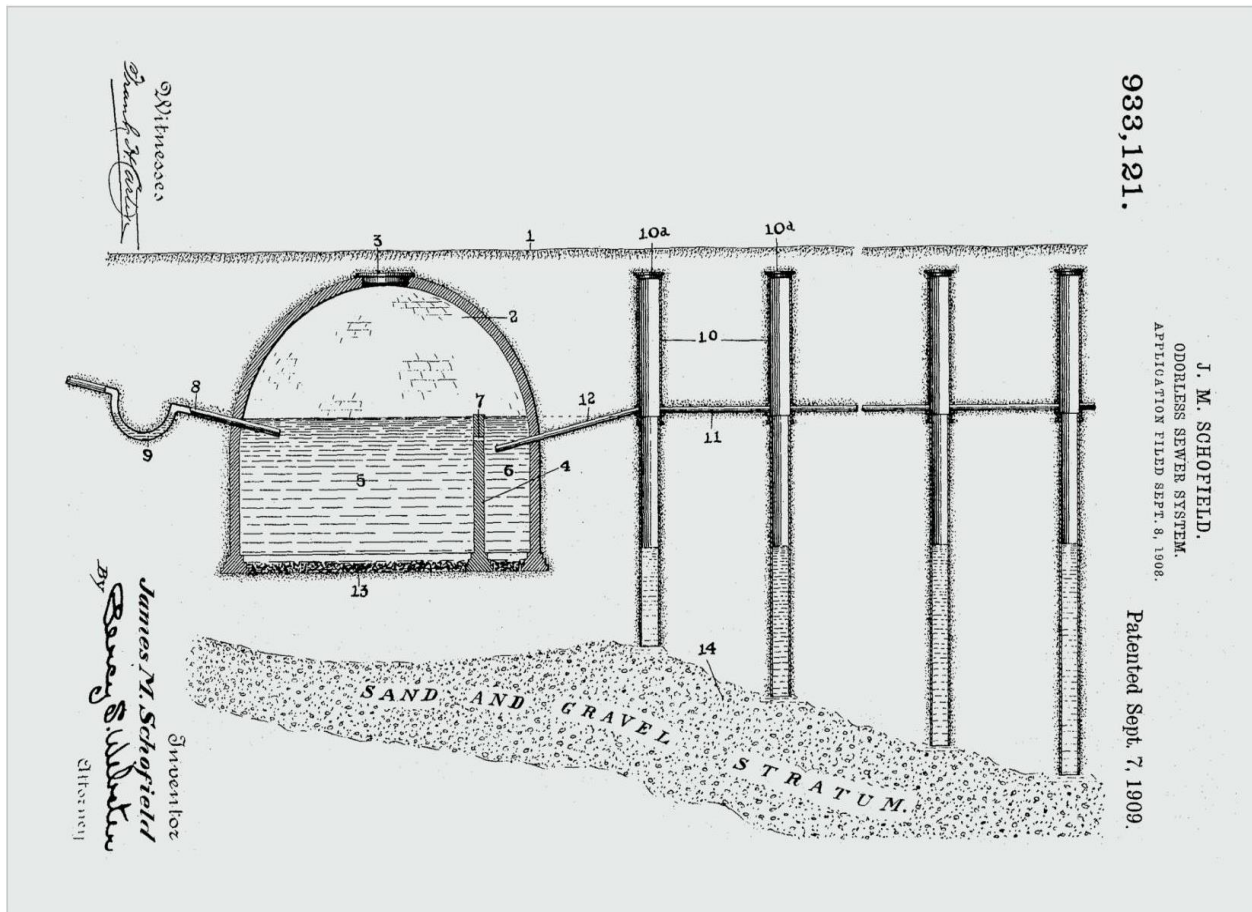


# LOS ANGELES REGIONAL WATER QUALITY CONTROL BOARD

## DRAFT STAFF REPORT

### INCORPORATION OF THE STATEWIDE ONSITE WASTEWATER TREATMENT SYSTEMS POLICY INTO THE LOS ANGELES REGION'S WATER QUALITY CONTROL PLAN



