

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

STAFF REPORT FOR REGULAR MEETING OF MAY 4-5, 2011

Prepared on March 29, 2011

ITEM NUMBER: 17

SUBJECT: Resolution No. R3-2011-0004; Amendment to the Water Quality Control Plan, Central Coast Basin, regarding onsite wastewater system implementation program

KEY INFORMATION

Location: Throughout the Central Coast Region
Type of Waste: Domestic wastewater discharged from individual and community onsite wastewater systems
This Action: **Adoption of Resolution No. R3-2011-0004 (revising Basin Plan and amendments adopted in 2008 and 2009)**

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SUMMARY

Historically, discharges from conventional onsite wastewater disposal systems (onsite systems) have been regulated by local governing jurisdictions (cities and counties) that implemented local requirements and the criteria for onsite systems set forth in the Regional Water Quality Control Board, Central Coast Region's (Central Coast Water Board or Water Board) Water Quality Control Plan, Central Coast Basin (Basin Plan). The Central Coast Water Board had also adopted a general waiver of waste discharge requirements (General Waiver) for onsite systems, where such systems were regulated by local agencies. The Water Board entered into multi-agency memoranda of understanding (MOUs) governing regulation of onsite systems, and local permitting agencies implemented criteria for onsite systems through their own permits. Pursuant to Water Code §13269(b)(2), the Central Coast Water Board's General Waiver expired on June 30, 2004. Since expiration of the General Waiver, discharges from onsite systems have not been formally authorized by the Central Coast Water Board as required by the California Water Code. 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 Central Coast Water Board, on May 9, 2008, adopted an amendment to the Basin Plan that updated and clarified criteria for onsite systems (Resolution No. R3-2008-0005). To ensure compliance with the California Water Code, the Central Coast Water Board, on March 20, 2009, adopted an additional Basin Plan amendment establishing an Implementation Program as a conditional waiver of waste discharge requirements for onsite systems that meet Basin Plan criteria for siting, design, construction, and management. The Implementation Program establishes regulatory oversight,

management, and monitoring of onsite systems in a manner that is clear, streamlined and protective of water quality.

Basin Plan amendments adopted by the Central Coast Water Board do not become final until they have been reviewed and approved by the State Water Resources Control Board (State Water Board) and the Office of Administrative Law (OAL). During their review of the 2008 and 2009 amendments, State Water Board staff noted that revisions were necessary to further clarify the amendments. This proposed Basin Plan amendment (Resolution No. R3-2011-0004) addresses each of the issues identified by State Water Board staff.

This agenda item proposes revisions to the amendments adopted by the Central Coast Water Board on May 9, 2008, and March 20, 2009. Proposed revisions are identified by underlining (additions) and strike-out (deletions). Updating the Basin Plan requirements for onsite systems will complete a Triennial Review list priority task which has been backlogged for many years.

DISCUSSION

Background – Persons who discharge waste that could affect the quality of waters of the state, including discharges from onsite wastewater systems, are required to submit a report of waste discharge (application) under California Water Code section 13260 and obtain waste discharge requirements or a waiver of waste discharge requirements. California Water Code section 13263 authorizes the Water Boards to issue waste discharge requirements. 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 of the Central Coast Water Board's implementation program 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 Water Board regulation of most onsite system discharges within the Region. Expiration of the waiver left onsite systems subject to individual waste discharge requirements, a cumbersome and redundant manner of regulatory oversight. Accordingly, the Central Coast Water Board's onsite system General Waiver and implementing MOUs needed to be revised and updated.

On May 9, 2008, the Central Coast Water Board adopted an amendment to the Basin Plan that updated, clarified and strengthened criteria for onsite systems (Resolution No. R3-2008-0005). On March 20, 2009, the Water Board adopted an additional Basin Plan amendment establishing an Implementation Program as a conditional waiver of waste discharge requirements for onsite systems that meet Basin Plan criteria for siting, design, construction, and management (Resolution No. R3-2009-0012). Further

information regarding the 2008 and 2009 amendments is available for reference at:

http://www.waterboards.ca.gov/centralcoast/water_issues/programs/septics/index.shtml

The Central Coast Water Board forwarded the Basin Plan amendments and the administrative record to the State Water Board for its review and approval. During the State Water Board staff review of these amendments, State Water Board staff identified revisions and clarifications needed prior to State Water Board approval. The Executive Officer of the Central Coast Water Board withdrew the Basin Plan amendments from State Water Board consideration pending revisions to address the State Water Board staff's concerns. The Central Coast Water Board staff has revised the 2008 and 2009 amendments to address the State Water Board staff recommendations and the corresponding revisions are incorporated into the proposed amendment, Resolution No. R3-2011-0004.

