

Comment Summary and Responses
Incorporation of the Statewide Onsite Wastewater Treatment Systems (OWTS) Policy into the Basin Plan
Comment deadline April 14, 2014

1. City of Los Angeles Bureau of Sanitation
2. Joan Lavine
3. Julie Tobias

Comment Summary and Responses
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Comment deadline April 14, 2014

No.	Author	Comment	Response
1.1	City of Los Angeles, Bureau of Sanitation (CLA-BOS)	<p>The City of Los Angeles Bureau of Sanitation (City) thanks the State Water Resources Control Board (SWRCB) for the opportunity to comment on the incorporation of the State Policy regulating Onsite Wastewater Treatment Systems (OWTS). The City is supportive of the OWTS Policy and the goals of AB 885 and hopes the City's comments will result in a more effective and successful program.</p>	Comment noted.
1.2	CLA-BOS	<p>The City supports the risk-based, tiered approach to regulating OWTS and the flexibility the Policy provides for local programs already implementing OWTS programs. While the City is supportive of the proposed OWTS regulations, the City is concerned about the lack of clear direction on the consequences, if any, of Local Agencies abdicating the responsibility of regulating OWTS to the State (relinquishing the authority to regulate and permit OWTS within their jurisdictions and allowing it to return back to the State).</p> <p>The City requests for this clear direction. Additionally, the City would like guidance on what information, if any, the RWQCB would require the City to collect for the RWQCB in order for them to issue WDR permits to OWTS owners in the City.</p>	<p>Currently, the Los Angeles Water Board, with local agencies, permit and regulate onsite wastewater treatment systems (typically for single family dwellings) through Memoranda of Understanding (MOUs) between the Regional Board and local agencies that are intended to address compliance with water quality requirements in the Regional Board's Basin Plan.</p> <p>The OWTS Policy facilitates direct local regulation through Local Agency Management Programs (LAMPs) approved by the Los Angeles Water Board and a waiver of waste discharge requirements. Therefore, MOUs between local agencies and the Los Angeles Water Board are no longer needed to facilitate LAMP development and implementation.</p> <p>With this provision, agencies are not</p>

Comment Summary and Responses
Incorporation of the Statewide Onsite Wastewater Treatment Systems (OWTS) Policy into the Basin Plan
Comment deadline April 14, 2014

No.	Author	Comment	Response
			<p>required to relinquish their regulatory authority over OWTS; rather they are encouraged to maintain it through the development of LAMPs.</p> <p>However, should any agency choose not to develop a LAMP, individual systems will be required to meet the minimum requirements outlined in the OWTS Policy, or be regulated through the Los Angeles Water Board's existing General Waste Discharge Requirements (WDRs) for onsite wastewater treatment system discharges.</p>
1.3	CLA-BOS	<p>Furthermore, Tier 1 does not allow the new construction of seepage pits, although seepage pits are commonly used in hillside areas of Los Angeles, where leach field or drain field systems are less (or not) suitable due to geological conditions. The City would like clarification on whether they will be able to continue allowing new seepage pits after May 13, 2013 since the OWTS Policy does not supersede local agency requirements (local codes or ordinances). The City requests clarification on whether local codes/ordinances supersede the OWTS Policy if there is no approved LAMP.</p>	<p>Seepage pits are not included under Tier 1 since the State Water Board determined that the level of oversight necessary for such systems required that they be regulated under Tier 2 (i.e. through Local Agency Management Programs – LAMPs).</p> <p>Therefore, should an agency choose not to develop a LAMP, such systems may be regulated, at the Los Angeles Water Board's discretion, through individual or General WDRs for OWTS (septic system) discharges.</p> <p>With regard to the relationship between the OWTS Policy requirements and existing local codes or ordinances, per Section 3.1 of the OWTS Policy, in the absence of a Tier 2 Local Agency</p>

Comment Summary and Responses
Incorporation of the Statewide Onsite Wastewater Treatment Systems (OWTS) Policy into the Basin Plan
Comment deadline April 14, 2014

