



CALIFORNIA ASSOCIATION OF REALTORS®

December 8, 2008

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 Proposed AB 885 Onsite Wastewater Treatment Systems Regulations and Draft Environmental Impact Report

Dear Mr. Thompson:

Thank you for the opportunity to provide comments on the proposed AB 885 Onsite Wastewater Treatment Systems (OWTS) regulations and the accompanying Draft Environmental Impact Report (DEIR). As you know, the CALIFORNIA ASSOCIATION OF REALTORS® has participated as a "stakeholder" in the AB 885 regulatory process since it began in 2002. During this process, we have found ourselves representing not only the interests of our 184,000 REALTOR® members, but also the interests of property owners who currently own, or might someday own, an OWTS. This letter provides a synopsis of our overarching concerns, followed by detailed comments on both the proposed regulations and DEIR.

OVERARCHING CONCERNS

Cost to Existing Property Owners and New Homebuyers not Justified. No matter what, the proposed regulations are going to be hugely expensive for California property owners who currently own or some day will own an OWTS. Even if a major repair will not automatically trigger the new regulations for existing property owners, most property owners will be required to pay for testing of their private groundwater wells, required service contracts for supplemental treatment systems and inspections of their septic tanks every five years, whether there is evidence of OWTS-related problems or not. Making everyone perform these expensive tasks, without first determining that surface and/or ground water is actually being impacted, dilutes the impact of the AB 885 regulations while adding an unnecessary cost burden to property owners, many of which are low income. Furthermore, because of the prescriptive depth to groundwater standards and loss of sidewall infiltration, among other things, new and existing homebuyers will be forced to install tremendously expensive "alternative systems"- if they are even allowed - making homeownership unachievable for many people throughout the state.

Lack of Sound Science to Justify Broad Approach. It has become evident throughout the stakeholder process that there is not enough scientific data to prove whether OWTS are causing water quality problems throughout the state. In fact, it seems to be clear that OWTS are NOT the major culprits when it comes to pathogens and nitrates in surface and groundwater, but that agriculture is likely the major contributor to such problems. Having realized the lack of data and science surrounding OWTS problems, the proposed regulations have become a data collection tool for regulators, instead of focusing on areas where local regulators know they



REALTORS® is a registered mark which identifies a professional in real estate who subscribes to a strict Code of Ethics as a member of the NATIONAL ASSOCIATION OF REALTORS®



offer any exemptions for lot sizes that allow domestic wells to be located in excess of 100 feet of dispersal systems, and/or the separation of the drinking water aquifer and septic dispersal system by an impermeable layer or other protective geologic or hydrologic conditions.

5. Sections (s) (1) and (2) - Requiring OWTS owners to self-test groundwater every 5 years may be redundant in certain parts of the state. For instance, the County of San Bernardino Department of Environmental Health performs routine domestic well testing every 3 years. An exemption to the 5-year testing requirement should be made for jurisdictions in which groundwater testing is already required and/or performed by a local agency.

6. Section (t) - The list of constituents required for testing are overkill. This section should be changed to fecal coliforms, Escherichia coli, and enterococci testing only (Section 2.7.3), if these tests are to remain mandatory. To test for items that do not show a direct nexus to a failing OWTS is costly and unnecessary. In addition, we request clarification in this section that the test results, while not available to the public by internet, will be available to the property owner and/or their agent.

Article 3 PERFORMANCE REQUIREMENTS AND SPECIFICATIONS

§30014. SWRCB - Dispersal Systems.

1. Section (b) - As prescribed in this section, dispersal systems will be designed only counting the bottom area of the system as the infiltrative surface. Currently, most jurisdictions throughout California allow sidewall surface area to be included as infiltrative surface. By changing this calculation to bottom area only, many existing unimproved lots will be rendered unbuildable and many existing systems not replaceable, even with supplemental systems. We request a statement of reasons for introducing this drastic change in minimum systems design requirements. Furthermore, waivers should be allowed based on parcel size and/or the lack of a domestic well.

