

**STATE OF CALIFORNIA
REGIONAL WATER QUALITY CONTROL BOARD
CENTRAL COAST REGION**

SUPPLEMENTAL STAFF REPORT FOR REGULAR MEETING OF MAY 9, 2008

Prepared on April 29, 2008

ITEM NUMBER: 9

SUBJECT: Resolution No. R3-2008-0005; Amendment to the Water Quality Control Plan, Central Coast Basin, revising criteria for onsite wastewater systems

SUMMARY

Additional comments were received regarding the proposed Basin Plan amendment, which, due to time constraints, were not included in the original staff report. Following is a summary of those additional comments and associated staff responses. It should be noted that many of the comments received from Los Osos residents do not address the proposed Basin Plan Amendment. Due to the volume of comments unrelated to this agenda item in some letters, pertinent comments are identified with a number in the margin of the comment letter corresponding to the comment/response below. Only those comments directly relating to this agenda item are addressed below.

COMMENTS

Citizens for Clean Water, Prohibition Zone Legal Defense Fund (CCW-PZLDF, a Los Osos citizens' action group) – CCW-PZLDF submitted a comment letter regarding the triennial review process, rescission of Resolution No. 83-13 (which is not proposed), and the proposed Basin Plan Amendment of onsite criteria. The CCW-PZLDF letter is included as Attachment 3H.

1. Please provide a list of all system regulators and interested parties along with their contact information, all documents related to the amendment process, scoping meetings, and discussions.

Staff response: The comment essentially requests a copy of the administrative record for the proposed amendment. The administrative record will be prepared for State Water Board and Office of Administrative Law review of the amendment (if approved by the Central Coast Water Board), at which time copy will be made available for public review and/or purchase. Summary of the requested information is contained in the staff report for this agenda item. No change recommended.

2. The public and stakeholder process for the proposed action has been inadequate.

Staff response: See response to Chuck Cesena's comment 1 in the staff report. No change recommended.

3. How many septic systems is the Water Board seeking to regulate? How many systems are failing? What water bodies are effected and specifically which onsite

systems are responsible for such impacts? What is the number and location of wells impacted by pathogens from onsite sources?

Staff response: The Water Board is not seeking to regulate any specific number of septic systems. The proposed action will update existing Basin Plan criteria for onsite wastewater systems in order to clarify such criteria and improve water quality protection. The Basin Plan criteria are used by local governmental jurisdictions in their review and permitting of onsite systems. The information requested is not typically collected by the Water Board, but may (in some cases) be included in onsite wastewater management plans. No change recommended.

4. CCW-PZLDF objects to the proposed amendment as it seeks to strengthen Water Board enforcement powers.

Staff response: The comment does not make clear to which section of the proposed amendment it refers. However, Water Board enforcement powers are not altered by the proposed amendment. No change recommended.

5. California Water Code §13263 is misquoted in the staff report as this code section does not authorize regulation of discharges from onsite systems. However, CCW-PZLDF does not question the Water Board's authority to regulate onsite discharges.

Staff response: California Water Code section 13260 requires persons who discharge waste or propose to discharge waste that could impact waters of the state to submit a report of waste discharge (application to discharge) and California Water Code section 13263 authorizes the Water Board to issue waste discharge requirements. Water Code section 13269 authorizes the Water Board to waive both of those requirements if such waiver contains conditions that are consistent with the Basin Plan and are in the public interest. Onsite systems result in discharges of waste that could impact waters of the state and are clearly subject to regulation under the Water Code, including section 13263. We disagree with the commenter's characterization of Section 13263. No change recommended.

6. The proposed amendment exceeds Water Board authority and effects land planning. What is the justification for requiring a 5-unit development to have a community system? Why are granny units no longer allowed without an additional acre of property?

Staff response: Regarding Water Board authority, see response to Chuck Cesena's comment 15. Language defining community onsite systems as those serving more than 5 units has been in the Basin Plan since 1983 and is not proposed for revision. Secondary (or granny) units are addressed John Ricker's comment 12, Barry Tolle's comment 4 and David Athey's comment 6 in the staff report. Language is added to VIII.D.a.13 to clarify that smaller lot sizes are allowed where consistent with an onsite wastewater management plan.

7. There will be economic disparity for effected communities. How will the proposed amendments effect targeted communities?

Staff response: The proposed Basin Plan amendment will apply to the entire Central Coast Region. It is not expected to result in economic disparity between communities. No change recommended.

8. Review by the Office of Administrative Law of the proposed amendment is needed.

Staff response: See response to Chuck Cesena's comment 9 in the staff report. No change recommended.

9. The proposed amendments add unacceptable liability for properties with onsite systems and discourage energy-efficient wastewater systems.

Staff response: See response to Chuck Cesena's comment 14 in the staff report. No change recommended.

10. Environmental impacts of the proposed amendments need to be studied and disclosed.

Staff response: See response to Chuck Cesena's comment 4 in the staff report. No change recommended.

11. State Water Board requirements to review affordability and environmental justice have been ignored. Also inverse condemnation and regulatory taking of private property have not been addressed. What guarantee does a property owner have regarding the value of his property?

Staff response: See response to Chuck Cesena's comments 4, 9 and 23 in the staff report. No change recommended.

12. If the Water Board requires properties previously served by onsite systems to be connected to a community sewer, and one is not available, what problems and expense might arise?

Staff response: The Basin Plan includes criteria for onsite wastewater systems to prevent long-term water quality impacts, such as those that have occurred in Los Osos. Furthermore, development and implementation of onsite wastewater management plans is intended to detect and address water quality problems that may be developing in areas served by onsite systems. The proposed amendment does not require properties to connect to community sewer systems. The amendment strengthens criteria for onsite systems so as to prevent resulting water quality problems that may result in having to sewer areas where onsite discharges have impacted water quality. No change recommended.

