
State Water Resources Control Board

General Response to Public Comments on September 30, 2011 Initial Draft OWTS Policy

Comment letters on the September 30, 2011 Initial Draft of the Onsite Wastewater Treatment System (OWTS) Policy were received during an informal comment period from 9/30/2011 through 11/14/2011. Eighty-five comment letters were received from counties, cities, businesses, non-profit organizations, and individuals. All the comments were taken from the comment letters and sorted into major categories for concurrent review. All comments were discussed by the OWTS Policy Team, however not every comment resulted in a change to the Policy. Following is a general response to the major categories of comments.

Purpose of the Policy

Many commenters were concerned about the Policy's lack of recognition of effective local programs. Commenters were also concerned that the Policy was not clear that local programs are essential to addressing the varying soil and geological conditions throughout the state. Therefore, emphasis on local programs has been added to the Preamble of the Policy with the following sentence:

“This Policy recognizes that responsible local agencies can provide the most effective means to manage OWTS on a routine basis. Therefore as an important element, it is the intent of this policy to efficiently utilize and improve upon where necessary existing local programs through coordination between the State and local agencies.”

In addition, the phrase “In order to address local conditions” has been added to the Preamble and the Tier 2 introduction to further clarify that local agency management programs are an appropriate choice for managing OWTS.

Cost and Financial Assistance

Many commenters were concerned about the potential cost to OWTS owners as a result of the Policy. Several changes have been made to the Policy that reduce costs for OWTS owners and clarify available financial assistance.

1. Language about financial assistance has been added to the Policy. A new section has been added at the end of the Policy (section 14). In addition, section 5.7 has been added to the State Water Board responsibilities section. Section 5.7 provides details on the State Revolving Fund loan program.
2. The number of OWTS owners that may be required to install supplemental treatment due to proximity to impaired waters has decreased. Changes were made to the criteria

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that place OWTS within Tier 3. The primary criterion for supplemental treatment is no longer distance from any impaired waters. Instead, the criterion is whether the OWTS is near a water body that is listed on Attachment 2 of the Policy. Attachment 2 of the Policy contains only those impaired water bodies for which it is likely that operating OWTS will be given a load reduction when a TMDL is developed, and that new OWTS installations would contribute to the impairment. Existing OWTS owners in Tier 3 will have to comply with a watershed-specific implementation plan contained in a TMDL or special provisions in a local agency's management plan. New and replaced OWTS will have to either comply with a watershed-specific implementation plan, or, if there is no plan, they will have to install supplemental treatment if the OWTS discharges within 600 feet of the Attachment 2 water body. In other words, the Policy now requires more consideration of OWTS actual contribution to polluted waters.

Tier 1

Comments on Tier 1 focused on the definition of qualified professional; siting requirements such as percolation rate, slope, density, horizontal setbacks, and groundwater determination; construction requirements; and alternative technology requirements. The changes made to Tier 1 are detailed below.

1. Section 7.5.2 was changed to include monitoring wells, in addition to water wells, in the 100 foot setback, unless regulatory or legitimate data requirements necessitate that monitoring wells be located closer.
2. Section 7.5.3 was changed to require unstable land mass or earth slides be identified by a registered engineer or registered geologist, and that other setback distances are allowed if recommended by a geotechnical report that has been prepared by a qualified professional.
3. Springs were added to the 100 foot setback from flowing surface water bodies (section 7.5.4).
4. Section 7.8 changed to clarify that the density provision applies to subdivision of property occurring after the effective date of the Policy, and only for areas that are implementing Tier 1.
5. Table 1 was changed to apply to minimum depths to groundwater as well as the minimum native soil depth beneath the dispersal system.
6. The source for Table 3 has been added.
7. Sections 8.2.4 and 8.2.5 have been consolidated into one section. The new section now states that new and replaced OWTS that are stamped and certified by a California registered civil engineer as meeting standards can also be used, in addition to those approved by IAPMO. In addition, the reference to prefabricated septic tanks has been removed from this section.

Many commenters believed that the Tier 1 requirements are too strict. The OWTS Policy Team did not relax Tier 1 requirements because Tier 1 is intended to be the most conservative option

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for OWTS management owing to the limited oversight provided under this Tier. The Policy encourages the use of Tier 2 Local Agency Management Programs when alternate siting and construction standards are necessary. The Policy now also explicitly states that OWTS that do not meet the qualifications of any of the Tiers will be regulated separately by the applicable Regional Water Board. In other words, a proposed new OWTS that does not meet the Tier 1 requirements in a jurisdiction with no Tier 2 local agency management program may still be authorized by the Regional Water Board, but it would have to be regulated under a separate waiver of waste discharge requirements or waste discharge requirements, rather than the waiver contained in the Policy.

Tier 2

A major concern among commenters was the contradictory nature of Tier 2 requirements for Local Agency Management Programs. Section 9.2.1 suggested that local agencies could issue permits that are in "substantial conformance" with Local Agency Management Programs (LAMPs), "to the greatest extent practicable," but section 9.4 contained strict prohibitions on LAMPs. Commenters believed it was unclear how much flexibility local agencies could exercise in their LAMPs, and that the prohibitions on LAMPs would limit the ability of local government to creatively and responsibly address challenging site conditions. Language was added to clarify that once a Tier 2 Local Agency Management Program was approved it superseded all Tier 1 requirements. Requirements similar to Tier 1 may be included in a Local Agency Management Program, but Tier 1 as a complete option is not available when a Local Agency Management Program is in effect.

