

**STATE WATER RESOURCES CONTROL BOARD
BOARD MEETING SESSION - DIVISION OF FINANCIAL ASSISTANCE AND
DIVISION OF WATER QUALITY
DECEMBER 4, 2012**

ITEM 9

SUBJECT

FOURTH ANNUAL UPDATE ON EFFORTS TO ASSIST SMALL AND/OR DISADVANTAGED COMMUNITIES IN MEETING THEIR WASTEWATER NEEDS

DISCUSSION

Small ¹ and/or disadvantaged ² communities (SDACs) face specific challenges related to their drinking water and wastewater systems.

Due to their small rate base, SDACs often cannot provide the economies of scale necessary to build and maintain adequate wastewater systems. Small, and especially small and rural communities, generally face higher per capita operations and maintenance (O&M) costs and capital costs which result in higher, sometimes prohibitive, sewer rates.

The challenges SDACs face generally result from a lack of adequate local monetary resources combined with insufficient access to technical expertise. SDACs are often unable to retain qualified operators. If their wastewater treatment plants (WWTPs) violate water quality requirements, they often lack the capital to repair the problem, and are unable to pay the fines or penalties associated with non-compliance. Even if these communities secure financial assistance to improve their system, often there is insufficient in-house technical expertise to determine the best project alternative, or to appropriately plan for long-term O&M needs.

Failing septic systems and old, obsolete, or undersized WWTPs that cannot meet current water quality standards can cause significant health and safety problems, endanger surface water uses, and threaten groundwater supplies.

The State Water Resources Control Board (State Water Board) is committed to addressing the human health and water pollution problems SDACs face, especially in cases where these problems present an environmental injustice. In 2008, State Water Board staff, in coordination with Regional Water Quality Control Boards (Regional Water Boards) staff (collectively referred to as Water Boards), developed a [Small Community Wastewater Strategy](#) (Strategy), which provides an overview of the problems faced by SDACs and proposed solutions to address those problems.

The Strategy is referenced in State Water Board [Resolution No. 2008-0048](#), adopted July 1, 2008, which promotes strategies to assist SDACs with wastewater needs, and directs staff to report annually on progress.

This update includes a summary of actions taken to support SDAC wastewater needs, and a discussion of potential financial assistance and regulatory strategies to assist these communities in the future.

¹ Small = Population less than 20,000 persons

² Disadvantaged = Median Household Income (MHI) less than 80 percent of statewide MHI

UPDATE ON SDAC COMMUNITY WASTEWATER ACTIONS DURING SFY 2011/12

The following is a summary of progress with respect to actions outlined in Resolution No. 2008-0048, the Strategy, and previous annual updates:

1. State Water Board staff continues to work with staff from the California Department of Public Health (CDPH), Department of Water Resources (DWR), United States Department of Agriculture (USDA), United States Environmental Protection Agency (U.S. EPA), and related agencies to identify opportunities to leverage resources. This coordination is facilitated by the State Water Board's participation in the [California Financing Coordinating Committee](#) (CFCC) funding fairs, which were held during March, April, and May 2012, in San Diego, Riverside, Fresno, Santa Cruz, Redding, and Sacramento.
2. State Water Board staff is implementing the following improvements to the Clean Water State Revolving Fund (CWSRF) Program in an effort to make it more responsive and affordable to SDACs:
 - a. Following procedures to process and disburse payments within 30 days of a complete payment request submittal;
 - b. Allowing for refinancing of existing local wastewater debts, if CWSRF eligible, and when necessary to make CWSRF financing for a new wastewater project affordable;
 - c. Providing Extended Term Financing and/or reduced interest rates for eligible small, disadvantaged communities with wastewater rates of at least 1.5 percent of the community's MHI;
 - d. Providing principal forgiveness to eligible SDACs. Per the [2012 CWSRF Intended Use Plan](#) (IUP), adopted March 20, 2012, the State Water Board reserved approximately \$8.4 million in principal forgiveness authority from the Federal Fiscal Year (FFY) 2012 CWSRF appropriation for two categories of disadvantaged communities: Category 1) small, disadvantaged communities with substantial water quality investment³; and Category 2) other communities⁴. State Water Board staff continues to work with eligible communities to commit those funds. [Exhibit A](#) is a list of the principal forgiveness commitments made during SFY 2011/12;
 - e. Offering planning financing agreements at zero percent interest during a draw period of up to three years, with the option to either repay over five years at half the general obligation (GO) bond rate, or to refinance the planning financing as part of a CWSRF construction financing agreement; and
 - f. Allowing eligible Category 1 planning financing applicants to receive 100 percent of eligible planning costs as principal forgiveness/grants, not to exceed \$500,000.⁵

³ Category 1 = Small, disadvantaged community with wastewater rates at least 1.5 percent of the community MHI, or small community with wastewater rates at least 4 percent of the community MHI. Service charges plus other costs related to the system, such as taxes, assessments, and fees may be included in calculating the rates as a percent of MHI.

