



CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD
CENTRAL VALLEY REGION

Amendments to the
Water Quality Control Plans for the
Sacramento River and San Joaquin River Basins
and the
Tulare Lake Basin

Regarding Onsite Wastewater System
Implementation Program

Draft Staff Report

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CALIFORNIA ENVIRONMENTAL PROTECTION AGENCY



STATE OF CALIFORNIA

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DISCLAIMER

This publication is a report by staff of the California Regional Water Quality Control Board, Central Valley Region. This report contains the evaluation of alternatives and technical support for the adoption of basin plan amendments to the Water Quality Control Plans for the Sacramento and San Joaquin River Basins and for the Tulare Lake Basin (Resolution No. TBD).

SUMMARY

On 19 June 2012, the State Water Resources Control Board (State Water Board) adopted the *Water Quality Control Policy for Siting, Design, Operation, and Maintenance of Onsite Wastewater Treatment Systems* (OWTS Policy). The OWTS Policy was approved by the Office of Administrative Law (OAL) on 13 November 2012, and became effective on 13 May 2013. Applicable statewide, the OWTS Policy designates the regional water quality control boards with principal responsibility for overseeing its implementation and calls for incorporation of the OWTS Policy requirements into regional water boards' basin plans within a year of the policy's effective date. The proposed action is to amend the *Water Quality Control Plan for the Sacramento River and the San Joaquin River Basins* and the *Water Quality Control Plan for the Tulare Lake Basin* (Basin Plans) to incorporate the State Water Board's OWTS Policy. Implementation of the OWTS Policy will provide more effective and efficient regulation of onsite systems due to clear (single source) criteria, a streamlined regulatory tool (conditional waiver), more specific coverage (the policy applies to systems with up to 10,000 gallons per day of domestic and commercial waste from individual, community and alternative systems), and flexibility of local alternatives where Local Agency Management Programs are implemented.

DISCUSSION

Background - The Regional Water Quality Control Board, Central Valley Region's (Central Valley Water Board's) Basin Plans include guidelines that contain criteria for siting and designing septic tank and leaching systems. The Central Valley Water Board had adopted a general waiver of waste discharge requirements for septic tank and leach field systems, where such systems were regulated by counties that used the criteria for onsite systems set forth in the Basin Plans. Pursuant to Water Code section 13269(b)(2), the Central Valley Water Board's general waiver expired on 30 June 2004. Since expiration of the general waiver, discharges from onsite systems have not been formally authorized by the Central Valley Water Board. However, the Central Valley Water Board has investigated complaints and assisted local agencies with review of alternative systems upon request. In addition, the Central Valley Water Board has prohibited discharges from traditional septic system in several communities within its jurisdiction.

The OWTS Policy provides criteria for siting, design, operation, and maintenance of onsite systems and provides a conditional waiver for onsite systems that comply with the policy. The OWTS Policy is available at the following link:

http://www.waterboards.ca.gov/water_issues/programs/owts/docs/owts_policy.pdf

The OWTS Policy calls for regional boards to incorporate the onsite criteria into their basin plans. This Staff Report describes staff recommendations to amend the Basin Plans to bring them into conformance with the OWTS Policy. Revised Basin Plan text is shown in underline and strikeout on Attachments 1 and 2.

Basin Plan amendments adopted by the Central Valley Water Board do not become final until they have been reviewed and approved by the State Water Board and OAL.

Onsite Discharge Regulation - Persons who discharge waste that could affect the quality of waters of the state, including discharges from onsite wastewater systems, are required to submit a report of waste discharge (application) under Water Code section 13260 and obtain waste discharge requirements or a waiver of waste discharge requirements. Water Code section 13263 authorizes the Water Boards to issue waste discharge requirements. Section 13269 of the Water Code authorizes the State Water Board or regional boards to waive the issuance of waste discharge requirements and the requirement to submit a report of waste discharge, provided such waivers are conditional, do not exceed five years, are consistent with applicable state or regional water quality control plans, and are in the public interest. The State Water Board adopted Resolution No. 2012-0032, the OWTS Policy, which contains a conditional waiver of waste discharge requirements, a waiver of the requirement to submit a report of waste discharge, and a waiver of application fees for onsite systems that comply with the OWTS Policy.

