

**STATE OF CALIFORNIA  
REGIONAL WATER QUALITY CONTROL BOARD  
CENTRAL COAST REGION**

**STAFF REPORT FOR REGULAR MEETING OF MAY 9, 2008**

Prepared on April 11, 2008

**ITEM NUMBER: 10**

**SUBJECT: Waiver of Waste Discharge Requirements for Onsite Wastewater System Discharges (Resolution No. R3-2008-0006)**

**KEY INFORMATION**

**Location:** Throughout the Central Coast Region  
**Type of Waste:** Domestic wastewater discharged from onsite wastewater systems  
**This Action:** Adoption of Resolution No. R3-2008-0006

**SUMMARY**

Historically, discharges from conventional onsite wastewater systems have been regulated by local permitting agencies (cities and counties). The Central Coast Water Board's general waiver of waste discharge requirements for such systems was implemented through multi-agency memoranda of understanding (MOUs), and local permitting agencies implemented Basin Plan criteria for onsite systems through their own permits. Pursuant to Water Code §13269(b)(2), the Central Coast Water Board's general waiver for discharges from onsite wastewater systems expired on June 30, 2004. Since expiration of the waiver, discharges from onsite systems have not been formally authorized by the Central Coast Water Board. 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. The proposed conditional waiver (Resolution No. R3-2008-0006) establishes regulatory oversight, management, and monitoring of onsite systems in a manner that is clear, streamlined and protective of water quality. Adoption of the proposed waiver will complete a Triennial Review list priority task which has been backlogged for many years.

**DISCUSSION**

Background - California Water Code §13263 authorizes the Regional Water Quality Control Board, Central Coast Region (Central Coast Water Board) to regulate waste discharges that could affect the quality of State waters, including discharges from onsite wastewater systems. California Water Code section 13260 requires any person who discharges waste, except into a publicly owned treatment facility, to submit a report of waste discharge. Section 13269 of the California Water Code authorizes the Central Coast Water Board 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 Central Coast Water Board encourages direct regulation of onsite systems by an authorized and qualified local agency, where such a policy is mutually beneficial. To facilitate direct regulation, the Water Board enters into MOUs with local agencies that appropriately regulate onsite system siting, design, construction, monitoring and performance, in accordance with criteria specified in the Basin Plan. The MOUs provide for local regulation and implementation of the Central Coast Water Board's waiver policy with respect to onsite systems.

On June 30, 2004, the waiver for onsite system discharges expired (in accordance with California Water Code §13269), leaving no formal authorization for local regulation of onsite system discharges. Expiration of the waiver left onsite systems subject to individual waste discharge requirements, a cumbersome and redundant oversight. Accordingly, the Central Coast Water Board's onsite waiver and implementing MOUs need to be revised and updated. Revision of the waiver is proposed with today's action and updating MOUs will take place over the coming months/years. Section 13269 allows flexibility to the Regional Boards so that regulatory resources can be directed toward potential problems rather than consumed through regulation of discharges that will have little or no affect on quality of the state's waters. Accordingly, waivers granted for discharges are consistent with the Basin Plan, and where such waivers are in the public interest, enable staff time to be used efficiently and avoid unnecessary expenditures of limited resources.

In 2000, the California State Legislature passed Assembly Bill 885 (§13291 of the California Water Code). Assembly Bill 885 requires the State Water Resources Control Board (State Water Board) (in consultation with state and local health departments, California Coastal Commission, counties, cities and other interested parties) to adopt regulations or standards for onsite wastewater systems. For the past eight years, Central Coast Water Board staff members have been participating in the State Water Board's regulation development process. These regulations are not yet established and we do not anticipate that the statewide regulations will be adopted in the near future. Also, we do not anticipate that the statewide regulations (when adopted) will replace the need for Basin Plan criteria for onsite systems. Although such statewide regulations are not yet in place, §13269 requires any waiver for onsite systems adopted or renewed after June 30, 2004, to be consistent with the applicable regulations or standards adopted pursuant to §13291. If more stringent statewide regulations are adopted pursuant to §13291, then such regulations shall be incorporated into this waiver.

Proposed Resolution - Resolution No. R3-2008-0006 conditionally waives waste discharge requirements for discharges from onsite wastewater systems, and authorizes the Water Board's Executive Officer to enroll and terminate enrollment in the waiver. The proposed resolution also waives submittal of reports of waste discharge for certain onsite wastewater systems.

