

**STATE WATER RESOURCES CONTROL BOARD  
BOARD MEETING SESSION – DIVISION OF WATER QUALITY  
JUNE 19, 2012**

**ITEM 7**

**SUBJECT**

CONSIDERATION OF A PROPOSED RESOLUTION TO APPROVE A SUBSTITUTE ENVIRONMENTAL DOCUMENT AND ADOPT A PROPOSED WATER QUALITY CONTROL POLICY FOR SITING, DESIGN, OPERATION, AND MAINTENANCE OF ONSITE WASTEWATER TREATMENT SYSTEMS

**DISCUSSION**

Assembly Bill 885 (Statutes of 2000, chapter 781), which was approved by the California State Legislature and signed into law in September 2000 and codified as sections 13290-13291.7, chapter 4.5, division 7 of the Water Code, requires the State Water Resources Control Board (State Water Board) to adopt regulations or standards for the permitting and operation of all specified categories of onsite sewage treatment systems in the state and to apply those regulations or standards commencing six months after their adoption.

In compliance with the law, the State Water Board developed the proposed *Water Quality Control Policy for Siting, Design, Operation, and Maintenance of Onsite Wastewater Treatment Systems* (Policy) in consultation with other state agencies, specific stakeholder groups, and the general public. Over a period of approximately one year, the State Water Board and its staff held two CEQA scoping meetings, nine staff workshops, and one State Water Board Hearing to hear and consider comments on the draft Policy. Following these consultations with other state agencies and the public, scientific peer review, and review of the draft Policy as required by California Environmental Quality Act (CEQA), State Water Board staff have made revisions to the draft Policy, as appropriate.

The purpose of this Policy is to allow the continued use of onsite wastewater treatment systems (OWTS), while protecting water quality and public health. This Policy recognizes that responsible local agencies can provide the most effective means to manage OWTS on a routine basis. Therefore as an important element, it is the intent of this policy to efficiently utilize and improve upon where necessary existing local programs through coordination between the state and local agencies. To accomplish this purpose, this Policy establishes a statewide, risk-based, tiered approach for the regulation and management of OWTS installations and replacements and sets the level of performance and protection expected from OWTS. In particular, the Policy requires actions for identified areas where OWTS contribute to water quality degradation that adversely affect beneficial uses.

This Policy only authorizes subsurface disposal of domestic strength, and in limited instances high strength, wastewater and establishes minimum requirements for the permitting, monitoring, and operation of OWTS for protecting beneficial uses of waters of the state and preventing or correcting conditions of pollution and nuisance. And finally, this Policy also conditionally waives the requirement for owners of OWTS to apply for and receive Waste Discharge Requirements in order to operate their systems when they meet the conditions set forth in the Policy. Nothing in

this Policy supersedes or requires modification of Total Maximum Daily Loads or Basin Plan prohibitions of discharges from OWTS.

**POLICY ISSUE**

Should the State Water Board approve the Substitute Environmental Document and adopt the proposed Policy?

**FISCAL IMPACT**

If the State Water Board adopts the proposed Policy, there will be costs associated with its implementation.

**REGIONAL BOARD IMPACT**

Yes. The State Water Board, Regional Water Quality Control Boards, and local agencies will be responsible for implementing the Policy.

**STAFF RECOMMENDATION**

Approve the Substitute Environmental Document and adopt the proposed Policy.

State Water Board action on this item will assist the Water Boards in reaching Goals 1 and 2 of the Strategic Plan Update: 2008-2012 to implement strategies to fully support the beneficial uses for all 2006-listed water bodies by 2030, improve and protect groundwater quality in high-use basins by 2030.

