

**STATE OF CALIFORNIA
CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD
CENTRAL COAST REGION**

STAFF REPORT FOR REGULAR MEETING OF JULY 6, 2007
Prepared on June 14, 2007

ITEM NUMBER: 18 and 19

SUBJECT: Adoption of Waste Discharge Requirements Order No. R3-2007-0050, Adoption of Cease and Desist Order No. R3-2007-0051 and Rescission of Waste Discharge Requirements Order No. 01-037, Casa de Montgomery, Inc., Santa Cruz County

KEY INFORMATION:

Treatment System Location: Casa de Montgomery (aka Happy Valley Villa), Santa Cruz County
Discharge Type: Domestic wastewater
Design Capacity: None
Treatment: Septic tank
Disposal: Impoundments/soil absorption
Reclamation: None
Existing Orders: Waste Discharge Requirements (WDRs) Order No. 01-037

SUMMARY

Staff recommends the Board rescind WDRs Order No. 01-037 because, over the past several years, Arlen Haffner (Discharger) paid no annual fee for three years, submitted no required monitoring reports, and constructed no treatment works capable of complying with the Order's waste discharge requirements. The Discharger owns and operates the facility. Although the Discharger paid the fee for FY06-07, he has yet to comply with staff's extensive efforts to obtain any data demonstrating compliance with Order No. 01-137. The Discharger has consistently demonstrated he will not comply with waste discharge requirements. Staff also recommends the Board adopt attached proposed WDRs Order No. R3-2007-0050, which prohibits waste discharge from the site's rooming house and rescinds Order No. 01-037, and that the Board adopt proposed Cease and Desist Order (CDO) No. R3-2007-0051, which prohibits violations of Order No. R3-2007-0050.

BACKGROUND

At 4573 Branciforte Drive in Santa Cruz County, the Discharger owns and operates a rooming house on hilly rural land comprising several acres, approximately five miles northeast of the City of Santa Cruz. The rooming house can accommodate up to 20 residents and discharges domestic wastewater to two septic tanks. A pump station is intended to transfer their effluent about 100 feet uphill to a treatment works, which discharges to four percolation ponds extending in series downhill toward the septic tanks, parallel to the effluent pipeline. The Discharger lives on the site in the former gatehouse, which is served by a separate septic tank and leachfield system.

Branciforte Creek flows southward along the property's eastern boundary while an unnamed tributary flows along the southern boundary before discharging into the Creek. The septic tanks, treatment pond, and percolation ponds all lie within 100 feet of one of these surface waters. See Attachment A to Order No. 01-037 for the locations of the Creek and treatment and disposal works.

On April 14, 1995, the Central Coast Water Board adopted Resolution No. 95-04, which amended the Basin Plan, adding Santa Cruz County's Wastewater Management Plan for the San Lorenzo River watershed. On May 18, 2001, the Board adopted WDRs Order No. 01-037 for Casa de Montgomery, Inc. which, in accordance with the Basin Plan, includes the following:

Effluent Limitation

"3. Total Nitrogen in wastewater shall be reduced by at least 50 percent prior to subsurface disposal. Compliance will be determined from samples taken before and after extended treatment."

System Operation Specifications

"10. The Discharger currently has an onsite septic system. To comply with the San Lorenzo River Wastewater Management Plan, this system shall be modified to reduce nitrogen levels by a minimum of 50 percent. The Discharger will comply with the timeline listed below for system construction:

Task	Completion Date
Completion of extended treatment system design	1/1/2002
Installation of extended treatment system	7/1/2003
Submit a technical report detailing optimal system performance	1/1/2004

The Discharger did not comply with Specification No. 10, above, and therefore could not, in staff's professional judgment, comply with Limitation No. 3. The basis for this conclusion is described below.

Board staff inspection found the "treatment" system to consist of various diameters of partly buried plastic piping with two plastic jugs into the piping. To nitrify (convert the ammonia in the septic tank effluent to nitrate) and subsequently denitrify (convert nitrate to nitrogen gas), a treatment system must provide the specific environmental conditions necessary to sustain the bacteria that perform the conversions. Staff concluded the piping-jug system cannot provide the necessary conditions. (To nitrify, a treatment system must provide oxygen and a carbon source, typically provided by the septic tank effluent. To denitrify, the system must provide an anoxic zone and carbon. To provide these conditions, effective systems typically consist of discrete reactors or zones. Importantly, effective systems typically recycle the flow back through the system several times. The piping-jug system provides none of these conditions.) Although requested to do so by both Board staff and Santa Cruz County staff, the Discharger never submitted a design for the system for review and approval. Although repeatedly requested to do so by Board staff, the Discharger did not submit the effluent monitoring data necessary to demonstrate the system's ability to nitrify or denitrify.

