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October 12, 2009

VIA HAND DELIVERY & EMAIL

Dave Walls
Executive Director
California Building Standards Commission
2525 Natomas Park Drive, Suite 130
Sacramento, CA 95833

**Re: HCD Proposed Amendments to the California Plumbing Code
Regarding Graywater Systems; Chapter 16A**

Dear Mr. Walls:

The following comments are respectfully submitted on behalf of the California State Pipe Trades Council (the "Council") in response to the Department of Housing and Community Development's ("HCD") proposed California Plumbing Code ("CPC") regulations regarding graywater systems. The California Building Standards Commission ("CBSC" or "Commission") is currently reviewing proposed building standard code submittals as part of its 2009 Annual Code Adoption Cycle. Included in the submittals currently under review are regulations proposed by HCD that would adopt Chapter 16A, which contains building standards for the construction, installation and alteration of graywater systems for residential uses. ("Proposed Graywater Standards").

The Proposed Graywater Standards are currently in effect as emergency regulations approved by the Commission on July 30, 2009 and filed with the Secretary of State on August 4, 2009. HCD is now proposing that the Commission adopt these standards permanently as part of the regular rulemaking process.

The Proposed Graywater Standards simplify and clarify graywater standards to reduce costs and facilitate the installation of graywater systems in residential occupancies. The Council strongly supports this goal.

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Unfortunately, however, the Proposed Graywater Standards also include a provision that would unnecessarily exempt single fixture and clothes washer graywater systems from any permit or inspection requirements.¹ In addition, the Proposed Graywater Standards would allow agencies to exempt simple and complex graywater systems from permit requirements after consulting with the public water provider.² The Council believes that these exemption requirements are both unnecessary and unwise.

The Council has a long history of supporting safe and effective water conservation provisions in the California Plumbing Code, including the installation of graywater systems. Such systems, however, carry inherent public health risks due to their re-use of completely untreated wastewater.³ As acknowledged in HCD's Initial Statement of Reasons ("ISOR"), "Graywater is known to carry pathogens and [human] contact is to be avoided or minimized." Accordingly, permit requirements are critical to ensure that these systems are installed safely and correctly.

HCD's Finding of Emergency referenced testimony offered during HCD's focus group meetings that found "thousands of unpermitted graywater systems in usage principally due to the current poorly designed unusable building standards." The Council supports the efforts to clarify and simplify current building standards applicable to residential graywater systems and does not object to issuing emergency graywater regulations for that limited purpose.

However, *eliminating permit requirements* does not address the stated concern of poorly designed standards. To the contrary, such a proposal makes compliance with graywater standards even less likely, and fails to address the significant public health risks presented by improperly installed graywater systems. If poorly designed graywater standards have been the reason for the installation of the "thousands of unpermitted graywater systems," then the proposed revisions to these standards should resolve this problem without the need for any permit exemption. Because these new standards are simplified and therefore easier to understand, implement and enforce, the permit process should no longer pose any barrier to the installation of these systems. Accordingly, the permit exemption provisions are both dangerous and unnecessary.

¹ HCD, Proposed Express Terms, CPC § 1603A.1.1 (Aug. 26, 2009).

² HCD, Proposed Express Terms, CPC §§ 1603A.1.2, 1603A.1.3 (Aug. 26, 2009).

³ Dr. Pless Comments (Oct. 12, 2009) [Exhibit A].

Moreover, these permit exemptions conflict with the California Plumbing Code's provisions for permit exemptions.⁴ The Code requires that all erection, construction, reconstruction, installation, relocation, or alteration of any plumbing system obtain a permit, with few narrow exceptions. The exceptions are limited to fixing and repairing leaks or clearing stoppages and would not cover the Proposed Graywater Standards.

I. THE PERMIT EXEMPTION PUTS THE PUBLIC HEALTH AND ENVIRONMENT AT RISK

The permit exemption sets a dangerous precedent of allowing plumbing work to be performed without a permit and raises serious health and safety concerns. The purpose of requiring permits for plumbing work is to protect the public health. Safe and effective plumbing systems are critical to preventing disease outbreaks. The Proposed Graywater Standards would allow persons without adequate training to cut into home drainage systems and divert potentially contaminated water into public areas. If these systems are installed without properly capping sewer lines, they may result in dangerous sewage and sewer gases entering the living areas. Furthermore, poorly designed or installed graywater irrigation systems may result in ponding or runoff that exposes the public to health hazards.

