

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

STAFF REPORT FOR REGULAR MEETING OF MAY 3, 2012

(Prepared on January 5, 2012)

ITEM NUMBER: 10

SUBJECT: Rescission of Waste Discharge Requirements for Ellingwood/
Stagecoach Territory, Red Barn (Order No. 92-022)

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KEY INFORMATION

Discharger: Ellingwood/Stagecoach Territory, Red Barn
Location: 1000 Highway 101, Aromas, Monterey County
Discharge Type: Sanitary Wastewater
Treatment: Septic Tanks and Mound System (not constructed)
Design Capacity: 5,000 gallons per day
Recycling: None
Existing Order: 92-22
This Action: Rescind waste discharge requirements (Order No. 92-022)

SUMMARY

Staff reviewed existing waste discharge requirements for a 5,000-gallon-per-day mound system at the Red Barn in Aromas. The Central Coast Regional Water Quality Board (Central Coast Water Board) approved the WDRs in 1992 prior to construction of the system; that system was never constructed. Instead, the discharger used, and continues to use, portable toilets for sanitary wastewater handling. Monterey County has enforced numerous code violations at the Red Barn, including violations associated with sanitary wastewater handling. Monterey County determined that the mound system would be insufficient to adequately process the Red Barn's wastewater. Consequently, the current WDRs regulate a system that will not be permitted and therefore not built. Staff agrees with Monterey County's judgment and position on the matter. Consequently, staff proposes to rescind the WDRs to eliminate the Central Coast Water Board's approval of an inadequate sanitary system and oversight of the non-existent discharge.

DISCUSSION

The Red Barn is located in Aromas, at 1000 Highway 101 in Monterey County. The Red Barn holds weekend flea markets, which produce up to 5,000 gallons per day of sanitary wastewater. The Central Coast Water Board adopted Waste Discharge Requirements Order No. 92-22 to regulate sanitary wastewater discharges from the Red Barn's proposed septic tank/mound system. That system was never constructed. Instead, the discharger used, and continues to use, portable toilets for sanitary wastewater handling.

Starting in 2008, Monterey County officials intensified efforts to enforce a number of code violations at the Red Barn. Monterey County contended, and the Monterey County Superior Court agreed, that the Red Barn had, among other things, expanded the facility beyond the limits of its use permit. Court documents stated:

Based on the Hatch, Mott MacDonald report of June 5, 2009 the flea market attendance was evaluated on April 5, 2009. The observed traffic study began at 8:00 a.m. This report did not count the vendors and employees who arrived prior to 8:00 a.m. However, solely based on the

8:00 a.m. – 5:00 p.m. time range, the vehicle count was 2,749. EHD staff has observed the occupancies of the vehicles entering the Red Barn property, and the vast majority of the vehicles had an occupancy rate of between 4 – 6 occupants per vehicle. Based on this, it is EHD's opinion that the peak [wastewater] flow has been grossly underestimated. If the Red Barn is unable to design an onsite wastewater treatment system for the site for the use intended, then Red Barn will need to reduce operations to what the site can support.

As a result of Monterey County's investigations, Monterey County alleged the following Monterey County Code violation:

Lack of adequate flush toilets supplied with a reliable source of water and connected to an approved sewage disposal system for public assemblages that occur ten or more calendar days per year.

To address that violation, Monterey County has required the discharger to design an acceptable wastewater system and apply for necessary permits. At that time, the discharger will submit a report of waste discharge and the Central Coast Water Board may consider waste discharge requirements for the Red Barn's proposed, permanent facilities. It is unknown when an acceptable report of waste discharge will be submitted.

In the meantime, the existing WDRs allow a 5,000-gallons-per-day mound system that, in staff's and Monterey County's informed opinions, will not sufficiently process expected sanitary wastewater streams and will not be permitted.

COMPLIANCE HISTORY

Staff Cecile Demartini created a January 11, 2006 "Telephone Log" memo and filed it in the Red Barn file. That "Telephone Log" memo summarizes the facility's compliance history as follows:

Ms. Fran Ellingwood, owner of The Red Barn, acquired WDR Order No. 92-22 in 1992 for a proposed mounded septic disposal system. Due to financial hardship, she was not ever able to proceed with construction of the system. For the life of the permit, Ms. Ellingwood has never submitted a monitoring report due to there being no discharges to report on. Now that monitoring reports are tracked electronically a 'Failure to Submit' letter is being automatically triggered and sent to Ms. Ellingwood. Martin Fletcher explained to me that Kim McFlail called to discuss the letter with him and that Ms. Ellingwood was not interested in rescinding the WDR but yet he did not believe he was responsible for sending out a letter twice a year explaining that they had not yet started construction on the mounded septic disposal system.

CECILE'S CONVERSATION WITH KIM MCFLAIL AND FRAN ELLINGWOOD: Kim McFlail answered the call. He essentially explained to me that they do not intend to construct a septic disposal system and don't expect to have to write a letter twice a year to the Board explaining this. Yet, he was not interested in rescinding the permit. My explanation to him was that with the WDR permit there comes a responsibility to inform the Board if they have or don't have a waste discharge. I explained to Mr. McFlail that as long as the permit is active and they don't send in a report of a discharge or non-discharge, they will receive the 'Failure to Submit' letters. He didn't like those options at all and found the whole system to be ridiculous. He became a bit irate and passed me over to Fran Ellingwood. After explaining the options to Ms. Ellingwood (rescind permit or send in report twice a year) she stated she was not interested in rescinding the order and that she would send in a report of discharge or non-discharge on April 20 and October 20 of each year.

The discharger's responsiveness has not improved since that January 11, 2006 memo. The discharger is especially recalcitrant regarding submittal of monitoring reports. It requires inordinate staff resources to manage the case.

ENVIRONMENTAL SUMMARY

Waste discharge requirements for existing facilities are exempt from provisions of the California Environmental Quality Act (Public Resource Code, Section 21100 et seq.) in accordance with Section 15301, Chapter 3, Title 14 of the California Administrative Code.

COMMENTS

The Discharger and interested parties were notified by a letter dated January 11, 2012, of Water Board staff's recommendation to rescind Waste Discharge Requirements Order No. 92-22. These parties were invited to submit written comments by March 2, 2012. As of March 2, 2012, neither the Discharger nor any interested parties submitted written comments. On March 26, 2012, staff telephoned discharger representative Mr. Ken McPhail and asked Mr. McPhail if he had any comments concerning the proposed rescission. Mr. McPhail replied that he did not object to the rescission and he requested that his agreement be noted in this staff report. He also requested that this staff report include his statement that the discharger is in negotiations with the State of California's Department of Transportation regarding an eminent domain acquisition of a portion of Red Barn property, and that negotiation involves sanitary sewer discussions.

RECOMMENDATION

Rescind Order No. 92-22, Waste Discharge Requirements for Red Barn

ATTACHMENT

1. Order No. 92-22, Waste Discharge Requirements for Red Barn

TJK

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