⁴ Category 2 = Disadvantaged communities not qualifying under Category 1; project serving a disadvantaged area of a larger community; or project implementing a nationally designated estuary plan.

⁵ If a community does not have wastewater rates in place (i.e., septic-to-sewer project) but would otherwise qualify for Category 1, that community can qualify for principal forgiveness/grants for planning.

3. Assembly Bill (AB) 2356 (Statutes 2008, Chapter 609, Arambula) created the CWSRF Small Community Grant (SCG) Fund, and allows the State Water Board to assess an annual charge on existing CWSRF financing agreements for deposit into the SCG Fund. The annual charge is in lieu of interest that would otherwise be charged in association with a CWSRF financing agreement. AB 2356 authorizes the State Water Board to deposit up to \$50 million into the SCG Fund by 2014.

Due to restrictions on federal funding and bond revenues, provisions regarding collection of the annual charge can only be incorporated into CWSRF financing agreements funded solely by CWSRF repayments. Staff already amended existing repayment-only financing agreements to incorporate the necessary provisions, resulting in approximately \$12 million in deposits through the end of SFY 2011/12, and approximately \$30 million in deposits projected by the December 2014 sunset date. The State Water Board will be unable to collect the full \$50 million without legislative action to extend the deadline.

The State Water Board had the authority to spend \$1 million in SCG funds during SFY 2010/11, plus \$1 million in SFY 2011/12. The State Water Board is authorized to commit \$12 million in SCG funds during SFY 2012/13. As outlined in the [2012 CWSRF IUP](#), the funds will be allocated to eligible Category 1 projects, subject to the following: (i) at least \$3 million is set-aside for planning financing agreements; (ii) if the planning set-aside funds are not committed to planning projects by July 1, 2013, any remaining funds will be available for planning or construction projects. Consistent with AB 2356, the State Water Board has given funding priority to projects that serve severely disadvantaged⁶ small communities. [Exhibit B](#) is a list of SCG funding commitments to date.

4. On November 17, 2011, the State Water Board executed a contract with California Rural Water Association (CRWA) to provide wastewater-related technical assistance to SDACs statewide through the end of SFY 2012/13. Technical assistance efforts are tailored to the needs of each individual community, and are focused on the following general areas of concern:
 - Compliance audits and troubleshooting to address permit violations and make operations more efficient;
 - Reviewing project reports and/or proposed project alternatives to assist in identifying low-cost, sustainable approaches;
 - Assistance with planning and budgets, including development of capital improvement plans or equivalent;
 - Assistance with community outreach, awareness, and education, especially with regard to rate setting and Proposition 218 compliance; and
 - Preparation of financial assistance applications.

The State Water Board solicited input from the nine Regional Water Boards and the State Water Board's Office of Enforcement to develop a list of communities that may benefit from technical assistance. Staff in the Division of Financial Assistance (Division) has also been directly contacted by several communities in need of technical assistance. A list of the communities that have been referred to CRWA and information about the status of technical assistance efforts is in [Exhibit C](#).

5. State Water Board staff continues to identify, evaluate, and promote means of recruiting and retaining qualified operators for small wastewater systems, including incorporating the provisional operator certification into regulations. The [Wastewater Treatment Plant](#)

⁶ Severely Disadvantaged = MHI less than 60 percent of the statewide MHI

[Classification, Operator Certification, and Contract Operator Registration Regulations](#) are scheduled for State Water Board consideration on December 4, 2012, with the regulations anticipated to become effective as of April 1, 2013.

The provisional certification would be available only in the case of simple systems (e.g., Class 1 pond systems). The owner of the WWTP would be required to request written approval from the Office of Operator Certification before using a provisional operator. The request would have to demonstrate that the owner has had difficulty hiring a certified operator, despite due diligence. The owner would also need to provide a written plan outlining the provisional operator duties and responsibilities, plus a copy of a written agreement with a certified operator that will be available to assist the provisional operator. In an effort to improve operator retention, the provisional operator would be tied to a given community at least until full certification is received.