Improperly designed graywater systems can lead to environmental impacts due to contaminated water ponding under homes and in backyards or running offsite onto adjacent properties.⁵ Pondered water can breed disease vectors and create hazardous waste pools. Ultimately this wastewater runoff can enter unprotected storm drain systems, thereby polluting receiving waters with chemicals and bacteria hundreds of times above federal limits.

Improperly designed graywater systems can also lead to significant pollution from washing machines and other home fixtures that can have public health impacts. Graywater often contains soap, bleaches, fecal matter, grease, chemicals and lint, among other things.

While the Proposed Graywater Standards provide mandatory guidelines designed to avoid these problems, these guidelines are not enforceable without the

⁴ Cal. Code Regs., tit. 24, §§ 108.4.1 and 103.1.2.

⁵ See Dr. Pless Comments (Oct. 12, 2009) [Exhibit A].

inspection that would be required by a permit. This is the same as allowing people to alter structural, electrical or HVAC systems or to remodel a bathroom without a permit, and will lead to the foreseeable result of improperly installed systems.

For example, the graywater regulations require users to install a diversion valve or other diversion design on washing machines to divert washing machine discharge with fecal matter from dirty diapers into the sewer system.⁶ Without a permit inspection requirement, uninformed laypersons are more likely to just run one hose from their washing machine without also setting up the diversion valve.

An improperly installed graywater system can also put the occupants of the home at risk from sewer gas leaks. Installing a single fixture graywater system can require cutting into and altering the existing building drainage and waste piping. Such alterations and modifications can require skill and plumbing knowledge that not all homeowners may possess. Sloppy or improper modifications may lead to leaks or openings in the drain, waste and vent system that allow raw sewage or sewer gas to escape into the walls and living area or to collect under the home.

Leaking sewage or sewer gas can quickly lead to widespread disease. It is well-documented that sewer gases pose a serious risk to public health from toxic gases including hydrogen sulfide ("H₂S"), methane, carbon dioxide and ammonia, and also from airborne pathogens including tuberculosis, coxsackie A&B, dysentery, rotavirus, echovirus, cholera, common cold, hepatitis A, typhoid, polio and SARS.⁷ The SARS pandemic, for example, began due to the failure of a sewer trap that allowed sewer gas to escape into the living areas of a high rise complex in Hong Kong. Accordingly, if homeowners modify drain and sewer lines when installing graywater systems, it is critical that such modifications be carefully inspected to ensure that no leaks or openings in the drain, waste and vent system occur.

Alterations and modifications of the plumbing system by unskilled and unknowledgeable lay persons also pose the risk of cross-contamination of drinking. This risk is heightened if a homeowner fails to ensure that the graywater pipe is properly marked and distinguishable from the potable water piping that may run through the building. Accordingly, inspection of graywater modifications is also

⁶ It is unrealistic to expect that, without such a diversion valve, households with children would go to a laundromat every time they have to wash soiled clothing or sheets.

⁷ Dr. Pless Comments (Oct. 12, 2009) [Exhibit A].

critical to ensure that graywater piping is properly marked and that cross-contamination has been avoided.

Another concern with alterations and modifications of the plumbing system by unskilled and unknowledgeable lay persons is fecal cross-contamination of graywater from incorrect hookup and backflow from the building sewer waste lines.⁸ This is a particular concern where a toilet and a sink discharge into the same waste line. An uninformed homeowner intending to divert wastewater from the sink may unwittingly tap into a waste pipe that also serves the toilet. Such errors are easily avoided by permit inspections requirements.

HCD acknowledges that there is already a problem with the widespread use of unlawful graywater systems.⁹ HCD also acknowledges that improperly designed and installed graywater systems may pose a health and safety threat.¹⁰ HCD concludes that direct contact with graywater is to be avoided because graywater is known to carry pathogens.¹¹ HCD further warns that the “spraying or ponding, or run-off and/or discharge of graywater directly into any storm sewer system of any body of water is prohibited due to the potential for pathogens.”¹² HCD also concludes that it is widely accepted by health officials that graywater is not safe for use to irrigate root crops or edible parts of food crops that contact soil.¹³

Rather than addressing this problem by assuring that such systems are installed correctly, HCD is exempting these systems from any permit inspection requirements. This will exacerbate rather than eliminate this problem. Without any permit requirements, installers of these systems will have no incentive to ensure careful and accurate compliance with the Proposed Graywater Standards.

