

California Regional Water Quality Control Board  
Santa Ana Region

STAFF REPORT

May 3, 2019

ITEM: 10

SUBJECT: Conditional Waiver of Waste Discharge Requirements for the Proposed Use of an Onsite Wastewater Treatment System – Olga Morales-Knobler, 1619 Dwight Street, Redlands, San Bernardino County – APN 0176-073-23

**BACKGROUND:**

On June 19, 2012, the State Water Resources Control Board adopted the Onsite Wastewater Treatment Systems (OWTS) Policy. OWTS are commonly known as septic systems which primarily treat domestic wastewater for subsurface disposal. The OWTS Policy became effective May 13, 2013, after approval from the Office of Administrative Law. On April 25, 2014, the Santa Ana Regional Water Quality Control Board (Regional Water Board) adopted Resolution No. R8-2014-0005 amending the Water Quality Control Plan (Basin Plan), in part, to incorporate State Board's 2012 OWTS Policy.

The OWTS Policy established a statewide, risk-based, tiered approach to the regulation and management of OWTS and established requirements for each tier as follows:

**Tier 0 – Existing OWTS**

Tier 0 includes existing OWTS which are properly functioning and do not require corrective action. Existing OWTS are automatically covered by the Policy's waiver of waste discharge requirements if they meet the provisions in Section 6 of the Policy.

**Tier 1 – Low Risk New or Replacement OWTS**

Tier 1 applies to new or replacement OWTS when a Local Agency Management Program (LAMP) has not been approved by the Regional Water Board. OWTS subject to Tier 1 must comply with conservative siting and design standards in Sections 7 & 8 of the Policy.

**Tier 2 – Local Agency Management Program (LAMP) for New or Replacement OWTS**

Under Tier 2, local agencies may submit a management program to the Regional Water Board for approval. Upon approval, the local agency may manage new and replacement OWTS under the LAMP. A LAMP approved under Tier 2 may have requirements that differ from Tier 1 to address local conditions but must still be protective of water quality and public health. Tier 2 requirements are specified in Section 9 of the Policy.

### Tier 3 – Impaired Areas

Existing, new, and replacement OWTS that are near impaired water bodies may be addressed by a Total Maximum Daily Load (TMDL) and its implementation program, or special provisions contained in a Local Agency Management Program. If there is no TMDL or special provisions, new or replacement OWTS within 600 feet of impaired water bodies listed in Attachment 2 of the Policy must meet the specific requirements of Tier 3 specified in Section 10 of the Policy.

### Tier 4 – OWTS Requiring Corrective Action

OWTS that require corrective action or are either presently failing or fail at any time while the Policy is in effect are automatically included in Tier 4 and must follow the requirements as specified in Section 11 of the Policy.

The Policy recognizes variability in local conditions by allowing local agencies to propose for approval by regional boards, a Local Agency Management Program (LAMP) under Tier 2 that would achieve the same policy purpose to protect water quality and public health. Once the LAMP is approved, all future OWTS decisions will be governed by the Tier 2 Local Agency Management Program until it is modified, withdrawn, or revoked. Where there is no approved Local Agency Management Program, Tier 1 requirements apply to new or replacement OWTS, unless site conditions mandate implementation of Tier 3.

Under Tier 1, the OWTS Policy sets specific acreage requirements for new or replacement septic systems. Section 7.8 of the OWTS Policy specifies that the density requirements apply to the subdivision of property made by Tentative Approval pursuant to the Subdivision Map Act.

On September 27, 2016, Governor Brown signed two accessory dwelling unit bills into State law, Assembly Bill (AB) 2299 and Senate Bill (SB) 1069. These amendments went into effect on January 1, 2017. An accessory dwelling unit (ADU) is defined as “an attached or a detached residential dwelling unit which provides complete independent living facilities for one or persons” that is on the same parcel as the single-family dwelling unit. (Gov. Code § 65852.2, subd. (i)(4).) ADUs, commonly referred to as “granny flats,” have been identified by the State as providing an important housing option to both potential renters and homeowners.

The ADU legislation above specified limitations on local governments with regards to regulations, such as additional parking requirements and additional service fees for the ADUs. Further, the legislation specified that the Subdivision Map Act does not apply to the construction, leasing, or financing of ADUs (Gov. Code § 66412.2.). The exemption of ADUs from the Subdivision Map Act operates such that the density requirements under Tier 1 do not apply to new OWTS that are proposed to serve ADUs (unless an ADU is sold or transferred before the new OWTS is proposed).

