

CENTRAL COAST REGIONAL WATER QUALITY CONTROL BOARD

JEFFREY S. YOUNG, CHAIR

In the Matter of the)
South San Luis Obispo County)
Sanitation District Administrative)
Civil Liability Complaint)
No. R3-2012-0030)
_____)

TRANSCRIPT OF PROCEEDINGS

San Luis Obispo, California

Wednesday, October 3, 2012

Reported by:

MARK McCLURE
CSR No. 12203

Job No. :
B8824WQSLO

CENTRAL COAST REGIONAL WATER QUALITY CONTROL BOARD

JEFFREY S. YOUNG, CHAIR

In the Matter of the)
South San Luis Obispo County)
Sanitation District Administrative)
Civil Liability Complaint)
No. R3-2012-0030)
_____)

TRANSCRIPT OF PROCEEDINGS, taken at
895 Aerovista Place, San Luis Obispo,
California, commencing at 9:01 a.m.
on Wednesday, October 3, 2012, heard before
the CENTRAL COAST REGIONAL WATER QUALITY
CONTROL BOARD, reported by MARK McCLURE,
CSR No. 12203, a Certified Shorthand Reporter
in and for the State of California.

APPEARANCES :

CHAIR: Jeffrey S. Young

VICE CHAIR: Russell M. Jeffries

BOARD MEMBERS: Jean-Pierre Wolf
Michael Jordan
Michael Johnston

INTERIM ACTING
EXECUTIVE OFFICER: Kenneth A. Harris, Jr.

BOARD COUNSEL: Jessica Jahr

BOARD STAFF: John Robertson
Ryan Lodge

I N D E X

SPEAKERS:	PAGE
William Nicolls	7

ITEM 3:

Administrative Civil Liability Complaint

No. R3-2012-0030:

INTRODUCTORY ITEMS:

- 1 - Roll Call
- 2 - Public comments
- 3 - Presentation of Draft Order No. R3-2012-0041

1 SAN LUIS OBISPO, CALIFORNIA, WEDNESDAY, OCTOBER 3, 2012

2 9:01 A.M.

3
4
5 MR. YOUNG: Folks, we're going to start our
6 meeting today.

7 Good morning, everybody. I'm Jeff Young,
8 chair of the Central Coast Regional Water Quality
9 Control Board. I welcome everybody to San Luis Obispo.
10 Today is October 3rd.

11 And why don't we start with roll call.

12 Mr. Harris.

13 MR. HARRIS: Mr. Young?

14 MR. YOUNG: Present.

15 MR. HARRIS: Mr. Jeffries?

16 MR. JEFFRIES: I'm here.

17 MR. HARRIS: Mr. Delgado? He's absent.

18 Dr. Hunter? Dr. Hunter is absent.

19 Mr. Johnson?

20 MR. JOHNSON: Present.

21 MR. HARRIS: Mr. Jordan?

22 MR. JORDAN: Present.

23 MR. HARRIS: Dr. Wolf?

24 DR. WOLFF: Present.

25 MR. YOUNG: Thank you. Let's move on to

1 introductions.

2 Mr. Harris.

3 MR. HARRIS: Advising and assisting the board
4 today is Ms. Jessica Jahr, counsel to the board;
5 technical staff to my far right, including Mr. John
6 Robertson and Mr. Ryan Lodge, and that's it. Okay.

7 MR. YOUNG: Okay. Item No. 3.

8 Mr. Harris.

9 MR. HARRIS: Item No. 3 is a continuation of
10 the hearing begun on September 7, 2012, concerning
11 Administrative Civil Liability Complaint R3-2012-0030.
12 The complaint alleges that the San Luis Obispo County
13 Sanitation District caused untreated wastewater
14 discharges to surface waters of the United States on
15 December 19 and 20, 2010. The alleged discharges are
16 violations of the California Water Code and Federal
17 Water Pollution Control Act.

18 MR. YOUNG: Okay. What we've decided to do
19 for today is to have Mr. Nicolls give us his public
20 comments for three minutes, and then we're going to
21 adjourn the meeting and go into closed session for
22 deliberations.