As described below, noncompliance with Specification No. 10 led to the Executive Officer (EO) preparing a series of notices of violation and enforcement orders. The Discharger did not adequately comply with any of these requirements, as attested to by the items included in the following compliance history.

COMPLIANCE HISTORY

The following history of noncompliance comprises three sections: WDR compliance efforts, annual fees, and monitoring reports.

WDR Order No. 01-037 compliance

- In a November 9, 2001 letter sent via regular mail, the EO reminded the Discharger of Order 01-037's requirement to submit the treatment system design by January 1, 2002.
- On January 17, 2002, the EO notified the Discharger via email that the EO had not received the design, and that this violated WDRs Order No. 01-037.
- In a February 21, 2002 notice of violation sent via certified mail, the EO ordered the Discharger to submit the treatment system design. The letter notified the Discharger of the possible penalties for noncompliance. The Discharger did not claim the letter, which was returned to the Regional Board's offices. The letter was sent to the official address (the Discharger's residence address, which is also the facility location) that the Discharger had provided to the Board.
- In April 5, 2002 letter sent via certified mail and a July 2, 2002 letter sent regular mail, pursuant to Water Code section 13267, the EO required the Discharger to submit a treatment system design by April 19, 2002, and July 24, 2002, respectively. The letters notified the Discharger of the possible penalties for noncompliance. The Discharger did not claim the April letter, which was returned to the Regional Board's offices. The letters were sent to the official address that the Discharger had provided to the Board.
- In a September 18, 2002 letter sent via regular mail, the EO directed the Discharger to sample and analyze influent and effluent for total nitrogen twice per month. The letters was sent to the official address that the Discharger had provided to the Board
- In a September 19, 2002 NOV sent via regular mail, the EO notified the Discharger of numerous violations of Order 01-037 and that, in accordance with Water Code section 13263(g), discharge of waste into waters of the State is a privilege and not a right. The letter was sent to the official address that the Discharger had provided to the Board
- In a May 28, 2003 letter served by the Santa Cruz County Sheriff on June 19, 2003, the EO reiterated the requirement of Order 01-037 that the Discharger must install a treatment system by July 1, 2003. The letter imposed additional reporting requirements and notified the Discharger of the possible penalties for noncompliance.
- In a May 28, 2003 email, staff reminded the Discharger of the requirement that a treatment system must be installed by July 1, 2003, in accordance with Order No. 01-037.
- In an August 12, 2003 email, the Discharger informed Board staff of his intent to begin wastewater disposal underground.
- In an August 13, 2003 letter sent certified mail, pursuant to Water Code section 13267, the EO required the Discharger to submit monthly status reports of his efforts to restore his treatment and disposal systems to compliance with Order No. 01-037. The letter notified the Discharger of the possible penalties for noncompliance. The Discharger did not claim the letter, which was returned to the Regional Board's offices. The letter was sent to the official address that the Discharger had provided to the Board
- In an April 13, 2004 letter, the Discharger reported he no longer discharged effluent into the ponds but had discharged to a subsurface system since July 2003. However, the Discharger submitted no design for the new system for review and approval by the EO or the County Environmental Health Services Department.
- A May 4, 2004 staff site inspection found the Discharger had installed new treatment and disposal system components but staff could not discern their function from a visual inspection.
- In a July 22, 2004 meeting between Regional Board engineer Michael Higgins, the Discharger, and his assistant Maureen Gallagher, the Discharger stated his desire to achieve compliance with Order No. 01-037.

- On September 15, 2004, the Discharger met with Fall Creek Engineering, who agreed to draft a proposal.
- On October 15, 2004, Maureen Gallagher notified staff they had received the proposal and were requesting revisions.
- On November 19, 2004, staff called Ms. Gallagher for a status report. She responded that the Discharger needed more information.
- On December 2 and December 14, 2004, staff called the Discharger for status and left messages, and received no response.
- On January 13, 2005, staff left a message for the Discharger asking for a decision on the treatment plant/disposal system proposal, and received no response.
- On February 3, 2005, staff informed the Discharger via phone message that no more time was available to comply.
- On February 9 and 16, 2005 staff informed the Discharger via phone message that he must submit, by February 23, 2005, a signed contract specifying design completion within thirty days of signing the contract.
- Since November 19, 2004, the Discharger has not communicated with staff, regarding any issue discussed herein or any other issue.
- On September 29, 2005, the Superior Court of California granted an injunction requiring the Discharger to comply with all lawful orders of the Water Board; and within 30 days of the injunction's date, to submit a signed contract to design a treatment and disposal system capable of removing 50 percent of the nitrogen from the wastewater; within 90 days, to submit the treatment system plans to the Executive Officer; within 210 days of the Executive Officer's approval of the design, to install the system, ensure its reliable operation, and report the findings to the Executive Officer.
- On September 16, 2005, Fall Creek Engineering reported it was in the process of designing an enhanced wastewater treatment system to reduce the wastewater's nitrogen by half.
- On November 5, 2005, the Discharger submitted the design of a treatment system known to be capable of removing 50 percent of the nitrogen from the wastewater.
- On March 6, 2006, the Executive Officer commented on the design, stating that before approval could be granted the Discharger shall alter the plans to show the existing system would be permanently removed from service within 30 days of activating the new system.
- The Discharger did not submit altered plans for approval nor contract with a construction professional to build the system.
- On November 9, 2006, the Santa Cruz County Health Services Agency, via certified mail, notified the Discharger that he was in violation of the California Health and Safety Code due to the presence of untreated sewage in a culvert discharging to Branciforte Creek. The County directed the Discharger to investigate and eliminate any sources of contamination, including broken pipelines and other sources.

