

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

**STAFF REPORT FOR REGULAR MEETING OF SEPTEMBER 25-26, 2014**

**ITEM NO:** 13

**SUBJECT:** Options for Enforcement of Los Osos Basin Plan Prohibition

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**This Action:** Discussion/Information/Terminate Enforcement Orders

**SUMMARY**

The Regional Water Quality Control Board, Central Coast Region (Water Board) issued cease and desist orders and cleanup and abatement orders (collectively "Orders") to individuals in Los Osos to require compliance with the Basin Plan prohibition on waste discharges. Several parties have requested that the Water Board terminate these Orders. This staff report discusses various options available to the Water Board, including terminating the Orders.

**DISCUSSION**

**Background**

At its May 2014 meeting, the Water Board directed staff to evaluate options available to the Water Board and staff to make sure Order recipients and other Los Osos residents comply with the Basin Plan prohibition by hooking up to the community wastewater system when it becomes available.

According to County staff, the system will be available in March 2016, and it will take one or two years to hook everyone up. Residents are responsible for individual connections.

**County Ordinance**

In December 2010, San Luis Obispo County adopted Ordinance No. 3209. The ordinance states the following (see also Attachment 1):

SECTION 2: Use of Public Sewers Required. Within 180 days of being notified that the County's wastewater system is operational and available for connection, the owner of a parcel of land located within the Service Area and on which there exists a building or other structure used for human occupancy or other purposes requiring sanitation facilities must install suitable sanitation facilities in the premises and must connect the facilities to the County's wastewater system. The Director of Public Works may extend the connection deadline in individual cases of extraordinary circumstances. The connection must be accomplished by the owner in accordance with rules and regulations established by the County, including but not limited to any and all requirements and limitations of the Regional Water Quality Control Board, California Coastal Commission, and/or

other regulatory agencies. These rules and regulations will include a phased connection plan.

The County will thus be the agency primarily responsible for making sure owners comply with the hookup requirements. The County has the following enforcement options available:

1. Section 7.D of Ord. 3209 establishes that non-payment of the service charges will result in liens and monetary penalties. If owners do not connect and refuse to pay the service charges, they will face liens and other penalties for non-payment.
2. Section 2 of Ord. 3209 expressly contemplates that the County will develop "rules and regulations" governing the connection process. The County anticipates that this document will further address the issue of enforcement.
3. In general, when the County learns of code violations, efforts are made to work with the citizens to bring them into compliance. County staff will work with citizens to ensure that they connect to the sewer as required. If that effort fails, than other avenues of enforcement will be explored, including civil and criminal penalties.

### **Water Board Enforcement Options**

#### Notice of Violation

A notice of violation is the most significant level of informal enforcement action and is a tool for informing parties of their violation status. A notice of violation alone does not impose a penalty or require action. In 2007, the Executive Officer issued notices of violation to all septic system owners in the prohibition zone.

#### Time Schedule Orders

The Water Board may require a discharger to submit a time schedule of specific actions that it will take to correct or prevent a violation of requirements if the Water Board finds that a discharge of waste is taking place that violates requirements prescribed by the regional board. Time schedule orders can be issued by the Executive Officer and can be enforced by penalties.

#### Cease and Desist Orders

California Water Code section 13301 provides that the Water Board can issue an order to cease discharging in cases where a discharge of waste is occurring in violation of a prohibition established by the Water Board. A CDO can establish interim steps and actions and time schedules by which a discharger must come into compliance. In 2006, enforcement staff proposed issuing CDOs to 45 septic system owners in the prohibition zone. The Water Board subsequently issued 13 of the proposed CDOs. The Water Board could issue a cease and desist order to a property owner who failed to hook up to the County's wastewater system.

#### Cleanup and Abatement Orders

California Water Code Section 13304 provides that any person who discharges waste into waters of the state in violation of a prohibition issued by the Water Board, shall, upon order of the Water Board, clean up the waste or abate the effects of the waste.

All of the septic system discharges in the Prohibition Zone violate this Water Board's Basin Plan prohibition; therefore, all persons responsible for those discharges are subject to CAOs. An advantage of CAOs is that they may be issued by the Executive Officer. This means that CAOs need not be individually heard and approved by the Water Board, as with cease and desist orders.

The CAO recipients could, however, request administrative hearings. Such hearings could be handled by an administrative officer, such as the Executive Officer. CAOs also provide a strong basis for further enforcement action, including administrative civil liability, if necessary.

#### Administrative Civil Liability

California Water Code Section 13350 provides that any person who violates a prohibition issued by the Water Board shall be liable civilly. The Water Board may impose civil liability of up to \$5,000 for each day the violation occurs or up to \$10 for each gallon of waste discharged. Persons responsible for septic system discharges in the Prohibition Zone currently meet this condition, and thus are liable civilly under Section 13350. In other words, if a septic system owner failed to hook up to the sewer, the Board could go straight to penalties without any other prior enforcement action. The administrative process for issuing civil liability includes a right to a hearing, though the Board could appoint a hearing officer.

#### Referral to the Attorney General

The Water Board could also refer ask the Office of the Attorney General to enforce the Basin Plan prohibition in one or more civil actions. If the Water Board pursues this alternative, the Attorney General's Office could sue the homeowners who fail to hook up to the sewer for penalties and an injunction requiring them to hook up.

#### **Existing Enforcement Orders**

Over the years, the Water Board has issued numerous cease and desist orders and time schedule orders to both the County and the Los Osos Community Services District (CSD). The Water Board also penalized the CSD \$6.6 million in January 2006. In addition, the Water Board issued 38 cease and desist orders and cleanup and abatement orders to individual septic system owners in 2006 and 2007.

The 38 orders approved by the 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 to review the cease and desist orders, which it declined to do. The Water Board's authority to issue the Orders was also upheld by the courts.

We have received information that six 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 32 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, order holders and other interested parties have asked the Water Board to remove the orders.

In letters dated July 10, 2014, enforcement staff notified order recipients that the Water Board would not take enforcement actions against them for failing to pump their septic tanks every three years as required by the orders.

#### Options Regarding the Current Enforcement Orders

1. The Water Board could terminate the cease and desist orders and cleanup abatement orders at today's meeting by adopting Resolution No. R3-2014-0051, included as Attachment 2. All of the enforcement options discussed above would be available to the Board in the future to compel septic system owners to comply with the Basin Plan prohibition.
2. The Water Board could decide to take no action at today's meeting. In this case, the orders would remain in place

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.

#### **ATTACHMENTS:**

1. San Luis Obispo County Ordinance No. 3209
2. Draft Resolution No. R3-2014-0051
3. Example Cease and Desist Order
4. Example Cleanup and Abatement Order