Proposed Resolution - Resolution No. R3-2011-0004 (Attachment 1 to this staff report) adopts a revised Implementation Program into the Basin Plan under Water Code section 13242 that conditionally waives waste discharge requirements for discharges from onsite systems and authorizes the Water Board's Executive Officer to enroll and terminate enrollment in the Conditional Waiver. The proposed Implementation Program also would waive the requirement to submit reports of waste discharge for existing and certain new onsite wastewater systems. Proposed revisions are identified by underlining (additions) and strike-out (deletions). The Implementation Program has been reorganized in the Basin Plan with few substantive revisions. The reorganization and revisions are intended to clarify the criteria and conditions for dischargers to qualify for a waiver of waste discharge requirements and to ensure consistency in terminology, applicable dates, and Implementation Program components. Staff does not propose that the Water Board revisit the Basin Plan criteria for onsite systems in its entirety as the public has had several opportunities to comment on the 2008 and 2009 amendments and the Central Coast Water Board has adopted those amendments. The record for this action to amend the Basin Plan will be consolidated with the records for the May 2008 and March 2009 amendments for State Water Board review and approval. Interested persons will not need to resubmit comments on the parts of the amendment that are unchanged from the May 2008 and March 2009 amendments.

Proposed Resolution No. R3-2011-0004 amends the Basin Plan onsite wastewater system criteria and implementation program in two ways. First, sections are reorganized so that the implementation program (formerly Section VIII.D.3) is brought forward to the beginning of the onsite section (VIII.D.1). Second, increased detail is incorporated into the text to clarify terms, implementation practices, and requirements. Specific revisions are described below and highlighted (with underline and strikeout) on Attachment A of the proposed Resolution No. R3-2011-0004.

Section VIII.D. (beginning on Page 1 of Attachment A) – Definitions are added and/or expanded to clarifying text in the following sections.

Section VIII.D.1. (beginning on Page 2) – The Implementation Program is relocated from VIII.D.3 to Section VIII.D.1 and background information regarding the Water Board's expired onsite wastewater system waiver policy is added. Much of the added background information previously appeared in the Staff Report for Resolution R3-2009-0012. The section is relocated and renumbered.

Section VIII.D.1.a. (Page 5) – To increase clarity of the Implementation Program, the *eligibility criteria* and *conditions* for enrollment of existing onsite systems under the conditional waiver of waste discharge requirements and reports of waste discharge are more clearly identified. The proposed amendment continues the conditional waiver of waste discharge requirements and reports of waste discharge for existing onsite systems that are regulated by the local governing jurisdiction, and clarifies each condition to ensure that local regulation of existing onsite systems (and replacements of such systems) is consistent with Basin Plan requirements. Recommendations are carried over from the 2009 amendment, with editorial revisions to be sure optional (rather than mandatory) language is used for such recommendations. Specific section numbers are listed to clarify referenced Basin Plan criteria.

Section VIII.D.1.b. (beginning on Page 6) – Similarly (to the revisions described above), the *eligibility criteria* and *conditions* for enrollment in the waiver for new onsite systems regulated directly by the Water Board are clarified. Much of the added language previously appeared in the Staff Report for Resolution R3-2009-0012. The section is relocated and renumbered.

Section VIII.D.1.c. (beginning on Page 7) – Clarifying language is added regarding *eligibility criteria*, *conditions* and *prohibitions* for waiver of waste discharge requirements for onsite systems regulated by local governing jurisdictions. Revised language of these criteria, conditions and prohibitions is carried over from the Staff Report for Resolution No. R3-2009-0012, carried over from existing Water Code regulations, or added to clarify Basin Plan sections referenced. The section is relocated and renumbered.

Section VIII.D.2. (Page 8) – Section relocated and renumbered accordingly.

Section VIII.D.2.a. (beginning on Page 8) – Clarifying language is added and the section is relocated and renumbered.

Section VIII.D.2.b. (beginning on Page 9) – This section is relocated, renumbered and expanded with additional detail regarding onsite wastewater management plan content. Onsite wastewater management plans implemented by local governing jurisdictions are key to effective implementation of this conditional waiver for onsite systems, and ultimately water quality protection. This section describes the purpose and goals of comprehensive onsite management plans, consolidates plan components from other sections of the Basin Plan criteria, and adds detail regarding existing onsite management plan requirements.

Section VIII.D.2.c. (Page 11) – Section relocated and renumbered only.

Section VIII.D.3. (Page 11) – Section relocated and renumbered with minor edits.

Section VIII.D.3.a. (beginning on Page 11) – Section relocated and renumbered with minor edits.

Section VIII.D.3.b. (beginning on Page 13) – Section relocated and renumbered with minor edits.

Section VIII.D.3.c. (Page 15) – Section relocated and renumbered with minor edits.

Section VIII.D.3.d. (beginning on Page 15) – Section relocated and renumbered only.

Section VIII.D.3.e. (Page 16) – Section relocated and renumbered with minor edits.

Section VIII.D.3.f. (beginning on Page 16) – Section is relocated and renumbered with minor edits. The term “salts minimization plan” is replaced with “onsite wastewater management plan” as salts are likely to be a component issue of the broader management plan. It should be noted that in many areas, local governing jurisdictions will be taking a lead role in developing basin-wide salts and nutrient management plans required by the State Water Board’s 2009 Recycled Water Policy. If onsite wastewater systems are identified as a potential source of excess salts discharges, specific measures to reduce such discharges will be incorporated into those basin-wide plans.

Section VIII.D.3.g. (Page 17) – Renumbered only.

Section VIII.D.3.h. (beginning on Page 17) – Renumbered with minor edits.