February 27, 2014

## **SUMMARY**

On June 19, 2012, the State Water Resources Control Board (State Water Board) adopted the *Water Quality Control Policy for Siting, Design, Operation, and Maintenance of Onsite Wastewater Treatment Systems* (OWTS Policy). The OWTS Policy applies statewide and designates the regional water quality control boards (regional water boards) with principal responsibility for overseeing implementation of the policy. In adopting the OWTS Policy, the State Water Board required that regional water boards incorporate the policy's requirements into regional basin plans within a year of the policy's effective date. The proposed amendments will revise the Water Quality Control Plan (Basin Plan) for the Los Angeles Region to incorporate the State Water Board's OWTS Policy. Implementation of the OWTS Policy will provide more effective and efficient regulation of onsite wastewater treatment systems (often referred to as septic systems) by providing clear, consistent criteria; a streamlined regulatory tool (i.e., conditional waiver of waste discharge requirements); broader coverage (systems treating up to 10,000 gallons per day); and flexibility to implement local alternatives where Local Agency Management Programs (LAMPs) are implemented.

The OWTS Policy conditionally waives requirements to submit a report of waste discharge (ROWDs) and associated application fees, and to obtain waste discharge requirements (WDRs) for onsite wastewater treatment systems that comply with the policy (OWTS Policy section 12). The conditional waiver will allow for use of onsite wastewater treatment systems in a manner protective of water quality yet without the administrative burden of applying for and issuing waste discharge requirements. While the OWTS Policy provides for regulation of OWTS under a conditional waiver, the policy does not limit the Los Angeles Water Board's authority to regulate OWTS in an alternate manner, including requiring ROWDs and issuing WDRs, when it may be necessary to protect water quality. Additionally, the OWTS Policy upholds and does not supersede or modify any discharge prohibitions imposed on onsite wastewater treatment systems and/or local agency requirements.

## **DISCUSSION**

**Background.** To ensure that onsite wastewater treatment systems do not adversely affect groundwater and surface water quality, the Los Angeles Water Board currently regulates OWTS discharges in the Los Angeles Region through three general permits adopted by the Los Angeles Water Board (91-94, 01-031, and R4-2004-0146) and one State Water Board permit (97-10-DWQ). The regulatory requirements of these permits are based on criteria set forth in Chapter 4, Article 5, Division 7 of the California Water Code. Dischargers planning to operate OWTS apply for individual waste discharge requirements (WDRs) or, if eligible, enroll under one of the general WDRs. Also, local agencies with land use and planning powers in the Los Angeles Region regulate onsite wastewater treatment systems based on California Uniform Building and Plumbing Codes. These agencies require soil analysis, site evaluation, percolation tests, and determination of proximity to surface waters and depth to groundwater before approving use of an onsite wastewater treatment system. In some cases, the Los Angeles Water Board has entered into Memoranda of Understanding with local agencies to permit onsite wastewater treatment systems.

In addition, to date, the Los Angeles Water Board has adopted two prohibitions on the discharge of waste from onsite wastewater treatment systems in accordance with California Water Code sections 13243 and 13280. The Los Angeles Water Board adopted these prohibitions as amendments to the Basin Plan. The first to be adopted applies to the Oxnard Forebay in the County of Ventura (Resolution No. R99-013) and the second applies to the Malibu Civic Center Area in the County of Los Angeles

(Resolution No. R09-007). The requirements of these prohibitions are included in Chapter 4 of the Basin Plan.

**The State Water Board's OWTS Policy.** The OWTS Policy, adopted on June 19, 2012, provides criteria for siting, design, operation, and maintenance of onsite wastewater treatment systems and provides a conditional waiver for onsite wastewater treatment systems that comply with the policy. The State Water Board's OWTS Policy implements water quality protection measures in a manner that allows for the protection of beneficial uses of waters and the prevention and correction of conditions of pollution and nuisance. The OWTS Policy is available at the following link:

[http://www.waterboards.ca.gov/water\\_issues/programs/owts/docs/owts\\_policy.pdf](http://www.waterboards.ca.gov/water_issues/programs/owts/docs/owts_policy.pdf)

The OWTS Policy requires that the regional water boards incorporate the requirements established in the policy into regional basin plans within 12 months of the effective date of the policy (OWTS Policy section 4.2). The proposed amendments incorporate the requirements of the policy through revisions to Chapter 4 (Strategic Planning and Implementation) and Chapter 5 (Plans and Policies) of the Basin Plan.