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			<p>Management Program, to the extent that there is a direct conflict between the applicable minimum standards and the local codes or ordinances (such that it is impossible to comply with both the applicable minimum standards and the local ordinances or codes), the more restrictive standards shall govern.</p> <p>The proposed Basin Plan language will be modified to reflect this clarification.</p>
1.4	CLA-BOS	<p>Implementing the OWTS Policy, as well as implementing existing elements of the proposed Policy that are already in use at regional and/or local levels, requires extensive financial investments by private property owners. The SWRCB should adequately address the specific situations in which financial assistance will be available to OWTS owners and the City, including but not limited to the use of the State's Revolving Fund Loan Program.</p>	<p>The Policy has been structured to build upon existing local agency programs, in an effort to minimize the costs associated with implementing the Policy. Also, monitoring requirements are structured so that existing data may be used to further lower program costs to local agencies. State and Regional Water Board staff are committed to assist local agencies with development of Local Agency Management Programs.</p> <p>The level of enforcement activities contemplated by this Policy should already be implemented by existing local programs, in coordination with the Regional Board. Any additional local agency costs are expected to be passed on to OWTS owners.</p> <p>The Policy provides a mechanism for local agencies to apply for funds from the State Water Board Clean Water</p>

Comment Summary and Responses
Incorporation of the Statewide Onsite Wastewater Treatment Systems (OWTS) Policy into the Basin Plan
Comment deadline April 14, 2014

No.	Author	Comment	Response
			<p>State Revolving Funds for use in mini loan programs that provide low-interest loan assistance to private property owners who incur costs associated with implementation of the Policy.</p> <p>This mini-loan program will be administered through local agencies; local agencies are encouraged to contact the State Water Board's Division of Financial Assistance for more information regarding mini-loan programs.</p>
1.5	CLA-BOS	<p>The City is committed to protecting public health, beneficial uses, and the environment and believes that the proposed OWTS regulations will help to reduce pollution and nuisance statewide. The City looks forward to working with the SWRCB and RWQCB in reducing the OWTS pollution incidents in a manner that is cost effective, fair, and reasonable.</p>	Comment noted.
2.1	Joan Lavine, Private Citizen	<p>I respectfully submit my comments regarding the pending resolution (unnumbered) for Incorporation of OWTS Policy in the Water Quality Control Plan for the Los Angeles Region/Region 4.</p> <p>I urge you to vote "NO" on the resolution to adopt above the pending amendments to the <i>Water Quality Control Plan for the Los Angeles Region</i> (Basin Plan), having the purpose to modify the Basin Plan to</p>	Comment noted.

Comment Summary and Responses
Incorporation of the Statewide Onsite Wastewater Treatment Systems (OWTS) Policy into the Basin Plan
Comment deadline April 14, 2014

No.	Author	Comment	Response
		include, by reference, the <i>Water Quality Control Policy for the Siting, Design, Operation and Maintenance of Onsite Wastewater Treatment Systems (OWTS Policy)</i> , which was adopted by the State Water Resources Control Board (State Water Board) on June 19, 2012, SWRCB Resolution No. 2012-0032.	
2.2	Joan Lavine	The OWTS Policy is arbitrary, capricious, overbroad, irrational, vague and overbroad, unreasonable, oppressive, discriminatory, confiscatory, uneven-handed in denying equal application and equal protection, lacks constitutionally adequate procedural provisions for variances, lacks constitutionally adequate procedural provisions for exemptions for good cause, particularly exemptions for previously permitted and authorized activities. It lacks a factual basis. In fact, it is contrary to the facts. The OWTS Policy prejudicially violates both substantive and procedural Due Process of Law.	<p>The comment refers to the OWTS Policy adopted by the State Water Resources Control Board (State Water Board), not to the proposed Los Angeles Water Board action. The OWTS Policy requires the Regional Water Boards to incorporate the requirements of the Policy by amending Regional Basin Plans. The Los Angeles Water Board's proposed action does not modify the OWTS Policy adopted by the State Water Board. The commenter has filed a complaint in Los Angeles County Superior Court (Case No. BS143391) challenging the State Water Board's OWTS Policy.</p> <p>The Los Angeles Water Board does not agree that the OWTS Policy itself, or the action proposed by the Los Angeles Water Board to incorporate the OWTS Policy into the Los Angeles Region's Basin Plan, violates substantive or procedural due process of law. In fact, to the contrary, the</p>

Comment Summary and Responses
Incorporation of the Statewide Onsite Wastewater Treatment Systems (OWTS) Policy into the Basin Plan
Comment deadline April 14, 2014