In addition to the revisions described above, several sections refer to approval of an onsite wastewater management plan or granting exemptions by the Central Coast Water Board or its Executive Officer. In each instance, “or its Executive Officer” is deleted.

ENVIRONMENTAL SUMMARY

The proposed action is the adoption of a Basin Plan amendment to add an Onsite Wastewater System Implementation Program. The amendment consists of revisions to the Implementation Program adopted in Resolution No. R3-2009-0012. Summary of public participation; project scoping pursuant to the California Environmental Quality Act (CEQA) [California Public Resources Code §21083.9(a)(2)]; and evaluation of project alternatives is included in the Staff Report for Resolution No. R3-2009-0012. The Staff Report for Resolution No. R3-2009-0012 is available at:

http://www.waterboards.ca.gov/centralcoast/board_info/agendas/2009/mar/item_18/index.shtml

The Central Coast Water Board is the lead agency with respect to CEQA. The Secretary of Resources has certified the basin planning process as exempt from the CEQA requirement to prepare an environmental impact report or negative declaration. [PRC 21080.5; Cal. Code Regs., tit. 14, §15251(g)]. The State Water Board has adopted regulations to implement certified regulatory programs that require the regional boards to prepare substitute environmental documents, including a written report and an accompanying CEQA Environmental Checklist. (Cal. Code Regs., tit. 23, §3775 et seq.) The staff of the Central Coast Water Board prepared substitute environmental documents for Resolution No. R3-2008-0005 and Resolution No. R3-2009-0012. Consistent with CEQA Guidelines section 15162, the Central Coast Water Board is not required to prepare a subsequent or supplemental CEQA document because the revisions proposed in this action do not constitute substantial changes from the previously approved projects, do not involve new information, and would not result in any new or more significant environmental effects than those reviewed in the previous CEQA substitute environmental documents. [Cal. Code Regs. tit. 14, § 15162, subd. (a)]. This action today revises previously adopted Basin Plan amendments by reorganizing and clarifying, without significant substantive changes. The Substitute Environmental Documents for this action consist of:

- CEQA Reports for Basin Plan Amendments Regarding Onsite Wastewater Systems (Resolution No. R3-2008-0005 and No. R3-2009-0012), including associated CEQA Environmental Checklists
- Staff Reports for Resolution No. R3-2008-0005 and No. R3-2009-0012; including Supplemental Staff Reports, Comments and Response to Comments
- Resolution No. R3-2008-0005 and No. R3-2009-0012, including Basin Plan amendments adopted therein
- Staff Report for Resolution No. R3-2011-0004 (this staff report), including Comments and Response to Comments
- Resolution No. R3-2011-0004, including Basin Plan amendments adopted therein

A Notice of Public Hearing was published in newspapers with general circulation throughout the Central Coast Region. A Notice of Public Hearing, draft staff report, resolution, and text of proposed revisions to the Basin Plan were circulated to known interested parties throughout the Central Coast Region and posted on the Central Coast Water Board's website. Public comments regarding the proposed revisions to the onsite Implementation Program, and associated Water Board staff responses, are addressed below.

COMMENTS and RESPONSE TO COMMENTS

Many of the comments received pertain to issues addressed in the staff reports for Resolution No. R3-2008-0005 (criteria) and Resolution No. R3-2009-0012 (implementation program). Those Basin Plan Amendments were adopted by the Central Coast Water Board in 2008 and 2009, respectively, and are not presented for reconsideration here. For reference, the staff reports for these earlier actions are available at the following links:

http://www.waterboards.ca.gov/centralcoast/board_info/agendas/2008/may/item9/item9_staff_rpt.pdf (Resolution No. R3-2008-0005 updating onsite criteria)

http://www.waterboards.ca.gov/centralcoast/board_info/agendas/2009/mar/item_18/18_sfrpt.pdf (Resolution No. R3-2009-0012 updating onsite implementation program)

Cheryl Journey & Barry Tolle (San Luis Obispo County, Dept of Planning & Building) – San Luis Obispo County comments primarily reflect concern that the proposed action will create a large financial burden for the County and property owners. The County's specific comments are summarized below, and the comment letter included as Attachment 3A.

Staff response: Potential costs are addressed in the staff reports for Resolution No. R3-2008-0005 (pages 5, 6, 13, 19, 20, 23 and 14) and No. R3-2009-0012 (pages 6 and 7) at the web links above. The proposed resolution is clarifying in nature and is not anticipated to require additional expenditures by local permitting agencies or onsite system owners beyond those addressed in 2008 and 2009. No change to the proposed amendment is

recommended.

1. Section VIII.D.2.a requires the County to electronically transfer information from the Building Department to the Clerk's Office regarding pending enforcement actions. This would require expensive changes to the County's IT operating system. Also, it would be difficult to differentiate between abated and pending enforcement actions.

Staff response: The proposed amendment revises the specific term "prohibition" to a more general term "enforcement action," but remains unchanged with respect to the local agency's responsibility to disclose such actions to prospective property buyers. The language (existing and proposed) does not require disclosure of pending or proposed actions. However, when enforcement actions are formally adopted, then the local governing jurisdiction must ensure that the terms of such actions are entered into the County record, effectively notifying property buyers. The County may modify its IT system to facilitate implementation. However, IT system changes are not required by the Basin Plan. No change to the proposed amendment is recommended.