Annual fee

- On February 26, 2004, the State Water Resources Control Board sent the Discharger, via certified mail, a Notice of Violation for failure to pay annual fees of \$1,766 for the year 2003-2004. The Discharger did not claim the letter, which was returned to the State Board's offices.
- The Discharger did not claim a February 2, 2005 notice of violation sent by the State Water Resources Control Board for non-payment of the \$981.00 annual fee for 2004-2005.
- The Discharger did not claim a January 26, 2006 notice of violation sent by the State Water Resources Control Board for non-payment of the \$981.00 annual fee for 2005-2006.
- All of the above letters were sent to the Discharger's address of record on file with the State and Central Coast Water Boards.
- The Discharger paid the \$981 annual fee for 2006-2007 but not the prior annual fees.

Monitoring Reports

- Monitoring and Reporting Program (MRP) No. 01-037 (attached) requires the Discharger to report semiannually by February 1st and August 1st the results of sample analyses and information regarding sewage spills. Since the Board adopted the Order in May 2001, the Discharger should have submitted 12 semiannual reports. However, the Board's case files show the Discharger submitted five complete reports including influent and effluent analyses, one report with effluent data, and one report with no data. The Discharger submitted no monitoring reports after June 25, 2003. Four of the five reports show the discharge removed more than 50 percent of the nitrogen from the wastewater. The Discharger submitted no reports of biweekly monitoring as directed by the EO in the September 18, 2002 letter.

Board staff inspected the treatment system identified by the Discharger as the system that has removed and continues to remove half the nitrogen from the septic tank effluent. The Discharger submitted the four monitoring reports noted above to demonstrate the system's effectiveness. As described above, staff found the treatment system does not apparently provide the conditions necessary to nitrify or denitrify the wastewater. In staff's professional judgment, the system cannot likely remove half the wastewater's nitrogen. Therefore, staff concluded the monitoring results do not likely represent the system's performance. Accordingly, staff first requested additional monitoring data, followed with a request for wastewater samples split between the Discharger and Board staff. However, the Discharger has not responded to staff's request for biweekly samples for nitrogen in the wastestream, has not submitted monitoring reports since 2003, and has not complied with the District Attorney's request he set up a monitoring program whereby Board staff would sample the wastestream. Moreover, the Discharger has never submitted the plant's design to the Board or County Health, as required. Therefore, without enough valid data and the plant design, it has been impossible for staff to determine if the system removes half the nitrogen. The submittal of merely four compliant results of more than the 40 required does not demonstrate, in staff's judgment, that the system functions as required.

- By letter dated April 9, 2004, the Executive Officer notified the Discharger of his failure to submit the semiannual monitoring report required by Monitoring and Reporting Program No. 01-037. The letter informed the Discharger of the possible penalties for failure to comply.
- By letter dated August 22, 2005, the Board notified the Discharge of his failure to submit the monitoring report required on August 1, 2005.

Compliance summary. The Discharger has not complied with WDRs Order No. 01-037's Effluent Limitation No. 3 or System Operation Specification No. 10.

The following table summarizes the Discharger's other compliance requirements and compliance history.

Compliance item	Number of requirements	Number of compliances
NOV	3	0
13267 letter	3	0
Reminder letters	3	0
Requests for information	3	0
Annual fee	4	1
Monitoring reports	12	5
Biweekly nitrogen monitoring reports	30	0

DISCUSSION

Rescission of WDR Order No. 01-037.

California Water Code §13263(g) states:

No discharge of waste into the waters of the state, whether or not the discharge is made pursuant to waste discharge requirements, shall create a vested right to continue the discharge. All discharges of waste into waters of the state are privileges, not rights.

