

COUNTY OF EL DORADO

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February 3, 2009

State Water Resources Control Board
Division of Water Quality
Attn: Todd Thompson, P.E.
1001 I Street, 15th Floor
P.O. Box 2231
Sacramento, CA 95812

Re: Comments on the AB 885 Onsite Wastewater Treatment Systems (OWTS) Draft
Environmental Impact Report (DEIR) and Proposed Regulations

Dear Mr. Thompson:

The County of El Dorado appreciates the opportunity afforded by the State Water Resources Control Board (SWRCB) to comment on the DEIR and the current proposed onsite wastewater treatment system regulations developed pursuant to the passage of Assembly Bill 885 in September of 2000. El Dorado County staff actively participated for the past eight years in stakeholder meetings, workshops, and various efforts to contribute to the development of reasonable, practical, science based regulations that will be equally protective of both the public health and the environment. Given that the County of El Dorado has over 35,000 private OWTS within its boundaries, the residents, business community, County staff and government leaders have grave concerns regarding the regulations currently being proposed.

In brief, the proposed regulations exceed the original intent and statutory authority of AB 885. The proposed regulations are overly prescriptive, constitute a one size fits all approach, and are not flexible enough to accommodate California's diverse geology and site specific conditions. The proposed regulations are largely "self-implementing," meaning that actions are required to be completed by the property owner in order to comply with these regulations, which will ultimately result in the need for oversight by local agency staff resulting in an unfunded State mandate. The proposed regulations will result in significant increased costs to property owners dependent upon OWTS, and may limit future land development that would currently be acceptable under existing local and state requirements for OWTS.

There are three basic categories of concerns that the County would like to share with you:

- The current proposed regulations far exceed the original goals and intent of Assembly Bill 885;
- The lack of scientific evidence for the extent of the regulations as proposed; and
- The analysis of impacts and specific elements of the proposed regulations that are of greatest concern to the County of El Dorado and its citizens.

Background

Original Goals and Intent of Assembly Bill 885

Assembly Bill 885 was introduced into the State Assembly February 25, 1999 by Assembly Member Hannah-Beth Jackson, the Chair of the Assembly Committee on Environmental Safety and Toxic Materials. The Bill, as originally introduced, was titled, "Coastal onsite sewage treatment systems." Assembly and Senate analyses over the ensuing eighteen months, prior to the approval of the Bill in September of 2000 by Governor Davis, repeatedly stated that the intent of the legislation was to protect the coastal zone with respect to pathogen and nutrient impacts. A summary of the April 13, 1999 committee hearing regarding AB 885 states that,

"California's coastal resources have been receiving more attention in recent years. Beach closures due to high bacterial counts have become a chronic problem. At the same time, awareness has been increasing rapidly that nonpoint sources of pollution are a significant contributor to contamination. The importance of California's coast to the states economy and recreation is clear."

"Sponsors point to beach closures and results of beach monitoring programs which indicate that contamination of coastal waters from leaking or poorly functioning onsite systems is a serious problem in many coastal communities."

The proposed legislation was specifically attempting to address chronic OWTS problems in the Malibu area that frequently resulted in beach closures in that area due to high bacteria loads along the shore and tidal waters, resulting in a rallying cry for change by the surfing community and environmental organizations. It should come as no surprise that the only registered opposition to AB 885 at the time was the Malibu Town Council and the Malibu Realtors Association.

As late as the beginning of August 2000, one month prior to passage of the Bill, the proposed regulation language was still specific to the coastal zone throughout the state. However, in late August of 2000, sponsors of the Bill made the case that the potential for septic systems to negatively impact waters of the state may not be limited to the coastal zone, and that the Bill should encompass the entire state. AB 885 was subsequently amended in the Senate on August 18, 2000 whereby the "coastal zone" verbiage was eliminated.

On August 25, 2000, during a hearing by the Senate Rules Committee, The California Association of Realtors (CAR) voiced formal opposition to the Bill and stated that the CAR, "...believe that the Legislature must call for a statewide survey that reveals the extent of the

septic problem, before taking action on legislation like AB 885." The County of El Dorado concurs with CAR's position. Enacting legislation that applies to the entire state prior to investigating whether or not there is a state-wide problem is a problematic and flawed approach. This is important to note because rather than allowing the State and local agencies the opportunity to investigate whether or not OWTS are negatively impacting other surface or groundwaters of the state, not just the coastal zone, it set the stage for the SWRQB staff to only pursue evidence that would justify the proposed legislation.

