



A Tradition of Stewardship  
A Commitment to Service

Agenda Date: 1/13/2009

Agenda Placement: 10A

## NAPA COUNTY BOARD OF SUPERVISORS Board Agenda Letter

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**TO:** Board of Supervisors  
**FROM:** Steven Lederer - Director  
Environmental Management  
**REPORT BY:** Steven Lederer, Director of Environmental Management - 253-4471  
**SUBJECT:** AB 885 Proposed Regulations

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### **RECOMMENDATION**

Director of Environmental Management requests approval of and authorization for the Chair to sign a letter outlining Napa County's concerns relating to the implementation of AB 885, the proposed statewide regulations for onsite wastewater treatment systems. (Supervisor Dillon) (Unanimous vote required)

### **EXECUTIVE SUMMARY**

This item is being brought to the Board at this time because the Onsite Wastewater Treatment System (OWTS) regulations being proposed by the State Regional Water Quality Control Board will, if adopted, significantly impact every current and future owner of property where an OWTS (also know as a septic system) is used. Existing systems will be more expensive to operate and repair and new systems will be more expensive and complicated. Some denser areas currently served by OWTS may be forced to install community sewage systems, and some parcels may simply become "unbuildable". We are also concerned, of course, about the impact to our own workload. Since the Water Board is in the process of taking public comment, and a public meeting is scheduled for Tuesday evening, January 27th in Santa Rosa, the time for public input from the Board and any concerned citizens is now.

On November 7, 2008 the State Water Resources Control Board (SWRCB) released the proposed Onsite Wastewater Treatment System (OWTS) regulations which were prepared pursuant to Assembly Bill 885 (AB 885) (adopted in 1999). Released along with the proposed regulations was the draft environmental impact report (DEIR). The State is accepting comments on the proposed regulations and DEIR at this time. Many meetings have been held between the SWRCB, County staff and various other stakeholders between January 2002 and the present. While some of the County and stakeholder concerns have been incorporated into this draft, many concerns still have not been addressed. We are concerned that the proposed regulations are not ultimately realistic, workable or effective and as such, have prepared a letter for the Board to sign that outlines our concerns.

**PROCEDURAL REQUIREMENTS**

1. Staff report.
2. Public comments.
3. Motion, second, discussion and vote on the item.

**FISCAL IMPACT**

Is there a Fiscal Impact?                      No

**ENVIRONMENTAL IMPACT**

ENVIRONMENTAL DETERMINATION: The proposed action is not a project as defined by 14 California Code of Regulations 15378 (State CEQA Guidelines) and therefore CEQA is not applicable.

**BACKGROUND AND DISCUSSION**

Over the last decade various groups have raised concerns about the effectiveness of septic systems in protecting the quality of waters of the state (though many of these concerns are unfounded with little scientific data to support the concern) and the alleged inconsistency in septic system permitting requirements from county to county and region to region. Since septic systems discharge wastewater to land, most Regional Water Quality Control Boards have entered into formal or informal agreements with counties requiring them to implement guidelines for Onsite Wastewater Treatment Systems (OWTS) that are contained in each Regional Board's Basin Plan. Previous attempts by the State Water Resources Control Board (SWRCB) to establish consistent statewide OWTS guidelines have been unsuccessful. Concerns of surface water and groundwater degradation prompted Heal the Bay, a Santa Monica based environmental organization, to sponsor AB 885 (Jackson, 1999). AB 885 added Section 13291 to the California Water Code and required the SWRCB, on or before January 1, 2004, to adopt statewide regulations (or standards) for the permitting and operation of OWTS.

Initially, county environmental health departments welcomed the initiative, touted as a mechanism for the state's 58 counties to pool their resources to address perceived wastewater issues and attempt to consolidate the various inconsistencies that existed. The SWRCB staff initiated meetings with the stakeholders in 2002 to facilitate the development of these consolidated regulations. Unfortunately throughout the course of these meetings over the last six years the SWRCB has been unresponsive to many of the points raised by the stakeholders. Most counties are objecting to the SWRCB's one-size-fits-all plan as it is excessive in cost and labor and, most importantly, is not scientifically justified.

In our opinion there are three different types of issues or concerns: (1) those that need to be further discussed or reviewed in both the regulations and the DEIR, (2) those that could be workable if modified in the proposed regulations and DEIR, and (3) those issues that need to be completely removed from the proposed regulations.

**(1) Issues that need to be further discussed or reviewed.** Based on our review of the documents it is our opinion that several items have not been adequately addressed in the DEIR and the full impact of the requirements are yet to be discussed or evaluated.

- 1 The DEIR acknowledges that the proposed regulations will inevitably result in a shift away from standard gravity systems toward more engineered, supplemental treatment systems but does not address many of

the impacts associated with this 'shift' including increased energy usage, adverse health effects during prolonged periods of power outage (common in many rural areas), the increased carbon footprint given that the proposed statewide standards will increase the number of vehicle trips to a property and increased energy use to operate the mechanical supplemental treatment systems.

- | The basic premise of the DEIR is flawed. It seems to be a *solution* in search of a *problem*. Most OWTS function properly and in a manner that does not contaminate the environment or create a public health impact. Rather than attempt to solve isolated regional problems with statewide regulations, the Regional Boards should work specifically with the jurisdictions wherein documented problems have been found to exist.
- | There is a provision that allows local agencies to be more protective of the environment however the regulations do not include a provision for local agencies to be equally protective. Many jurisdictions have established procedures, processes and requirements that have been accepted by various Regional Boards that have proven adequate over time, however with the proposed regulations there is no provision to allow these previously accepted, equally protective standards to be utilized.

