



April 6, 2018

[SENT VIA EMAIL TO COMMENTLETTERS@WATERBOARDS.CA.GOV]

Jeanine Townsend, Clerk to the Board  
State Water Resources Control Board  
1001 I Street, 24th Floor  
Sacramento, CA 95814

**Re: Comment Letter – OWTS Policy Conditional Waiver Renewal and TMDL List Amendment**

Dear Ms. Townsend,

Our organizations work on behalf of communities impacted by contaminated water sources, many of which rely upon individual septic systems. We are familiar with the difficult history of developing the On-site Wastewater Treatment Policy and have made our disappointment with the current policy known in prior communications.

Unfortunately, the shortcomings of this policy are exacerbated by the fragmented state of implementation, particularly related to reporting. We strongly urge the Board to take the following actions to ensure that at least some benefit results from the program:

- Provide links to county LAMPs as well as annual reports (once submitted) on State Board webpage;
- Make technical and financial assistance for septic upgrades a priority for the Clean Water State Revolving Fund;
- Work with counties to encourage voluntary domestic well testing;
- Provide counties on an annual basis, with new water quality information that is relevant to the program.

We note that, under Water Code § 13269(a)(2), “[m]onitoring results shall be made available to the public.” Reporting results should thus be made public in a way to provide easy accessibility of information and public understanding of the adequacy and effectiveness of the waiver’s conditions.

Given how little has been accomplished in the first five years of this waiver, we do not recommend a 5-year renewal. A two-year renewal would allow staff to fully review new county LAMP programs and assess at least one annual report. That would provide the Board at least some information about how and whether the program could or should be improved.

We look forward to working with you to improve this program.

Sincerely



Michael Claiborne  
Attorney  
Leadership Counsel for Justice and Accountability



Deborah Ores  
Policy Analyst and Attorney at Law  
Community Water Center



Jennifer Clary  
Water Policy Analyst  
Clean Water Action

Attachments: OWTS comments 050412  
OWTS comments Nov 2011

# **ATTACHMENT A**



November 14, 2011

Thomas Howard  
Executive Director  
State Water Resource Control Board  
1001 I Street  
Sacramento, CA 95814  
Sent via Electronic Mail

**Re: Comment letter – DRAFT OWTS Policy Documents**

Dear Sir,

These comments are submitted on behalf of California Rural Legal Assistance Foundation, Clean Water Action and the Community Water Center. We are a group of nonprofit organizations concerned about the impacts of groundwater contamination on rural communities and the environment. In particular, we are concerned at the increasing number of wells contaminated by nitrates; nitrate is the largest source of well closure in the state<sup>1</sup> and an acute contaminant that threatens public health. Unfortunately, while most communities whose wells exceed the nitrate standard are able to replace the contaminated water supply, small communities often lack the resources to do the same. The problem becomes more acute when families dependent upon private wells are unaware of contamination in their well and continue to consume tainted water.

While inadequate or failing septic systems are a minor source of nitrate in groundwater compared with large animal feeding or agricultural operations, their frequent proximity to domestic wells presents a serious dilemma to residents. The proposed policy is insufficient to protect these wells from leaking septic tanks.

Our organizations offer the following suggestions to improve this program:

**A tiered approach is appropriate to protect water quality and target enforcement activities where they are most needed.** We agree that a tiered enforcement program is a good way to focus resources and attention on the most serious problems. However, while the process for protecting threatened surface water bodies is clearly identified in Tier 3, it is unclear how hydrologically vulnerable groundwater areas will be identified and protected. The Tier 2 Local Agency Management Programs may perform this function, but the requirements listed in the draft policy do not provide sufficient confirmation of that.

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<sup>1</sup> Saracino, A. and H. Phipps. (2008). Groundwater Contaminants and Contaminant Sources. In *Watersheds, Groundwater and Drinking Water: A Practical Guide*, edited by T. Harter and L. Rollins. Oakland: University of California, Agriculture and Natural Resources.



**More aggressive action is needed to protect domestic water supplies.** Although the draft policy prescribes action if water quality exceedances are found, the lack of testing for domestic wells makes it difficult to find OWTS that are contaminating groundwater. We understand that resources for monitoring are limited. One suggestion for identifying at-risk wells could be to require that domestic wells located within 300 feet of an OWTS be tested for nitrate and pathogens when the property on which the OWTS or domestic well is located changes hands. This would at least provide minimal data to assist local agencies in their effort to identify problem systems.

**Five years is too long to wait for the policy to take effect (Section 3.1).** The scope of the policy has been significantly reduced, so implementation should be similarly streamlined. We recommend a 3-year phased implementation, with Tier 1 requirements taking effect as soon as possible, Tier 2 in 3 years, and Tiers 0 and 4 in 6 months.

- Tier 1 is a very clear set of minimum standards that can be easily incorporated into local requirements; it doesn't make sense to delay regulations that can have an immediate impact on public health and the environment.
- Many counties have regulations that meet Tier 2 requirements. Quickly approving these plans and posting them on the internet to serve as a template for other counties should reduce the time required to prepare and approve such plans.
- Tier 4 covers systems that are severely impacting public health and the environment; waiting 5 years to implement this segment will unnecessarily threaten public health.

**Regional Board requirements should be clarified.** Local agencies are required to provide an annual summary report to the Regional Board; but the Regional Board responsibilities (Section 4) provide no corresponding reporting requirement to the State Board. We recommend that in addition to the local agency summary reports, the Regional Board provide annually to the State Board a list of any WDRs or waivers granted that grant exemptions to the policy (per section 4.8), as well as any enforcement actions.

