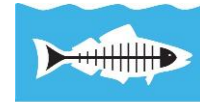




120 Broadway Suite 105, Santa Monica, CA 90401



Heal the Bay

1444 9<sup>th</sup> Street, Santa Monica, CA 90401

January 4, 2019

Mr. Eric Wu, Ph.D.  
Chief of Groundwater Permitting  
Los Angeles Regional Water Quality Control Board  
320 West 4<sup>th</sup> Street, Suite 200  
Los Angeles, CA 90013

Via e-mail to [eric.wu@waterboards.ca.gov](mailto:eric.wu@waterboards.ca.gov); [don.tsai@waterboards.ca.gov](mailto:don.tsai@waterboards.ca.gov);  
[deborah.smith@waterboards.ca.gov](mailto:deborah.smith@waterboards.ca.gov)

**Re: LAW and HTB comments on Tentative General Waste Discharge Requirements (WDR), Tentative Resolution No. 19-xxx, and Negative Declaration (Order R4-2019-xxxx) for Advanced Onsite Wastewater Treatment Systems (AOWTS) in Region 4.**

Dear Mr. Wu:

Los Angeles Waterkeeper (LAW) and Heal the Bay (HTB) jointly submit the following comments on the Tentative WDR and Resolution for AOWTS. LAW is a nonprofit environmental organization with over 25 years of experience and 3,000 members dedicated to protecting and restoring the inland and coastal surface and ground waters throughout Los Angeles County. Heal the Bay is a nonprofit environmental organization with over 30 years of experience and 15,000 members dedicated to making the coastal waters and watersheds of greater Los Angeles safe, healthy, and clean.

The Tentative WDR should be adequately protective of surface and ground water quality and should adequately control pollution associated with AOWTS. In support of these goals, we request that the Regional Board consider the following comments and suggested refinements before approving the WDR, Resolution, and Order:

During the review of the State Board policy for OWTS, it was clear that many more OWTS existed than previously recognized, and it appears that the exact number of OWTS in Region 4 is still not known. While AOWTS are more complex and expensive, and inherently less likely to “slip through the cracks” of the regulatory system, we request the Regional Board clarify how it intends to ensure that all AOWTS are identified and properly regulated.

**Tentative WDR page 3:** We request clarification whether the 10-20% Total N removal rate in the Soil Column referenced in Table 1 on page 3 is an average of all soil types, and whether and how more site-specific soil conditions in Region 4 could affect Total N removal. We also request clarification on how variation in Total N removal by differing soils might affect additional treatment requirements for AOWTS. Given the generally low Total N removal by soil, we also recommend that the Regional Board consider including some type of setback

requirement in the General WDR from waters that are listed on the 303(d) list as impaired for nutrients. While we do not see the need for the typical 600-foot setback required for conventional OWTS, we suggest including at least a 150-foot setback from such waters for AOWTS, unless a demonstration of infeasibility is made, to provide extra protection in the case of unexpected interruptions in advanced treatment at enrolled individual AOWTS sites.

**Tentative WDR page 8:** The Regional Board has invested considerable time and resources in developing an overall strong and protective General WDR, so the granting of conditional waivers could foreseeably result in environmental impacts, and possibly even in further degradation of the quality of waters listed as impaired. Such an outcome would be inconsistent with applicable anti-degradation policies. We strongly urge the Regional Board to regulate AOWTS through the provisions of the General WDR, and not through conditional waivers. At a minimum, we request clarification on what criteria the Regional Board would use in making the determination that a conditional waiver for an AOWTS would be more appropriate than enrollment in the General WDR, and how any conditional waivers would avoid additional degradation of water quality in already impaired waters.

**Tentative WDR page 14:** We urge the Regional Board to consider establishing an alternative default warning other than “RECYCLED WATER- DO NOT DRINK.” We realize that currently recycled water is not approved for potable (re)use. However, with the State Board moving forward on its framework for issuance of regulations for Direct Potable Reuse (DPR), we believe the wording in the Tentative General WDR is unfortunate, and could lead to an unfounded perception that recycled water is somehow dangerous. We suggest an alternative such as “DO NOT DRINK- WATER SOURCE NOT APPROVED FOR HUMAN CONSUMPTION” or something similar that avoids references to recycled water entirely.

**Tentative WDR page 19:** We support the reopener language for salt and nutrient management plans. We suggest the reopener language also include possible changes to regulations governing recycled water.

**Tentative WDR Attachment D, page D-1:** We support the requirement for quarterly non-compliance reporting. We note that the Clean Water Act does not apply to the Tentative WDR, so Section 505 provisions for suits by private attorneys general are unavailable. Enforcement of monitoring, reporting, and oversight of any necessary corrective actions must therefore rely on enforcement of the Porter-Cologne Water Quality Act by the Regional Board. We request information on whether the Regional Board plans to dedicate enforcement staff or resources to AOWTS, or otherwise ensure adequate enforcement of General WDR conditions.

**Tentative WDR Attachment E, page E-2:** We suggest a minor change to the vested rights discussion in Paragraph 8. The distinction between “rights” and “privileges” is generally not a useful distinction in modern administrative law,<sup>1</sup> and the last sentence does not add anything substantively to the otherwise concise disclaimer. Paragraph 8 could foreseeably become an issue in litigation, for example, resulting from the Regional Board ordering a discharger to cease a discharge for environmental or nuisance prevention reasons otherwise allowed by the General WDR. The distinction between privileges and rights is in tension with modern Procedural Due Process jurisprudence, and thus might conceivably breathe life into an otherwise unviable Procedural Due Process claim (or at least require the Regional Board to use

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<sup>1</sup> See, for example, *Goldberg v. Kelly* (1970) 397 US 254.

briefing space to address the issue). While we recognize the language in the last sentence of paragraph 8 exactly parallels the language in California Water Code Section 13263, subd. g, we nonetheless suggest eliminating the last sentence and the citation to section 13263 subd. g.

**Tentative WDR, Negative Declaration:** The Regional Board has prepared an Initial Study (IS) and Negative Declaration (ND) pursuant to the California Environmental Quality Act (CEQA) prior to approval of the General WDR for AOWTS. We welcome the preparation of the IS and ND, and strongly support the inclusion of CEQA findings in the record. We also agree that approval of the General WDR is not likely to have a significant impact on the environment, because of the conditions contained elsewhere in the Tentative General WDR, including the monitoring requirements and effluent limitations.

We note that the scope of the partial CEQA exemption for WDR/NPDES Permits contained in Water Code Section 13389 has been a contentious issue. Indeed, litigation on this issue is ongoing between LAW and the Water Boards. Water Code Section 13389 facially exempts the Boards from Chapter 3 of CEQA when issuing WDR, unless the WDR regulates a “new source” as that term is defined in the federal Clean Water Act. *County of Los Angeles v. State Water Resources Control Board* (2006) 143 Cal. App. 4<sup>th</sup> 985 further extends the exemption to EIR requirements for discretionary projects contained in Chapter 2.6 of CEQA.

We request clarification on whether the Regional Board is of the opinion that the General WDR for AOWTS constitutes the adoption of WDR for “new sources” as that phrase is used in Water Code Section 13389 and the Clean Water Act. In addition, we recommend adding a paragraph to the Resolution more generally addressing the applicability of Water Code Section 13389 and the holding in *County of Los Angeles v. State Water Resources Control Board* (2006) 143 Cal. App. 4<sup>th</sup> 985.

Thank you for this opportunity to comment.

Sincerely,



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Arthur S. Pugsley  
Senior Attorney  
Los Angeles Waterkeeper



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Annelisa E. Moe  
Water Quality Scientist  
Heal the Bay