

Response to Comments

Tentative General Waste Discharge Requirements (WDRs) Order No. R4-2019-XXXX, Tentative Resolution No. 19-XXX, and Negative Declaration for Advanced Onsite Wastewater Treatment Systems (AOWTS) Comment Deadline: January 7, 2019

The Los Angeles Regional Water Quality Control Board (Regional Board) received the following comment letters:

No.	Commenters	Date Received
1	Los Angeles Waterkeeper and Heal the Bay	January 4, 2019
2	California Department of Transportation	December 24, 2018

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Los Angeles Waterkeeper and Heal the Bay		
1-1	<p>During the review of the State Water Resources Control Board (State Board) policy for Onsite Wastewater Treatment Systems (OWTSs), it was clear that many more OWTSs existed than previously recognized, and it appears that the exact number of OWTSs in Region 4 is still not known. While AOWTSs 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 AOWTSs are identified and properly regulated.</p>	<p>There are several ways in which the Regional Board will be able to ensure identification and proper regulation of AWOTS. First, Regional Board staff have been working closely with local agencies to identify the locations and status of onsite wastewater treatment systems (OWTS) and advanced OWTS (or AOWTS). Per the requirements in the Water Quality Control Policy for Siting, Design, Operation, and Maintenance of Onsite Wastewater Treatment Systems (OWTS Policy), local agencies are required to submit an annual report providing numbers of permits issued for OWTS and AOWTS and an inventory of all OWTS/AOWTS.</p> <p>An AOWTS is required where certain setbacks such as distance to surface water or water supply wells or separation to groundwater, cannot be met, or where the proposed location of the discharge is within areas that may or have contributed to surface water impairment. For Los Angeles County, Ventura County, the City of Malibu and the City of Glendora, their jurisdiction-specific</p>

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		<p>Local Agency Management Programs (LAMPs) were approved by the Regional Board Executive Officer in 2018, and they include management of AOWTS. Numbers and locations of AOWTS that have been issued permits according to the provisions of LAMPs will be submitted to the Regional Board as part of routine reporting as described above. Local agencies which do not develop a LAMP will forward permit applications received for OWTS/AOWTS discharges to the Regional Board for the issuance of Waste Discharge Requirements (WDRs), if appropriate.</p> <p>Second, the approved LAMPs require that the AOWTS be periodically inspected to ensure the proper function and maintenance. Dischargers issued WDRs for their AOWTS are also required to sample the effluent water quality and submit monitoring reports on a quarterly basis. Reports submitted by local agencies documenting locations and numbers of permits issued per the LAMP and the OWTS Policy and inspection results, and reports submitted by WDR permittees according to the monitoring and reporting program prescribed will help the Regional Board to manage the potential sources that may cause impacts to groundwater and surface water, and to identify necessary strategies to protect beneficial uses and public health.</p>
1-2	<p>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.</p>	<p>The 10-20% Total N removal rate in the Soil Column referenced in Table 1 on page 3 and cited from <i>USEPA Onsite Wastewater Treatment System Manual</i>, June 2005, EPA/625/R-00/008 is an average for available soil types beneath OWTS/AOWTS. However, the Regional Board requires submittal of information including type(s) of soil, percolation rate, and separation to groundwater at the proposed discharge location to determine whether</p>

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		<p>the soil is adequate and site conditions support sufficient degradation of nitrogen related compounds and bacteria for wastewater discharged from conventional OWTS.</p>
1-3	<p>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.</p>	<p>For AOWTS, the treatment to remove nitrogen compounds is completed by the nitrification/denitrification process, and bacteria is disinfected through chlorination or ultra-violet light. AOWTS do not rely on soil treatment to remove nitrogen related compounds or bacteria. Therefore, the total N removal variation by different types of soil is irrelevant for the AOWTS treatment efficiency.</p> <p>Additionally, the requested setback to the impaired surface water is unnecessary. As an initial matter, the tentative General WDRs focus on wastewater discharged from AOWTS, and prescribe stringent effluent limitations for constituents of concern including nitrate, nitrite, organic nitrogen, ammonia, and total coliform, which are consistent with Title 22 Drinking Water Standards, Recycled Water Standards, and the Basin Plan.</p> <p>Furthermore, projects enrolled under the tentative General WDRs are issued a site-specific monitoring and reporting program (MRP), which requires the discharger to regularly collect and analyze effluent samples and to have the OWTS regularly inspected. Groundwater sampling and monitoring may also be required if a large volume of wastewater is discharged at locations where it is close to an impaired water body.</p> <p>Finally, the General WDRs require the discharger to employ advanced technology to remove contaminants such as nitrogen related compounds and bacteria in order to resolve the geological constraints including</p>

