RESOLUTION - ACTION REQUESTED 2012-227

MEETING: May 1, 2012

TO: The Board of Supervisors

FROM: Charles Mosher, Health Officer

RE: AB 885 Sewage Disposal Regulation Status

RECOMMENDATION AND JUSTIFICATION:
Authorize the Chairman of the Board of Supervisors to sign a letter regarding Assembly Bill (AB) 885 - State Wide Sewage Disposal Regulations. Please see the attached staff report on the status of AB 885. The Health Department will present a draft letter for the Board to review and approve.

BACKGROUND AND HISTORY OF BOARD ACTIONS:
The Health Department has presented updates to the board as the State has moved through the process of adopting standards for onsite sewage disposal (septic) systems. The State has now released their FINAL DRAFT Policy.

ALTERNATIVES AND CONSEQUENCES OF NEGATIVE ACTION:
Do not authorize requested action and Mariposa County's comments will not be included in the final adopted policy.

ATTACHMENTS:
AB 885 State Wide Sewage Disposal Regulations Status (PDF)
OWTS Letter (PDF)

CAO RECOMMENDATION
Requested Action Recommended

[Signature]
Rick Benson, County Administrator 5/26/12
Resolution - Action Requested 2014-227

RESULT: ADOPTED AS AMENDED [UNANIMOUS]
MOVER: Lee Stetson, District I Supervisor
SECONDER: Jim Allen, District V Supervisor
AYES: Stetson, Turpin, Bibby, Cann, Allen
TO: DR. MOSHER, Health Officer
FROM: MARGIE WILLIAMS, Clerk of the Board

SUBJECT: Authorize the Chairman of the Board of Supervisors to Sign a Letter Regarding Assembly Bill 885 - State Wide Sewage Disposal Regulations.

RES. 12-227

THE BOARD OF SUPERVISORS OF MARIPOSA COUNTY, CALIFORNIA

ADOPTED THIS Order on May 1, 2012

ACTION AND VOTE:

4. Health RES-2012-227
   Authorize the Chairman of the Board of Supervisors to Sign a Letter Regarding Assembly Bill 885 - State Wide Sewage Disposal Regulations.
   Discussion was held with Dr. Mosher/Health Officer and Dave Conway/Environmental Health Manager.
   The Board approved the letter regarding AB 885 with the deletion of "project specific environmental review" to leave decisions to the local review in section 7.8.
   Board of Supervisors May 1, 2012 Page 7

RESULT: ADOPTED AS AMENDED [UNANIMOUS]
MOVER: Lee Stetson, District I Supervisor
SECONDER: Jim Allen, District V Supervisor
AYES: Stetson, Turpin, Bibby, Cann, Allen

Cc: File
April 20, 2012

TO: Board of Supervisors

FROM: Charles B. Mosher, M.D., MPH, Health Officer

SUBJECT: AB 885 State Wide Sewage Disposal Regulation Status

BACKGROUND:

The Health Department has presented updates to the board as the State has moved through the process of adopting standards for onsite sewage disposal (septic) systems. The State has now released their FINAL DRAFT Policy.

AB 885 was first introduced by Assembly member Jackson in February 1999. On September 27, 2000 the governor signed into law AB 885 amending sections of the water code and requiring the State Water Board to adopt regulations or standards for the permitting and operation of onsite sewage disposal systems in the State of California. Regulations were supposed to have been adopted on or before January 1, 2004.

On August 3, 2005 the Mariposa County Health Department provided comments for the EIR and draft regulations in a ten page document sent to the State Water Resources Control Board (SWRCB). In 2008 the Water Board held a number of hearings, one of which was held in Mariposa County, to solicit input from the general public regarding the draft regulations. That version of the regulations included expensive and unnecessary testing of both septic systems and private water wells. That version of the proposed regulations was eventually withdrawn and a committee of Environmental Health, Public Health and Water Board Officials was formed to come up with a new approach. Dave Conway volunteered to be a member of this committee. Since February 2009 the committee met several times either via telephone conference or in person in Sacramento to develop a framework and details leading to the final draft policy.
ANALYSIS:

In general the frame work has followed the recommendation of the above-mentioned committee, although it has grown from an original three tier concept into the current five tier concept. The original concept was to have a three tier system where tier one were the standards for conventional onsite sewage disposal systems, tier two were the standards for those systems which could not meet the criteria for standard systems in tier one, i.e. engineered systems and tier three standards were to address the waterway pollution that AB 885 was originally designed to correct. Throughout the process Dave Conway and other committee members reminded the Water Board Staff that the local county Health Departments were the best source of information and the agencies best equipped with the knowledge and expertise to regulate onsite sewage disposal systems. Eventually the Water Board took those comments to heart modified the tiers.