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## STATE WATER RESOURCES CONTROL BOARD RESOLUTION NO. 2012-

### APPROVE A SUBSTITUTE ENVIRONMENTAL DOCUMENT AND ADOPT A PROPOSED WATER QUALITY CONTROL POLICY FOR SITING, DESIGN, OPERATION, AND MAINTENANCE OF ONSITE WASTEWATER TREATMENT SYSTEMS

#### WHEREAS:

1. California Water Code section 13140 provides that the State Water Resources Control Board (State Water Board) shall formulate and adopt state policy for water quality control.
2. Water Code sections 13290-13291.7, chapter 4.5, division 7 of the Water Code, requires the State Water Board to adopt regulations or standards for the permitting and operation of specific categories of onsite wastewater treatment systems (OWTS) in the state and to apply those regulations or standards commencing six months after their adoption.
3. Water Code section 13260(a) requires that any person discharging waste or proposing to discharge waste, other than to a community sewer system, that could affect the waters of the state, shall file a report of waste discharge with the appropriate Regional Water Quality Control Board (Regional Water Board) to prescribe waste discharge requirements as to the nature of any proposed discharge, existing discharge, or material change in an existing discharge.
4. Water Code section 13269 authorizes the State Water Board or Regional Water Boards to conditionally waive the requirement for filing a report of waste discharge and issuance of waste discharge requirements for a specific discharge or specific type of discharge. Section 13269 requires that all waivers be consistent with any applicable state or regional water quality control plan, be in the public interest, not exceed five years in duration, and include monitoring requirements to support the development and implementation of the waiver program, except where the State Water Board determines that the discharges do not pose a significant threat to water quality.
5. The State Water Board's 2004 Policy for the Implementation and Enforcement of the Nonpoint Source Pollution Control Program provides that nonpoint source discharges will be regulated through waste discharge requirements, through waivers of waste discharge requirements, or through Basin Plan prohibitions.
6. The subsurface discharge of effluent from OWTS constitutes a discharge that could affect the quality of waters of the state.
7. The proposed Water Quality Control Policy for Siting, Design, Operation, and Maintenance of Onsite Wastewater Treatment Systems (Policy) includes a conditional waiver of the requirements to submit a report of waste discharge, obtain waste discharge requirements, and pay fees for discharges from OWTS covered by the Policy. The Policy sets forth conditions with which owners of OWTS covered by the Policy shall comply.

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8. Water Code section 13291.5 states it is the intent of the Legislature to assist private property owners with existing systems who incur costs as a result of the implementation of the requirements established under this section by encouraging the State Water Board to make loans to local agencies.
9. The State Water Board administers the Clean Water State Revolving Fund loan program and may make loans to local agencies so they may operate mini-loan programs to assist private property owners.
10. The purpose of this Policy is to allow the continued use of OWTS, while protecting water quality and public health.
11. This Policy only authorizes subsurface disposal of domestic strength, and in limited instances high strength, wastewater and establishes minimum requirements for the permitting, monitoring, and operation of certain OWTS for protecting beneficial uses of waters of the state and preventing or correcting conditions of pollution and nuisance.
12. This Policy establishes a statewide, risk-based, tiered approach for the regulation and management of OWTS installations and replacements and sets the level of performance and protection expected from OWTS.
13. This Policy recognizes that responsible local agencies can provide the most effective means to manage OWTS on a routine basis. Therefore, as an important element, it is the intent of this policy to efficiently utilize and, where necessary, improve upon existing local programs through coordination between the state and local agencies.
14. State Water Board staff held public scoping meetings pursuant to the California Environmental Quality Act (CEQA) (Pub. Resources Code § 21000 et. seq.) on May 2, 2011, in Sacramento, and May 5, 2011, in Riverside.
15. The adoption of a policy for water quality control is a regulatory program that has been certified by the state's Secretary for Natural Resources as exempt from the requirements of the CEQA to prepare an Environmental Impact Report (EIR) or Negative Declaration. (Cal. Code Regs., tit. 14, § 15251, subd. (g); Cal. Code Regs., tit. 23, § 3782.) Accordingly, the State Water Board has prepared a Substitute Environmental Document (SED) in lieu of an EIR or negative declaration. The final SED includes the draft SED dated March 20, 2012, revisions to the draft SED, responses to comments on the draft SED and Policy, and this resolution. These documents constitute the required environmental documentation under CEQA. (See Cal. Code Regs., tit. 14, §§ 15250, 15252; Cal. Code Regs., tit. 23, § 3777.)
16. The State Water Board circulated a Draft Water Quality Control Policy for Siting, Design, Operation, and Maintenance of Onsite Wastewater Treatment Systems Policy and supporting preliminary SED dated September 30, 2011, for public comment on September 30, 2011. The deadline for the submission of written comments was November 14, 2011.