In addition, the intent of AB 885 was to establish minimum requirements for OWTS. The proposed regulations go well beyond establishing minimum standards for an appropriate level of protection for public health and groundwater quality, exceed the statutory authority of the original legislation, are overly prescriptive, and lack the necessary flexibility to accommodate California's diverse geology such as highly permeable sands and gravels to low permeability granitic rock with fracture flow properties.

Lastly, AB 885 makes a statement of "legislative intent" relating to monetary assistance to private property owners with onsite sewage treatment systems where compliance with the regulations exceeds one-half of one percent of the current assessed value of the impacted property. The DEIR estimates the statewide cost to OWTS owners/users over the next 5-year period (2009-2013) to be between \$287.0 million to \$339.7 million annually, with California households incurring 91%-98% of these additional costs. The DEIR does not attempt to estimate how many households will need financial assistance. Given the declining real estate values throughout the state the number will likely be significant.

Question: What is the anticipated number of households where the cost to comply with the proposed regulations will exceed one-half of one percent of the current assessed value of their homes?

The DEIR states that "The state, in cooperation with EPA has set aside funds from its State Revolving Fund Program that can be made available to local qualified agencies who can then provide low-interest loans to homeowners to install, repair, replace or upgrade their OWTS. The homeowner would still bear the financial responsibility for these improvements, but could potentially tap into lower interest rates."

California OWTS owners may not have the financial ability to comply with the proposed burdensome regulations that were originally intended to meet minimum standards to address known OWTS issues and failures.

Question: With the current State fiscal crisis it is unlikely that adequate loan funding will be available. Therefore, will adequate loan funding be available to local agencies to assist homeowners who must meet the intent specified within AB 885?

Lack of Scientific Evidence for the Proposed Regulations

The opposition voiced by CAR and their recommendation to conduct a state-wide survey to determine the extent of septic system impacts on ground and surface waters ultimately resulted in

the SWRCB, Division of Water Quality (DWQ) initiating the, “Voluntary Well Assessment Project” (Hereafter referred to as the Project) as part of the State’s, “Groundwater Ambient Monitoring Program” (GAMA). Private well owners in selected counties, which included El Dorado, were offered free well water testing in an effort to determine whether or not septic systems were negatively impacting groundwater, although this purpose was not communicated to participants or County staff when the Project began in 2002. The real intent behind the GAMA Project was made clear during an AB 885 workshop hosted by the SWRCB in December 2003. DWQ staff presented an “Issue Paper” which included the preliminary water well testing results for El Dorado County. DWQ staff communicated to the workshop participants that based upon the preliminary testing results in El Dorado County, septic systems negatively impact groundwater with fecal and total coliform bacteria, nitrates and other pollutants of concern. Analysis of the GAMA Project results in El Dorado County do not support DWQ’s assertion, and actually provide data to the contrary; properly sited and constructed systems under current standards *do* protect groundwater quality.

El Dorado County’s analysis of the GAMA Project’s results was communicated to the SWRCB at an AB 885 workshop held on December 9, 2005, and submitted in writing on December 15, 2005. Please see Attachment A for the full content of this analysis. To date, the SWRCB has failed to provide compelling evidence that properly sited and constructed OWTS negatively impact groundwater in El Dorado County.

Analysis of Impacts and Specific Elements of Greatest Concern to El Dorado County

Fiscal Considerations

Property Owners

1. Property owners with septic systems will be required to monitor septic tanks for solids accumulation every five (5) years and the regulations recommend pumping the septic tank if the scum and solids layer exceed 25% of the tank. This cost is estimated at \$325 for septic inspections and an additional cost if the septic tank requires pumping. In addition, if major repairs or a new septic system is warranted, there would be a significant cost to comply with the proposed regulations. The DEIR states, “Any person owning a septic tank shall obtain a report on inspection from a service provider a minimum of once every 5 years.” This proposed requirement is self-implementing according to the proposed regulations.