## **DISCUSSION:**

On January 9, 2019, the City of Redlands submitted a proposed LAMP under the Tier 2 of the OWTS Policy. Regional Water Board staff conducted an initial review of the Redlands LAMP and provided comments for changes, particularly with regard to ADUs. The City of Redlands has recently submitted a revised LAMP, which is currently under Regional Water Board staff review. Until the City's LAMP is approved, a new OWTS in the City of Redlands is subject to review by the Regional Water Board and it must comply with Tier 1 requirements.

In January 2019, a request on behalf of Ms. Knobler was submitted to the Regional Water Board staff to evaluate the applicability of the OWTS Policy Conditional Waiver of Waste Discharge Requirements (OWTS Waiver) under Tier 1 for the use of a new conventional septic system to serve a new 900 square foot ADU on a lot located at 1619 Dwight Street, Redlands, APN 0176-073-23-0000. Currently, there is an existing 1,568 square foot home on the 0.37-acre lot that is served by a septic system and seepage pit (no leach field). There is no public sewer available within 200 feet of any proposed building, which could serve the lot.

On February 4, 2019, the Executive Officer determined that the Tier 1 density requirements did not apply to the proposed septic system and that the proposal met the remaining requirements of Tier 1. However, the Executive Officer revoked the OWTS Policy Conditional Waiver of Waste Discharge Requirements because the OWTS Policy as applied to the proposed septic system was not sufficiently protective of water quality. The proposed Conditional Waiver provides additional details on the basis for the revocation.

Regional Board staff met several times with the project proponent to discuss various options that would allow the project to move forward. On March 18, 2019, Ms. Knobler proposed the use of an OWTS that includes a National Science Foundation (NSF) 245 certified wastewater treatment system or an equivalent third-party certified system sized to serve the existing 1,586 square foot home and the proposed 900 sq. foot ADU. NSF 245 certified wastewater treatment systems provide 50% nitrogen reduction. The use of alternative treatment systems is designed to provide advanced treatment of wastewater including clarification, aeration, nitrification/de-nitrification and activated sludge treatment. Documentation of various NSF certified systems have noted a total nitrogen reduction of approximately 70 percent provided the systems are maintained.

Staff determined that an NSF 245 certified wastewater system that can reduce nitrogen loading of the combined flow from the existing home and the proposed ADU by a minimum of 50% would effectively reduce the net loading compared to the loading from the existing home served by a conventional system only.

Should Ms. Knobler's request for conditional waiver be approved, she will be required to enter into an operation and maintenance agreement with a qualified service provider and conduct bi-annual monitoring for the first year and yearly monitoring of the

alternative system for nitrates thereafter. The City of Redlands has included in their proposed LAMP (currently at pages 50, 51, 57 and 59) the requirements for annual inspections of these alternative systems to determine if they are operating as required.

## **RECOMMENDATION**

Staff recommends approval of a “Conditional Waiver from Waste Discharge Requirements with Conditions” approach as identified in the Exhibit for approval of this ADU project.

# ITEM 10 - EXHIBIT

May 3, 2019

Olga Morales-Knobler  
1619 Dwight Street  
Redlands, CA 92373

## **CONDITIONAL WAIVER OF WASTE DISCHARGE REQUIREMENTS FOR THE USE OF AN ONSITE WASTEWATER TREATMENT SYSTEM (OWTS) AT 1619 DWIGHT STREET, REDLANDS, SAN BERNARDINO COUNTY, APN 0176-073-23-0000**

Dear Ms. Morales-Knobler:

On November 27, 2018, you submitted a proposal for a conventional septic system with a leach field to serve a new accessory dwelling unit (ADU) on a 0.37-acre lot with an existing home discharging to a conventional septic system. On February 4, 2019, the Executive Officer determined that although your proposal meets the requirements of Tier 1 and could be covered under the Onsite Wastewater Treatment System Policy (OWTS Policy) Conditional Waiver of Waste Discharge Requirements, the OWTS Policy as applied to your proposal is not adequately protective of water quality. Therefore, the OWTS Waiver (identified in Section 12.0 of the OWTS Policy) for the proposed septic system was revoked.

On March 18, 2019, you proposed the use of a National Science Foundation (NSF) 245 certified residential wastewater treatment system or an equivalent third-party certified wastewater treatment system to serve the existing 1,586 square foot home and the proposed 900 sq. foot ADU on your 0.37-acre lot.