Conditions for waived systems - Resolution No. R3-2008-0006 waives waste discharge requirements [California Water Code §13263(a)] for discharges from onsite wastewater systems sited, designed, managed and maintained in a manner consistent with control actions specified in the Basin Plan, Chapter 4, Section VIII.D (see agenda item No. 9). Application for enrollment under the proposed waiver must be submitted in the form of a report of waste discharge (ROWD, standard WDR application and fee) that describes and documents the proposed system's consistency with Basin Plan criteria. Each ROWD submittal shall be accompanied by a fee corresponding to the lowest applicable fee for waste discharge requirements (threat and complexity rating of III-C) identified in the State Water Board's fee schedule. Applicants seeking enrollment in this waiver are required to comply with conditions specified in a Water Board-approved onsite management program

implemented by the local permitting authority, when such a plan is implemented.

Conditions for waived ROWD requirements - Requirements for submittal of reports of waste discharge, issuance of waste discharge requirements, and enrollment notification [California Water Code §13260(a) and (b), §13263(a), and §13264(a)] are waived for discharges from onsite wastewater systems sited, designed, managed and maintained in a manner consistent with a Water Board-approved onsite management program implemented by the local permitting authority, which also implements an authorizing MOU with the Central Coast Water Board. Provided all conditions (of the onsite management plan and MOU) are met, these dischargers need not submit applications to the Central Coast Water Board, pay fees, or receive waiver enrollment notification.

MOUs with Local Jurisdictions - The Central Coast Water Board creates water quality protection policies, provides guidance, and implements region-wide programs in conjunction with local agencies. Local jurisdictions implement a variety of regulations (including Water Board requirements) through their permitting processes. In order to implement these coordinated roles, the Water Board and local jurisdictions enter into memoranda of understanding (MOUs), which describe each entity's role within formal institutional agreements. Central Coast Water Board staff members have been in the process of developing and updating such MOUs over the past few years (some of which are more than 20 years old). The proposed Resolution No. R3-2008-0006 will be implemented through updated MOUs to ensure consistent implementation of the Basin Plan criteria for onsite systems (see Basin Plan Amendment, Item No. 9).

The proposed resolution authorizes the Executive Officer to approve and execute, on behalf of the Central Coast Water Board, individual MOUs with local agencies in the Region. The MOUs will reflect the requirements specified in Chapter 4, Section VIII.D of the Basin Plan (sections pertaining to onsite wastewater systems). Furthermore, these interagency MOUs shall commit the local agency to amending its municipal code and onsite wastewater system program, if necessary, to be substantially equivalent to any statewide standards adopted pursuant to California Water Code §13290 and §13291. Individual MOUs will incorporate additional measures to be taken by the local agency to identify and address areas of degraded groundwater or surface water quality where onsite wastewater treatment systems are a potential source of pollution.

Water Board staff believe that this approach (MOUs and conditional waivers) will prove to be most effective in protecting water quality from impacts associated with onsite systems in a streamlined fashion (without duplicative agency oversight).

#### **ENVIRONMENTAL SUMMARY**

On July 30, 2004, Central Coast Water Board held a scoping meeting pursuant to the California Environmental Quality Act (CEQA)(California Public Resources Code §21083.9(a)(2) to discuss possible revisions to the waiver policy. The meeting focused on requirements to develop onsite management plans. During the past few months, Water Board staff members have met with county representatives and other stakeholders who will most likely directly implement this waiver policy, to gather their input. Individual and telephone meetings have included onsite wastewater management staff from Santa Barbara, San Luis Obispo, Monterey, and Santa Cruz Counties; City of Atascadero; Nipomo and Los Osos Community Services Districts. Additionally, Water Board staff made presentations at public meetings for the Nipomo Community Services District and the San Luis Obispo County Water Resources Advisory Committee. These meetings provided the opportunity to

discuss preliminary draft revisions and incorporate stakeholder recommendations into the proposed amendment.

A Notice of Public Hearing has been circulated (Attachment 2). The following newspaper publications provided public notice regarding the proposed actions.

Santa Barbara News Press	March 12, 2008
Santa Maria Times	March 12, 2008
The Tribune (San Luis Obispo County)	March 12, 2008
The Monterey Herald	March 12, 2008
Santa Cruz Sentinel	March 12, 2008
Hollister Free Lance	March 11, 2008

A staff report, including Environmental Checklist and Negative Declaration, were prepared and circulated by Water Board staff to interested agencies and persons prior to consideration of the resolution by the Central Coast Water Board.