13. The proposed amendments create an unfunded mandate.

Staff response: See response to Chuck Cesena's comment 5 in the staff report. No change recommended.

14. The proposed amendment is not needed. Please answer questions posted by the National Onsite Wastewater Association regarding AB885 (see CCW-PZLDF's comment letter for the 10 questions).

Staff response: The purpose and need for the proposed amendment is described in the staff report (*Summary* and *Background*) above. The 10 questions address issues that should be considered within the context of local onsite management plans and are not directly applicable to the proposed action. No change recommended.

15. There is no scientific basis for the amendments and no reason to anticipate that the amendment will result in water quality improvement.

Staff response: See response to Chuck Cesena's comment 13 in the staff report. No change recommended.

16. Onsite system discharges represent only a small portion of nonpoint source pollution. Pollution from sanitary sewer overflows, storm water contaminants, and agricultural runoff pose a greater threat to water quality than onsite system discharges. The proposed amendments do not address these greater sources of pollution.

Staff response: As described in the staff report, the proposed amendment addresses onsite wastewater discharges only. No change recommended.

17. The Basin Plan criteria should be compared with AB885 criteria.

Staff response: As stated in the staff report, statewide regulations required by AB885 have not yet been developed. Accordingly, comparison of the proposed criteria to statewide regulations is impossible. No change recommended.

18. The proposed amendments are fiscally irresponsible. What is the estimated cost of compliance, how many will be eligible for financial assistance, will the Water Board provide funding, if so how much, how much funding does the Water Board receive for developing onsite criteria?

Staff response: See response to David Athey's comment 5 and Chuck Cesena's comment 5 in the staff report. The comment inquires about funding for individual homeowners with existing onsite systems. Potential homeowner costs resulting from the proposed amendment include standard maintenance of existing systems and repair of failing systems. Staff is not aware of Water Board funding for such costs. The Water Board does not receive funding specifically for developing onsite criteria. However, developing and maintaining the Basin Plan (such as onsite criteria) is one of the basic functions of the Water Board. No change recommended.

Ann Calhoun (Los Osos resident) – Ms. Calhoun does not believe adequate notice has been provided to effected onsite system owners. Ms. Calhoun protests this process and requests delay until all septic system permit holders are notified by individual mailing and provided opportunity to comment. Ms. Calhoun's comment letter is included as Attachment 3I.

Staff response: See response to Chuck Cesena's comment 1 in the staff report. No change recommended.

Keith Wimer (Los Osos resident) – Mr. Wimer submitted a comment letter with several attachments and lengthy discussion regarding community sewer system components.

The following comments and responses address only those portions of Mr. Wimer's submittal that relate to this agenda item. Mr. Wimer's letter is included as Attachment 3J.

1. The proposed revisions to the Basin Plan should not be approved. The revisions are vague, confusing, pose unidentified costs, and are inconsistent with draft statewide AB885 regulations. The revisions will discourage use of onsite systems, water recycling, decentralized systems, and STEP/STEG collection systems.

Staff response: The comment does not identify specific language that needs clarification. See response to David Athey's comment 5 and Chuck Cesena's comment 5 in the staff report. The status of statewide regulations developed in response to AB885 is addressed in the staff report (page 3). The Basin Plan criteria for onsite systems do not discourage such systems, but simply specify criteria to ensure such systems do not impact water quality. Although, it should be noted that Resolution No. 69-01, adopted by the Central Coast Water Board in 1969, encourages centralized wastewater treatment as it provides increased opportunities for recycling treated wastewater. Septic Tank Effluent Pumped and Septic Tank Effluent Gravity (STEP/STEG) collection systems are not addressed in the proposed amendments, as such systems do not include onsite discharge of wastewater. No change recommended.

2. The proposed action should be postponed until completion of the statewide AB885 regulations.

Staff response: See staff report discussion regarding statewide regulations (page 3). No change recommended.

3. Basin Plan changes should use the same terminology as other wastewater authorities. State and federal policies prioritizing sustainability, conservation, energy-efficiency, and adequate funding should be incorporated and the regulations should be consistent with Basin Plan goals and the Porter-Cologne Act (requiring economic feasibility and water recycling).

Staff response: Staff agrees that terminology, sustainability, conservation, energy-efficiency, and funding should (and are) incorporated, to the extent that such issues are addressed in the Basin Plan criteria for onsite systems. No change recommended.

4. Unfunded mandates will lead to ineffective implementation and conflicts.

Staff response: See response to David Athey's comment 5 and Chuck Cesena's comment 5 in the staff report. No change recommended. Discussion following Mr. Wimer's Reason #1 (page 1 of 6 of his first attachment) does not appear to address the proposed amendments. The discussion reflects misunderstanding regarding the application of the Basin Plan criteria. There is no proposal to require existing onsite system owners to apply for waivers or waste discharge requirements or submit fees. No change recommended.

5. The proposed amendment is not consistent with other standards and ordinances.

Staff response: Much of the discussion following Mr. Wimer's Reason #3 (page 2 of 6 of his first attachment) refers to Basin Plan language that is not proposed to be revised and

therefore not addressed in this agenda item (such as recommendations to provide homeowners with information to facilitate repair of critical components within 48 hours). Also, the discussion indicates Mr. Wimer supports use of alternative onsite systems. Such use is authorized where consistent with an onsite management plan to ensure effectiveness. No change recommended.