Even though untreated graywater poses a more serious threat to human health, HCD’s Proposed Standards for graywater are much less protective of the public health than the much stricter standards required for “recycled water”

⁸ *Id.*

⁹ HCD, ISOR, 2009 UPC / 2010 CPC – Triennial Code Adoption Cycle (Aug. 20, 2009) at p. 13.

¹⁰ *Id.*

¹¹ *Id.*

¹² *Id.*

¹³ *Id.*

plumbing systems.¹⁴ Recycled water undergoes tertiary treatment and is essentially safe to drink. As a result, recycled water is used for many beneficial uses including irrigation of edible crops and recreation where full body contact with water may occur.

Graywater, on the other hand, is untreated and may be contaminated with fecal matter, chemicals, food particles and other contaminants.¹⁵ As a result, graywater poses a much greater risk than recycled water of exposing the public to e-coli and other dangerous pathogens. Unlike recycled water, graywater is not safe for direct contact by humans nor can it be used for vegetable gardening.

The Department of Water Resources (“DWR”) is currently proposing new building standards for recycled water that not only require a permit but go as far as to prohibit a permit from being issued until complete plumbing plans, with appropriate data satisfactory to the jurisdictional authority, have been submitted and approved.¹⁶ Moreover, a recycled water system may only be designed by a person registered or licensed to perform plumbing design work.¹⁷

This is in stark contrast to the Proposed Graywater Standards that require no special training for the installer and have no permit requirement to ensure that a graywater system connected to a clothes washer or single fixture is safely and properly installed. Because graywater systems discharge *untreated* wastewater, it makes little sense that building standards for untreated graywater will be less stringent than building standards for *treated* recycled water.

The Council strongly supports the environmental benefits of graywater systems and HCD’s efforts to simplify and clarify the building standards for such systems. However, these systems must be required to meet minimum permit inspection requirements in order to ensure that untreated wastewater does not contaminate the environment and put the public health at risk and in order to ensure that modifications to existing plumbing systems do not result in leaks or

¹⁴ Are Graywater and Recycled Water the Same? Fethi BenJemaa, Fawzi Karajeh and Julie Saare-Edmonds Water Conservation News, January 2003. Linked to the California Department of Water Resources website: <http://www.owue.water.ca.gov/recycle/WCN/GraywaterWCN0103.pdf>.

¹⁵ Dr. Pless Comments (Oct. 12, 2009) [Exhibit A].

¹⁶ California Department of Water Resources, Express Terms for Proposed Building Standards regarding Proposed Changes to Dual Plumbing Design Standards for Potable and Recycled Systems in Buildings (7/13/2009) p. 1.

¹⁷ *Id.*

openings in the building drain, waste and vent lines or cross-contamination of drinking water.

II. THE PERMIT EXEMPTION PROVISIONS ARE UNNECESSARY TO REDUCE COSTS AND STREAMLINE THE PERMITTING PROCESS

Not only does the proposed exemption for single fixture and clothes washer graywater systems create a public health risk, it is also wholly unnecessary to address the current barriers to graywater installation. Currently, the California Plumbing Code requires even simple graywater systems to be engineered, to have tank systems installed, and to have costly groundwater depth verification tests performed. These requirements create unnecessary cost and complexity for the installer. It has also meant that most jurisdictions considered such systems too complex to be suitable for a streamlined permitting process.

The Proposed Graywater Standards, however, include a number of significant revisions that greatly reduce the cost and complexity of installing a small permitted graywater system. The Proposed Graywater Standards create simplified standards for single fixture and clothes washer graywater systems and for simple graywater systems that discharge less than 250 gallons per day (“GPD”). These standards remove the tank requirement, engineering requirement and groundwater verification requirement for systems under 250 GPD. As a result, HCD has already removed the biggest cost and complexity barriers to widespread use of these systems in residential occupancies. The additional permit exemption simply is not necessary in this context.