**The Policy does not provide sufficient time to CDPH Drinking Water program to respond to concerns (Sections 7.6.4, 9.5.4).** Five days is not necessarily sufficient for review of a permit application by the CDPH Drinking Water Program, particularly since these sections address proposed OWTS that are near drinking water intakes.

**Tier 4 requirements lack sufficient detail to determine their efficacy.** With no time frames for the required corrective actions in this section, we are left with no certainty that this policy will achieve its purpose of improving water quality. While we appreciate the threat of a Report of Waste Discharge for those OWTS that fail to comply with Tier 4 requirements, it's not clear that this threat will ever be carried out. We are also concerned that the requirements for groundwater (Section 11.5) have no specific objectives or action, only the direction to "modify or upgrade" the OWTS to "abate its impact." We would appreciate greater specificity about the objectives and how compliance is measured for this section.



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**The Policy should identify mechanisms to assist low-income homeowners.** The Board should identify available or potential funding sources to assist low-income home owners to comply with regulations through design, permitting and construction funding, including proper abandonment of failed systems. For instance, Assembly Bill 1221 (Alejo), chaptered on October 11 of this year, allows public agencies (including counties) to apply for funds for infrastructure projects. The Board could identify under what circumstances local jurisdictions could utilize this ability to provide low-cost loans or grants to eligible residents through the Clean Water State Revolving Fund.

**Education must be an integral part of the policy.** The policy is silent on how residents can be better educated and informed about proper OWTS maintenance. Because this policy is mostly passive in its regulation of existing systems, education is one a key factor in the protection of water quality. As the Board moves forward with plans to increase technical assistance to communities, it should consider how it can partner with counties to provide this needed component. One example and a potential replicable model is in the Coachella Valley, where Polanco Rehabilitation Assistance Program (PRAP) provides direct assistance to repair or replace failing systems and Comunidades de Salud (CODESA) which helps families to understand how to manage onsite wastewater systems to prevent future failure and overall unhealthy conditions.

### **Conclusion**

We appreciate the difficulty of developing a policy that affects so many California residents, and support your efforts to create a program that limits costs to both local government and residents. However, we are concerned that the policy as drafted is insufficient to identify and address threats to groundwater, particularly domestic well water quality. Further, the long lead time for implementation and enforcement of the policy delays even its modest measures to improve water quality for almost two decades past the passage of AB885. We urge you, as you continue to improve this program, to consider steps that can improve drinking water quality in a more expeditious manner

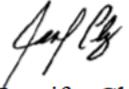
Sincerely,

A handwritten signature in black ink, appearing to read "Esmerald Soria".

Esmerald Soria  
California Rural Legal Assistance Foundation

A handwritten signature in black ink, appearing to read "Laurel Firestone".

Laurel Firestone  
Co-Executive Director and Attorney at Law  
Community Water Center



Jennifer Clary  
Water Policy Analyst  
Clean Water Action

**LEAN WATER ACTION**  
CALIFORNIA



# **ATTACHMENT B**



May 4, 2012

Thomas Howard  
Executive Director  
State Water Resource Control Board  
1001 I Street  
Sacramento, CA 95814  
Sent via Electronic Mail

**Re: Comment letter – Final Draft OWTS Policy**

Dear Sir,

These comments are submitted on behalf of California Rural Legal Assistance Foundation, Clean Water Action and the Community Water Center. We are a group of nonprofit organizations concerned about the impacts of groundwater contamination on rural communities and the environment. Many of the communities we work with are dependent upon septic systems, so we are fully aware of the need for a flexible policy that protects both water quality and affordability. These communities also rely upon groundwater for their drinking water supply, a supply that is increasingly impacted by nitrate contamination. Our concern is that contamination created by

We continue to have the following concerns about the policy as drafted;

- While we fully support the directives to protect groundwater quality in Sections 6.2.2 and 11.4, the lack of any requirement to test the water quality of domestic wells located near septic systems undermines the value of these provisions. Members of the public will continue to be unknowingly exposed to pathogens and nutrients from failing or inadequate septic systems.
- The five-year implementation window for this policy is not health protective.
- Section 14.0 identifies financial assistance through the State Water Boards' Clean Water State Revolving Fund (CWSRF), funneled through local agencies as loans, as a means to assist private property owners with compliance. Unfortunately, the CWSRF has had limited experience or success in such financing, nor is this program identified or described in the 2011/2012 Intended Use Plan for the Fund.

Some of these concerns can be addressed through implementation of the policy. We recommend that, as part of the resolution adopting this policy, the Board direct staff to take the following immediate actions;

- Use data that is currently available or that will soon become available through the GAMA program and other sources to identify communities and residents potentially at risk from septic contamination;



- Work with Regional Boards and counties to develop a voluntary domestic well testing program in identified at-risk areas;
- Ensure that programs are in place to help residents in need of financial assistance access safe drinking water;
- Develop usable funding sources to assist homeowners in repairing and replacing failing or inadequate systems. In particular, the Board should direct that the development of a program through the CWSRF as described in Section 14.0. The program should also identify a funding source for low-income septic owners.
- Development of a technical assistance program, funded through SRF or Cleanup and Abatement funds, in partnership with Local Agencies that provides information as well as direct technical assistance to Tier 3 and Tier 4 systems.

These actions can be taken relatively quickly, and need not be part of the 5-year implementation process. We urge that the Board take these proactive steps to assist residents and protect drinking water sources.

Sincerely,

A handwritten signature in black ink, appearing to read "Esmeralda Soria".

Esmeralda Soria  
California Rural Legal Assistance Foundation

d Attorney at Law

A handwritten signature in black ink, appearing to read "Jennifer Clary".

Jennifer Clary  
Water Policy Analyst  
Clean Water Action