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		<p>insufficient separation to groundwater or setback to surface water. Dischargers within a tributary area to an impaired surface water are required to obtain WDRs and meet effluent limitations that are protective for surface water and groundwater. Dischargers are also required to sample and analyze effluent and submit monitoring reports of results quarterly.</p>
1-4	<p>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.</p>	<p>It appears that the commenter may be confused regarding the criteria for coverage of an OWTS/AOWTS discharge under the conditional waiver in the OWTS Policy. The OWTS Policy contains a conditional waiver for existing functional OWTS (Tier 0) and low risk new or replacement OWTS (Tier 1) outside the areas where the receiving surface water is impacted by nutrients or bacteria. Any proposed or existing discharge must meet all criteria specified in the OWTS Policy to qualify for the conditional waiver. For tributary areas to impaired waterbodies or areas addressed by total maximum daily loads (TMDLs) for nutrients or bacteria, no waivers can be granted to any OWTS.</p> <p>The Regional Board does not disagree that the waivers granted to OWTS under the OWTS Policy could cause impact to groundwater or surface water. According to the OWTS Policy, local agencies will submit a water quality assessment report every five years to evaluate the groundwater quality as the result of issuing permits or waivers within the jurisdictional area. Reports submitted by local agencies documenting locations and numbers of permits issued per the LAMP and the OWTS Policy along with the groundwater quality at the areas of dense OWTS/AOWTS use will help the Regional Board understand the possible groundwater impacts from the</p>

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		<p>use of OWTS/AOWTS, and to identify necessary strategies to protect beneficial uses and public health.</p> <p>As stated in the response to comment no. 1-3, AOWTS are required for specific conditions including insufficient setback to surface water or separation to groundwater and these AOWTS will not qualify for the conditional waiver. Therefore, it is anticipated that the AOWTS will be regulated by the tentative General WDRs after they are adopted.</p>
1-5	<p>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.</p>	<p>The tentative General WDRs cover the recycled water application for irrigation and/or dust control only. Any proposed recycled water applications other than irrigation or dust control shall apply for site specific water reclamation requirements (WRRs). Dischargers who propose to use AOWTS treated wastewater for non-subsurface recycled water applications shall submit a Title 22 engineering report for review and approval by the Division of Drinking Water and the Regional Board. Additional language may be required in the site specific WDRs/WRRs if necessary. In summary, the current, proposed language as a warning to the public for the non-potable recycled water application covered by the General WDRs is appropriate and the Board does not find that it will discourage potable recycled water use.</p>
1-6	<p>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.</p>	<p>With respect to the comment concerning the SNMP, the comment is noted. With respect to the comment concerning recycled water, the Regional Board responds as follows:</p> <p>Section XI of the tentative General WDRs allows the Regional Board to reopen, revise or renew the General</p>

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		WDRs any time if revision or additional requirements are necessary without referencing the specific reopener language suggested.
1-7	<p>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.</p>	<p>Comment noted. The dischargers are required to comply with the General WDRs and the site specific MRP. Regional Board staff has been involved with enforcement action when the dischargers fail to meet WDRs or MRP requirements. The enforcement action could include the issuance of notices of violation (NOV) and administrative civil liability complaints. Each year, Regional Board staff review over 1,500 monitoring reports and conduct more than 30 inspections for OWTS/AOWTS sites and OWTS/AOWTS related complaints to ensure the compliance with WDRs. With the adoption of the General WDRs, Regional Board staff will continue to manage AOWTS and monitor their compliance to ensure the protection of beneficial uses of surface and groundwater, including public health.</p>
1-8	<p>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 [See, for example, <i>Goldberg v. Kelly</i> (1970) 397 US 254], 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</p>	<p>The Regional Board does not agree that the comment is reasonably subject to litigation, or that it is “not useful” or unclear in any way. The language included here tracks exactly the language of California Water Code Section 13263, subd. g, which is clear and puts all who enroll under the General WDRs on notice of the fact that the privilege of discharging is not a guaranteed vested right to continue discharging.</p>

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	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.	
1-9	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.	Comment noted.
1-10	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. <i>County of Los Angeles v. State Water Resources Control Board</i> (2006) 143 Cal. App. 4 th 985 further extends the exemption to EIR requirements for discretionary projects contained in Chapter 2.6 of CEQA.	<p>This comment pertains in part to ongoing litigation and will only be briefly discussed. The Regional Board’s NPDES permits are exempt from all requirements of CEQA and the Regional Board believes that Water Code § 13389 and 23 Cal. Code Regs. § 3733 and the cases <i>County of Los Angeles v. State Water Resources Control Board</i> (2006) 143 Cal.App.4th 985, 1007 and <i>City of Burbank v. SWRCB</i> (2003) 4 Cal.Rptr.3d 27 (unpublished) support that position.</p> <p>Moreover, and to the extent that this comment relates to the General WDRs (and not the litigation), California Water Code Section 13389 is irrelevant. Section 13389 is within Chapter 5.5 of the California Water Code, which applies only to compliance with the Federal Clean Water Act. Likewise, Section 13389 applies only to NPDES permits. Section 13389 does not apply at all to the General WDRs, which are issued pursuant to the</p>

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		Regional Board's authority to regulate groundwater under the Porter-Cologne Water Quality Control Act.
1-11	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 <i>County of Los Angeles v. State Water Resources Control Board</i> (2006) 143 Cal. App. 4 th 985.	See response to Comment no. 1-10, <i>supra</i> . The Regional Board declines to add the paragraph requested.
California Department of Transportation		
2-1	Caltrans has reviewed the Negative Declaration and does not expect project approval to result in a direct adverse impact to the existing State transportation facilities. However, any project work proposed in the vicinity of the Caltrans Right of Way, would require an encroachment permit and all environmental concerns must be adequately addressed.	Comment noted. Additionally, the General WDRs do not alleviate the responsibility of the discharger to obtain other necessary permits as required.