The simplified Proposed Graywater Standards for single fixture and clothes washer graywater systems will alone lead to a streamlined permitting process. Virtually all California jurisdictions already have an inexpensive, streamlined online permitting process in place that allows customers to easily obtain permits and schedule inspections for simple plumbing installations. With the changes that HCD is proposing to the graywater standards, permits for all single fixture, clothes washer and simple graywater systems would be appropriately granted using this streamlined process.

Moreover, even under the current, more cumbersome graywater standards, some local jurisdictions have already established streamlined graywater permitting

processes without the use of permit exemptions. For example, the City of Santa Barbara provides an inexpensive and expedient process for permitting graywater systems. Permit applicants in Santa Barbara incur a \$50 fee that covers the permitting costs and system inspections.

HCD's proposed permit exemption, however, would eliminate Santa Barbara's streamlined approval process for single fixture and clothes washer graywater systems and replace it with a process that provides for no inspections at all! This proposal would thus create public health risks with only a negligible increase in promoting the installation of residential graywater systems.

Moreover, resolving the problem of thousands of unpermitted systems by simply deciding that such permits are no longer necessary fails to address in any way the underlying concern that these unpermitted systems may be incorrectly installed and unsafe. As acknowledged by the Finding of Emergency, the problem with the unpermitted graywater systems is that they might not be correctly designed and thus may pose a public health risk. The only way to ensure that such systems are installed correctly is to require permits. Removing this requirement increases the risk to public health and creates a dangerous precedent of limiting local oversight of building construction, without addressing the real barriers to safe graywater installation.

By requiring building permits, homeowners or contractors are required to certify, prior to construction, that they these systems will be designed and installed in compliance with the requirements of the California Plumbing Code, and systems will be inspected to verify compliance. Without such a requirement, it is likely that some lay homeowners will attempt to install these systems without even looking at the Graywater Standards contained in the Code. Accordingly, the proposed permit exemption provisions will only exacerbate the problem of improperly installed, unpermitted graywater systems rather than address this problem.

IV. THE PERMIT EXEMPTION FOR SIMPLE AND COMPLEX SYSTEMS IS INCONSISTENT WITH LONGSTANDING PLUMBING CODE POLICY

Even more alarming than allowing a permit exemption for single fixture and clothes washer systems, is HCD's Express Terms for the Proposed Graywater

Standards, Sections 1603A.1.2(2) and 1603A.1.3(2), that enable Enforcing Agencies to *exempt simple and complex systems* from the construction permit requirement so long as the Enforcing Agency consults with the public water system first.

It is highly irregular for the Plumbing Code to give discretion to enforcing agencies to waive permit requirements for plumbing work. In fact, the discretion to waive permit requirements directly conflicts with the California Plumbing Code's explicit mandate that written construction permits be obtained from the enforcing agency "prior to the erection, construction, reconstruction, installation, relocation, or alteration of any plumbing system" with very limited narrow exceptions.¹⁸ These exceptions are limited to very minor work, such as stopping leaks in drains, clearing stoppages and repairing leaks in pipes. The Proposed Graywater Standards provide for permit exemptions that pose different and far graver risks than the types of permit exceptions currently in the California Plumbing Code.

This proposal is also inconsistent with DWR's proposed standards for recycled water.¹⁹ Recycled water is wastewater that has undergone tertiary treatment and is safe for consumption, whereas graywater is untreated waste water. Yet, as discussed above, the proposed standards for recycled water are much more stringent, prohibiting a permit from being issued until complete plumbing plans, with appropriate data satisfactory to the jurisdictional authority, have been submitted and approved. The recycled water standards hold plumbing work to high standards in California. In comparison, the proposed graywater permit exemptions for simple and complex systems lowers the bar to allow untrained individuals to install unpermitted and uninspected sewage system alterations that may put the public's health at risk.

Furthermore, the permit exemption for simple and complex graywater systems is not necessary to streamline the process. For the same reasons that HCD should withdraw the permit exemption for single fixture and clothes washer systems, HCD should remove the Enforcing Agencies' discretionary permit exemption from the proposed emergency regulations.

¹⁸ Cal. Code Regs., tit. 24, §§ 108.4.1 and 103.1.2.108.4.1.

¹⁹ California Department of Water Resources, Express Terms for Proposed Building Standards regarding Proposed Changes to Dual Plumbing Design Standards for Potable and Recycled Systems in Buildings (July 13, 2009).

