

Comments about Alameda County's (California) Proposed Onsite Wastewater Ordinance

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Background

Alameda County is the first jurisdiction in California to try to revise its regulations in light of expected state wide regulatory changes (pursuant to AB 885). Alameda County Environmental Health staff claim that changes now proposed are needed to conform to state standards. But that is misleading. There are no state standards at this time, and none are likely to be adopted by the State Water Quality Control Board (the state agency charged with the AB885 review) before 2006.

Hydro Nova has been part of the stakeholders group that met for the past two years to advise the Water Quality Board on the content of statewide standards. To date there has been no consensus on those standards, and the staff of the Water Quality Board has not issued a final draft proposal. Following the issuance of a final draft, a thorough environmental impact review will be performed and a series of hearings held throughout the state to gauge public reaction to the proposal. Most likely the regulations will be substantially modified before adoption by the Water Quality Control Board.

At this juncture it is difficult to know what will make it into the statewide regulations. Any claims to the contrary are either ill informed or deceptive.

Alameda County's Ordinance and Regulations

The text of the ordinance is available at the County Environmental Health website: www.acgov.org/aceh/septic/ordinance.htm Hydro Nova has serious concerns with a number of provisions of this ordinance and with the County Health Department's regulations which are supposed to implement the ordinance.

The 59 page Alameda County document can be divided into two general parts – technical requirements for construction of onsite systems (Standard systems in Sections 12 – 23 of the Regulations and Advanced systems in

Page (2)

Sections 24 to 31) and permitting or administrative requirements (Sections 1 - 11, 32 – 3) We have concerns with all parts of the regulations but will focus first on the permitting/administrative aspects because these have received the least discussion at the state level and no discussion at all at the county level.

1. Hydro Nova opposes Operating Permits (Section 11)

The heart of the regulations is a staff proposal to require operating permits for onsite wastewater systems that don't fit the category of "standard" systems (that is systems with a septic tank and a gravity fed leachfield). These will be revocable permits, meaning that the County Health Department will be able to initiate abatement procedures for failure to comply with permit requirements. There are no findings required of any harm to the public health or to the ground or surface water prior to demands for corrective action.

The best that can be said for this proposal is that it is a solution in search of a problem. Operating permits will initially apply to about 20 properties in Alameda County (of the 1,400 or so that have onsite systems). These are the newest, the most carefully engineered, the most rigorously inspected onsite systems in the County. Yet, pollution comes from failing systems – systems which are likely to be 20, 30 or 40 years old. None of those systems will be covered by operating permits, and therefore none of the pollution the regulations are supposed to alleviate, will be affected. Operating permits will be as ineffective as they will be costly.

We estimate that an operating permit will cost the average property owner about \$1,000/year (for the cost of the permit itself and the reporting requirements necessary under Section 33). It will also require that the property owner submit to inspection on demand by the Health Department and allow entry onto the property at any time, even when there is no suspicion of a problem. By means of this operating permit a de facto easement is created on the property – a condition which may lower the value of that property.

Page (3)

Operating permits are unnecessary as well. The Health Department already has all the authority it needs to deal with real cases of onsite system failure – situations where sewage surfaces or runs off the property or is found to be polluting nearby streams or groundwater. And that should be the standard for corrective action, whether the onsite systems in question are “standard” or “advanced”.

Recommendation – Delete all references to operating permits in the Ordinance and the Regulations. If such permits are ever required by statewide regulations, then and only then should Alameda County re-open the discussion about the best means for compliance.

2. Hydro Nova opposes subjecting all Building Permits to Onsite System Clearance. (Section 7)

In their hearts, some bureaucrats want every onsite system to be under the control of operating permits. This section of the Alameda County regulations seems to be a back door means for quickly dragging properties into the operating permit system. Under the County’s proposed regulations every building permit for a property that has an onsite system will require clearance for the onsite system before issuance. That applies whether the permit is for a new heating system, or updated windows or creation of a child’s playhouse in a garage or for a new bathroom.

We estimate that an onsite inspection might add between \$ 150 to \$500 to the cost of a typical building permit, and hold up issuance for at least a month. Many older systems are likely to fail, according to the definition of “functioning properly” on page 51 of the regulations. Some property owners might then be faced with the prospect of replacing their septic systems with “advanced” systems which require an operating permit.

Recommendation –Inspection of an onsite system should be required only for those building permits that generate more wastewater than the current system can support.

3. Permits should only be required for major repairs of onsite systems

The regulations appear to conflict with the ordinance in this regard. Section 8 of the regulations refers to permits for repair of failing systems. That seems reasonable. But permit requirements for minor corrections as in the language of the ordinance, are neither wise nor necessary. By saddling owners with permit costs for minor repairs, there will be less incentive for them to do the routine maintenance that keeps systems functioning. Piling on triple fees only exacerbates the problem, especially in dealings with the Health Department, where permit fees can run into many hundreds, if not, thousands of dollars.

Recommendation – Require permits only for new construction and for repair of failing systems. Delete the triple fee penalty except for repeated failure to obtain permits for major repairs.