The Central Valley Water Board encourages direct regulation of onsite systems by an authorized and qualified local agency and has historically waived the requirements to submit a report of waste discharge and the issuance of waste discharge requirements for such systems. The OWTS Policy facilitates direct local regulation to be implemented through Local Area Management Programs (LAMPs) approved by the Central Valley Water Board. While the Policy does not include provisions for prohibition areas, a LAMP will need to recognize prohibition areas in order to be acceptable. Therefore, consistent with the adopted prohibitions, a local agency that includes special provisions in its LAMP to apply in prohibition areas may be allowed to grant exemptions from the prohibitions in accordance with the LAMP, upon approval by the Board.

Further discussion regarding LAMP development, approval, and ongoing implementation is included below.

The OWTS Policy implements criteria for siting, design, operation, and maintenance of onsite systems using different levels (tiers) of requirements based upon potential threat to water quality that may be caused by the onsite system. The tiers are as follows:

Tier 0 provides a conditional waiver of waste discharge requirements for existing, properly functioning systems that are not failing or in need of corrective action (Tier 4) and are not determined to be contributing to an impairment of surface water (Tier 3). Tier 0 conditions for existing OWTS are specified in Section 6 of the OWTS Policy.

Tier 1 provides a conditional waiver of waste discharge requirements for new or replacement systems that comply with specific criteria intended to be protective of water quality. The criteria are intentionally conservative to ensure that use of such systems, without specific monitoring, will not result in water quality impairment. Tier 1 conditions for low-risk OWTS are specified in Sections 7 and 8 of the OWTS Policy.

Tier 2 provides alternative criteria to be implemented by local governing jurisdictions in areas with approved LAMPs. At its discretion, the local agency may implement a LAMP that provides a similar level of water quality protection while addressing unique geologic conditions or management approaches. Where LAMPs have been approved by a regional board, the local criteria will supersede Tier 1 criteria. Tier 2 requirements for LAMPs are described in Section 9 of the OWTS Policy.

Tier 3 provides special conditions for onsite systems located near impaired waters listed in Attachment 2 of the OWTS Policy. New and existing onsite systems must comply with the applicable TMDL implementation program. Where there is no TMDL in place, onsite systems within 600 feet of certain impaired waters must meet advanced protection requirements specified in the policy. The Tier 3 advanced treatment requirements are in Section 10 of the OWTS Policy.

Tier 4 specifies corrective actions for failing onsite systems. After completion of corrective action and repair, the onsite system would then return to Tier 1, Tier 2, or Tier 3 (whichever is appropriate in the specific circumstances). Tier 4 criteria for OWTS requiring corrective action are specified in Section 11 of the OWTS Policy.

Waiver - The OWTS Policy includes a conditional waiver of requirements to submit a report of waste discharge and associated application fees and a waiver of waste discharge requirements for onsite systems that comply with the Policy (OWTS Policy Section 12). The conditional waiver effectively replaces the Central Valley Water Board's waiver for onsite systems that expired in 2004. This conditional waiver will allow for use of onsite systems in a manner protective of water quality yet without the cumbersome burden of application for and issuance of waste discharge requirements. It should be noted, however, the OWTS Policy does not limit the Central Valley Water Board's authority to require reports of waste discharge and to issue individual or general waivers or waste discharge requirements when such actions are needed to protect water quality. The OWTS Policy upholds and does not waive any Basin Plan prohibitions and/or local agency requirements.

As described in the Background section above, the onsite criteria for siting, design, operation, and maintenance specified in the OWTS Policy are consistent with (though not identical to) criteria adopted by the Central Valley Water Board in its Basin Plans. The OWTS Policy provides increased detail and incorporates related requirements, such as those for drinking water protection from the Department of Public Health. Updating the Basin Plan will provide the public and local agencies with more clear and consistent direction regarding onsite systems and is required by the OWTS Policy.

Local Agency Management Programs - A key component of the OWTS Policy is onsite management programs developed and implemented by local agencies. Tier 2 of the Policy provides for LAMPs that may implement area-specific programs with different conditions, different criteria, and different methods of assessing compliance than those specified in Tiers 1, 2 and 3. Typically, LAMPs are implemented in areas that differ (more or less favorable conditions for onsite systems) from the conditions considered during policy development. This local agency management approach has been the

preferred model in the Central Valley Region for many years, and Central Valley Water Board staff has been working with local agencies to develop such plans. Accordingly, we anticipate that many agencies throughout the region will have their LAMPs ready for approval well in advance of the deadlines specified in the OWTS Policy (five years).