The State Water Resources Control Board's Water Quality Enforcement Policy recommends rescission of WDRs for negligently or intentionally withholding required information (Enforcement Policy section V.A(d)), and states the rescission may be appropriate in cases including nonpayment of fees (Enforcement Policy section IV.C.8).

Except for submitting a design of a treatment facility capable of removing half the effluent's nitrogen, the preceding compliance history demonstrates the Discharger has not complied with any requirement specified in Orders adopted by the Water Board or in correspondence from the EO. Nor has the Discharger installed the treatment facility described in the submitted designs, to date. The Discharger did not respond to staff comments on the design. The Discharger has made it impossible for the Board to determine whether the Discharger is complying with requirements the Board imposed to ensure the protection of beneficial uses of surface and ground water. In staff's professional judgment, the current facility is incapable of achieving 50 percent nitrogen reduction. The Discharger failed to provide monitoring data to Water Board staff either as required by his WDRs and other requirements, or after receiving notice from the Santa Cruz County District Attorney that failure to comply with WDRs would result in legal action initiated by the District Attorney. ... Rescission of WDRs Order No.01-037 would revoke the Discharger's privilege to discharge waste.

WDRs Order No. R3-2007-0050. Order R3-2007-0050 prohibits the discharge of waste at the subject site and rescinds WDRs Order No. 01-037. The purpose of the WDRs is to prohibit the Discharger from discharging waste. California Water Code Section 13264 provides:

"No person shall initiate any new discharge of waste or make any material changes in any discharge, or initiate a discharge to, make any material changes in a discharge to, or construct, an injection well, prior to the filing of the report required by Section 13260 and no person shall take any of these actions after filing the report but before whichever of the following occurs first:

(1) The issuance of waste discharge requirements pursuant to Section 13263..."

Section 13264 allows discharges to commence without WDRs after expiration of a stated period of time, but only if the discharge does not threaten to cause pollution or nuisance, which this discharge does. Although Section 13264 does not explicitly prohibit continued discharges after rescission of WDRs, where there is not a new or modified discharge, such prohibition is implicit in Sections 13260-13265.

On the other hand, Water Code Section 13243 is explicit that a regional water board may prohibit discharges of waste in WDRs: "A regional board, in ... waste discharge requirements, may specify certain conditions or areas where the discharge of waste, or certain types of waste, will not be permitted."

To remove any ambiguity, staff recommends the board adopt new WDRs that explicitly prohibit the continued discharge of waste from the facility. The prohibition does not apply to the separate system at the gate house that the Discharger occupies.

CDO No. R3-2007-0051. This Order prohibits the violation of Order No. R3-2007-0050. Adopting the CDO provides a basis for the Attorney General, or the District Attorney, to obtain an injunction if the Discharger continues to violate Board requirements. In addition, staff believe the issuance of the CDO will discourage County staff from issuing the facility any permits to operate.

CONCLUSION

Staff concludes that the Discharger should not be granted the privilege to discharge waste into State waters. Staff further concludes that the Discharger does not intend to comply with Order No. 01-037's Effluent Limitation No. 3 or System Operation Specification No. 10, or with MRP No. 01-037. Staff so concluded because the Discharger has not:

1. Complied in any manner with the Superior Court's injunction or the Board's or District Attorney's request for valid system monitoring data;
2. Submitted more than five of the 12 reports required in MRP No 01-037 and none at all since June 2003;
3. Complied with numerous directives and requirements from the EO, as shown in the compliance history, above (except to provide the preliminary design of a treatment system likely able to remove half the nitrogen from the wastewater);
4. Accepted delivery of numerous letters from the Board;
5. Paid the required annual fees for three years (until this year, which he paid);
6. Communicated with Board staff since November 2004; and
7. Demonstrated that his existing treatment system removes half the total nitrogen from the wastewater.

The Discharger has the obligation to demonstrate that his discharge complies with all applicable requirements; staff is not required to prove the system cannot meet the requirements. As stated above, in staff's professional judgment, the existing system likely cannot remove half the nitrogen and the existing monitoring data do not demonstrate that it can. However, staff would recommend

rescission based on the other instances of noncompliance (failure to pay fees and submit required reports) noted above.

RECOMMENDATION

Adopt WDRs Order No. R3-2007-0050, which rescinds Order No. 01-137 and prohibits further discharge, and adopt CDO No. R3-2007-0051.

ATTACHMENTS

1. WDRs Order No. 01-037 and Monitoring and Reporting Program No. 01-037
2. WDRs Order No. R3-2007-0050
3. CDO Order No. R3-2007-0051

S:\WDR\WDR Facilities\Santa Cruz Co\Casa de Montgomery - Happy Valley Villa\Rescission\Haffner SRP 5-31 version.DOC