6. The EIR is not adequate.

Staff response: An EIR was not completed for the proposed action. Environmental compliance is addressed in the staff report (*Environmental Summary* on page 6) and states as follows. The California Resources Agency has certified the Basin Planning process as an exempt regulatory program for the purposes of complying with the California Environmental Quality Act (CEQA) and the CEQA Guidelines [§15251, Title 14, California Code of Regulation (CCR)]. The Water Board is exempt from the requirement to prepare an environmental impact report or negative declaration. Any Regional Board exempt regulatory program must satisfy the documentation requirements of §3775(a), Title 23, CCR. This Report constitutes a substitute environmental document as set forth in Section 3775(a), Title 23, CCR. It contains the following: 1) A description of proposed activity and proposed alternatives, 2) An environmental checklist and a description of the proposed activity, 3) An environmental evaluation, and 4) A determination with respect to significant environmental impacts. The environmental analysis contained in this Report for Basin Plan Amendment and accompanying documents, including the Environmental Checklist, the staff report and the responses to comments complies with the requirements of the State Water Resources Control Board's certified regulatory process, as set forth in CCR, Title 23, §3775 et seq. All public comments were considered. No change recommended.

7. Water Board staff have not supported past onsite management planning efforts and have been unwilling to negotiate or oversee onsite management plans or consider alternative onsite systems.

Staff response: As indicated in the staff report, Santa Cruz County has the only operational onsite wastewater management plan in the Central Coast Region, and the Water Board contributed considerable staff resources to assisting development of that plan. In 2004 Water Board staff (along with San Luis Obispo County) assisted Los Osos CSD in developing an onsite management plan as part of its community-wide wastewater management plan. However, completion and implementation of that community-wide plan ceased in 2005. Comments following Mr. Wimer's Reason #7 (page 4 of 6 of his first attachment) relate to community wastewater project components and are not pertinent to this agenda item. No change recommended.

8. The definition of onsite disposal area is unclear and, since the proposed amendment calls for a set-aside area for a second leachfield, this criterion may make some lots unbuildable.

Staff response: The proposed amendment adds the following definition for disposal area: Onsite disposal area shall include the direct application area (trench, pit, bed) and surrounding 100 foot radius from any point in the application area that may be influenced by discharge from the disposal system. However, the requirement to reserve backup disposal area (in case of failure) is carried over from the existing Basin Plan. Staff concurs that not all lots are suitable for onsite systems. No change recommended.

9. Proposed requirement VIII.D.a.7 (page 5) is burdensome for agencies and may not be possible for homeowners and is not consistent with draft AB885 statewide regulations.

Staff response: The requirement for agencies to make sure onsite system owners have adequate information regarding maintenance and repairs of their own system is carried over from the existing Basin Plan text. The proposed additional language is intended to make clear sentences, but does not change the intent of the existing criterion. No change recommended.

10. The clarifying language added to VIII.D.2.a.4 calling for soil borings to be done during or shortly after the wet season may unduly delay construction projects.

Staff response: In some areas of the Central Coast Region groundwater elevations change significantly throughout the year. As a result, depth to groundwater measured during the dry season may be significantly greater than the depth measured during the wet season. In the most extreme cases, onsite systems designed using dry-season measurements may result in the leachfield sitting in (or very near) groundwater during the wet season. Since much of the wastewater treatment associated with onsite systems occurs in the soil column, inadequate separation to groundwater means that inadequately treated waste is discharged to groundwater. The proposed language is intended to prevent this potential water quality impact. In areas where depth to groundwater has already been adequately characterized (such as in an onsite management plan), lot-specific wet-weather data may not be needed. No change recommended.

11. Requirement VIII.D.2.a.11 regarding design of systems on slopes greater than 20% is vague, are these alternative systems or engineered systems?

Staff response: See response to John Ricker's comment 2 in the staff report. No change recommended.

12. The one-acre lot size specified in VIII.D.2.a.13 is arbitrary and not supported by science. Furthermore, alternative systems are not limited by lot size.

Staff response: The one-acre minimum lot size criterion is carried over from the existing Basin Plan and incorporates State Water Board legal opinion (as referenced). The clarifying language is intended to address the meaning of the current language "where soil and other physical constraints are particularly favorable." Over the past two decades, this wording has generated many questions regarding what exactly is meant by "particularly favorable." Rather than addressing a myriad of individual soil and physical constraints, the updated criterion allows lot sizes smaller than one acre (with or without alternative treatment) where consistent with onsite management plans. No change recommended.

13. Throughout his submittal, Mr. Wimer objects to discretion on the part of the Water Board Executive Officer (onsite management plan approval and other instances where such discretion is stated).

Staff response: The California Water Code authorizes the Water Board to delegate authority to the Executive Officer. No change recommended.

14. Section VIII.D.2.h places an unfair burden on discharges seeking exemptions to prove that a system meets vague criteria or standards.

Staff response: The existing language providing for exemptions to the Basin Plan criteria for onsite systems is not proposed to be materially changed. No change recommended.

Anne Norment (Los Osos resident) – Letter included as Attachment 3K.

1. Citizens should be more widely noticed to allow opportunity for public comment and a lay person's description of the proposed action should be provided.

Staff response: Public notice and public participation activities are described in the staff report, summarized in the response to Chuck Cesena's comment No. 1, and are consistent with Water Board standard practice and state law. The staff report is intended to be the lay person's description of the proposed action. However, review of these comments and responses will provide clarification of more technical issues. No change recommended.

2. I applaud language supporting water conservation and would like to see such language strengthened in the Basin Plan.

Staff response: The Water Board also supports water conservation. No change recommended.

3. It is not clear what agency would be responsible for developing an onsite management plan in Los Osos, however such efforts should be coordinated with the County's current Los Osos community wastewater project development effort.