Commenters were also concerned that the Policy would make it difficult for people to install replacement systems and new systems on existing lots because of physical restrictions to meeting some of the prescribed standards in Tier 2. The OWTS Policy Team deleted the "substantial conformance" language from section 9, and added a new section 9.2.3 to the Policy. New section 9.2.3 allows variances from Tier 2 LAMP requirements, as long as they are reported, other than those requirements contained in section 9.4. Section 9.4 contains prohibitions that the State Water Board has decided are necessary to be covered by the Policy's waiver for water quality protection. However, replacement systems and new systems installed on parcels existing at the time of the effective date of the Policy that cannot meet the horizontal separation requirements, shall meet the horizontal separation to the greatest extent practicable.

Some comments focused on former section 9.2.3, specifically on the language about informing property buyers of "enforcement action." Commenters believed this language is confusing because enforcement action is not defined and could mean informal as well as formal. The section was changed to apply to all OWTS owners, not just property buyers, and also now focuses on education for how to locate, operate, and maintain OWTS. In addition, for clarity, the reference to "enforcement action" has been changed to "Water Board order (e.g., Basin Plan prohibitions)." (New section 9.2.5.)

Another area of concern among commenters was the requirement to "maintain records of the number and location of all OWTS cleanings and pumping reported as part of the local septic tank cleaning registration program" (former section 9.3.2). This section has been deleted; however, since disposal of septage has the potential to impact water quality, a new section has been added to require some consideration of septage disposal. The new section (section 9.2.6) requires an analysis of existing and proposed disposal locations for septage, the volume of

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septage anticipated, and whether adequate capacity is available. In addition, section 3.3 still contains a requirement for considering septic tank cleanings, although the requirement has been changed slightly. Section 3.3.2 now requires that local agencies collect the applications and registrations issued as part of the local septic tank cleaning registration program.

Many commenters were unclear about the requirements of former section 9.3.8, which required local agencies to “establish terms, conditions, and timing for monitoring and assessment of groundwater and local surface water quality on a regional and localized basis...” This section has been changed. New section 9.3.2 now emphasizes the maintenance of a water quality assessment program as opposed to the establishment of a program, and emphasizes the use of existing water quality analysis activities, which are sufficient to satisfy the requirement. The main goal of this requirement is to evaluate the impact of OWTS discharges on groundwater and to assess the extent to which groundwater and local surface water quality may be adversely impacted, but the Policy allows much flexibility in the way that this is accomplished.

Record-keeping was another concern among commenters. Commenters thought that the amount of record-keeping required was too extensive, and that the requirement to keep records for number and location of permits issued for OWTS “with additional conditions imposed” was unclear. To address the extensive record-keeping, the OWTS Policy Team has changed the requirement to submit an annual report summarizing water quality assessment data from every third year to every fifth. To address the concern about tracking OWTS permits “with additional conditions imposed,” former sections 9.3.3 – 9.3.6 were deleted from the Policy. However, some of the information in former sections 9.3.3 – 9.3.6 is also in section 3.3, although section 3.3 does not require that number and location of permits issued for OWTS “with additional conditions imposed.”

Tier 3

One of the biggest concerns regarding Tier 3 was how the Water Boards determine when OWTS need to install supplemental treatment. This area of the Policy has been revised substantially. The requirement for owners of OWTS to install supplemental treatment when their OWTS is within 100 or 600 feet of water bodies impaired for pathogens or nitrates, respectively, in the absence of a TMDL for the impaired water body, has been removed from the Policy.

In the new version of the Policy, owners of existing OWTS within specified distances of water bodies impaired for pathogens and/or nitrates will not be required to install supplemental treatment unless required by an implementation plan contained in a TMDL or special provisions contained in a local agency management plan, WDRs, waivers of WDRs, or some other type of order requiring corrective action. This approach will allow Regional Boards to determine the requirements for OWTS after looking at density, geography, and other factors that affect the transport of pollutants to impaired water bodies. New and replaced OWTS will have to comply with an implementation plan contained in a TMDL or special provisions contained in a local agency management plan, if either implementation plan exists. If there is no implementation plan, new and replaced OWTS discharging within 600 feet of a water body listed on Attachment 2 of the Policy will have to install supplemental treatment.

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Tier 4

One comment received about Tier 4 was about the requirement for an OWTS owner to submit a report of waste discharge if not able to comply with the corrective action requirements (former section 11.6). This section has been removed and a new section added (new section 11.5), that describes requirements if the OWTS owner can't comply with the corrective action requirements. While the Regional Board may still require a report of waste discharge, the new section also allows the Regional Water Board or the local agency to "authorize repairs that are in substantial conformance, to the greatest extent practicable."

Concern was expressed regarding whether making minor repairs, such as those not including repair of failing leach fields (section 11.1) or a structural tank failure (section 11.2), would mean the OWTS had to be upgraded to meet Tier 1 or 2 standards. Section 11.3 was modified to clarify that after any minor repairs were done to return an OWTS to its proper operating condition, it would then return to its prior Tier, be that Tier 0, 1, 2, or 3.

The State Water Board wishes to thank those who took the time to submit comments on the initial draft OWTS Policy, as the comments have been particularly helpful to staff in preparing the Draft Final OWTS Policy. The official public comment period for the Draft Final OWTS Policy commences on March 20, 2012, and concludes at noon on May 4, 2012.