2. San Luis Obispo County is concerned about the requirement to survey and evaluate existing onsite systems on the basis it would be expensive, time-consuming, and the information is already available.

Staff response: The requirement to survey and evaluate existing onsite systems as part of an onsite wastewater management plan is unchanged from that adopted by the Central Coast Water Board in 2009 (Resolution No. R3-2009-0012). The commenter emphasizes that in San Luis Obispo County the information (survey and evaluation) has already been collected, if this is correct then it is not clear what would be expensive or time-consuming (as the work has already been done). No change recommended.

3. Site Suitability Prohibitions VIII.D.3.a.13 (one-acre minimum lot size) and VIII.D.3.a.17 (ability to maintain subsurface disposal) should be deleted. Design Prohibition VIII.D.3.b.21 also tries to limit housing to one lot per acre. Some areas in San Luis Obispo County support onsite disposal contrary to these prohibitions.

Staff response: Staff is not proposing to modify either prohibition, except to delete specific reference to Executive Officer approval of onsite management plans. San Luis Obispo County submitted the same comment regarding Resolution No. R3-2008-0005, addressed on page 18 of the 2008 staff report (at web link above). The County's comment also refers to a prohibition against locating onsite disposal on adjacent properties (with proper site restrictions and documentation). Such action is not specifically prohibited by the Basin Plan. No change recommended.

4. Design Recommendation VIII.D.3.b.4 does not make sense and requires clarification.

Staff response: Recommendation VIII.D.3.b.4 states "Application area used in design calculations should be no greater than defined in section VIII.D" (the Definitions at the beginning of the Chapter). The only change is that the descriptive language is moved from this particular recommendation to the definitions section. No alternative language is proposed by the County. No change recommended.

5. The proposed amendment will increase County operating costs and add to the cost of housing. This amendment calls for substantial protection yet does not offer economic compensation for the costs of the regulation.

Staff response: The comment does not identify any part of the proposed amendment that will increase County or housing costs, and appears to refer to 2008 and 2009 actions. Therefore, no response is necessary relative to this proposed resolution. However, the comment reflects an often voiced misconception regarding waste discharge and the cost of water quality protection. State law does not provide a “right” to discharge waste in a manner that will degrade waters of the State. The “privilege” to discharge waste is contingent upon that discharge not degrading water quality. These regulations (Basin Plan criteria for onsite systems) set out recommendations, requirements and prohibitions designed to ensure that those availing themselves of such privilege, do so in a manner that is adequately protective of waters of the State. There is no offer of compensation any more than compensation is offered for obeying traffic laws in order to protect public safety. Economic compensation (if such is to be discussed) is that of avoiding costly restoration of areas impacted by onsite systems, such as Los Osos. Throughout the Central Coast Region, the County of San Luis Obispo should be uniquely aware of the economic value of clarifying these onsite regulations. No change recommended.

Paul Jenzen (Santa Barbara County Public Health Department) – Mr. Jenzen recommends that we add a definition for fractures or fractured rock, and proposed the following definition: *Fractured rock is defined by hydraulic conductivity of 100 feet per day or greater.*

Staff response: The Basin Plan does not specifically define “fractures” but includes the prohibition “Onsite discharge is prohibited where soils or formations with channels, cracks, fractures, or percolations rates allow inadequately treated waste to surface or degrade water quality.” This prohibition was amended in 2008, but not materially changed. Though imprecise in terminology, the prohibition provides for the practical application that geologic conditions of any type (or hydraulic conductivity), must not allow waste to surface or degrade water quality. Fractures can fill and change the hydraulic conductivity, but the existing language will ensure ongoing water quality protection. No change recommended.

Russell Thompson (City of Atascadero) – Mr. Thompson describes the City of Atascadero’s municipal code requirements for onsite systems as robust; flexible; protective of health, safety, and state waters; and consistently applied. Notwithstanding the following comments, Mr. Thompson believes that the proposed amendment language is improved from that adopted in 2009. The City of Atascadero’s letter is included as Attachment 3B.

1. The proposed 2-acre minimum parcel size that would be required for adding secondary units conflicts with the City’s affordable housing programs and is not based upon reasonable science. Lot size should be based upon site-specific characteristics.

Staff response: The minimum lot size criterion is not proposed to be revised in this amendment. However, the City’s comment indicates that the City may not have been implementing the one-acre minimum lot size criteria adopted into the Basin Plan in 1983,

highlighting the need for clearly defined language. Staff agrees with the City's recommendation to evaluate site-specific characteristics, and such action is supported by the 2008, 2009, and proposed amendments, which provide for alternative lot sizes to be implemented through locally developed onsite management plans. Further discussion of this issue is included in the Staff Report for Resolution No. R3-2008-0005, response to the City of Atascadero's comment No. 6 (page 20 at the link above). No change recommended.

2. These regulations are not consistent with other Regional Board Basin Plans and unreasonably single out the Central Coast region, leading to higher construction costs and management costs.

Staff response: Each Regional Board (at its discretion) develops its Basin Plan independently of other regions, in order to address region-specific water quality issues, policies, programs and characteristics. It is not clear to what portion of the proposed amendment the comment refers. However, this Basin Plan amendment (as described above) will be reviewed by the State Water Board and Office of Administrative Law to ensure consistency with statewide laws and policies. No change recommended.