No.	Author	Comment	Response
			purpose of the OWTS Policy is to provide consistent requirements throughout the State for the siting, design, operation and maintenance of on-site wastewater treatment systems to ensure even-handed regulation of such systems. The proposed action does not alter existing permits nor alter existing prohibitions. Previously permitted and authorized activities will maintain their status under the policy as will current prohibitions of certain activities that have demonstrated to impact water quality and beneficial uses.
2.3	Joan Lavine	I object as follows: Complete prohibitions on the use of OWTS in the Malibu Civic Center constitute disparate, unfair, harsh, oppressive application of the Title 23 C/CR, § 2924 OWTS Policy, in violation of the Due Process, Equal Protection and Equal Application of the laws, and Taking provisions contained in 5th and 14th Amendments, U.S. Constitution, and Article I, Sections 16 and 19, and Articles 13 through 13D, California Constitution. Same has been applied to the Malibu Civic Center in an overbroad, disparate, uneven-handed, harsh, oppressive manner, without a factual basis and without promoting the policies set out in Title 23 CCR, § 2924, and SWRCB Resolution No. 2012-0032, and the health,	As noted in response to comment 2.2, the proposed action by the Los Angeles Water Board is intended to implement the State Water Board's OWTS Policy, but does not propose to make any changes to existing permits or prohibitions. The OWTS Policy states that it does not supersede any existing Basin Plan prohibitions on discharges from OWTS. It is intended for statewide application and is not specific to any particular locale. It is not clear from the comment how the Los Angeles Water Board's proposed action to incorporate the State Water Board's OWTS Policy is being done in an "overbroad, disparate, . . . oppressive manner". The OWTS

Comment Summary and Responses
Incorporation of the Statewide Onsite Wastewater Treatment Systems (OWTS) Policy into the Basin Plan
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		safety, morals, or general welfare. It does not substantially or in the least further important or any public policies as applied to the Malibu Civic Center.	<p>Policy does not alter existing permits, but rather provides a more uniform way to permit OWTSs and protect water quality.</p> <p>The comments regarding the Los Angeles Water Board's Basin Plan Amendment establishing the prohibition that affects portions of Malibu are not relevant to the proposed action of the Los Angeles Water Board.</p> <p>Further, the commenter challenged the Basin Plan Amendment prohibiting onsite wastewater disposal systems in the Malibu Civic Center Area in Los Angeles County Superior Court (Case No. BS 128989). On May 31, 2012, the Superior Court denied Plaintiff's Petition for Writ of Mandate and on March 15, 2013, the Superior Court denied Plaintiff's claim for inverse condemnation. The comments do not apply to the Los Angeles Water Board's proposed action since the action does not alter the prohibition.</p>
2.4	Joan Lavine	I object that both the OWTS Policy and these pending proceedings violate the federal notice provisions of Title 40 CFR, § 25.5, requiring that written, mailed notice be sent to interested parties. Specifically, I have not received written, mailed notice of the OWTS resolutions before either the	The federal regulations cited by the commenter do not apply to the Los Angeles Water Board's proposed action. The action is being taken under state law, not federal law. The Los Angeles Water Board complied with applicable state law with respect to

Comment Summary and Responses
Incorporation of the Statewide Onsite Wastewater Treatment Systems (OWTS) Policy into the Basin Plan
Comment deadline April 14, 2014

No.	Author	Comment	Response
		<p>State or Regional Boards. I object that the OWTS Policy subject to these amendments fails to comply with requisite federal constitutional minimally adequate notice to parties whose substantial vested property rights and related substantial interests are not only affected, but are subjected to being taken from those parties. <i>Mullane v. Central Hanover Bank</i>, 339 US 306, 70 S.Ct. 652, 94 L.Ed. 865 (1950) I object that because of the lack of minimally adequate notice proceedings to adopt the OWTS Policy, the OWTS Policy is null and void.</p>	<p>notice. Specific to the incorporation of the OWTS Policy, the Los Angeles Water Board provided notice of the proposed Board action, and the availability of related draft documents, on February 27, 2014, allowing interested persons 45 days to review and comment on the proposed action. This notice was provided through the Los Angeles Water Board's general lyris (e-mail) distribution list for Basin Plan amendments.</p> <p>In addition notices of this proposed action were published in the Los Angeles Times and the Ventura County Star on February 27, 2014, as required by applicable law.</p>
2.5	Joan Lavine	<p>I object that there is no nexus or connection between this OWTS Policy, either inherently and per se, or as construed and applied to the Malibu Civic Center and the conditions in the Malibu Civic Center.</p> <p>I object that the OWTS Policy fails to promote any public benefit, public welfare, public health or public purpose in the Malibu Civic Center. There is no factual basis that the health, safety, morals, or</p>	<p>The OWTS Policy is intended as a means of providing statewide minimum requirements for on-site wastewater treatment systems, and allows site-specific conditions to be addressed through Local Agency Management Programs or location/project-specific actions by the Regional Water Boards.</p> <p>The incorporation of the OWTS Policy has no bearing on the prohibition of OWTS in the Malibu area as the Policy specifically states that it does not supersede or modify any discharge</p>