Question: How will local jurisdictions be informed that homeowners are conducting the required septic tank monitoring?

Question: Service providers are identified throughout the proposed regulations, but they are vaguely defined. What is the intent of the SWRCB to further define and/or define a qualified service provider.

Question: How will the SWRCB relay pertinent information to the local jurisdictions?

Question: How will the SWRCB enforce a self-implementing program?

2. Property owners that have an OWTS and well on their property must also monitor and sample the well water every 5 years for a wide array of constituents by a State-Certified laboratory. The correlation, by the SWRCB, that a problem exists between a properly sited and constructed septic system and groundwater integrity has not been proven and is fundamentally flawed. Groundwater sampling is at an estimated cost of \$300-\$500. Once the regulations are implemented, homeowners will have 5 years from the effective date of the regulations to complete the first monitoring, and must have groundwater sampling completed every 5 years thereafter. The SWRCB is charged with groundwater monitoring oversight however, the proposed requirement is self-implementing.

Question: How will local jurisdictions be informed that homeowners are conducting the required ground water monitoring?

Question: Why is the SWRCB requiring the sampling of constituents that do not reflect septic system effluent?

Question: How will the SWRCB relay pertinent information to the local jurisdictions?

Question: How will the SWRCB enforce a self-implementing program?

3. Nitrogen is listed in the DEIR as creating a significant impact on the environment when discharged from a conventional OWTS. Mitigation measures have been recommended to change the proposed regulations to require supplemental treatment on all new and replacement systems (repairs). The DEIR indicates that the cost per OWTS will range from \$26,000 to \$50,000 plus additional annual monitoring costs.

Question: Is this proposed regulation practical and feasible based upon the extremely high cost associated with nitrogen reduction and the minimal benefit it will have to water quality?

El Dorado County Union Mine Facility

4. The proposed septic tank pumping requirement will increase the amount of septic tank effluent taken to Union Mine Wastewater Treatment Plant (WWTP) with the potential for waste disposal to exceed the capacity of the current Waste Discharge Requirement limits. The required facility upgrade to increase the capacity and to revise the current permit will be costly. In addition, operational costs will be significantly higher to meet the increased septage disposal volume.

Question: Did the SWRCB conduct a feasibility study regarding the septic tank effluent storage and treatment capacity throughout the state to determine whether or not the existing WWTP facilities have the capacity to accommodate the increased septage volume that will be generated based upon the proposed regulations?

Question: Will it be necessary for El Dorado County to allow the importation of septic effluent from adjacent counties due to limited WWTP facilities?

Question: Will the State provide funding to assist with the necessary upgrade of the Union Mine WWTP Facility to accommodate the additional septage volume?

El Dorado County Environmental Management Department

5. The County Environmental Management Department has regulatory oversight of the current on-site sewage disposal systems. While the proposed regulations are self-implementing, it is unrealistic that regulatory compliance will be achieved through a self-implementing process. However, it is consistent that the implementation and enforcement of the proposed regulations will wholly fall on the local jurisdiction which is the Environmental Management Department. The DEIR does not address the impact to local jurisdictions.

Question: Will the SWRCB provide adequate funding to the local jurisdictions to administer the proposed regulations?

OWTS Requirements

6. The proposed regulations for all convention septic tank systems require that the dispersal system to be at a depth no greater than 3 feet, and that the bottom area only be considered in the calculation of the overall size of the dispersal system. Currently the county allows for deep trench systems, with dispersal system trenches deeper than 3 feet. Utilizing the sidewall area in the calculations allows for the overall size of the dispersal field to have a smaller horizontal land area, or “foot print”. In addition to trench sidewall, the current standards consider soil percolation rate, and average estimated daily flows to determine the size of a dispersal field. The new regulations would set a “surface application rate” based on soil texture, or a modified percolation rate, along with the bottom trench area to determine the needed dispersal field area. These new standards for calculating the dispersal area size would effectively double the area a parcel would need for an OWTS. It should be noted that, deep trench systems, sized according to percolation rate and estimated daily flows have functioned adequately in El Dorado County for over 30 years [Section 30014 (b)(i)]

Question: If the proposed regulations are implemented, how will local agencies address parcels approved for development utilizing OWTS under the current RWQCB Basin Plan, yet under the new regulations are no longer able to develop?