23 What we've decided to do is to allow
24 Mr. Nicolls to give his comments as a member of the
25 public and not as a member of the district, with the

1 admonition that we do not want to have you commenting on
2 any of the evidence that you've heard that took place
3 during the proceedings, and the reason for that was, as
4 a board member of the district, you have, obviously,
5 your own knowledge of what's been going on with the
6 district, and to keep things out of the realm of you
7 saying something, maybe, that the prosecution team would
8 feel was inappropriate and that they would want to
9 possibly cross-examine you on to set everything fairly,
10 we want to avoid that, and so as a member of the public
11 you're welcome to give your comments in terms of policy.

12 So that's what we decided to do, Mr. Jeffries.

13 MR. JEFFRIES: All right.

14 MR. YOUNG: We'll have to swear you in.

15

16

WILLIAM NICOLLS,

17

having been sworn, was examined and testified

18

as follows:

19

20

MR. YOUNG: Thank you. Go ahead.

21

22

MR. NICOLLS: I thank you very much for
allowing me the opportunity to speak to you.

23

24

25

The comments that I have are comments that I
had formulated in my mind prior to your hearing, so what
I have to say really has nothing to do with evidence

1 that was represented at the hearing.

2 I live in Grover Beach, I am on the Grover
3 Beach City Council, have been for six years now. I
4 currently function as the mayor pro tem, and as part of
5 my responsibility with the City of Grover Beach, I sit
6 on the board of directors of the South San Luis Obispo
7 Sanitation District. As part of the board of directors
8 of the district, I am currently the chairman of the
9 board. I have been on that board for approximately four
10 years now.

11 I would like to comment that I speak to you
12 today as a citizen, resident of Grover Beach. I would
13 like to impress upon you the need to be fair and
14 equitable in your decision on this matter. I'm a
15 ratepayer, as is everybody else in the three agencies
16 that comprise the South San Luis Obispo Sanitation
17 District. Any substantial fine that comes from this
18 situation is going to adversely severely affect all of
19 the ratepayers within the three agencies that comprise
20 the district.

21 So I ask you, I've looked at some past cases
22 that this Board has heard, I did a little bit of
23 research on my own, and I know in the past I have looked
24 at cases where it appears to me that you have been fair
25 and equitable. I would hope that you will proceed with

1 your deliberations on this case with that same thought
2 in mind, that whatever comes out of this is going to go
3 to the ratepayers, because that's the way we operate,
4 that's the way we're set up there. So please keep that
5 in mind and proceed with your deliberations.

6 I would also like to mention to you and remind
7 you that you did receive a letter, which I got a copy
8 of, dated September 4, from the mayor of Arroyo Grande.
9 He was unable to appear here in person, but he submitted
10 a letter to you. I have read that letter. I think he
11 has made some outstanding points. I almost chose to
12 read that letter for him, but I decided not to do that;
13 I would simply encourage you to please take a look at
14 that letter, read it. I think he makes some outstanding
15 points in it that will help you in your deliberations.

16 I thank you very much for the opportunity to
17 appear here.

18 MR. YOUNG: Thank you for your comments.

19 Okay, that concludes the remaining item that
20 we need to cover before adjourning and going into closed
21 session. So we'll now do that.

22 MR. HARRIS: Just for the audience's
23 information, I think what Ms. Jahr talked about
24 yesterday was at some point around lunchtime we would
25 like to have someone come back and give everyone an idea

1 of how much longer it's going to take so they can go out
2 and have lunch.

3 MR. YOUNG: Okay. And we do have a personnel
4 matter that we're going to be dealing with, so we're
5 going to stop at 11:00 to deal with that.

6 MR. HARRIS: So I think we would come back at
7 about 12:30 and let everybody know where we are.

8 MR. YOUNG: All right, thank you very much.

9 (Recess)

10 MR. YOUNG: All right, we're back out of
11 closed session and we do have an order that is being
12 photocopied right now which we're going to distribute to
13 everybody. Because Mike Jordan needs to leave very
14 soon, we want to quickly let staff run us through the
15 changes we have made to the draft order that we will all
16 look at up on the screen, instead of waiting to vote,
17 and then we'll have a vote and then we'll have the paper
18 version as soon as it comes down.