ANTIDEGRADATION SUMMARY

The State Water Board, in adopting the OWTS Policy, considered a wide range of factors affecting water quality and the availability of treatment measures to protect beneficial uses and public health, consistent with the goals and requirements set forth in State Water Board Resolution No. 68-16, Statement of Policy with Respect to Maintaining High Quality of Waters in California. The State Water Board analyzed the potential environmental impacts of reasonably foreseeable methods of compliance with the OWTS Policy, concluding that alternatives to the OWTS Policy do not accomplish the objectives of adopting consistent standards that will ensure public health and protection of beneficial uses of the state's waters while establishing an effective implementation process that considers cost and technological capabilities.

The State Water Board found that the OWTS Policy sets standards that could allow potentially significant direct water quality impacts from pathogen and nitrogen contamination, as well as cumulative water quality and public health impacts. The State Water Board also found that available mitigation measures would not meet the goals of the OWTS Policy, and that specific overriding economic, legal, social technological or other benefits outweigh any adverse environmental impacts resulting from new or continuing discharges in compliance with the OWTS Policy. With respect to local agency management programs, the State Water Board rejected mitigation measures that would remove too much local agency flexibility, render too many sites unsuitable for new and replaced OWTS, or impose significant costs without corresponding environmental benefit. The State Water Board concluded that effective implementation of protections to allow continued use of OWTS for wastewater disposal in areas not suitable for centralized treatment systems is an important public benefit, and the protections afforded by the OWTS Policy provide the best treatment to ensure the highest water quality consistent with the maximum benefit to the people of the state. The State Water Board concluded that the OWTS Policy establishes a statewide, risk-based, tiered approach for the regulation and management of OWTS installations and replacements and sets the level of performance and protection expected from OWTS.

The OWTS Policy requires local agencies implementing management programs to monitor and assess water quality to ensure that beneficial uses are protected. The assessments must evaluate the impact of OWTS discharges and assess the extent to which local groundwater and surface water quality may be adversely impacted. Local agencies must report the results to the applicable Regional Water Board, and identify any changes in the local agency management program that will be undertaken to address impacts from OWTS. The Regional Water Board may also require modifications to an approved local agency management program as appropriate.

Consistent with the State Water Board's findings and the requirements of the OWTS Policy, the incorporation of the OWTS Policy into the Basin Plans is consistent with maximum benefit to the people of the State; will not unreasonably affect present and anticipated beneficial uses; will not result in water quality less than that prescribed in applicable state policies, including the OWTS Policy; and requires OWTS dischargers to use the best practicable treatment or control of the discharge necessary to avoid a pollution or nuisance and to maintain the highest water quality consistent with the maximum benefit to the people of the State.

ENVIRONMENTAL SUMMARY

The Central Valley Water Board's discretionary decisions are typically subject to the requirements of the California Environmental Quality Act (CEQA) (Pub. Res. Code, § 21000 et seq.). The Secretary of Natural Resources has certified the basin planning process as exempt from the CEQA requirement to prepare an environmental impact report or other appropriate environmental document. (Pub. Res. Code, § 21080.5.; Cal. Code Regs., tit. 14, § 15251, subd. (g).) Rather, State Water Board regulations require that basin plan amendments be accompanied by substitute environmental documentation that consists of, at a minimum, a written report and an Environmental Checklist and Determination with respect to Significant or Potentially Significant Environmental Impacts. (Cal. Code Regs., tit. 23, § 3775 et seq.)

Substitute Environmental Documentation (SED) has already been prepared by the State Water Board for the OWTS Policy in accordance with the Water Board's certified regulatory program (Cal. Code Regs., tit. 23 §§3777-3781). The State Water Board approved the OWTS Policy and the SED on 19 June 2012. The proposed amendment removes existing Basin Plan provisions regulating onsite systems and incorporates the OWTS Policy. No substantive changes or modifications to the previously approved OWTS Policy are proposed, no substantial changes with respect to circumstances under which the project will be undertaken have occurred, and no new information triggers the need for supplemental or subsequent CEQA analysis. This amendment is completely within the scope of the OWTS Policy as analyzed by the State Water Board in the SED. As such, the recommended actions do not require further environmental review pursuant to the certified regulatory program or CEQA (Pub. Res. Code §21166; Cal. Code Regs. tit. 14, §§15161, 15163).

RECOMMENDATION

Staff recommends that the Central Valley Water Board approve the proposed Basin Plan amendments.