2. Section (h) - In certain circumstances, dispersal systems can be engineered to allow for light vehicle traffic across a specified portion of the system to allow for site access. The regulations should allow exemptions for systems engineered for placement beneath driveways and/or other paths of access.

Article 4 PROTECTING IMPAIRED WATER BODIES

§30040. SWRCB - Applicability and Requirements.

1. Section (a) - We appreciate that this section is limited to those water bodies where OWTS have been specifically identified as contributing to their impairment. However, we are concerned that nitrogen and/or pathogen impairment may actually be a result of agriculture or wildlife. Thus, while the arbitrary prohibition of standard OWTS within 600 feet of an affected water body will not ensure protection for that water body, it will ensure that many lots will be deemed unbuildable, or will have to be condemned.

2. Section (b) (4) - This section should be removed from the regulations. We strongly believe that the requirement to augment an existing OWTS with a supplemental system should be limited to systems known to be contributing to the pollution/impairment of a water body. The findings in section (b) (1) (B) (C) and (D) do not take into consideration hydrogeologic conditions and therefore clearly cannot illustrate a nexus between an OWTS and an affected water body. If an existing system is not a problem, it should be exempt.

DETAILED COMMENTS ON DRAFT ENVIRONMENTAL IMPACT REPORT

Section 2.0 BACKGROUND AND PROJECT DESCRIPTION

Human Exposure to OWTS-Degraded Groundwater

Section 2.7.3 states that approximately 600,000 or so domestic wells in California "may be vulnerable to pollution from the discharges of existing or yet-to-be installed OWTS", based upon a conclusion drawn from testing 900 domestic wells in Northern California. The DEIR acknowledges that the analyses were not

Section 7.0 OTHER CEQA-REQUIRED SECTIONS

Potential for the Proposed Statewide Regulations to Restrict Growth

Section 7.5.1 states that "It is not known where implementation of the proposed statewide regulations could inhibit growth." At a minimum, the lack of sidewall infiltration in dispersal system design and the minimum three-foot vertical separation requirement coupled with local jurisdictions having already banned the use of supplemental systems alone exemplifies that the proposed regulations are certain to deem large portions of the state "unbuildable" - which will inhibit growth. This is also in conflict with Section 1.6, which states, "implementing the proposed project either would have no impact or would have a less-than-significant impact on issue areas associated with overall land development." Because of this oversight, the DEIR failed to evaluate the impact of the proposed regulations on the ability for local governments to achieve the goals of their Regional Housing Needs Allocation (RHNA) goals.

Cumulative Traffic Impacts

Section 1.6.9 states that "Because the proposed project would not be expected to increase the number of OWTS installed over time, OWTS-related traffic patterns or emergency access to either the site of a treatment system or surrounding areas would likely not be affected." Section 7.2.6 continues this notion by finding that any increase in traffic due to installation and maintenance requirements would "be minimal and on an infrequent basis." However, full installation, maintenance, inspection and sampling compliance by all OWTS owners will easily increase vehicle miles travelled (VMTs) in rural areas by at least several millions of additional miles per year beyond present conditions. The DEIR fails to quantify and analyze the increased VMTs and their contribution to increased green house gas (GHG) emissions throughout the state. Had the DEIR appropriately acknowledged the impact of the proposed regulations on GHG emissions, the DEIR could have considered a relaxed version of the proposed regulations with reduced well testing and tank inspection requirements as a way to mitigate the increased GHG emissions.

Thank you for the opportunity to provide these comments. As you can see from the above, we are very concerned about the practical implications of the proposed AB 885 regulations and the lack of comprehensive analysis in the DEIR. Property owners with OWTS or those who might need to install or replace OWTS in the future must feel confident that the state is seriously attempting to tackle a water quality problem, and not create unreasonable burdens or increase the cost of home ownership in California.

Sincerely,



Elizabeth Gavric
Legislative Advocate