**Tier 1** contains a set of basic standards for onsite sewage disposal systems that can be utilized anywhere in the state. If a County wants to they can use **Tier 1** standards without additional local ordinances, rules or policies.

**Tier 2** turned into a Local Agency Onsite Wastewater Treatment System Management Program. Under **Tier 2** the local county can have their own standards. Local Agencies will have to submit their program to the Regional Water Quality Control Board (RWQCB) for approval. Similar to the current practice where local agencies submitted their ordinances and rules and regulations to the RWQCB and entered into a MOU with the RWQCB allowing the local authority to oversee onsite sewage disposal systems in their county. The Health Department has not been able to locate any MOU between Mariposa County and the RWQCB.

**Tier 3** remained, standards for sewage disposal systems in areas of polluted water ways. Additionally Tier zero and Tier four were added.

**Tier 4** addresses systems that are in a state of failure requiring replacement or repair to return them to a tier one, tier two, or tier three approved status.

**Tier zero** exempts most existing systems provided that they are functioning properly. Throughout the process Dave Conway continued to comment on proposed requirements within the individual tiers in an attempt to steer the final draft regulations to be in line with what Mariposa County currently does. In many cases Mariposa County's current process is the same or exceed the requirements in tier one. The exception being how we calculate the required square footage for leach fields.

The Health Department is preparing detailed comments to be submitted to the SWRCB at the hearing on May 2nd in Sacramento.

RECOMMENDATION:

Authorize Board Chair to work with Health Department to prepare a comment letter representing Mariposa County's position on the Draft Policy.
May 1, 2012

Jeanine Townsend, Clerk to the Board
State Water Resources Control Board
1001 I Street, 24th Floor
Sacramento, CA 95814

RE: Letter of Comment on Proposed OWTS Policy

Honorable Members of the Board:

Thank you for providing us with the opportunity to comment on the Draft Policy for Siting Design, Operation, and Management of Onsite Wastewater Treatment Systems (OWTS Policy) to implement Assembly Bill (AB) 885. We have reviewed the OWTS Policy and give credit to your Board for your efforts to draft statewide standards that incorporate many of the comments made on the draft regulations released in October 2011, including homeowner financial assistance which our letter dated Nov 8, 2011 urged you to do. However, even though the proposed OWTS Policy is an improvement over the previous versions, we have some serious concerns as follows:

1. The policy still does not provide clear, unambiguous direction to the Regional Water Quality Control boards regarding the approval of Tier 2 Local Management Programs. We urge the State Water Resource Control Board to direct Regional Water Quality Control Boards to refrain from implementing more stringent standards that are applicable “across the board,” rather than allowing local programs (especially in areas with no impaired waters) to continue their successful program implementation. Tier 1 standards should not be used to gauge the effectiveness of a Tier 2 plan.

2. The proposed OWTS Policy mandates that the permitting agency conduct, collect, store and transfer data to the Regional Water Boards. This requirement will create a financial hardship on the citizens of our County. The amount of data and man hours involved with such a task is unknown. If our County is required to complete the reporting, we will have little choice but to recover our
costs through new fees, which will be a burden on our constituents. Due to the current economic situation, this is simply not the time to impose new fees.

3. There are several areas in the Tier 1 section of the policy that refer to other allowances if there is an approved Tier 2 program. The fact that some sections have this language and others don’t could be interpreted to mean only the sections that have this language are allowed to deviate from the Tier 1 standards. This needs to be corrected by removing all references to Tier 2 and or a local management plan from Tier 1 and adding a clear, unambiguous section that says Tier 1 Standards do not apply to a Tier 2 program unless the local agency specifically includes them in their program.