Staff response: See response to Chuck Cesena's comment 25 in the staff report. No change is recommended.

4. The Environmental Checklist potential impact 8b should be revised to reflect potential impacts of septic systems on groundwater recharge. Also, potential impacts 12b and 12c should reflect the potential for housing or resident displacement if repairs to onsite systems are required.

Staff response: The Basin Plan criteria are to be used by local permitting agencies in their role in conditioning the approval of onsite system design details. The criteria do not authorize discharge to onsite systems, but specify the siting, design, and construction parameters for systems that may be permitted. Accordingly, the proposed updates to the Basin Plan criteria will not have significant potential to deplete groundwater supplies. Similarly, the Basin Plan requires repairs to existing systems to be consistent with Basin Plan criteria to the greatest extent practicable. This language is carried over from the existing text. No change recommended.

5. For areas with onsite discharge prohibitions, goals for onsite management plans during development of community wastewater projects should be included.

Staff response: Goals for onsite wastewater management plans are addressed in VIII.D.1.b. No change recommended.

CDO #R3-2006-1041 (Los Osos resident) - Due to lack of public notice, consideration of the proposed Basin Plan amendment should be postponed. Also, the Water Board indicated during the Los Osos CDO hearings that newspaper articles should not be considered reliable resources. Therefore, Water Board staff should not rely on newspaper publication as a reliable means of public notice. - Letter included as Attachment 3L.

Staff response: Public notice and public participation activities are described in the staff report above, summarized in the response to Chuck Cesena's comment No. 1 in the staff report, and are consistent with Water Board standard practice and state law. The applicable regulations require the Water Board to provide notice by publication in a newspaper and to provide individual notice to those who have requested such notice. The Water Board complied with those regulations. No change or delay is recommended.

Shaunna Sullivan (representing Harold Biaggini, Ruth Sullivan and Shaunna Sullivan) - Letter included as Attachment 3M.

1. Ms. Sullivan objects to the proposed Basin Plan amendment as it requires compliance with unfunded mandates. Further, Ms. Sullivan objects to any regulations adopted by the Water Board that allows Water Board discretion to regulate, enforce or fine onsite system owners.

Staff response: Specific objectionable conditions are not identified; therefore, no staff response is offered. California Water Code already authorizes Water Boards to regulate onsite wastewater discharges (as described in the staff report and Resolution Finding No. 2 and No. 3 and Resolution Requirement No. 1).

2. Adequate public notice was not provided regarding the proposed action; each owner of an existing onsite system should receive individual notice.

Staff response: Public notice and public participation activities are described in the staff report, summarized in the response to Chuck Cesena's comment No. 1 in the staff report, and are consistent with Water Board standard practice and state law. No change or delay is recommended.

3. Adequate CEQA compliance has not been documented and we object to this effort to circumvent environmental review.

Staff response: The Water Board's Basin Planning process is an exempt regulatory program that has been certified by the Resources Agency. As such the Water Board is exempt from the requirement to prepare an environmental impact report or negative declaration. Consistent with the requirements for certified regulatory program, the staff provided for public comment a description of the proposed activity with alternatives, an environmental checklist, an environmental evaluation, and a determination with respect to the significant environmental impacts. The preliminary determination was that the proposed amendments would result in no adverse impacts to the environment. The

proposed amendment represents strengthening of environmental protection criteria specified in the Basin Plan. The proposed amendments do not authorize new discharges, but rather revise criteria to assure that discharges authorized by local agencies will be protective of water quality. . No change is recommended.

4. The public notice and staff report do not adequately describe the location in which the criteria will be applicable, the Central Coast Basin is not adequately defined.

Staff response: The Central Coast Basin is described in Chapter 1 of the Basin Plan and no revision to this description is proposed. No change is recommended.

5. What is the basis for requiring a community onsite system, and how will this requirement impact rural, unclustered subdivisions? Will systems approved between May 9, 2008, and State Water Board approval of the amendment need to comply with the new criteria? If you add a bedroom to a home served by an existing onsite system, is the onsite system then considered a new system? And why was the section "Corrective Action for Existing Systems" deleted?

Staff response: The existing description of community systems (those serving more than five parcels) is not proposed to be materially changed. The text (Attachment A, page 1) defines a community system, but does not require community onsite systems. No impact to rural onsite systems is anticipated. If adopted on May 9, 2008, the Basin Plan criteria should be used for planning purposes (by permitting agencies, designers, onsite system owners) until such time as approved by the State Board and Office of Administrative Law. Expansion of an existing onsite systems (such as might be required for significant home expansion) is considered a new system and is required to be consistent with the Basin Plan criteria (VIII.D New onsite system definition). The general discussion regarding corrective action for existing systems is incorporated into the staff report where appropriate. No change recommended.

6. Are all existing onsite systems subject to these new rules and incapable of being repaired to comply?

Staff response: The nature of the question is unclear. Existing onsite systems are subject to maintenance and use criteria (VIII.D.2.e and VIII.D.2.f). Repairs are required to be consistent with Basin Plan criteria to the greatest extent practicable (existing language). No change recommended.

7. Why does the definition of watercourse include man-made channels? What funding is available for implementing onsite management plans?

Staff response: The term man-made is intended to clarify the term artificial used in current Basin Plan text. This suggestion was made by local permitting agencies as a clarification. Staff is not aware of any Water Board funding for development or implementation of onsite wastewater management plans. See further discussion in response to Richard Merrifield's comments 7 and 8 in the staff report. No change recommended.

8. The Water Board appears to be taking on land use decisions beyond its jurisdiction. We object to any requirements for recording information on title documents.

