.

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IV. The Policy should include more protective requirements and performance criteria for advanced treatment systems.

The proposed policy sets weak performance standards for nutrients and fecal indicator bacteria in advanced treatment systems. According to the Policy, "[e]ffluent 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

4 average effluent." (p. 35, Section 10.7.1). Unfortunately, there is no basis for this requirement. This level is not protective of human health or aquatic life, and will not reduce algal impairments, anoxia and hypoxia conditions, and other eutrophication impacts.

While we recognize the complications of including a nitrogen limit for residential systems, those complications do not exist for larger commercial developments and multi-family homes. The State Water Board should require a water quality objective of 10 mg/L as nitrogen, as this would be consistent with many Basin Plans throughout the State. For example, the Los Angeles Water Quality Control Plan sets a water quality objective for nitrogen in waters that is not to exceed 10 mg/l nitrogen as nitrate-nitrogen plus nitrite-nitrogen. The water quality objective of 10 mg/l is based on a Department of Health Services drinking water standard. Thus, the advanced treatment requirement for nitrogen should instead revert back to a maximum 30-day average total nitrogen concentration of 10 mg/L as nitrogen.

5 **V. The Policy should require implementation plans with compliance deadlines for EPA-adopted nutrient and pathogen TMDLs.**

The Policy fails to address existing TMDLs that were drafted by U.S. EPA and, thus, do not contain an implementation plan. The Malibu Creek Nutrient TMDL is just one example where the EPA adopted a TMDL without an associated implementation schedule with compliance deadlines. Malibu Creek and other EPA-drafted nutrient and pathogen TMDLs need to be inserted into a new table in Attachment 2, in order to require Tier 3 minimum requirements. Even with established TMDLs (EPA and Regional Board-adopted), all OWTS should be allowed no more than five years to comply with the Policy; unless a sewer connection is being pursued.

Attachment 2 provides a list of existing nutrient and/or pathogen impairments on the 303(d) list where an OWTS may contribute to the impairment, and thus, a TMDL should be developed expeditiously. 6 The Policy should specify that the Regional Board shall review this list every two years to determine whether or not additional impaired water bodies should be added to this list. This information should be submitted to the State Water Board.

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The Policy has great potential for protecting public health and improving surface and groundwater quality in California, but the proposed Policy framework should be supplemented and clarified as specified above to ensure that the program results in better protection of human health and aquatic life, and that the intent of AB 885 is achieved. Thank you for your consideration of these comments.

Respectfully,

Sara Aminzadeh
Policy Director

Sean Bothwell
Staff Attorney