

STATE OF CALIFORNIA
REGIONAL WATER QUALITY CONTROL BOARD
CENTRAL COAST REGION

STAFF REPORT FOR REGULAR MEETING OF MAY 30-31, 2013

Prepared on April 9, 2013

ITEM NUMBER: 12

SUBJECT: Resolution No. R3-2013-0005; Amendment to the *Water Quality Control Plan for the Central Coastal Basin* Regarding Onsite Wastewater System Implementation Program

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KEY INFORMATION

Location: Throughout the Central Coast Region

Type of Waste: Domestic wastewater discharged from individual and community onsite wastewater systems

This Action: Adopt Resolution No. R3-2013-0005 (revising Basin Plan and rescinding amendments adopted in 2008, 2009 and 2011)

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). Applicable statewide, the OWTS Policy designates the regional water quality control boards with principal responsibility for overseeing its implementation and calls for incorporation of the OWTS Policy requirements into regional boards' basin plans within a year of the policy's effective date. This action is to revise the *Water Quality Control Plan for the Central Coastal Basin* (Basin Plan) to incorporate the State Water Board's OWTS Policy. Implementation of the OWTS Policy will provide more effective and efficient regulation of onsite systems due to clear (single source) criteria, a streamlined regulatory tool (conditional waiver), broader coverage (up to 10,000 gallons per day systems), and flexibility of local alternatives where Local Agency Management Programs are implemented.

DISCUSSION

Background - Historically, discharges from conventional onsite wastewater disposal systems (onsite systems) have been regulated by local governing jurisdictions (cities and counties) that implemented local requirements and the criteria for onsite systems set forth in the Regional Water Quality Control Board, Central Coast Region's (Central Coast Water Board's) Basin Plan. The Central Coast Water Board had also adopted a general waiver of waste discharge requirements for onsite systems, where such systems were regulated by local agencies. The Central Coast Water Board entered into multi-agency memoranda of understanding (MOUs)

governing regulation of onsite systems, and local permitting agencies implemented criteria for onsite systems through their own permits. Pursuant to Water Code §13269(b)(2), the Central Coast Water Board's general waiver expired on June 30, 2004. Since expiration of the general waiver, discharges from onsite systems have not been formally authorized by the Central Coast Water Board as required by the California Water Code. Due in part to this lack of regulatory oversight, consistent compliance with Basin Plan criteria is sporadic and there is little (if any) monitoring of onsite system performance or water quality impacts from onsite disposal. Over the past few years, the Central Coast Water Board adopted several resolutions addressing onsite system regulation.

On May 9, 2008, the Central Coast Water Board adopted an amendment to the Basin Plan that updated and clarified criteria for onsite systems (Resolution No. R3-2008-0005). On March 20, 2009, the Central Coast Water Board adopted an additional Basin Plan amendment (Resolution No. R3-2009-0012) establishing an implementation program as a conditional waiver of waste discharge requirements for onsite systems that meet Basin Plan criteria for siting, design, construction, and management. During review of the 2008 and 2009 amendments, State Water Board staff noted that additional revisions were necessary to further clarify the amendments. Therefore, on May 5, 2011, the Central Coast Water Board adopted a third Basin Plan amendment (Resolution No. R3-2011-0004) to address each of the issues identified by State Water Board staff.

Basin Plan amendments adopted by the Central Coast Water Board do not become final until they have been reviewed and approved by the State Water Board and the California Office of Administrative Law (OAL). The Central Coast Water Board forwarded the three Basin Plan amendments and the administrative record to the State Water Board for its review and approval. However, the State Water Board did not proceed with approval of the three Basin Plan Amendments due to its concurrent development of the statewide OWTS Policy.

The State Water Board's OWTS Policy, adopted on June 19, 2012, provides criteria for siting, design, operation, and maintenance of onsite systems and provides a conditional waiver for onsite systems that comply with the policy. Essentially, the State Water Board's OWTS Policy implements water quality protection measures in a manner similar to that adopted by the Central Coast Water Board in its Basin Plan and the 2008, 2009, and 2011 amendments. The OWTS Policy is available at the following link:

http://www.waterboards.ca.gov/water_issues/programs/owts/docs/owts_policy.pdf

The OWTS Policy calls for regional boards to incorporate the onsite criteria into their basin plans. This agenda item proposes revisions to Basin Plan Chapter 4 (Implementation Plan) and Chapter 5 (Plans and Policies) and rescinds the amending resolutions adopted by the Central Coast Water Board in 2008, 2009, and 2011 (Resolution No. R3-2008-0005, Resolution No. R3-2009-0012, and Resolution No. R3-2011-0004). Updating the Basin Plan requirements for onsite systems will also complete a triennial review list priority task which has been backlogged for many years.

Onsite Discharge Regulation - Persons who discharge waste that could affect the quality of waters of the state, including discharges from onsite wastewater 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

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 State Water Board adopted Resolution No. 2012-0032, the OWTS Policy, which 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 systems that comply with the OWTS Policy.