V. CEQA APPLIES TO THE PERMANENT ADOPTION OF THE GRAYWATER PERMIT EXEMPTION PROVISIONS

There is substantial evidence that improper installation of graywater systems may result in significant public health and environmental impacts. This evidence includes HCD's own findings in its ISOR and the attached expert comments of Dr. Petra Pless. Accordingly, the proposed graywater permit exemption provisions may not be permanently adopted until these potential impacts have been fully disclosed, evaluated and mitigated in an environmental impact report ("EIR") as required by the California Environmental Quality Act ("CEQA"). HCD, however, has proposed adoption of these proposed regulations without any compliance with CEQA whatsoever.

CEQA compliance, prior to permanent approval of HCD's graywater permit exemption provisions, is not only prudent, but is legally required. The purpose of CEQA is to inform the public and its responsible officials of the environmental consequences of their decisions before they are made.²⁰ Thus, CEQA "protects not only the environment but also informed self-government."²¹ The Supreme Court has held that CEQA is "to be interpreted ... to afford the fullest possible protection to the environment within the reasonable scope of the statutory language."²²

An agency action is subject to CEQA if it: (1) is a discretionary action undertaken by a public agency, and (2) may cause either a direct physical change in the environment or a reasonably foreseeable indirect physical change in the environment.²³ The adoption of regulations is considered "discretionary" under CEQA if any application of judgment is required.²⁴

The courts have uniformly held that the adoption of building standards meets this definition and is subject to environmental review under CEQA. In *Plastic Pipe and Fitting Association v. California Building Standards Commission*, the Court of Appeal held that environmental review under CEQA must be conducted prior to the

²⁰ Pub. Resources Code §§ 21063 & 21100.

²¹ *Communities for a Better Environment v. Calif. Resources Agency* (2002) 103 Cal.App.4th 98, 108.

²² *Laurel Heights Improvement Assoc. v. Regents of Univ. of Calif* (1988) 47 Cal.3d 376, 390; *Communities for a Better Environment v. Calif. Resources Agency*, *supra*, 103 Cal.App.4th at p. 110.

²³ Pub. Resources Code §§ 21065, 21080; Cal. Codes Regs., tit. 14 ("CEQA Guidelines") §§ 15061, 15357, 15358, 15378.

²⁴ *Wildlife Alive v. Chickering* (1976) 18 Cal.3d 190, 206 (holding that CEQA applies to the enactment of regulations).

approval of building code amendments that may have a significant impact on the environment.²⁵ The Court of Appeal held that the approval of new building standards is a discretionary act and that no statutory or categorical exemptions from CEQA apply to the promulgation of building standards.²⁶

In reviewing whether a government action may cause a physical change in the environment, the “fair argument standard” is applied.²⁷ Under this standard, CEQA review occurs “whenever it can be fairly argued on the basis of substantial evidence” that the project may cause either a direct physical change in the environment or a reasonably foreseeable indirect physical change in the environment.²⁸

“Substantial evidence’ . . . means enough relevant information and reasonable inferences from this information that a fair argument can be made to support a conclusion, even though other conclusions might also be reached.”²⁹ The CEQA Guidelines define substantial evidence as including “facts, reasonable assumptions predicated upon facts, and expert opinion supported by facts.”³⁰ As a matter of law, “substantial evidence includes . . . expert opinion.”³¹

The substantial evidence required to make the initial determination to apply CEQA is, necessarily, minimal.³² A reviewing court’s decision as to whether an activity is a “project” need only be based on the most preliminary of investigations, rather than based on an initial study or other environmental document. As one court observed, “[t]he existence of a project cannot depend on the outcome of the

²⁵ *Plastic Pipe and Fitting Association v. California Building Standards Commission* (“PPFA v. CBSC”) (2004) 24 Cal.App.4th 1390; see also *Building Code Action v. Energy Resources Conservation and Development Commission* (1980) 102 Cal.App.3d 577.

²⁶ *Id.* at p. 1413.

²⁷ *Dunn-Edwards v. Bay Area Air Quality Management District* (“BAAQMD”) (1992) 9 Cal.App.4th 644, 654-656; *Castaic Lake Water Agency v. City of Santa Clarita* (1995) 41 Cal.App.4th 1257, 1264-1265.