Staff response: Regarding land use issues, the comment refers to existing Basin Plan language. See David Athey's comment 2 regarding disclosure issues. No change recommended.

9. Prohibition VIII.D.2.a.13 should be deleted as it conflicts with state law encouraging granny units.

Staff response: See response to John Ricker's comment 12 and David Athey's comment 6. No change recommended.

10. Ms. Sullivan objects to site suitability criteria VIII.D.2.a.17, 18, 19, and 20 as they are too vague.

Staff response: These criteria are not proposed to be materially changed from the existing Basin Plan text. No change recommended.

11. The language "nearly 100 percent" is proposed to be deleted from VIII.D.2.b.6, does this mean that 100% of the settleable solids are required to be removed in the tank? And why are community systems required to be operated by a public agency?

Staff response: No, the revised provision requires onsite wastewater tanks to be designed to remove settleable solids, without qualifying a percent removal effectiveness. Regarding VIII.D.2.b.19 (public agency operation), no revision of existing Basin Plan language is proposed. No change recommended.

12. Ms. Sullivan objects to criteria VIII.D.2.b.24 prohibiting onsite systems except where demonstrated that the *installation, operation and maintenance of the system will be properly functional and in compliance with all Basin Plan criteria.*

Staff response: Comment noted, the italic text is the proposed revision and is intended to clarify the existing Basin Plan prohibition. No change recommended.

13. Under criteria VIII.D.2.c.3 and 4, alternative onsite systems are allowed only at the discretion of the Water Board Executive Officer, this is too subjective and overreaching.

Staff response: The referenced provisions call for alternative onsite systems to be consistent with local agency onsite management plans, rather than at the discretion of the Executive Officer. No change recommended.

Giti White – Letter included as Attachment 3N.

1. Resolution No. R3-2008-0005 should not be considered until after statewide regulations have been developed as required under AB885.

Staff response: See response to Chuck Cesena's comment 3 in the staff report. No change recommended.

2. The proposed amendment poses potential risk to water quality and environmental impacts should be considered.

Staff response: See response to Chuck Cesena's comment 4 in the staff report. No change recommended.

3. Consideration of the proposed Resolution No. R3-2008-0005 should be delayed until impacts associated with existing onsite discharges have been characterized.

Staff response: Characterization of existing impacts is an important component of long-term onsite wastewater management. For exactly that reason, the proposed amendment requires development of onsite management plans to implement such characterization. No change recommended.

4. Increased regulation of onsite systems is likely to result in expansion of community sewer systems, which will have growth-inducing impacts. Therefore, the proposed onsite criteria have growth-inducing impacts. Furthermore, land application of sewage sludge generated by community sewer systems may pose public health risks.

Staff response: The Basin Plan criteria for onsite systems (existing and proposed) are intended to ensure that onsite wastewater systems provide long-term water quality protection so that replacing onsite systems with community sewer systems is not necessary. In short, the criteria are intended to prevent Los Osos-type situations (need to replace onsite systems with community-wide sewer system) from developing in other areas. Sludge (sewage solids residual from community treatment facilities) should, most appropriately, be compared to septage disposal. Sludge is characterized by domestic and municipal sewage solids that are highly treated and monitored for consistency with federal and state regulations. Septage, on the other hand, is the same source of material (domestic and municipal sewage solids) that are only partially treated and typically not monitored for consistency with any requirements. The amendment includes a provision for local permitting agencies to develop septage disposal plans. No change recommended.

5. The proposed amendment should be delayed until further public participation has occurred.

Staff response: See response to Chuck Cesena's comment 1. No change recommended.

Rhian Gulassa (Los Osos resident) – Ms. Gulassa's letter is included at her request (Attachment 3O); however, staff was unable to identify comments directly relating to this agenda item. Ms. Gulassa's letter summarizes her experience with and mistrust of the Water Board and its regulatory actions. No staff response needed.

Sandy Bean (Los Osos resident) – In a brief emailed message (Attachment 3P), Sandy Bean asks for authorization of zero discharge systems, individual wastewater systems that discharge no water. The request does not directly relate to the proposed agenda item, however it should be noted that alternative systems are provided for within the context of onsite management plans. No change recommended.

Piper Reilly (Los Osos resident) – Much of Ms. Reilly's letter (Attachment 3Q) is related to her support for use of "Reclamators" in all locations where connection to a community sewer is not feasible. Comments relating to this agenda item are as follows.

1. Inadequate public notice was provided regarding the proposed action.

Staff response: Public notice and public participation activities are described in the staff report, summarized in the response to Chuck Cesena's comment No. 1, and are consistent with Water Board standard practice and state law. No change recommended.

2. The proposed action may have environmental impacts, therefore CEQA is triggered.

Staff response: Compliance with the California Environmental Quality Act (CEQA) is addressed in the staff report above (beginning on Page 3).

Scott Peterson (Los Osos resident) – Mr. Peterson requests that alternative treatment systems be allowed on a demonstration basis. Letter included as Attachment 3R.

Staff response: The proposed Basin Plan criteria allow such systems where consistent with onsite management plans. No change recommended.

Art Ludwig (Oasis Design) – Mr. Ludwig provided comments (Attachment 3S) supporting research, development and testing of alternative onsite systems.

Staff response: The proposed Basin Plan criteria allow such systems where consistent with onsite management plans. No change recommended.

Lawson Schaller – Mr. Schaller's comments are included at Attachment 3T.

1. Valuable experience and expertise is likely available by consulting with field professionals who install, maintain and repair onsite systems. Such expertise would improve the onsite criteria.

Staff response: See response to Chuck Cesena's comment 1 in the staff report. No change recommended.