## COMMENTS

Most agencies and individuals submitted comments on both onsite wastewater system Agenda Items 10 and 9 (Waiver and Basin Plan Amendment) combined in a single letter. Comments are addressed in the staff report for the issue to which the comment pertains. Comment letters are included with the respective staff reports and posted on the Central Coast Water Board website as agenda attachments. Due to the volume of comments unrelated to the agenda items in some of the letters, pertinent comments are identified with a number in the margin of the comment letter corresponding to the comment/response below.

### **John Ricker (Santa Cruz Co. Environmental Health Services, Water Resources Division Director)**

1. The proposed waiver would commit local agencies to adoption of criteria contained in statewide regulations developed pursuant to AB885 (Water Code §13291). The County cannot agree to adopt future criteria with unknown content or reasonability. Accordingly, the County recommends including language in the waiver resolution for review and modification (if needed) of MOUs if/when statewide AB885 regulations are developed.

Staff response: Staff agrees that review and possible modification of MOUs may be needed to address future statewide onsite regulations. The language proposed by Santa Cruz County is added to proposed Resolution No. R3-2008-0006 (Attachment 1, Page 4, No. 2).

2. Will all new onsite wastewater systems in areas without approved onsite management plans need to submit a report of waste discharge to the Water Board and pay a filing fee?

Staff response: Yes, as described in the staff report (Page 2, *Conditions for waived systems*), proposed onsite wastewater systems in areas without onsite management plans and implementing MOUs will need to enroll under the waiver by filing a complete report of waste discharge and associated filing fee.

**Chuck Cesena (Los Osos CSD President)** – Los Osos CSD submitted a comment letter regarding triennial review of the Basin Plan (expected to occur in 2009) and including several attachments relating to the triennial review process. Only those portions of the CSD's submittal that relate to the proposed onsite system waiver are included in this staff report.

1. The Los Osos CSD never received notice of the proposed action.

Staff response: On December 4, 2007, Water Board staff circulated preliminary draft staff reports for the two onsite wastewater system agenda items (Waiver and Basin Plan Amendments) to county, city and CSD staff (including Los Osos CSD) seeking feedback and recommendations from those actively involved in implementing such policies. Los Osos CSD General Manager John Schempf responded to that invitation and met with Water Board staff Sorrel Marks on December 18, 2007, to discuss his comments on the preliminary documents. Mr. Schempf had a copy of the preliminary draft documents with him during that meeting. On January 9, 2008, Sorrel Marks made a presentation regarding the upcoming onsite issues at the San Luis Obispo County Water Resources Advisory Committee meeting. A copy of the preliminary draft documents was attached to the agenda for the Advisory Committee meeting, and a Los Osos CSD Director and staff participated in the meeting. On February 28, 2008, Water Board staff sent the Los Osos CSD electronic copies of draft staff reports, associated attachments, and notice of hearing, with request for comments and offer of paper copy for anyone who might desire one. Additionally, as noted in the staff report, notice of public hearing was published in local newspapers throughout the Central Coast Region and posted on the opening page of the Water Board's website. The individual correspondences and meetings appear to contradict the claim that notice of the hearing was not received. No change recommended.

2. The proposed action does not adequately address CEQA requirements as no CEQA analysis is provided.

Staff response: Compliance with the California Environmental Quality Act (CEQA) is addressed in the staff report above (beginning on Page 3).

3. The Water Board will become another layer of review.

Staff response: This comment from the CSD and similar comments received from others may indicate that many were/are not aware that authorization for new discharges from onsite wastewater systems is required by existing state law or that prior waivers of such authorization expired in 2004. As described in the staff report (*Summary*, Page 1) reducing duplicative or redundant oversight of onsite wastewater systems is exactly why the Waiver Resolution is proposed. No change recommended.

4. What is the Water Board's authority to issue waivers and what are the criteria for such waivers?

Staff response: See the first paragraph under *Discussion, Background* above (Page 1).

5. The proposed waiver resolution appears to unlawfully allow fees to be assessed by the Water Board.

Staff response: Detailed information and California Water Code reference citations regarding the Water Board's authority to collect fees for waste discharge requirements, permit, and waiver enrollment is available on the State Water Board's website at <http://www.waterboards.ca.gov/resources/fees/>

**Citizens for Clean Water, Prohibition Zone Legal Defense Fund (CCW-PZLDF)** – CCW-PZLDF submitted a comment letter regarding the triennial review process, proposed Basin Plan Amendment of onsite criteria, and rescission of Resolution No. 83-12 (which is not

proposed). The CCW-PZLDF letter does include comments regarding this agenda item (Resolution No. R3-2008-0006) on Page 7, accordingly the comments are summarized and addressed as follows.

