

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

STAFF REPORT FOR MEETING OF MAY 10-11, 2007

Prepared on April 10, 2007

ITEM NO: 5

SUBJECT: **Consideration of Requests for Rescission of Cease and Desist Order Nos. R3-2006-1046 for Doug & Paula Dishen, and No. R3-2006-1004 for Dennis & Sally Joller, Los Osos/Baywood Park Prohibition Zone**

KEY INFORMATION

Locations: 1755 12th Street (Dishen), and 1546 8th Street (Joller), Los Osos/Baywood Park Prohibition Zone, San Luis Obispo County

Type of Waste: Domestic wastewater

Action Proposed: Rescission of cease and desist orders

SUMMARY

On December 15, 2006, the Central Coast Water Board issued cease and desist orders to Douglas & Paula Dishen and Dennis & Sally Joller for their prohibited septic system discharges in the Los Osos/Baywood Park Prohibition Zone. The Dishens and Jollers have since provided acceptable reasons why they did not agree to settle with Prosecution Team prior to their individual cease and desist order hearings, as well as why they missed their individual hearings. The Dishens and Jollers have requested that their cease and desist orders be rescinded so that they may enter into a settlement agreement with the Prosecution Team instead. The Prosecution Team recommends the Water Board rescind the Dishens' and Jollers' cease and desist orders.

DISCUSSION

Background. On December 14, 2006, the Water Board approved a settlement agreement instead of cease and desist orders for several individual property owners in the Los Osos/Baywood Park prohibition zone. After the Water Board approved the settlement agreement, it held individual hearings and issued cease and desist orders to 13 of the non-settling parties, on December 15, 2006. Of these 13 non-settling parties, eight were not present for their hearings. These parties essentially waived their rights to a hearing and the Water Board adopted their cease and desist orders en masse at the end of the hearing day. Two of these eight parties, Doug & Paula Dishen and Dennis & Sally Joller, contacted the Prosecution Team after the hearings and explained why they missed the hearing and stated their willingness to enter a settlement agreement with the Prosecution Team instead of having a cease and desist order. The Prosecution Team explained to the Dishens and Jollers that the Water Board would have to rescind their cease and desist orders in order for them to enter a settlement agreement with the Prosecution Team. The Dishens and Jollers then formally requested rescission of their cease and desist orders in respective letters to Water Board advisor Michael Thomas, dated January 4 and January 29, 2007. These letters are attached.

Doug & Paula Dishen, Cease and Desist Order No. R3-2006-1046. The Dishens' January 9, 2007 letter explains that they "were unaware that we had the option to sign a settlement agreement until after December 15, 2006." The Dishens had been busy caring for a sick family member in the

Los Angeles area and did not have time to read through the various documents from the Water Board until after Christmas. The Dishens letter states:

"While reading through many documents we realized there was a settlement agreement option but it was past the deadline. We have signed the settlement agreement and would be grateful if you would reconsider and accept our signed document."

Dennis & Sally Joller, Cease and Desist Order No. R3-2006-1004. On or about November 1, 2006, the Jollers signed an authorization form to be represented by Shauna Sullivan, an attorney representing the Prohibition Zone Legal Defense Fund, and later submitted a copy to the Water Board. That agreement stated:

"This authorization serves as my notice to the Regional Water Quality Control Board and its staff that Sullivan & Associates represents me and is authorized to act on my behalf with regard to all matters concerning settlement negotiations and extension requests. I/We request that all communications from the Regional Water Quality Control Board and its staff concerning the proposed enforcement action against the undersigned be directed to my attorney, Sullivan & Associates..."

As requested, the Prosecution Team then stopped communicating directly with those who signed Shauna Sullivan's authorization, including the Jollers. On November 7, 2006, Shauna Sullivan proposed an alternative settlement agreement on behalf of the Prohibition Zone Legal Defense Fund to the Prosecution Team. The Jollers went a step further and signed Shauna Sullivan's proposed agreement and submitted it to the Water Board on November 15, 2006. The accompanying letter, a copy which is attached, states:

"My wife and I have signed a "settlement agreement to comply with work plan of preventative and remedial measures pursuant to water code 13300." If this agreement is not acceptable, I am willing to work with the board to find a way not to receive a CDO."

Shauna Sullivan's proposed settlement agreement was unacceptable and the Prosecution Team rejected it. The Prosecution Team instead incorporated acceptable terms from Shauna Sullivan's proposal into its settlement agreement. The Prosecution Team mailed its settlement agreement to Shauna Sullivan and all other parties that were not represented by her on November 16, 2007. Several parties not represented by Shauna Sullivan then accepted the Prosecution Team's settlement offer. After further negotiations, the Prosecution Team offered an improved settlement by mailing a modified settlement agreement to Shauna Sullivan and all other parties that were not represented by her on December 6, 2006. The Jollers were not aware of the Prosecution Team's settlement offers until after the December 14-15, 2006 hearings. According to Dennis Joller, Shauna Sullivan did not tell him about either of the Prosecution Team's settlement offers. The Jollers could have learned of the Prosecution Team's settlement offer at the December 14-15, 2006 hearing, but the Jollers did not attend that hearing. In their January 29, 2007 letter, the Jollers state "We planned on attending the CDO hearings. I knew the dates of the hearing, but got the days confused."

Their stated willingness to sign settlement agreement to avoid receiving a cease and desist order suggests the Jollers would have accepted the Prosecution Team's settlement offer had they known about it. This is supported by the fact that nearly all of the parties that were not represented by Sullivan and heard about the settlement offer directly from the Prosecution Team accepted it.

RECOMMENDATION

The Prosecution Team accepts these reasons and requests that the Water Board rescind Cease and Desist Order No. R3-2006-1046 and No. R3-2006-1004, for the Dishens and Jollers, respectively, so they may enter into a settlement agreement with the Prosecution Team. The Prosecution Team mailed Water Board-approved, site-specific settlement agreements to the Dishens and the Jollers. Both parties have signed and submitted their settlement agreements in anticipation of your consideration of this item today. The Dishens' signed settlement agreement is included as Attachment 4. The Jollers' signed settlement agreement is included as Attachment 5.

Assuming the Water Board rescinds these cease and desist orders today, the Prosecution Team will then sign the Dishen and Joller settlement agreements. The Assistant Executive Officer will then certify the settlement agreements, on which date they will become fully effective and enforceable.

ATTACHMENTS

1. January 9, 2007 Dishen letter, including signed settlement agreement template
2. January 29, 2007 Joller letter
3. November 15, 2006 Joller letter
4. Signed Dishen settlement agreement
5. Signed Joller settlement agreement

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