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

The Los Angeles Water Board encourages direct regulation of onsite wastewater treatment systems by an authorized and qualified local agency, and has historically entered into memoranda of understanding (MOUs) with such agencies to develop and implement local onsite wastewater treatment system management plans. The OWTS Policy facilitates direct local regulation through Local Area Management Programs (LAMPs) approved by the Los Angeles Water Board. Therefore, MOUs between local agencies and the Los Angeles Water Board are no longer needed to facilitate LAMP development and implementation. Further discussion regarding LAMP development, approval, and ongoing implementation is provided below.

The OWTS Policy implements criteria for siting, design, operation, and maintenance in a manner similar to that adopted by the Los Angeles Water Board in its Basin Plan and General Waste Discharge Requirements for Residential Subsurface Sewage Disposal Systems in Areas Where Ground Water is Used for Domestic Purposes (Order No. 91-94). The OWTS Policy establishes tiered implementation requirements based upon the potential threat to water quality posed by the onsite wastewater treatment system. The tiers are as follows:

**Tier 0** provides a conditional waiver of waste discharge requirements for existing, properly functioning systems that are not failing or in need of corrective action (Tier 4) and are not determined to be

contributing to an impairment of surface water (Tier 3). Tier 0 conditions for existing onsite wastewater treatment systems are specified in section 6 of the OWTS Policy.

**Tier 1** provides a conditional waiver of waste discharge requirements for new or replacement systems that comply with specific criteria intended to be protective of water quality. The criteria are intentionally conservative (similar to those previously adopted by the Los Angeles Water Board) to ensure that use of such systems, without specific monitoring, will not result in water quality impairment. Tier 1 conditions for low-risk onsite wastewater treatment systems are specified in section 7 and 8 of the OWTS Policy.

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

**Tier 3** provides special conditions for onsite wastewater treatment systems located near waters identified as water quality impaired (listed in Attachment A of the OWTS Policy). New and existing onsite wastewater treatment systems must comply with the applicable implementation program established in a total maximum daily load (TMDL) for the water body. Where there is no TMDL in place, onsite wastewater treatment systems within 600 feet of water bodies impaired by nitrogen or pathogen indicators must meet advanced protection requirements specified in the policy. The Tier 3 advanced protection requirements are set forth in section 10 of the OWTS Policy.

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

**Conditional Waiver of Certain Requirements.** The OWTS Policy conditionally waives requirements to submit a report of waste discharge and associated application fees, and to obtain waste discharge requirements for onsite wastewater treatment systems that comply with the policy (OWTS Policy section 12). The conditional waiver allows for use of onsite wastewater treatment systems in a manner protective of water quality without the administrative burden of applying for and issuing waste discharge requirements. While the OWTS Policy provides for regulation of onsite wastewater treatment systems under a conditional waiver, the policy does not limit the Los Angeles Water Board's authority to regulate OWTS in an alternate manner, including requiring ROWDs and issuing WDRs, when it may be necessary to protect water quality. Additionally, the OWTS Policy upholds and does not supersede or modify any discharge prohibitions imposed on onsite wastewater treatment systems and/or local agency requirements.

As described in the Background section above, the OWTS criteria for siting, design, operation, and maintenance specified in the OWTS Policy are consistent with criteria adopted by the Los Angeles Water Board in its Basin Plan and General WDRs. The OWTS Policy provides increased detail and incorporates related requirements, such as those for drinking water protection from the California Department of Public Health. These requirements became effective upon adoption of the OWTS Policy, but updating the Basin Plan to incorporate these requirements will provide the public and local agencies with more clear and consistent direction regarding onsite wastewater treatment systems. Furthermore, as stated

above, the OWTS Policy required regional water boards to amend their basin plans to incorporate the requirements of the policy.

