

REPORT TO CITY COUNCIL

DATE: FEBRUARY 9, 2005

TO: HONORABLE MAYOR AND MEMBERS OF THE CITY COUNCIL

FROM: GREG RAMIREZ, CITY MANAGER

BY: KEN BERKMAN, CITY ENGINEER

SUBJECT: CONSIDERATION OF A MEMORANDUM OF UNDERSTANDING WITH THE REGIONAL WATER QUALITY CONTROL BOARD, LOS ANGELES, TO EXTEND WAIVERS OF WASTE DISCHARGE REQUIREMENTS FOR SINGLE-FAMILY RESIDENCE ONSITE WASTEWATER TREATMENT (SEPTIC) SYSTEMS

In 1952, the Regional Water Quality Control Board (Regional Board) adopted a resolution that waived the necessity for homeowners to obtain a Regional Board Waste Discharge Requirement (WDRs) permit for Onsite Wastewater Treatment Systems (OWTSs, henceforth "septics"). According to the California Water Code (CWC), the Regional Board was required to review and renew these waivers by June 30, 2004. At the Regional Board meeting on June 10, 2004, the waiver deadline was extended to October 8, 2004, by which time those cities desiring to extend the waivers needed to submit a Memorandum of Understanding (MOU) to the Regional Board for its consideration.

The Regional Board held a public hearing September 2, 2004, at which it adopted new Septic WDRs for the express purpose of having a permitting system in place that can be used as an alternative to local agency permitting through a MOU. Regional Board staff has informed the City Engineer that the City can still enter the MOU at this time; therefore, in order to provide a continuation of the waiver for residential septic, staff is recommending the City enter into the attached MOU with the Regional Board. If the City does not enter into the MOU with the Regional Board, then the residents will be subject to the Regional Board WDR permit process for installation of new or improvements to existing septic.

This measure by the Regional Board is one of three current regulations being developed and/or required that pertain to septic systems.

Assembly Bill 885

AB 885 was prepared to update septic regulations and was passed in September 2000. This bill requires the State Water Resources Control Board (State Board), in consultation with the State Department of Health Services, California Coastal Commission, counties and cities, to adopt specified regulations or standards for the permitting and operation of septic that meet certain requirements. These statewide standards were to become effective January 1, 2004; however,

they are still undergoing the stakeholder review and revision process. As it appears now, the standard developed against this bill will ultimately be the guidelines by which septics will be regulated.

Malibu Creek Bacteria Total Maximum Daily Load (TMDL)

At its December 13, 2004 public hearing, which was a continuation of the public hearing held at the Regional Board's downtown headquarters on November 4, 2004, the Regional Board approved the Tentative Bacteria TMDL for the Malibu Creek Watershed. This TMDL now must be approved by the State Board, the State Office of Administrative Law (OAL) and the US Environmental Protection Agency (EPA).

There are regulations related to septics in this order as well. A report to the Regional Board identifying "high-risk areas" will be required within one year of approval of the TMDL by the OAL and EPA. These areas are to be identified via groundwater monitoring or hydrogeologic modeling. The City will work with the LACDPW, as the lead agency, and our fellow watershed cities to ensure compliance with this TMDL, as we do with all water quality issues within our watershed.

Septic MOU

In general, the MOU maintains status-quo by authorizing the City to remain the agency responsible for enforcement of all applicable Code requirements for the siting, design, approval, installation, operation, maintenance and monitoring of residential onsite wastewater treatment systems for the next 10 years.

The City will also be required to submit a complete inventory of all existing septics within 10 years, with a first inventory review by the Regional Board due in 5 years. All components of the required inventory are based upon available data and do not require access onto private property. City staff is currently developing an agreement with the Los Angeles County Department of Health Services (LACDHS) and the City of Calabasas to complete this task. LACDHS is preparing a grant application to the Santa Monica Bay Restoration Commission to fund this effort.

The City is also required to amend its Municipal Code following the effective date of any statewide standards adopted pursuant to sections 13290 and 13291 of the CWC, if necessary.

In addition, the MOU requires the City to comply with the following interim measures:

1. Implementation of an enforcement program for requiring corrective action by owners of failing systems.
2. Adoption of the same program as the County, when developed, for issuance of renewable operating permits for alternative or enhanced systems.
3. County licensing for persons providing pumping services for septics.

This MOU may be terminated, with or without cause, by either party. City termination of the MOU requires 90 days written notice, while Regional Board termination may occur with only 30 days written notice to the City prior to a regularly scheduled Regional Board meeting at which the action shall be considered. In terminating the MOU, the Regional Board would become the agency required to permit, implement and enforce their regulations directly with the property owners. It is estimated a Septic WDR permit from the Regional Board would cost between \$400 to \$900 per year, depending upon the “risk level” of the septic system, and require an approximate 3 month plan check process to obtain a permit. Permit requirements could result in property owners paying thousands of dollars to perform groundwater investigations and provide monitoring wells and reports, again depending upon the “risk level” of the system.

This program has minimum fiscal impact on the City’s operating budget. Building and Safety currently permits septic, which are reviewed under contract by the LACDHS, and the process will remain the same under the MOU.

The MOU was prepared by the City Attorney and is based upon the MOU the County of Los Angeles executed with the Regional Board.

Based on the foregoing, staff has determined that it is in the best interest of our constituents to enter into the MOU and continue the waiver of residential septic WDRs for 10 years, or at least until the statewide septic standards are adopted.

RECOMMENDATION

Staff respectfully recommends that the City Council enter into the attached Memorandum of Understanding with the Regional Water Quality Control Board, Los Angeles, to extend waivers of Waste Discharge Requirements for Single-Family Residence Onsite Wastewater Treatment Systems.