**(2) Items that need to be modified.** These items may be beneficial and implementable if they are modified somewhat and more thoroughly addressed in the DEIR.

- | The 'self-implementing' nature of many of the requirements in the proposed regulations is particularly unclear. The regulation assumes that thousands of individual property owners across the state, with no training or oversight from any regulatory body, will voluntarily implement these requirements. Language needs to be modified so it is clear specifically what portions are self-implementing. The DEIR maintains that adoption of the proposed regulations will not result in any increased costs to counties or the RWQCB (as many of the new requirements are self-implementing) without clearly documenting the implementation process. The DEIR also states that the proposed regulations will not increase staffing requirements of the State Water Board, the Regional Boards or local agencies but fails to deal with the fact that local agencies will need to expend considerable resources responding to questions about water well sampling, septic pumping and other questions about the new regulations. The DEIR assumes full regulatory compliance (including the self-implementing portions even with no additional resources for implementation or enforcement) when evaluating impacts, however in order to assess the potential benefits associated with the new requirements the DEIR needs to clearly state the degree to which compliance is expected. We recommend these self-implementing requirements be changed to 'recommendations' considering the State is not expecting to add any additional resources to enforce these components.
- | Wet weather groundwater monitoring. In certain situations the regulations require continuous groundwater monitoring over a five month period. The cost for personnel and equipment to continuously monitor groundwater levels (which equipment may or may not be readily available in the industry and may be virtually cost prohibitive to build and safeguard from theft and vandalism) has not been considered in the DEIR's financial analysis. Besides the cost and practicality of this procedure, the requirements could also delay a home owner's project or commercial applicant's project by nearly a year while waiting for this testing to be completed. The DEIR and regulations do not recognize that many local agencies have developed other methods to determine high groundwater levels that may provide equally reliable results.

**(3) Items that need to be removed from the regulations.** These issues appear to either exceed the scope of AB 885, serve little purpose at great cost, and/or are based on non-scientific criteria.

- | Groundwater Quality Monitoring. The proposed regulations require mandatory sampling of water supply wells or monitoring wells for general minerals on parcels that have an OWTS. This sampling requires testing for constituents that are indicative of background water quality, NOT parameters that are specifically associated with onsite disposal of wastewater and therefore this sampling exceeds the regulatory requirements of AB 885. If monitoring of all drinking water wells is the desired outcome (as stated by Water

Board staff), then separate legislation should be authored and debated. It should not be slipped into the OWTS regulations as 'required by AB 885' when it is not.

- | The design specifications as written result in a one-size-fits-all approach to OWTS siting and design. The design standards are prescriptive and therefore limit the ability of the Regional Boards and local agencies to respond to local conditions and evolving science that may prove to be equally protective of the environment and public health. It is better to have a guidance document with goals than to set prescriptive regulations without the ability of Regional Boards or local agencies to approve functionally equivalent and equally protective measures based on local conditions. Topography and geology is too diverse throughout the large state of California to have a one-size-fits-all approach; hence the reason for local health departments, nine regional boards and their specific basin plans.
- | Service provider requirements are now retroactive meaning all new and existing OWTS with supplemental treatment will be required to have a service provider. Previous versions of the regulations only required service providers for new supplemental treatment systems. This version requires all new and existing systems with supplemental treatment to maintain a contract with a service provider. It is unclear if this requirement falls into the self-implementing part of the regulations or if there is an expectation that local agencies will find these systems and enforce this requirement. The DEIR has not evaluated the additional resources that will be required as a result of this change nor the level of compliance expected when evaluating impacts.
- | Nitrate Supplemental Treatment. Mitigation measure 4.1-5 of the DEIR would require all new or replaced OWTS to have supplemental treatment for nitrogen removal to mitigate water quality impacts. The DEIR however fails to quantitatively assess the relative extent to which other sources may be contributing vastly more significant quantities of nitrogen. The DEIR recognizes that this measure may be considered infeasible in light of fiscal issues, yet the financial analysis does not present information that can be used to assess the cost impacts of this recommendation.

AB 885 required the SWRCB to complete the regulations by January 2004. That deadline has passed as a result of a multitude of delays at the State level and the State's inability to reach a consensus with the stakeholder group. Although the process thus far has proven to be somewhat ineffective and incomplete in the minds of the stakeholders, the SWRCB has opted to go forward with their final draft and initiate the California Environmental Quality Act (CEQA) review. Environmental Management staff have prepared a letter for the Board that outlines the concerns relative to the proposed regulations and the Draft Environmental Impact Report. The letter identifies those issues and concerns that have either not been addressed in the DEIR or have been addressed in the DEIR but inadequately so, those items which we feel need modifying, and those items that we believe are either beyond the scope of AB 885 or are non-scientific based and should be removed from the proposed regulations.

Full text of AB 885, information on the public meeting in Santa Rosa on January 27, 2009, the proposed regulations, the Notice of Proposed Rulemaking, and the Initial Statement of Reasons are posted on the State Board's website at: [http://www.waterboards.ca.gov/water\\_issues/programs/septic\\_tanks/](http://www.waterboards.ca.gov/water_issues/programs/septic_tanks/).

## **SUPPORTING DOCUMENTS**

A . Letter to State Water Resources Control Board

CEO Recommendation: Approve

Reviewed By: Helene Franchi