**Local Agency Management Programs.** A key component of the OWTS Policy is the development and implementation of OWTS management programs by local agencies. Tier 2 of the policy provides for the use of LAMPs, which may implement area-specific programs with different and/or supplemental requirements, including conditions, criteria, and methods of assessing compliance than those specified in Tiers 1, 2 and 3. Typically, LAMPs are implemented in areas that differ from the conditions considered during policy development, either by having more or less favorable conditions for onsite systems. This local agency management approach has been the preferred model in the Los Angeles Region for many years. The Los Angeles Water Board has been providing guidance to local agencies developing LAMPs to meet the OWTS Policy requirements. The Los Angeles Water Board intends to continue to work with these local agencies to complete LAMPs for review and approval by the Los Angeles Water Board. Accordingly, it is anticipated that many local agencies throughout the region will have their LAMPs ready for approval well in advance of the deadlines specified in the OWTS Policy (i.e., five years).

**Advanced Protection Management Program.** Another key component of the OWTS Policy is the Advanced Protection Management Program (APMP) in Tier 3, which addresses OWTS that are near impaired water bodies that do not have TMDLs or special provisions to address the impairment. An APMP is the minimum required management program for all OWTS located near a water body that has been listed as impaired due to nitrogen or pathogen indicators pursuant to Section 303(d) of the Clean Water Act. Local agencies are authorized to implement APMPs in conjunction with an approved LAMP or, if there is no approved LAMP, Tier 1 requirements. Local agencies are encouraged to collaborate with the Regional Water Boards by sharing any information pertaining to the impairment, providing advice on potential remedies, and regulating OWTS to the extent that their authority allows for the improvement of the impairment.

**Proposed Resolution.** The proposed resolution is intended to align the Basin Plan with the State Water Board's OWTS Policy, as required by state law and the OWTS Policy, and will amend the Los Angeles Region's Basin Plan by incorporating (by reference) the State Water Board's OWTS Policy. The existing (1994) Basin Plan language, as amended by Resolution Nos. R99-013 and R09-007, pertaining to septic system regulation will be modified. Revised Basin Plan text (showing changes in underline and strikeout format) is provided in Attachment A to the proposed Resolution.

## **ENVIRONMENTAL SUMMARY**

The Los Angeles Water Board's discretionary decisions are typically subject to the requirements of the California Environmental Quality Act (CEQA). The Secretary for Natural Resources has certified the basin planning process as an exempt regulatory program, and therefore the water boards are exempt from the specific CEQA requirement to prepare an environmental impact report or negative declaration when the water board is complying with the procedures identified in the certified regulatory program (Cal. Code Regs., tit. 23, §§ 3720-3781; Pub. Res. Code § 21080.5; Cal. Code Regs., tit. 14, § 15251(g)).

The State Water Board prepared a Substitute Environmental Document (SED) for the OWTS Policy in accordance with the water board's certified regulatory program. The State Water Board approved the OWTS Policy and the accompanying SED on June 19, 2012. The proposed amendments incorporate the OWTS Policy and remove certain existing Basin Plan provisions regulating onsite wastewater treatment systems that are no longer applicable as a result of the OWTS Policy. No substantive changes or modifications to the previously approved OWTS Policy are proposed, no substantial changes with

respect to circumstances under which the project will be undertaken have occurred, and no new information triggers the need for supplemental or subsequent CEQA analysis. These amendments are wholly within the scope of the OWTS Policy as analyzed by the State Water Board in the existing SED. As such, the recommended actions do not require further environmental review pursuant to the certified regulatory program or CEQA. A finding to this effect is included in the resolution as Finding No. 14. Consistent with the water board's certified regulatory program, a Notice of Decision will be filed with the Secretary for Natural Resources after the State Office of Administrative Law approves the basin plan amendment (Cal. Code Regs., tit. 23 § 3781).