²⁸ *Dunn-Edwards v. BAAQMD*, *supra*, 9 Cal.App.4th at p. 655.

²⁹ *Castaic Lake Water Agency v. City of Santa Clarita*, *supra*, 41 Cal.App.4th at pp. 1264-1265.

³⁰ CEQA Guidelines, § 15064, subd. (f)(5).

³¹ Pub. Resources Code § 21080, subd. (e)(1); CEQA Guidelines § 15064, subd. (f)(5).

³² See *Simi Valley Recreation and Park District v. Local Agency Formation Commission* (1975) 51 Cal.App.3d 648, 663; *Davidon Homes v. City of San Jose* (1997) 54 Cal.App.4th 106, 118.

inquiry which the act contemplates only after the existence of a project is established.”³³

In the case at hand, substantial evidence exists that exempting graywater systems from permit inspection requirements may result in reasonably foreseeable indirect physical changes in the environment is presented herein and in the attached expert comment of Dr. Petra Pless. Because the fair argument standard applies, this evidence conclusively establishes that CEQA applies regardless if other contrary evidence is presented.

VI. THE GRAYWATER STANDARDS FAIL TO MEET AT LEAST TWO OF THE NINE-POINT CRITERIA

Before the Commission may adopt a proposed building standard, it must be satisfied that the proposing agency has adequately justified adoption under the nine-point criteria analysis of Health and Safety Code section 18930. The nine-point criteria required under Section 18930 to justify proposed building standards are as follows:

- (1) The proposed building standards do not conflict with, overlap, or duplicate other building standards.
- (2) The proposed building standard is within the parameters established by enabling legislation and is not expressly within the exclusive jurisdiction of another agency.
- (3) The public interest requires the adoption of the building standards.
- (4) The proposed building standard is not unreasonable, arbitrary, unfair, or capricious, in whole or in part.
- (5) The cost to the public is reasonable, based on the overall benefit to be derived from the building standards.

³³ *Simi Valley Recreation and Park District v. Local Agency Formation Commission*, *supra*, 51 Cal.App.3d at p. 663.

- (6) The proposed building standard is not unnecessarily ambiguous or vague, in whole or in part.
- (7) The applicable national specifications, published standards, and model codes have been incorporated therein as provided in this part, where appropriate.
 - (A) If a national specification, published standard, or model code does not adequately address the goals of the state agency, a statement defining the inadequacy shall accompany the proposed building standard when submitted to the commission.
 - (B) If there is no national specification, published standard, or model code that is relevant to the proposed building standard, the state agency shall prepare a statement informing the commission and submit that statement with the proposed building standard.
- (8) The format of the proposed building standards is consistent with that adopted by the commission.
- (9) The proposed building standard, if it promotes fire and panic safety, as determined by the State Fire Marshal, has the written approval of the State Fire Marshal.

The proposal to exempt some graywater systems from any permit or inspection requirements, however, fails to meet at least two of the nine-point criteria. Accordingly, the Commission may not find that these proposed standards are justified under Section 18930 criteria.

In the case at hand, there is substantial evidence that the exempting graywater systems from permit inspection requirements without environmental review under CEQA would be contrary to the public interest and would be unreasonable, arbitrary and unfair. Accordingly, HCD's proposed graywater permit exemption provisions lack justification under at least two elements of the nine-point criteria.

**A. Adoption of the Graywater Permit Exemption Provisions
without CEQA Compliance Would Not Be in the Public Interest**

Exempting graywater systems from permit inspection requirements without first complying with CEQA would not meet the “public interest” element of the nine-point criteria. Health and Safety Code section 18930, subdivision (3), requires Agencies to determine if the “public interest requires the adoption of the building standards.” In the case at hand, HCD’s proposed exemption of certain graywater systems from permit inspection requirements, without first evaluating the potential impacts of the proposed regulations under CEQA, would violate state law. Approval of building standards in violation of state law would, in itself, be contrary to the public interest. Exempting graywater systems from permit inspection requirements would also be contrary to the public interest due to the potential significant environmental, health and safety impacts associated with improper installation of these systems.

