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NAPA COUNTY BOARD OF SUPERVISORS Board Agenda Letter

TO: Board of Supervisors
FROM: Christine M. Secheli for Trent Cave - Director
Environmental Management
REPORT BY: Christine M. Secheli, Environmental Health Manager, 253-4471
SUBJECT: AB 885 Proposed Regulations

RECOMMENDATION

Approval of and authorization for the Chair to sign a letter outlining Napa County's concerns relating to AB 885, the proposed statewide regulations for onsite wastewater treatment systems. (Supervisor Dillon) (Unanimous vote of the Board members present required)

EXECUTIVE SUMMARY

On April 22, 2005 the State Water Resources Control Board (SWRCB) released draft statewide regulations for onsite wastewater treatment systems (OWTS), which were prepared pursuant to Assembly Bill 885 (Jackson), adopted in 1999 (copy on file with the Clerk). The State is soliciting comments on the scope of the Environmental Impact Report (EIR) that will be prepared to evaluate the potential impacts of these regulations. Meetings between the SWRCB and the stakeholders from January 2002 to the present have occurred however many of the concerns of County staff and other stakeholders have not been incorporated into this draft. We are concerned that the proposed regulations are not ultimately realistic, workable or effective.

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 on the effectiveness of septic systems in protecting the quality of waters of the state and the 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 requires 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 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 over this time the SWRCB was unresponsive to many of the points raised by the stakeholders. The currently proposed draft regulations would require California's septic systems to meet water quality standards far in excess of any local, state, or federal standards. Most counties are objecting that the SWRCB's "one-size-fits-all" plan is excessive in cost and labor and, most importantly, is not scientifically justified. Despite the inadequacies of the proposed regulations, the Department continues to support the development of statewide standards that would accommodate the very diverse hydrological and geological conditions that exist throughout California and would provide adequate provisions for effective system operation and management.

Key Issues Regarding the Proposed Regulations

Following is a summary of the primary elements of the proposed regulations which staff believe are overly strict, unrealistic, ineffective, or otherwise inappropriate. There are also many other fine points that staff believe need to be substantially modified to be workable.

- | **Private Well Water Monitoring:** The proposed State regulations would require all private wells on or near properties with septic systems to be tested at the time of real estate transaction. No criteria are included on how the sample should be obtained and how the results will be compiled or interpreted. The State's proposal will put an additional burden on Realtors and property owners with questionable benefit.
- | **Requirement for Treatment to Drinking Water Standards for all OWTS within 600 feet of 303(d) Listed "Impaired" Water Bodies:** The proposed regulations would allow the use of alternative technology to treat effluent to drinking water standards for all new and existing OWTS located within 600 feet of a water body which is listed as impaired by pathogens or nutrients with septic systems as a contributing source, pursuant to Section 303(d) of the federal Clean Water Act. This would apply to the Napa River and all its tributaries. The regulations do not acknowledge the variability of local geographic conditions and furthermore disregard the established TMDL process that will identify the primary causes of impairment and develop a watershed specific strategy for correcting that impairment. In many cases these requirements are overly burdensome and unnecessary and in many cases they would not be adequate to address the problem. For example, elevated nitrate levels could originate from septic systems in sandy soils well beyond the 600 foot setback. Additionally, the regulations do not address minimum horizontal setbacks requirements, allowable development density, parcel size, or cumulative impacts.
- | **Overly Strict Standards for Treated Effluent:** The proposed regulations would require substantially more use of individual treatment technologies than is presently required in Napa County. The standards for treatment, however, are unnecessarily arbitrary and restrictive and don't take into account that less expensive treatment methods may be adequate in many circumstances. There is little accounting for the natural treatment that takes place in soil under a properly designed OWTS. Additionally, the regulations

require extensive effluent testing on a quarterly basis in perpetuity, creating further financial burdens on the property owners and additional impacts on staff resources of the local agency that will have to oversee that monitoring. Staff believes that after the first year of start up, annual testing is adequate, with testing of only a few parameters needed to confirm that the treatment process is working as designed.

- | **Application of Rules to Existing OWTS:** AB 885 was written specifically to address new, replacement and failing OWTS, as well as those determined by a regional board or authorized local agency to pose a reasonable threat of water quality impairment, pollution, contamination or nuisance. In the latest version, the SWRCB staff have changed this to extend the application of the regulations to all existing as well as new and repaired OWTS. The details of this are unclear and the implications of this decision for local regulatory agencies (and regional boards), as well as for the more than 1.2 million existing OWTS owners have not been considered.
- | **"Minimum" Requirements" vs. "Highest Risk" Approach:** AB 885 requires the development and adoption of "minimum operating requirements" for OWTS, while allowing regional boards and local agencies to adopt standards that are more protective of the environment where deemed necessary. Without technical justification, the SWRCB staff has, instead, proposed regulations that are generally aimed at the highest risk circumstances. This will produce highly restrictive or "idealized" OWTS standards for uniform statewide application, resulting in either: (a) extensive new "de facto" prohibitions of waste discharge from OWTS; and /or (b) regional boards and local agencies having to expend significant resources establishing exemptions and variances where the idealized conditions and threats to water quality envisioned by the State's proposed standards don't exist.

Process of Review, Adoption and Implementation of these Regulations

AB 885 required the SWRCB to complete the regulations by January 2004. However, that deadline has passed as a result of delays and the State's inability to reach a consensus with the stakeholder group. Although that process has proved to be ineffective and incomplete in the minds of the stakeholders, the SWRCB has still opted to go forward with their final draft and initiate the California Environmental Quality Act (CEQA) review. The Director of Environmental Management attended a scoping meeting on July 20, 2005 to state on record Napa County's concerns relative to the scope of the EIR.

Environmental Management Staff have prepared a letter for the Board that outlines the concerns relative to the Notice of Preparation and the needs of the Draft Environmental Impact Report. The letter identifies the those concerns that have either not been addressed in the NOP or have been addressed in the NOP but inadequately so.

Further public review of the regulations will follow completion of the EIR. Staff intends to continue to work with other stakeholders and submit comments regarding the substantial improvements needed to these regulations in order for them to be effective. The Department will provide the Board with a follow up report once the EIR is circulated and we assemble our further comments.

SUPPORTING DOCUMENTS

A . Letter of concern to NOP

CEO Recommendation: Approve

Reviewed By: Britt Ferguson