3. The dual leach field criteria will result in unnecessary site disturbance and removal of native trees.

Staff response: Design criteria VIII.D.3.b.1 carries over the recommendation for dual disposal fields that has been in the Basin Plan since 1983. Design criteria VIII.D.3.b.13 requires installation of dual disposal fields for community systems, same as required since 1983. The proposed amendment relocates but does not propose to change these 28 year old criteria. Again, the comments indicate the City of Atascadero may not have been consistently implementing the current Basin Plan criteria. No change recommended.

4. During these difficult budgetary times, there are no funds available to implement over-regulation to mitigate a problem that there is no evidence exists.

Staff response: The comment does not reflect a specific portion of the amendment or recommend changes. However, the proposed amendment develops an implementation program that will allow for reduced costs for dischargers by streamlining the regulatory process. No change recommended.

5. The City believes the Water Board has not adequately met CEQA requirements with respect to financial impacts on local agencies and homeowners.

Staff response: Again, the comment is not specific regarding potential costs. However, CEQA compliance is addressed above (beginning on page 5) and in the Staff Reports for Resolution No. R3-2008-0005 and R3-2009-0012 (at the links above). No change to the proposed amendment is recommended.

6. The City recommends inserting the word "discharger" on page 4 (paragraph 3, line 9) to clarify who is being compelled to comply.

Staff response: Since the paragraph refers to MOU between local governing jurisdictions and the Water Board, the statement could refer to onsite system owners or local agencies. Accordingly no change is recommended.

7. In order to allow flexibility during MOU development, the last sentence of page 4, paragraph 5 should be revised to read (City's additions in bold, deletions as strikeout):

*Individual memoranda of understanding shall **be developed in cooperation with local governing jurisdictions in order to protect surface and groundwater from onsite wastewater system discharges.** ~~incorporate additional measures to be taken by the local governing jurisdiction to identify and address areas of degraded groundwater or surface water quality, where onsite wastewater systems are a potential source of pollution.~~*

The Water Board cannot compel local agencies or individuals to investigate or remedy ground or surface water impacts, except where they are the land owner or discharger. The requirement is an unfunded mandate, and does not belong in the section discussing the implementation. The City is under no obligation to enter into MOU with the Water Board, and is not responsible for investigating or monitoring onsite wastewater discharges. The last portion of the sentence "where onsite systems are a potential source of pollution" could be interpreted to mean every installed onsite system. Again, this would be an unfunded mandate for the City to investigate every onsite system.

Staff response: The proposed language is specifically drafted to document and support appropriate conditions for a waiver of waste discharge requirements. The language is intentionally located in the section describing the implementation program, as it describes why and how this waiver is appropriately conditioned to meet the requirements of state law. Specific requirements are located in later sections.

The City is correct in that the Water Board cannot compel local agencies to enter into MOU to facilitate the waivers described by this section. If the City of Atascadero chooses not to enter into MOU with the Water Board, then owners of onsite systems (or potential systems) will need to apply directly to the Water Board and obtain duplicate authorization (permits from City and Water Board). This will result in additional permit fees and time delays that this implementation program seeks to prevent. Additionally, if the City chooses not to implement an onsite management program, then applicants will also bear the burden individually to demonstrate each proposed system supports authorization. Alternatives to the Basin Plan criteria (lot size, setbacks, designs, etc.) based upon local conditions would only be allowed after each discharger demonstrates such action is consistent with water quality protection. Information available to the Water Board indicates that local agencies, such as the City, provide onsite wastewater management far more cost-effectively than could individual dischargers. In fact, as described in the staff report above and for Resolution No. R3-2009-0012, this implementation program (conditional waiver) is developed specifically to save time and money by streamlining discharger compliance with state law and coordinating oversight responsibilities. During the public hearing for Resolution No. R3-2009-0012, the City of Atascadero expressed its support for the implementation program. No change is recommended.

8. Recommendation VIII.D.2.a.2 does not clearly state who will conduct the public education, the City recommends the Water Board conduct public education programs to provide property owners with operation and maintenance guidelines.

Staff response: The recommendation appears under the section heading “Local Governing Jurisdiction Actions,” and as with all of the recommendations, requirements and prohibitions in section VIII.D.2.a through section VIII.D.2.c refers to local governing jurisdiction actions. No change recommended.

9. The City is unclear of what is meant by “local onsite governing jurisdictions” (page 11, column 2, paragraph 3). The City is also unclear why septage is referenced in the section regarding criteria for new systems.

Staff response: Staff agrees with the suggested edit and “onsite” is deleted from the phrase; the edited version appears in the agenda package. Septage (along with other general issues) is referenced in the descriptive language preceding and supporting the criteria for new systems. The descriptive language briefly summarizes why the criteria are specified. No change recommended.

10. The apparent conflict between Recommendation VIII.D.3.f.4 and Prohibition VIII.D.3.f.5 should be resolved and/or clarified.