Policy Section Specific Comments:

Definitions: For the most part the definitions are acceptable; however, the definition for domestic waste water includes, in the last sentence, “domestic waste water does not include waste water from industrial process or RV dump stations”. Many rural homeowners have dump stations attached to their residential OWTS. The definition should include an exception for these incidental dump stations. (Exception: Private RV dump stations that provide incidental flows to an OWTS may be allowed by the Regional Board or Local Area Management Program Agency in Tier 0, Tier 1 or Tier 2.)

Section 4.5 Requires the Regional Water Quality Control Board to accept and consider complaints regarding local agencies management programs from any person; however, the section does not provide adequate detail regarding what types of issues are worthy of revoking an existing program and should include some language to avoid landlord tenant disputes resulting in actions being taken against an agency program.

Section 6.2 states a Regional Water Board or local agency may deny coverage under this policy to any onsite waste water treatment system that is not in compliance with section 6.1. However, section 6.2.2 takes the local agency out of the loop in determining if coverage is allowed and should include language that keeps the local agency involved. Something like, “after consultation with the local agency”.

Section 7.3 states a site evaluation shall determine the anticipated highest level of ground water within the disposal field …… it is not normal industry practice to determine the anticipated highest level of ground water, instead, what is normally done is to determine if the highest anticipated level of ground water is within five feet of the bottom of the proposed disposal field. The language should be changed to reflect this issue.

Section 7.5.9 requires a setback of 400 feet from the high water mark of a reservoir, lake or flowing water body, including all tributaries, when they are within 1200 feet of a public water systems surface water intake and within the catchment of the drainage. This will require us to know the exact location of surface water intakes. Since many rural counties do not regulate water
systems and CDPH does not share this information because of security concerns against terrorist attacks some language changes are prudent. **Recommend adding:** CDPH drinking water division shall provide local agencies with exact coordinates of water intakes within the local agencies jurisdiction. Local agencies shall treat the location coordinates as confidential information.

**Section 7.5.10** has the same issue however; the distance that we must look is between 1200 and 2500 feet. **Recommend adding:** CDPH drinking water division shall provide local agencies with exact coordinates of water intakes within the local agencies jurisdiction. Local agencies shall treat the location coordinates as confidential information.

**Sections 7.6.1 thru 7.6.4** require us to notify and provide copies of the permit application for OWTS’s within 1200 ft of the water intake to the owner of the public water systems and CDPH Drinking Water Division and allows for a comment period; however, because septic permits are ministerial permits we can not hold permits and/or add discretionary conditions to the permit. Also section 7.6.2 details components of the application that are not otherwise required. **Recommend deleting section 7.6.2 thru 7.6.4.**

**Section 7.7** uses a 25% slope as the greatest slope an onsite sewage disposal can be installed under tier 1. This is an arbitrary decision by the Water Board based on equipment operation parameters. 30% is common in most local agency programs and is the standard typically used to avoid breakout which is the real public health and water quality issue. **Recommend changing this to 30%.**

**Section 7.8** usurps the County’s local land use authority. It specifically limits density for new subdivisions using Tier 1, 7.8 states, “The average density for any subdivision of property occurring after the effective date of this policy and implemented under Tier 1 shall not exceed 1 single family dwelling unit or its equivalent, per 2.5 acres for those units that rely on OWTS.” This section usurps local land use policy and fails to recognize that land divisions procedures and density are determined in the County’s general plan which is supported by an EIR which specifically addresses density of dwellings with respect to onsite sewage disposal systems. **Recommend adding language “unless there is an environmental review document supporting greater density.”**

**Section 9.2.11** requires a local agency to identify procedures for notifying the owner of a public water system prior to issuing an installation or repair permit if the OWTS is within the 1200 feet of the intake for surface water treatment plant. Again without exact coordinates as previously discussed comments for Section 7.5.9 above we can not implement this section.
In closing, while we acknowledge that the proposed OWTS Policy does provide a more reasonable overall approach to AB 885 implementation in comparison to previous proposals; it still contains requirements that are costly and overly burdensome to property owners, and to the County as the local implementing agency. Therefore, Mariposa County opposes adoption and implementation of the OWTS Policy as currently presented and requests your Board consider our comments and concerns in reviewing the proposed policy.

Sincerely,

Janet Bibby, Chair
Mariposa County Board of Supervisors

cc: California State Association of Counties (CSAC)
    Regional Council of Rural Counties (RCRC)