POTENTIAL SDAC WASTEWATER ACTIONS

The following is a summary of specific financial assistance and regulatory strategies the State Water Board plans to implement to assist SDACs. These items were discussed during a November 5, 2011, meeting with various environmental justice, technical assistance, and industry organizations that work with SDACs. Feedback and comments from that meeting were considered in preparing this informational item.

1. Amend the CWSRF Policy and Application

State Water Board staff continues to consider updates to the [Policy for Implementing the CWSRF for Construction of Wastewater Treatment Facilities](#) (CWSRF Policy) to help support the needs of SDACs. Division staff is also working on streamlining the application process.

The CWSRF application is being updated to make it more organized and easier for applicants to complete. The new application will be organized into three separate packages: 1) technical, 2) environmental, and 3) financial. The separate packages will make it easier for applicants to navigate the application. Attachments such as resolutions, certifications, and legal opinions will also be condensed into fewer documents with standard template language provided wherever possible. State Water Board staff is also working on streamlining and improving the efficiency of the application review process so that funding can be made available to recipients more quickly. Once the updated CWSRF application is available, staff plans to market the new process at the annual CFCC funding fairs. In addition, staff intends to record a series of training videos that will be available to all applicants online.

Concurrent with the CWSRF application update, staff is working on amendments to the CWSRF Policy, including the following proposed changes that would assist SDACs:

- Making separate design financing available, prior to construction financing approval.
- Extending the amortization period for planning or design financing from five to ten years, if the applicant prefers. This will make the project more affordable by extending the amount of time the recipient has to repay the financing. It will also be easier for applicants to have sufficient revenues to comply with CWSRF debt coverage requirements.

- Including contingencies as eligible costs. Contingencies will be used to pay for change orders approved by the Division at the end of construction. Change orders will have to be consistent with the initial scope of work and the recipient will still need to cover change order costs until the final disbursement.

Next steps, estimated time and staffing requirements

It is anticipated that the CWSRF Policy amendments will be presented to the State Water Board for consideration in early 2013. The new application will be included as an appendix to the Policy. Initially the application will remain paper-based. Staff anticipates moving the application into the State Water Board’s Financial Assistance Application Submittal Tool (FAAST) so that applicants may apply online in the future.

2. Financial Incentives to Encourage Larger Entity Support

State Water Board staff is working to develop a process, through the CWSRF Program or other means, to encourage larger entities to help support the needs of SDACs. The State Water Board is exploring offering larger entities financial incentives, such as lower interest rates, in exchange for efforts to assist SDACs. The large entities could potentially offer assistance in various forms, such as: a peer-to-peer approach, manning a help desk, preparing written/web guidance materials on specific topics, operator or managerial training or service, and assisting with preparation of planning documents. State Water Board staff has identified several potential approaches, as outlined below. However, hurdles have been encountered with regard to finding ways to protect the larger entities from potential liability, determining the best methods for tracking progress and outcomes, and for ensuring no conflicts with Proposition 218 if the larger entities resources are used to support needs outside their service area.

1. Statewide program managed by existing wastewater advocacy or training association: The association would develop a roster of participating larger entities, and would be responsible for tracking the number of service hours that each larger entity provides. The hours would in turn equate to a specific amount of “subsidy” provided to the larger entities through interest rate reduction(s) over a specified period of time.
2. Pilot interest rate reduction with one or more CWSRF financing agreements: The State Water Board could do a pilot project by writing a defined scope of assistance for a specified SDAC into a CWSRF financing agreement with a larger entity. In exchange, the larger entity would receive an interest rate reduction that would equate to more “subsidy” than the larger entity would spend providing the assistance. If the pilot is successful, the program could be broadened to additional new financing agreements.
3. Targeted forums on specific topics of interest: The larger entities could participate in forum(s) for guidance and lessons learned on specific topics (i.e., septic-to-sewer projects, with presentation by staff from larger entities). These could be filmed and posted on the web. Unless this was part of a larger statewide program similar to the above described Option 1, the State Water Board would probably not be able to compensate participants with financial incentives, like reduced interest rates. Participation would likely have to be on a “Pro Bono” basis.

Next steps, estimated time and staffing requirements

State Water Board staff will continue vetting the concepts outlined above. If a feasible approach is developed, staff can propose program changes during the subsequent CWSRF Policy amendment. No additional resources are required.

3. General Order for Small WWTPs

State Water Board staff continues working to improve and streamline the permitting of small WWTPs. Staff is drafting a General WDR Order (General Order) to more efficiently permit small WWTPs. Discharges to land from small domestic wastewater treatment and disposal systems have certain common characteristics, such as similar constituents, concentrations of constituents, disposal techniques, flow ranges, and they require the same or similar treatment standards. These types of discharges are appropriately regulated under a General Order.