2. It is important for a single government agency to have authority over onsite systems. What are the qualifications needed for a government agency to qualify for management authority.

Staff response: Onsite management is typically implemented by the local permitting authority (the county in most cases). See response to Bruce Buel's comment 1 in the staff report. No change recommended.

3. Some items in the Basin Plan, such as the Los Osos prohibition, are controversial and therefore should receive external scientific review.

Staff response: The Los Osos onsite discharge prohibition is not proposed for revision. Most of the proposed revisions are based upon scientifically peer-reviewed documents, so second peer review has not been sought. No change recommended.

4. Several paragraphs of existing text is proposed to be deleted, why is that?

Staff response: In order to make the Basin Plan criteria more clear, streamlined and user-friendly, several sections of narrative have been moved to the staff report discussion. Also, recommendations and requirements are consolidated into a list format to facilitate project review. No change recommended.

5. Discharge standards should be included to differentiate drinking water from waste.

Staff response: Discharge standards, in the form of chemical constituent concentrations, are not included in the Basin Plan criteria for onsite systems. Most of the treatment of onsite discharges occurs in the soil column, and the proposed criteria are designed to ensure that soil-column treatment is adequate to protect water quality. In some cases, where adequate soil column is not available, alternative systems may be used where consistent with an onsite management plan. Such alternative systems will be evaluated on a case-by-case basis, with concentration-based standards implemented where needed. No change recommended.

6. Who is responsible for protecting adequate recharge of the groundwater basin in order to prevent saltwater intrusion? Isn't saltwater more damaging than other low-level pollutants?

Staff response: Groundwater management responsibility falls to a variety of agencies and water purveyors, but is not addressed in this agenda item. Saltwater intrusion is extremely problematic in some areas, due to its lasting nature and limited treatability. Saltwater intrusion is also not part of this agenda item. No change recommended.

7. Some of the proposed requirements call for approval of the Water Board Executive Officer, perhaps Water Board or some other committee approval would be better.

Staff response: The California Water Code authorizes the Water Board to delegate authority to the Executive Officer to act on behalf of the Water Board, which facilitates timely, technical review. No change recommended.

8. Description of the proposed action should be more clear so that lay persons understand the issues.

Staff response: The staff report is intended to describe, in clear language, the proposed actions. Hopefully, any questions regarding the proposed action will be clarified by these responses to comments. No change recommended.

9. You may want to delay action until the public is more educated regarding these issues and thereby able to give better input.

Staff response: See response to Chuck Cesena's comment 1 in the staff report. No change recommended.

Al Barrow (Coalition for Los Income Housing, Citizens for Affordable and Safe Environment) – Mr. Barrow sent several email messages that include comments and attachments, his submittals are included as Attachment 3U. A significant amount of text from other documents was inserted into Mr. Barrow's comments. Comments specific to this agenda item are noted with a number in the right margin corresponding to the comment below.

1. Further study is needed to evaluate impacts to the population in Region 3 and the Water Board should fund such study.

Staff response: See response to CCW-PZLDF comment 3 above. No change recommended.

2. Inadequate public notice was provided to allow adequate review time.

Staff response: See response to Chuck Cesena's comment 1 in the staff report. No change recommended.

3. All documents from COWA and NOWRA regarding AB885, all coastal zone laws CZLOU, Estero Plan, all general plans, codes, rules, policies and laws are included by reference. You should be compliant with all state laws.

Staff response: See response to Chuck Cesena's comment 9 in the staff report. No change recommended.

4. Technologies, discharge requirements and testing protocols listed on the State Water Board website will be impacted.

Staff response: The comment does not make clear any conflict between State Water Board website information and the proposed Basin Plan update. However, the amendment (if approved) will be reviewed by the State Water Board and OAL for consistency with its policies. No change recommended.

5. The term "at the discretion of the Director" is open for challenge and is unsupportable.

Staff response: See response to Shaunna Sullivan's comment 13 and Lawson Schaller's comment 7 above. No change recommended.

6. Impacts to native species have not been addressed. Also, earthquake faults are not addressed. These issues should be addressed through the CEQA process.

Staff response: The Basin Plan criteria are to be used by local permitting agencies in their role in conditioning approval of onsite system design details. The criteria do not authorize discharge to onsite systems, but specify the siting, design, and construction parameters for systems that may be permitted. Accordingly, the proposed updates to the Basin Plan criteria will not have significant potential to impact species or seismic safety. No change recommended.

7. You should not circumvent the State Water Board's efforts to develop regulations under AB885.

Staff response: See discussion of the statewide regulations in the staff report (page 3). No change recommended.

8. Most onsite professionals believe that treatment occurs in the soil column below the discharge.

Staff response: Correct. No change recommended.

9. More diesel truck trips to pump septic tanks will contribute to increased carbon footprint and air emissions and such impacts should be considered through the CEQA process.

Staff response: The existing Basin Plan criteria states that septic tanks should be inspected every two to five years to determine the need for maintenance, and pumped when solids and scum accumulate to specified levels. U.S. EPA guidance recommends pumping tanks every two to five years to maintain solids removal capacity, and standard industrial practice is to pump tanks every five years. Accordingly, the proposed criterion (requiring pumping when solids accumulate to specified levels or five years, whichever is sooner) is not expected to result in truck trips beyond standard practice, except that in cases where tank maintenance has been neglected. It should be noted that the Air Pollution Control District comment regarding truck traffic (paraphrased in Mr. Barrow's email) is based upon a proposal to pump tanks in the Los Osos prohibition area every two months. Such frequency is not proposed in these criteria. Regarding CEQA evaluation of impacts, see response to comment 6 above. No change recommended.