Question: Does the scenario referenced above conflict with AB 885 Section 13291.7, which states that, “Nothing in this chapter shall be construed to limit the land use authority of any city, county, or city and county?”

7. The definition of “soil” for sewage disposal in the proposed regulations limits the infiltrative material to less than 30% particles greater than 2 mm and must have at all times during operation at least three feet of continuous unsaturated, undisturbed, earthen material. This differs from the current definition of effective soil depth which allows for weathered, decomposed bedrock to be considered as adequate infiltrative material and at least five feet of continuous unsaturated earthen material.

Question: The proposed definition of infiltrative material that is adequate for OWTS effluent treatment does not allow for areas that have very deep infiltrative surfaces but may be composed of more than 30 % particles greater than 2 mm. The definition above appears to consider only areas that have a high water table and does not consider the conditions that are prevalent throughout El Dorado County where deep soils of decomposed bedrock provide permeable infiltrative surfaces, but are not single grains of sand, silt or clay. How will these conditions be addressed in the new regulations?

8. The DEIR identifies soils that favor denitrification as silts and clays as they would have higher percolation rates. However, the regulations do not support installation of OWTS in soils with higher percolation rates. Per the DEIR, deeper soils and slower percolation rates may be better for denitrification and the impact on nitrogen, yet the proposed regulations require the installation of OWTS in shallow soils with relatively faster percolation rates, 120 minutes per inch (mpi) maximum compared with the current limit of 240 mpi.

Question: Please explain the contradiction between the proposed regulations and the DEIR regarding soil depth and percolation rates as it pertains to denitrification?

Administrative Issues/Enforcement

9. It is unclear from the proposed regulations if the County will need to enter into a Memoranda of Understanding or other agreements with the Regional Water Quality Control Boards for the effective implementation of the proposed regulations.

Question: Will El Dorado County be required to enter into a Memoranda of Understanding or other agreements with the Regional Water Quality Control Boards for implementation of the proposed regulations?

10. Currently, local jurisdictions implement the OWTS standards. The proposed regulations would not allow the review and approval of supplemental OWTS by local jurisdictions, and do not indicate what agency will review and approve these systems.

Because the regulations do not identify who or how supplemental OWTS systems will be permitted and regulated this will create confusion, long delays in the building permit process and a burden on the land developer. Development in certain areas of the county may not occur, or may face significant project delays if supplemental treatment system permits cannot be issued at the local level.

Question: Which agency will approve supplemental treatment systems? If the SWRCB is the approving agency, what is the anticipated turn around time for design approval of supplemental systems?

11. Any corrective action necessary to address surfacing effluent must be initiated within 30 days and completed in 90 days, unless the SWRCB grants an alternative time period not to exceed 180 days.

Question: Is this timeframe adequate for the protection of public health from pathogenic organisms contained in surfacing effluent?

Question: Will this extended time period for correction allow surfacing effluent to enter surface waters?

Conclusion

El Dorado County is strongly opposed to the implementation of the proposed statewide minimum standards for the siting, construction and performance standards for OWTS. The correlation, by the SWRCB, that a problem exists between a properly sited and constructed septic system and groundwater integrity has not been proven and is fundamentally flawed. The OWTS requirements set forth in the Central Valley Regional Water Quality Control Board (CVRWQCB) Basin Plan, and the El Dorado County Ordinance Code, Chapter 15.32 and accompanying Board Resolution, which is consistent with the CVRWQCB Basin Plan, already meet the State's water quality objective of protecting the groundwater and surface water as evidenced by the results of the State Voluntary Well Assessment Project.

Respectfully,

Ron V. Briggs, Chairman
Board of Supervisors
County of El Dorado

Cc: Senator Dave Cox
Assemblyman Ted Gaines
Supervisor John Knight, District I
Supervisor Ray Nutting, District II
Supervisor Jack Sweeney, District III
Supervisor Norma Santiago, District V