19 So, John, why don't you go ahead and put the
20 draft order on the screen and lead us through the
21 changes that we've made to it.

22 MS. JAHR: John is actually going to be
23 looking at the draft penalty calculator methodology
24 because it's a shorter version of the draft order.

25 MR. YOUNG: Okay.

1 MR. ROBERTSON: Okay, this is the enforcement
2 policy. I'm going to scroll up to the top.

3 The penalty calculation methodology worksheet,
4 this works through the different factors and steps of
5 the enforcement policy.

6 Step 1 is the potential for harm factor, which
7 is the sum of this factor here (indicating). Ten is the
8 sum of the selected factors up here (indicating) -- that
9 is, a sum of 5, 4 and 1.

10 Let me open up to step 1. This reflects the
11 harm or potential harm for beneficial users. The
12 physical and chemical, biological and thermal
13 characteristics of the discharges is a factor 2.

14 Let me step back and say factor 1, the Board
15 selected a value of 5; for the physical, chemical,
16 biological and thermal characteristics of the discharge,
17 factor 2, the Board identified a factor of 4; and for
18 the susceptibility of cleanup, factor 3, the Board
19 selected a score of 1. That sums the items right here
20 (indicating).

21 Step 2 identifies the per-gallon assessment
22 for the discharge. The Board identified a moderate
23 deviation from the requirement, and that, factored with
24 the previous potential for harm, comes to this .6 value
25 here on the spreadsheet (indicating).

1 The Board had four discharge volumes to
2 evaluate and determined that the 674,400 gallon
3 discharge volume was the most representative, based on
4 the evidence before them.

5 There were two days of discharge, so that
6 entered into this factor here (indicating), \$10,000 per
7 day, and for the per-day factor, the deviation from
8 requirement and potential for harm factored there was
9 assessed at .6 as well, and that is right there
10 (indicating).

11 Moving down to step 4, with respect to the
12 culpability factor, based on the evidence, the Board
13 determined a factor of 1.4.

14 With respect to the cleanup and cooperation
15 factor, factor 2 of step 4, the Board made a
16 determination of 1, 1.0 for that factor. That's right
17 there (indicating).

18 And then for the history of violations, the
19 Board made a determination of 0.9 for that factor.

20 The Board also added staff costs of \$75,000 to
21 this total final liability of \$1,109,812.80.

22 MS. JAHR: Do you have extra copies?

23 MR. YOUNG: If you'd like a copy, raise your
24 hand and we'll pass that to you.

25 Any Board comments before we take a vote? We

1 don't have a motion yet. Does anyone want to -- go
2 ahead, make a motion.

3 MR. JORDAN: Mr. Chair, I move that after
4 consideration of the evidence and according to the
5 findings presented in the draft order, that the Board
6 approve Draft Order R-32012-0041.

7 MR. YOUNG: Okay.

8 MR. JEFFRIES: Second.

9 MR. YOUNG: Any comments on the motion?

10 Okay. Seeing none --

11 And by the way, folks, a lot of the rationale
12 that went into what we did in terms of calculating the
13 penalty is contained inside the draft order itself, so
14 if you get a copy of this, you can look into what we
15 determined for why the volume we thought was
16 appropriate, why we settled with it, the 674,000 gallon
17 figure, the rationale is in there.

18 Also the degree of culpability, we looked at
19 that, because that has a big effect on the bottom-line
20 number. Our rationale for that is contained in the
21 draft order on page 8.

22 So I will call for a vote.

23 All those in favor of the motion say "aye."

24 Anyone opposed to the motion say "no."

25 Okay, motion carries unanimously.

1 All right, so that's it. We're completed with
2 this agenda item.

3 Mr. Jordan, you can run out now.

4 That concludes our meeting. Thank you very
5 much.

6 (The proceedings concluded at 3:37 p.m.)
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23