10. Mr. Barrow seeks relief from the financial burden that he believes will result from the proposed amendments.

Staff response: Tank maintenance every five years is one of the only new requirements proposed for existing onsite system owners. As described in response to comment 9, such maintenance is consistent with standard practices and is not expected to be an additional burden, unless the onsite system owner has neglected such maintenance in the past. No change recommended.

11. San Luis Obispo County provided a status report to the Board of Supervisors summarizing its concerns about the proposed Basin Plan update.

Staff response: San Luis Obispo County's comments, similar to those presented in the status report, are included in the staff report (See comments by Barry Tolle). No change recommended.

12. Please request that the Central Coast Water Board do the full EIR for this huge project. The negative declaration that the Water Board has started is inadequate. They say there are NO impacts under CEQA. After reading the scoping document for the statewide regulations, there are many impacts stated there. Many prominent stakeholders disagree. Regulatory and commercial interest agree an EIR is needed.

Staff response: Water Board staff does not agree that a full EIR is required for the project under consideration by the Central Coast Water Board. The comment refers to a summary of comments made at a scoping meeting for the State Water Board's adoption of a new policy for onsite systems that would apply statewide. It appears the State Water Board is preparing an EIR-type Substitute Environmental Document, which may be appropriate in that case given the scope of the project and the type of requirements that may be included in the policy. In contrast, the scope of the action under consideration by the Central Coast Water Board is quite different from the State Water Board's adoption of a new policy. The proposal being considered by the Central Coast

Water Board is to adopt revisions to existing criteria for onsite systems that apply within the Central Coast Region; the proposal is not the adoption of a completely new policy. The proposed revisions would not result in significant impacts to the environment because the proposed revisions consist primarily of clarifications to the existing criteria with some revisions that make the criteria more stringent in minor ways. The most significant revision would require local regulatory agencies to prepare an onsite wastewater management plan. The preparation of such a management plan for this purpose does not cause a physical change in the environment. The proposed revisions do not change the process for approval of developments or onsite systems, do not approve new systems or require upgrades to existing properly-functioning systems, do not change existing location-specific prohibitions, and do not create a new regulatory policy. No change recommended.

Ken Mabie (Environmental Concepts, septic system consultant) – Mr. Mabie expressed his support for John Ricker's comments (summarized in the staff report) and inquired if variances would be available for slope and setback requirements and what is the source of the slope and setback criteria. He states that in the past 20 years he has not seen evidence of failure due to the existing slope and setback criteria. Mr. Mabie's letter is included as Attachment 3V.

Staff response: The amendment does not materially change existing slope or setback criteria. Accordingly, it is valuable to note Mr. Mabie's experience that the existing criteria have not resulted in system failures. Technical information supporting the existing Basin Plan criteria is included in the staff report for Resolution No. 83-12. Variance from the proposed criteria may be acceptable where consistent with onsite management plans. However, it should be noted that setbacks from steep slopes and water bodies is proposed to be qualified by language such as "if site conditions permit migration of wastewater to water." This continues to allow variance from the stated setback, if such variance is supported by site-specific information demonstrating seepage of wastewater will not surface on the slope or in adjacent water bodies. No change recommended.

Hans & El-Jay Hansson – Comment letter included as Attachment 3W and indicates concern that ongoing monitoring and surveillance will be too costly for homeowners.

Staff response: The proposed criteria do not call for burdensome homeowner monitoring or surveillance beyond that needed for standard maintenance (check and pump tank every five years). No change recommended.

SLO Green Build –The SLO Green Build comments are included as Attachment 3X.

1. The SLO Green Build association submitted general description of sustainable technology and requests that the proposed action be delayed until these technologies can be incorporated into the amendment. The Water Board should evaluate energy-saving technologies and compare mitigation measures prior to requiring these methods in the Basin Plan criteria.

Staff response: The Basin Plan criteria for onsite systems do not specify, recommend or require specific treatment or disposal technologies, but simply specify criteria to ensure such systems do not impact water quality. Such specifics may be addressed in onsite

management plans or through the local jurisdictional permitting process. No change recommended.

2. Water conservation, reuse, low-flow fixtures, landscaping and irrigation plans should accompany onsite design proposals.

Staff response: See response to comment 1. No change recommended.

3. Criteria for greywater systems should be included in the Basin Plan update.

Staff response: Discharge or reuse of greywater has historically been regulated by county health departments, and is not proposed to be incorporated in this amendment. Notwithstanding, greywater issues may be addressed in the future if the Water Board concludes that such discharges pose a potential threat to water quality. No change recommended.

4. Experimental systems should be authorized in Resolution No. R3-2008-0005 so that homeowners may pilot test emerging technologies.

Staff response: See Art Ludwig's comment above. No change recommended.

5. SLO Green Build recommends that appropriate technology uses be approved by the Water Board Executive Officer. SLO Green Build also supports MOUs between the Water Board and local jurisdictions as a means of clarifying administration of onsite management and water quality protection.

Staff response: Comment noted. See response to comment 1. No change recommended.

6. SLO Green Build recommends that local agencies conduct inspections of alternative onsite system to monitor and maintain public health and safety.

Staff response: Staff concurs with the recommendation and anticipates such inspections will be incorporated in onsite management plans. No change recommended.

Joseph Chouinard, P.E. – Mr. Chouinard's comments are included as Attachment 3Y.

1. U.S. EPA does not recommend seepage pits for onsite wastewater treatment. Accordingly, why are seepage pits allowed in the proposed Basin Plan criteria?