1. How will the proposed action affect delegation through waivers?

Staff response: See Page 2 (paragraphs 1 and 2) of the staff report above.

2. What is the exact number of onsite systems that will not be eligible for waiver enrollment?

Staff response: It is impossible to say how many (not yet proposed) onsite systems will not qualify for waiver enrollment. However, any system that is not proposed to be sited, designed or constructed in a manner consistent with the Basin Plan criteria would not be eligible for waiver enrollment.

3. What fees will be charged for waiver enrollment?

Staff response: Enrollment fees set by the State Water Board are currently \$400.

4. What is the risk for fines, enforcement, prohibition zones, WDR and monitoring costs associated with the proposed waiver?

Staff response: The waiver itself requires compliance with Basin Plan criteria for onsite systems, but does not in itself pose a risk for fine, enforcement, prohibition zone or monitoring costs. Regular septic tank maintenance (solids removal) would be required if the Basin Plan Amendment proposed in Resolution No. R3-2008-0005 (Agenda Item No. 9) is approved.

5. How does the proposed waiver differ from waivers within the statewide AB885 plan?

Staff response: As stated in the staff report, statewide regulations required by AB885 have not yet been developed. Accordingly, comparison of the proposed waiver to any waiver that might be incorporated into the statewide regulations is impossible.

#### **Ann Calhoun**

1. No individual citizens, whose property will be affected by this proposed action, have been notified.

Staff response: Public notice and public participation activities are described in the staff report above, summarized in the response to Los Osos CSD comment No. 1, and are consistent with Water Board standard practice and state law.

2. I protest this process and request delay until all septic system permit holders in the County are notified by individual mailing and provided opportunity to comment.

Staff response: The proposed waiver will authorize new onsite systems; therefore, it is not clear why existing system owners would need individual notification of the proposed action. No change or delay is recommended.

**Anne Norment**

1. Citizens should be more widely noticed to allow opportunity for public comment.

Staff response: Public notice and public participation activities are described in the staff report above, summarized in the response to Los Osos CSD comment No. 1, and are consistent with Water Board standard practice and state law.

2. Finding No. 7 and No. 22 are duplicates.

Staff response: Duplicate finding deleted from proposed draft.

3. Local agencies entering into MOUs with the Water Board should be the same agencies as those implementing onsite wastewater management plans.

Staff response: Local agencies referenced in Resolution No. R3-2008-0006 are those counties, cities, or other local governing agencies vested with legislative authority to regulate onsite wastewater systems. In most cases, the local agency is the county permit authority and is the same agency that would be responsible for implementing an onsite wastewater management plan. However, the general wording of the proposed Resolution No. R3-2008-0006 is intended not to preclude implementation through multi-agency agreements (such as between a county and services district). No change is recommended.

**CDO #R3-2006-1041** - Due to lack of public notice, consideration of the proposed waiver should be postponed. Also, the Water Board indicated during the Los Osos CDO hearings that newspaper articles should not be considered reliable resources. Therefore, Water Board staff should not rely on newspaper publication as a reliable means of public notice.

Staff response: Public notice and public participation activities are described in the staff report above, summarized in the response to Los Osos CSD comment No. 1, and are consistent with Water Board standard practice and state law. The proposed waiver will authorize new onsite systems; therefore, it is not clear why existing system owners would need individual notification of the proposed action. No change or delay is recommended.

**Shaunna Sullivan**

1. On behalf of Harold J. Biaggini, Ruth B. Sullivan and herself, Ms. Sullivan objects to waiver conditions based upon agency or individual compliance with unfunded mandates. Further, Ms. Sullivan objects to any regulations adopted by the Water Board that allows Water Board discretion to regulate, enforce or fine onsite system owners.

Staff response: Specific objectionable conditions are not identified, therefore no staff response is offered. California Water Code already authorizes Water Boards to regulate onsite wastewater discharges (as described in the staff report and Resolution Finding No. 1 and No. 2.

2. The staff report states that over 100,000 onsite systems currently exist in the region, yet notice was not provided to these 100,000 property owners and no public notice was provided in the newspaper.

Staff response: Public notice and public participation activities are described in the staff report above, summarized in the response to Los Osos CSD comment No. 1, and are consistent with Water Board standard practice and state law. The proposed waiver will

authorize new onsite systems; therefore, it is not clear why existing system owners would need individual notification of the proposed action. No change or delay is recommended.

3. Ms. Sullivan objects to local permitting agencies entering into MOUs with the Water Board without her review of such MOUs. Proposed MOUs should be provided for review and comment before the proposed conditions are acceptable in the waiver.