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17. In October and November 2011, the State Water Board staff held eight public workshops to accept public comment on the preliminary SED and Draft Policy. Two workshops at separate times were held in each of four locations: San Luis Obispo on October 24, 2011, Redding on October 28, 2011, Santa Rosa on November 2, 2011, and Riverside on November 7, 2011.
18. On March 20, 2012, the State Water Board circulated for public comment a revised proposed Policy, and supporting draft SED, both dated March 20, 2012. The deadline for submission of written comments was May 4, 2012.
19. State Water Board staff held a public workshop on April 4, 2012, in Sacramento.
20. The State Water Board conducted a public hearing on May 2, 2012, in Sacramento to receive oral comments and evidence from public agencies and members of the public on the proposed Policy and supporting draft SED.
21. The scientific basis for the March 20, 2012 revised Draft Water Quality Control Policy for Siting, Design, Operation, and Maintenance of Onsite Wastewater Treatment Systems was subjected to an independent, external peer review, pursuant to the requirements of Health and Safety Code section 57004.
22. State Water Board staff revised the proposed Policy in response to comments provided by the peer reviewers, or provided written responses that explained the basis for not incorporating other proposed changes in accordance with Health and Safety Code section 57004.
23. State Water Board staff has responded to significant written comments and made revisions to the proposed Policy and the draft SED as appropriate.
24. Consistent with CEQA, the final SED does not engage in speculation or conjecture but, rather, analyzes the environmental impacts of the draft Policy, including the reasonably foreseeable environmental impacts related to methods of compliance with the draft Policy.
25. The final SED identifies a number of alternatives to adoption of the proposed Policy, which included a no project alternative and various other alternatives that would be more prescriptive and contain more requirements for existing systems. The State Water Board finds that these alternatives do not accomplish the objectives of adopting consistent standards that will ensure public health and protection of beneficial uses of the state's waters while establishing an effective implementation process that considers cost, practical considerations for implementation, and technological capabilities existing at the time of implementation. In addition, certain alternatives were infeasible because they would interfere with local agency planning requirements.
26. In accordance with California Code of Regulations, title 23, section 3777, subdivision (b)(4), the State Water Board in the final SED has evaluated the potential environmental impacts of reasonably foreseeable methods of compliance with the Policy. The State Water Board has identified potentially significant direct water quality impacts from pathogen contamination caused by operation of OWTS statewide and occurring as a result of reasonably foreseeable methods of compliance with the Policy. These impacts may occur under local agency management programs due to use of systems that

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provide a differing level of treatment or due to differing requirements such as depth to groundwater where protective requirements and risk management programs could be insufficient to counterbalance the potentially significant impacts. The State Water Board has identified potential mitigation measures that could avoid or substantially lessen these impacts, including certain types of additional prohibitions, but finds the identified mitigation measures to be infeasible to implement on a statewide basis because the measures would remove too much local agency flexibility, render too many sites unsuitable for new and replaced OWTS, and impose significant costs without corresponding environmental benefit. This impact is therefore significant and unavoidable.

27. The State Water Board has identified potentially significant, direct water quality impacts from nitrogen contamination caused by operation of OWTS statewide and occurring as a result of reasonably foreseeable methods of compliance with the Policy. These impacts may occur because, absent supplemental treatment designed for nitrogen removal, total nitrogen concentrations in OWTS effluent may not be sufficiently reduced to protect water quality or public health in all cases. Density requirements may slow or stop severe nitrate pollution in groundwater in certain areas but may not be sufficient in other areas. In addition, local agency management plans and some basin plans may not include density requirements or requirements for removing nitrogen. The State Water Board has identified potential mitigation requirements that could avoid or substantially lessen the impacts, including mandated supplemental treatment for nitrogen removal from all OWTS, but finds that the mitigation measure would be infeasible to implement on a statewide basis because it would remove local agency flexibility and impose significant costs without corresponding environmental benefit. This impact is therefore significant and unavoidable.
28. The State Water Board has identified potentially significant cumulative water quality and public health impacts resulting from reasonably foreseeable methods of compliance with the Policy. These impacts could occur in impaired areas where OWTS are near surface waters and where there are other sources contributing to the impairment, and in areas that have shallow or sandy soil and underlying hydrogeology that could expose the public to potential health hazards through proximity to drinking water supplies, especially in conjunction with increased development. The State Water Board has identified potential mitigation measures that could avoid or substantially reduce these impacts, including required disinfection and nitrogen removal systems, but finds that such measures would be infeasible to implement on a statewide basis because of reduced local agency flexibility and high costs imposed without corresponding environmental benefit. This impact is therefore significant and unavoidable.
29. The State Water Board has duly considered the final SED, which identifies significant and unavoidable impacts resulting from adoption and implementation of the proposed Policy. Consistent with Public Resources Code section 21081(b), specific overriding economic, legal, social, technological or other benefits outweigh the unavoidable adverse environmental impacts. The State Water Board makes this statement of overriding considerations concerning the Policy's unavoidable significant impacts to explain why the benefits override and outweigh the Policy's unavoidable impacts. These benefits include continued availability of an affordable means of wastewater disposal for housing in areas statewide that are removed from centralized wastewater treatment systems; a statewide approach that respects the land use authorities, knowledge, and expertise of local agencies; a coordinated and consistent approach to construction of