4. Hydro Nova urges greater protections for onsite system owners from arbitrary actions by the Health Department

Neither the ordinance nor the regulations provide for science based permitting or enforcement decisions. The Health Department can take as long as it likes to review applications, and then, in its majesty decide whether to grant permits. The ordinance should specify a 30 day period for Health Department issuance of permits and guarantee that a permit will be issued for repair of failing systems using the most cost-effective technology available. Furthermore Alameda County ought to allow installation of onsite systems that has been certified by a national standards organization, demonstrated to be effective by a federal or state agency or proven elsewhere in California.

Actions can apparently be taken by officials on their “judgment” without a demonstrated threat to the public health or to the environment. Several particularly egregious examples occur in Section 15.18.040 (B) of the Ordinance. There “the opinion of the Director” is invoked as a justification for actions not specified in the Regulations. In an even more astounding example, the Ordinance seeks to prohibit the Board of Supervisors and the public from any further comment on changes in the Regulations.

Recommendation – Revise the Administration section of the Ordinance and add a new Section 34 to the Regulations to strengthen consumer protection.

5. Hydro Nova seeks to drive down the cost of onsite system installation, maintenance and upgrading.

The federal Environmental Protection Agency found that local permitting authorities are a major barrier to upgrading onsite systems. One of the reasons is the cost to comply with permit requirements. The Alameda County Health Department charges \$124/hour for its valuable services – but since it is the one to determine that those services are indeed valuable there is absolutely no incentive to control the amount of fees coming out of the pockets of onsite users. For example, the Health Department requires that its inspector witness water disappearing into the ground (a so-called perc test) rather than allowing a written certification by the owner or the professional performing the test – and, of course it charges the applicant for the privilege.

Alameda County fees are some of the highest in the nation, and the public has only a limited opportunity to comment on the charges. The ordinance should specify a periodic audit of the fee structure for onsite systems and require a well noticed public hearing for adoption of said fees.

AB 885, the state legislation, requested state authorities to provide financing for upgrading onsite systems. Alameda County's ordinance is silent on the County's intentions with respect to loans or grants to aid moderate income property owners with repairs of failing systems.

Recommendation – Include a commitment to lowering the cost of permits and providing financial assistance for upgrading failing onsite systems.

6. Hydro Nova urges specific technical changes to the regulations to improve their flexibility.

- A. The design flow of 150 gallons/bedroom is much too high. That leads to requirements for excessive drain field area, and increases the cost of onsite systems. The regulations should encourage water conservation, and give credit in design for water saving measures which will reduce the quantity or the strength of the sewage flow from the house.
- B. The regulations, as currently proposed, are prescriptive in nature. Most thinking in the onsite field has come to the conclusion that those types of standards are obsolete because they require constant updating, fail to allow for the variability in actual site conditions and do not provide for outcomes. More flexibility needs to be introduced into the Alameda County regulations without providing a convenient rationale for arbitrary actions.
- C. The Regulations limit service providers much too narrowly. Wherever the regulations specify “septic contractor” or “registered professional” the language should be changed to “qualified service provider” to recognize the fact that there are others who can provide the service. Furthermore, property owners should be able to submit plans for any onsite system engineered by a manufacturer or distributor without the need for another professional certification.
- D. Environmentally friendly technologies, such as constructed wetlands, composting toilets, zero discharge systems and other innovative treatment systems should be allowed by the regulations.
- E. Alternative systems which treat wastewater prior to discharge should not be required to have secondary leachfields set aside for future use. Furthermore, credit in the size of the leachfield ought to be given for innovations that increase the infiltrative capacity or the treatment capability of the system.

- F. Fecal coliform has been chosen as an indicator of potential problems with advanced systems. However fecal coliform comes from animals as well as humans. Any enforcement action initiated by the Health Department must first be required to rule out the possibility of animal contamination.
- G. It is not always necessary to separate sump and pump tanks. This may be desirable in some situations, but it ought not to be cast in stone in the County's regulations.
- 7. Hydro Nova urges consumer education with respect to the operation and maintenance of onsite systems.

Nowhere in the proposed Regulations is there any provision for informing consumers about the operation and maintenance of their systems. That is an unfortunate oversight. The owner of a system lives with it day in and day out, and should be able to spot trouble before it develops into a crisis. The owner can avoid common problems by understanding how onsite systems function and the do's and don'ts of daily operation. Hydro Nova suggests that every owner of an onsite system (and especially new owners) have access to information to aid them in keeping their systems working properly. Written materials, workshops, individual consulting or referrals to competent technical service people should be readily available.

There have been no instances of illness or water pollution proven to have been caused by failing onsite systems in Alameda County. Perhaps owners of these systems haven't been doing such as bad job all along and might be helped to better maintain onsite systems by continued education rather than by heavy handed regulation.

These comments, along with detailed suggestions for changes in the County's ordinance, will be submitted to the Board of Supervisors prior to a hearing on the proposed regulations.

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