Staff response: Language remains in the Basin Plan discouraging use of seepage pits for the same reasons as described in the U.S. EPA guidance documents. However, staff is not aware of adequate technical justification to support prohibition of seepage pits entirely. No change recommended.

2. The definition of watercourse should be consistent with Black's Law Dictionary, which includes presence of bed and banks.

Staff response: See response to John Ricker's comment 5 in the staff report. No change recommended.

3. The proposed language does not state how the disposal reserve area shall be protected; does a meets-and-bounds description need to be recorded?

Staff response: The proposed amendment does not specify the means by which the reserve disposal area shall be protected. The criteria are intended to restrict development of such areas in a manner that would preclude use in case of failure of the original disposal field, but the specific manner of protection at the discretion of the local permitting agency. No change recommended.

4. The Basin Plan should include acceptable methods for performing hand-augered percolation tests, and are such tests required in seepage pits? Is recovery of undisturbed samples intended to be required, to determine mottling in soils? Also, who determines the wet season.

Staff response: The existing and proposed Basin Plan criteria intentionally leave such details to the discretion of the local permitting agency, in order to accommodate geologic, jurisdictional and administrative variation among areas. Due to practical and safety considerations, performing percolation tests in the bottom of seepage pits is neither required nor recommended. No change recommended.

5. Criteria VIII.D.2.a.11 refers to highest seasonal usable groundwater, the term usable should be deleted.

Staff response: The existing Basin Plan language is not proposed for revision and is based upon the State's sources of drinking water policy (State Water Board Resolution No. 88-6 3).

6. Site suitability criterion VIII.D.2.a.13 limits onsite discharge based on zoning (one house per acre). I recommend authorizing discharge based on application rates, in order to account for average daily flow and percolation rates.

Staff response: The one-acre minimum lot size, reflected in the existing and proposed criteria, is based upon a number of factors beyond the amount of wastewater that can be discharged into the soil. The criteria consider setbacks, soil dispersion, and groundwater assimilation. These issues are addressed in the staff report for Resolution 83-12 (existing criteria) and are not proposed for revision here. No change recommended.

7. Site suitability criterion VIII.D.2.a.22 should simply refer the reader to the definitions for low permeability soils.

Staff response: The proposed revised onsite criteria are grouped by activity type (i.e., site suitability evaluation) to facilitate locating all of the applicable recommendations, requirements and prohibitions in one location. The definitions are simply added for clarity. In the case of seepage pits, percolation testing is often not practical due to the difficulty in measuring the bottom of the pit. Therefore, application rates are based on general soil type, which would be evaluated when excavating the pit. No change recommended.

8. Past experience indicates rotating drainfields every year is adequate and can be included in an annual inspection and maintenance routing. Is there data indicating more frequent rotation is necessary?

Staff response: U.S. EPA recommends rotating drainfields on a semi-annual to annual basis. The proposed criteria carries over the more conservative recommendation. No change recommended.

9. Chapter 5, section V.D. recommends high density areas organize into maintenance districts. To be consistent with Chapter 4, the language should be strengthened to require such action. Also, "County governments" should be replaced with "local jurisdictions".

Staff response: The recommendation to form maintenance districts is not proposed for revision, although such action could be part of local agency onsite management plans. The existing language in Chapter 5 is consistent with the proposed revisions and no change is recommended. Staff agrees that "Local governing jurisdiction" should replace "County governments" in Chapter 5, V.H.3.1, as the section may also apply to cities and other jurisdictions.

Steven Paige (Los Osos resident) – Mr. Paige submitted a document that starts with page 15; staff verified in conversation and email with Mr. Paige that there are no prior pages to his submittal. Mr. Paige's submittal summarizes his support for an alternative onsite wastewater system, specifically a source (urine) separation system. Staff was unable to identify comments regarding this agenda item in Mr. Paige's submittal, which is included as Attachment 3Z. Attachments to Mr. Paige's submittal are available on the Water Board's website, but are not attached to this report due to their unrelated nature. No staff response necessary.

Nicole Silva (Monterey Co. Department of Environmental Health Services) – Ms. Silva sent a brief message indicating that the County supports replacing the flood zone setback specified in VIII.D.2.a.14 with 50-year flood plain. Maps depicting 50-year flood zones are more readily available than the proposed 25-year flood zone. Ms. Silva's message is included as attachment 3AA.

Staff response: The criterion is proposed to be revised from precluding onsite disposal within areas subject to 10-year floods to precluding disposal within areas subject to 25-year floods. This revision is intended to protect water quality from impacts associated with increased development in floodplains and long-term use of onsite disposal. The revision is also intended to implement a greater margin of safety. Increasing the flood zone setback to 50-year flood zone is likely to preclude onsite disposal in a manner not evaluated in the proposed amendment. The Basin Plan criterion is not intended to preclude the County from implementing a more protective setback, if it so chooses. No change recommended.

RECOMMENDATION

Adopt Resolution No. R3-2008-0006, as proposed.

ATTACHMENTS

- 3. Comment letters (continued from staff report)
 - H. Citizens for Clean Water – Prohibition Zone Legal Defense Fund
 - I. Ann Calhoun
 - J. Keith Wimer
 - K. Anne Norment
 - L. CDO No. R3-2006-1041
 - M. Shaunna Sullivan
 - N. Giti White
 - O. Rhian Gulassa
 - P. Sandy Bean
 - Q. Piper Reilly
 - R. Scott Peterson
 - S. Art Ludwig
 - T. Lawson Schaller
 - U. Al Barrow
 - V. Ken Mabie
 - W. Hans & El-Jay Hansson
 - X. SLO Green Build
 - Y. Joseph Chouinard
 - Z. Steven Paige
 - AA. Nicole Silva

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