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new systems, so that water quality and public health are protected, and protection of waters impaired by constituents associated with operation of OWTS where OWTS are found to be contributing to the impairment. The State Water Board finds that the significant, unavoidable environmental impacts are acceptable in light of the benefits set forth above, and that each of the benefits constitute an overriding benefit warranting approval of the Policy, independent of the other benefits, despite each and every unavoidable impact.

30. The documents and other materials that constitute the record of proceedings on which the State Water Board findings are based are located at State Water Resources Control Board, Division of Water Quality, 1001 I Street, 15th floor, Sacramento, California, 95814. The custodian for these documents is the Division of Water Quality. This information is provided consistent with Public Resources Code §21081.6(a)(2) and title 14, California Code of Regulations, §15091(e).
31. The Policy sets forth timelines for specific actions required for compliance, including development and approval of local agency management programs. In accordance with Water Code section 13291(a), the requirements set forth in the Policy shall apply commencing six months after the Policy's effective date.
32. A policy for water quality control does not become effective until adopted by the State Water Board and until the regulatory provisions are approved by the Office of Administrative Law (OAL).

THEREFORE BE IT RESOLVED THAT:

The State Water Board:

1. Approves the [final Substitute Environmental Document](#), which was prepared in accordance with the requirements of the State Water Board's certified regulatory CEQA process (as set forth in California Code of Regulations, title 23, section 3775, et seq.), Public Resources Code section 21159, and California Code of Regulations, title 14, section 15187, and directs the Executive Director or designee to transmit the Notice of Decision to the Secretary for Natural Resources.
2. After considering the entire record, including oral comments at the public hearing, [adopts the Water Quality Control Policy for Siting, Design, Operation, and Maintenance of Onsite Wastewater Treatment Systems \(Policy\)](#) and approves a conditional waiver of requirements to submit reports of waste discharge, obtain waste discharge requirements and pay fees for discharges from onsite wastewater treatment systems covered by the Policy.
3. Authorizes the Executive Director or designee to submit the Water Quality Control Policy for Siting, Design, Operation, and Maintenance of Onsite Wastewater Treatment Systems to the Office of Administrative Law (OAL) for review and approval.
4. Directs the Executive Director or designee to make minor, non-substantive modifications to the language of the Policy, if during the OAL approval process, OAL determines that such changes are needed for clarity or consistency, and inform the State Water Board of any such changes.

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5. Directs the Regional Water Boards to work together collaboratively with local agencies to implement the Policy within the timeframes indicated in the Policy.
6. Directs State Water Board staff to assist the Regional Water Board and local agencies in implementing the Policy.
7. Directs State Water Board staff to work with local agencies to provide financial assistance from the Clean Water State Revolving Fund loan program to local agencies to assist private property owners with existing systems who incur costs as a result of the Policy.

## **CERTIFICATION**

The undersigned Clerk to the Board does hereby certify that the foregoing is a full, true, and correct copy of a resolution duly and regularly adopted at a meeting of the State Water Resources Control Board held on June 19, 2012.

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Jeanine Townsend  
Clerk to the Board