

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

STAFF REPORT FOR REGULARY MEETING OF MAY 22-23, 2014

ITEM NO: 14

SUBJECT: Los Osos Cease and Desist Orders

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This Action: Discussion/Information

SUMMARY

The Central Coast Water Board has issued cease and desist orders and cleanup and abatement orders to individuals in Los Osos to require compliance with the Basin Plan prohibition on waste discharges. Several parties have requested that the Central Coast Water Board rescind these orders. Staff recommends that the Central Coast Water Board take no action at this time and not direct staff to bring the item back for a hearing.

DISCUSSION

Background

In 1983, the Central Coast Water Board adopted Resolution No. 83-13, which amended the Basin Plan and prohibited discharges of waste from individual and community sewage systems within portions of the Baywood Park/Los Osos area of San Luis Obispo County. Resolution No. 83-13 anticipated that the County would complete construction of a community wastewater collection and treatment system by the prohibition date of November 1, 1988.

After many years of delay, the County Board of Supervisors voted unanimously to proceed with a community wastewater project for Los Osos in October 1995. The Central Coast Water Board reviewed the proposed project and found it acceptable as a means of resolving water quality problems in the community. The County then proceeded with design plans and completion of the environmental review and permitting process. In 1997, the County was on schedule to begin construction of the community-wide sewer system, which would have included a treatment plant to be built on a site outside of town, east of South Bay Boulevard. During the permitting process, the California Coastal Commission responded to community members who protested the County project and wanted a treatment plant in town by encouraging the community to form a community services district (CSD).

In November 1998, Los Osos voted to form a CSD to replace the County as the governing body for community services. The Los Osos CSD chose not to proceed with the County's wastewater project, began anew the process for project development, and developed a revised project for wastewater collection, treatment, and disposal.

Through a lengthy multi-year process of evaluation and public meetings, the Los Osos CSD developed a technically, environmentally, and financially sound community wastewater project.

In 1999, the Central Coast Water Board issued cease and desist orders to the Los Osos CSD for facilities under its jurisdiction that were discharging in violation of the Basin Plan prohibition.

In 2001, the Los Osos CSD approved the community wastewater project and formed an assessment district to fund it. The Coastal Commission approved a coastal development permit in August 2004. Construction of the community wastewater facilities began in August 2005.

In a recall election held in September 2005, Los Osos voters replaced the majority of the Los Osos CSD directors. The new Los Osos CSD board stopped work on the project with the stated intention to move the project to a different site.

In response, the Central Coast Water Board issued an administrative civil liability order against the Los Osos CSD for \$6.6 million in January 2006.

In January 2006, the Central Coast Water Board also began a process to hold individuals responsible for their discharges of waste from septic systems contrary to the Basin Plan prohibition. Enforcement staff issued 45 draft cease and desist orders to owners of randomly selected residences in the prohibition zone. Ultimately, the Central Coast Water Board issued 13 cease and desist orders, 25 parties accepted settlement agreements in the form of cleanup and abatement orders, and 7 parties agreed to settle but never signed the agreements. The Central Coast Water Board never finalized any actions against the latter seven parties. Staff's original intention was to hold all owners of septic systems in the prohibition zone similarly responsible.

The 38 orders approved by the Central Coast Water Board require the dischargers to take the following actions:

1. Cease septic system discharges when the community system becomes available. If the county were to cease work on the community system, dischargers would have two years to develop alternatives to their septic systems.
2. Take interim compliance actions, including septic system inspection and pumping every three years with repair of any failing elements.

Some of the parties petitioned the State Water Resources Control Board for review of the cease and desist orders, which it declined to do. Subsequent attempts to challenge the orders in court also failed.

We have received information that five order recipients have since sold their properties. Since the orders were issued to individuals, once those individuals cease their discharges, the orders are moot and prospective requirements do not apply.

Because the county continues to make progress on the community system, all parties are in compliance with the order provisions requiring hookup.

Current Status

There are currently 33 orders in effect. The orders require hookup when the community system becomes available and the interim actions noted above.

During public comment and staff updates at meetings over the years, the Central Coast Water Board has received requests from order holders and other interested parties that the Central

Coast Water Board rescind the orders. It is within the Central Coast Water Board's discretion to do so at a properly noticed public meeting.

Central Coast Water Board enforcement staff recommends leaving the individual enforcement orders in place for the following reasons:

1. The County has not yet completed the community system, and while we are confident that it will, this outcome is not guaranteed.
2. The main requirement of the orders, hooking up to the sewer when it becomes available, cannot yet be complied with. This requirement should stay in place until the system is available.
3. Even when the system is available, there may be dischargers in the prohibition zone who are reluctant or refuse to hook up. Leaving these orders in place maintains a disincentive for order recipients to continue violating the prohibition after construction of the sewer system.

Staff has received numerous comments on this subject. Most encourage the Central Coast Water Board to rescind the orders. Reasons include the County's progress toward completing the community system, the cost of more frequent septic-tank pumping, the unfairness of only holding a small number of dischargers responsible, and the continued stigma of the orders. The comments are provided with this report.

ATTACHMENTS:

1. Example Cease and Desist Order
2. Example Cleanup and Abatement Order
3. Comments