Staff response: Interagency MOUs have been used by the Water Board for several decades to clarify overlapping jurisdiction, streamline regulatory oversight, and coordinate mutual efforts. Water Board staff plan to work with local permitting agencies to develop updated MOUs, to address the proposed onsite waiver, but such documents are not yet prepared. The proposed Resolution authorizes the Water Board Executive Officer to enter into such MOUs on behalf of the Water Board. Water Board hosted public review, public comment and public hearing is not anticipated for each MOU. No change is recommended.

4. Ms. Sullivan objects to Finding Nos. 12, 13, 14, 16, 17, 24, 25 and 26.

Staff response: The Resolution findings state (in a concise manner) facts upon which the Resolution conditions are based. No change is recommended.

5. Finding No. 6, No. 7 and No. 8 are duplicated in the draft Resolution.

Staff response: Duplicate finding deleted from proposed draft.

6. The Resolution fails to state that the MOUs and waivers will be conditioned upon compliance with the proposed amendments to the Basin Plan (proposed Resolution No. R3-2008-0005 described in Agenda Item No. 9).

Staff response: Resolution Finding No. 13 and No. 14, and Condition No. 2, No. 3, and No. 4, all clearly state compliance with the Basin Plan is a condition for enrollment in the waiver.

**Giti White** – Ms. White's comments are based upon her assumption that a waiver for onsite systems will result in expansion of community sewer systems. This assumption is not supported by any facts of which Water Board staff is aware.

1. Growth inducing impacts associated with sewer system extensions should be addressed in the Environmental Checklists for Resolution No. R3-2008-0006. Also, the costs associated with sewer system expansion, aging infrastructure, and maintenance should be addressed.

Staff response: Staff does not agree with the commenter's underlying assumption that the proposed waiver will result in expansion of community sewer systems. Inclusion of sewer system related impacts in the Environmental Checklist for the proposed waiver is not appropriate and would lead to significant confusion regarding the proposed action.

2. Ms. White included in her comment letter several comments generally supportive of expanded use of onsite wastewater systems (as opposed to centralized sewer systems).

Staff response: Although staff does not agree with the factual basis of Ms. White's statements, the proposed waiver is intended to facilitate streamlined authorization of onsite wastewater systems. Accordingly, we assume this goal to be consistent with Ms. White's support for continued use of onsite wastewater systems.



3. Consideration of the proposed Resolution No. R3-2008-0006 should be delayed to accommodate greater public participation.

Staff response: Public notice and public participation activities are described in the staff report above, summarized in the response to Los Osos CSD comment No. 1, and are consistent with Water Board standard practice and state law. No change or delay is recommended.

**Rhian Gulassa** – Ms. Gulassa's letter is included at her request; however, staff was unable to identify comments directly relating to this agenda item. Ms. Gulassa's letter summarizes her experience with and mistrust of the Water Board and its regulatory actions. No staff response needed.

**Sandy Bean** – In a brief emailed message, Sandy Bean asks for authorization of zero discharge systems, individual wastewater systems that discharge no water. The request does not directly relate to the proposed agenda item and no staff response is needed.

**Piper Reilly** – Much of Ms. Reilly's letter is related to her support for use of "Reclamators" in all locations where connection to a community sewer is not feasible. Comments relating to this agenda item are as follows.

1. Inadequate public notice was provided regarding the proposed action.

Staff response: Public notice and public participation activities are described in the staff report above, summarized in the response to Los Osos CSD comment No. 1, and are consistent with Water Board standard practice and state law. No change recommended.

2. The proposed action may have environmental impacts, therefore CEQA is triggered.

Staff response: Compliance with the California Environmental Quality Act (CEQA) is addressed in the staff report above (beginning on Page 3).

## RECOMMENDATION

Adopt Resolution No. R3-2008-0006, as proposed.

## ATTACHMENTS

1. Proposed Resolution No. R3-2008-0006 w/attached CEQA Report
2. Notice of public hearing dated February 22, 2008
3. Comment letters
  - John Ricker
  - Los Osos CSD
  - Citizens for Clean Water – Prohibition Zone Legal Defense Fund
  - Ann Calhoun
  - Anne Norment
  - CDO No. R3-2006-1041
  - Shaunna Sullivan
  - Giti White
  - Rhian Gulassa
  - Sandy Bean
  - Piper Reilly

S:\WQ Control Planning\Onsite\Basin Plan Amendment\waiver\onsite waiver.itm.doc