Staff response: Neither of these criteria are proposed to be revised in this amendment. However, for clarity, the recommendation against discharging from self-regenerating water softeners to onsite systems is carried over from the Basin Plan (existing since 1983). This recommendation is (as recommendations throughout the chapter) voluntary. The prohibition states that self-regenerating water softener discharge is prohibited unless consistent with an onsite wastewater management plan. The prohibition is (as prohibitions throughout the chapter) mandatory, and includes conditions under which self-regenerating water softener discharge may be accommodated (with local onsite management plans). In light of the City of Atascadero’s comments (No. 7 above, and detailed on page 3 of Attachment 3B), the City’s failure to implement an onsite management plan would mean that new onsite systems within Atascadero would be unable to legally receive self-regenerating water softener brine (unless specific exemption were granted by the Water Board). Cumulative impacts and specific characteristics could/should be considered when addressing salts disposal; such would be a component of a locally implemented onsite management plan. No change recommended.

11. The City of Atascadero’s summarizes its objection to the 2008, 2009 and 2011 amendments to the Basin Plan onsite criteria and implementation program. The City believes the amendments to be unwarranted and infeasible. The City also comments that the amendments will have economic repercussions, dire consequences on core health and safety programs, and basic needs for families. The City requests that the Water Board work with local agencies to develop an alternative program.

Staff response: The summary comment, in very general terms, reiterates the City’s prior comments from this letter, but directly conflicts with its earlier statement of support for the 2009 amendment. No specific changes to this amendment are identified by the City. Staff agrees that working with local agencies is vital to on-going effective implementation of the onsite criteria and particularly the onsite implementation program. As the initial

step of the process of updating the Basin Plan criteria, Water Board staff invited representatives from local governing jurisdictions throughout the Central Coast Region to participate in early draft document development. Local agency representatives (including David Athey from the City of Atascadero) met with Water Board staff and submitted detailed comments and recommendations, most of which were incorporated into the amendments adopted by the Central Coast Water Board in 2008 and 2009. As a former Water Board staff engineer and an independent contractor, Mr. Athey's participation in developing the 2008 amendment was particularly helpful, as his experience includes local agency, design contractor, and Water Board perspectives. In summary, the City's letter did not provide recommended changes to the amendment being considered today.

Tom O'Malley (City of Atascadero) – As mayor of the City of Atascadero, Mr. O'Malley submitted comments in a letter to Governor Brown and provided a copy to the Central Coast Water Board. Mr. O'Malley's comments are summarized below and the letter is included as Attachment 3C.

1. Mr. O'Malley describes the Water Board process as unresponsive, and states that the City's public records requests have not received adequate response.

Staff response: The City of Atascadero (and Mr. O'Malley in particular) has actively participated throughout the 2008, 2009 and current Basin Plan amendment process. As described above (response to Russell Thompson comment No. 11), City of Atascadero staff have participated in and contributed to this process from its inception. In addition to Water Board staff's outreach meetings, public workshops, and formal Water Board hearings, Mr. O'Malley contacted Water Board staff member Sorrel Marks, requesting an individual meeting, which Ms Marks willingly accommodated. Mr. O'Malley contacted Ms. Marks a second time requesting an individual meeting, to which she agreed; however, he failed to follow through with a time/date. After one of the public workshops, Water Board staff (Sorrel Marks and Harvey Packard) invited a number of Atascadero residents, council and planning commission members to remain for a small group Q/A session, which continued until each participants' questions had been thoroughly addressed (approximately 90 minutes). In short, the Central Coast Water Board and its staff have been extremely responsive and accommodating to participation by Mr. O'Malley, City staff and his constituents in Atascadero.

On February 16, 2011, David Athey (Deputy Director of Public Works for the City of Atascadero) requested correspondence from the State Water Board staff to the Central Coast Water Board staff regarding Resolution No. R3-2009-0012. On February 23, Water Board staff member Sorrel Marks responded (via email) to Mr. Athey's email request, informing him that the correspondence would be provided as soon as it had been reviewed to determine any that should be withheld due to attorney-client privilege. On March 1, 2011, Water Board counsel Frances McChesney corresponded with Mr. Athey with similar information, and on March 14, 2011, transmitted those documents. Subsequently, additional email messages from the City Clerk indicate the City had received the transmitted records but believed that the Water Board staff had not been forthcoming with public records. Atascadero Public Works Director also confirmed by telephone that the transmitted records were received. Summary of correspondence regarding this public records request is included at Attachment 3D. Water Board staff responded to the public records request in accordance with the law.

2. The amendments will have wide ranging impacts and costs that have not been addressed. The proposed amendment will create unfunded mandates, such as: development of groundwater and surface water investigations and remediation plan; increase septic system data management, inspection and code enforcement; formation of onsite wastewater management districts; development of onsite wastewater management plan; and others. These requirements will be costly to the City, and address water quality problems that we believe do not exist. The current Basin Plan has been effectively implemented for 28 years.