The Central Coast Water Board encourages direct regulation of onsite 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 management plans. The OWTS Policy facilitates direct local regulation to be implemented through Local Area Management Programs (LAMPs) approved by the Central Coast Water Board. Therefore, MOUs between local agencies and the Central Coast Water Board are no longer needed to facilitate plan development and implementation. Further discussion regarding LAMP development, approval, and ongoing implementation is included below.

The OWTS Policy implements criteria for siting, design, operation, and maintenance in a manner similar to that adopted by the Central Coast Water Board in its Basin Plan and recent amendments (Resolutions No. R3-2008-0005, No. R3-2009-0012, and No. R3-2011-0004). The new OWTS Policy implements levels (tiers) of requirements based upon potential threat to water quality that may be caused by the onsite 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 OWTS 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 Central Coast 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 OWTS 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. Where LAMPs have been approved by a regional board, the local criteria will supplement Tier 1 criteria. Tier 2 requirements for LAMPs are described in section 9 of the OWTS Policy.

Tier 3 provides special conditions for onsite systems located near impaired waters listed in Attachment A of the OWTS Policy. New and existing onsite systems must comply with the applicable TMDL implementation program. Where there is no TMDL in place, onsite systems within 600 feet of certain impaired waters must meet advanced protection requirements specified in the policy. The Tier 3 advanced treatment requirements are in section 10 of the OWTS Policy.

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

Waiver - The OWTS Policy conditionally waives requirements to submit a report of waste discharge and associated application fees and waives waste discharge requirements for onsite systems that comply with the Policy (OWTS Policy Section 12). The conditional waiver effectively replaces the Central Coast Water Board's waiver for onsite systems that expired in 2004 as well as the waiver described in Resolution No. R3-2011-0004. This conditional waiver will allow for use of onsite systems in a manner protective of water quality yet without the cumbersome burden of application for and issuance of waste discharge requirements. It should be noted, however, the OWTS Policy does not limit the Central Coast Water Board's authority to require reports of waste discharge and to issue individual or general waivers or waste discharge requirements when such actions are needed to protect water quality. The OWTS Policy upholds and does not waive any Basin Plan prohibitions and/or local agency requirements.

As described in the Background section above, the onsite criteria for siting, design, operation, and maintenance specified in the OWTS Policy are consistent with (though not identical to) criteria adopted by the Central Coast Water Board in its Basin Plan and the onsite amendments. 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 are effective through the OWTS Policy regardless of Basin Plan provisions. However, updating the Basin Plan will provide the public and local agencies with more clear and consistent direction regarding onsite systems and is required by the OWTS Policy.

Local Agency Management Programs - A key component of the OWTS Policy is onsite management programs developed and implemented by local agencies. Tier 2 of the Policy provides for LAMPs that may implement area-specific programs with different conditions, different criteria, and different methods of assessing compliance than those specified in tiers 1, 2 and 3. Typically, LAMPs are implemented in areas that differ (more or less favorable conditions for onsite systems) from the conditions considered during policy development. This local agency management approach has been the preferred model in the Central Coast Region for many years, and Central Coast Water Board staff has been working with local agencies to develop such plans. Accordingly, we anticipate that many agencies throughout the region will have their LAMPs ready for approval well in advance of the deadlines specified in the OWTS Policy (five years).

Central Coast Water Board staff has provided guidance for developing LAMPs to meet the OWTS Policy requirements and plans to continue to work with local agencies to complete LAMPs for review and approval by this Board. Because of the similarity of requirements to those approved by this Board in 2008 and 2009, we anticipate that LAMPs developed (or in process) to meet Basin Plan requirements will meet the requirements set forth in the OWTS Policy.

Proposed Resolution - This 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. Proposed Resolution No. R3-2013-0005 amends the Basin Plan onsite wastewater sections by incorporating (by reference) the State Water Board's OWTS Policy. Much of the existing (1983) Basin Plan

language describing onsite criteria and implementation program is deleted, and the resolutions adopted by the Central Coast Water Board in 2008, 2009, and 2011 amending the onsite sections are rescinded, as such language would be redundant with the OWTS Policy. For clarity, some renumbering of sections is also proposed.

Specific revisions are described below. Revised Basin Plan text is shown on Attachment A and all proposed revisions highlighted (with underline and strikeout) on Attachment B of the proposed Resolution No. R3-2013-0005.

Chapter 4, VIII.D. Delete existing text (general discussion of onsite systems on page IV-57).

Chapter 4, VIII.D.1. Delete existing section and add the following reference to State OWTS Policy.

“Requirements for siting, design, operation, maintenance, and management of onsite wastewater systems are specified in the State Water Resources Control Board’s *Water Quality Control Policy for Siting, Design, Operation, and Maintenance of Onsite Wastewater Treatment Systems* (OWTS Policy). The OWTS Policy sets forth a tiered implementation program with requirements based upon levels (tiers) of potential threat to water quality. The OWTS Policy includes a conditional waiver of waste discharge requirements for onsite systems that comply with the policy.