ATTACHMENT 1

AMENDMENTS TO THE WATER QUALITY CONTROL PLAN FOR THE SACRAMENTO RIVER AND SAN JOAQUIN RIVER BASINS

Revise Page IV-6.00, third paragraph under “Other Discharge Activities”

Improperly located, designed, constructed and/or maintained on-site wastewater treatment and disposal systems can result in ground and surface water degradation and public health hazards. The Regional Water Board's approach is that the control of individual wastewater treatment and disposal systems is best accomplished by local environmental health departments enforcing county ordinances designed to provide protection to ground and surface waters. ~~To help the counties with enforcement, the Regional Water Board adopted guidelines which contain criteria for proper installation of conventional systems (see Guidelines section of this chapter and Appendix). Although the Regional Water Board has also prohibited septic tank usage in certain areas, it has formal and informal agreements with counties to evaluate field performance of alternative and special design systems.~~ Consistent with this approach, the Regional Water Board implements the State Water Board's *Water Quality Control Policy for Siting, Design, Operation, and Maintenance of Onsite Wastewater Treatment Systems* (OWTS Policy).

Add the following new policy to “Policies and Plans” under the “Control Action Considerations of the State Water Board” beginning on page IV-8.00

Water Quality Control Policy for Siting, Design, Operation, and Maintenance of Onsite Wastewater Treatment Systems (OWTS Policy)

This Policy implements Water Code, Chapter 4.5, Division 7, sections 13290 through 13291.7 by establishing statewide regulations and standards for permitting onsite wastewater systems. The OWTS Policy specifies criteria for existing and new onsite systems and establishes a conditional waiver of waste discharge requirements for onsite systems that comply with the policy. The OWTS Policy, including future revisions, is incorporated into this Basin Plan and shall be implemented according to the policy's provisions.

Delete Item 4 on Page IV-26.01:

~~4. Disposal from Land Developments~~

~~This Guideline contains criteria for the siting of septic tanks, sewer lines, leach fields, and seepage pits to protect water quality.~~

Delete Appendix 36.

ATTACHMENT 2

AMENDMENTS TO THE WATER QUALITY CONTROL PLAN FOR THE TULARE LAKE BASIN

Revise Page I-3 as follows:

Waste disposal from land developments and from animals in confinement must conform with ~~guidelines~~ the State Water Board's *Water Quality Control Policy for Siting, Design, Operation, and Maintenance of Onsite Wastewater Treatment Systems (OWTS Policy)*. ~~Most existing unsewered communities need not be sewerred if individual waste systems are properly sited, operated and maintained.~~ New developments must consider collection systems and should connect if within the sphere of influence of an established collection and treatment system. Septic tank pumpings must be treated and disposed of in a way that prevents impact to waters of the state.

Revise "Individual Waste Systems" beginning on Page IV-8 as follows:

Individual Waste Systems

Control of individual waste treatment and disposal systems can best be accomplished by local county environmental health departments if these departments are strictly enforcing an ordinance that is designed to provide complete protection to ground and surface waters as well as public health. ~~The Regional Water Board's policies and guidelines for waste disposal from land developments is in Appendix 32, which is included by reference into this plan.~~ Consistent with this approach, the Regional Water Board implements the State Water Board's *Water Quality Control Policy for Siting, Design, Operation, and Maintenance of Onsite Wastewater Treatment Systems (OWTS Policy)*.

The Regional Water Board will consider adoption of a ban on new septic tank systems and elimination of existing systems in areas where the systems contaminate underlying ground water or where a substantial percentage of existing systems fail annually. In making this determination, the Regional Water Board must consider the factors listed in Section 13281 of the California Water Code. (See the "Prohibitions" section of this chapter for a listing of communities with septic tank system moratoria.) The Regional Water Board will also review alternatives to protect water quality standards and beneficial uses; and prevent nuisance, pollution and contamination. Alternatives may include any combination of individual disposal systems, community collection and disposal systems with subsurface disposal, and conventional treatment systems.

A problem may develop in some agricultural areas of the Basin owing to saturation of the soil when irrigation water along the valley trough is restricted from percolating through the soil profile. As the areal extent of this condition

expands, individual waste disposal systems in areas where community sewers are not an option may create surfacing waste and a public health problem.

Add the following new policy to “State Water Board Policies and Plans” beginning on Page V-1

Water Quality Control Policy for Siting, Design, Operation, and Maintenance of Onsite Wastewater Treatment Systems (OWTS Policy)

This Policy implements Water Code, Chapter 4.5, Division 7, sections 13290 through 13291.7 by establishing statewide regulations and standards for permitting onsite wastewater systems. The OWTS Policy specifies criteria for existing and new onsite systems and establishes a conditional waiver of waste discharge requirements for onsite systems that comply with the policy. The OWTS Policy, including future revisions, is incorporated into this Basin Plan and shall be implemented according to the policy’s provisions.

Delete Appendix 32.