As discussed in detail above, it is well settled that the Commission and HCD must comply with CEQA prior to adopting building standards that may have a significant impact on the public health, safety or the environment. Furthermore, it is well settled that compliance with CEQA is in the public interest.³⁴ CEQA “protects not only the environment but also informed self-government.”³⁵ CEQA informs the public and its responsible officials of the environmental consequences of their decisions before they are made, ensuring consideration of alternatives and requiring imposition of reasonable mitigation measures.³⁶ Failure to comply with CEQA prior to the adoption of this proposed regulatory change would thus be contrary to the public interest in ensuring informed self-government and in protecting public health, safety and the environment.

Furthermore, substantial evidence exists that approval may result in significant environmental, health, and safety impacts that could adversely affect the public. As detailed above, the exemption of certain graywater systems from permit inspection requirements may result in improper installation of these

³⁴ See *Kane v. Redevelopment Agency of City of Hidden Hills* (1986) 179 Cal.App.3d 899, 905; *People By and Through Dept. of Public Works v. Bosio* (1975) 47 Cal.App.3d 495, 526; see also Pub. Resources Code § 21000.

³⁵ *Communities for a Better Environment v. Calif. Resources Agency, supra*, 103 Cal.App.4th at p. 108.

³⁶ *Id.*; Pub. Resources Code §§ 21063 & 21100.

systems and expose the public to water contaminated with e-coli and other dangerous pathogens, either through direct exposure or cross-contamination of drinking water. The exemption of certain graywater systems from permit inspection requirements may also result in sewer gas leaks since it allows untrained laypersons to cut into building sewer lines with no inspection to ensure opened sewer lines are then properly capped or sealed. Approval of the proposed graywater permit exemption provisions without full disclosure, evaluation and mitigation of these impacts would not be in the public interest and thus may not be justified under the nine-point criteria.

B. Adoption of the Graywater Permit Exemption Provisions without First Preparing an EIR Would Be Unreasonable, Arbitrary and Unfair because It Would Violate State Law

Health and Safety Code section 18930, subdivision (4), requires proposing agencies to justify their proposed building standards on the grounds that the proposed standard "is not unreasonable, arbitrary, unfair, or capricious, in whole or in part." In the case at hand, it is manifestly unreasonable, arbitrary and unfair to propose the adoption of building standards that violate state law. As discussed above, exempting graywater systems from permit inspection requirements without first preparing an EIR or otherwise complying with CEQA would violate state law. Since it would be unreasonable, arbitrary and unfair to approve building standards in a manner contrary to law, such approval may not be justified under the nine-point criteria.

Furthermore, the proposed graywater permit exemption provisions are unfair and unreasonable due to the potential significant impacts associated with improper installation of graywater systems. Approval of a building regulation without first requiring full disclosure, evaluation and mitigation of its potential impacts is unfair to the public. Moreover, a proposal by an agency to have a potentially hazardous building regulation approved without such disclosure, evaluation and mitigation is unreasonable.

VII. CONCLUSION

The California State Pipe Trades Council is normally not in the business of asking for increased inspection of its members' work. However, the Council has also

Dave Walls
California Building Standards Commission
October 12, 2009
Page 16

long recognized the link between its profession and public health. Permit inspection requirements under the code have long been recognized as the most effective way to ensure uniform installation of plumbing systems in compliance with established codes.

The Council is hopeful that these streamlined graywater standards, will help make graywater systems the rule, rather than the exception in California. However, as these systems become more common, more and more graywater systems will be installed by unskilled, untrained lay persons instead of professional plumbers or well-informed hobbyists. If California truly wants graywater systems to be the norm, it needs to ensure that graywater regulations account for installation by even unskilled and uninformed homeowners.

The permit exemption provisions incorporated into the Proposed Standards are not necessary to streamline the process. Moreover, the permit exemption provisions create policy that will exacerbate rather than eliminate the health problems associated with improperly designed and installed graywater systems. In addition, because the permit exemption provisions may result in improperly installed graywater systems affecting public health and the environment, these provisions must be evaluated under CEQA before permanent adoption.

The Council respectfully requests that HCD amend its Proposed Graywater Standards to delete the provisions that exempt clothes washer, single fixture, simple and complex graywater systems from permit inspection requirements.

Thank you for your consideration of our comments.

Sincerely,



Thomas A. Enslow

TAE:cnh
Attachment

cc: Doug Hensel