Comment Summary and Responses
Incorporation of the Statewide Onsite Wastewater Treatment Systems (OWTS) Policy into the Basin Plan
Comment deadline April 14, 2014

No.	Author	Comment	Response
		general welfare" would be promoted by prohibiting OWTS in the Malibu Civic Center. There is no nexus between the OWTS Policy providing for a septic ban in the Malibu Civic Center and the activities and conditions in the Malibu Civic Center. The OWTS Policy, containing a ban of OWTS in the Malibu Civic Center, does not advance any public purposes or goals by banning OWTS in the Malibu Civic Center. It does not substantially or in the least further important or any public policies as applied to the Malibu Civic Center. How could it? The SWRCB interactive mapping posted with the OWTS shows no pollution with 2000 of my property or of other properties within the Malibu Civic Center. See SWRCB Interactive Map of Lavine Malibu Civic Center property at page 14 hereof. Nollan v. CCC, 483 US 825, 107 S.Ct. 3141, 97 L.Ed. 2d 677 (1987).	prohibitions imposed on OWTS discharges.
2.6	Joan Lavine	I object that this Board has failed to identify any nonpoint source pollution in the Malibu Civic Center. I object that the LARWQCB has failed to implement Water C. § 79117 providing for the use of California bond funds to identify nonpoint pollution source identification. I object that this OWTS Policy fails to promote any public policy, public benefit, public welfare or public health or safety goals in the Malibu Civic Center.	As previously stated, the OWTS Policy is intended for statewide application and is not focused on any one specific location. Comments with respect to implementing Water Code § 79117 are outside the scope of the proposed action.

Comment Summary and Responses
Incorporation of the Statewide Onsite Wastewater Treatment Systems (OWTS) Policy into the Basin Plan
Comment deadline April 14, 2014

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2.7	Joan Lavine	Both the SWRCB and this Board, LARWQCB, have FAILED TO FUND the OWTS septic related obligations they have imposed on property owners and municipal governments, as required by the California Constitution, Article 13B, Sec. 6. Both the State Board and this Regional Board have failed to implement the provisions of California Water Code, §§ 79113, 79114 and 79117, particularly, § 79117, subsec. (a) providing for use of bond-funded nonpoint pollution source identification, at least as to Malibu.	The Policy provides a mechanism for local agencies to apply for funds from the State Water Board Clean Water State Revolving Fund for use in mini loan programs that provide low-interest loan assistance to private property owners who incur costs associated with implementation of the Policy. This mini-loan program will be administered through local agencies. Local agencies are encouraged to contact the State Water Board's Division of Financial Assistance for more information regarding mini-loan programs.
2.8	Joan Lavine	I incorporate by reference herein my Comments filed with this California Regional Water Quality Control Board, Los Angeles Region/Region Four (4), on or about July 10, 2010 and July 12, 2010, and before the State Water Resources Control Board on May 4, 2012, as my comments regarding the OWTS Policy, true and correct copies of which are attached hereto and incorporated herein by reference as though fully set forth herein.	Comment noted. Those comments are not relevant to the proposed action, as it does not modify the prohibition on onsite wastewater disposal systems in the Malibu Civic Center Area.
2.9	Joan Lavine	I also incorporate by reference herein the Comment of the City of Malibu, filed on July 12, 2010, before this LARWQCB during the Malibu Civic Center OWTS	Comment noted. Those comments are not relevant to the proposed action, as it does not modify the prohibition on onsite wastewater disposal systems in

Comment Summary and Responses
Incorporation of the Statewide Onsite Wastewater Treatment Systems (OWTS) Policy into the Basin Plan
Comment deadline April 14, 2014

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		septic ban proceedings effectuated under Title 23 CCR 3939.37, a true and correct copy of which is attached hereto.	the Malibu Civic Center Area.
3.1	Julie Tobias	I am submitting these comments in support of the position of Joan Lavine. <i>(Comments consist of a copy of the Letter and attachments submitted by Joan Lavine.)</i>	See responses to Comments No. 2.1 through 2.9.