

**PROPOSED CHANGES TO ORDINANCE AND MANUAL TO ADDRESS COMMENTS  
RECEIVED IN SUPERVISOR MILEY'S WORKSHOP**

**COMMENT #1: RIGHT OF ENTRY**

The following Right of Entry clause in the Ordinance should be eliminated.

***15.18.110 Right of Entry.***

*For the purpose of inspecting or monitoring any OWTS or OWCU, the Department may enter any area of any property at reasonable times subject to the Department providing advanced notice to the owner, lessee, occupant, user or designated agent as is reasonable and practicable under the circumstances. This section shall not preclude the Department from entering property without notice, based on reasonable cause to believe that there exists a condition related to an OWTS or OWCU that poses an imminent threat to public safety, health or welfare.*

**RESPONSE:**

The Right of Entry clause in the Ordinance remains unchanged with the exception of the numbering which has been changed from 15.18.110 to 15.18.120.

Chapter 4, Section 4.2.A.1 of the Technical Manual has been modified to provide guidance on Right of Entry procedures to be followed by Department staff as follows:

***DEPARTMENT INVESTIGATIONS***

***A. INVESTIGATIONS***

- 1. Upon receipt of a complaint, the Department will conduct a complaint assessment and/or investigation. The actions that the Department may take include the following:
  - a. The Department will contact the complainant to collect information about the alleged violation.*
  - b. The Department will contact the local code enforcement agency and request assistance in contacting the Owner or tenant to notify them of the complaint and request an appointment to conduct a joint Site visit.*
  - c. If the Department is unable to contact the Owner or tenant, the Department in conjunction with the code enforcement agency will attempt to ascertain whether there is a violation from observations obtained from a neighboring property or public vantage point.*
  - d. If the Department and the code enforcement agency are unable to contact the Owner and/or tenant, the Department and code enforcement agency will send the Owner and/or tenant a certified letter with details of the complaint and a request for an appointment to conduct a Site visit.*
  - e. If the Department and code enforcement agency are unable to access the property to conduct a complaint investigation and the Department has determined that public health and/or the environment may be at risk, the Department will request that the code enforcement agency seek an inspection warrant from a judge.**

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**COMMENT #2: NOTICE OF OPERATING PERMIT CONDITIONS WITH COUNTY  
ASSESSORS OFFICE**

The following clause should be removed from the Ordinance. Disclosure is the responsibility of the Property owner and real estate professionals.

***Ordinance Reference:***

***15.18.110 Notice of Operating Permit Conditions.***

*In order to provide notice to any future owners of a property, a Notice of Operating Permit Requirements for Onsite Wastewater Treatment System will be recorded by the Department in the office of the County Recorder of Alameda County after approval of an OWTS and the issuance of an Operating Permit. Certain Special Permits for OWCU may also require recording of a Notice of Permit Requirements Properties which had a Deed Restriction recorded under the previous Ordinance requirements may apply to the Department to have the Deed Restriction replaced with a Notice of Operating Permit Requirements.*

**RESPONSE:**

The Ordinance clause has been modified as follows. Property owner and real estate professional disclosure requirements in conjunction with the Department's Operating Permit program can meet the same intent.

***15.18.110 Notice of Operating Permit Conditions.***

*In order to provide notice to any future owners of a property, a Notice of Operating Permit Requirements for Onsite Wastewater Treatment System may be recorded by the Department in the office of the County Recorder of Alameda County after approval of an OWTS requiring the granting of a variance by the County to any requirements of this Ordinance and the Manual and the issuance of an Operating Permit. Certain Special Permits for OWCU may also require recording of a Notice of Permit Requirements. Properties which had a Deed Restriction recorded under the previous Ordinance requirements may apply to the Department to have the Deed Restriction removed.*

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**COMMENT #3: OPERATING PERMIT REQUIREMENTS**

The following Operating Permit clause for Advanced Systems in the Ordinance below should be:

- (a) Eliminated; or
- (b) Modified to allow for initial annual renewal with provisions to lengthen the renewal interval after the first year if permit conditions are complied with.

***Ordinance Reference:***

***15.080.070 Permits and Reporting.***

- D. ***Operating Permit.*** *Depending on the size and complexity of the OWTS or OWCU, an annual Operating Permit may be required. The property owner is responsible for obtaining the Operating Permit from the Department and complying with permit conditions and renewal requirements.*

**RESPONSE:**

- (a) The state OWTS Policy requires local agencies to include monitoring and reporting requirements for Advanced Systems in their LAMP. The Operating Permit Program provides the mechanism to satisfy the State requirement.
- (b) Chapter 2, Section 2.A.d of the Technical Manual has been revised to allow for lengthening the renewal interval after the first year if permit conditions are complied with as follows:

***Operating Permits.*** *In order to operate an Onsite Wastewater System an annual operating permit may be required. Advanced OWTS and holding tanks require an annual operating permit. Other Onsite Wastewater Systems may require an annual operating permit if requirements or conditions contained in this Manual cannot be met. The owner is responsible for obtaining the operating permit and complying with permit conditions and renewal requirements. The operating permit renewal frequency for advanced OWTS may be extended to a period of three (3) years contingent upon compliance with all of the following conditions:*

- (1) *The System has been functioning properly for two (2) consecutive years in compliance with the approved design plans and the operation, monitoring and maintenance (OM&M) manual; and*
- (2) *The owner is in compliance with the terms of the operating permit including but not limited to the annual reporting requirements to the Department.*

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**COMMENT #4: REPORTING REQUIREMENTS**

The reporting requirement clause for Existing Standard Systems in the following sections of Ordinance and Manual below should be modified to use the term “may be asked to provide information...” instead of “must provide information...”.

**Ordinance Reference:**

***15.080.070 Permits and Reporting.***

***I. Reporting.***

- 2. OWTS without Operating Permits. To assist the County in complying with State reporting requirements, any property owner with an OWTS that does not require an Operating Permit must provide information on its OWTS to the Department and update that information at least once every five years as set forth in the Manual.***

**Manual Reference:**

***OWTS WITHOUT OPERATING PERMITS***

*For Standard OWTS that do not require an operating permit, the property owner shall submit a Homeowner’s Questionnaire (included in **Appendix D**) with information on its OWTS to the Department and update that information at least once every five years to assist the County in complying with State reporting requirements.*

- a. Failure to submit information required by the State may result in fines or penalties.*
- b. Prior to any fine or penalty the Department will send at least one notice to the property owner and direction to provide the required information.*

**RESPONSE:**

The reporting requirement clause in the Ordinance has been modified as follows:

***OWTS without Operating Permits. To assist the County in complying with State reporting requirements, any property owner with an OWTS that does not require an Operating Permit may be required to provide information on its OWTS to the Department and update that information at least once every five years as set forth in the Manual.***

Chapter 43, Section 43.3.A.1 of the Technical Manual has been modified to provide additional guidance on the reporting requirements as follows:

***OWTS WITHOUT OPERATING PERMITS***

- 1. For Standard OWTS that do not require an operating permit, the property owner will be asked to submit a homeowner’s questionnaire to the Department once every five years with information on the OWTS to assist the County in complying with State reporting requirements.***
  - a. The Department will send at least one notice to the property owner requesting submittal of the homeowner’s questionnaire.*

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- b. Failure to submit the questionnaire to the Department may result in a requirement to provide the information by the Regional Water Board.*