Staff response: The comment does not identify to which of the currently proposed changes it refers; however, environmental impacts and costs are described in the staff report above (beginning on page 5). Mr. O'Malley objects to formation of onsite management districts, yet the proposed language carries forth the 28-yr old Basin Plan language to "consider" onsite management districts. Mr. O'Malley's comments, and those submitted by the City in 2008, claim the City has been implementing the Basin Plan criteria. Yet objections are primarily about existing requirements, indicating they may not be consistently implemented by the City. Based upon conversations with the City's Deputy Public Works Director David Athey, Water Board staff believes Atascadero has already developed most of the components of an effective onsite management plan, and could, in a very cost-effective manner, compile its programs and policies into a locally effective plan. For example, the most problematic areas for onsite systems in Atascadero (densely developed and with clay soils) are sewerred. Impacts to Atascadero Lake caused by surrounding onsite discharges have been resolved by connecting to the sewer system. This does not mean that sewerred is the only means of resolving onsite problems, it is simply the means implemented in these particular cases. The point is that these examples are typical of onsite management plans (identify the problem and implement an effective solution). The Basin Plan requirements do not call for the City to develop or implement any unnecessary or redundant actions, it calls for the City to implement those actions most effective in its community-specific circumstances.

As described in the response to San Luis Obispo County comment No. 5, Water Board staff does not believe that economic or water quality resources can or will be sustained by failing to properly manage onsite discharges. The Basin Plan criteria and implementation program lay out general protective measures as well as flexibility to accommodate local characteristics through alternatives implemented in onsite management plans. In this manner, water quality protection can be tailored to each area based upon local characteristics.

The proposed amendment does not create an unfunded mandate. As explained in response to comment No. 7 above, the Water Board cannot compel the City to enter into an MOU with the Water Board, nor prepare an onsite wastewater management plan. If a local governing agency chooses not to enter into an MOU or prepare an onsite wastewater management plan, then the waiver of waste discharge requirements would not apply to those new dischargers, resulting in significant duplication.

Jim Irving (California Association of Realtors) – Mr. Irving's comments and staff responses are summarized below, his letter is included as Attachment 3E.

1. Requirements of Section VIII.D.2.a (Disclosure & Compliance of Existing Systems) will require costly development of a system to transfer information between County departments. Also, such recorded information may not be accurate or up-to-date and

could represent a “cloud” on the title of homes for sale. Proper due diligence during a buyer’s inspection should be sufficient.

Staff response: See response to San Luis Obispo County comment No. 1, above. No change recommended.

2. Many areas throughout the County currently allow secondary dwellings on one acre. Limiting such units would require the county to revise its Land Use Ordinance and Area Plans, and could affect multi-generational family living.

Staff response: See response to San Luis Obispo County comment No. 3. No change recommended.

3. Section VIII.D.3.e recommends onsite system inspection every three to five years. This will add additional and unnecessary expense to the homeowner unless it is left to individuals to monitor their own system. It seems logical that the homeowner, most likely to be impacted by failure, be required to monitor for accumulation of solids in the tank. Do the regulations require someone else to perform the inspections.

Staff response: The inspections are recommended (discretionary) and do not require that they be performed by anyone other than the homeowner. This section is not proposed to be revised in this amendment. No change recommended.

4. Having maintenance records available upon request is an admirable idea, but not practical. If a seller could not find maintenance records, would it delay closing? Who will enforce this requirement and how will it apply to foreclosed properties?

Staff response: This section is not proposed to be revised in this amendment. However, onsite system maintenance records at the time of sale are not likely to be problematic since typically the system is pumped and/or inspected as part of the sale process. Records are more important when the system is not conventional (an advanced treatment system). In either case, if records are not available, then the system owner would need to inspect the system to evaluate maintenance needs. As with all of the criteria for new systems, they can be enforced by either the Water Board (as conditions of a waiver) or the local governing jurisdiction through its onsite management plan. No change recommended.

5. Garbage grinders should not be used. How will this be enforced?

Staff response: This 28-yr old recommendation is not proposed to be changed. It is a recommendation (discretionary - good practice to prevent clogging the tank) and enforcement is not foreseen.

6. I understand these requirements apply only to new construction, can we be assured they will not be applied to onsite system replacements?

Staff response: Mr. Irving’s understanding is incorrect. Portions of the Basin Plan criteria for onsite systems (specifically VIII.D.2) apply to existing systems, and how those systems are managed by the local governing jurisdiction to ensure problems are identified and corrected. Section VIII.D.2.a.6 calls for repaired systems to be brought into substantial conformance with the Basin Plan (to the greatest extent practicable) or

locally implemented onsite management plan. This requirement intentionally includes flexibility to address site-specific limitations and is retained in the proposed amendment. No change recommended.

7. The regulations will impose unnecessary financial burden on homeowners, and will limit flexibility needed to provide additional housing as our population grows.

Staff response: See response to San Luis Obispo County comment No. 3. No change recommended.

Heather Roda (Atascadero resident & real estate broker) – Ms. Roda states her disapproval of the proposed regulations based upon lot size limitations, low failure rate, and required onsite system monitoring. Ms. Roda believes these requirements will devalue property, and asks that the Water Board not approve the proposed amendments. Ms. Roda's comments are included as Attachment 3F. Similar or identical comments were submitted by the follow individuals.