[Water Quality Order \(WQO\)-97-10](#) is an existing General Order addressing small domestic wastewater systems for discharges up to 20,000 gallons per day (gpd). No residential systems were allowed regulatory coverage by WQO-97-10. The proposed Small Domestic General Order would address domestic wastewater treatment and disposal systems, including residential systems. It would be limited to systems that discharge to land, with a monthly average flow rate of 100,000 gpd or less. This correlates to a community of approximately 1,300 single family homes. The General Order will include model monitoring and reporting requirements that could be modified on a site-specific basis if needed.

In June 2012, the State Water Board adopted a [Water Quality Control Policy for Siting, Design, Operation, and Maintenance of Onsite Wastewater Treatment Systems](#) (OWTS Policy) for the regulation of residential onsite systems with subsurface disposal. The Policy establishes a statewide, risk-based, tiered approach for the regulation and management of OWTS installations, repairs, and replacements. Local agencies are allowed to manage systems discharging less than 3,500 gpd without a Local Agency Management Plan (LAMP), and to manage systems discharging less than 10,000 gpd with a LAMP. Although the OWTS does allow for management of some small systems at the local level, the Regional Water Boards anticipate some increase in workload as a result of the OWTS Policy. The proposed Small Domestic General Order will help the Regional Water Boards manage this additional need.

4. Streamlining Monitoring Requirements for Recycled Water

State Water Board staff has developed proposed amendments to the [Recycled Water Policy](#), to add monitoring requirements for constituents of emerging concern (CECs). The Recycled Water Policy previously required monitoring of priority pollutants twice per year for landscape irrigation projects. The proposed amendment recommends reducing the frequency of monitoring for priority pollutants to once per year for most recycled water production facilities, and to once every five years for systems producing less than one million gpd. The State Water Board held a hearing on the proposed amendment to the Recycled Water Policy on October 16, 2012, but postponed consideration of adoption to a future State Water Board Meeting. It is anticipated that the proposed amendment will be reconsidered in early 2013.

5. Evaluating Opportunities for Reducing the Cost of Compliance

The [Third Annual Update on Efforts to Assist SDACs with their Wastewater Needs](#) (Third Annual Update) outlined various potential regulatory strategies that could help reduce SDAC compliance costs and/or allow them additional time to achieve compliance. The State Water Board is sensitive to these concerns and strives to help all dischargers achieve compliance as cost effectively as possible. The State Water Board is going through a Resource Alignment effort, and as part of this effort staff is trying to evaluate the actual costs of compliance for various dischargers. This information will ultimately be used to identify opportunities to reduce compliance costs.

On October 24, 2012, State Water Board staff held a kickoff meeting with stakeholders. Staff will be working with the stakeholder team(s) to develop a method for classifying categories of dischargers and defining their associated compliance costs relative to their total costs. Different types and sizes of discharges will likely have varying cost sensitivities to different compliance requirements. For example, the cost of implementing monitoring requirements could comprise a substantial portion of a small discharger's budget, while these same requirements may have less financial significance to a larger discharger. Classifying dischargers by size, sector, and other relevant factors will allow for identification of the highest relative costs of various compliance actions within each group. This information will help staff determine the most efficient ways to achieve compliance in a cost effective way. Staff plans to identify and evaluate a list of potential opportunities and make recommendations for specific permitting or planning changes that could lead to cost savings.

State Water Board staff will provide an update on the efforts of this project, and in particular any specific information or recommendations that will assist SDACs during the next annual update.

POLICY ISSUE

None at this time; informational item.

FISCAL IMPACT

None at this time; informational item.

REGIONAL BOARD IMPACT

None at this time; informational item.

STAFF RECOMMENDATION

None at this time; informational item.

State Water Board action on this item will assist the Water Boards in reaching Goals 1, 2, and 5 of the Strategic Plan Update: 2008-2012 to implement strategies to fully support the beneficial uses for all 2006-listed water bodies by 2030 (Goal 1), improve and protect groundwater quality in high-use basins by 2030 (Goal 2), and improve transparency and accountability by ensuring that Water Boards goals and actions are clear and accessible, by demonstrating and explaining results achieved with respect to the goals and resources available, by enhancing and improving accessibility of data and information, and by encouraging the creation of organizations or cooperative agreements that advance this goal, such as establishment of a statewide water data institute water bodies by 2030 (Goal 5).