“The OWTS Policy, including future revisions, is incorporated into this Basin Plan and shall be implemented according to the policy’s provisions.”

Chapter 4, VIII.D.2. Delete existing sections and replace with renumbered paragraphs referencing onsite discharge prohibitions for Nipomo, San Lorenzo River Watershed, and Los Osos/Baywood Park (moved from page IV-66, column 2, beginning with paragraph 6). A clarifying paragraph is added at the end of VIII.D.2.2 to provide for Santa Cruz County to implement an approved LAMP (consistent with the OWTS Policy requirements) in lieu of the currently required Wastewater Management Plan for the San Lorenzo River Watershed. Note that the paragraphs describing the Los Osos/Baywood Park prohibition have been updated to include the language originally added by Resolution 83-13, of which the last paragraph was deleted by Resolution No. R3-1989-0004, citing the paragraph was historical and unnecessary. A portion of the 1983 amendment had been inadvertently omitted from the current Basin Plan text.

Chapter 4, VIII.D.3. Delete sections, except discharge prohibition paragraphs referenced above and renumbered to VIII.D.2.

Chapter 4, VIII.D.3.j. Section is renumbered and text is revised to clarify that the Regional Board exemption authority is limited to prohibition zone exemptions and does not extend to exemptions to the State OWTS Policy. Paragraphs referring to engineered systems are deleted, since the OWTS Policy allows engineered systems only where managed through LAMPs.

Chapter 5, Section I. summarizes a variety of State Water Board plans and policies implemented by the Central Coast Water Board. The OWTS Policy will be included in this summary by inserting to the list of plans and policies (page V-1, column 2, line 3) “OWTS Policy.”

Chapter 5, I.M. Insert new section regarding the OWTS Policy.

The *Water Quality Control Policy for Siting, Design, Operation, and Maintenance of Onsite Wastewater Treatment Systems* (OWTS Policy), Resolution No. 2012-0032, was adopted by the State Water Resources Control Board on June 19, 2012. This Policy implements California Water Code, Chapter 4.5, Division 7, §13290-13291.7 by establishing statewide regulations and standards for permitting onsite wastewater systems. The OWTS Policy specifies criteria for existing and new onsite systems and establishes a conditional waiver of waste discharge requirements for onsite systems that comply with the policy.”

Prohibition Areas - Onsite discharge prohibition areas remain unchanged by this action. The OWTS Policy expressly upholds onsite prohibition areas, and nothing in the policy supersedes or requires modification of Basin Plan prohibitions of waste discharges from onsite systems.

ENVIRONMENTAL SUMMARY

The Central Coast Water Board’s discretionary decisions are typically subject to the requirements of 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)].

A Substitute Environmental Document (SED) has already been prepared by the State Water Board for the OWTS Policy in accordance with the Water Board’s certified regulatory program (Cal. Code Regs., tit. 23 §§3777-3781). The State Water Board approved the OWTS Policy and the SED on June 19, 2012. The proposed amendment removes existing Basin Plan provisions regulating onsite systems and incorporates 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. This amendment is completely within the scope of the OWTS Policy as analyzed by the State Water Board in the SED. As such, the recommended actions do not require further environmental review pursuant to the certified regulatory program or CEQA (Pub. Res. Code §21166; Cal. Code Regs. tit. 14, §§15161, 15163). The Central Coast Water Board must make a finding to these effects in the resolution (Finding No. 9). Consistent with the Water Board’s certified regulatory program, a Notice of Decision will be filed with the Secretary for Natural Resources after the Office of Administrative Law approves the basin plan amendment (Cal. Code Regs., tit. 23 §3781).

PUBLIC NOTICE

A notice of public hearing was published in newspapers with general circulation throughout the Central Coast Region. A notice of public hearing, draft staff report, resolution, and text of proposed revisions to the Basin Plan were circulated to known interested parties throughout the Central Coast Region and posted on the Central Coast Water Board’s website. Public comments regarding the proposed revisions to the onsite implementation program and associated Water Board staff responses are addressed below.

Further information regarding onsite wastewater systems is available at:

http://www.waterboards.ca.gov/centralcoast/water_issues/programs/septics/index.shtml

COMMENTS AND RESPONSE TO COMMENTS

Water Board staff did not receive any comments or questions regarding the draft resolution and proposed revisions to the Basin Plan.

RECOMMENDATION

Adopt Resolution No. R3-2013-0005 as proposed and direct the Executive Officer to forward the resolution and corresponding administrative record to the State Water Board for review and approval.

ATTACHMENTS

1. Proposed Resolution No. R3-2013-0005 with Attachments
 - A. Revised Basin Plan Chapter 4 and Chapter 5 (onsite sections only)
 - B. Revisions to Basin Plan Chapter 4 and Chapter 5 (onsite sections only)
2. Notice of Public Hearing

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