Sharon George (Atascadero resident & real estate broker) – 3G

Kyler Hamann (Atascadero resident) – 3H

Dutch Nichols (Atascadero resident & real estate broker) – 3I

Sue Byrd (Atascadero resident & real estate broker) – 3J

Roger Hanson (Atascadero resident & real estate loan officer) – 3K

Mark McConnell (Atascadero resident & real estate broker) – 3L

Mary Arnold (Atascadero resident & real estate broker) – 3M

Joanie Williams (Atascadero resident) – 3N

Beverly Booth (Atascadero resident) – 3O

Barbara McCormick – 3P

Jeannie Malik (Atascadero resident & real estate marketing manager) – 3Q

Aaron Sherer (Atascadero resident) – 3R

John Hawley (Atascadero resident) – 3S

Cynthia Workman (Atascadero resident) – 3T

Hazel Boyd (Atascadero resident & realtor) – 3U

Tim McCutcheon (Atascadero resident & real estate broker) – 3V

Gina Salazar (Atascadero resident) – 3W

Claude D (Atascadero resident) – 3X

Sue Kretzu (Atascadero property owner & realtor) – 3Y

Terry Miles (real estate broker) – 3Z

Glenn Horn (Atascadero homeowner & taxpayer) – 3AA

Staff response: These comments are similar (or identical) to a portion of those submitted by Mr. O'Malley and addressed above. Specifically, the issues highlighted by Ms. Roda and others (such as lot size and onsite system monitoring) are not proposed to be revised in this amendment and are addressed in the staff report for Resolution No. R3-2008-0005 (at the link above). No change recommended.

Suzanne Wigand – Ms. Wigand's comments express opposition to the proposed amendments, but are unclear regarding specifics. Ms. Wigand expresses her belief that if there were a problem with septic, city or county governments would have been employing a gradual move away from their use and residents would have been notified long ago. Ms. Wigand's letter is included as Attachment 3BB.

Staff response: It is not clear what portions of the amendment Ms. Wignad opposes or what facts form the basis for her belief that if a problem exists she would have been notified. However, the proposed onsite implementation program describes a process for just such action (identifying/resolving existing problems and preventing future problems from onsite discharges). No change recommended.

Jolene Horn – Ms. Horn requests that her 2008 comment letters be re-read, and resubmitted her comment letter on the 2008 amendments. Based upon the documents in the record, the pages submitted by Ms. Horn (marked 2008) were not submitted to the Central Coast Water Board and appear to have been prepared for some other audience. However, the submitted pages are included with Ms. Horn's letter as Attachment 3CC.

1. Is the Water Board trying to revive supposed concern over septic systems in Atascadero?

Staff response: The purpose of these region-wide Basin Plan amendments is described in the staff report (beginning on page 1). Onsite systems in Atascadero are of somewhat less concern than other portions of the region since the City has resolved some of the most problematic areas by connecting them to the community sewer system. However, some areas in and around Atascadero are problematic for onsite disposal (steep slopes for example) and the Basin Plan criteria are as applicable there as anywhere else in the region. The key component of the proposed amendment is renewing the waiver for onsite systems that expired in 2004, without with each onsite discharger, in accordance with state law, must submit a report of waste discharge (application) for formal authorization.

2. Has the Water Board done an EIR that shows there is a problem with septic systems in Atascadero?

Staff response: No, the Water Board has not and is not required to prepare an EIR regarding septic systems in Atascadero. The CEQA compliance for the proposed amendment is described on page 5 and 6, above.

3. Is there evidence that the Basin Plan needs revising or that it has been enforced?

Staff response: As described in response to Ms. Horn's comment No. 1, the purpose or need to revise the Basin Plan is described in the staff report beginning on page 1, additional detail was presented in the staff reports for the 2008 and 2009 amendments (links above). With respect to enforcement of the Basin Plan criteria, consistent compliance or enforcement has been difficult due (in part) to imprecise language. Much of the 2008 amendment focused on clarifying imprecise requirements, in order to facilitate local and Water Board implementation of such requirements in a consistent and effective manner. No change recommended.

RECOMMENDATION

Adopt Resolution No. R3-2011-0004 as proposed and direct the Executive Officer to forward the resolution and corresponding administrative record to the State Water Board for review and approval.

ATTACHMENTS

1. Proposed Resolution No. R3-2011-0004 with Attachment
 - A. Revised Basin Plan Chapter 4 (onsite sections only)
2. Notice of Public Hearing
3. Comment letters
 - A. Cheryl Journey & Barry Tolle, San Luis Obispo County
 - B. Russell Thompson, City of Atascadero
 - C. Tom O'Malley, Mayor of Atascadero
 - D. Messages regarding Atascadero's Public Records Request
 - E. Jim Irving, California Association of Realtors
 - F. Heather Roda
 - G. Sharon George
 - H. Kyler Hamann
 - I. Dutch Nichols
 - J. Sue Byrd
 - K. Roger Hanson
 - L. Mark McConnell
 - M. Mary Arnold
 - N. Joanie Williams
 - O. Beverly Booth
 - P. Barbara McCormick
 - Q. Jeannie Malik
 - R. Aaron Sherer
 - S. John Hawley
 - T. Cynthia Workman
 - U. Hazel Boyd
 - V. Tim McCutcheon
 - W. Gina Salazar
 - X. Claude D
 - Y. Sue Kretzu
 - Z. Terry Miles
 - AA. Glenn Horn
 - BB. Suzanne Wigand
 - CC. Jolene Horn