Pursuant to California Water Code, section 13269, the Santa Ana Regional Water Quality Control Board (Regional Water Board) hereby waives the waste discharge requirements specified under Water Code section 13263(a) and the requirement to submit a report of waste discharge under section 13260(a)1) for the proposed discharge from the new septic system for the proposed ADU. This waiver is conditioned on your compliance with the following provisions prior to discharge from the ADU (unless otherwise noted):

1. The alternative subsurface disposal system installed shall include a wastewater treatment system certified by NSF<sup>1</sup>, or other approved third-party tester, to meet at least a 50 percent reduction in total nitrogen when comparing the 30-day average influent to the 30-day average effluent. You must submit substantiating information on the effectiveness of your selected system to the Regional Water Board;
2. You must enter into an agreement with a qualified service provider for the operation and maintenance of the alternative system. You must submit a copy of this agreement to the Regional Water Board;
3. You must meet requirements for Tier 1 siting and design standards in Section 7 & 8 of the OWTS Policy, except for the density requirements in Section 7.8;

---

<sup>1</sup> <http://info.nsf.org/Certified/Wastewater/Listings.asp?TradeName=&Standard=245>

4. You must obtain a permit from the City of Redlands Building and Safety Department for the operation of the alternative subsurface disposal system<sup>2</sup> and provide a copy of that permit to the Regional Water Board;
5. You must provide a copy of the local agency inspection verifying the installation of an approved NSF or equivalent third-party certified wastewater treatment system to the Regional Water Board;
6. You must record a deed restriction (1) requiring the operation of a wastewater treatment system certified by the National Science Foundation, or other approved third-party tester, to meet at least a 50 percent reduction in total nitrogen when comparing the 30-day average influent to the 30-day average effluent for onsite wastewater treatment on the property, and (2) agreeing to connect and be served by a public sewer system within one year of a public sewer system becoming available within two hundred feet of the property. The deed restriction must expressly state that the restrictions run with the land. You must submit a copy of the recorded deed to the Regional Water Board;
7. Within one month of construction of the alternative subsurface disposal system and occupancy of the ADU, you must sample both the influent and effluent of the wastewater treatment system to determine the working nitrate reduction efficiency of the system. You must repeat the sampling six (6) months after construction and occupancy of the ADU. You must submit the sampling analyses to the Regional Water Board within 30 days after the analyses are performed\*;
8. You must conduct annual sampling and reporting beginning one year after installation of the alternative wastewater treatment system\*;
9. Should you sell or transfer this property, you are required to disclose all conditions of approval stipulated in 1, 2, 5, 7 and 8, above, to the new property owner(s). You shall also notify the Regional Water Board and City of Redlands in writing of new ownership and confirm that the disclosures identified above have been made.

\*The specified monitoring requirements are required under Water Code section 13269(a)(2) to verify the adequacy and effectiveness of the waiver's conditions.

The Regional Water Board finds that this waiver is consistent with the Water Quality Control Plan for the Santa Ana River Basin, including the applicable State Water Resources Control Board plans and policies incorporated therein, and that the waiver is in the public interest. Pursuant to Water Code section 13269(a)(2), this waiver may not exceed five years and expires on [date]. Notwithstanding the expiration date, this waiver is conditional and may be terminated by the Regional Water Board at any time. The Regional Water Board may renew the waiver after reviewing its terms at a public hearing to determine whether the waiver remains appropriate or if the discharge should be subject to waste discharge requirements. While we expect that this waiver for your use of an alternative subsurface disposal system would be renewed, we must notify you of the potential that waste discharge requirements could be required.

---

<sup>2</sup> It should be noted that City of Redlands requires the recordation of an alternative system with the property deed, providing additional assurance that disclosure to buyers is provided. Alternative systems are then permitted for the life of the system and the permit must be renewed annually by the property owner.

Should any conditions change from those stated in your submittal or should there be non-compliance with the conditions identified above, you must notify this office immediately to determine a further course of action. Please be aware that this waiver does not relieve you of your responsibility to comply with the laws and guidelines of other regulatory agencies involved with this project.

If you have any questions, please contact Susan Beeson at (951-782-4902 or at [Susan.Beeson@waterboards.ca.gov](mailto:Susan.Beeson@waterboards.ca.gov) or Michael Perez at (951) 782-4306 or at [Michael.Perez@waterboards.ca.gov](mailto:Michael.Perez@waterboards.ca.gov).

Sincerely,

Hope A. Smythe  
Executive Officer

cc: City of Redlands - Jeff Baughman / Donald P. Young  
San Bernardino County Environmental Health Services – David Alaniz/Josh Dugas

TENTATIVE